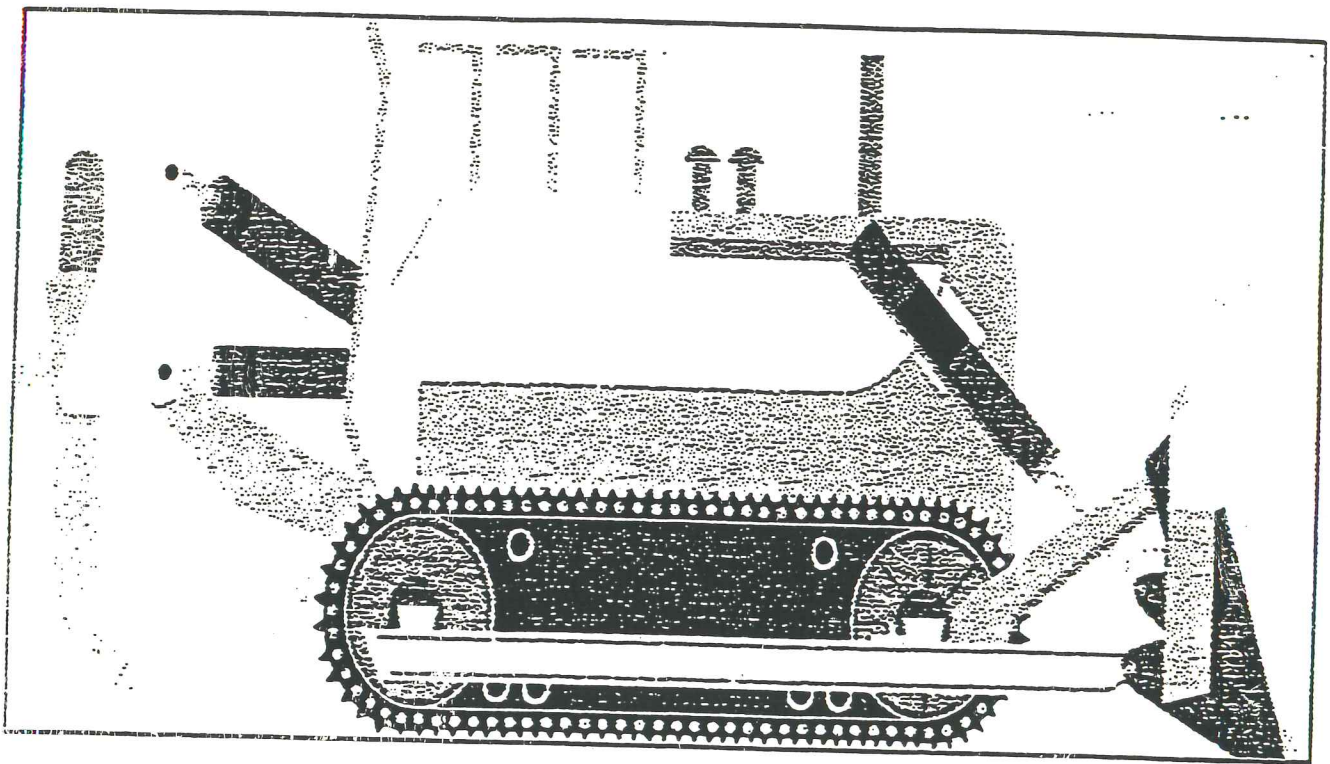


# WILL COUNTY LANDFILL PROPOSAL



WASTE MANAGEMENT OF ILLINOIS, INC.



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DISCLOSURE AND VERIFICATION

The undersigned verifies that with the exception of the items noted on Attachment 1 hereto, neither the undersigned or any agent, representative or designate of the undersigned has (in any capacity, manner, shape or form) provided (in excess of statutory reporting requirements) any gratuities, items of tangible worth or value or any other form of tangible value, worth or consideration to or otherwise has not promised to provide any such gratuities, items of tangible worth, value or consideration or otherwise hire or retain (or promise o hire or retain) in any capacity or in any manner in the future any Will County Official (elected or otherwise, employee, Committee member, Committee designate or other person or party who in any way materially participated in the formulation of the strategy and/or requirements for the development of the Landfill Contract on behalf of the County, or who will vote or otherwise materially participate in approval of a finalist to fulfill the terms and conditions of that Landfill Contract.

WASTE MANAGEMENT OF ILLINOIS  
Company

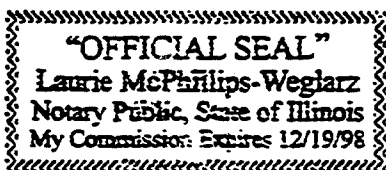
By Its: Bruce A. Mader

Title: PRESIDENT

The undersigned affirms under oath that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

SUBSCRIBED and SWORN to  
before me this 29<sup>th</sup> day of May, 1997.

Laurie McPhillips-Weglarz  
Notary Public



**SUMMARY**  
**OF BID ITEMS INCLUDED IN ATTACHED**  
**"HOST AGREEMENT and AGREEMENT FOR**  
**OPERATION/DEVELOPMENT OF THE**  
**WILL COUNTY LANDFILL" PROPOSAL**

Waste Management of Illinois, Inc. has included the following bid items in connection with submitting the attached HOST AGREEMENT and AGREEMENT FOR OPERATION/DEVELOPMENT OF THE WILL COUNTY LANDFILL as reflected at the Sections as indicated below:

**This Company bids as follows:**

Section 5.1 - Initiation Fee	<u>\$1,000,000.00</u>
Section 5.3 - Host Fee per ton	<u>\$2.75 per ton</u>
Section 5.6 - Base Unit Price per ton	<u>\$17.00 per ton</u>

As submitted by and authorized by:

  
Signature by an authorized signatory

May 29, 1997  
Date

Bruce S. Malec, Sr.  
Please print name of signatory above

President  
Please print title of signatory above



## CONTENTS

1. Cover Letter
2. Host Agreement And Agreement For Operation/Development Of The Will County Landfill
  - \* Initiation Fee
  - \* Host Fees Per Ton
  - \* Base Unit Price Per Ton
  - \* Guarantee Of Performance
3. Exhibit # 1 - Plat of Survey
4. Exhibit # 2 - Inclusive Will County Agencies/Offices
5. Exhibit # 3 - Available Disposal Capacity for Solid Waste
6. Exhibit # 4 - Will County Agencies
7. Exhibit # 5 - Contractor Insurance Specifications
8. Exhibit # 6 - Initial Bond Requirements
9. Exhibit # 7 - Guaranty
10. Exhibit # 8 - Landfill Questionnaire
11. Exhibit # 9 - Notification of Compensation Paid to Lobbyists
12. Exhibit #10 - Receipt and Acknowledgement Form

**Waste Management, Inc.**

A WMX Technologies Company      Phone 708.409.0700  
P.O. Box 7070                              Fax 708.409.0773  
Two Westbrook Corporate Center  
Suite 1000  
Westchester, IL 60154

May 29, 1997

Mr. Charles F. Helsten  
Hinshaw & Culbertson  
100 Park Avenue  
Rockford, Illinois 61105-1389

Dear Mr. Helsten:

Pursuant to the Will County, Illinois "Request For Proposals" for the operation/development of a sanitary landfill at the Joliet Army Arsenal Plant, Waste Management of Illinois, Inc. is submitting this bid proposal for consideration. We have structured our response so that it coincides with the Host Agreement/Agreement and the attached exhibits.

Waste Management of Illinois, Inc. wishes to stipulate that we will meet or exceed the requirements for surety and performance bonds, letters of credit and insurance coverages once they are defined and we have attached documents that indicate that willingness.

We know that this selection process has been challenging, but soon a decision will be made that will provide the citizens of Will County with a solution to their disposal needs for the next twenty-five years.

Waste Management of Illinois, Inc. would like to take this opportunity to thank you for the the objectivity that you have displayed in these deliberations and we look forward to the Will County Board's selection of a qualified operator.

Respectfully,

A handwritten signature in cursive script, appearing to read "Bruce S. Malec, Sr.".

Bruce S. Malec, Sr.  
President

**HOST AGREEMENT and AGREEMENT FOR  
OPERATION/DEVELOPMENT OF THE WILL COUNTY LANDFILL**

This HOST AGREEMENT ("AGREEMENT") is made and entered into this 2nd day of June, 1997, by and between the COUNTY OF WILL ("County") and WASTE MANAGEMENT OF ILLINOIS, INC. ("Operator").

**RECITALS:**

- A. WHEREAS, pursuant to certain federal legislation commonly referred to as Public Law 104-106 (110 STAT.594) entitled the "Illinois Land Conservation Act of 1995", the County of Will, Illinois is to receive the title to and possession of one certain 455 acre tract of land located in the Joliet Army Ammunition Plant (JAAP) complex (which is more specifically described in Exhibit 1, which is incorporated herein, and which is hereinafter referred to as the "Premises"); and
- B. WHEREAS, the County is interested in negotiating an Agreement with a qualified landfill development and operations firm for the siting, development, and operation of a municipal solid waste/sanitary landfill as described herein upon the Premises (consistent with the terms and conditions set forth in this Agreement); and
- C. WHEREAS, Operator desires to site, develop and operate such landfill under the terms and conditions set forth in this Agreement; and

D. WHEREAS, the parties hereto desire to memorialize a complete and accurate statement of the conditions and understandings with respect to Operator's siting, development and operation of such landfill;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and in reliance upon the recitals set forth above (which are incorporated herein by this reference), the parties agree as follows:

### DEFINITIONS

1. "Base Unit Price" - Shall mean the total charge/tipping fee being initially quoted by the Operator for receipt and disposal of each ton of residential/household waste from townships, municipalities, villages and towns located within the physical boundaries of Will County during the initial year term under this Agreement as provided for in greater detail in Section 5.6 hereof.
2. "Commercial Solid Waste" - Shall mean municipal waste (as defined by Section 3.21 of the Illinois Environmental Protection Act) received by the Operator at the Final Disposal Facility for which a tipping fee for receipt and disposal of such waste is charged.
3. "Documents and Records" - The terms "Documents" and "Records" shall mean any written or graphic matter of any kind whatsoever, however produced or reproduced, any electronically or magnetically recorded matter of any kind or character, however produced or reproduced or other matter constituting the recording of data or information upon any tangible thing by any means including, but not limited to the original and any non-identical copy of any of the following: books, records, reports, accounting or other financial ledgers, memorandum, notes, letters, calendars of diary entries and/or daily activities, schedules,

maps, graphs, charts, estimates, opinions, studies, analyses, summaries, tabulations, films, tapes, surveys, messages, correspondence, records (of meetings, conferences and telephone or other conversations or communications), tables, drawings, sketches, working papers, financial information, computer data (including information or programs stored in a computer whether or not ever printed out or displayed) as well as other tangible things upon which information is recorded in writing, sound, electronic and/or magnetic impulse or any other such matters, including preliminary versions, drafts revisions and amendments to any of the foregoing in supporting, underlying or preparatory material.

4. "Final Disposal Facility" - Shall mean that solid waste landfill (as defined by Section 3.85 of the Illinois Environmental Protection Act) which is sited, developed and operated by the Operator under the terms and conditions set forth in this Agreement so as to satisfy the long term solid waste disposal needs of the Will County Service Area.
5. "Household Hazardous Waste" - Shall mean any solid waste derived from households/residences which fits the definition of "hazardous waste" set forth at Section 3.15 of the Illinois Environmental Protection Act.
6. "Interim Disposal Facility" - Shall mean that solid waste landfill(s) designated by Operator to satisfy the solid waste disposal needs of the Will County Service Area from the date of execution of this Agreement until such time as the Final Disposal Facility herein is operational.
7. "Municipal Waste" - Shall have that meaning ascribed by Section 3.21 of the Illinois Environmental Protection Act.

8. "Operational Authority" - Shall mean the receipt of approval from any and all relevant and applicable federal and/or state governmental agencies or entities necessary to commence the operation of the Final Disposal Facility.
9. "Residential/Household Waste" - Shall mean garbage and other general waste received from households and residences within the township, municipality, village or town located within the physical boundaries of Will County.
10. "Sanitary Landfill" - Shall have that meaning ascribed by Section 3.41 of the Illinois Environmental Protection Act.
11. "Transfer Station" - Shall have that meaning ascribed by Section 3.83 of the Illinois Environmental Protection Act.
12. "Unit Price" - Shall mean the total charge/tipping fee quoted by the Operator for receipt and disposal of each ton of residential/household waste from townships, municipalities, villages and towns located within the physical boundaries of Will County during each year term subsequent to the initial year term under this Agreement.
13. "Will County Service Area" - Shall mean the area consisting of those townships, municipalities, villages and towns, including any portions thereof, located within the physical boundaries of Will County.

1. SCOPE OF PROJECT

1.0 Pursuant to the terms and conditions of this Agreement, Operator shall provide both an Interim Disposal Facility and a Final Disposal Facility.

Operator shall provide interim disposal capacity of its choosing in a manner and form so as to accommodate and satisfy the Municipal Waste disposal needs of the Will

County Service Area until such time as a Final Disposal Facility is sited, developed, constructed and open for the disposal of waste on the Premises.

Such Interim Disposal Facility may be either inside or outside Will County, but must be a currently operating facility with air space capacity sufficient to meet the interim solid waste disposal needs of the Will County Service Area.

Unless otherwise designated by the County, the Final Disposal Facility shall be located upon the Premises, and shall be designed and developed with a Commercial Solid Waste disposal capacity of 14,000,000 (fourteen million) tons with an operating life of not less than twenty (20) years nor more than twenty-three (23) years, plus that additional capacity necessary to address that quantity of construction debris, refuse, and other materials related to any restoration and clean-up of the JAAP as provided by Public Law 104-106 (110 STAT.594), entitled the "Illinois Land Conservation Act of 1995", (as well as all rules, regulations, policies, orders and other directives developed in conjunction with that statutory provision).

Operator shall insure that such Interim and Final Disposal Facilities are combined with a network of new and/or existing transfer facilities necessary and satisfactory to meet and address the ongoing solid and special waste disposal needs of the Will County Service Area over the term of this Agreement. All transfer stations so developed, operated and maintained by the Operator during the term of this Agreement shall keep a separate and accurate written account and record of the amount of solid waste received from: (1) within the Will County Service Area, and

(2) waste received from parties outside the Will County Service Area. The Final Disposal Facility shall not include a compost facility.

1.1 Methane to Electricity Plant - The Final Disposal Facility shall be designed in such a manner as to allow for an appropriate gas collection system and should allow sufficient space for the potential development of a methane gas to electricity conversion plant. If the County, in its sole discretion, desires to develop such a conversion plant, then all rights and obligations related to said plant shall inure to the County. In the event that the County desires not to develop such a conversion plant, or desires to have such a conversion plant developed by Operator, and Operator desires to develop said plant, then the parties shall enter good faith negotiations to develop specifications and an appropriate revenue sharing agreement concerning revenues generated from said plant. In the event that the Operator constructs the conversion plant, the Operator shall be entitled to all available tax credits.

1.2 Recycling Efforts - The Operator further agrees to develop, operate and maintain, at its cost, and on an ongoing basis, first rate, state of the art recycling programs and facilities which will maximize the extent of Residential/Household Waste materials recycled within the Will County Service Area, and ten percent (10%) of the gross revenues received from the sale of such Residential/Household Waste materials recycled within the County, and all interest or other investment income earned thereon, shall be held by Operator for distribution to not-for-profit organizations. Operator shall provide quarterly reports of the funds generated through recycling efforts to a Committee of the County Board, said Committee to be named at a later



date. Said Committee shall designate the not-for-profit organization(s) to which the funds shall be distributed. Operator shall distribute said funds upon its receipt of written direction from the Committee and after County Board approval.

- 1.3 Costs - All costs associated with the providing of the Interim Disposal Facility capacity and further associated with the design, siting, development, operation, closure and post-closure phases of the Final Disposal Facility and the corresponding network of transfer stations as provided herein shall be borne solely by the Operator.

2. PREMISES

- 2.1 License - Subject to the County of Will acquiring the fee title under the terms and conditions of Public Law 104-106 (110 STAT.594) to the Premises, and subject to the reservation of rights described in Section 18.1 below, the County hereby licenses to Operator, and Operator accepts such licensing for the term set forth herein, and upon all of the conditions set forth herein (as well as all of the terms and conditions of documents attached as exhibits to this Agreement which are incorporated herein by this reference) the Premises.

2.2 Ownership of Real Property

The County shall retain fee title to the Premises. The Operator shall be responsible for any and all assessments other than in the nature of *ad valorem* or real estate tax assessments levied upon the landfill and upon other improvements located upon the Premises during the term of this Agreement.

3. TERM

3.1 Term - The term of this license shall commence on the date of this Agreement and (barring a default by Operator under the terms and conditions of this Agreement) shall continue through completion by Operator of those closure and post closure care conditions set forth in this Agreement. The term of this license shall continue during any temporary periods in which permitted capacity may not be available due to the termination or lapse of any necessary permit so long as the Operator is using its best efforts to pursue the necessary permits in a reasonable manner and is otherwise in compliance with all other local, state and federal laws, regulations and ordinances and is also otherwise in compliance with all other terms and conditions of this Agreement.

3.2 Disposal Capacity Period - The Operator shall provide the County with interim disposal capacity at a facility of its own choosing until such time as the Final Disposal Facility is operational and disposal capacity at the Final Disposal Facility for a period of not less than twenty (20) years or more than twenty-three (23) years pursuant to the terms and conditions of this Agreement for all Municipal Waste generated within the Will County Service Area, and for all other nonhazardous solid waste generated within the above-described service area, for all nonhazardous solid waste generated by the County from its own activities and other waste described in Section 3.3 below. Operator's obligation to provide the capacity outlined above shall continue during the term of this Agreement at an Interim Disposal Facility of the Contractor's choosing until such time as final, non-appealable siting and operating

authorization for the above-mentioned Final Disposal Facility is obtained by Operator. There shall be no obligation on the part of the Operator to accept, or provide disposal capacity for "Free Waste" as described below at the Interim Disposal Facility.

- 3.3 Free Waste - The Operator shall accept and dispose of at no charge all non-hazardous solid waste received from the Department of the Army, the Department of Veteran's Affairs and the Department of Agriculture (or their agents or assigns) relating to the decommissioning, closure, restoration and cleanup of the JAAP as provided in Public Law 104-106 (110 STAT.594) (said waste, along with the County Government Waste described below shall be referred to as "Free Waste").

For so long as any capacity permitted for the disposal of Commercial Solid Waste remains in the Final Disposal Facility, pursuant to the terms and conditions of this Agreement, the Operator shall dispose of waste received from those offices, agencies and departments of Will County government designated in Exhibit 2 attached hereto (which is incorporated herein by this reference) at no charge ("County Government Waste"). For purposes of this Agreement, County Government Waste shall not include waste generated from any County owned or operated POTW, County road demolition debris, or any solid waste generated as a result of unusual and/or extraordinary events such as County building development projects, construction project, renovation and remodeling projects, etc.

The Operator shall not be obligated to pay the Host Fee provided for in Section 5.3 below, the Permanent Waste Disposal Surcharge under Section 22.15(j) of the

Illinois Environmental Protection Act or any other fee or assessment otherwise required hereunder, on any waste required to be disposed of pursuant to this Section.

4. **OPERATIONS**

4.1 **Waste Limits** - The Operator shall not accept more than five hundred thousand (500,000) tons of Commercial Solid Waste for disposal at the Final Disposal Facility during the first year of its operation. Such initial Commercial Solid Waste-in flow cap will be reviewed by the County on an annual basis for each subsequent year of operation of the Final Disposal Facility, provided however, that in no event shall the waste-in, (exclusive of "Free Waste") flow cap be reduced to less than 500,000 tons of Commercial Solid Waste per year. The Director of Waste Services for the County shall make a determination no less than One Hundred Twenty (120) days before the end of each calendar year during the term of this Agreement indicating the waste-in flow cap for the subsequent year. In the event that Operator desires to challenge that determination, Operator may do so by making a written appeal to the County Board within thirty (30) days of Operator's receipt of notice of the Director of Waste Services determination.

Free Waste shall not be included in the calculation of such annual Commercial Solid Waste disposal limitation figure. Should the Operator exceed the annual Commercial Solid Waste disposal limitation figure in any given year under this Agreement, the Operator shall pay to the County liquidated damages in an amount equal to the gross revenues received by the Operator from the disposal of such excess tonnage, minus the permanent waste disposal surcharge (presently \$1.27 per ton) and minus the Host

Fee otherwise received by the County on such waste. Such liquidated damages will not be assessed and/or due and owing from the Operator to the County in the event that: (1) prior to the receipt of such excess tonnage, the Operator has used its entire annual solid waste disposal allocation for receipt of Will County Service Area waste and the excess tonnage constitutes additional waste solely from within the Will County Service Area, or (2) such excess tonnage amount does not exceed ten (10%) percent of the waste disposal limitation figure established for that year period. Liquidated damages shall be paid by the Operator to the County within sixty (60) calendar days of Operator's receipt of excess tonnage subject to assessment of liquidated damages.

4.2 Standards - The Final Disposal Facility shall be designed, sited, developed, operated, ultimately closed and maintained in a post-closure mode in a manner which complies with all provisions of the Illinois Environmental Protection Act, rules and regulations of the Illinois Environmental Protection Agency and the Illinois Pollution Control Board, the provisions of Subtitle D of RCRA, as well as the terms, conditions and requirements of any and all permits issued by any applicable governmental authority/agency relating to the operation of the landfill facility, as well as any and all other applicable laws, statutes, rules, regulations and/or ordinances now in effect or enacted hereafter.

4.3 Flow Quantity Payment Guarantee - As part of the fee arrangement set forth herein, Operator guarantees the County an annual fee of the greater of either the per ton Host Fee rate then applicable to 500,000 tons of Commercial Solid Waste, or the

Host Fee rate applied to the actual Commercial Solid Waste in-flow quantity received, and guarantees payment of that amount for each year that Host Fees are due and payable under this Agreement. Payment of such fees in any given year shall be amortized on a twelve (12) month basis, and such monthly amortized guaranteed fees shall be paid by the Operator to the County on or before the 10th day of each month for the preceding month. By way of example and not by limitation, said fees shall be payable as follows:

Step 1: Determine the actual volume of Commercial Solid Waste received at the Premises for the prior month.

Step 2: Compare the actual volume of waste received to the guaranteed amount. For purposes of this calculation, the guaranteed amount shall be 500,000 tons of Commercial Solid Waste in each year of operation of the Final Disposal Facility. That number should be divided by twelve (12) months to determine the monthly guaranteed amount.

Step 3: Pay the greater of the two amounts specified above.

Step 4: To the extent that the actual volume of Commercial Solid Waste received is less than the guaranteed amount for any fiscal year hereunder, Operator shall, during the first three (3) years of operation, be allowed to carry forward the cumulative amount of any such differences as a credit into future years.

However, at the time that Commercial Solid Waste actually

received is offset against any such amount carried forward, the Operator shall pay, in addition to amounts previously paid, any incremental differential in the Host Fee in effect when the guaranteed minimum was paid and the Host Fee in effect when the Commercial Solid Waste is actually received and offset against the credit amount carried forward.

The following example is designed to offer an illustration of the above methodology:

In any given year of operation of the Final Disposal Facility, the Operator is required to pay the Host Fee then applicable on the 500,000 tons per year for each year of operation of the Final Disposal Facility. Presume that in the first year only 250,000 tons are actually brought in. Also presume that Host Fees are as follows: Year 1 - \$2.00/ton; Year 2 - \$2.25/ton. An unused capacity amount of 250,000 tons will carry forward as a credit to the second year. If the Operator actually brings in 750,000 tons in the second year, the Operator will have to pay a Host Fee of \$2.25/ton on 500,000 tons. However, the Operator will also be required to pay an additional \$62,500.00 (250,000 tons X \$0.25) in year two because of the incremental differential of \$0.25 in that second year.

Any credits generated in the first three (3) years of operation may be carried forward until fully utilized. Any such carry forward credits may be used to offset Commercial Solid Waste volume caps as described in Section 4.1 herein. However, carry forward credits may not be used to offset the minimum annual guaranteed

payments described in Section 4.3 herein. The carry forward credit shall apply only during the first three (3) years of operation of the Final Disposal Facility. After the third year of operation, the incremental differential discussed in the above example in Section 4.3 will not apply, and the Operator shall pay the then applicable Host Fee on all Commercial Solid Waste tonnage received in any and all subsequent years.

- 4.4 No Guarantee of Waste Inflow - The County makes no representation, commitment or guarantee of any type, kind or sort relative to the inflow of waste volume from the Will County Service Area.
- 4.5 Hours of Operation - The Operator and the County intend that (subject to holidays), the Final Disposal Facility will be open for the receipt of waste Monday through Friday from the hours of 6:00 a.m. to 5:00 p.m., and may also be open for the receipt of waste for one-half day on Saturday from 6:00 a.m. to 12:00 noon.
- 4.6 County Criterion - The Final Disposal Facility shall meet all County siting criteria, as well as all criteria and requirements of the Will County Solid Waste Management Plan (and all updates, amendments and/or supplements thereto during the term of the Agreement).
- 4.7 Backup Site(s) - Operator must provide at least one additional disposal location as a contingent (backup) site during both the Interim and Final Disposal Facility phases of this Agreement. Such contingency (backup) site(s) shall have a capacity necessary to meet the waste disposal needs of the Will County Service Area during any period of shutdown or termination of waste disposal services at either the Interim or the Final Disposal Facility. Operator shall provide such contingent (backup) site



disposal capacity at no extra cost to the County or to generators of waste from the Will County Service Area, unless the need for said contingent (backup) site arises as a result of reasonably unforeseeable events beyond the reasonable control of Operator. The *force majeure* type of events contemplated herein are in the nature of natural disasters, war and those items described in Section 19.1 below. In the event an inability to utilize the Final Disposal Facility is the result of the occurrence of this type of *force majeure*, Operator shall be allowed to pass through its additional transportation costs that reasonably arise out of the consequences of the *force majeure* event. In the event the inability to utilize the Final Disposal Facility is not related to a *force majeure* event, Operator shall not be allowed to pass through any additional transportation costs.

4.8 Waste Streams - The Final Disposal Facility shall accept no special waste streams which cause or threaten to cause a violation of any applicable federal, state and/or local law, rule, regulation or ordinance designed and/or intended to protect the human health, safety, welfare and/or the environment.

4.9 Cooperative Guarantee - The Operator shall fully cooperate in all manner and all respects, and in a prompt fashion, with the County, its authorized agents and representatives in allowing access to the Premises and Interim or Final Disposal Facility, in allowing access to all documents and records which pertain and relate to the design, development, construction, operation and closure of the facility, and compliance with all other requirements relating to the Will County Land Use Department landfill monitoring and inspection program. In addition, Operator shall

abide by all measures employed by the County to insure that the terms of this Agreement are being complied with in all respects, including, but not limited to the following covenants:

(a) The Operator shall provide all County, state and/or federal environmental, investigative and/or enforcement/compliance agencies, officials, representatives and agents with ready and immediate access to all parts of the Premises, Interim and Final Disposal Facility during the hours of operation set forth herein, and upon a showing of unusual, exigent or emergency circumstances shall further provide such entities and persons with ready and immediate access to all parts of the Premises, Interim and Final Disposal Facility and all records pertaining to operation of the Premises, Interim and Final Disposal Facility at times beyond the Operator's normal and customary hours of operation.

(b) Operator shall designate a contact person(s) who will be on call and may be readily contacted if any of the entities and/or persons noted above desire access to the Premises, Interim or Final Disposal Facility. Such designation must be in the form of a written list/schedule which shall include the hours and times that any such contact person(s) will be on call and will stand ready to provide immediate access as outlined hereinabove.

4.10 Document Access - Operator shall provide to the County Waste Services Director, on demand and, free of charge, copies of the following Documents and Records:

- (a) Those Documents and/or Records contemplated to be submitted by Operator and/or its agents, representatives or consultants to any state and/or federal environmental regulatory/compliance agency;
- (b) correspondence and/or other communications of any type, kind or sort with any state and/or federal environmental regulatory/compliance agency;
- (c) those Documents and/or Records filed with or received from any state or federal regulatory agency relevant to investigations, inquiries, charges, complaints, citations or notices of violations made and/or issued by any such governmental authority with respect to Operator's conduct and/or activity on or related to the Premises;
- (d) any and all Documents and/or Records reflecting the amounts and types of waste accepted by the Operator for disposal on the Premises, as well as any and all documents reflecting charges assessed to customers and/or users of the Interim or Final Disposal Facility by Operator in connection with acceptance and disposal of such waste at the Interim or Final Disposal Facility; and
- (e) any and all other Documents and/or Records relating to the operation on the Premises and the waste receipt/disposal activities described herein.

The County shall keep confidential all such Documents and Records received from Operator which are entitled to confidentiality or which are subject to an exemption from disclosure under applicable provisions of the Illinois Trade Secrets Act, the Illinois Freedom of Information Act, the Illinois Environmental Protection Act or other applicable law. All such Documents and/or Records described herein shall be provided to County at a reasonable time prior to their anticipated submittal by

Operator and/or its agents and consultants to any state and/or local federal regulatory agency, and County shall have a reasonable opportunity to review such anticipated submittals and make comments and/or suggested changes and modifications to the same. Operator shall provide County with any Documents received by Operator from any state, local and/or federal regulatory agency within ten (10) days of receipt thereof.

The Operator shall maintain on a daily basis books and Records pertaining to the weight and volume of waste accepted at the landfill and the daily traffic count of vehicles utilizing the Interim or Final Disposal Facility (setting forth the license plate number of each vehicle, the size of each vehicle, the weight of waste each vehicle contains, the classification of waste and its origin). The County, its authorized agents and representatives shall be permitted to inspect such books and Records which the Operator shall maintain. The County shall also be permitted to inspect any and all books, Records, data, Documents and reports maintained by the Operator concerning compliance with any and all applicable federal, state and local laws, statutes, regulations, rules and/or ordinances relating to the operation of the Interim or Final Disposal Facility and the waste handling/disposal activities described herein.

In addition, for every calendar year which arises during the term of this Agreement, the Will County Auditor or an outside auditor retained by the County at the County's expense shall inspect and audit all data, information, documents, records and reports compiled and maintained by the Operator in connection with performance of the terms and conditions of this Agreement. Such audit shall take place, and the results

of the same be provided to the Operator, within one hundred and eighty (180) days after the end of the calendar year in question.

The Operator shall maintain a true and accurate copy of any and all books, Records, data, information, Documents and reports noted herein at the Final Disposal Facility.

- 4.11 Monthly Progress Review Meetings - The Operator shall participate in monthly progress review meetings with the County during the course of further site investigation, local siting, design, permitting, development and construction of the Final Disposal Facility (as well as any additional transfer stations intended to be constructed by the Operator within Will County pursuant to the terms and conditions of this Agreement).

Prior to the commencement of construction of the Final Disposal Facility and any such additional transfer stations, the Operator shall coordinate all such meetings as are necessary with the County, its authorized agents and representatives, state and/or federal environmental, investigative and/or compliance agencies, and any and all other necessary and appropriate persons, parties and agencies so as to ensure the safe and efficient transition and development of the JAAP site for the Final Disposal Facility.

- 4.12 Community Relations/Complaint Resolution - As of the date of commencement of development of the Final Disposal Facility, and for the balance of the operating life of the Final Disposal Facility, the Operator shall assign and designate a telephone number and representative which shall be responsible for receipt of complaints which may arise from the public relative to the operation of the transfer stations and Final

Disposal Facility as outlined in this Agreement. All such complaints and inquiries received from the public shall be responded to and addressed promptly. The Operator shall also keep a log of the date and time such complaint, inquiry or communication was received the nature of the complaint, inquiry or communication, the name of the person initiating such contact, the date and time which response was made to such complaint, inquiry or communication, as well as the method in which any such complaint, inquiry or communication was addressed and or resolved.

- 4.13 Assignment or Transfer of Interest - Operator will not be allowed to sell, convey or otherwise assign its interest in, or transfer operation of, the Premises, Interim or Final Disposal Facility without prior written approval of the County (which approval shall not be unreasonably withheld or delayed following submission of information sufficient to justify such sale, assignments or transfer), and the County shall also have the right to consider the ability of the proposed transferee (financially and operationally), to comply with all terms and conditions of this Agreement, and the Operator shall pay to the County an Assignment Fee acceptable to the County which fee shall be reasonably related to the value of the consideration to be paid to Operator as a result of any such assignment.
- 4.14 Wage Compliance - Operator agrees to comply with all applicable prevailing wage provisions (if any) under state and/or federal law, as well as any and all other applicable wage and/or work place provisions under state and/or federal law.
- 4.15 Prime and Subcontractor Relationships - The Operator may enter into subcontractor arrangements for the providing of services at the Interim Disposal Facility, and for

the design, siting, development, and construction of the Final Disposal Facility and an appropriate network of transfer stations. However, the Operator shall be deemed the prime contractor for purposes of this Agreement.

4.16 Disposal Space Priority - During every year period under this Agreement that landfill capacity exists at the Final Disposal Facility (or any expansion thereof), the Operator shall reserve sufficient capacity for, and give first priority to, disposal of that volume of waste generated within the Will County Service Area. However, the reservation of disposal capacity for waste from the Will County Service Area shall not be cumulative, and should the reserved annual disposal capacity not be utilized for disposal of waste from the Will County Service Area during any year term under this Agreement, the unused excess capacity which exists in that given year, or any cumulative unused excess capacity that exists from prior years as provided for herein may then be utilized by the Operator for waste received from outside the Will County Service Area.

4.17 Acceptable Waste - The landfill facility shall not knowingly accept, treat, and/or dispose of any waste which is defined as "hazardous" by the Illinois Environmental Protection Act, rules and regulations of the Illinois Environmental Protection Agency or the Illinois Pollution Control Board. Operator shall comply with all regulations of the Illinois Environmental Protection Agency and the Illinois Pollution Control Board relative to load checking, and shall immediately inform the County orally and in writing if any hazardous waste has been accepted, received, stored, treated, disposed, or transported to or from the Premises, Interim or Final Disposal Facility,

and shall immediately take any and all steps necessary to properly remove such hazardous waste from the Premises, Interim or Final Disposal Facility and take any and all necessary response actions set forth in all applicable federal, state and/or local laws, statutes, rules, regulations and ordinances.

- 4.18 Landfill Design and Operating Standards - The Final Disposal Facility shall be sited, designed, developed, constructed, operated, closed and maintained in post-closure care so as to comply with all applicable provisions of the Illinois Environmental Protection Act, rules and regulations of the Illinois Environmental Protection Agency and the Illinois Pollution Control Board, the provisions of Subtitle D of RCRA, as well as the conditions and requirements of any permits issued by applicable governmental agencies to the Operator and all other applicable rules and regulations now in effect or enacted hereafter.
- 4.19 Costs Assumed by Operator - All costs associated with the siting, design, construction, development, operation, closure and post-closure phases of the Final Disposal Facility described herein, and any and all costs, fees, penalties and/or other expenses that may arise in any way from the siting design, construction, development, operation, closure and post-closure phases of the Final Disposal Facility (or any expansion thereof), are to be paid by, and are the sole responsibility of the Operator. Also, upon its receipt of final, nonappealable siting approval by the appropriate government authority, the Operator shall reimburse the County for the expenses and costs incurred by the County to date in connection with the site



assessment evaluation study and its efforts to determine the feasibility of location of a Final Disposal Facility upon the Premises, said amount being \$89,625.00.

In addition, upon execution of this Agreement, Operator shall initially reimburse the County, on an annual basis for each year until final, non-appealable siting approval is obtained for the Final Disposal Facility, the sum of forty-five thousand dollars (\$45,000) for costs and expenses incurred by the Will County Land Use Department as a result of the conducting of oversight, monitoring and compliance activities by the Will County Land Use Department with respect to the design, construction, development, operation closure and post closure phases of the Final Disposal Facility. At such time as the Operator receives final, non-appealable siting approval for the Final Disposal Facility, such annual reimbursement amount shall double, and Operator shall pay such increased reimbursement amount for each year term thereafter that the Final Disposal facility is operational. Such reimbursement amount shall increase each year by the increase in CPI-U-US Price Index for the preceding year.

4.20 Permits - The Operator shall obtain, at its sole expense, any and all state and/or federal permits, adjusted standards, variances, and/or other permits or authorizations, or any amendments or modifications to any of the foregoing which are necessary and/or appropriate for the design, development, construction, operation and closure of the Interim and Final Disposal Facility or for any corrective and/or remedial action relating to the Interim and Final Disposal Facility. The Operator will provide the County with reasonable prior notice of intended submission of any such applications,

and Operator shall not seek any permit, variance, standard and/or adjusted standard which would have a material adverse effect upon the County without the prior written approval of the County Executive. In the event that any such items require execution by the County, the County's Waste Services Director is authorized to execute any such document.

- 4.21 Highway and Roadway Maintenance - The Operator shall rebuild to Class II IDOT standards for 80,000 pound vehicles and properly maintain in good condition and repair for the period of development, operation, closure and post-closure activities pertaining to the Final Disposal Facility, that common portion of South Arsenal Road which is intended to be used as an approach road from Illinois Route 53 to the Final Disposal Facility, or that alternative roadway which may be developed for access to the Final Disposal Facility at the Operator's sole expense. However, in the event that Operator initially uses South Arsenal Road as an approach road from Illinois Route 53 to the Final Disposal Facility, Operator shall be required to make the above referenced improvements to the South Arsenal Road as well as any other approach road that it may later use or construct under the terms and conditions described herein. To the extent necessary to comport with U.S. Department of Transportation and Illinois Department of Transportation standards, the Operator must also properly channelize and otherwise design and improve the intersection of the existing Township road and Illinois Route 53 (including necessary traffic signals) so as to accommodate the anticipated increased traffic flow in the area. In addition, to the extent necessary, the Operator shall, at its sole expense, build and properly maintain

in good condition and repair an additional new concrete/asphaltic approach road from the above-mentioned township road to the Final Disposal Facility so as to facilitate the flow of traffic in the area. All of the above-referenced improvements shall be subject to the most stringent applicable Department of Transportation regulations. The County shall, however, use its best efforts to attempt to effectuate an equitable apportionment and allocation of costs incurred in the upgrading, construction and maintenance of the roadways and intersections noted above among those owners/operators of the Industrial Park Property which will use and benefit from such improvements. The County shall suitably maintain all other highways and roadways within its present maintenance jurisdiction which are utilized by the Operator as part of its operations at the Final Disposal Facility.

All governmental and/or community agencies, commissions and/or entities which are properly charged in whole or in part with the decommissioning of the JAAP and conversion of the JAAP to its future intended long term end uses shall be allowed use during normal business hours of the peripheral roads in and around the Final Disposal Facility for those purposes.

5. **FEES, COSTS, EXPENSES, ETC.**

- 5.1 **Initiation Fees** - In consideration for the exclusive right to develop and operate the County landfill facility for the term of and subject to the conditions and provisions of this Agreement, Operator shall pay to the County an Initiation Fee of \$\_\_\_\_\_  
\$1,000,000.00\_\_\_\_\_ at such time as final, non-appealable siting approval for the development and operation of the Final Disposal

Facility is obtained. Such fees shall be in the nature of General Corporate fund revenue to be used by the County at its sole discretion.

- 5.2 Miscellaneous Costs Incurred by Operator - Operator shall pay for any and all engineering, monitoring and other professional fees, and costs and other necessary expenses incurred by Operator to ensure that the facility complies with any and all applicable and relevant state, federal and local statutes, laws, rules, regulations and/or ordinances.
- 5.3 Host Fees - For each year of operation of the Final Disposal Facility, Operator agrees to pay the County a Host Fee on each ton of Commercial Solid Waste received and disposed of at the Final Disposal Facility (excluding waste exempt from disposal charges as provided herein), but in no event shall the annual total of such Host Fees paid by the Operator to the County be less than the annual minimum payment amount provided for in Section 4.3 herein. During the initial year of operation of the Final Disposal Facility, Host Fees of \$ 2.75 per ton shall be paid by the Operator to the County on each ton of such waste disposed of. Payment of such fees shall be made on a monthly basis. For each year of operation of the Final Disposal Facility subsequent to the initial year, the Host Fee shall increase by an amount equal to; (1) the annual increase for the preceding year in the CPI-U-US Price Index or (2) the average percentage increase in tipping fees for disposal of Commercial Solid Waste at those landfill operations identified in Exhibit 3 (which is incorporated herein by this reference), whichever is more. Such Fees are in the nature of General Corporate fund revenues, are not a fee,

tax, or surcharge with regard to the permanent disposal of solid waste to be utilized only for solid waste management purposes, but, rather, are General Corporate fund revenues and fees which are collected under this Agreement in addition to any and all solid waste management/disposal fees, assessments or levies required or provided for by any applicable and/or federal, state and/or statute, law, rule, regulation and/or ordinance.

5.4 Permanent Disposal Surcharge Fees - The County shall collect, and the Operator shall pay to the County, a permanent waste disposal surcharge/fee of \$1.27/ton on each ton of Commercial Solid Waste received and disposed of at the Final Disposal Facility. In the event that future legislation will allow the County to collect more than \$1.27/ton on any such waste, than the County shall be allowed to collect, and Operator shall be obligated to pay, the greater of \$1.27/ton agreed to herein or the then allowable amount. The County shall also collect and the Operator shall pay to the County such permanent waste disposal surcharge/fee for each ton of Commercial Solid Waste received and disposed of at the Interim Disposal Facility if that facility is located within Will County. Said permanent waste disposal surcharge/fee shall not apply to Free Waste.

5.5 End Use Fees - Upon completion of the Final Disposal Facility, completion being defined as the date such Final Disposal Facility actually begins to process waste, Operator shall make a payment directly to the Will County Forest Preserve District, in care of the Director of said District, of Two Hundred Thousand and No/100 Dollars (\$200,000.00). And, upon the next four (4) annual anniversaries of the

completion date, Operator shall make additional payments of Two Hundred Thousand and No/100 (\$200,000.00) per year. Said payments shall be utilized for long term end use preservation and recreational activities on the Premises, and shall be held and apportioned at the sole discretion of the Will County Forest Preserve District. Said amounts shall be designated as "End Use Fees", and shall be maintained in a special account by the Will County Forest Preserve District. The End Use Fees shall be utilized for the preparation and development of desirable end uses for the Premises after appropriate closure of operations thereon. The County and the Will County Forest Preserve District shall enter into an Intergovernmental Agreement to carry out the conditions described herein. The above referenced payments shall be utilized for only the purposes described herein.

- 5.6 Unit Fees Allowed to be Charged by Operator - Municipal generators of Residential/Household Waste within the Will County Service Area who choose to arrange for disposal of such waste at either the Interim Disposal Facility or the Final Disposal Facility shall make direct payment to the Operator of such disposal charges assessed in connection with the disposal of such waste. For purposes of calculating the Base Unit Price for the initial year of this Agreement, and for purposes of calculating the Unit Price in each year thereafter, Residential/Household Waste shall not be deemed to include commercial, industrial or office waste or construction or demolition debris. All such charges initially quoted by the Operator shall be designated collectively as the Base Unit Price. The Base Unit Price (as well as Unit Prices charged at the Final Disposal Facility in all subsequent years under this

Agreement) shall include any and all charges being assessed by the Operator to municipal generators of Residential/Household Waste within the Will County Service Area for the handling and disposal of such waste. The Base Unit Price designated and quoted shall be \$17.00 per ton. For each year subsequent to the initial quotation and designation of the Base Unit Price noted above, an annual increase in such Unit Price shall be allowed in an amount limited to the average percentage increase in per ton tipping fees for disposal of Residential/Household Waste at those landfill operations identified in Exhibit 3 (which is incorporated herein by this reference). Such Unit Price charged during the term of this Agreement shall also be increased by the amount of any subsequent specific mandatory surcharge, tax, fee, or assessment imposed by state and/or federal authorities of competent jurisdiction upon the receipt and disposal of Residential/Household Waste. In addition, in the event of the occurrence of a Change In Law which results in a material and substantial increase in the specific costs of compliance with such Change In Law at the Final Disposal Facility, Operator may provide written notice of its desire to obtain an increase in the Base Unit Price, stating with specificity the ramifications of compliance to the County Board through the Director of Waste Services for the County. The County Board shall take reasonable measures to consider any such requests for increase, and to grant relief where warranted.

In the event that during the term of this Agreement Operator offers another generator of Municipal Waste a lower per ton tipping/disposal fee than that being charged as

either the Base Unit Price or the Unit Price to Will County municipal customers at that time for Residential/Household Waste, the Operator must offer Will County Service Area municipal customers that same lower tipping/disposal fee on the same terms and for the same period of time offered to other municipal customers . (This requirement shall apply only to tipping/disposal fees quoted for the disposal of Residential/Household Waste for a time period of more than three (3) consecutive months, and shall not apply to one time "spot pricing" events and/or private contracts for the disposal of commercial, industrial, office waste or construction or demolition debris).

The Will County Service Area contains only portion of certain municipalities, those portions being the segments of those municipalities physically located within Will County. By way of example, not by limitation, approximately fifteen percent (15%) of the population of Naperville is located within Will County. The other eighty-five (85%) percent is physically located outside of Will County. Therefore, only approximately fifteen percent (15%) of the population is within the Will County Service Area . In all such situations, the Base Unit Price, and the Unit Price in subsequent years, will be applied to the pro-rata portion of the total waste tonnage from each of the these municipalities which is equal to the percentage of that municipality's population located within the Will County Service Area.

5.7 License Fees -The Operator shall pay license fees to the County for the term of this Agreement. Such license fee amount shall be due and owing from the Operator to the County by the tenth day of each month for all charges accruing in the previous



month under the terms outlined herein without condition, and shall not be subject to downward revision, downward modification, appeal or challenge.

The Operator shall make an initial license payment of \$30,000 upon execution of this Agreement. Thereafter, the Operator shall pay to the County \$100.00 per day in license fees for every day after the date of execution of this Agreement and until the date of opening of the Final Disposal Facility for the acceptance of disposal of waste. As of the date of opening of the Final Disposal Facility for the disposal of waste, the Operator guarantees payment to the County a license fee of fifty cents (\$0.50) per ton on the greater of either the per ton license fee then applicable to 500,000 tons or the per ton license fee then applicable applied to the actual Commercial Solid Waste inflow quantity received in each year of the term of operation of the Final Disposal Facility, whichever is greater. Such license fee shall increase every year for each year that the Final Disposal Facility receives and disposes of waste by either the annual increase for the preceding year in the CPI-U-US Price Index or three percent (3%) whichever is less. All such license fees due, owing and payable by the Operator to the County shall be paid by the Operator to the County Treasurer. The County Treasurer shall hold such license fees in a separate account, which will dispersed pursuant to the terms and conditions of an intergovernmental agreement executed by and between the County and certain taxing bodies within the Wilmington, Illinois area in direct proportion to the percentage that the individual real estate tax rate of each such body bears to the cumulative total tax rate of all such local taxing bodies identified in Exhibit 4 (which is attached hereto and incorporated herein by this

reference). Such license fee is to be paid by the Operator to the County in addition to and over and above all other payments from the Operator to the County provided for herein. The parties agree that the license fees described herein are to be paid by Operator in lieu of any other *ad valorem* or real estate taxes.

- 5.8 Verified Records of Waste Received - Operator shall maintain a certified scale at the gate of the Interim and Final Disposal Facility, and all incoming waste shall be inspected and weighed. Further, Operator shall maintain a true and accurate copy of all Records of waste received at the Interim and Final Disposal Facility for the benefit of the County, and shall provide a copy of all such Records to the County on a monthly basis, such Records being due from the Operator to the Waste Services Division of the Will County Land Use Department on or before the 10th day of each subsequent month.
- 5.9 Utilities and Improvements - Operator shall be responsible for and pay for all water, gas, heat, power, telephone, sewer and other utilities and services which must be supplied to the Final Disposal Facility, together with any and all other necessary improvements. Moreover, any relocation, demolition, disconnection of and/or adjustments to existing overhead, above-ground and underground utilities, services and existing improvement/structures necessary to develop the Final Disposal Facility shall be undertaken by the Operator at its sole expense.
- 5.10 Maintenance - Operator shall keep any and all buildings and other improvements built or utilized by Operator upon the Premises or Final Disposal Facility in good condition and repair, and shall make and maintain all of its additional improvements

upon the Premises or Final Disposal Facility in good condition and repair for the term of this Agreement. Upon the conclusion, termination, and windup of waste disposal activities at the Final Disposal Facility, the Operator shall commence in timely fashion any and all necessary and appropriate closure/post-closure activities, and will use its best efforts to insure that the end use of the parcel effectuated upon closure of the Final Disposal Facility is not only consistent with, but, in addition, complements and is congruent to the greatest extent possible with the end use design formulated for the balance of the Midewin Tall Grass Prairie Area, and to the extent that such buildings and other improvements placed upon the Final Disposal Facility during its years of active operation cannot be converted to an appearance and use which is consistent with and beneficial to the overall end use design plan for the Midewin Tall Grass Prairie Area, such buildings and other improvements shall be removed and properly disposed of by the Operator in timely fashion at the Operator's sole expense. In the event that the Operator determines to dispose of waste related to any such buildings or other improvements within the landfill on the Premises, any such waste shall not be subject to a Host Fee or the Permanent Waste Disposal Surcharge/Fee provided for in 5.4 herein.

- 5.11 Environmental Education Center and Programs - Operator shall construct, complete, open, maintain and operate an Environmental Education Center at its own sole expense at the Final Disposal Facility within one (1) year of receipt of final, non-appealable siting approval; and shall maintain in good condition and repair and

operate such Environmental Education Center at its own expense for the term of operation of the Final Disposal Facility.

Such Environmental Education Center shall include, at a minimum, nature display, viewing and study areas, as well as a conference room capable of seating in safe and comfortable fashion up to one hundred (100) visitors. In addition, for the term of this Agreement, the Operator shall develop and conduct nature, ecology, environmental and resource management programs for the benefit of the public on an ongoing basis. Such Environmental Education Center shall be designed and constructed so as to complement the aesthetics and character of surrounding natural areas, and such construction shall be complemented with landscape and plantings that replicate pre-settlement prairie conditions. Such Environmental Education Center shall also include safe and properly engineered parking facilities designed to accommodate up to fifty (50) vehicles. Operator shall also, in conjunction with the County, develop and offer an educational curriculum to the public, including teaching materials, a neighborhood watch program accompanying its hauling service, and a comprehensive recycling education program. The Operator shall also provide at such Environmental Education Center not less than two thousand (2,000) square feet of clean, modern and comfortable, usable office space for use by the Will County Land Use Department. At the end of the term of Operation of the Final Disposal Facility, Operator shall convey all right and interest it may have or claim to have in such Center to the County.

5.12 Household Hazardous Waste Collection Program - Commencing with the year of execution of this Agreement and continuing every year thereafter under this Agreement that waste is accepted at either the Interim Disposal Facility or the Final Disposal Facility, Operator shall implement, coordinate, conduct and fund at its own sole expense a Household Hazardous Waste Collection Event for the residents of Will County. Such program shall, on a minimum, include at least one (1) Household Hazardous Waste collection date for the residents of Will County at such a location or locations within Will County which are necessary to insure the safe and efficient collection of Household Hazardous Waste from residents of the County. Operator agrees that there shall be a minimum of three collection sites for each such event. One site will be in the eastern portion of the County, one shall be in the northern portion of the County and one shall be on the Premises.

Such Household Hazardous Waste Collection Events shall be held on the second Saturday in May and, shall be coordinated with the Illinois Environmental Protection Agency and appropriate County officials, including the County Waste Services Division, shall comply with any and all guidelines, directives, rules, regulations or policies of USEPA or IEPA then in effect which pertain to such activities. In addition, the Operator shall provide the County with a report of the amount of Household Hazardous Waste diverted from the Will County Service Area solid waste stream, as well as the manner in which such Household Hazardous Wastes were ultimately disposed of. All expenses related to said events, including, but not limited to, marketing, collection, handling and disposal shall be borne by Operator.

Within the improvements located at the Final Disposal Facility for conducting of landfill activities and operations, the Operator shall maintain a secured area in which non-conforming waste received at the facility may be handled and segregated pending final disposition of the same.

6. **COUNTY OBLIGATIONS**

6.1 **Public Information** - County shall make every reasonable effort to insure public access to information concerning the Final Disposal Facility.

6.2 **Representations of the County** - The County represents and warrants that:

(a) It has full power, authority and legal right to enter into and perform this Agreement and that the execution, delivery and performance adhered by the County (i.) will have the requisite approval of all necessary governmental boards and bodies, and (ii.) will not violate any judgment, order, law or regulation applicable to the County and (iii.) will not (a) conflict with (b) constitute a default under or (c) result in the creation of any lien, charge, incumbrance or security interest upon any assets of the County under, any law, agreement or instrument to which the County is a party or by which the County or its assets may be bound or affected.

(b) This Agreement has been duly authorized, executed and delivered by the County, and constitutes a legal, valid and binding obligation on the part of the County enforceable in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of the parties generally, or by general equitable principles concerning remedies.

(c) Subject to the provisions of Public Law 104-106 (110 STAT. 594) the County will use its best efforts to obtain fee simple title to the Premises as soon as practicable.

6.3 Quiet Enjoyment - Subject to acquisition by the County of fee title to the Premises in accordance with the provisions of Public Law 104-106 (110 STAT. 594), and subject to payment of the fees and other payments and charges to be paid by the Operator under the terms of this Agreement, and further subject to performance by the Operator of all of its obligations and duties under this Agreement, and otherwise imposed by law, the Operator will lawfully and quietly hold, occupy and enjoy the Premises until all necessary closure/post-closure care periods have been satisfied and completed.

6.4 Memorandum - The County and Operator shall execute and record this Agreement with the Will County Recorder's office.

## 7. OVERSIGHT

7.1 Monitoring and Review - The Will County Land Use Department (Waste Services Division) or its designees shall be allowed to: (1) monitor landfill development, construction and operation activities, (2) review user fees structures, (3) review charges assessed and collected for waste received at the facility by the Operator and (4) conduct any and all inquiries, inspections, etc. necessary to fulfill the mandates of the Will County Solid Waste Management Plan (and periodic updates and supplementation thereto).

8. **COOPERATIVE GUARANTEE**

8.1 Operator shall cooperate in all respects and in all manner and in a prompt fashion with the County, its authorized agents, representatives and/or designees in allowing access to the Premises, in allowing access to Records and in complying with all other requirements concerning the County landfill monitoring, compliance and inspection program and all other mandates included within the Will County Solid Waste Management Plan (and periodic updates and supplements thereto).

9. **SITING OF FACILITY**

- 9.1 **Siting Approval** - Operator shall initiate and use its continuing best efforts to obtain siting approval for the Final Disposal Facility pursuant to applicable state statute, the Will County Solid Waste Management Plan (and periodic updates and supplements thereto), applicable County ordinances or any other applicable law, statute, regulation, rule, policy or ordinance. All such siting efforts must be undertaken and completed at the sole expense of the Operator. In addition, a landfill siting application must be submitted by Operator to the appropriate siting authority within twelve (12) months after the effective date of this Host Agreement, unless the County consents in writing to an extension of this period for good cause shown. The siting application submitted by the Operator to the appropriate siting authority must include and incorporate annual and cumulative tonnage figures set forth in this Agreement, and must also include any designation of a secondary service area.
- 9.2 **Siting Requirements** - Operator shall submit a siting application and siting proposal which meets at a minimum, all applicable, local, state and federal landfill laws,



statutes, rules, regulations, policies, permit standards and siting criteria, ordinances and plans.

10. **CLOSURE/POST CLOSURE AND END USE DESIGN**

10.1 **Responsibility** - Operator shall assume responsibility of any and all closure/post-closure responsibilities (financial and otherwise) as listed in approved closure/post-closure permits for the Final Disposal Facility, or as otherwise provided for by applicable federal and/or state statute, law, regulation or rule.

10.2 **End Use** - As soon as practicable after all applicable agency approval of closure/post-closure plans for the Final Disposal Facility, Operator shall initiate, implement, perform and complete all closure/post-closure measures necessary to allow the County to implement an end use for the Final Disposal Facility which is consistent with the overall, long range end use plan for the entire Midewin National Tall Grass Prairie Area.

In effectuating the completion of such an end use plan, Operator shall fully, and in all manner and in prompt fashion, cooperate with all governmental agencies, tribunals, boards or other duly authorized organizations, boards, committees or groups which have been properly charged in whole or in part with formulation, implementation, monitoring and/or oversight of the overall long range use plan for the entire Midewin National Tall Grass Prairie Area.

10.3 **Final Assurance For Closure/Post-Closure Care and Corrective Action** - The Operator shall comply, satisfy and abide by any and all state and federal closure,

post-closure, care and corrective action requirements for solid waste landfills, all at the sole cost and expense of the Operator.

In addition, the Operator shall on an annual basis provide the County with a copy of any and all annual report forms filed with state and or federal agencies which demonstrate Operator's compliance of all such closure, post-closure care and corrective action requirements. Copies of all such reports and disclosures shall be mailed by Operator to the County no less than ten (10) days prior to the date of Operator's intended submission of such report to the appropriate state and federal agencies.

## 11. INDEMNIFICATION & INSURANCE

11.1 Hold Harmless and Indemnification Clause - Operator agrees to indemnify, hold harmless and defend the County of Will, its agents, servants, and employees, and each of them against and hold them harmless from and against any and all lawsuits, claims, demands, liabilities, losses and expenses (including court costs, litigation expenses and attorney's fees) for or on the account of any injury to any person or any death at any time resulting from such injury, or any damage to property or the environment, or any other damage of any type, kind or sort which may arise or which may have been alleged to have arisen out of or in connection with the development, construction, operation, closure and post closure activities of either the Interim or Final Disposal Facilities, as well as in connection with the rendering by Operator of all other services and performance of all tasks and obligations set forth in this Agreement.

- 11.2 Insurance - Operator shall purchase and maintain such insurance as is necessary to fully protect Operator and the County from claims set forth and below which may rise out of or in any way result from Operator's operations, conduct or activities as described above. Such insurance shall include the County of Will as an additional insured and, if such coverage is commercially available, shall include "Occurrence" basis wording issued by a company or companies qualified to do business in the State of Illinois, in the type and minimum amounts set forth in Exhibit 6 (which is attached hereto and incorporated herein by this reference).
- 11.3 So as to ensure maintenance of adequate levels of future insurance coverage for the term of this Agreement, the Operator shall adjust and increase such levels of insurance coverage outlined above as necessary during each five (5) year period included in this Agreement to account for increases in the CPI-U-US Price Index over the preceding five (5) years.
- 11.4 Operator agrees that with respect to the above-required insurance, the County shall:
- (a) Be named as additional insured as its interest may appear;
  - (b) Be provided with ninety (90) days advance notice, in writing, of any proposed policy change;
  - (c) Be provided with Certificates of Insurance delivered by the Operator to the office of:

Will County Executive  
Will County Office Building  
302 North Chicago  
Joliet, Illinois 60431

Will County Director  
Waste Services Division  
Will County Land Use Department  
501 Ella Avenue  
Joliet, Illinois 60433

- 11.5 Operator Responsibility - Operator shall assume responsibility for the full and complete performance of all services and obligations made incumbent upon it by the terms of this Agreement and by all relevant and/or applicable federal, state and/or local statutes, laws, regulations, rules, directives, ordinances and mandates. The County shall thus consider the Operator to be the point of contact with regard to any and all claims, demands, insurance, financial responsibility, coverage, indemnity and payment issues or other matters which may from time to time arise (including payment of any and all fees and charges due and owing from Operator to the County) pursuant to the terms and conditions of this Agreement.
- 11.6 Third Party Claims - Promptly after receipt by the County hereto of notice of any claim, action, suit or proceeding by any Person who is not a party to this Agreement (collectively, an "Action") which is subject to indemnification hereunder, the County (the "Indemnified Party") shall give reasonable notice to the Operator (the "Indemnifying Party"). At the sole expense and liability of the Indemnifying Party and within a reasonable time after the giving of such notice by the Indemnified Party, the Indemnifying Party shall: (i) notify the Indemnified Party in writing of the Indemnifying Party's intention to assume the defense of such action and (ii) retain at its sole expense legal counsel reasonably satisfactory to the Indemnified Party to conduct the defense of such Action. The Indemnified Party shall cooperate with the Indemnifying Party in the defense, compromise or settlement of any such Action as the Indemnifying Party may reasonably request. If the Indemnifying Party so assumes the defense of any such Action, the Indemnified Party shall have the right

to employ separate counsel and to participate in (but not control) the defense, compromise, or settlement thereof, but the fees and expenses of such counsel shall be the expense of the Indemnified Party. The Indemnified Party shall not settle or compromise any such Action for which is entitled to indemnification hereunder without the prior written consent of the Indemnifying Party, unless the Indemnifying Party shall have failed, after reasonable notice thereof, to undertake control of such action in the manner provided for in this Agreement. The Indemnifying Party shall not settle or compromise any such Action in which any relief other than the payment of money damages is sought against the Indemnified Party unless the Indemnified Party consents in writing to such compromise or settlement.

12. **PAYMENT AND PERFORMANCE BONDS**

12.1 Operator shall provide the County with all letters of credit, payment and performance bonds (as the case may be) which are necessary to insure the prompt and complete satisfaction of all liabilities, obligations, payments and duties of the Operator of any type, kind, or sort which may arise: (1) by operation of applicable federal, state and/or local statute, law, regulation, rule, directives, ordinances, or mandate, or (2) pursuant to the terms and conditions of this Agreement. Such bonds shall be maintained in a timely manner, and proof of securing and continued maintenance of such bonds and assurances shall be provided to the County officials designated above upon execution of this Agreement, and shall further be provided to the County at all times thereafter as required and necessitated by the terms and conditions of this Agreement.

Such bonds shall (at a minimum) cover and assure those matters listed in Exhibit 5 (which is attached hereto and incorporated herein by this reference).

All such bonds required to be maintained pursuant to the terms and conditions of this Agreement shall be reviewed by the County and the Operator on an annual basis, and such bonds shall not be reduced in any manner which would adversely affect the County's interest herein.

13. **GENERAL COVENANTS**

13.1 Maintenance of Bonds, Permits, Licenses, Etc. - Operator shall maintain in full force and effect all licenses, permits, bonds, financial assurances, franchises, leases, patents, contracts, authorizations, approvals and all other rights, agreements and arrangements necessary to the proper and legal conduct of its business including, without limitation, all reports, notices, permits, licenses and applications which must be filed and/or obtained to effectuate compliance with all applicable federal, state and local statutes, laws, rules, regulations, directives, ordinances, and mandates which are in any way related to the proper development, operation, closure or post closure care of the Final Disposal Facility, or are in anyway related to the Operator's rendering of all other services, duties and obligations provided for herein.

As of the date of submission by Operator of its proposal for payment of Initiation and Host Fees, and its quotation of the Base Unit Price included herein, the Operator shall also obtain and submit written assurance statement(s) which satisfactorily evidence Operator's ability to obtain bonds and/or letters of credit and insurance coverages in the amounts required by the County.

13.2 Compliance with Applicable Laws - Operator shall conduct its respective business so as to comply with all material aspects of all applicable and/or relevant laws, statutes, rules, regulations and/or ordinances and/or mandates in any way related to operation of the facilities described herein, related to fulfillment of all other duties and obligations herein, or otherwise related to the rendering of all services described herein; provided, however, that nothing contained in this paragraph shall prevent Operator from contesting, in good faith and by appropriate legal proceedings, any such laws, statutes, rules, regulations, directives, ordinances, and/or mandates or interpretation or application thereof, provided that the Operator shall comply with the order, mandate or directive of any court or other governmental body of applicable jurisdiction relating to such laws, statutes, rules, regulations, directives, ordinances and/or mandates pending prosecution of such an action, or an appeal or proceeding for review thereof, and in such event Operator shall have secured and obtained any necessary order, stay of enforcement, or execution or other arrangement postponing enforcement or execution pending such appeal or pending such further proceedings for review.

13.3 Notices - If Operator shall receive with respect to the facilities described herein any (a) notice that a violation of any law, statute, regulation, directive, ordinance and/or mandate may have been committed or is about to be committed, or (b) notice that any administrative or judicial complaint, order, mandate or directive has been filed or is about to be filed against Operator alleging violation of any law, statute, rule, regulation, directives, ordinance, and/or mandate, or requiring Operator to take such

action in connection with the release or threatened release of "hazardous substances" (as defined by state and federal law) into the environment, or any notice from any federal, state or local governmental agency, court or private party alleging that the Operator may be liable or responsible for a response, cleanup and remediation of a release or disposal of a "hazardous substance" into the environment, any damages caused thereby, or any other damages or injuries or losses in any way alleged to have been caused by the conduct or actions of the Operator, Operator shall provide the County with a copy of such notice within ten (10) days of Operator's receipt thereof. In addition, Operator shall provide the County with notice of the enactment, promulgation, initiation or issuance of any law, statute, rule, regulation, ordinance, complaint, mandate, order or directive which may result in a material adverse change in the business condition, financial condition or operations of the Operator at the facilities described herein as promptly as is reasonably possible after the Operator obtains knowledge thereof.

14. **PROHIBITION AGAINST HIRING OF WILL COUNTY OFFICIALS**

Neither the Operator, its subsidiaries, affiliates (by contract or otherwise) and/or its parents company shall be allowed to either directly or indirectly hire or retain in any capacity or in any manner any Will County official (elected or otherwise), employee, committee member, committee designate or other person or party who in any way participate in the formulation of the strategy and/or requirements for the plan for the development of this Agreement on behalf of the County, or who voted or otherwise participated in approval of this Agreement for a period of two (2) years after the execution date of this Agreement. Notwithstanding the



foregoing, the County Board may, for good cause shown, on a case by case, fact specific basis, waive the requirements of this Section.

15. **GUARANTEE OF PERFORMANCE**

15.1 The Operator is a Delaware Corporation comprised of Waste Management of Illinois, Inc., which is qualified to do business in Illinois. Operator shall cause its parent corporation (Waste Management, Inc.) to execute a Guarantee in the form attached to this Agreement as Exhibit 7, (a true and accurate copy of which is attached hereto and incorporated herein by this reference), fully and completely guaranteeing all the obligations of Operator under the terms and conditions of this Agreement and under all applicable federal, state and/or local laws, statutes, rules, regulations and/or ordinances.

16. **DEFAULTS/REMEDIES**

16.1 Defaults - The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Operator:

16.1.01 The failure of the Operator to make payment of any fee, charge or other payment of any type, kind or sort required to be made by Operator under this Agreement after ten (10) days written notice thereof;

16.1.02 The failure of the Operator to properly maintain or renew any bond, insurance and/or financial assurance mechanism or instrument required pursuant to the terms and conditions of this Agreement;

16.1.03 Subject to the provisions of Section 13.2 of this Agreement, the failure of the Operator to correct or remedy promptly and in the proper and required manner any alleged or actual violation by the Operator of any law, statute, rule, regulation, permit or ordinance relating to the development, operation, closure/post closure care of the facility or further relating to any services to be rendered under this Agreement by Operator. For purposes of this Agreement, Operator shall be deemed to have acted promptly if it corrects or commences correction of the violation in question within the time allowed by law, or within the time otherwise allowed by a court, tribunal or a governmental agency of competent jurisdiction. Notwithstanding the foregoing, Operator shall take all reasonable steps necessary to correct any such violation upon the first to occur of: (1) Operator's receipt of notice of any alleged or actual violation or (2) Operator's actual knowledge of any such violation. In the event that any statute or regulation is silent regarding a period and process for cure of violations, the provisions of Section 16.1.04 shall apply.

16.1.04 The failure of the Operator to observe or perform any of the other covenants, terms, conditions or provisions of this Agreement to be observed or performed by Operator, where such failure shall continue for a period of thirty (30) days after written notice thereof from County to Operator, provided, however, that if the nature of Operator's default is such that more than thirty (30) days are reasonably required for its cure, and the County

agrees in writing that this is the case, and such acknowledgment in writing shall not be unreasonably withheld, then Operator shall not be deemed to be in default if Operator commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

16.1.05 (i) The making by Operator of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Operator of a petition to have Operator adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Operator, the same is dismissed within sixty (60) days of filing); (iii) the appointment of a trustee or receiver to take possession of substantially all of Operator's assets located at, or serving, the Premises or of Operator's interest in this Agreement, (where possession is not restored to Operator within thirty (30) days); or (iv) the attachment, execution or other judicial seizure of substantially all of Operator's assets located at the Premises or of Operator's interest in this Agreement, (where such seizure is not discharged within thirty (30) days).

16.2 Remedies - In the event of any default or breach by the Operator hereunder, County may in its sole discretion at any time thereafter, by written notice and without limiting County in the exercise of any right or remedy which County may otherwise have by reason of such default or breach:

16.2.01 Pursue, make claim under and/or recover on any and all outstanding bonds and assurances posted and/or obtained to insure the proper development and

- construction of the Final Disposal Facility (the Premises) and the conducting of all other operations to be undertaken by Operator under this Agreement;
- 16.2.02 Elect to re-enter, or take possession and to terminate this Agreement; in which event County may recover from Operator all damages it may incur by reason and consequence of Operator's default, including but not limited to the costs of recovering the Premises, attorney's fees, court costs and litigation expenses as well as the present value at the time of such termination of the balance of any anticipated payments and/or charges reserved in this Agreement for the remainder of the stated original term, all costs associated with replacing Operator, as well as any and all other damages and losses incurred by County as a consequence of Operator's default, (all of which amounts shall be immediately due and payable from Operator to County);
- 16.2.03 Re-enter, or take possession pursuant to legal proceedings and without terminating this Agreement, make such modification and/or improvements or take such other measures as may be necessary in order to relicense the Premises for the remainder of the then-existing term for the best terms then reasonably obtainable. Upon such relicensing, all payments and other sums received by the County from such relicensing shall be applied first to the payment of the costs and expenses of such relicensing and the costs of such modifications and/or improvements or such other measures as may be necessary; and second to the payment of all other charges otherwise reserved and unpaid under this Agreement. In the event such sums received from the

reletting are less than those amounts to be paid by Operator hereunder, Operator shall immediately pay any such deficiency to County as such deficiency amounts arise; The making of any modifications or improvements by the County, and its receipt of payments from Operator related thereto, shall not modify County's right to terminate the Agreement and/or relet the Premises upon any default by Operator.

16.2.04 Maintain Operator's rights and obligations related to possession, in which case this Agreement shall continue in effect whether or not Operator shall have abandoned the Premises. In such event, County shall be entitled to enforce all of County's rights and remedies under this Agreement, including the right to recover past due payments and charges as well as future payments and charges as they become due hereunder;

16.2.05 Pursue any other remedy now or hereafter available to County under applicable laws or judicial decisions;

16.2.06 In the event that the County elects to re-enter and take possession of the facility upon a default by the Operator, whether or not the County elects to terminate this Agreement:

- (a) In the event that the County closes the facility upon re-entry, the County shall be entitled to apply any closure/post-closure financial assurances which the operator has provided to cover the costs of closure, post-closure care and any corrective action, and the Operator shall take all steps necessary to enable the County to utilize any and all developmental, operational, closure/post-closure

and/or other financial assurances which the Operator has provided; provided however, that the use of any such financial assurance shall not relieve the Operator from liability for any short fall.

- (b) The County shall be entitled to apply any and all bonds and/or financial assurances which the Operator has been required to post and provide to cover any and all expenses and costs incurred by the County in fulfilling and satisfying Operator's duties and obligations under this Agreement, and Operator shall take all steps necessary to enable the County to utilize any and all such bonds and/or financial assurances provided that the use of any such bonds and financial assurances shall not relieve the Operator from liability for any short fall.

16.3 Interest on Past Due Obligations - Except as otherwise expressly provided herein, any amount due to the County not paid when due shall bear interest at four percent (4%) over the National Prime Rate, as published in the *Wall Street Journal*, or if unavailable a similar publication/index existing at the time any such amounts become due or at the time of payment of such past due amount, whichever rate is higher. Payment of such interest shall not otherwise excuse or cure any default by Operator under this Agreement.

16.4 Default Expenses - In the event of a default by Operator under the terms of this Agreement or breach of any covenant of this Agreement, and in the event that the

County brings legal proceedings to enforce and protect its rights and remedies under this Agreement, Operator shall pay all reasonable attorneys' fees, court costs and expenses of litigation incurred by of the County should it prevail.

17. **WATER RIGHTS**

The County shall, notwithstanding anything provided herein to the contrary and without limitation, retain all rights related to any water production, storage, distribution and transmission systems located upon the Premises.

18. **ADDITIONAL REVENUES**

18.1 **Additional Revenues to be Received by the County** - It is expressly understood by the Operator that to the extent practicable, the County intends to lease those acres and improvements within the Premises which are not immediately needed for the development, and construction of the Final Disposal Facility. As such, it is understood and agreed by the Operator that the phase-in of development and construction of cells within the Final Disposal Facility shall be designed and carried out in such a way as to allow maximum utilization of current areas of activity and use by the County and/or its lessees until the County receives written notice from the Operator that the Operator reasonably requires the portion of the Premises described in the notice. Any such notice must be received no less than thirty (30) days before the end of any calendar year for portions of the Premises that will be required in the subsequent year. In addition, the Operator shall design the Final Disposal Facility in such a manner as to minimize impact on the current water tower/water distribution system located upon the Premises. The County shall be entitled to keep the proceeds

of any such leases it may negotiate, and the Operator shall not unreasonably interfere with the activities allowed under such leases. Operator shall not be held liable for any losses, damages, injuries, claims or causes of action arising from conditions that are not caused in whole or in part by Operator's act, conduct or omissions or any such act, conduct or omissions on the part of a subcontractor, employee, agent or representative of Operator.

19. **UNCONTROLLABLE CIRCUMSTANCES**

19.1 **Uncontrollable Circumstances** - Notwithstanding anything to the contrary contained in this Agreement, the Operator shall not be liable to the County for any failure or delay in performance of any obligation under this Agreement, (other than the obligation to pay money) due to the occurrence of an uncontrollable circumstance and any such failure or delay shall not constitute an event of default under this Agreement. As a limited exception to Operator's obligation to pay money hereunder, Operator shall not be liable to pay the minimum Host Fee amount provided for in Section 5 that would normally accrue during the time period of any delay caused by an uncontrollable circumstance or change in law resulting in the Operator's inability to utilize the Final Disposal Facility. This limited exception shall only apply to the time period during which the Operator cannot utilize the Final Disposal Facility. "Uncontrollable Circumstance" means any act, event or condition (other than labor strikes) that has had, or may reasonably be expected to have a material adverse effect on the rights or obligations of the parties under this Agreement, or a material adverse effect upon the Final Disposal Facility or the construction, development or operation



by the Operator of the Final Disposal Facility, if such act, event or condition is beyond the reasonable control of the Operator. Such acts and events may include, but shall not be limited to, the following:

- (a) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence; acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
- (b) the failure to issue, suspension, termination, interruption, denial or failure of renewal of or the imposition of any new and material conditions upon any permit, license, consent, authorization or approval essential to the operation of the Final Disposal Facility; provided that such act or event is not the result of the action, inaction and/or conduct of the Operator, its agents, assigns, and contractors, sub-contractors, and/or representatives;
- (c) a "Change in Law" which materially affects the ability of the Operator to perform its obligations either pursuant to the terms and conditions of this Agreement or pursuant to applicable federal, state and/or local statutes, laws, rules, regulations, directives, ordinances, and/or mandates. A "Change in Law" shall excuse performance only for the period of time which is reasonably necessary to allow the Operator to so comply, and shall not excuse all further performance by the Operator unless the Change in Law is such that it effectively prohibits performance. (For example, the Operator's performance under this Agreement would be excused if a Change in Law made it unlawful to dispose of municipal waste by landfilling, or imposed other requirements which have the same effect).

A "Change in Law" means: (1) the adoption, promulgation or modification or reinterpretation (including any change in enforcement policy) after the date of this Agreement of any federal, state, county, local or municipal, statute, ordinance, permit, code, rule or regulation not adopted, promulgated, modified and/or officially published on or before the date of this Agreement; or (2) the imposition after the date of this Agreement of any material and substantial conditions or change in government or judicial policy in connection with the issuance, renewal, modification or enforcement of any official permit, license or approval, which in the case of either (1) or (2) establishes requirements substantially and materially affecting the obligation of either party under this Agreement (other than payment obligations) or the failure of any applicable federal, state or local governmental agency or unit having jurisdiction over the Final Disposal Facility to issue any permit, license or approval necessary for the operation of the Final Disposal Facility after the date of this Agreement, which permit, license or approval was not issuable on or before this Agreement, and which failure is not the result of the conduct, action or inaction of the Operator; or (3) the imposition, after the date of this Agreement, of any material condition or change in government statute or regulation or a change in judicial policy which establishes requirements affecting the design, construction, startup, operation, maintenance or cost of the Final Disposal Facility materially and substantially and in a more burdensome way than the most stringent requirements in affect as of the date of this Agreement. (A change in federal or state law potentially affecting the taxation of income of the Operator or affecting or potentially affecting the receipt

and/or classification of income and revenue by the Operator or affecting the ability of the Operator to meet its financial obligations shall not be deemed a "Change in Law").

(d) the failure of any appropriate federal, state, county or Community public agency or private utility having operational jurisdiction in the area in which the Final Disposal Facility is located to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Final Disposal Facility which are required for and essential to the operation of the Final Disposal Facility;

(e) the condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Final Disposal Facility, or any material portion or part thereof by the action of any federal, state or local government or governmental agency or authority.

A change in law shall not be used by the Operator to attempt to modify or otherwise alter the Operator's obligation to make certain payments and pay monies to the County as provided in this Agreement.

20. **GENERAL PROVISIONS**

20.1 **Severability** - The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provisions hereof.

20.2 **Validity** - The parties hereto recognize and acknowledge that the terms of this Agreement have been negotiated in good faith, with it being the full and abiding intent of all parties to this Agreement to satisfy the terms and conditions of the same.

As such, the parties hereto agree not to challenge or in any way contest the validity of any provision of this Agreement.

- 20.3 Incorporation of Prior Agreements: Amendments - This Agreement contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matters shall be effective. This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.
- 20.4 Non-Discrimination - In performance of the terms and conditions of this Agreement, the Operator shall not discriminate against any person on account of or by reason of age, color, handicap, national origin, race, religion, sex or gender.
- 20.5 Waivers - No waiver by County of any specific provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Operator of the same or any other provision. County's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of County's consent to or approval of any subsequent act by Operator. The acceptance of payments hereunder by County shall not be deemed a waiver of any preceding breach by Operator of any provision hereof, (other than the failure of Operator to pay the particular payment so accepted), regardless of County's knowledge of such preceding breach at the time of acceptance of such payment.
- 20.6 Cumulative Remedies - No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

- 20.7 Covenants and Conditions - Each provision of this Agreement performable by Operator shall be deemed both a covenant and a condition.
- 20.8 Termination - Termination of this Agreement shall not relieve the Operator of its obligations under the terms and conditions of the same.
- 20.9 Binding Effect - This Agreement shall bind the parties, their successors, and assigns.
- 20.10 Governing Law - This Agreement shall be governed by the laws of the State of Illinois.
- 20.11 Venue - Venue for purposes of any dispute which may arise between the parties shall be deemed to be the Circuit Court in and for Will County, Illinois.
- 20.12 Notice - Notice shall be provided in writing by certified mail to the respective parties as follows:

County: James W. Glasgow  
 State's Attorney of Will County  
 Will County Courthouse  
 14 West Jefferson Street  
 Suite 200  
 Joliet, IL 60431

Charles R. Adelman  
 County Executive  
 302 North Chicago  
 Joliet, IL 60431

Operator: Bruce Malec, WM of IL, Inc.  
2 Westbrook Corp. Ctr., Suite 1000  
Westchester, IL 60154

The parties have caused this Agreement to be executed on the date referenced herein above.

COUNTY OF WILL

By: Charles R. Adelman  
 Its: County Executive

OPERATOR

By: Bruce S. Malec  
 Its: PRESIDENT