

SOLID WASTE SERVICES AGREEMENT

BETWEEN

CAMPTON TOWNSHIP SOLID WASTE DISPOSAL DISTRICT

AND

WASTE MANAGEMENT OF ILLINOIS, INC.

DATED: _____

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EXHIBIT 5 - Form of Performance Bond

SOLID WASTE SERVICE AGREEMENT

This Solid Waste Service Agreement (the "Agreement") is made and entered into as of the 1st day of April, 2010 by and between Waste Management of Illinois, Inc., a Delaware corporation (the "Contractor") and the Campton Township Solid Waste Disposal District (the "District").

PREAMBLE

WHEREAS, the District wishes to contract for the waste hauling and collection services specified in this Agreement; and

WHEREAS, the District has determined to provide waste collection, transportation and disposal services for its residents; and

WHEREAS, the District has determined that it is in the best interests of the District and its residents to contract with the Contractor to collect, transport and dispose of Solid Waste, pursuant to the terms and conditions of this Agreement; and

WHEREAS, the District has adopted Ordinance No. _ (a certified copy of which is attached hereto as Exhibit 1), authorizing the execution and delivery of this Agreement; and

WHEREAS, the Contractor, pursuant to the terms of this Agreement and on behalf of the District, is willing to collect and transport all Solid Waste to a licensed solid waste disposal facility and collect, transport and dispose of Other Waste pursuant to the terms and conditions of this Agreement;

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

ARTICLE 1 **DEFINITIONS**

Section 1.1 Definitions.

As used in this Agreement, each of the following terms shall have the meaning set forth below:

"Act" means the Environmental Protection Act, ILCS 1993, Chapter 415, Section 5/1, et. sea., as amended from time to time, and applicable rules and regulations promulgated thereunder.

"Agreement" means this Agreement, dated APRIL 1, 2010, by and between the District and the Contractor, as amended from time to time.

"Breach" means one of the items described in Sections 11.1 or 11.2.

"Bulk Items" means items including, but not limited to, pianos, beds, box springs, mattresses, sofas, furniture, furnishings, fixtures.

"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.

"Contractor" means Waste Management of Illinois, Inc., a Delaware corporation, and its successors and assigns.

"District" means Campton Township Solid Waste Disposal District. "Event of Default" has the meaning specified in Sections 11.3 and 11.4.

"Landscape Waste" means all accumulations of grass or shrubbery cuttings, leaves, tree limbs and other materials accumulated as the result of the care of lawns, shrubbery, vines and trees.

"Other Waste" means Landscape Waste, Recyclable Materials, Bulk Items and any other materials designated by the District for collection.

"Recyclable Materials" shall mean 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 District and the Contractor mutually agree to include as a "Recyclable Material" subsequent to the execution of this Agreement.

"Residential Unit" means a residential household in a building of three units or less that is located within unincorporated Campton Township.

"Services" means the specified waste hauling, collection and disposal services to be provided by the Contractor, at the direction and on behalf of the District, pursuant to Section 2.1.

"State" means the State of Illinois.

"Solid Waste" means generally, municipal waste, as defined in the Act.

"Subcontractor" means a person or entity who has a direct contract with the Contractor to perform a portion of the Services. (The term "Subcontractor" is referred to throughout this Agreement as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or Subcontractors of a separate contractor.)

"Township Facilities" means those township-owned or township-affiliated facilities and properties set forth on Exhibit 2, as such list may be modified from time to time by mutual agreement between the Contractor and the District. The Contractor may not unreasonably withhold its consent.

"White Goods" means White Goods as defined in Section 5/22.28 of the Act.

ARTICLE II SCOPE OF SERVICES

Section 2.1 Services Provided to District. The Contractor shall provide the following solid waste services from each Residential Unit:

- A. Collection and disposal of Solid Waste;
- B. Collection, transportation and/or disposal of Other Waste, as provided in this Agreement;
- C. Quarterly billing of the residents; and
- D. Collection and disposal of Township facilities' solid waste and recycling.

Section 2.2 Revenue Collection. The Contractor shall bill household receiving services, in accordance with Article VI of this Agreement.

Section 2.3 Modification of Required Services. The District reserves the right to modify or adjust the scope of Services provided under this Agreement, upon one hundred and eighty (180) days (unless a shorter period of time is mutually agreed by the Contractor and the District) prior written notice ("Notice of Service Modification", the form of which is attached hereto as Exhibit 3) to the Contractor: (i) to accommodate the District's decision to implement an alternative form or type of Service to be provided by the Contractor, pursuant to Section 4.4 or (ii) any other change in Service as mutually agreed to by the District and the Contractor. The District and the Contractor agree to negotiate in good faith to make an equitable adjustment to the Contractor's compensation under this Agreement required as a result of any such modification or adjustment in the Services provided under this Agreement.

ARTICLE III
TERM OF AGREEMENT

Section 3.1 Term of Agreement. The term of this Agreement shall commence on April 1, 2010, and end on April 1, 2015, unless terminated at an earlier date pursuant to the terms of this Agreement.

ARTICLE IV
WASTE COLLECTION AND DISPOSAL

Section 4.1 Description of Waste to be Collected.

A. Solid Waste. Materials to be collected and disposed by the Contractor in accordance with the schedule prepared in accordance with Section 4.2.

B. Other Waste. Materials to be collected by the Contractor, in accordance with the schedule prepared in accordance with Section 4.2, and disposed, as provided in Section 4.3, shall include the following:

1. Bulk Items as provided in Article VIII.
2. Landscape Waste, as provided in Article IX.
3. Recyclable Materials as provided in Article X.
4. White Goods as provided in Article IX.

Section 4.2 Schedule and Location of Collection.

A. All Solid Waste and Other Waste to be collected once per week between the hours of 6:00 AM and 6:00 PM on the scheduled day of collection.

B. The Contractor will purchase, distribute and maintain a 65-gallon two wheeled lidded cart for each Residential Unit, for the collection of recyclable material. Each Residential Unit may change (at no cost) to a 35-gallon or 95-gallon cart once during the term of the contract, and each residential unit may also change (at no cost) to a 35-gallon or 95-gallon cart once during the term of each renewal period.

C. Residents shall place waste containers at the curb in front each household and made accessible to standard garbage collection and recycling trucks.

Section 4.3 Disposal of Waste.

A. Solid Waste. The Contractor shall collect and dispose at a licensed solid waste disposal facility of all Solid Waste pursuant to this Agreement unless otherwise directed by the District

B. Other Waste.

1. Recyclable Materials shall be collected and transported, with an intermediate diversion(s) for processing permitted, in accordance with the requirements of Article X.

2. White Goods shall be transported to permitted sites for disposal in accordance with applicable laws.

Section 4.4 Waste Collection Data. The Contractor shall provide to the District, monthly a report on the quantity of all waste collected within the District. The report shall contain a breakdown of the types of waste collected including Solid Waste, bulk items, white goods, landscape waste and recyclable materials, and shall include recycling participation and/or set-out rates. The reporting format shall be approved in advance by the District which can be adjusted from time to time as determined by the District.

Section 4.5 General Operating Requirements.

A. The Contractor shall undertake to perform all Services rendered hereunder in a neat, thorough and workmanlike manner, without supervision by the District, 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.

B. The Contractor shall provide the Services in compliance with all applicable governmental laws, rules, regulations and permits. Except as specifically identified in this Agreement, the Contractor shall pay as and when due all costs and expenses incurred with respect to the services to be provided pursuant to this Agreement.

C. The Contractor shall, in a manner consistent with applicable law, insurance requirements and recognized safety practice, establish and maintain appropriate safety procedures for the services provided. The Contractor shall provide the District with copies of all reports filed with governmental authorities having jurisdiction over safety standards and procedures, including, without limitation, reports filed with the Occupational Safety and Health Administration.

D. The Contractor shall take reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to employees performing the Services and other persons who may be affected thereby.

E. The Contractor shall take all necessary precautions for the protection of public or private property. The Contractor shall be responsible for damages on or to public or private property resulting from careless or negligent operation of vehicles or handling of any receptacle. All

property which suffers damage (reasonable wear-and-tear excepted) caused by the Contractor, including, but not limited to waste receptacles, sod, mailboxes or recycling bins, shall be repaired or replaced as soon as possible to equivalent quality at the time of the damage, and at no extra charge to the property owner. If the Contractor fails to do so within a reasonable period of time, the District may, after the expiration of a period of forty-eight (48) hours after giving the Contractor notice in writing, proceed to repair or replace such property as may be deemed necessary at the Contractor's expense. Contractor shall reimburse the District within thirty (30) days of receipt of an invoice from the District detailing the expenditures to be reimbursed.

F. The Contractor shall employ qualified personnel, all of whom shall be licensed as required by law, in sufficient number to provide the Services specified under this Agreement.

G. The Contractor shall pay all sales, use, property, income and other taxes that are lawfully assessed against the District or the Contractor in connection with the Contractor's facilities and the work included in this contract. By law, the District is exempt from paying Federal Excise Tax, State and Local Retailers' Occupation Tax, State and Local Service Occupation Tax, Use Tax and Service Use Tax. The District's sale tax-exemption number shall be furnished upon request of the Contractor.

The Contractor shall secure, at its own expense, all necessary permits, licenses and certificates of authority required to complete the work, and shall comply with all requirements of such permits, licenses and certificates of authority to operate. The Contractor shall keep and maintain all such licenses, permits and certificates of authority in full force and effect throughout the term of this Agreement.

H. The Contractor shall promptly investigate and courteously resolve all complaints of missed pick-ups, and shall arrange for collection of missed pick-ups found to be valid within twenty-four (24) hours after a complaint or notification is received. In the event this occurs on a day preceding a holiday or weekend, the complaint shall be serviced on the next working day. The Contractor and the District agree to jointly establish reasonable administrative regulations for the investigation and resolution of alleged missed pick-ups. The Contractor agrees to provide notices ("sorry tag") to be left at the resident's property clearly explaining the reason(s) services (refuse, yard waste or recycling collection) were not provided, and what actions, if any, can be taken by the resident in the future to ensure collection of materials. Such notices are to be designed and printed by the Contractor, but shall be approved by the District. In the event of valid complaints for other incidents, including, but not limited to, breakage of glass during collection of recyclables; items of refuse, recyclables and/or yard waste dropped during collection; and the like are not cleaned up by the collection crew, the Contractor shall promptly arrange for clean-up within twenty-four (24) hours after a complaint or notification is received.

The Contractor shall maintain a daily log of complaints received. The complaint record shall be forwarded monthly for inspection by the District during regular business hours.

Section 4.6 Service Coordinators. The District shall provide the Contractor with the name of its service coordinator with respect to matters that may arise during the performance of this Agreement, and such person shall have authority to transmit instructions and receive information

and confer with the Contractor's service coordinator. The Contractor shall provide the District with the name of its service coordinator with respect to matters that may arise during the performance of this Agreement, and such person shall have authority to transmit instructions and receive information and confer with the District's service coordinator. The District or the Contractor may change their respective designations of service coordinators from time to time by notice to the other party.

Section 4.7 Program Education. The Contractor shall provide the District with 200 copies, and a copy to each residential unit in the District prior to April 1, 2010, and thirty (30) days prior to the anniversary date of each subsequent year of the contract, a brochure detailing the solid waste collection schedule, collection requirements, recycling program description including but not limited to a list of accepted materials, bulk items collection requirements, white goods collection requirements, rate structure for the base compensation services and subscription services, and District contact information. The District shall approve the brochure's content and layout prior to its distribution.

ARTICLE V COMPENSATION

Section 5.1 Base Compensation.

A. For providing:

1. Collection and disposal of Solid Waste;
2. Collection and disposal (if required) of Other Waste, as provided in this Agreement;
3. Collection and transportation of Township facilities' solid waste and recycling;
4. Providing a 65-gallon, two-wheeled lidded cart for recyclables to each Residential Unit, including the option for each Residential Unit during the Contract period (and during any renewal period) to select either the standard 65-gallon, or optional 35-gallon or 95-gallon, two-wheeled lidded cart;
5. Three month billing cycles billed four times per year.

B. The monthly Residential Unit rates will be:

1. Base Compensation - \$16.04per month
2. Landscape Waste Stickers - \$2.61 per sticker
3. White Goods - \$28.00 per unit

4. Top-of-the-drive collection - \$38.95 per month
5. Twice Per Week Solid Waste Collection - \$32.00 per month
6. Optional 65-gallon 2-wheeled lidded garbage cart rental - \$2.24 per month

Section 5.2 Rates Adjustment

A. Rates identified in Section 5.IB will adjust based on the calendar year percentage change of the Consumer Price Index for Chicago-Kenosha-Gary All items with a 2.5% minimum adjustment and 4.0% maximum adjustment each year of the contract beginning 2011.

B. If, during the term of this Contract, there are revisions to applicable statutory or regulatory requirements imposed upon the Operator, and in the further event that such revisions result in additional and unanticipated operating costs to be borne by the Operator, then the parties agree that they will negotiate and mutually agree upon the amount of, and timing, to impose any additional charges to be paid to the Operator.

ARTICLE VI REVENUE COLLECTION PROCEDURES

Section 6.1 Billing of Accounts: Payments to Contractor.

A. The Contractor shall, on a quarterly basis, bill and collect all rates and charges imposed on residents and customers by the District relating to such Services. The bill should clearly state the services provided by the Contractor and the corresponding cost of each service. The District agrees to cooperate and assist the Contractor in the collection of funds owed for services performed. The District further agrees to cooperate with respect to information, of any, relating to move-ins, move-outs or any other information that will assist the Contractor in the execution of this subsection.

B. The bill shall be payable by each Residential Unit within thirty (30) days of receipt.

C. The Contractor shall provide to the District a report listing the Residential Units, in a form acceptable to the District, served by the Contractor. The report shall include, but not be limited to, the name, address, services provided and service day of the week of each Residential Unit. Further the District will be notified of any new Residential Unit at the time service is requested, in a form acceptable to the District.

Section 6.2 Landscape Waste Sticker Program.

A. The Contractor shall be responsible for the printing, distribution, and sale of an ample supply of landscape waste stickers, designed to be a "one-time-use" variety. The Contractor shall arrange for area retailers to aid in the sale of stickers, and shall secure arrangements with a sufficient number of retailers, so as to achieve reasonable District-wide coverage and a readily-

available supply of stickers. The District may also elect to act as a retailer in the sale of stickers. The District agrees to facilitate arrangements with area retailers, but shall not require any specific retailer to participate, nor shall it incur any liability for retailers' payment or other obligations for the stickers. The Contractor shall be solely responsible for collection of sales proceeds. Residents shall have the right to purchase as small a quantity as one (1) sticker at a time from a retailer.

B. The Contractor shall be permitted to sell stickers to retailers on either a prepaid or a billable basis at its discretion. The Contractor shall not charge retailers or the District for storage, handling, or mail or in-person delivery of stickers. The Contractor shall deliver stickers to all retailers and to any municipal facility site within forty-eight (48) hours, weekends excepted, of receiving an order. The Contractor shall have the right to cease supplying stickers to any retailer that repeatedly allows its sticker inventory to run out or that is materially and repeatedly in arrears in making payments on its account with the Contractor. The Contractor shall promptly notify the District of the names of retailers to which the supply of stickers has been suspended.

C. The Contractor shall also offer stickers for sale through mail order. The cost to mail packages of stickers shall be separate from the sales price. The Contractor shall be permitted to add a per-order charge, not to exceed its actual cost to provide this service, for handling and mailing expenses for mail orders to residents. No other Contractor mark-up for mail orders shall be permitted. The Contractor may require a minimum quantity purchase. The Contractor shall furnish the District information on minimum quantity purchase requirements and the per-order charges to be added to mail orders. Residents may request a mail order of stickers by phone. The Contractor may sell stickers by mail on either a prepaid or a billable basis at its discretion. Billing and collection of sales proceeds for mail orders shall be the sole responsibility of the Contractor

D. The District reserves the right to approve the form and wording of stickers prior to their fabrication. Stickers may be designed in any suitable form, including a "strip" or "luggage tag" version. Proposals should indicate how the stickers will normally be packaged (e.g. ten to a package; rolls; sheets; or some other quantity or format).

E. The District and the Contractor agree to jointly establish reasonable administrative regulations as to the interpretation of theft and resolution of collection should a sticker show signs of unauthorized removal from a container for reuse; or conversely, a proper container lacking a sticker shows signs of having had a valid sticker affixed.

F. Stickers should be made using water soluble or palpable paper, and printed with vegetable or soy-based inks. Should the need for pressure sensitive adhesive to deter theft or accommodate weather override the ability to use water soluble or palpable paper content, the stickers may be made from other base stock.

ARTICLE VII
TITLE TO WASTE

Section 7.1 Title to Waste. The Contractor shall take title of the Solid Waste and Other Waste once it has been collected by the Contractor.

ARTICLE VIII
BULK ITEMS, WHITE GOODS AND EMERGENCY SERVICE

Section 8.1 Bulk Items Collection Service. The Contractor shall furnish a Bulk Items, excluding white goods, collection service to collect and dispose of discarded materials which are too large and bulky to be handled by packer-type equipment. Each household shall be allowed to set out one large household item per week excluding white goods for collection by the Contractor on said normal collection day, provided the resident has called and notified the Contractor of the necessity for the Bulk Item collection at least 48 hours prior to the normal pick up time. The resident must place such call to the Contractor between the hours of 8:00 a.m. and 4:00 p.m., Monday thru Friday. There shall be no additional charge for these collections.

Section 8.2 White Goods Collection Service. White Goods as defined in Section 22.28 of the Illinois Environmental Protection Act shall be collected and disposed of as required by law.

Section 8.3 Emergency Pick-Up Service. The Contractor shall, upon receipt of notice from the District, provide any home in the community a special emergency pick-up service for garbage and miscellaneous waste materials, in circumstances requiring prompt disposition of the waste material and where a delay in pick-up until the next regularly scheduled pick-up day would or might be injurious or detrimental to the health and/or welfare of the community. Any such special emergency pick-up service shall be completed on or before the next business day after the day of notification and no charge shall be made to the District for this service. This provision does not and is not intended to provide free garbage service to the District and its residents in the event of a natural disaster, such as windstorm, tornado, flooding, ice storm or other similar occurrence. Notwithstanding anything to the contrary herein, Contractor, during any year of this Agreement, shall not be required to pick-up, in aggregate, more than 2 truckloads (50 compacted cubic yards) of Solid Waste pursuant to this provision.

ARTICLE IX
LANDSCAPE WASTE

Section 9.1 Landscape Waste Collection Service.

A. Landscape Waste shall be collected from Residential Units from March 15 through December 15 of each year, in accordance with the schedule provided in Section 4.2. The District and Contractor may mutually agree to extend the collection of Landscape Waste until December 31 from year to year.

1. Containers to be used for the collection of Landscape Waste shall be thirty (30) gallon, two (2) ply kraft paper bags or garbage containers with a capacity of thirty four (34) gallons or less. Residents will be required to clearly mark, garbage containers as containing Landscape Waste with marking facing the street for ease of identification. No plastic bags, boxes or other containers of any kind shall be allowed.
2. The Contractor shall collect all Landscape Waste that has been placed in kraft paper bags or containers meeting the above specifications, providing the bags or containers do not exceed a weight of fifty (50) pounds per bag or container. The Contractor shall not be required to collect Landscape Waste containers that exceed the weight limit, that contain items other than Landscape Waste, or that are not accepted at the compost site used by the Contractor.
3. The Contractor shall accept and collect all bundles of brush or limbs, providing the bundles do not exceed a weight of fifty (50) pounds per bundle, are not more than four (4) feet long, are not more than two (2) feet in diameter, do not contain limbs greater than four (4) inches in diameter and are tied with a material (biodegradable string or twine) that would be acceptable at any composting facility.
4. The Contractor shall not be required to collect branches or logs exceeding four (4) inches in diameter.
5. There shall be no limit to the quantity of Landscape Waste that residents may set out for collection; provided that, in the event that a disaster or other emergency is declared by a government official or officials, with appropriate jurisdiction, the Contractor shall be paid additional compensation, as equitably determined by the District and the Contractor, for any extraordinary amounts of Landscape Waste which are required to be collected. All Landscape Waste materials set out for collection shall be picked up at one time, provided each Kraft paper bag, can or bundle bound with biodegradable string or twine has a properly affixed pre-paid sticker,
6. If a resident fails to properly prepare Landscape Waste as described above, the Contractor shall mark the material with a "sorry tag" describing why the material was not collected. All "sorry tags" and written information are subject to approval of the District.

ARTICLE X
RECYCLABLE MATERIALS

Section 10.1 Recyclable Materials Collection Service.

1. Recyclable Materials shall be collected during the term of this Agreement on the same day as the solid waste and landscape waste is collected from the household. Recyclable Materials do not need to be segregated. Material shall be placed in the 65-gallon two-wheeled lidded cart provided by the Contractor. Other containers for additional material that can not be placed into the 65-gallon two-wheeled lidded can may be utilized, provided each additional container (with a capacity of 34-gallons or less) is placed adjacent to the 65-gallon lidded cart and each are clearly marked RECYCLABLES with the marking facing the street. New homeowners throughout the

term of the Agreement shall have the option through the first thirty (30) days of occupancy - of substituting the standard 65-gallon two-wheeled lidded cart provided by the Contractor with either the 35-gallon or 95-gallon two-wheeled lidded cart. Subsequent cart size exchanges after this date are available at a minimal service fee of \$35.00 each. The resident shall, however, have the option of substituting the standard 65-gallon two-wheeled lidded cart provided by the Contractor with either the 35-gallon or 95-gallon two-wheeled lidded cart during any contract renewal period.

2. Upon the mutual agreement of the Contractor and the District, additional materials may be added to the list of Recyclable Materials set forth in Article I.

3. The Contractor shall have the contractual obligation to ensure that all Recyclable Materials collected are properly processed and marketed. No collected Recyclable Materials shall be landfilled or incinerated unless advance authorization to do so is given in writing by the corporate authorities of the District.

4. The Contractor shall be required to implement a "sorry tag" system for any materials placed in recycling containers that are not collected. The "sorry tag" should identify why such materials were not collected as Recyclable Materials. The Contractor shall provide an example of the "sorry tag" system to the District for advance approval.

5. The Contractor shall provide once per week collection of Recyclable Materials in suitably sized containers at the Township Facilities which are currently identified as follows:

Campton Township Community Center: 5N082 Old LaFox Road, St. Charles, Illinois, 60175; Account #101-0041461-2011-0

Campton Township Community Park: Brown Road, St. Charles, Illinois, 60175; (11) 90 Gallon Commercial Carts; (1) 90 Gallon Recycling Cart; New Waste Management Account; Carts Need to be delivered to above address

Campton Township Highway District: 5N790 Illinois Route 47, Maple Park, Illinois, 60151; Account #101-0003901-2011-1

Campton Township Town Hall: 4N498 Town Hall Road, St. Charles, Illinois, 60175; Account#101-0019515-2011-1

Headwaters Recreation Area: 42W463 Beith Road, Elburn, Illinois, 60119; (2) 90-Gallon Commercial Carts; Account #

Poynor Park: 6N330 Swanberg Road, St. Charles, Illinois, 60175; New Waste Management Account; Carts to be delivered to a site at a later date (Delivered Spring 2009)

Anderson (Campton Community) Park: 5N180 Brown Road, St. Charles, Illinois 60175: Actual service to be determined later by mutual agreement between the Contactor and the District.

Brown Road Meadows: 4N951 Brown Road, St. Charles, Illinois 60175. Actual service to be determined later by mutual agreement between the Contactor and the District.

Any new public building in Campton Township can be added to this list with a limit not to exceed two (2) additional locations per year.

ARTICLE XI
BREACH; EVENTS OF DEFAULT AND REMEDIE

Section 11.1 Breach by Contractor.

A. Each of the following shall constitute a Breach on the part of the Contractor.

1. Failure of the Contractor to pay, within thirty (30) days after notice from the District of such nonpayment, amounts which are undisputed or which are due to the District under this Agreement;
2. Failure of the Contractor to perform timely any obligation under this Agreement except that such failure shall constitute a Breach only if such failure remains uncured for twenty-four (24) hours, weekends and holidays excluded, after notice to the Contractor from the District of such failure; provided however, that this twenty-four (24) hours notice with opportunity to cure shall not be required in the event of persistent and repeated failure to perform; or
3.
 - 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, winding up, reorganization, insolvency, arrangement or similar proceeding being instituted by the Contractor under the laws of any jurisdiction;
 - c. A bankruptcy, winding up, 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 Agreement.

Section 11.2 Breach by District. Each of the following shall constitute a Breach on the part of the District:

- A. The District'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, winding up, reorganization, insolvency, arrangement or similar proceeding being instituted by the District under the laws of any jurisdiction;
- C. A bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding being instituted against the District 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 District 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 District which shall (or which reasonably might be expected to) substantially interfere with the District's performance hereunder.

Section 11.3 Events of Default and Remedies of District.

- A. If a Breach occurs under Section 11.1, the District may exercise any one or more of the following remedies:
 - 1. The District may declare an Event of Default and may then terminate this Agreement immediately, upon notice to the Contractor and, subject to the provisions of sub-paragraph (v) below, upon such termination the Contractor shall cease providing services under this Agreement;
 - 2. The District may seek liquated damages if the Contractor fails to collect and dispose of Solid Waste and Other Waste as required under this Agreement and the missed collection is not rectified within 24 hours, weekends and holidays excluded. Verified failure to make any collection shall be cause to charge \$5.00 per verified collection failure as liquidated damages. Contractor shall remit said amounts to the Campton Township Solid Waste District on a monthly basis, together with a listing of the residents whose collections were not picked up on a timely basis. In addition, a credit of 25% of the monthly rate shall be applied on the next quarterly bill to the household;
 - 3. The District may seek and recover from the Contractor any unpaid amounts due the District, all its substantiated costs for the failure of the Contractor to perform any obligation under this Agreement and all damages, whether based upon contract, negligence (including tort), warranty, delay or otherwise, arising out of the performance or non-performance by the Contractor of its obligations under this Agreement, and whether incidental, consequential, indirect or punitive, resulting from the Breach;

4. The District may (A) call upon the sureties to perform their obligations under performance bond or letter of credit or (B) in the alternative, after releasing the sureties from their obligations under the performance bond or letter of credit, take over and perform the required services by its own devices, or may enter into a new contract for the required services, or any portion thereof, or may use such other methods as shall be required in the opinion of the District for the performance of the required services;

5. The District 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 District shall deem most effectual to protect the rights aforesaid, insofar as such may be authorized by law;

6. Upon any such termination of this Agreement, the Contractor shall for a period requested by the District, but not longer than six (6) months, continue to perform the contractual services during which period the District shall continue to pay the Contractor its scheduled compensation;

7. No remedy by the terms of this Agreement conferred upon or reserved to the District 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 District. 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.

B. This Section 11.3 shall survive the termination of this Agreement.

Section 11.4 Events of Default and Remedies of Contractor.

A. If a Breach occurs under Section 11.2, the Contractor may declare an Event of Default and terminate this Agreement immediately, upon notice to the District. In such event, the Contractor's sole remedy shall be to seek and recover from the District any unpaid amounts due the Contractor and any damages, whether incidental, consequential, indirect or punitive, resulting from the Breach. The Contractor shall not be entitled to specific performance or any other equitable remedies.

B. This Section 11.4 shall survive termination of this Agreement.

ARTICLE XII INSURANCE AND INDEMNIFICATION

Section 12.1 Insurance.

The Contractor agrees to carry insurance relating to this Agreement in the amounts and subject to the terms and conditions set forth in Exhibit 4.

Section 12.2 Indemnification.

- A. The Contractor shall at its sole cost and expense indemnify, defend, keep and save harmless the District, its officials, employees, agents and consultants (individually, an "Indemnified Party" and collectively, the "Indemnified Parties") against all injuries, death, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may in any way accrue against any such Indemnified Party (collectively referred to as the "Loss") in consequence of this Agreement or the performance thereof, or which may in any way result therefrom, which are caused through the intentional misconduct, negligence or omission of the Contractor or any agent or employee, or any Subcontractor or their respective employees. The Contractor shall, at its sole cost and expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against such Indemnified Party in any such action, the Contractor shall, at its sole cost and expense, satisfy and discharge the same. The Contractor expressly understands and agrees that the performance and payment bond and insurance required by this Agreement or otherwise provided by the Contractor or such Indemnified Party shall in no way limit the responsibility to indemnify, keep and same harmless and defend the Indemnified Parties as herein provided.
- B. The indemnification obligations set forth in this Section 12.2 shall include indemnification for Losses resulting from claims made by third parties against any Indemnified Party. The provisions of this Section shall not apply to a Loss or portion thereof which arises, in whole or in part, out of intentional misconduct on the part of the Indemnified Party seeking indemnification, or to a Loss or portion thereof, which arises, in whole or in part, out of negligence on the part of such Indemnified Party, but only to the extent that such Indemnified Party's intentional misconduct or negligence contributed to the Loss, or that the Loss is attributable to such Indemnified Party's negligence or intentional misconduct.
- C. Until such time as it has been (i) determined by a court of competent jurisdiction that any Indemnified Party is liable in whole or in part for a Loss caused by said Indemnified Party's own negligent acts or omissions or intentional misconduct, or (ii) mutually agreed between the Contractor and any Indemnified Party regarding allocation of liability for any Loss, the Contractor shall defend such Indemnified Party from such Loss at the Contractor's sole cost and expense. Each Indemnified Party shall furnish such information as may be reasonably required by the Contractor or defense

counsel to provide an adequate defense, and each such Indemnified Party shall cooperate fully in the defense of the claim giving rise to the Loss. If it is determined that such Indemnified Party is liable in whole or in part for said Loss caused by such Indemnified Party's own negligent acts or omissions, to the extent indicated in the prior paragraph, the Indemnified Party shall be responsible for the payment of that portion of the reasonable attorneys' fees and related expenses incurred in the defense of the claim giving rise to the Loss equal to the Indemnified Party's adjudicated or agreed to share of liability for the Loss.

- D. Nothing in this Section 12.2 shall apply to suits or actions which are barred by the applicable statute of limitations.
- E. This Section 12.2 shall survive the termination of this Agreement.

ARTICLE XIII MISCELLANEOUS

Section 13.1 Non-Assignability. The Contractor shall not assign or subcontract this Agreement or the work hereunder, or any part thereof, to any other person, firm, or corporation without prior written consent of the District, but the Contractor may perform its obligations hereunder through its subsidiaries or divisions. Approval, if any, for such assignment shall be made by the corporate authorities of the District. Such assignment shall not relieve the Contractor from its obligations or change the terms of this Agreement.

Section 13.2 Equal Employment Opportunity. In the event of the Contractor's noncompliance with the provisions of this Section 13.2, 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 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.

A. During the performance of this 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 underutilization.
2. That, if it hires additional employees in order to perform this 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 underutilized.

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 District, 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 District, 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 District 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 13.2 in every subcontract it awards under which any portion of the Agreement obligations are undertaken or assumed, so that such provisions will be binding upon each subcontractor. The Contractor will promptly notify the District 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.

Section 13.3 Franchise Fee: The District hereby reserves the right to institute an annual franchise fee in an amount not to exceed \$10,000 at the beginning of any Contract anniversary year, with ninety (90) days prior notice to Contractor. The Contractor shall have the right to pass-through an amount equal to the franchise fee to the residents of the District by the addition of appropriate pro rata amounts of the fee to the residents' billings. Thereafter, the franchise fee shall continue on an annual basis, and said fee shall be adjusted on April 1st of each successive year of the Contract based upon the calendar year percentage change of the Consumer Price Index for the Chicago-Kenosha-Gary area, with a 2.5% minimum adjustment, and a 4.5% maximum adjustment, each year of the Contract following the first year the franchise fee is instituted.

Section 13.4 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 5, to be executed by a responsible surety company and to be in the penal sum equal to one-fifth (1/5) of the estimated amount of the Contractor's total compensation for the first year of this Agreement, and for each year thereafter to be in the penal sum of one-fifth (1/5) of the revenue earned by the Contractor for the preceding year under this Agreement. Such performance bond shall be furnished annually by the Contractor for the following contract year, and shall indemnify the District 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 District and bond shall be posted within sixty (60) days of the anniversary of the date on which the Contractor commenced provision of Services pursuant to this Agreement.

Section 13.5 Provision for Telephone Calls. The Contractor shall maintain and advertise either: (i) a 1-800-796-9696 telephone number or (ii) a telephone number with an exchange designated for the District in either case where it will receive service requests or complaints on all business days from 9:00 a.m. to 4:00 p.m. All complaints or service calls shall receive prompt and courteous attention. Each complaint shall be investigated immediately. If a complaint is due to a failure to provide the regularly scheduled collection, not the fault of the resident and is verified, the Contractor shall provide a special collection within 24 hours of receipt of the complaint. Contractor will provide the District with a monthly report as to complaints and requests for service, indicating the type of complaint or request for service, action taken and resolution. All service request forms forwarded to the Contractor by the District shall be completed and returned to the District within two weeks after receipt by the Contractor.

Section 13.6 Equipment to be Used by Contractor. The Contractor agrees to collect all materials described in Section 4.1 in fully enclosed, leak-proof, modern trucks. The District shall have the right to inspect all vehicles to ensure that the vehicles are safe and capable of collecting solid waste and other material.

Section 13.7 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 Agreement.

