

**COMMERCIAL AND INSTITUTIONAL
SOLID WASTE SERVICES AGREEMENT**

BETWEEN

Village of Wilmette

AND

Veolia ES Solid Waste Midwest, LLC

DATED: September 10, 2008

TABLE OF CONTENTS

	<u>Page</u>
PREAMBLE	1
ARTICLE I. – DEFINITIONS	
Section 1.1 – Definitions	2
ARTICLE II. - SCOPE OF SERVICES	
Section 2.1 - Commercial Services	3
Section 2.2 - Revenue Collection	3
Section 2.3 - Excluded Services	3
Section 2.4 - Exempted Services	3
Section 2.5 - Modification of Required Services	3
ARTICLE III. - TERMS OF SOLID WASTE SERVICES AGREEMENT	
Section 3.1 - Term of Solid Waste Contract	4
ARTICLE IV. – SOLID WASTE COLLECTION AND DISPOSAL	
Section 4.1 - Commercial Service	4
Section 4.2 - Schedule and Location of Collection	4
Section 4.3 - Disposal of Solid Waste	4
Section 4.4 - Solid Waste Collection Data	5
ARTICLE V. – COMPENSATION	
Section 5.1 - Commercial Service	5
ARTICLE VI. – REVENUE COLLECTION	
Section 6.1 - Billing of Accounts	6
Section 6.2 - Commercial Service	6
ARTICLE VII. – TITLE TO WASTE	
Section 7.1 - Title to Waste	6
ARTICLE VIII. - RECYCLABLE MATERIALS	
Section 8.1 - Recyclable Materials Collection Service	7
ARTICLE IX. - BREACH; EVENTS OF DEFAULT AND REMEDIES	
Section 9.1 - Breach by Contractor	7
Section 9.2 - Breach by Municipality	8
Section 9.3 - Events of Default and Remedies of Municipality	9
Section 9.4 - Events of Default and Remedies of Contractor	10

ARTICLE X. - INSURANCE AND INDEMNIFICATION

Section 10.1 – Insurance	10
Section 10.2 – Indemnification	10

ARTICLE XI. – MISCELLANEOUS

Section 11.1 - Non-Assignability	11
Section 11.2 - Equal Employment Opportunity	11
Section 11.3 - Business License Required	13
Section 11.4 - Performance Bond or Letter of Credit	13
Section 11.5 - Provision for Telephone Calls	13
Section 11.6 - Equipment to be Used by Contractor	13
Section 11.7 - Compliance with Laws	13
Section 11.8 - Care and Performance	14
Section 11.9 - No Alcohol or Drugs	14
Section 11.10 - Governing Law	14
Section 11.11 - Severability	14
Section 11.12 - Customer Service	14

EXHIBITS

EXHIBIT A -	Municipal Ordinance No. 2008-O-60
EXHIBIT B -	Pricing Sheet
EXBIT B-2	Fuel Surcharge
EXHIBIT C -	Insurance Provisions
EXHIBIT D -	Form of Performance Bond

This Solid Waste Services Agreement is made and entered into as of the 10th day of September, 2008 by and between Veolia ES Solid Waste Midwest LLC (the "Contractor") and the Village of Wilmette, Illinois (the "Municipality").

PREAMBLE

WHEREAS, the Municipality, in order to protect the public health and welfare of its residents and commercial entities, has deemed it necessary to collect, transport and dispose of Non-SWANCC Waste as defined below; and

WHEREAS, the Municipality is authorized pursuant to the provisions of Section 11-19-1 of the Illinois Municipal Code (65 ILCS 5/11-19-1) to provide for the method or methods of collection, transportation and disposal of municipal waste located within its boundaries and to provide that the method chosen may be the exclusive method to be used within its boundaries; and

WHEREAS, the Municipality has determined to provide municipal waste collection, transportation and disposal services to its multi-family residents and commercial entities and impose on its residents and commercial entities rates and charges relating to such services; and

WHEREAS, the Municipality has determined that it is in the best interests of its commercial entities to contract with a single waste hauler to collect, transport and dispose of (or sell) Non-SWANCC Waste at a facility or facilities mutually agreed upon by the Municipality and the Contractor; and

WHEREAS, the Contractor, pursuant to the terms of this Solid Waste Services Agreement and on behalf of the Municipality, is willing to collect, transport and dispose of (or sell) Non-SWANCC Waste at a facility or facilities mutually agreed upon by the Municipality and the Contractor;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained:

ARTICLE I DEFINITIONS

Section 1.1 Definitions

- a) "Breach" means one of the items described in Sections 9.1 or 9.2.
- b) "Change in Law" means: (i) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation; or (ii) the order or judgment of any federal, state or local court, administrative agency or other governmental body; provided that such event materially changes the costs or ability of the Contractor to carry out its obligations under this Agreement and establishes requirements which are materially more burdensome than or in addition to the applicable requirements in effect on the date this Agreement is executed.
- c) "Commercial Service" means the service provided by the Contractor, on behalf of the Municipality, pursuant to Section 4.1.
- d) "Contractor" means Veolia ES Solid Waste Midwest LLC a Wisconsin limited liability company authorized to conduct business in the State of Illinois, and its successors and assignees.
- e) "Event of Default" has the meaning specified in Sections 9.3 and 9.4.
- f) "Municipality" means the Village of Wilmette, Illinois.
- g) "Non-SWANCC Waste" means commercial, industrial, institutional and certain multi-family refuse and Recyclable Materials (as described in Article VIII), and any other materials designated by the Municipality for collection, provided that such materials are non-SWANCC Waste.
- h) "Project Use Agreement" means the Project Use Agreement, dated March 25, 1992, between the Solid Waste Agency of Northern Cook County and the Municipality, as amended from time to time.
- i) "Recyclable Materials" means aluminum cans, tin, steel and bi-metal cans, clear, green and brown glass bottles and jars, newspapers, magazines, mixed papers (junk mail, chipboard, white and colored paper, brown Kraft paper bags): corrugated cardboard, #1 PETE plastic containers and #2 HPDE plastic containers, #3-#7 plastic containers and bags, aseptic beverage containers, six-pack rings and twelve-pack bands, and any other material or materials which the Municipality and the Contractor mutually agree to include as a "Recyclable Material" subsequent to the execution of this Agreement.
- j) "State" means the State of Illinois.
- k) "SWANCC" means the Solid Waste Agency of Northern Cook County.
- l) "SWANCC Waste" shall have the meaning ascribed to "System Waste" in the Municipality's Ordinance No. 92-O-19.
- m) "Solid Waste Services Agreement" means this Agreement, as dated above, by and between the Municipality and the Contractor, as may be amended from time to time.

ARTICLE II SCOPE OF SERVICES

Section 2.1 Commercial Services

The Contractor shall provide, on behalf of the Municipality, complete service for designated collection, transportation and disposal (or sale) of Non-SWANCC Waste at the facility or facilities mutually agreed upon by the Municipality and the Contractor. The Contractor shall be the sole and exclusive agent of the Municipality to provide the above-referenced Commercial Services.

Section 2.2 Revenue Collection

The Contractor shall, on behalf of the Municipality, provide revenue collection services in accordance with Article VI for all Commercial Services provided under this Solid Waste Contract. This shall include monthly service billing as well as the administration fee recompensed to the Municipality.

