

CITY OF WARRENVILLE
DU PAGE COUNTY, ILLINOIS

ORDINANCE NO. _____

**ORDINANCE APPROVING CONTRACT BETWEEN THE
CITY AND WASTE MANAGEMENT OF ILLINOIS, INC.**

WHEREAS, the City has sought proposals for the collection and disposal of residential solid waste within the City; and

WHEREAS, the Mayor and City Council have determined that the proposal submitted by Waste Management of Illinois, Inc. will most beneficially meet the City's needs for refuse collection services; and

WHEREAS, the Mayor and City Council find and hereby declare that it is in the best interests of the City and its residents to approve the Contract attached hereto and made a part hereof;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WARRENVILLE, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION ONE: The Mayor and City Council of the City of Warrenville hereby approve the Contract Between the City of Warrenville and Waste Management of Illinois, Inc. attached hereto and made a part hereof, and the Mayor and City Clerk shall be and are hereby authorized and directed to execute said contract in substantially the form attached hereto.

SECTION TWO: Any policies, resolutions or ordinances of the City of Warrenville which conflict with this ordinance shall be and are hereby repealed to the extent of such conflict.

SECTION THREE: This ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED THIS ____ day of _____, 2010.

AYES:

NAYS:

ABSENT:

APPROVED THIS ____ day of _____, 2010.

ATTEST:

CITY CLERK

CONTRACT FOR RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL SERVICES BETWEEN THE CITY OF WARRENVILLE AND WASTE MANAGEMENT, INC.

THIS CONTRACT (the "Contract"), made this _____ day of _____, 2010, by and between **WASTE MANAGEMENT OF ILLINOIS, INC.**, of _____, a Delaware corporation (hereinafter "Contractor") and the **CITY OF WARRENVILLE**, an Illinois municipal corporation, DuPage County, Illinois (hereinafter "City").

WITNESSETH:

WHEREAS, the City has sought proposals for the collection and disposal of residential solid waste within the City; and

WHEREAS, the City has determined that the proposal submitted by Contractor will most beneficially meet the City's needs for refuse collection services; and

WHEREAS, the parties have agreed to expressly set forth their respective rights and obligations with respect to the residential solid waste collection and disposal services to be performed by the Contractor during the term of this Contract;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, it is agreed by and between the City and Contractor as follows:

ARTICLE 1. RECITALS AND CONTRACT DOCUMENTS

1.1. **Recitals incorporated.** Representations, covenants and recitations set forth in the foregoing recitals are material to this Contract and are hereby incorporated into and made a part of this Contract as though fully set forth in this Article I.

1.2. **Incorporated documents.** The Contract Documents shall be as defined in the Request for Proposal and shall also include the following documents, which are incorporated herein by reference and constitute the material terms, conditions and representations of the Contract between the City and the Contractor:

1.2.1. This Contract;

1.2.2. Request for Proposal - Residential Solid Waste Collection and Disposal Service, and all attachments thereto, prepared by the City and dated January 18, 2010, which is attached hereto as Exhibit 1 and made a part hereof; and

1.2.3. Contractor's Proposal to the City of Warrenville and all attachments thereto prepared and submitted by the Contractor, together with amendments thereto; all of which are attached hereto and incorporated herein by

reference as Exhibit 2. If any inconsistency exists amongst or between any term, condition, or provision of any of the Contract Documents, then those terms, conditions and provisions most favorable to the City shall control and be given effect over those terms, conditions or provisions less favorable.

ARTICLE 2. SCOPE OF WORK

Contractor shall perform everything required to be performed and shall provide and furnish all labor, materials, plant, tools, equipment, and other necessary apparatus and all transportation service required to complete all the work required to provide residential solid waste collection and disposal services for the City of Warrenville, Du Page County, Illinois, all in strict accordance with the Contract Documents, and the Contractor shall do everything required by this Contract and other documents constituting a part hereof for the full term of this Contract and any extension thereof.

ARTICLE 3. COMPLIANCE WITH LAWS

3.1. **License and taxes.** The Contractor shall be responsible to obtain all licenses and permits necessary for the successful performance of the Contract. The Contractor shall also pay all Federal, State and local taxes, including sales tax, social security, workers' compensation, unemployment insurance, and any other tax which may be chargeable against labor, material, equipment or real estate.

3.2. **Compliance with applicable law.** The Contractor shall comply with all applicable Federal, State, County and Municipal laws, ordinances, rules and regulations governing the collection, disposal and processing of refuse, recyclables and yard waste during the Term of the Contract, or which may be in effect during the provision of services under the Contract, including without limitation, all forms of traffic regulations, public utility and intrastate and interstate commerce regulations, workers' compensation laws, bid rigging laws, prevailing wage laws, the Social Security Act of the federal government and any of its titles, the Illinois Human Rights Act, and regulations or EEOC statutory provisions and rules and regulations, OSHA, and statutory provisions, rules and regulations of the State and Federal EPA. The Contractor shall provide any required certifications concerning these laws, rules or regulations upon execution of the Contract, including the certifications attached hereto as Exhibit 3 and made a part hereof. The Contractor shall contact the Illinois Department of Labor in order to determine whether the Contract work is deemed a "public work" for the purpose of prevailing wage and related laws defined in Exhibit 3.

The Contract and the work and the services to be performed as described in the Contract Documents are also subject to the provisions of all pertinent municipal ordinances and regulations, which are hereby made a part hereof with the same force and effect as if specifically set forth herein including, but not limited to, Title 6 of the City Code of the City of Warrenville.

3.3. **Penalties and fines.** The Contractor shall be solely liable for all fines and penalties imposed by the City or any other governmental agency resulting from the Contractor's performance or its failure to perform its duties and obligations under the Contract.

ARTICLE 4. TERM OF CONTRACT

The term of this Contract shall be three (3) years, commencing on May 1, 2010, and ending on midnight April 30, 2013.

ARTICLE 5. OTHER PROVISIONS

5.1. **Applicable law and exclusive venue.** This Contract shall be governed by the laws of the State of Illinois and the sole and exclusive venue for any proceedings to enforce the provisions hereof shall be in the Circuit Court of the 18th Judicial Circuit, DuPage County, Illinois, and the parties agree that this Contract was made and entered into in the City of Warrentville, DuPage County, Illinois.

5.2. **Entire agreement.** This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof. All prior and contemporaneous agreements, understandings and representations, oral or written are hereby superseded by this Contract.

5.3. **Amendment.** No amendment, modification or change to the Contract shall be effective unless it is in writing duly executed by the parties hereto.

5.4. **Severability.** If any provision of the Contract which is not essential to carry out the intent of the parties hereto is held invalid by a court of competent jurisdiction, such provisions shall be deemed deleted herefrom, and the invalidity thereof shall not affect any other provision contained herein.

5.5. **Remedies.** Contractor agrees that the services to be provided in accordance with this Contract are matters involving public health and, accordingly, the prompt and timely provision of the services provided herein is essential and vital to the health, safety and welfare of the City of Warrentville and its residents. The remedies furnished herein shall be construed and interpreted as favoring the public interest and the public health. In the event the Contractor fails to provide any or all of the services specified in this Contract and that said failure continues for a period in excess of one (1) collection day and the City, by either the City Council or the City Administrator, elects to exercise the remedies provided herein, then the City shall provide the Contractor at least twenty-four (24) hours written notice by telefax or personal delivery that the City may take such steps as are determined reasonably necessary to furnish or obtain services according to the collection requirements

provided for in the Contract Documents. If the Contractor does not cure the defect within five (5) days of the receipt of the aforesaid notice from the City, the City may take such reasonably necessary steps to ensure the above collection requirements, and shall have any or all of the remedies provided by law in addition to the following remedies:

- 5.5.1. The City shall have the right to terminate this Contract on thirty (30) days' further notice and to secure and obtain from any third party, by contract or otherwise, residential solid waste collection and disposal services, equal in nature and scope to the services provided in the Contract Documents. The City shall have the right to draw upon the letter of credit furnished by the Contractor for any excess cost, expense or damage incurred or to be incurred by the City or its residents for such services. In addition, the City may pursue any or all other remedies which the City may have by virtue of this Contract or any applicable law.
- 5.5.2. The City may elect to continue the Contract in effect but obtain waste disposal services of a type and scope necessary to cure the failure of the Contractor to provide services in accordance with the Contract Documents. The City may draw upon the letter of credit in advance of obtaining those services, but the monies drawn upon shall be used solely and exclusively for paying the additional expenses incurred by the City or its residents for obtaining and/or providing such services. The City may recover from Contractor or Contractor's letter of credit any and all expenses, including reasonable attorneys' fees and costs and expenses of litigation and collection, and administrative overhead incurred by the City because of Contractor's default.
- 5.5.3. The City shall have the right to seek such other remedies as it might have in law or in equity, by suit, action, mandamus, or any other proceeding, including specific performance, to enforce or compel the performance of this Contract and the City shall have the right to recover a judgment for monetary damages. Each of the City's remedies shall be cumulative to any other remedy, and not exclusive of one another. Contractor shall not have a right to recover a judgment for monetary damages against any elected or appointed official of the City for a breach of any of the terms of this Contract, the Contractor's sole and exclusive remedies being limited to any actions which the Contractor may have against the City of Warrentville.

5.6. Timely performance. Contractor's timely performance of the services provided for in the Contract Documents shall not be excused or delayed on account of any work stoppages, lock outs, strikes, labor or material shortage, by any person or organization. Contractor shall obtain, at Contractor's sole expense and subject to the City's reasonable approval, such services, labor or equipment as may be necessary for the timely performance of this Contract. In the event the Contractor is unable to perform on account of such work

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first above written.

WASTE MANAGEMENT OF ILLINOIS, INC.

ATTEST:

CITY OF WARRENVILLE

ATTEST:

Mayor

City Clerk

146838W\REV3/11/10

- Exhibit 1 Request for Proposal - Residential Solid Waste Collection and Disposal Service, and all attachments thereto, prepared by the City and dated January 18, 2010.
- Exhibit 2 Contractor's Proposal to the City of Warrenville and all attachments thereto prepared and submitted by the Contractor, together with amendments thereto.
- Exhibit 3 Required certifications concerning Federal, State, County and Municipal laws, ordinances, rules and regulations. these laws, rules or regulations upon execution of the Contract.