

ORDINANCE NO. 04-19

**ORDINANCE ADOPTING THE KENDALL COUNTY SOLID WASTE TRANSFER STATION
GENERIC HOST COMMUNITY BENEFIT AGREEMENT**

WHEREAS, the County of Kendall is authorized by State of Illinois law, pursuant to Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 39.2) to, among other things, receive, hold hearings, and decide an application for the site location of a pollution control facility proposed to be located in unincorporated Kendall County; and

WHEREAS, the Kendall County Board ("County Board") adopted a Solid Waste Pollution Control Facility Siting Ordinance, being Ordinance No. 99-01, consistent with Section 39.2 of the Illinois Environmental Protection Act, for the purpose of preparing a comprehensive approach to the site location review process of a solid waste pollution control facility in unincorporated Kendall County; and

WHEREAS, Section 39.2 of the Illinois Environmental Protection Act acknowledges a local government's power to negotiate and enter into a host community benefit agreement with an applicant for site location of a pollution control facility; and

WHEREAS, the County Board is desirous of setting a minimum standard agreement to be used in negotiation of host community benefit agreements related to the proposed site location of a solid waste transfer station; and

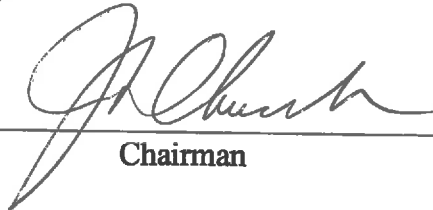
WHEREAS, the County Board, is authorizing its Chairman to enter into, on the County of Kendall's behalf, the minimum standards agreement, attached to this Resolution as Exhibit A, with any applicant who wishes to propose or has proposed the site location of a solid waste transfer station in unincorporated Kendall County; and foregoing its ability to negotiate more favorable or necessary terms, realizing that each proposed transfer station may have unique circumstances and locations, however, such terms may be proposed to the County Board in an amendment to the minimum standards agreement, and it does not effect the County Board Chairman's authorization to enter into the minimum standards agreement without further need for approval from the County Board; and

WHEREAS, this authorization of the County Chairman is valid from the date this Resolution is approved through December 31, 2006, at which time the County Chairman's authority to enter into the minimum standards agreement, attached as Exhibit A, automatically terminates and expires, unless renewed by the County Board.

NOW, THEREFORE, BE IT RESOLVED that the host community benefits agreement attached hereto as Exhibit A is adopted by the County Board as the minimum standards agreement for a solid waste transfer station.

BE IT FURTHER RESOLVED, that the County Board authorizes its Chairman, to enter into, on behalf of the County of Kendall without need for further approval of the County Board, the minimum standards agreement, attached as Exhibit A, with any applicant for a proposed site location of a solid waste transfer station in unincorporated Kendall County. However, this authorization automatically terminates and expires, without need for further County Board action on December 31, 2006

DATED: This 18 day of MAY, 2004.



Chairman

ATTEST: 
Clerk

WHEREAS, the parties acknowledge and agree that the Act, at Section 39.2(a), sets forth nine (9) criteria for the granting of such local siting approval with respect to each new pollution control facility, including waste transfer stations such as the facility, as follows:

The facility is necessary to accommodate the waste needs of the area it is intended to serve:

The facility is so designed, located and proposed to be operated that the public health safety will be protected;

The facility is located so as to minimize incompatibility of the character of the surrounding area and to minimize the effect on the value of the surrounding property;

The facility is located outside the boundary of the 100 year flood plain or the site is flood proof;

The plan of operations for the facility is designed to minimize the danger to the surrounding area from fires, spills or other operational standards; The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flow;

If the facility will be treating, storing or disposing of hazardous waste, an Emergency Response Plan exists for the facility which includes notification, containment, and evacuation procedures to be used in case of an accidental release;

If the facility is to be located in the County where the County Board has adopted a Solid Waste Management Plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; and,

If the facility will be located within a regulated re-charge area, any applicable requirements specified by the Board for such areas have been met.

In addition, Section 39.2(a) provides that, in making its determination as to whether the proposed Transfer Station meets the second (2) and fifth (5) criteria outlined above, the County Board may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the Company and any subsidiary or parent operation of the Company in the field of waste management.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the County and the Company agree as follows:

ARTICLE 1
DEFINITIONS AND TERM OF AGREEMENT

Section 1.1 Definitions

“**Act**”, as used in these definitions and this Agreement, shall mean the Illinois Environmental Protection Act (415 ILCS 5/1, *et seq.*).

“**Construction or Demolition Debris**”, whether or not capitalized, means “clean construction or demolition debris” as defined by Section 5/3.160 of the Act (415 ILCS 5/3.160), or “general construction or demolition debris”, as defined by Section 5/3.160 of the Act (415 ILCS 5/3.160).

“**Unacceptable Waste**”, whether or not capitalized and used in any of its grammatical forms, means (a) “hazardous waste”, as defined by Section 5/3.220 of the Act (415 ILCS 5/3.220) or by 35 IAC 721.03; (b) “industrial process waste”, as defined by Section 5/3.235 of the Act (415 ILCS 5/3.235) ; (c) “pollution control waste”, as defined by Section 5/3.335 of the Act (415 ILCS 5/3.335); (d) “sludge”, as defined by Section 5/3.465 of the Act (415 ILCS 5/3.465); (e) “potentially infectious medical waste” as defined by Section 5/3.360 of the Act (f) “special waste”, as defined by Section 5/3.475 of the Act; (g) “polychlorinated byphenyls”, as defined in the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2692, or regulations promulgated thereunder; (h) source, special or byproduct nuclear materials, radioactive waste, high-level or low-level radioactive waste, or transuranic waste as defined in the Atomic Energy Act, 42, U.S.C. Sections 2014, *et seq.*, or regulations promulgated thereunder; or (i) “asbestos” as defined in 40 CFR 763.83.

“**IAC**” as used in these definitions and this Agreement, shall mean the Illinois Administrative Code.

“**IEPA**” means the Illinois Environmental Protection Agency.

“**IPCB**” means the Illinois Pollution Control Board.

“**Landscape Waste**”, whether or not capitalized and in any of its grammatical forms, means “landscape waste” as defined by Section 5/3.270 of the Act (415 ILCS 5/3.270), and includes all accumulations of grass or shrubbery trimmings, leaves, tree limbs, and other materials accumulated as the result of the care of lawns, shrubbery, vines and trees except that such waste does not include Construction or Demolition Debris, Recyclables, or Unacceptable Waste.

“Municipal Waste”, whether or not capitalized and used in any of its grammatical forms, means “municipal solid waste”, as defined by Section 5/3.290 of the Act (415 ILCS 5/3.290), except that such waste does not include Construction or Demolition Debris, Recyclables, Unacceptable Waste, or Landscape Waste.

“Recyclables” whether or not capitalized and used in any of its grammatical forms, means as defined by Section 5/3.380 of the Act, Materials that are separated from garbage, municipal waste or refuse for the purpose of recycling, including but not limited, newspaper, aluminum cans, bi-metal cans, tin-plated steel food cans, food or beverage glass bottles and jars, (#2) HDPE bottles, and (#1) PETE soda bottles. “Recyclables”, whether or not capitalized and used in any of its grammatical forms, means any material, which would otherwise be disposed of or discarded, which is separated from Municipal Waste at the source of generation, so as to render it useable in a process, or alone, such that it can be returned to the economic mainstream in the form of raw materials or products. Examples of recyclables are: newspaper, glass bottles, High Density Polyethylene containers, aluminum food and beverage containers, chipboard, and corrugated containers.

“Transfer Station”, whether or not capitalized, means “Transfer Station” as defined by 5/3.500 of the Act (415 ILCS 5/3.500), including the property on which the transfer station is located.

Section 1.2 Term

This Agreement commences on the date executed and continues in effect to such time as the County, at its sole option, terminates this Agreement. The County will not exercise its termination option, unless: (a) the Transfer Station has not received Solid Waste for more than six consecutive calendar months, or (b), the Company is in default of this Agreement as provided in Section 4.2. The terms of this Agreement that are specifically extended beyond termination (*i.e.*, as provided in Sections 2.1, 2.3, 4.6, 4.7, 4.8, 4.9, and 5.2), survive the termination of this Agreement. In addition, the Company agrees that this Agreement continues to be in full force and effect even if the Company annexes the Transfer Station into the boundaries of a local government entity other than the County. The Company agrees that, should this Agreement be terminated, the Company will immediately remove all Solid Waste from the Transfer Station and stop its operations and receipt and acceptance of Solid Waste, until such time as it successfully renegotiates a new host community benefit agreement with the County, such agreement to contain no less favorable terms (including, but not limited to fee provisions) as what would have been in this Agreement, should this Agreement have been active at the time of renegotiation. As part of any new host community benefit agreement between the Company and County, resulting from the termination of this Agreement and required closure of the Transfer Station, the Company agrees that the County, at its discretion, may require that the Company: file and obtain County approval on a pollution control facility site location application (even if for the same Transfer Station which is the subject of this Agreement), pursuant to Section 39.2 of the Act, any applicable County

ordinances, and any other laws or regulations which are applicable at the time of refilling; and, submit applications and obtain approval from the IEPA (or other government entity or agency reviewing permit applications at that time) for new development and operation permits for the Transfer Station.

ARTICLE 2

ENVIRONMENTAL PROTECTIONS

Section 2.1 Compliance with Laws

The Company shall comply, at all times in connection with the development and operation of the Transfer Station, with all laws, ordinances, final and non-appealable conditions of this site location, should it be approved by the County, conditions and requirements of any permit that is issued for development or operation of the Transfer Station, modified or amended, rules and regulations and ordinances of any Federal, state or local governmental agency or authority relating to the development, operation, monitoring remediation or closure of the Transfer Station and this Agreement. In addition, should the Company obtain approval from the County, pursuant to Section 39.2 of the Illinois Environmental Protection Act, but contest one or more conditions, if any, placed on such approval on appeal, the Company agrees that it will not commence development or operation of the Transfer Station, until the appeal on the conditions has been decided by IPCB, provided, however, that the Company will take any and all actions required to come into compliance with any condition(s) which are held to be unenforceable by the IPCB but are enforceable as a result of an appeal of the IPCB decision. With respect to the termination or closing of the Transfer Station, the Company agrees to comply with any government ordinance, rule, law, permit or directive as to post-closure requirements and pay the entire costs associated therewith. Any violation of this section requiring compliance with laws is a material breach of this Agreement and enforceable by injunction, or any other legal theory, to require compliance or the closure of the Transfer Station. This section 2.1 survives the termination of this Agreement.

Section 2.2 Waste Acceptability

The Company shall only allow Solid Waste to be accepted at, transported to, stored at, or otherwise present at the Transfer Station. All Solid Waste, except when being transported to or from the Transfer Station, must be kept inside (*i.e.*, within a fully enclosed area of the Transfer Station.) Under no circumstances shall Unacceptable Waste be accepted at, transported to, stored at, or otherwise present at, on, under, or in the Transfer Station. Any violation of this prohibition of Unacceptable Waste is a material breach of this Agreement and enforceable by injunction, or any other legal theory, to force the closure of the Transfer Station and the enforceability of this provision survives the expiration or termination of this Agreement.

Section 2.3 Defense and Indemnification

The Company covenants and agrees to defend, indemnify and hold harmless the County, individual members of the County Board, and any and all employees, agents, officers or representatives of the County, from and against all claims, suits, actions, administrative enforcement proceedings, losses, damages of all kinds (including but not limited to property damage or personal injury arising from any allegation related to the release or threatened release of any pollutant or contamination resulting from the ownership or operation of the Transfer Station), costs, expenses, fines and penalties, attorneys' fees and expense of litigation, of any nature whatsoever, relating in any way directly or indirectly to the Transfer Station or any condition or occurrence thereat, any release or emission at, onto, into, above, under, through or from the Transfer Station, the County's or the Company's execution, performance, or non-performance of this Agreement or of any conditions placed on siting, (should the facility be approved or the operations of the Company conducted at the Transfer Station), including, without limitation, claims of injury to any person or property or violation of or non-compliance with any law, ordinance, rule or regulation (including without limitation any environmental, health, anti-trust, civil rights, employment or trade law, or statutory or common law obligation or liability). Unless otherwise directed in writing by the County, the Company shall, at its own cost and expense defend any such suit, action or proceeding as contemplated herein and pay all fees, costs, damages and other expenses arising therefrom; and if any judgment, decree, fine or penalty of any kind shall be entered or levied against the County, any member of the County, or any representative officer, agent or employee of the County, in any such action or actions, the Company shall, at its own cost and expense, promptly satisfy and discharge the same. The County shall give prompt notice of the service of any suit upon it to the Company, and shall give reasonable notice of any claim, action, administrative proceeding, loss or other damages. No claim of late notice shall relieve the Company from any indemnity obligation unless and only to the extent that the Company is prejudiced in indemnifying the County. The Company shall not be responsible for indemnification of any injury or damage resulting from the County's willful and wanton acts. The defense and indemnification obligations of the Company hereunder shall survive the expiration or termination of this Agreement. The County and Company specifically agree that this Section should be construed as a global defense and indemnity provision, (except as respects indemnification of willful and wanton acts of the County), and that it requires the Company to defend and indemnify the County even in circumstances which include allegations of the sole acts or omissions of the County, regardless of whether such allegations are groundless, false or fraudulent; however, should the agreement expressed in the prior sentence of this Section be determined by a court to be invalid, then it is severable from the remainder of this Section, and the remainder of this Section should not be invalidated, and thereby still require the Company to defend and indemnify the County for acts or omissions of persons other than the County. In addition, nothing in this Agreement should be construed as a waiver of any common law or statutory immunity the County may have to such liability.

Section 2.4 Insurance

- a) At a minimum, the Company shall purchase and maintain at all times during the term of this Agreement, the following types and amounts of insurance:
- (i) Commercial General Liability Insurance in an amount not less than \$10,000,000.00 per occurrence and a combined single limit of \$25,000,000.00 in aggregate, and for damage to property in an amount not less than \$10,000,000.00; and
 - (ii) Workers' Compensation Insurance, including employer's liability.
 - (iii) Pollution Legal Liability Insurance with limits of \$5,000,000.00 per occurrence and \$10,000,000.00 annual aggregate for non-hazardous waste treatment, storage or disposal facilities. Coverage shall apply to sudden and non-sudden pollution events and shall also include bodily injury, death, property damage, remediation costs and defense costs.
- b) The liability insurance described above shall be primary insurance and shall cover the County as an additional named insured by endorsement. The liability insurance coverage described above shall indemnify the Company and County against loss or liability of the company or County or any of its employees, agents or sub-contractors for damage on account of death and bodily injury to persons, personal injury and damage to property. Such insurance shall be provided on a comprehensive, broad form policy written by an underwriter carrier, reasonably satisfactory to the County.
- c) The Company shall file with the County evidence of insurance certifying to the coverage required hereunder with the County named as an additional insured. All evidences of insurance shall be certified by an authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, the type and amount of coverage, the locations and operations to which the coverage applies and the expiration date of the policy, and shall state that the insurer shall give, by registered mail, notice to the County at least 60 days prior to the effective date of any cancellation, lapse, or material change in the policy.

**ARTICLE 3
HOST FEE**

Section 3.1 Purpose

In consideration of the additional fees and costs to be incurred by the County, should the Kendall County Board approve the Transfer Station site location, including but not limited to road, maintenance, and building, public health and environmental department inspections, the Company agrees to pay the county the following fees.

Section 3.2 Quantity-Based Fees

Municipal Waste and Construction and Demolition Debris: The Company shall pay to the County a base fee for each ton of Municipal Waste and Construction or Demolition Debris received at the Transfer Station (whether received in the same or separate vehicles) from the first date Solid Waste is received through the termination of this Agreement. This per-ton fee is specifically designated below, for years 2004 to 2007; and, beginning on January 1, 2008, the annual increase provision in Section 3.3 will be used to determine the per ton fee. To the extent any Municipal Waste or Construction or Demolition Debris received at the Transfer Station contains Landscape Waste or Recyclables (*i.e.*, non-source segregated Landscape Waste or Recyclables), even if the Landscape Waste or Recyclables is source separated, but contained or placed on the same vehicles as Municipal Waste or Construction or Demolition Debris (*e.g.* a “blue bag” program), then those materials shall be included in determining the tonnage and fees for purposes of this Section.

The Host fee Schedule is a two tier system. Tier 1 rates apply for those facilities within unincorporated areas and Tier 2 rates apply in incorporated areas.

<u>Year</u>	<u>Tier 1 Per Ton Fee</u>	<u>Tier 2 Per Ton Fee</u>
2004	\$1.80	\$0.45
2005	\$1.80	\$0.45
2006	\$1.90	\$0.48
2007	\$1.95	\$0.49

Landscape Waste and Recyclables: The Company shall not be required to pay a fee for source segregated Landscape Waste or source segregated Recyclables entering the Transfer Station on vehicles which are not otherwise transporting Municipal Waste or Construction or Demolition Debris, unless the amount of Landscape Waste or Recyclables being received at the Transfer Station, either individually or combined, is 30% or more of the combined tonnage of Solid Waste. In such an event the same fees to be paid with respect to Municipal Waste and Construction and Demolition Debris (including the surcharge described in Section 3.3) will be paid with respect to Recyclables and Landscape Waste, on a per ton basis for every ton over the 30% combined tonnage figure. The percentages described above will be calculated on a calendar year basis and the Company will pay the County any fees incurred pursuant to this Section no later than the thirtieth day of the calendar year following the year for which the percentages have been calculated. For example, if during 2004, the Company’s combined tonnage of Solid Waste receipts is 1000 tons and 32% (320 tons) of that is Landscape Waste or Recyclables combined, then on or before January 30, 2005, the Company will pay the County the per ton fee for 2004 plus the surcharge (as calculated in Section 3.3), for 2% (20 tons) of the total tonnage.

Section 3.3: Annual Increase

Beginning as of January 1, 2008 and as of each January 1 thereafter, the per ton fees described in Section 3.2, above, will be adjusted from the per ton fees of the previous year by the percentage of change during the previous year in the Revised Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor-Statistics, provided, however, that at no time shall there be a downward adjustment made to the subject fees. The unadjusted percent change from January of the calendar year, prior to the year of the increase, to the January of the year of the increase shall be used to determine the percent change in this Section and apply retroactively to any time of the year of the increase that passed prior to the Department of Labor publishing that information in the year of the increase and the determination of the increase being made (e.g., for the adjustment being made in January 2008 the CPI-U, unadjusted 12 month percent ending January 2008 will be used. Since this publication is not typically published until Mid-February of the following year, the determination of what increase to apply will not be made until after the publication of the CPI-U for the past year, the increase under this Section will apply retroactively to the period of time that has passed prior to it being determined, which in this example would be January 1, 2008 to sometime at or after mid-February 2008). If the Consumer Price Index for All Urban Consumers shall cease to be published at the timeframe described above the County and Company shall designate a comparable timeframe or index, which shall then be used for determining the annual rate of adjustment.

Section 3.4: Other Increase

In the event the Company has heretofore entered into or hereafter enters into any agreement to pay money, equivalent services or like-kind contributions, or other equivalent fees such as fees typically described as "Host Community Benefits" to another county, township or municipality in the Counties of Cook, DuPage, Kendall, Will, Lake, McHenry, DeKalb or Kendall for a solid waste transfer station (*i.e.*, a transfer station accepting any one or more of the types of wastes contained in the definition of Solid Waste) and the payment terms of said Agreement are more favorable to such other unit of local government, (even if those terms are only more favorable on a current rather than future term) then the payment terms contained herein that are not as favorable as those in the other agreement shall be changed to the more favorable terms under such other agreement, however, the other terms in this Agreement which are equal to or more favorable to the other agreement shall remain in this Agreement. The Company has an obligation to report such terms to the County at a time any such agreement is entered into, and this Agreement shall automatically be amended as of the date of such other agreement, to incorporate the more favorable terms of the other Agreement. The term "more favorable terms" means a greater host fee(s), whether calculated per ton, per truck, annually or otherwise, taken as a whole or individually, whichever is greater. For example, a per ton fee of \$1.81 in 2004 is greater than the host fee in this agreement, even if the other agreement has no CPI-U increase applicable for future year payments or surcharge (as described in Section 3.3.).

Section 3.5: Identification and Weight of Receipts

The Company shall weigh all receipts of Solid Waste on a certified scale, which is inspected at least once each calendar year. In addition, the Company shall provide to the County, in writing, a listing of all receipts categorized by date, type of Solid Waste and other material in each receipt (if not Solid Waste), and weight of Solid Waste (or other material if not Solid Waste) in each receipt, so that the County can determine by its review of these records, the number of incoming vehicles, the type of vehicle, the load weight and total weight of each vehicle, and type of waste or material contained on each vehicle received at the Transfer Station each calendar day. The Company shall have a representative certify that all such listings prepared by the Company and submitted to the County are true and accurate.

Further, the Company shall keep records of outgoing Solid Waste, such that the County can determine by its review of these records the number of outbound vehicles, the type of vehicle, the destination of each vehicle, and the type of waste contained on each vehicle leaving the Transfer Station each calendar day. In addition, should the County request records concerning the load weight and total weight of each outbound vehicle, the Company agrees to provide that information, from weights measured at the Transfer Station or at the destination of the vehicles leaving the Transfer Station, from the time the Company receives the County's request on a moving forward basis for any time period(s) designated by the County.

Section 3.6 Auditing

The Company shall keep complete and accurate books and records relating to the determination of the fees described in Article 3, in an auditable form, including those records described in Section 3.5. The Company shall permit the County and its designated representatives access to such books and records (paper and electronic version) for inspection and copying. In the event that such inspection reveals any underpayment(s) of the fees described in Article 3, the Company shall promptly pay the County the amount(s) of such underpayment(s), and reimburse the County for its costs and expenses of such inspection and, if necessary, collection, including any professional and technical fees (including attorney's fees) in connection therewith. In the event that such inspection reveals any overpayment(s) of the subject fees, the Company may credit the amount of such overpayment(s) against the payments of the subject fees in subsequent quarters.

Section 3.7 Payment Schedule for Fees

The fees described in this Article shall be paid on a quarterly basis. The quarterly payments shall be calculated on a calendar year basis; that is, they shall be calculated for the three month periods ending on the last day of March, June, September and December of each year during the term of this Agreement and any extension thereof. The payment shall be made not later than thirty (30) days after the last day of the preceding quarter and shall be limited to the solid waste transferred during the quarter to which it applies.

Section 3.8 Inspection & Enforcement & Other Fees and Costs

The Company shall pay the County upon demand, all of the reasonable and necessary costs incurred by the County in the siting process and this Agreement, including, but not limited to, engineering and/or witness fees and expenses, attorneys' fees and expenses, the hearing officer's fees and expenses, the wages, hourly rate and benefit per hour for any County employees or officers, except County Board members, and such other reasonable fees and expenses, if any.

If the Company is charged by the County with having violated any County enforceable law, ordinance, rule or regulation, or any of the Company's permit or site location approval conditions, and if found by Court or administrative body (such as IPCB), to be guilty of such violation, the Company shall, in addition to the payment of any penalty imposed, reimburse the County for all fees and cost associated with the County's investigation and prosecution of such violation, including, but not limited to, attorneys' fees.

**ARTICLE 4
MISCELLANEOUS**

Section 4.1 Assignment

The Company shall not assign or attempt to sublet this Agreement or any interest in this Agreement or any right or privilege appurtenant to this Agreement without first obtaining the County's written consent. In addition, no transfer of any ownership or other interest in the Transfer Station may be made without the prior written approval of the County. The right to seek assignment or approval may occur only if all payments to the County by the Company have been made and if the Company is not otherwise in Default (as described in Section 4.2 below) in connection with obligations under this Agreement. If the Company requests the County's consent to an assignment of this Agreement or approval of a transfer of ownership or other interest in the Transfer Station, the Company shall submit written notice containing at least the following information, plus any information required by the County's ordinance pertaining to such assignment request, should such an ordinance be in existence at the time of the request:

- a) The name of the proposed assignee or transferee;
- b) The terms of the proposed assignment or transfer;
- c) The nature of business of the proposed assignee or transferee and the proposed use by the assignee or transferee; and
- d) Information relating to the financial responsibility and general reputation of the proposed assignee or transferee that County may require;

- e) In the event of the County's agreement to assignment or approval of a transfer, the proposed assignee or transferee shall agree to the following:
- f) To assume all obligations and duties of the Company under this Agreement and any conditions placed on the site location approval by the County to be bound as an original party to this Agreement;
- g) To make any and all payments due under this Agreement and/or assignment to County directly at its offices in Yorkville, Illinois, as such payments become due.

Subject to the provisions of this Agreement limiting the right to assign or transfer, this Agreement shall be binding on and inure to the benefit of the parties and their heirs and successors. However, the Company shall remain primarily responsible for all obligations and liabilities under this Agreement and for any approved assignment or transfer. Furthermore, in the event of an approved assignment or transfer, the Company shall remain primarily responsible for all obligations and liabilities of this Agreement, which accrue prior to or after the execution of any approved assignment or transfer. Transfer of a fifty-percent (50%) or greater interest in the Company to another owner or owners shall be deemed an unpermitted transfer under this Section, unless made with the approval of the County. The County may require an additional written commitment from by the assignee or transferee to assume and comply with the duties and obligations of this Agreement. The County shall not unreasonably withhold approval of a proposed assignment or transfer.

Section 4.2 Default

The occurrence of any one or more of the following constitutes a "Default" by the Company under this Agreement. Should the Company be found by the County to be in Default of this Agreement, the County may, at its sole discretion, terminate this Agreement.

- a) The failure by the Company to pay any fee due and payable under this Agreement;
- b) The failure by the Company to observe or perform in any material respect the provision provided in Paragraph 2.1 of this Agreement and any other provision of this Agreement, and if the Company does not cure such failures within five (5) days after notice thereof from the County to the Company, unless such failures cannot reasonably be cured within five (5) days, in which case the Company must, before the fifth day: notify the County that it cannot complete its cure, present the County with a plan and timeline (which meets with the approval of the County) for completing the cure and implementing a plan to prevent the same or a similar failure from occurring again, and diligently continue to cure such failures during the initial five (5) day cure time period and any additional period beyond the five (5) days approved by the County. However, to the extent the Company's default under this Agreement concerns its failure to comply with Section 2.2

(Waste Acceptability), the more restrictive provision (this or Section 2.2) shall control in determining whether the Company is in default of this Agreement;

- c) The Company admits in writing its inability to pay its debts as they mature and makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the Company or a major part of its property;
- d) A trustee or receiver is appointed for the Company or for a major part of its property, and it is not discharged within ninety (90) days after such appointment;
- e) Bankruptcy, reorganization arrangement, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy law, or similar law, for the relief of debtors are instituted by or against the Company and, if instituted against the Company, are allowed against it or are not dismissed within 180 days after such institution;
- f) If, during the term of this Agreement, any governmental entity assesses on or on behalf of the County of Kendall, a fee, surcharge or tax against Company as the operator of the facility, the facility or the site on which the facility is located, then such fee, surcharge or tax shall not affect the obligations of the Company to pay the County. Additionally, such fee, surcharge or tax shall be the sole and complete responsibility of the Company to pay and this Agreement shall remain in full force and effect.

Section 4.3 Notice

Any notice to be given hereunder by either party to the other shall be in writing and be sent by personal delivery, by overnight delivery service or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated when delivered or as two (2) business days from the date of mailing, whichever is earlier. Notices shall be addressed as set forth below, but each party may change its address by written notice to the other in accordance with this Section:

To the County, notice shall be sent to both the County and the State's Attorney at the following addresses:

County of Kendall
111 W. Fox Rd.
Yorkville, IL 60560

Kendall County State's Attorney
807 W. John St.
Yorkville, IL 60560

To the Company, notice shall be sent to the following:

Company Representative Contact Information:

Section 4.4 Agreement Controls

This Agreement constitutes the entire understanding of the parties hereto relating to the subject matter contained herein, except that it does not, in any way, constitute the County's agreement or obligate the County to approve the Company's site location application, if such application is filed with the County and if such application is approved by the County, this Agreement is to be read as an additional obligation and not as superceding or controlling in any way, the Company's obligation to comply with any conditions of the County's site location approval and any laws, ordinances, rules or regulations applicable to the site or Transfer Station.

Section 4.6 Enforcement of Siting Conditions

The Company agrees that, should the Transfer Station receive site location approval pursuant to Section 39.2 of the Act from the Kendall County Board, that any final and non-appealable conditions imposed on the Transfer Station or Company as part of such approval are enforceable by the County against the Company, in the same manner in which the County's ordinances or this Agreement are enforceable, or pursuant to a County ordinance, should one be in effect at the time of the enforcement. Section 4.6 survives the termination of this Agreement.

Section 4.7 Governing Law and Form for Litigation

This Agreement shall be governed by and construed in accordance with the laws of Kendall County and the State of Illinois. Any litigation filed by the Company or County against the other party and involving this Agreement shall be filed in a court of competent jurisdiction in Kendall County, Illinois. Section 4.7 survives the termination of this Agreement.

Section 4.8 Severability

The provisions of this Agreement shall be deemed to be severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. Section 4.8 survives the termination of this Agreement.

Section 4.9 Binding Effect

This Agreement shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns. However, nothing in this Section should be construed to allow Company to assign or transfer interest in this Agreement or the Transfer Station, unless done pursuant to Section 4.1 of this Agreement. Section 4.9 survives the termination of this Agreement.

Section 4.10 Force Majeure

Neither party hereto shall be deemed to be in default or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military authority, civil disturbance, or war, which are beyond the control of such non-performing party.

Section 4.11 No Third Party Beneficiaries

Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties and their respective successors and assigns, nor shall any provision give any third persons any right or rights of action against any party to this Agreement.

Section 4.12 County Expenses

The Company agrees to reimburse the County for attorney fees incurred in connection with the drafting and negotiation of this Agreement and consulting fees incurred in connection with the review of the proposed construction and operation of the Transfer Station, up to a maximum total of \$20,000 for both attorney and consulting fees collectively.

Section 4.13 Records

In addition to those records described in Sections 3.5 and 3.6, above, the Company shall provide to the County, upon the County's request, free of charge and in a timely manner, copies of all of the following documents in any manner connected with the Transfer Station:

- 1) Documents submitted or received by the Company, its representatives, agents, attorneys, employees, or consultants to or from any state or federal government, or any regulatory or administrative agency; and

2) Documents submitted or received by the Company, its representatives, agents, attorneys, employees, or consultants to or from any citizen residing within the borders of Kendall County pertaining to the development or operations of the Transfer Station, particularly comments or complaints concerning such development or operations and including but not limited to the inbound or outbound vehicles to the Transfer Station.

ARTICLE 5
AUTHORITY & GUARANTY OF PAYMENT

Section 5.1: Authority to Enter Into Agreement

The Company hereby represents and warrants that it is a valid and existing _____, in good standing, and that the individuals executing this Agreement have been duly authorized by the Company to act on its behalf and enter into this Agreement. In addition the Company agrees to provide the County, at the time of execution of the Agreement, with a copy of the _____ resolution authorizing the execution of this Agreement.

Section 5.2 Guaranty of Payment

As additional consideration for and assurance of performance of this Agreement, the Company and its corporate parent, tender to the County and the County accepts, the Guaranty of Payment attached to this Agreement as Exhibit B.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first written above.

KENDALL COUNTY, ILLINOIS,

By: Kendall County
Board Chairman

Attest: [Signature]
Signature

John Church
Printed Name

By: Kendall County
Its: County Clerk

Attest: [Signature]
Signature

Paul Anderson
Printed Name

EXHIBIT "A"

**KENDALL COUNTY
HOST COMMUNITY BENEFITS
AND REIMBURSEMENT AGREEMENT**

This HOST COMMUNITY BENEFITS AND REIMBURSEMENT AGREEMENT ("Agreement") is made as of the ____ day of _____, 200__ between KENDALL COUNTY, ILLINOIS ("County") and _____, a _____ ("Company").

RECITALS

WHEREAS, the Company desires to construct and operate a solid waste transfer station ("Transfer Station") in unincorporated Kendall County, Illinois;

WHEREAS, the Company desires to provide certain environmental protection and compensation to the County with respect to the Transfer Station, if the Transfer Station obtains all required approvals and commences operation; and,

WHEREAS, the County is desirous of obtaining such environmental protections and compensation, provided that the County shall have no obligation to grant site location approval of the Transfer Station unless and until through the local site location review process, it finds that the Transfer Station meets or exceeds all criteria required by 415 ILCS 5/39.2. Regardless of whether site location approval is granted, this Agreement survives the local site location review process; and

WHEREAS, the parties acknowledge and agree that the siting of the facility is subject to the approval of the KENDALL COUNTY BOARD, pursuant to Section 39.2 of the Environmental Protection Act, which provides in pertinent part, that:

"No permit for the development or construction of a new regional pollution control facility may be granted by the (Illinois Environmental Protection) Agency unless the applicant submits proof to the agency that the location of such facility has been approved by the County Board of the County if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located in accordance with Section 39.2 of this Act.

Except...new pollution control facilities governed by Section 39.2...the granting of a permit under this Act shall not relieve the applicant from meeting and securing all necessary zoning approvals from the unit of government having zoning jurisdiction over the proposed facility..."

EXHIBIT "B"

GUARANTY OF PAYMENT

_____, for valuable consideration, the receipt of which is hereby acknowledged, does hereby unconditionally guarantee the payment by _____, of all sums due and owing to Kendall County, Illinois, pursuant to the Host Community Benefits and Reimbursement Agreement entered into between _____ and Kendall County on the ____ day of _____, 200__.

_____, hereby represents and warrants that it is a valid and existing _____, in good standing, and that the individual executing this Guaranty of Payment have been duly authorized by _____ to act on its behalf and enter into this Guaranty of Payment. In addition, _____, agrees to provide the County, at the time of execution of this Guaranty of Payment, with a copy of the resolution authorizing the execution of this Guaranty of Payment.

By: _____

Dated: _____

Its: _____