Section 2.3 Excluded Services

Solid Waste collection, transportation and disposal from all single-family, certain multi-family, and certain townhouse units within the Municipality, as may be provided in the applicable provisions of the Municipality's Municipal Code, now or hereafter amended, are not included within this Solid Waste Contract.

Section 2.4 Exempted Services

Solid Waste collection, transportation and disposal from any commercial, industrial and institutional account within the Municipality are not included within this Solid Waste Services Agreement if the Municipality approves the exemption of the specific services under the terms of the applicable provisions of its Municipal Code, now or hereafter amended.

Section 2.5 Modification of Required Services

The Municipality reserves the right to adjust or expand the scope of Commercial Services required under this Solid Waste Services Agreement, upon thirty (30) days prior written notice to the Contractor, to accommodate changes in the definition of non-SWANCC Waste or changes in the scope of services provided by SWANCC. The Municipality and the Contractor agree to negotiate an equitable adjustment to the Contractor's compensation under this Solid Waste Services Agreement required as a result of any adjustment or expansion of Municipal or Franchised Services. Unless otherwise agreed by the Contractor, in no event shall the adjustment or expansion of the scope require the Contractor to redirect the disposal of solid waste or recyclables collected under this Agreement.

**ARTICLE III
TERMS OF SOLID WASTE SERVICES AGREEMENT**

Section 3.1 Term of Solid Waste Agreement

The initial term of this Solid Waste Services Agreement shall commence on September 10, 2008, and end on September 30, 2015. Upon mutual written consent of both parties, this Solid Waste Services Agreement can be extended for periods of one (1) year, up to a total of five (5) additional calendar years.

Section 3.2 Commencement of Services under Agreement.

- a) The Contractor shall be entitled to commence Commercial Services as provided in Section 4.1 immediately upon the commencement date of this Agreement.
- b) The Contractor shall commence providing Commercial Services as provided in Section 4.1 under this Agreement no later than September 30, 2008.
- c) The Contract shall provide Commercial Services as provided in Section 4.1 to all non-exempt customers in the Village of Wilmette no later than December 1, 2008.

**ARTICLE IV
SOLID WASTE COLLECTION AND DISPOSAL**

Section 4.1 Commercial Service

Non-SWANCC Waste. Materials to be collected by the Contractor in accordance with the schedule provided in Section 4.3 and transported to a facility meeting the requirements of the State of Illinois and any United States governmental agencies.

- a) Commercial, industrial and institutional waste
- b) Certain Multi-family units waste
- c) Recyclable Materials as provided in Article VIII
- d) Temporary Construction and Demolition Roll-Off

Section 4.2 Schedule and Location of Collection

Commercial Service Waste shall be collected in compliance with the generally applicable provisions of Municipality's Municipal Code, now or hereafter amended.

Section 4.3 Disposal of Solid Waste

- a) Commercial, industrial, institutional and certain multi-family (Non-SWANCC) Waste. The Contractor shall transport for processing all non-SWANCC Waste collected pursuant to this Solid Waste Services Agreement to a facility meeting the requirements of the State of Illinois and any United States governmental agencies.
- b) Recyclable Materials. Recyclable Materials collected shall be transported for sale (with an intermediate diversion for processing permitted) to sites mutually agreed upon by the

Municipality and the Contractor that meet the requirements of the State of Illinois and United States governmental agencies.

Section 4.4 Solid Waste Collection Data

- a) The Contractor shall provide to the Municipality, on a quarterly basis, a report on the quantity of all commercial solid waste collected within the Municipality, recycling diversion data and a breakdown of the number of franchised accounts.
- b) An annual audit of the scope of service matrix will be performed and access to this matrix data base will be provided to the Municipality. The information on this service matrix will include the name of account, the service address, the billing address (if different than the service address), a contact person, a telephone number and fax number where the contact person can be reached, the type of containers on site, the quantities of containers on site, the frequency of collections and an itemization of what day collections are performed, the current service rate of each account and the annual franchise revenue for each account.
- c) Program data and other public information will be provided to each account upon the request of the Municipality to do so.

**ARTICLE V
COMPENSATION**

Section 5.1 Commercial Service

- a) Non-SWANCC Waste. For providing for, on behalf of the Municipality, the collection, transportation and disposal (or sale) of commercial refuse and recyclables at a facility or facilities mutually agreed upon by the Municipality and the Contractor, and for providing revenue collection services, the Contractor shall receive as compensation the rates outlined in the in Exhibit B.
- b) No commercial, industrial, institutional or multifamily entity, receiving the same level of service, will be charged more than that entity paid in the month before the commencement date of the Solid Waste Services Agreement, regardless of the rates outlined in Exhibit B-1, provided that said entity documents that it both (1) had a valid contract prior to August 1, 2008; and (2) actually paid the contract amount for the month of August 2008. If the entity's rate actually paid for the month of August 2008 is lower than the rate in Exhibit B, the entity's rate will be grandfathered until November 30, 2010, subject to such increases as may be provided under the entity's contract with the non-franchise provider aforesaid. Commencing December 1, 2010, that rate will be adjusted by adding thereto fifty percent (50%) of the difference between said current applicable rate provided for in the entity's contract with the non-franchise provider and the current rate as outlined in Exhibit B-1 and adjusted under Section 5.1(c), and commencing December 1, 2011 to the then current rate as outlined in Exhibit B-1 and adjusted under Section 5.1(c).
- c) Rates identified in Exhibit B-1 will adjust annually based on the change in the 12 previous months (September through August) Consumer Price Index (CPI-U) for Chicago-Kenosha-Gary - All Items, with a 2.75% minimum adjustment and 5.0% maximum adjustment each October 1 of the contract beginning 2010. The parties stipulate that the annual increase shown in Exhibit B-1 on October 1, 2009 shall be

5%. In addition, the rates in Exhibit B-1 will be adjusted semi-annually (each March and October) in accordance with the Fuel Surcharge calculation in Exhibit B-2.

- d) The Contractor is responsible for determining if an account is receiving sufficient service in terms of frequency of collection and on-site containers. If, for purposes of code enforcement, the Contractor deems that on-site storage is exceeded regularly, it shall recommend to the Municipality, that an increase in collection frequency or an upgrade of container size is necessary.

ARTICLE VI REVENUE COLLECTION

Section 6.1 Billing of Accounts

Commercial Services provided under Section 4.1 are provided by the Contractor on behalf of the Municipality. The Contractor shall perform on a monthly basis in advance of services provided, on behalf of the Municipality, the billing and collection of all rates and charges imposed on commercial entities by the Municipality relating to such Commercial Services. The Municipality agrees to cooperate and assist the Contractor, when necessary, in the collection of funds owed for services performed. The Contractor is responsible to inform the Municipality on all delinquent accounts where service may ultimately be affected or suspended due to these delinquencies. The Municipality further agrees to cooperate with respect to information, if any, relating to property vacancies or any other information that will assist the Contractor in the execution of this Solid Waste Services Agreement.

In addition to charging commercial entities a reasonable late payment fee or any other right of recovery available to Contractor at law or equity, Contractor may also, in its discretion, suspend service if payment is not timely made. However, if the Contractor fails to provide service to such a customer that is current in its payments and fails to cure such defect within Seven (7) days after notice from the customer, the customer shall have the right to obtain service from another waste hauler and credit that cost against any amount due to the Contractor on future invoices from the Contractor.