Section 13.8 Governing Law. This Agreement and any questions concerning its validity, construction or performance shall be governed by the laws of the State.

Section 13.9 Compliance with Laws. The Contractor shall comply, and shall cause its agents, employees and Subcontractors to comply, with the requirements of all federal, state and local laws, rules, regulations, licenses, approvals and permits in all matters pertaining to (a) the Services and (b) all other transactions contemplated by this Agreement.

Section 13.10 Dispute Resolution.

- A. In the event any controversy, claim or dispute between the Contractor and the District shall arise with respect to the provisions of this agreement or the transactions contemplated by this Agreement, the District and the Contractor shall undertake in good faith to resolve the dispute.
- B. The Contractor and the District shall continue to perform diligently their respective obligations under this Agreement (i) notwithstanding the existence of any dispute, controversy or claim, and (ii) during the pendency of any judicial, administrative or other dispute resolution process which is commenced by one or both parties. Notwithstanding the preceding provisions of this Paragraph (B), a party may until payment discontinue performance of its obligations under this Agreement if the other party has failed to pay amounts which are undisputed and due or which are preliminarily determined by the arbitrators to be paid pending the final award or which are finally determined to be due.
- C. This Section 13.10 shall survive the termination of this Agreement.

Section 13.11 Further Assurances. Each party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to carry forth the transactions contemplated by this Agreement so long as such instruments and acts (a) are not inconsistent with the provisions of this Agreement and (b) do not involve the assumption of obligations in addition to the obligations contemplated by this Agreement.

Section 13.12 Relationship of the Parties; Third Parties. Nothing in this Agreement shall be deemed to constitute one Party as the partner, agent or legal representative of the other Party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties hereto and their respective legal representatives, successors, and permitted assigns; nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties to any party to this Agreement nor shall any provision give any third parties any right of subrogation or action over or against any party to this Agreement.

Section 13.13 Subcontractors.

- A. Any consultants hired directly by the District shall be the agents of the District. All other Subcontractors who are retained to perform any of the Services required by this Agreement shall be hired by, and shall be the agents of, the Contractor. The District shall have no relationship with such Subcontractors. The District's prior written approval is required before the Contractor can enter into any subcontracts. Any consent by the District to subcontracting any part of the work shall not be construed to be an acceptance of the subcontract or any of the terms, but shall operate only as an acceptance of the making of a subcontract between the Contractor and Subcontractor.
- B. Each subcontract shall also contain a provision whereby the Subcontractor acknowledges that, despite the fact that such Subcontractor is not in privity of

contract with the District, the District shall have the right to bring a direct cause of action against such Subcontractor and its officers, agents and employees for its or their acts in connection with its provision of Services.

- C. The Subcontractor shall look only to the Contractor for the payment of the claims of any nature whatsoever arising out of any subcontract. The Contractor shall include in all agreements with Subcontractors, as pertaining to this Agreement, that its Subcontractor shall make no claim whatsoever against the District for any work performed or thing done by reason of the subcontract, or for any other cause whatsoever that may arise by reason of the relationship created between the Contractor and the Subcontractor by the subcontract.
- D. A Subcontractor shall be recognized by the District only in the capacity of any employee, agent or contractor of the Contractor.
- E. The Contractor shall be responsible for the compliance of its Subcontractors with the requirements of all federal, state, and municipal laws, ordinances, rules and regulations as may be applicable in the performance of this Agreement.

Email communication shall not be acceptable for "notice" purposes. Changes in persons and addresses to which such notices may be directed may be made from time to time by any party by notice to the other party given in accordance with this Section 13.14.

Section 13.15 Waiver.

- A. The waiver of a condition, Event of Default or Breach under this Agreement must be in a written signed instrument except as otherwise specifically stated in this Agreement. The waiver by either party of an Event of Default or a Breach of any provision of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent Event of Default or Breach. The making or the acceptance of a payment by either party with knowledge of the existence of an Event of Default or Breach shall not operate or be construed to operate as a waiver of the existing or any subsequent Event of Default or Breach.
- B. No approval given by the District under this Agreement shall operate to relieve the Contractor from any of its responsibilities under this Agreement or be deemed as an approval by the District of any deviation contained in any items or document subject to such approval from, or of any failure by the Contractor to comply with, any requirement of this Agreement.

Section 13.16 Entire Agreement; Modification; Conflicts. This Agreement sets forth the rights and obligations of the parties to this Agreement. This Agreement (a) constitutes the entire and integrated agreement between the parties with respect to the transactions contemplated by this Agreement, (b) supersedes and replaces all prior negotiations, agreements or understandings with respect to the transactions contemplated by this Agreement and (c) may be modified only by written instrument which refers to this Agreement and which is duly executed by both parties. To the extent that the RFP or the Contractor's response thereto, or any parts thereof, are incorporated into this Agreement, the terms of this Agreement, or any written modification thereof, shall control in the event of any conflict therewith.

Section 13.17 Construction. Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement. This Agreement shall not be construed against either the District or the Contractor. Wherever a date or period of time is specified in this Agreement, such date or period of time shall be of the essence of this Agreement.

Section 13.18 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

Section 13.19 Severability. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the parties shall negotiate in good faith and agree to such amendments, modifications or supplements to this

agreement or such other appropriate actions as shall, to the maximum extent practical in light of such determinations, implement and give effect to the intentions of the parties as set forth in this Agreement; and the other provisions of this Agreement shall, as and to the extent so amended, modified, supplemented or otherwise affected by such action, remain in full force and effect.

Section 13.20 Law to Govern and Venue. This Agreement shall be governed by the laws of the State of Illinois, both as to interpretation and performance, and the venue shall be Kane County, Illinois. Any references to laws in this Agreement shall include such laws as they may be amended or modified from time to time. Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

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

WASTE MANAGEMENT OF ILL, INC.

Attest:

By: _____

Its: _____

By: _____

Its: _____

**CAMPTON TOWNSHIP SOLID
WASTE DISPOSABLE DISTRICT
("District").**

By: _____

Its: _____

Attest:

By: _____

Its: _____

EXHIBIT 1

DISTRICT ORDINANCE NO. _____

[TO BE PROVIDED BY DISTRICT]

EXHIBIT 2

LIST OF TOWNSHIP FACILITIES

Campton Township Community Center

5N082 Old LaFox Road
St. Charles, IL 60175
Account #101-0041461-2011-0

Campton Township Community Park

Brown Road
St. Charles, IL 60175
(11) 90 Gal Commercial Carts
(1) 90 Gal Recycling Cart

Campton Township Highway District

5N790 IL Route 47
Maple Park, IL 60151
Account #301-0003 901-2011-1

Campton Township Town Hall

4N498 Town Hall Rd
St. Charles, IL 60175
Account #101-0019515-2011-1

Headwaters Recreation Area

42W463 Beith Road
Elburn, IL 60119
(2) 90 Gal Commercial Carts

Poynor Park

6N330 Swanberg Road,
St. Charles, Illinois 60175

Corron Farm

7N761 Corron Road
St. Charles, IL 60175

Anderson (Campton Community) Park

5N180 Brown Road
St. Charles, Illinois 60175

**Actual service to be determined later by mutual agreement between
the Contactor and the District.**

Brown Road Meadows

4N951 Brown Road,

St. Charles, Illinois 60175

Actual service to be determined later by mutual agreement between the Contactor and the District.

Any new public building in Campton Township can be added to this list with a limit not to exceed two (2) additional locations per year.

[LETTERHEAD OF DISTRICT]

_____, 200__

Dear **[Contractor]**:

Pursuant to Section 2.3 of the Agreement by and between CAMPION TOWNSHIP SOLID WASTE DISPOSABLE DISTRICT ["District"] _____ and [Contractor], dated _____, 200_, (the "Service Agreement"), we hereby request that the following modification in the Services currently being provided, effective _____, 200_ **[Unless mutually agreed by the Contractor and the District, to be not less than 180 days after the date of this Notice]:**

[INSERT THE MODIFICATION OR ADJUSTMENT IN SERVICE REQUESTED BY THE DISTRICT]

Please contact me at your earliest convenience so that we may promptly commence negotiations to make any equitable adjustments to your compensation required as a result of this modification or adjustment.

Very truly yours,

CAMPTON TOWNSHIP SOLID WASTE DISPOSABLE DISTRICT

By: _____

Title: _____

EXHIBIT 4

INSURANCE PROVISIONS

A. Insurance Requirements

The Contractor shall procure and maintain the following insurance during the entire term of the agreement:

Type of Insurance

1. Workers' Compensation

2. Employers' Liability

3. Commercial General Liability, including "occurrence" coverage for:

A. Premises and operations, independent contractors protective, contractual liability, broad form property damage and XCU hazards

B. Products and completed operations (including broad form property damage)

C. Personal injury liability

4. Business Auto liability (including owned, non-owned and hired vehicles and coverage for environmental liability)

5. Umbrella/Excess liability (to apply as excess over 2, 3 and 4 above)

Required Limits of Liability

Statutory

\$500,000 per accident
\$500,000 disease (policy limit)
\$500,000 disease (each employee)

\$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.

\$1,000,000 per occurrence for bodily injury and property damage combined.
\$2,000,000 annual aggregate for bodily injury and property damage combined.

\$1,000,000 per occurrence
\$2,000,000 annual aggregate

\$1,000,000 per accident for bodily injury
and \$1,000,000 per accident for property
damage
\$2,000,000 for bodily injury annual
aggregate and \$2,000,000 for property
damage annual aggregate

\$5,000,000 per occurrence

\$5,000,000 annual aggregateB. 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 District. 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. Provided that the Contractor maintains a financial rating of 5A2,

as issued by Dun and Bradstreet, Inc., at all times during the term of this Agreement, the Contractor may utilize a plan of self-insurance certified by the Department of Insurance, State of Illinois and the Illinois Industrial Commission for the minimum coverage required under Paragraphs 11 (a) and 11(c) above, provided that the Contractor maintains said limits at all times during the Agreement period and retains a current and viable certificate of self insurance from the State of Illinois and immediately provides a copy of said Certificate to the District.

4. All liability coverages shall be written on an occurrence basis.
5. Prior to commencing Services under the agreement, the Contractor shall deliver, or cause to be delivered, to the District certificates of insurance (and other evidence of insurance requested by the District) 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 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 District by certified mail.
7. The Contractor shall be responsible for promptly reporting all claims to the appropriate insurer on behalf of itself, the District 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 District, the Board members, employees, and agents. Such insurance is to be primary and non-contributory with any insurance secured and maintained by such additional named insureds.**

EXHIBIT 5

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 of District):

SOLID WASTE SERVICE AGREEMENT

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)

(Corporate Seal) Company:

Signature:

(Name and Title):

(Any additional signatures appear on page __)

_____(FOR INFORMATION ONLY - - Name,
Address and

Telephone) AGENT or BROKER:

- 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 Contract, 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:
 - 1.1 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 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
 - 1.2 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 days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
 - 1.3 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:
 - 1.4 Arrange for the Contractor, with consent of the Owner, to perform and complete the Contract; or
 - 1.5 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 1.6 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

- 1.7 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 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:
 - 1.8 The responsibilities of the Contractor for correction of defective work and completion of the Contract;
 - 1.9 Additional costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4;
 - 1.10 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;
 - 1.11 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 Kane County and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two 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

1.12 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.

1.13 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.

1.14 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: