

AMENDMENT TO DISPOSAL AGREEMENT

THIS AGREEMENT is entered into on this 20th day of November, 1998, by and between the SOLID WASTE AGENCY OF LAKE COUNTY, ILLINOIS, a body politic and corporate of the State of Illinois, acting by and through its Board of Directors ("the Agency") and COUNTRYSIDE LANDFILL, INC., an Illinois corporation ("CLI") (the Agency and CLI sometimes collectively referred to herein as the "Parties"). Capitalized terms not expressly defined in this Agreement shall have the meanings attributed to them in that certain Disposal Agreement between the Parties dated June 23, 1994 (the "1994 Agreement").

WHEREAS, the Agency was created by intergovernmental agreement, pursuant to § 3.2 of the Intergovernmental Cooperation Act, 5 ILCS 220/3.2 (the "Act") and Article VII, Section 10 of 1970 Constitution of the State of Illinois to dispose of the Solid Waste generated by the Participating Communities through recycling, combustion or landfilling; and

WHEREAS, CLI is the operator and part owner of landfill facilities known as the Countryside Landfill (the "Landfill") and located in unincorporated Lake County, Illinois; and

WHEREAS, in 1994 CLI and the Agency reached agreement with regard to certain issues concerning the operation of the Landfill, including but not limited to the reservation of disposal capacity at the Landfill for Solid Waste generated by Participating Communities and the Disposal Fee to be paid to the Agency for each Ton of Solid Waste or Special Waste accepted for disposal at the Landfill as a part of the Expansion, and executed the 1994 Agreement, which set forth the rights, duties, and obligations of the Parties; and

WHEREAS, the Commencement Date was February 21, 1997; and

WHEREAS, CLI voluntarily contacted the Agency in August of 1998, and reported to the Agency that it had deposited Waste in an area reserved for future landfilling, also had exceeded the permitted final contours of the Landfill in certain limited areas; and

WHEREAS, these activities do not adversely affect the total disposal capacity committed to the Agency by CLI pursuant to the 1994 Agreement; and

WHEREAS, CLI has requested that the Agency review and comment on the Application for Significant Modification (the "Sigmod") that it intends to submit to the Illinois Environmental Protection Agency ("IEPA"), as well as the Request for Permit to Construct a Replacement Flare (the "Flare Request") that it has submitted to IEPA, regarding certain revisions to the plan of development for the Landfill and the construction of a replacement enclosed flare; and

WHEREAS, the Sigmod and the Flare Request will assist CLI in managing odors and will limit, if not eliminate, the need to relocate Waste in order to come into compliance with the permitted final contours for the Landfill; and

WHEREAS, the Parties now wish to amend the 1994 Agreement as described herein, and to reaffirm the remaining terms of the 1994 Agreement; and

WHEREAS, the Parties have determined that the terms provided for in this Agreement are in their respective best interests;

NOW, THEREFORE, in consideration of the above, and other good and valuable consideration, the sufficiency, adequacy, and receipt of which are hereby acknowledged, and in

consideration of the above premises and of the covenants and conditions as set forth herein, the Parties agree as follows, intending to be legally bound hereby:

IT IS HEREBY AGREED:

1. Incorporation.
 - a. The above recitals are incorporated as part of this Agreement as though fully set forth herein.
 - b. The 1994 Agreement is hereby incorporated by reference into this Agreement.
2. Conflict Between Agreements. To the extent that a conflict exists between the provisions of the 1994 Agreement and the provisions of this Agreement with regard to the rights and obligations of the Parties, the provisions of this Agreement shall control.
3. Amendments to 1994 Agreement. The 1994 Agreement shall be amended as follows:
 - a. Following its review of the Sigmod prepared by CLI, and CLI's revisions to the Sigmod based on the Agency's comments, the Agency is satisfied with the Sigmod as revised, and also is satisfied with the Flare Request as submitted. The Agency will support CLI's efforts to obtain approval from IEPA for approval of the Sigmod and the Flare Request.
 - b. In addition to any certifications required pursuant to the 1994 Agreement, CLI shall submit to the Agency a certification, substantially in the form attached hereto as Exhibit A (the "Certification"), executed by the District Manager responsible for the operation of the Landfill and by a registered professional engineer, that to the best of CLI's knowledge after undertaking a reasonable review of the Landfill's status, the Landfill either: (i) is in

compliance with the 1994 Agreement and all permits under which it operates; or (ii) is not in compliance with the 1994 Agreement and all permits, in which case CLI shall describe such non-compliance and its remediation plan. For the first two years following the date of this Agreement, a Certification shall be submitted every 90 days, on the first Business Day of each quarter. After the initial two-year period, assuming that CLI has performed satisfactorily during that time, a Certification shall be submitted every 180 days, on the first Business Day of alternating quarters.

c. CLI shall reimburse the Agency for reasonable technical and legal consulting fees incurred by it as a result of reviewing the Sigmod and the Flare Request and negotiating this Agreement, in an amount estimated to be \$25,000.

d. Notwithstanding the provision of Section 4.03(b) of the 1994 Agreement regarding allocation of cost, CLI shall reimburse the Agency in an amount not to exceed \$30,000.00 per year for the cost of future annual audits by the Agency of the type contemplated in Sections 4.03, 4.07, and 4.10 of the 1994 Agreement; provided, however, that CLI's obligation to reimburse the Agency for annual audits after calendar years 1998 and 1999 will terminate in the event that CLI either is in compliance with the 1994 Agreement, as amended, as of December 31, 2000, or is in the process of remediating any non-compliance.

e. CLI shall pay to The Agency the amount of \$1,118,750.00, which amount represents additional Affected Area Compensation Fees for Solid Waste and Special Waste accepted for disposal at the Landfill from 1995 through 1997. Such amount is in addition

to the Affected Area Compensation Fees previously paid under the 1994 Agreement. The additional payment will be made on or before November 30, 1998.

f. The addresses contained in Section 11.07 of the 1994 Agreement are deleted in their entirety and replaced with the following:

To the Agency:

Mr. Andrew H. Quigley
Executive Director
Solid Waste Agency
of Lake County, Illinois
1300 N. Skokie Highway,
#103
Gurnee, Illinois 60031

To CLI:

Manager
Countryside Landfill, Inc.
31725 North Highway 83
Grayslake, IL 60083

With a copy to:

Waste Management - Midwest Area
720 East Butterfield Road
Lombard, Illinois 60148
Attention: Area General Counsel

g. Section 11.14 of the 1994 Agreement is deleted in its entirety and replaced with the following:

No Other Agreements. All negotiations, proposals and agreements prior to the date of this Agreement are superseded hereby. This Agreement, as amended by that certain Agreement between the Parties dated November 20, 1998, shall constitute the entire agreement between the Agency and the Contractor with respect to the disposal services contemplated hereby.

4. Continuing Validity of 1994 Agreement. The Parties hereby acknowledge, agree and reaffirm that the 1994 Agreement has at all times been, and is and shall remain, in full force and effect and legally binding upon the parties thereto including the Parties, subject only to the amendments described in this Agreement.

5. Binding Nature.

a. All of the obligations of the Agency under this Agreement shall be binding upon the Agency and upon any and all of the Agency's heirs, successors, and assigns.

b. All of the obligations of CLI under this Agreement shall be binding upon CLI and upon any and all of CLI's heirs, successors, and assigns.

A party shall be released from any duties and obligations under this Agreement upon the express written commitment by its successor, transferee, or assignee to assume and comply with the duties and obligations of this Agreement.

6. No Third Party Beneficiaries. Nothing in this Agreement shall be construed as creating a joint enterprise between the Parties nor being for the benefit of third parties for any purpose including, without limitation, establishment of any type of duty, standard of care or liability with respect to third parties. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation not a party to this Agreement shall be made, or be valid, against the Parties.

7. Severability. If any provision or subsection of this Agreement or the application thereof to any person or circumstance, is held invalid, illegal or unenforceable in any respect, the other provisions of this Agreement and/or their applicability to other persons or circumstances shall not be affected thereby. It is declared to be the intent of this Agreement that the same would have been adopted had such invalid provision, if any, not been included herein. In such event, the parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the provisions of this Agreement.

8. Authority to Execute.

a. The Agency hereby represents and warrants that the individuals executing this Agreement have been duly authorized to act on its behalf and to enter into this Agreement. The Agency agrees to provide the other parties to this Agreement with sufficient proof of said authorization upon request.

b. CLI hereby represents and warrants that the individuals executing this Agreement have been duly authorized by the corporation to act on its behalf and to enter into this Agreement. CLI agrees to provide the other parties to this Agreement with sufficient proof of said authorization upon request.

c. The Parties hereto acting under authorization of their respective governing bodies and organizations, when applicable, have caused this Agreement to be duly accepted and executed this 20th day of November, 1998.

9. Notices. All notices, demands or other communications given pursuant to this Agreement shall be in writing and shall be deemed to have been fully given, made or sent (i) when served personally; (ii) one day after deposit with a reputable overnight courier service, delivery charges prepaid; or (iii) three days after deposit in the United States mail and, if deposited in the United States mail, either certified or registered with postage prepaid, addressed as stated in Section 4(f) above. Notice of a change in those addresses may be given to the other parties as above provided but shall be effective only upon receipt of such change at least ten (10) days prior to the effective date of such change.

10. Remedies for Default. Notwithstanding anything contained herein to the contrary, upon a default hereof by any party, the other party shall have available to it all remedies available at law or in equity including, without limitation, the right of specific performance. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

11. Amendment. No amendment, modification or change to this Agreement shall be effective unless same shall be in writing and duly executed by the Parties.

12. Entire Agreement. The 1994 Agreement, as amended by this Agreement, shall constitute the entire agreement between the Agency and the Contractor with respect to the matters contemplated hereby.

13. Miscellaneous Provisions.

a. The paragraph captions in this Agreement are for convenience only and are not intended to limit or interpret the provisions hereof.

b. Time is of the essence of this Agreement and all provisions hereof.

c. This Agreement shall be legally enforceable whether executed and transmitted via original document or telecopy. This Agreement may be executed in counterparts which when taken as a whole, shall constitute one instrument.

d. This Agreement shall be effective as of the date first written above.

e. In any action brought by either party to enforce the obligations of the other party under this Agreement, the prevailing party shall be entitled to collect such party's reasonable attorneys' fees, court costs and expenses in such action.

f. This Agreement has been made and entered into in the State of Illinois and shall be governed by and interpreted in accordance with the laws of the State of Illinois.

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

Countryside Landfill, Inc.

Solid Waste Agency of Lake County

By: 

By:

Title: *Vice President*

Title:

EXHIBIT A

Certification

This Certification is submitted pursuant to the Amendment to Disposal Agreement between the Solid Waste Agency of Lake County ("the Agency") and Countryside Landfill, Inc. ("CLI") dated the _____ day of November, 1998.

1. The undersigned is the District Manager of the Countryside Landfill (the "Landfill") and, as such, is responsible for all aspects of the Landfill's operation.

2. The undersigned is familiar with the terms and conditions of the Disposal Agreement, as amended, between the Agency and CLI, and the terms and conditions of the permits issued by the Illinois Environmental Protection Agency with respect to the operation of the Landfill (collectively, the "Requirements").

3. The undersigned has conducted a review of the Landfill's compliance with the Requirements, which review included a review with the site engineer of the Landfill's compliance.

4. The undersigned hereby certifies (circle one):

(a) to the best of his/her knowledge after undertaking a reasonable review of the Landfill's status, that the Landfill is in compliance with the Requirements (with the exception of possible *de minimus* non-compliance that does present ongoing health, safety, or compensation issues).

(b) to the best of his/her knowledge after undertaking a reasonable review of the Landfill's status, that the Landfill is not in compliance with the Requirements for the

reasons described on Attachment A hereto. Attachment B hereto contains the remedial plan for bringing the Landfill into compliance.

Countryside Landfill, Inc.

By: _____

District Manager

Dated: _____

By: _____

Professional Engineer

Dated: _____

LAKE COUNTY HEALTH DEPARTMENT
MEMORANDUM

DATE: November 24, 1998
TO: Andy Quigley
THRU: Colin Thacker
FROM: Michael Kuhn
RE: Countryside Landfill Proposed Conditions

Per your request, the following information provides additional detail to the conditions proposed during the County Administrators's meeting of November 19th for the Countryside Landfill.

- 1: Annually, allow the LCHD to conduct split sampling of five monitoring wells to be selected by the LCHD for independent analyses of the G1 and G2 lists of parameters contained in CLI's operating permit.

CLI will be responsible for payment of the analytical cost for the five split samples and for one trip blank to be analyzed for volatile organic compounds.

To be completed as long as groundwater monitoring is required by the IEPA.

- 2: Within three months of each sampling event, submit to the LCHD a written tabulation of the quarterly and annual groundwater monitoring data, including the calculations showing the statistical analysis.

To be completed as long as groundwater monitoring is required by the IEPA.

- 3: By June of each year, submit to the LCHD a topographical map of the landfill at a scale of 1 inch equals 200 feet. When filling is within 10 feet of final elevation the survey of similar scale will be submitted to the LCHD on a quarterly basis until closure is approved.