The Contractor shall remit to the Municipality an administrative fee of \$75,000 per year in four equal quarterly payments and submit the same along with the service reports required under Section 8.1 herein. The administrative fee shall be included in the rates listed in Exhibit B and shall not be separately listed on the monthly bills to the commercial entities. The administrative fee will adjust annually based on the change in the 12 previous months (September through August) Consumer Price Index (CPI-U) for Chicago–Kenosha–Gary - All Items, with a 2.75% minimum adjustment and 5.0% maximum. The parties stipulate that the annual increase shown in Exhibit B-1 on October 1, 2009 shall be 5%. The Contractor's obligation to pay the administrative fee shall commence October 1, 2008, and the Contractor shall pay each quarterly installment on the first day of the first month of the following quarter, and each quarter thereafter.

Section 6.2 Commercial Service

The Contractor shall, on a monthly basis, bill each commercial entity, an amount payable for the collection, transportation and disposal (or sale) of Commercial Service waste for the following month. The bill shall be payable by the commercial entity within thirty (30) days. The Contractor shall account separately for all amounts received from commercial entities for the administrative fee and hold such amounts, as determined by the Municipality, for the benefit of

the Municipality. These amounts shall be remitted to the Municipality on a quarterly basis along with the submitted service reports.

ARTICLE VII TITLE TO WASTE

Section 7.1 Title to Waste

The Contractor shall retain title to all Non-SWANCC waste.

ARTICLE VIII RECYCLABLE MATERIALS

Section 8.1 Recyclable Materials Collection Service

- a) Commercial Recycling Service. Materials to be collected by the Contractor in accordance with the schedule referenced in Section 4.3 and transported to the facility or facilities mutually agreed upon by the Municipality and the Contractor that meets the requirements of the State of Illinois and United States governmental agencies shall include all Recyclable Materials as defined in Section 1.1.
- b) Transportation of Recyclable Materials. Recyclable Materials shall be sorted, processed, and transported for sale to sites mutually agreed upon by the Municipality and the Contractor. The Contractor shall retain all income (and fully bear all losses) resulting from the disposition of recyclable Materials.
- c) Recyclable Materials Collection Data. The Contractor shall provide to the Municipality, a quarterly report on the weight (in tons), of all Recyclable Materials collected from Commercial Entities under this Solid Waste Services Agreement. The report shall also contain a weight breakdown, by tons, of the types of Recyclable Materials collected, and an approximate count of bags collected in order to determine participation and diversion rates. Quantities attained through rigid-type containers should be broken out as well.
- d) As mutually agreed upon by the Municipality and the Contractor, additional materials may be added to the list of Recyclable Materials stated in Article I, pending the availability of markets for materials to be added.
- e) The Contractor, as agent for the Municipality, shall have a contractual obligation to ensure that all Recyclable Materials collected (except small quantities of process residuals) are properly processed and marketed. No collected Recyclable Materials shall be landfilled or incinerated, unless advance authorization to do so is given by the corporate authorities of the Municipality.
- f) The Contractor shall sell all Recyclable Materials it collects under this Solid Waste Services Agreement. If changes in the market for the sale of any particular Recyclable Material makes continued collection of such Recyclable Material not economically feasible, the Contractor shall consult with the Municipality regarding the market changes of the affected Recyclable Material. The Municipality may, in its

discretion, agree to remove from the list of Recyclable Materials any economically infeasible item upon such market change.

ARTICLE IX BREACH; EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Breach by Contractor

Each of the following shall constitute a Breach on the part of the Contractor:

- a) Failure of the Contractor to pay, within thirty (30) days after notice from the Municipality of such nonpayment, amounts which are undisputed or which are due to the Municipality under this Solid Waste Services Agreement;
- b) Failure of the Contractor to perform timely any obligation under this Solid Waste Contract not included within subparagraph 1) above, except that such failure shall constitute a Breach only if such failure remains uncured for seven (7) days after notice to the Contractor from the Municipality of such failure; provided however, that this seven (7) day notice with opportunity to cure shall not be required in the event of persistent and repeated failure to perform; or
- c) (A) The Contractor's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, (B) a bankruptcy, reorganization, insolvency, arrangement or similar proceeding being instituted by the Contractor under the laws of any jurisdiction, (C) a bankruptcy, reorganization, insolvency, arrangement or similar proceeding being instituted against the Contractor under the laws of any jurisdiction, which proceeding has not been dismissed within one hundred twenty (120) days, (D) any action or answer by the Contractor approving of, consenting to or acquiescing in any such proceeding, or (E) the levy of any distress, execution or attachment upon the property of the Contractor which shall (or which reasonably might be expected to) substantially interfere with its performance under this Solid Waste Services Agreement.
- d) If the Contractor misses a scheduled solid waste collection(s) under this Agreement, the missed scheduled collection(s) must be corrected within one business day of being reported to the Contractor. If the scheduled collection(s) is not corrected by the Contractor within one business day, a charge of \$10.00 per missed scheduled collection(s) will be charged to the Contractor by the Municipality. This provision will not be enforced if the missed solid waste scheduled collection(s) is due to a labor dispute of the Contractor's labor force, however, if the missed scheduled collection(s) is not corrected within seven (7) calendar days, the \$10 charge as stated above will become retroactive to the first day and collectable by the Municipality.
- e) If the Contractor violates an Ordinance of the Municipality, for the first offense in a contract year a written warning will be issued by the Municipality, for each offense after the first offense a \$100 per offense charge will be levied against the Contractor.
- f) All charges levied against the Contractor under sections 9.1 (4) and (5) will be remitted to the Municipality within 30 days of a written charge.

Section 9.2 Breach by Municipality

Each of the following shall constitute a Breach on the part of the Municipality:

- a) The Municipality's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property,
- b) A bankruptcy, reorganization, insolvency, arrangement or similar proceeding being instituted by the Municipality under the laws of any jurisdiction,
- c) A bankruptcy, reorganization, insolvency, arrangement or similar proceeding being instituted against the Municipality under the laws of any jurisdiction, which proceeding has not been dismissed within one hundred twenty (120) days,
- d) Any action or answer by the Municipality approving of, consenting to or acquiescing in any such proceeding, or
- e) The levy of any distress, execution or attachment upon the property of the Municipality which shall (or which reasonably might be expected to) substantially interfere with the Municipality's performance hereunder.
- f) Failure of the Municipality to perform timely any obligation under this Solid Waste Agreement, except that such failure shall constitute a Breach only if such failure remains uncured for thirty (30) days after notice to the Municipality from the Contractor of such failure.

Section 9.3 Events of Default and Remedies of Municipality

- a) If a Breach occurs under Section 9.1, the Municipality may exercise any one or more of the following remedies:
 - 1) The Municipality may declare an Event of Default and may then terminate this Solid Waste Services Agreement immediately, upon notice to the Contractor and, subject to the provisions of sub-paragraph 5) below, upon such termination the Contractor shall cease providing services under this Solid Waste Services Agreement;
 - 2) The Municipality may seek and recover from the Contractor any unpaid amounts due the Municipality, all its substantiated costs for the failure of the Contractor to perform any obligation under this Solid Waste Services Agreement and all damages, whether based upon contract, work stoppage, strike, Contractor negligence (including tort), warranty, delay or otherwise, arising out of the performance or non-performance by the Contractor of its obligations under this Solid Waste Services Agreement. Notwithstanding the foregoing, specifically excluded from the Municipality's rights of recovery are incidental, consequential, indirect or punitive, resulting from the Breach;
 - 3) The Municipality may (A) call upon the sureties to perform their obligations under the performance bond or (B) in the alternative, after releasing the sureties from their obligations under the performance bond, take over and

- 4) The Municipality shall have the power to proceed with any right or remedy granted by federal laws and laws of the State as it may deem best, including any suit, action or special proceeding in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any proper legal or equitable remedy as the Municipality shall deem most effectual to protect the rights aforesaid, insofar as such may be authorized by law;
 - 5) Upon any such termination of this Solid Waste Services Agreement, the Contractor shall for a period requested by the Municipality, but not longer than six (6) months (provided such period is not extended further than the current term of the Agreement), continue to perform the contractual services during which period the businesses shall pay the Contractor its scheduled compensation;
 - 6) No remedy by the terms of this Solid Waste Services Agreement conferred upon or reserved to the Municipality is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Municipality. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.
 - 7) Notwithstanding any other provision of this Agreement, in the event of the Contractor's failure to provide services hereunder due to a work stoppage by its employees, the Municipality shall be entitled to recover from the Contractor all documented labor and disposal costs incurred by it to abate public health, safety and welfare issues caused thereby.
- b) This Section 9.3 shall survive the termination of this Solid Waste Services Agreement.

Section 9.4 Events of Default and Remedies of Contractor

- a) If a Breach occurs under Section 9.2, the Contractor may declare an Event of Default and terminate this Solid Waste Services Agreement immediately, upon notice to the Municipality. In such event, the Contractor's sole remedy shall be to seek and recover from the Municipality any unpaid amounts due the Contractor and any damages resulting from the Breach. Notwithstanding the foregoing, specifically excluded from Contractor's right to recovery are any incidental, consequential, indirect or punitive damages. The Contractor shall not be entitled to specific performance or any other equitable remedies.

- b) The Contractor shall have the power to proceed with any right or remedy granted by federal laws and laws of the State as it may deem best, including any suit, action or special proceeding in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any proper legal or equitable remedy as the Contractor shall deem most effectual to protect the rights aforesaid, insofar as such may be authorized by law.
- c) No remedy by the terms of this Solid Waste Services Agreement conferred upon or reserved to the Contractor is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Contractor. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.
- d) This Section 9.4 shall survive termination of this Solid Waste Services Agreement.

ARTICLE X INSURANCE AND INDEMNIFICATION

Section 10.1 Insurance

- a) The Contractor shall maintain for the duration of this contract and any extensions thereof, insurance issued by a company or companies qualified to do business in the State of Illinois and that meet the requirements set forth in Exhibit C. The Contractor shall provide the Municipality with a certificate of insurance indicating that such insurance coverage meets the requirements contained in Exhibit C.
- b) The Contractor agrees to include the Municipality as an additional named insured on both general and auto liability insurance policies, and the umbrella policy. Contractor agrees to provide a copy of the actual additional insured endorsement evidencing such coverage prior to contract inception.
- c) Insurance premiums shall be paid by the Contractor and shall be without cost to the Municipality.

Section 10.2 Indemnification

- a) The Contractor agrees to indemnify, defend and hold harmless the Municipality, its officials, employees, agents, representatives and attorneys, in both their official and individual capacities, from and against any and all injuries, deaths, claims, losses, damages, suits, demands, actions and causes of actions, expenses, fees, including reasonable attorneys' fees, and costs which may accrue against the Municipality in consequence of entering into this Solid Waste Services Agreement or which may result from or arise out of any action or omission of the Contractor, its officers, employees, agents or subcontractors.
- b) The Contractor shall provide landfill indemnification as outlined in Exhibit "D" of this Solid Waste Services Agreement.

**ARTICLE XI
MISCELLANEOUS**

Section 11.1 Non-Assignability

The Contractor shall not assign this Solid Waste Services Agreement or any part thereof without the prior written consent of the Municipality. Approval, if any, for such assignment shall be made by the corporate authorities of the Municipality. The Contractor shall not assign or subcontract this Solid Waste Services Agreement or the work hereunder, or any part thereof, to any other person, firm, or corporation without prior written consent of the Municipality, but the Contractor may perform its obligations hereunder through its subsidiaries or divisions. Such assignment shall not relieve the Contractor from its obligations or change the terms of this Solid Waste Services Agreement.

Section 11.2 Equal Employment Opportunity

- a) In the event of the Contractor's noncompliance with the provisions of this Section 11.2, the Illinois Human Rights Act or the Illinois Department of Human Rights Rules and Regulations, the Contractor may be declared ineligible for future contracts or subcontracts with the State or any of its political subdivisions or municipal corporations, and this Solid Waste Services Agreement may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.
- b) During the performance of this Solid Waste Services Agreement, the Contractor agrees as follows:
 - 1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further, that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such under-utilization.
 - 2) That, if it hires additional employees in order to perform this Solid Waste Services Agreement or any portion hereof, it will determine the availability (in accordance with the Illinois Department of Human Rights Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not under-utilized.
 - 3) That, in all solicitations or advertisements for employees placed by the Contractor or on the Contractor's behalf, the Contractor will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
 - 4) That the Contractor will send to each labor organization or representative thereof with which it is bound by a collective bargaining or other agreement

or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Illinois Department of Human Rights Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly notify the Illinois Department of Human Rights and the Municipality, and will recruit employees from other sources when necessary to fulfill the Contractor's obligations thereunder.

- 5) That the Contractor shall submit reports as required by the Illinois Department of Human Rights Rules and Regulations, furnish all relevant information as may from time to time be requested by the Illinois Department of Human Rights or the Municipality, and in all respects comply with the Illinois Human Rights Act and the Illinois Department of Human Rights Rules and Regulations.
 - 6) That the Contractor shall permit access to all relevant books, records, accounts and work sites by personnel of the Municipality and the Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Illinois Department of Human Rights Rules and Regulations.
 - 7) That the Contractor shall include, verbatim or by reference, the provisions of this Section 11.2 in every subcontract it awards under which any portion of the Solid Waste Services Agreement obligations are undertaken or assumed, so that such provisions will be binding upon each subcontractor. The Contractor will promptly notify the Municipality and the Illinois Department of Human Rights in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor ineligible for contracts or subcontracts with the State or any of its political subdivisions or municipal corporations.
- c) During the term of this Solid Waste Services Agreement, the Contractor shall comply in all respects with the Equal Employment Opportunity Act. The Contractor shall have a written equal employment opportunity policy statement declaring that it does not discriminate on the basis of race, color, religion, sex, national origin, disability, or age. Findings of non-compliance with applicable State or federal equal employment opportunity laws and regulations may be sufficient reason for revocation or cancellation of this Solid Waste Services Agreement.

Section 11.3 Business License Required.

The Contractor shall be a duly licensed scavenger business as required pursuant to Chapter 5 of the Wilmette Village Code, now or hereafter amended, and shall faithfully obtain and renew its annual business license and pay such generally applicable license fee.

Section 11.4 Performance Bond or Letter of Credit

The Contractor shall furnish a performance bond for the faithful performance of this Agreement, such bond to be substantially in the form attached as Exhibit D, to be executed by a responsible surety company and to be in the penal sum of \$500,000. Such performance bond shall be furnished annually by the Contractor for the following contract year, and shall indemnify the Municipality against any loss resulting from any failure of performance by the Contractor. The

initial bond shall be posted on or before the date that the Contractor commences providing Services to the Municipality and bond shall be posted within thirty (30) days of the anniversary of the date on which the Contractor commenced provision of Services pursuant to this Agreement.

Section 11.5 Provision for Telephone Calls

The Contractor shall maintain an office and a local telephone number, for the receipt of service, billing and complaint calls, and shall be available for such calls on all working days from 8:00 a.m. to 5:00 p.m. Any complaints must be given prompt and courteous attention, and in case of missed scheduled collections, the Contractor shall investigate; and if verified, shall arrange for collection of such waste within 24 hours after the complaint is received.

Section 11.6 Equipment to be Used by Contractor

- a) The Contractor agrees to collect all materials described in Section 4.1 in fully enclosed, leak-proof, modern trucks. All vehicles and collection equipment will be kept in safe, operable condition. Any equipment that is used by the Contractor, that is determined to be unsafe, or in an overall poor condition by the Municipality, shall be replaced at the request of the Municipality. Equipment used for Private Service described in Section 4.3 may be open-body trucks, dump trucks and similar type equipment. When open-body trucks are used, the Contractor shall take such action as is necessary to prevent littering and blowing debris.
- b) Containers used under the franchised service shall be operable, safe and free of graffiti. Any container in disrepair of this sort shall be replaced within three (3) days of notification by the Municipality. Containers with plastic lids that are ill-fitted due to obsolescence or warping shall be replaced within three (3) days of notification by the Municipality, in order to maintain a tight fitting seal to prevent access for pests. All containers will be adequately demarcated with the Contractor's logo. Each container will have an inventory control number demarcated on each container that is cross-referenced to the service matrix.

Section 11.7 Compliance with Laws

- a) The Contractor shall comply at all times with all applicable federal, State and municipal laws, ordinances and regulations at any time applicable to the Contractor's operations under this Solid Waste Services Agreement with no increase to the Contractor's compensation as set forth in this Solid Waste Services Agreement.
- b) The Contractor shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain the same in full force and effect.
- c) The Contractor and the Municipality shall negotiate an equitable adjustment to the Contractor's compensation to reflect any increased costs actually incurred by Contractor as a result of any change in or interpretation in applicable law, rule or regulation affecting Contractor's operations hereunder.

Section 11.8 Care and Performance

The Contractor shall undertake to perform all services rendered hereunder in a neat, thorough and competent manner, without supervision by the Municipality, and to use care and diligence in the performance of all specified services and to provide neat, orderly, uniformed and courteous employees and personnel on its crews.

If the Contractor negligently causes damages to the streets and/or alleys of the Municipality, or the Municipality's property or utilities, the Municipality shall prepare a cost estimate to repair the damage and the Contractor shall have 30-days to provide written comment to the cost estimate, and will remit the cost to repair the damage to the Municipality within 30-days once a final written cost of the repair is sent to the Contractor.

Section 11.9 No Alcohol or Drugs

The Contractor shall prohibit and use its best efforts to enforce the prohibition of any drinking of alcoholic beverages or use of illegal drugs by its drivers and crew members while on duty or in the course of performing their duties under this Solid Waste Services Agreement. The Contractor shall comply will all applicable state and federal laws and regulations concerning drug and alcohol abuse, as well as random drug and alcohol testing as may be applicable to its employees required to hold Commercial Drivers Licenses.

Section 11.10 Governing Law and Construction

This Solid Waste Contract and any questions concerning its validity, construction, or performance shall be governed by the laws of the State of Illinois.

Each party to this Agreement, having access to representation and advice by competent legal counsel and having had full and fair opportunity to negotiate on an equal basis concerning its terms, each party agrees that the terms contained herein shall not be construed against a party merely because that party is or was the principal drafter.

Section 11.11 Severability

The invalidity or unenforceability of one or more of the terms or provisions contained in this Solid Waste Services Agreement shall not affect the validity or enforceability of the remaining terms and provisions of this Solid Waste Services Agreement so long as the material purposes of this Solid Waste Services Agreement can be determined and effectuated.

Section 11.12 Customer Service

The Contractor will each contract year conduct a customer service survey to assess the Contractor's service performance under the contract. The survey content and administration will be approved by the Municipality.

Section 11.13 Force Majeure

Contractor shall not be liable for its failure to perform hereunder due to contingencies beyond its reasonable control including, but not limited to, riots, terrorism, war, fire, or acts of God. Labor disputes and strikes, and changes in applicable law, are not *force majeure* events. If Contractor experiences a *force majeure* event, it shall provide reasonably prompt notice to the Municipality, and keep the Municipality advised of its reasonable efforts to overcome the event's impact on its performance hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Solid Waste Services Agreement to be executed by their duly authorized representatives, all on the day and year first above written.

VEOLIA ES SOLID WASTE MIDWEST LLC
[CONTRACTOR]

VILLAGE OF WILMETTE
[MUNICIPALITY]

By: _____

By: _____
Christopher S. Canning

Its: _____

Its: _____
Village President

ATTEST:

ATTEST:

By: _____

By: _____
Michael J. Earl

Its: _____

Its: _____
Village Clerk

[SEAL]

EXHIBIT A

MUNICIPALITY ORDINANCE

ORDINANCE NO. 2008-O-60

ORDINANCE NO. 2008-O-60

AN ORDINANCE AMENDING THE WILMETTE VILLAGE CODE, 1993, AS AMENDED, AMENDING CHAPTER 6, "FINANCE," SECTION 6-9, "SERVICE AND USER FEES," SUBSECTION 6-9.2, "SOLID WASTE COLLECTION FEE," FURTHER SUBSECTION 6-9.2.2, "AMOUNT OF SOLID WASTE COLLECTION FEE," AND AMENDING CHAPTER 7, "REFUSE, RECYCLING AND YARD WASTE DISPOSAL," SECTION 7-3, "VILLAGE REFUSE COLLECTION SERVICE," SO AS TO PROVIDE FOR THE FRANCHISING OF SOLID WASTE COLLECTION IN THE VILLAGE OF WILMETTE, AND FOR OTHER PURPOSES

WHEREAS, the Village President and Board of Trustees (hereinafter collectively referred to as the "Village Board") of the Village of Wilmette, Cook County, Illinois (hereinafter the "Village"), find that the Village is a home rule municipal corporation as provided in Article VII, Section 6 of the 1970 Constitution of the State of Illinois and, pursuant to said constitutional authority, may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and,

WHEREAS, the Village Board further finds that in order to provide for the public health and welfare it is incumbent on the Village to provide for the collection of solid waste and the recycling of recyclable materials generated by homes and businesses in the Village, and in furtherance of said purpose, has enacted ordinances regulating and controlling the collection of solid waste and recyclables within the Village, has become a member of the Solid Waste Agency of Northern Cook County (hereinafter "SWANCC"), and has contractually provided for the collection of solid waste and recyclables from residential property within the Village; and,

WHEREAS, the Village Board further finds that is authorized pursuant to the provisions of Section 11-19-1 of the Illinois Municipal Code (65 ILCS 5/11-19-1) to provide for the method or

methods of collection, transportation and disposal of municipal waste located within its boundaries and to provide that the method chosen may be the exclusive method to be used within its boundaries; and,

WHEREAS, the Village Board further finds that the Village has determined that it is in the public interest to provide solid waste and recyclables collection, transportation and disposal services to its multi-family residents, institutional, industrial and commercial entities, ensuring the availability of recycling collection that previously has not been available generally to such customers, and impose on its residents and commercial entities reasonable rates and charges relating to such services; and,

WHEREAS, the Village Board further finds that the Village has determined that it is in the interest of its commercial, industrial, institutional and multi-family entities, and in the interest of the public health, safety and welfare generally, to contract with a single, franchised waste hauler to collect, transport and dispose of or sell solid waste and recyclables at a facility or facilities mutually agreed upon by the Village and the contractor; and,

WHEREAS, the Village Board further finds that it is the purpose of this Ordinance to provide for the franchising of commercial, industrial, institutional, and multi-family solid waste and recycling services and to amend the Wilmette Village Code for such purpose;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Wilmette, Cook County, Illinois:

SECTION 1: The foregoing findings and recitals, and each of them, are hereby made a part of Section 1 of this Ordinance and are incorporated by reference as if set forth verbatim herein, and further, that this Ordinance in enacted pursuant to the Village of Wilmette's home rule authority.

SECTION 2: The Wilmette Village Code, 1993, as amended, is further amended in Chapter 6, "Finance," Section 6-9, "Service and User Fees," Subsection 6-9.2, "Solid Waste Collection Fee," further Subsection 6-9.2.2, "Amount of Solid Waste Collection Fee," by deleting the text of said further Subsection 6-9.2.2 in the manner and form shown in strikethrough type below, and inserting therein and therefor such new text in the manner and form shown in underlined bold type below, so that said further Subsection 6-9.2.2 shall hereafter provide as follows:

6-9.2.2 AMOUNT OF SOLID WASTE COLLECTION FEE.

The amount of the Solid Waste Collection Fee shall be as follows:

(a) For detached dwellings, the Solid Waste Collection Fee shall be \$15.65 per month or any portion thereof, said Solid Waste Collection Fee to be billed and paid in installments of \$46.95 per calendar quarter or pro rated fraction thereof.

(b) For each dwelling unit that is **a townhouse or** part of a multi-unit dwelling that receives individual solid waste collection service and individual water service metered separately for that dwelling unit, as described in Section 6-9.2.1(a)(1), the Solid Waste Collection Fee shall be \$15.65 per month or any portion thereof, said Solid Waste Collection Fee to be billed and paid in installments of \$46.95 per calendar quarter or pro rated fraction thereof.

(c) For multi-unit dwellings wherein each dwelling unit that is part of the multi-unit dwelling that does not receive individual solid waste collection service and individual water service metered separately for that dwelling unit, as described in Section 6-9.2.1(a)(2), the Solid Waste Collection Fee to be paid by the entity responsible for payment of the water service bill for that multi-unit dwelling shall be the total of \$15.65 per month, multiplied by the number of all the dwelling units in the multi-family structure, said Solid Waste Collection Fee to be billed and paid in installments of \$46.95 per calendar quarter times the number of all the dwelling units, or pro rated fraction thereof.

(d) Any multi-unit dwelling described in paragraphs **(b) or** (c) of this section that ~~elects to decline all~~ **Section shall either receive its** solid waste collection service from the village **and pay the Solid Waste Collection Fee as provided in this Section,** ~~so as~~ **or alternatively, may elect to receive solid waste collection service from the village's commercial waste franchise holder as provided in Chapter 7 of this Code, subject to the franchisee's collection fee. A multi-unit dwelling described in paragraph (c) of this Section shall be presumed to have not elected to receive solid waste collection service from the Village's commercial waste franchise holder unless it has notified** ~~not to be obligated to pay the Solid Waste Collection Fee, shall notify the Finance~~

Director ~~in writing of same and shall provide the Finance Director with a copy of an agreement, contract or similar proof that the multi unit dwelling~~ **notice that it** will receive such service from a licensed **the village's commercial** solid waste collector **franchise holder**. The Solid Waste Collection Fee shall thereafter cease to accrue beginning on the first day of the month next following receipt of said notice by the Finance Director.

SECTION 3: The Wilmette Village Code, 1993, as amended, is further amended in Chapter 7, "Refuse, Recycling and Yard Waste Collection," Section 7-3, "Village Refuse Collection Service," by deleting the text of said further Section 7-3 in the manner and form shown in strikethrough type below, and inserting therein and therefor such new text in the manner and form shown in underlined bold type below, so that said further Section 7-3 shall hereafter provide as follows:

7-3 VILLAGE REFUSE SOLID WASTE AND RECYCLING COLLECTION SERVICE.

~~The village, at its option, may provide refuse removal service for building which contain residences only, subject to such regulations as may be promulgated by the Village Manager.~~

7-3.1 RESIDENTIAL SOLID WASTE AND RECYCLING COLLECTION.

(a) The village shall provide solid waste and recycling collection for all single-family dwellings and multi-family dwellings. Said collection service may be provided by the village directly, by a contractor engaged by the village, or by an entity pursuant to a franchise approved by the Village.

(b) Owners and occupants of said properties receiving solid waste and recycling collection service shall be liable for payment of the Solid Waste Collection Fee, as provided in Chapter 6, Section 6-9.2, et seq., of this Code.

7-3.2 COMMERCIAL, INSTITUTIONAL AND MULTI-FAMILY SOLID WASTE AND RECYCLING COLLECTION.

Owners, lessees, and occupants, as the case may be, of commercial, industrial, institutional and multi-family properties in the village shall have their solid waste and recyclables collected by the village's solid waste franchise holder as provided in

this Section, unless they are specifically exempted from such requirement under Subsection 7-3.2.4.

7-3.2.1 AUTHORITY TO GRANT FRANCHISE.

(a) In pursuance of the public health, safety and welfare, and to better enable the village to regulate and control the services provided to the users of solid waste services, the village may provide for a franchise for the collection and disposal of solid waste for commercial, industrial, institutional and multifamily users by procurement of one or more contracts with qualified contractors.

(b) Such franchise may be granted by Resolution adopted by the Village Board.

7-3.2.2 FRANCHISE AND LICENSE REQUIRED.

(a) Commencing December 1, 2008, it shall be unlawful for any person or entity to engage in the business of collection, transportation or disposing of solid waste, from any commercial, industrial, institutional and multi-family building or property within the village without first having obtained a franchise from the village and made payment of the applicable business license fee as provided in Chapter 5 of this Code, unless said person or entity is providing such service to a building or property that has received an exemption pursuant to Section 7-3.2.4.

(b) It shall be unlawful for any person or entity to engage in the business of collection, transportation or disposal of solid waste, from any commercial, industrial, institutional or multifamily building within the Village that has been exempted pursuant to Section 7-3.2.4 without first having secured a business license as required under Chapter 5 of this Code.

7-3.2.3 SERVICE UNDER CONTRACTS.

All commercial, industrial, institutional and multifamily buildings shall be serviced by the solid waste franchise holder selected by the village. No person or entity owning or occupying a commercial, industrial, institutional or multifamily building shall enter into a contract for solid waste collection with a person or entity other than the village's franchise holder unless said building or property is exempted pursuant to Section 7-3.2.4.

7-3.2.4 EXEMPTION FROM FRANCHISED SERVICE.

(a) Any building or property occupied by the following users are exempt from the requirement of this Section 7-3.2 to receive solid waste service only from the village's solid waste franchise holder:

(1) The United States of America, or any agency or entity thereof, including but not limited to the United States Postal Service and the United States Coast Guard.

(2) The State of Illinois, or any agency or entity thereof.

(3) A political subdivision of the State of Illinois.

(b) In addition to the foregoing, any person or entity occupying any commercial, industrial, institutional or multifamily building may request, in writing and supported by copies of such documents described below, to the Village Manager, that they be exempted from the franchised solid waste service. The request shall specify the circumstances that necessitate such exemption status, which may include the following:

(1) The person or entity in question is subject to a corporate contract whose provisions are outside the person's or entity's control.

(2) The person or entity in question is subject to a written and binding contract with a scavenger licensed by the village entered into prior to effective date of this Ordinance, but only until the earlier of December 31, 2008, or the remaining term, without renewal, of such contract.

(3) The person or entity in question receives a specialized solid waste or recycling service that cannot be provided by the Village's franchise holder.

(c) Any person or entity that has been granted an exemption from the exclusive franchise pursuant to this Section shall utilize only a scavenger that is licensed by the Village.

(d) Any person or entity denied an exemption under this paragraph may appeal said denial in writing to the Village Board within ten (10) days of the date of the Village Manager's written denial.

SECTION 4: This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as required by law.

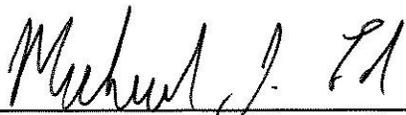
PASSED by the President and Board of Trustees of the Village of Wilmette, Illinois, on the **9th** day of **September**, 2008, according to the following roll call vote:

AYES: President Canning, Trustee Basil, Trustee Levin, Trustee Swanson, Trustee Terman, Trustee Watt

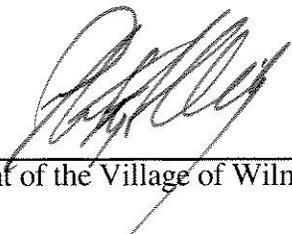
NAYS: Trustee Spillers

ABSTAIN: None

ABSENT: None


Clerk of the Village of Wilmette, IL

APPROVED by the President of the Village of Wilmette, Illinois, this **9th** day of **September**, 2008.


President of the Village of Wilmette, IL

ATTEST:


Clerk of the Village of Wilmette, IL

EXHIBIT B - 1
PRICING SHEET



Village OF Wilmette Commercial Franchise Rates

Commercial Refuse Rates

Size	1x	2x	3x	4x	5x	6x	7x
65 gal	\$28.06	\$56.12	\$84.18	\$112.23	\$140.29	\$218.35	\$271.41
95 gal	\$32.15	\$64.30	\$96.45	\$128.60	\$160.75	\$242.90	\$300.05
1-yard	\$38.75	\$77.51	\$116.26	\$155.01	\$193.77	\$282.52	\$346.27
1.5-yard	\$48.06	\$96.13	\$144.19	\$192.25	\$240.32	\$338.38	\$411.44
2-yard	\$57.16	\$114.31	\$171.47	\$228.62	\$285.78	\$392.94	\$475.09
4-yard	\$88.33	\$176.66	\$265.00	\$353.33	\$441.66	\$579.99	\$693.32
6-yard	\$111.71	\$223.43	\$335.14	\$446.86	\$558.57	\$670.28	\$857.00
8-yard	\$133.36	\$266.73	\$400.09	\$533.46	\$666.82	\$800.18	\$1,008.55
10-yard	\$162.38	\$324.75	\$487.13	\$649.50	\$811.88	\$974.25	\$1,211.63
2-yard comp	\$103.92	\$207.84	\$311.76	\$415.68	\$519.60	\$623.52	\$802.44
6-yard comp	\$311.76	\$623.52	\$935.28	\$1,247.04	\$1,558.80	\$1,870.56	\$2,257.32

Commercial Recycle Rates

Assumes all Com. Cust. receive 1-95 gallon 1x week @ No Charge

Size	1x	2x	3x	4x	5x	6x	7x
65 gal	\$25.01	\$50.01	\$75.02	\$100.02	\$125.03	\$150.03	\$250.04
95 gal.	\$26.00	\$52.00	\$78.00	\$104.01	\$130.01	\$156.01	\$257.01
1	\$27.06	\$54.13	\$81.19	\$108.25	\$135.31	\$162.38	\$264.44
1.5	\$32.48	\$64.95	\$97.43	\$129.90	\$162.38	\$194.85	\$302.33
2	\$34.64	\$69.28	\$103.92	\$138.56	\$173.20	\$207.84	\$317.48
4	\$56.29	\$112.58	\$168.87	\$225.16	\$281.45	\$337.74	\$469.03
6	\$77.94	\$155.88	\$233.82	\$311.76	\$389.70	\$467.64	\$620.58
8	\$86.60	\$173.20	\$259.80	\$346.40	\$433.00	\$519.60	\$681.20
10	\$97.43	\$194.85	\$292.28	\$389.70	\$487.13	\$584.55	\$756.98

Roll Off Rates Includes Permanent and Temporary work

	Per Haul
30c	\$415
42c	\$485
Selfcont 30	\$415
15 open	\$300
20 open	\$365
30 open	\$405

All Rates for First year of contract

EXHIBIT B – 2
FUEL SURCHARGE

APPENDIX B-2

Fuel Surcharge Calculation:

Commencing in 2010, the Contractor shall adjust (positively or negatively) the rates in Appendix B-1 by the change in the actual cost of fuel to provide the Commercial Services under this Agreement from October of the previous year to March of the given year and from March to October of the given year.

The Contractor shall propose a Fuel Surcharge adjustment to the Municipality within 30-days of March 1st and October 1st of each year. The Contractor Fuel Surcharge adjustment proposal shall include the amount of fuel utilized by the Contractor for the previous two quarters and the cost of fuel as reported by *Weekly Midwest No 2 Diesel Retail Sales by All Sellers* published by the U.S. Energy Information Administration or successor index. In addition, the proposal shall include the actual total number of container yards collected monthly under this Agreement. The Contractor shall provide the Municipality with such documentation as the Municipality may reasonably request to audit the validity of the data and information presented to the Municipality in connection with the Fuel Surcharge calculation.

The Contractor shall calculate the Fuel Surcharge adjustment in accordance the formula below.

First Semi-Annual Month Fuel Costs:	A
Second Semi-Annual Month Fuel Costs:	B
Change in Monthly Fuel Costs:	$B - A = C$
Total Customer Container Yardage Collected:	D
Monthly Fuel Yardage Change:	$C / D = E$
Pricing Change Per Yard:	E

Examples of such adjustments are shown below to illustrate the foregoing. The value of "E" shall be rounded to the nearest full cent.

The Municipality shall review the Fuel Surcharge adjustment and shall, within fifteen (15) business days of receipt thereof from the Contractor (1) approve the proposed Fuel Surcharge adjustment in writing; or (2) request in writing additional information from the Contractor the Municipality reasonably deems necessary to review or audit the Contractor's request; or (3) reject the proposed Fuel Surcharge adjustment in whole or in part, stating its justification for doing so.

In the event that the Municipality shall request additional information from the Contractor, the Municipality shall either approve or reject in whole or in part the proposed Fuel Surcharge adjustment within ten (10) business days of receipt of such materials from the Contractor.

In the event that the Municipality rejects the proposed Fuel Surcharge adjustment in whole or in part, the parties shall meet within 10 business days, or such further time as may be mutually agreed, and work in good faith to resolve the dispute over the amount of the proposed surcharge.

The Contractor shall make no adjustments to the Rates listed in Appendix B-1 under this Fuel Surcharge without the prior approval of the Village, which shall not be unreasonably withheld.

EXAMPLE 1:

First Month Fuel Costs:	\$5,582.60
Second Month Fuel Costs:	\$5,965.50
Change in Monthly Fuel Costs:	$\$5,965.50 - \$5,582.60 = \$382.90$
Total Customer Container Yardage:	7,820
Monthly Fuel Yardage Change:	$\$382.90 / 7,820 = \0.049
Pricing Change Per Yard:	\$0.05

EXAMPLE 2:

First Month Fuel Costs:	\$5,582.60
Second Month Fuel Costs:	\$5,001.60
Change in Monthly Fuel Costs:	$\$5,001.60 - \$5,582.60 = -\$581.00$
Total Customer Container Yardage:	7,820
Monthly Fuel Yardage Change:	$-\$581.00 / 7,820 = \0.074
Pricing Change Per Yard:	- \$0.07

EXHIBIT C

INSURANCE PROVISIONS

A. Insurance Requirements

The Contractor shall procure and maintain the following insurance during the entire term of the agreement described in Section 3.1:

<u>Type of Insurance</u>	<u>Required Limits of Liability</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000 per accident \$500,000 disease (policy limit) \$500,000 disease (each employee)
3. Commercial General Liability, including "occurrence" coverage for:	
a. Premises and operations, independent contractors protective, contractual liability, broad form property damage and XCU hazards	\$1,000,000 per occurrence for bodily injury and property damage combined. \$2,000,000 annual aggregate per location for bodily injury and property damage combined.
b. Products and completed operations (including broad form property damage)	\$1,000,000 per occurrence for bodily injury and property damage combined. \$2,000,000 annual aggregate for bodily injury and property damage combined.
c. Personal injury liability	\$1,000,000 per occurrence \$1,000,000 annual aggregate
4. Business Auto liability (including owned, non-owned and hired vehicles and coverage for environmental liability)	\$1,000,000 per accident for bodily injury and property damage combined.
5. Umbrella/Excess liability (to apply as excess over 2, 3 and 4 above)	\$5,000,000 per occurrence \$5,000,000 annual aggregate
6. Environmental Impairment/Pollution Liability Coverage for pollution incidents as a result of a claim for bodily injury, property damage or remediation costs from an incident at, on or migrating beyond the contracted work site. Coverage shall be extended to Non-Owned Disposal sites resulting from a pollution incident at, on or mitigating beyond the site; and also provide coverage for incidents occurring during transportation of pollutants.	<u>\$1,000,000 combined single limit per occurrence for bodily injury, property damage and remediation costs.</u>

B. Miscellaneous Provisions

1. The insurance policies set forth in items 3 and 5 above shall continue to be maintained for a period of two (2) years following the termination of the Agreement.
2. Equivalent insurance must be maintained by each subcontractor of the Contractor.
3. All insurance companies must be reasonably acceptable to the Municipality and may include self-insurance obtained by the Contractor. Minimum insurance carrier requirements include a current rating from A.M. Best Co., Inc. (or any successor publication of comparable standing within the industry) of "A VIII" and a license to do business in the State of Illinois.
4. All liability coverages shall be written on an occurrence basis.
5. Prior to commencing Services under the agreements, the Contractor shall deliver, or cause to be delivered, to the Municipality certificates of insurance (and other evidence of insurance and additional insured endorsements requested by the Municipality) which the Contractor is required to purchase and maintain pursuant to this Schedule. The Contractor shall deliver certificates of renewal or replacement policies or coverage, along with applicable additional insured endorsements, no less than ten (10) days prior to the effective date of each renewal or replacement policy or coverage.
6. All insurance coverage required to be purchased and maintained shall contain a provision or endorsement providing that the coverage afforded will not be cancelled, materially reduced or altered or renewal refused until at least thirty (30) days' prior written notice has been given to the Municipality by certified mail.
7. The Contractor shall be responsible for promptly reporting all claims to the appropriate insurer on behalf of itself, the Municipality and the additional insureds set forth below.
8. The insurance policies set forth in items 3, 4 and 5 above shall be endorsed to include the Municipality, the directors, officers, employees, agents and members of the Municipality, SWANCC and the directors, officers, employees, agents and members of SWANCC as additional named insureds for all activities of the Contractor in the performance of the Agreement. Such insurance is to be primary and non-contributory with any insurance secured and maintained by such additional named insureds.

EXHIBIT D

FORM OF PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address or Municipality):

SOLID WASTE COLLECTION AND HAULING AND SERVICE CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than In-Service Date):

Amount:

CONTRACTOR AS PRINCIPAL:

Company: (Corporate Seal)

Signature:

Name and Title:

SURETY

Company: (Corporate Seal)

Signature:

Name and Title:

(Any additional signatures appear on page ____)

_____(FOR INFORMATION ONLY – Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

- I. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Solid Waste Services Agreement, which is incorporated herein by reference.
- II. If the Contractor performs the Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
- III. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - a) The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen (15) days after receipt of such notice to discuss methods of performing the Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
 - b) The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty (20) days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
 - c) The Owner has agreed to pay the Balance of the Contract Price to the Surety, in accordance with the terms of the Contract, or to a contractor selected to perform the Contract in accordance with the terms of the contract with the Owner.
- IV. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall, promptly and at the Surety's expense, take one of the following actions:
 - d) Arrange for the Contractor, with consent of the Owner, to perform and complete the Contract; or
 - e) Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - f) Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with a performance bond executed by a qualified surety equivalent to the bond issued on the Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
 - g) Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 - .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefore to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefore.

- V. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional written notice from the Owner of the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

- VI. After the Owner has terminated the Contractor's right to complete the Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:
 - h) The responsibilities of the Contractor for correction of defective work and completion of the Contract;
 - i) Additional costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4;
 - j) Liquidated damages as provided in the Contract, or if no liquidated damages are provided for in the Contract for such event, actual damages caused by delayed performance or non-performance of the Contractor.
 - k) The responsibilities of the Contractor for obtaining the insurance specified in the Contract and for fulfilling the indemnification obligations undertaken by the Contractor in the Contract.

- VII. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

- VIII. The Surety hereby waives notice of any addition, alteration, modification or change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

- IX. Any proceeding, legal or equitable, under this Bond is required to be instituted in the Circuit Court of Cook County and shall be instituted within two (2) years after Contractor Default or within two (2) years after the Contractor ceased working or within two (2) years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitations available to sureties as a defense prescribed by Illinois law shall be applicable.

- X. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

XI. DEFINITIONS

- l) The Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.
- m) Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- n) Owner Default: Failure of the Owner, which has neither been remedied nor waived, (a) to pay the Contractor, but only to the extent such failure to pay excuses or relieves the Contractor from full and faithful performance of its obligations under the Contract and the completion of the Services provided for in said Contract; or (b) to perform and complete or comply with the terms of the said Contract, but only to the extent such failure excuses or relieves the Contractor from full and faithful performance of its obligations under the said Contract and the completion of the Services provided for in the said Contract.

(Space is provided below for additional signatures of added parties, other than those appearing on the coverage page.)

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Signature: _____
Name and Title:
Address:

SURETY

Company: (Corporate Seal)

Signature: _____
Name and Title:
Address: