

1/6/2016

6-R-16

A RESOLUTION

**Authorizing the City Manager to Negotiate and Execute a Settlement
of all Litigation and Claims with Advanced Disposal Services Solid
Waste Midwest, LLC**

WHEREAS, since 2011, the City and Veolia Environmental Services n/k/a Advanced Disposal Services Solid Waste Midwest, LLC (“Advanced”) litigated claims in case no. 11 CH 41536 in Cook County Circuit Court; and

WHEREAS, this litigation pertained to the Transfer Station Fee approved by the City Council in Ordinances 82-O-10 and 68-O-11; and

WHEREAS, following payment to the City by Advanced of a total of \$1,263,247.90 in Transfer Station Fees since 2011 while this litigation remained pending; and

WHEREAS, the City and Advanced now desire to settle all claims by and between them pursuant to the terms of the settlement agreement attached hereto as Exhibit 1; and

WHEREAS, the terms of the settlement agreement permit the City retain all Transfer Station Fees paid by Advanced since 2011.

**NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: The City Manager is hereby authorized to negotiate and execute the Settlement Agreement with Advanced, attached as Exhibit 1 and

incorporated herein by reference. The Settlement Agreement will be approved as to form by the City's Corporation Counsel prior to execution.

SECTION 2: Resolution 6-R-16 shall be in full force and effect from and after its passage and approval, in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: February 22 2016

EXHIBIT 1
SETTLEMENT AGREEMENT

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement, dated _____, 2016, is entered into according to the following terms and conditions by and between the City of Evanston, on the one hand, and Advanced Disposal Services Solid Waste Midwest, LLC, on the other hand.

DEFINITIONS AND RECITALS

- A. As used herein, "Agreement" means this Settlement and Release Agreement.
- B. As used herein, "Evanston" means the City of Evanston, an Illinois home-rule municipal corporation and the defendant in the Lawsuit, and all of Evanston's elected or appointed officials.
- C. As used herein, "Advanced" means Advanced Disposal Services Solid Waste Midwest, LLC, the plaintiff in the Lawsuit.
- D. "Transfer Station" means the solid-waste transfer station that Advanced owns and operates at 1711 Church Street, Evanston, Illinois.
- E. As used herein, "Ordinance" or "Ordinances" means the ordinances that Evanston enacted and are at issue in the Lawsuit, specifically: (i) "An Ordinance Amending the City Code by Enacting a New Title 8, Chapter 26, 'Solid Waste Transfer Station Fee'" (82-O-10); and (ii) "An Ordinance Amending Title 8, Chapter 27 of the City Code, Solid Waste Transfer Station Fee" (68-O-11). Among other things, the Ordinances purportedly require Advanced to pay Evanston a fee of \$2 for every ton, or any fraction thereof, of solid waste delivered to the Transfer Station. The parties agree that as of the date of this Agreement, Advanced has paid Evanston, under protest, One Million Two Hundred Sixty Three Thousand Two Hundred Forty Seven and 90/100 Dollars (\$1,263,247.90) pursuant to the Ordinances ("Ordinance Fee Payments"). The parties further agree that no additional payments under the Ordinances are required.
- F. As used herein, "Lawsuit" means the lawsuit entitled *Veolia ES Solid Waste Midwest, LLC, n/k/a Advanced Disposal Services Solid Waste Midwest, LLC v. The City of Evanston* (Case Number 11-CH-41536; Circuit Court of Cook County, Illinois, Chancery Division), that Advanced filed against Evanston. In the Lawsuit, Advanced asserts, among other things, that the Ordinances are unconstitutional and invalid, and that Evanston must reimburse Advanced all Ordinance Fee Payments, plus interest, or pay Advanced monetary damages in the same amount. Evanston denies all such claims.
- G. As used herein, "Parties" or "Party" means Evanston and/or Advanced.
- H. In order to avoid the expense and uncertainty of litigation, the Parties desire to resolve the Lawsuit, among other things, in accordance with this Agreement's terms and conditions.

AGREEMENTS

In consideration of the foregoing recitals and the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. No Admission of Liability. Nothing in this Agreement, nor any statement or communication made by the Parties or their respective agents during the negotiations leading to this Agreement, will be considered admissions of liability or wrongful or improper conduct by, or on behalf of, any Party.

2. Retention of Ordinance Fee Payments. Subject to the other Sections of this Agreement, Advanced will forgo reimbursement of the Ordinance Fee Payments, plus interest, and Evanston will retain such Payments.

3. Repeal of Ordinances and Execution of Host Community Agreement.

3.1 Within 30 days from the date of this Agreement, Evanston will repeal the Ordinances in their entirety.

3.2 Within 30 days from the date of this Agreement, Evanston will enter into the Community Host Agreement (“Host Agreement”), attached as Exhibit A.

3.3 Other than the “Host Fees” set forth in Paragraph 4 of the Host Agreement, Evanston will not levy any new taxes or assess any fees against Advanced, the Transfer Station, or “the Property” (as defined in the Host Agreement), even if such fees are specifically allowed by state law to be charged by a host community to a pollution-control facility or other similar facility, such as the Transfer Station; provided, however, that the foregoing restriction will not apply to real-estate taxes or other fees or taxes validly and uniformly assessed against all members of a class of taxpayers or fee payers, other than as an owner or operator of: (i) a waste-transfer station; (ii) a collector of waste, landscape waste, construction and demolition debris, and/or recyclables; or (iii) a solid-waste management facility.

3.4 Notwithstanding Section 2, should Evanston levy or assess any tax or fee prohibited by Section 3.3, then Evanston agrees to reimburse the Ordinance Fee Payments, plus interest, to Advanced within 30 days of such levy or assessment. Interest shall be calculated from the date of this Agreement and in accordance with Illinois’ post-judgment interest statute, 735 ILCS 5/2-1303.

3.5 By entering into this Agreement, Advanced is not waiving or forfeiting any right to challenge or appeal, on any basis, any tax or fee that Evanston assesses, or attempts to assess, against Advanced, the Transfer Station, or “the Property” (as defined in the Host Agreement).

3.6 Advanced acknowledges that this Agreement will be approved by a final action of the Evanston City Council in open session as required by the Illinois Open Meetings Act, 5 ILCS 120/1 et seq.

4. Specific Release of Claims.

4.1 Except for obligations under this Agreement or the Host Agreement, Evanston releases and forever discharges Advanced, including all of its present, past, and future parent companies, subsidiaries, divisions, affiliates, and related entities, as well as all of the foregoing entities' present, past, and future officers, directors, employees, shareholders, attorneys, insurers, agents, successors, and assigns (collectively, the "Advanced Released Parties"), from any and all suits, causes of action, claims, counterclaims, charges, complaints, demands, obligations, liabilities, costs, damages (including punitive damages), injuries, rights, judgments, attorneys' fees, expenses, penalties, fines, fees, and any other causes of action of whatever nature, whether known or unknown, whether suspected or unsuspected, whether discovered now or hereafter, that arose at any time from the beginning of time to the date of this Agreement and: (i) were asserted or could have been asserted in the Lawsuit; (ii) relate in any way to the Ordinances; or (iii) relate in any way to ownership or operation of the Transfer Station. For the sake of clarity, Evanston reiterates that this specific release applies to claims that are presently unknown to Evanston.

4.2 Except for obligations under this Agreement or the Host Agreement, Advanced releases and forever discharges Evanston, including all of its present, past, and future divisions, agencies, elected officials, officers, employees, attorneys, insurers, agents, successors, and assigns (collectively, the "Evanston Released Parties"), from any and all suits, causes of action, claims, counterclaims, charges, complaints, demands, obligations, liabilities, costs, damages (including punitive damages), injuries, rights, judgments, attorneys' fees, expenses, penalties, fines, fees, and any other causes of action of whatever nature, whether known or unknown, whether suspected or unsuspected, whether discovered now or hereafter, that arose at any time from the beginning of time to the date of this Agreement and: (i) were asserted or could have been asserted in the Lawsuit; (ii) relate in any way to the Ordinances; or (iii) relate in any way to ownership or operation of the Transfer Station. For the sake of clarity, Advanced reiterates that this specific release applies to claims that are presently unknown to Advanced.

4.3 Each Party fully understands and acknowledges that it may hereafter discover facts, circumstances, or legal decisions different from, or in addition to, those now known or believed to be true regarding the subject matter of this Agreement or the Lawsuit. It is understood that this Agreement, including the specific releases in Sections 4.1 and 4.2, will remain in full force and effect, notwithstanding the existence of any such different or additional facts, circumstances, or legal decisions.

4.4 The Parties intend for the Advanced Released Parties and Evanston Released Parties who are not parties to this Agreement to be third-party beneficiaries of the releases provided in Sections 4.1 and 4.2 and the indemnification, defense, and hold harmless provisions of Section 7.7.

5. Subpoena or Other Discovery Request. If any Party or its attorneys are served with a subpoena or other discovery request seeking documents or information relating to this Agreement, including the Agreement itself, that Party will provide prompt written notice to the other Party and, unless prohibited by law, send the other Party a copy of the subpoena or discovery request so the other Party has an opportunity to evaluate the subpoena or discovery

request and seek any relief that it deems appropriate. The Party receiving the subpoena or other discovery request for documents or information shall provide such notice via U.S. Mail and electronic mail to the individuals identified below and do so at least 21 days before any documents or information are disclosed.

To Advanced:

Michael K. Slattery
Senior Vice President and General Counsel
Advanced Disposal
90 Fort Wade Road
Suite 200
Ponte Vedra, Florida 32081
Michael.Slattery@advanceddisposal.com

Gerald P. Callaghan
Freeborn & Peters LLP
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606
jcallaghan@freeborn.com

To Evanston:

W. Grant Farrar
Corporation Counsel
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
gfarrar@cityofevanston.org

6. Dismissal of the Lawsuit and Cooperation in Effecting Agreement.

6.1 Within three business days of the date(s) on which Evanston has both repealed the Ordinances and entered into the Host Agreement, the Parties will file all necessary documents and take any further steps needed to secure the Court's entry of an appropriate Order dismissing with prejudice the Lawsuit, with each Party bearing its own costs, expenses, and attorneys' fees.

6.2 In addition to the document(s) contemplated in Section 6.1, the Parties will execute any and all supplementary documents and take all additional steps reasonably necessary to give full force and effect to this Agreement's basic terms and intent.

7. Representations and Warranties.

7.1 Evanston represents and warrants that it is the sole owner of the claims, causes of action, and other matters released in Section 4.1.

7.2 Advanced represents and warrants that it is the sole owner of the claims, causes of action, and other matters released in Section 4.2.

7.3 Each Party represents and warrants that it has the legal authority to enter into this Agreement and to execute any document contemplated by this Agreement. Similarly, each Party represents and warrants that the individual signing this Agreement on that Party's behalf is competent and has the power, right, and legal authority to do so.

7.4 Each Party represents and warrants that the execution, delivery, and performance of this Agreement, or any document contemplated by this Agreement, will not violate or constitute a breach or default in: (i) its corporate-formation or related governing documents; (ii) any provision of any contract, agreement, grant, or other instrument or document to which it is a party or by which it is bound; or (iii) any judgment, order, writ, injunction, decree, law, rule, ordinance, or regulation.

7.5 Each Party represents and warrants that it: (i) sought and obtained the advice of legal counsel before entering into this Agreement; (ii) read this Agreement in its entirety; (iii) is fully informed and understands the terms of this Agreement; (iv) has been given reasonable time to consider whether to execute this Agreement; (v) is knowingly and voluntarily entering into this Agreement and agrees to comply with its terms and conditions; and (vi) is not acting under duress, including economic duress, in executing this Agreement.

7.6 The representations and warranties made by Evanston will be deemed material to Advanced's rights and obligations under this Agreement. Similarly, the representations and warranties made by Advanced will be deemed material to Evanston's rights and obligations under this Agreement.

7.7 Evanston will indemnify, defend, and hold harmless Advanced and the Advanced Released Parties for any and all injuries and damages relating to or arising out of any breach of the representations and warranties that Evanston made in this Section 7. Similarly, Advanced will indemnify, defend, and hold harmless Evanston and the Evanston Released Parties for any and all injuries and damages relating to or arising out of any breach of the representations and warranties that Advanced made in this Section 7.

8. Attorneys' Fees and Costs. The Parties will separately bear their own respective costs, expenses, and attorneys' fees arising from the Lawsuit and the negotiation and drafting of this Agreement.

9. Joint Drafting. The Parties expressly agree that they prepared this Agreement jointly, and that no ambiguity will be resolved against any Party on the basis that it was responsible or primarily responsible for having drafted this Agreement.

10. Entire Agreement. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof, and it supersedes any prior representation, agreement, or understanding with respect to the subject matter hereof. This Agreement may be amended only by written agreement signed by all Parties.

11. Governing Law. This Agreement will be governed by and construed under the laws of the State of Illinois, without regard to conflict-of-laws rules or principles. All disputes arising from or related to this Agreement will be adjudicated in a court of competent jurisdiction located in Cook County, Illinois.

12. Section Headings. The section headings contained in this Agreement are for reference purposes only and will not affect the meaning or interpretation of this Agreement.

13. Severability. Except for the provisions contained in Sections 3.1 and 3.2, should any provision of this Agreement for any reason be held illegal, invalid, or unenforceable, the illegal, invalid, or unenforceable provision will not affect the remaining provisions, but will be fully severable, and the Agreement will be construed and enforced as if the illegal, invalid, or unenforceable provision had never been inserted herein. If for any reason any of the provisions in Sections 3.1 or 3.2 are held illegal, invalid, or unenforceable, then this Agreement is null and void, and the Parties shall be placed in the same position they occupied immediately prior to the date of this Agreement.

14. Successors. This Agreement will be binding upon and inure to the benefit of the Parties' respective representatives, administrators, successors, and assigns.

15. Counterparts. The Parties may execute this Agreement in counterparts, and if so executed, each counterpart will have the full force and effect of an original, and all counterparts when taken together will constitute a single document. Facsimile signatures delivered by electronic means shall have the same legal effect as original signatures.

REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURES TO FOLLOW

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

The City of Evanston

**Advanced Disposal Services Solid Waste
Midwest, LLC**

By: _____

By: _____

Name: Walter J. Bobkiewicz

Name: _____

Its: City Manager

Its: _____