

## **AMENDMENT OF HOST CITY AGREEMENT**

**THIS AMENDMENT OF HOST CITY AGREEMENT** (hereinafter referred to as "Amendment") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2008, between Veolia ES Zion Landfill, Inc., an Illinois corporation, formerly known as Superior Zion Landfill, Inc. and Onyx Zion Landfill, Inc., (hereinafter referred to as "Veolia") and the City of Zion, an Illinois municipal corporation (hereinafter referred to as "City").

**WHEREAS**, on May 11, 1994, the City and Browning-Ferris Industries of Illinois, Inc. (hereinafter referred to as "BFI") entered into a Host City Agreement (hereinafter referred to as "Agreement") regarding BFI's proposal to expand a landfill onto a portion of the property referred to in the Agreement as the BFI Property; and

**WHEREAS**, by Resolution No. 95-R-18, dated April 17, 1995, the City Council of the City granted local siting approval pursuant Section 39.2 of the Illinois Environmental Protection Act (hereinafter referred to as "Siting Approval") for a landfill on Sites 2 and 3 of the BFI Property, as those sites are described in the Agreement (hereinafter referred to as "Landfill"); and

**WHEREAS**, on March 31, 2000, BFI sold the BFI Property and transferred Siting Approval to Veolia, and the City consented to said sale and transfer; and

**WHEREAS**, Veolia has acquired approximately 5.9 acres and has a contract to purchase approximately 19.5 acres that are contiguous to the BFI Property (said 25.4 acres are hereinafter collectively referred to as the "Expansion Property"); and

**WHEREAS**, the Expansion Property is located within the corporate limits of the City; and

**WHEREAS**, the BFI Property and the Expansion Property are hereinafter referred to together as the "Veolia Property;" and

**WHEREAS**, Veolia desires to expand the Landfill on the Veolia Property, including onto the Expansion Property (hereinafter referred to as "Landfill Expansion"); and

**WHEREAS**, Veolia intends to file with the City an application for local siting approval for the Landfill Expansion under Section 39.2 of the Illinois Environmental Protection Act (hereinafter referred to as the "Act"); and

**WHEREAS**, the City and Veolia desire to enter into this Amendment for the purpose of amending the Agreement to address the Landfill Expansion.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and the other good and valuable consideration recited in the Agreement, the receipt and sufficiency of which are hereby acknowledged, Veolia and the City agree as follows:

**Section 1. Incorporation of Recitals.**

The above recitals are incorporated as part of this Amendment as though set forth herein.

**Section 2. Lands Covered.**

Paragraph 2 of the Agreement is hereby replaced with the following paragraph:

a. This Amendment covers the Veolia Property.

b. Unless otherwise indicated in this Amendment: (i) the term “BFI Property” in the Agreement is hereby replaced with the term “Veolia Property;” (ii) the term “BFI” in the Agreement is hereby replaced with the term “Veolia;” (iii) the term “Landfill” in the Agreement is hereby amended to include the “Landfill Expansion;” (iv) the term “Sites 2 and 3” in the Agreement is hereby replaced with the term “Landfill Expansion;” and (v) the term “Browning-Ferris Industries, Inc.” in the Agreement is hereby replaced with the term “Veolia ES Solid Waste, Inc.”

c. The Veolia Property is depicted in Exhibit A hereto. The Expansion Property is legally described in Exhibit B hereto and depicted as a portion of the Veolia Property on Exhibit A.

**Section 3. Effective Date.**

Paragraph 3 of the Agreement is hereby replaced with the following paragraph:

Except for the following provisions, which shall become effective on the date of this Amendment, this Amendment shall become effective upon the date of a final and non-appealable decision by the Illinois Environmental Protection Agency (hereinafter referred to as the “IEPA”) to issue a permit to develop the Landfill Expansion:

a. This Amendment and the Agreement shall be made part of any request for local siting approval for the Landfill Expansion under Section 39.2 of the Act.

b. By entering into this Amendment and the Agreement, the City has not predetermined whether it will grant or deny local siting approval for the Landfill Expansion under Section 39.2 of the Act.

c. Veolia agrees that it will not develop or operate the Landfill Expansion unless the same has been approved by the City pursuant to Section 39.2 of the Act, provided that the City has jurisdiction over the Veolia Property.

d. Subparagraphs 15.a(1)(a) and (c) that are set forth in Section 7 of this Amendment.

**Section 4. Ban on Various Wastes.**

Paragraph 4.d. of the Agreement is hereby replaced with the following paragraph:

Veolia agrees not to receive, or seek permission to receive, at the Veolia Property any waste containing free liquids, unless approved by the City and the IEPA.

**Section 5. Well Monitoring.**

The following subparagraph is hereby added to paragraph 9 of the Agreement:

f. With regard to the Landfill Expansion, the notice and monitoring provisions of this paragraph 9 shall apply only to those properties located within 1,500 feet of the Veolia Property that were not included within the monitoring area described in paragraph 9.a. of the Agreement prior to this Amendment.

**Section 6. Property Value Protection Plan.**

The following subparagraph is hereby added to paragraph 11 of the Agreement:

c. The properties that are eligible for protection on the date of this Amendment under the Property Value Protection Plan Agreement, which is attached to the Agreement as Exhibit C, shall remain protected after the Effective Date of this Amendment. With regard to the Landfill Expansion, the Property Value Protection Plan Agreement shall apply only to those properties located within 1,500 feet of the Veolia Property that were not classified as Protected Property under said Agreement prior to this Amendment.

**Section 7. Host Benefit Fee.**

Subparagraphs 15.a. and 15.b. of the Agreement are hereby replaced with the following subparagraphs:

**a. Calculation**

(1) Veolia shall pay the City the following Host Benefit Fees:

(a) A \$100,000 lump sum fee shall be paid within thirty days after final and non-appealable siting approval by the City for the Landfill Expansion pursuant to Section 39.2 of the Act; and

(b) A per-ton based fee, calculated on a calendar quarterly basis and applied to each ton of solid waste accepted at the Veolia Property during the quarter for disposal at the Landfill Expansion (hereinafter referred to as the "Per Ton Fee"), shall be paid. The initial Per Ton Fee shall be the amount of such fee, calculated under paragraph 15.a.(2) of the Agreement, that is in effect on January 12, 2012, but in no event shall the initial Per Ton Fee be less than Two Dollars and Eighty Five Cents (\$2.85) per ton.

For purposes of this Amendment, all solid waste accepted at the Veolia Property after January 1, 2012 shall be considered to have been received for disposal at the Landfill Expansion.

(c) Until January 12, 2012, the provisions of paragraph 15.a.(2), (3) and (4) of the Agreement shall remain in full force and effect.

(2) Beginning on January 1, 2013, and on each January 1 thereafter, the Per Ton Fee shall be adjusted from the Per Ton Fee of the previous year by fifty percent (50%) of the percentage change during the previous year in the Revised Consumer Price Index for Chicago-Gary-Kenosha (IL-IN-WI) published by the United States Department of Labor-Statistics, provided, however, that at no time shall there be a downward adjustment made to the Per Ton Fee. If the Consumer Price Index for Chicago-Gary-Kenosha (IL-IN-WI) shall cease to be published in the timeframe described above, the City and Veolia shall designate a comparable timeframe or index, which shall then be used for determining the annual rate of adjustment.

(3) The weight of solid waste received at the Veolia Property for disposal in the Landfill Expansion shall be determined by a certified scale, independently inspected and calibrated semi-annually. Tonnages shall be certified in writing by Veolia, subject to the City's audit rights pursuant to paragraph 8.b. of the Agreement.

**b. Payment of Per Ton Fee.**

The Per Ton Fee shall be paid by Veolia to the City on a calendar quarterly basis. Payments shall be delivered to the City by the last day of the month following the end of each quarter. Any Per Ton Fee not received by the City by the above deadline shall be subject to a late charge of 2% of the total quarterly Per Ton Fee plus accrued late charges per month or fraction of a month for which the payment is late.

**Section 8. Enforcement and Remedies.**

Subparagraph 21.a. of the Agreement is hereby replaced with the following subparagraphs a, b, c, and d:

a. Defaults. A material default and breach of this Agreement by Veolia includes, but is not limited to, the following:

- (1) The failure to make payment of any Host Community Fee payment required to be made under this Agreement after ten (10) business days written notice thereof.
- (2) The failure to properly maintain insurance required pursuant to the terms and conditions of this Agreement after ten (10) business days written notice thereof.

(3) The failure to correct or remedy promptly and in the proper and required manner any actual violation of any law, statute, rule, regulation, permit or ordinance relating to the development, operation, and closure/post closure care of the Landfill Expansion, including Siting Conditions. For purposes of this Agreement, Veolia 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. If the remedy or correction requires a permit or other approval or consent from a governmental entity, Veolia shall be deemed to have promptly commenced a remedy or correction if it has commenced preparation of an application for such permit or other governmental approval and diligently pursues the filing of the same.

(4) The failure to observe or perform any of the other covenants, terms, conditions or provisions of this Agreement or the Siting Conditions, where such failure shall continue for a period of thirty (30) days after written notice thereof from the City to Veolia; provided, however, that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, and the City agrees in writing that this is the case (which agreement shall not be unreasonably withheld or delayed), then Veolia shall not be deemed to be in default if Veolia commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. If the cure of the default requires a permit or other approval or consent from a governmental entity, Veolia shall be deemed to have diligently prosecuted such cure if it has commenced preparation of an application for such permit or other governmental approval and diligently pursues the filing of the same.

(5) The making by Veolia of any general assignment, or general arrangement for the benefit of creditors; the filing by or against Veolia of a petition to have Veolia 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 Veolia, the same is dismissed within sixty (60) days of filing); the appointment of a trustee or receiver to take possession of substantially all of Veolia's assets located at, or serving, the Property or of Veolia's interest in this Amendment (where possession is not restored to Veolia within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Veolia's assets located at the Veolia Property or of Veolia's interest in this Amendment (where such seizure is not discharged within thirty (30) days).

b. Remedies. Subject to the cure provisions of subparagraphs 8.a.(3) and 8.a.(4), in the event of any default or breach by Veolia of its obligations hereunder, the City may bring an action to enforce this Amendment and seek any and all relief available at law or in equity. Veolia shall reimburse the City for its reasonable attorneys fees and costs (including fees for expert witnesses and consultants) incurred in enforcing this Amendment.

c. Stipulated Damages. Subject to the cure provisions of subparagraphs 8.a.(3), 8.a.(4) and 8.a.(5), any violation of a Performance Standard shall result in stipulated damages against Veolia, as follows:

<b>Stipulated Damage Per Day For Veolia's Unexcused Failure to Achieve Performance Standards</b>	<b>Days of Unexcused Failure to Achieve Performance Standards</b>
\$100	1 <sup>st</sup> through 14 <sup>th</sup> day
\$250	15 <sup>th</sup> through 30 <sup>th</sup> day
\$750	31 <sup>st</sup> through 44 <sup>th</sup> day
\$1000	45 <sup>th</sup> through 60 <sup>th</sup> day
\$1250	61 <sup>st</sup> through 74 <sup>th</sup> day
\$1500	75 <sup>th</sup> through 90 <sup>th</sup> day
\$2000	91 <sup>st</sup> day and beyond

d. **Remedies Not Exclusive.** No right, power or remedy conferred upon or reserved to any Non-Defaulting Party under this Amendment or under law, except the election to take stipulated damages, shall be considered exclusive of any other right, power or remedy, but such rights, powers and remedies shall be cumulative and shall be in addition to every other right, power and remedy given hereunder or now or hereafter available at law or in equity or by statute or otherwise, and every right, power and remedy given by this Amendment to any Non-Defaulting Party may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, without precluding any Non-Defaulting Party's simultaneous or later exercise of any or all other rights, powers or remedies, including, by way of example, the right of the City to file a complaint with the IPCB alleging a violation of the Act and to enforce the Siting Conditions independently of this Agreement. No delay or omission of the Non-Defaulting Party to exercise any right, power or remedy arising from any default or breach hereof on the part of the Defaulting Party shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or breach or any acquiescence therein.

Subparagraph 21.b. of the Agreement is hereby renumbered and hereafter referred to as subparagraph 21.e.

## **Section 9. Additional Revisions.**

Paragraphs 20 and 25 of the Agreement are hereby stricken in their entirety.

## **Section 10. Authority to Enter Into Amendment.**

The word "Delaware" in paragraph 26 of the Agreement is hereby replaced with the word "Illinois."

### **Section 11. Validity of Agreement.**

Except as provided herein, all terms and conditions of the Agreement shall remain in full force and effect. If any provisions of the Agreement and this Amendment are inconsistent, the terms and conditions of this Amendment shall apply and shall supersede the terms of the Agreement.

IN WITNESS WHEREOF, the City and Veolia have caused this Amendment to be executed by their duly authorized officers and representatives on the date written above.

CITY OF ZION

VEOLIA ES ZION LANDFILL, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Its: \_\_\_\_\_



## EXHIBIT B

### LEGAL DESCRIPTION OF EXPANSION PROPERTY

That part of the Northeast Quarter of Section 7 and the Northwest Quarter of Section 8, Township 46 North, Range 12, East of the Third Principal Meridian, described as follows: to-wit: Beginning at a point on the East line of the Northeast Quarter of Section 7, aforesaid, 75 1/3 rods (1243 feet) South of the North line of said Quarter Section; running thence West on a line parallel with the North line of said Quarter Section, 85 rods (1402.5 feet), measured 1386.17 feet; thence South on a line parallel with the West line of said Quarter Section, 40 rods (660 feet), measured 658.85 feet; thence East parallel with the North line aforesaid, to a point on the East line of the Northeast Quarter of Section 7; thence North along the East line of the Northeast Quarter of Section 7, for a distance of 297.0 feet; thence East at a right angle to the last described line for a distance of (195.15 feet), measured 194.99 feet to a point of curvature; thence Southeasterly along a curved line convex Northeasterly, having a radius of 25 feet, for an arc distance of 39.68 feet, to a point of tangency, said point being on the West right-of-way line of Kenosha Road, 40 feet distant from the centerline of said road; thence North along said Westerly right-of-way line, a distance of 1014.58 feet, more or less, to a point on the North line of the South 164 feet of Lot 4 (as measured along the West line thereof) in FORMAN'S SUBDIVISION, being a Subdivision in the Northwest Quarter of Section 8, Township 46 North, Range 12, East of the Third Principal Meridian, according to the plat thereof, recorded November 26, 1958, as Document No. 1012214, in Book 1666 of Records, page 664, in Lake County, Illinois; thence West along the last described line for a distance of 248.31 feet (measured) to a point on the West line of the Northwest Quarter of Section 8; thence South along the West line of the Northwest Quarter of Section 8, for a distance of 634.18 feet (record) to the point of beginning, all in Lake County, Illinois.

**AMENDED AGREEMENT**

**THIS AMENDED AGREEMENT** (hereinafter referred to as "Amended Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2008, between Veolia ES Zion Landfill, Inc., an Illinois corporation, formerly known as Superior Zion Landfill, Inc. and Onyx Zion Landfill, Inc., (hereinafter referred to as "Veolia") and the Zion Park District, (hereinafter referred to as "Park District").

**WHEREAS**, on February 14, 1995, the Park District and Browning-Ferris Industries of Illinois, Inc. (hereinafter referred to as "BFI") entered into an Agreement (hereinafter referred to as "Agreement") regarding BFI's proposal to expand a landfill onto a portion of the property referred to in the Agreement as "BFI's Property;" and

**WHEREAS**, on April 17, 1995, the City Council of the City of Zion (hereinafter referred to as "City") granted local siting approval pursuant Section 39.2 of the Illinois Environmental Protection Act for a landfill on Sites 2 and 3 of BFI's Property, as those sites are described in the Host City Agreement, dated May 11, 1994, between the City and BFI (hereinafter referred to as "Landfill"); and

**WHEREAS**, the Agreement discharged, in that part relevant to the Park District, BFI's obligations described in a certain settlement stipulation entered in the case styled, Lake County Forest Preserve District v. Browning-Ferris Industries, Inc., Circuit Court of the 19<sup>th</sup> Judicial Circuit, Lake County, Illinois, Case No. 90 ED 65, all in relation to the Landfill; and

**WHEREAS**, on March 31, 2000, BFI sold BFI's Property and transferred Siting Approval to Veolia; and

**WHEREAS**, Veolia has acquired approximately 5.9 acres and has a contract to purchase approximately 19.5 acres that are contiguous to BFI's Property (said 25.4 acres are hereinafter collectively referred to as the "Expansion Property"); and

**WHEREAS**, the Expansion Property is located within the corporate limits of the City; and

**WHEREAS**, BFI Property's and the Expansion Property are hereinafter referred to together as the "Veolia Property;" and

**WHEREAS**, Veolia desires to expand the Landfill on the Veolia Property, including onto the Expansion Property, and intends to file with the City an application for local siting approval for the Landfill Expansion under Section 39.2 of the Illinois Environmental Protection Act (hereinafter referred to as "Landfill Expansion"); and

**WHEREAS**, the Park District and Veolia desire to enter into this Amended Agreement for the purpose of amending the Agreement to extend the obligations contained in the Agreement to the Landfill Expansion.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Veolia and the Park District agree as follows:

**Section 1. Incorporation of Recitals.**

The above recitals are incorporated as part of this Amended Agreement as though set forth herein.

**Section 2. Lands Covered.**

This Amendment covers the Veolia Property. The Veolia Property is depicted in Exhibit A hereto. The Expansion Property is legally described in Exhibit B hereto and depicted as a portion of the Veolia Property on Exhibit A.

**Section 3. Effective Date.**

This Amended Agreement shall become effective upon the date that is executed by the last of the signatories hereto.

**Section 4. Payment of Fee.**

(a) Veolia shall pay a fee of seventy cents (\$0.70) for each ton of solid waste accepted at the Landfill and the Landfill Expansion for disposal (hereinafter referred to as "Fee").

(b) The weight of solid waste received at the Veolia Property for disposal in the Landfill and the Landfill Expansion shall be determined by a certified scale, independently inspected and calibrated semi-annually. Tonnages shall be certified in writing by Veolia, subject to the Park District's right to audit. For purposes of such audit(s), Veolia will provide the Park District with access to those records necessary to determine the weight of solid waste received, on a confidential basis. Such access shall be provided upon request, at reasonable times, to the Park District or its designee.

(c) The Fee shall be payable on a calendar quarterly basis. Payments shall be delivered to the Park District by the last day of the month following the end of each quarter. Any Fee not received by the Park District by the above deadline shall be subject to a late charge of 2% of the total quarterly Fee for each month, or prorated for each fraction of a month, for which the payment is late.

(d) The Park District acknowledges that Veolia shall only be required to pay the Fee for solid waste received for disposal at the Landfill Expansion if the Landfill Expansion is approved by the City and the Illinois Environmental Protection Agency under applicable laws and regulations.

## **Section 5. Additional Provisions.**

(a) The Park District agrees that it will not contest or otherwise oppose Veolia's application to the City for local siting approval of the Landfill Expansion and will not present its own witnesses or cross examine any witnesses presented by Veolia or any other participant, will not submit a post-hearing brief, will not otherwise participate in the City's public hearing for the Landfill Expansion and will not appeal any decision relating to Veolia's application for local siting approval for the Landfill Expansion.

(b) This Amended Agreement contains the entire agreement between and among Veolia and the Park District. Veolia and the Park District agree that this Amended Agreement supersedes and replaces the Agreement in its entirety and that the Agreement shall no longer be of any force or effect and that this Amended Agreement is intended to satisfy any conditions or host agreement requirements arising under the City's grant of local siting approval pursuant to Section 39.2 of the Illinois Environmental Protection Act for the Landfill and the Landfill Expansion.

(c) Except as provided in Section 4 of this Amended Agreement, if any agreement, law, statute, ordinance, regulation or siting decision imposes or permits the Park District to impose any fees or taxes for the benefit of the Park District, Veolia shall receive a credit against the Fees, described in Section 4 hereof, in the full amount of such fees or taxes benefiting the Park District, provided that the amount of such credit shall not exceed the amount of the Fees due under Section 4.

(d) This Amended Agreement cannot be modified except by a writing signed by both Veolia and the Park District.

(e) This Amended Agreement is entered into in the State of Illinois and shall be construed, interpreted and applied in accordance with its laws.

IN WITNESS WHEREOF, the Park District and Veolia have caused this Amended Agreement to be executed by their duly authorized officers and representatives.

ZION PARK DISTRICT

VEOLIA ES ZION LANDFILL, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

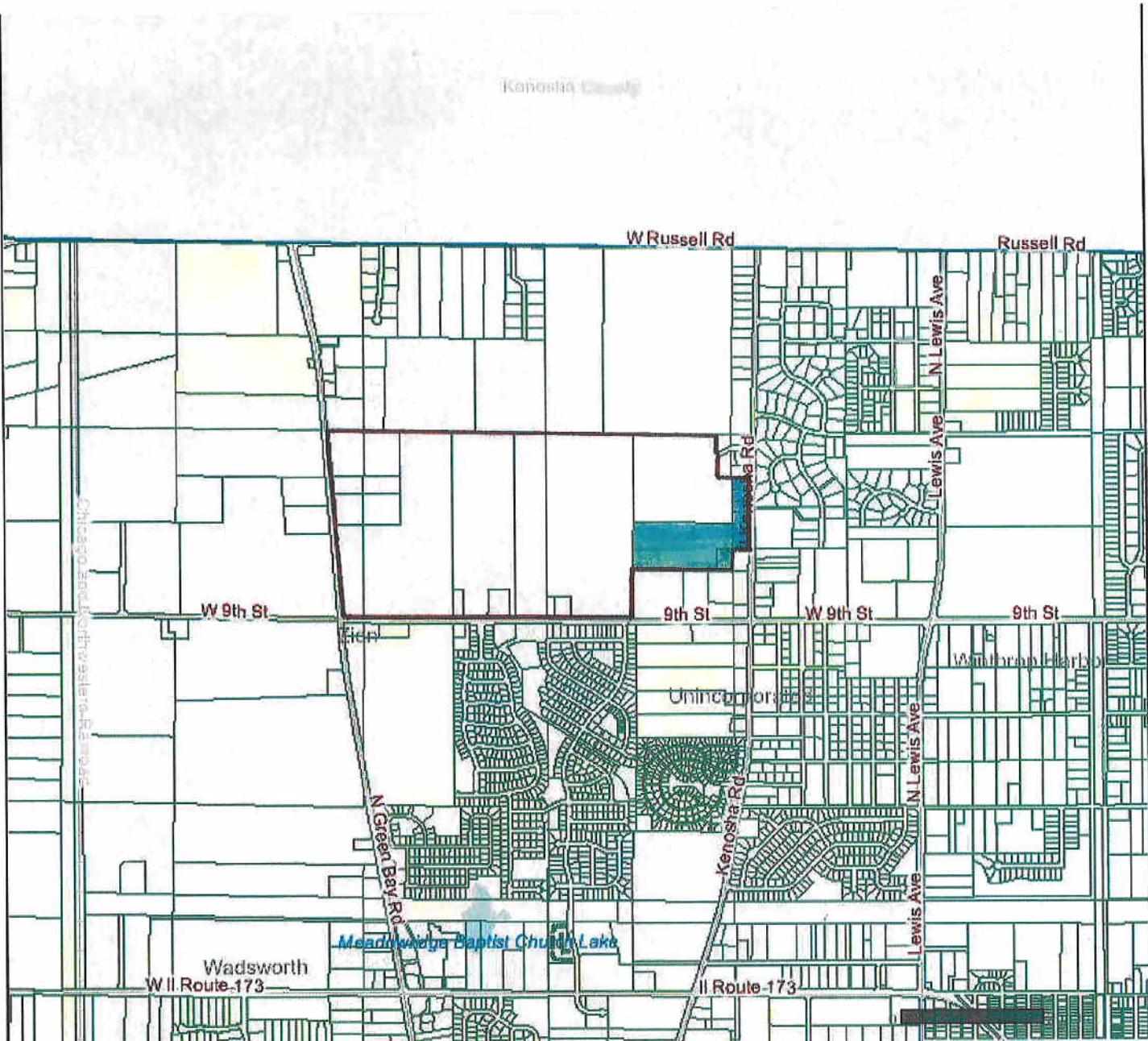
Dated: \_\_\_\_\_

## EXHIBIT B

### LEGAL DESCRIPTION OF EXPANSION PROPERTY

That part of the Northeast Quarter of Section 7 and the Northwest Quarter of Section 8, Township 46 North, Range 12, East of the Third Principal Meridian, described as follows: to-wit: Beginning at a point on the East line of the Northeast Quarter of Section 7, aforesaid, 75 1/3 rods (1243 feet) South of the North line of said Quarter Section; running thence West on a line parallel with the North line of said Quarter Section, 85 rods (1402.5 feet), measured 1386.17 feet; thence South on a line parallel with the West line of said Quarter Section, 40 rods (660 feet), measured 658.85 feet; thence East parallel with the North line aforesaid, to a point on the East line of the Northeast Quarter of Section 7; thence North along the East line of the Northeast Quarter of Section 7, for a distance of 297.0 feet; thence East at a right angle to the last described line for a distance of (195.15 feet), measured 194.99 feet to a point of curvature; thence Southeasterly along a curved line convex Northeasterly, having a radius of 25 feet, for an arc distance of 39.68 feet, to a point of tangency, said point being on the West right-of-way line of Kenosha Road, 40 feet distant from the centerline of said road; thence North along said Westerly right-of-way line, a distance of 1014.58 feet, more or less, to a point on the North line of the South 164 feet of Lot 4 (as measured along the West line thereof) in FORMAN'S SUBDIVISION, being a Subdivision in the Northwest Quarter of Section 8, Township 46 North, Range 12, East of the Third Principal Meridian, according to the plat thereof, recorded November 26, 1958, as Document No. 1012214, in Book 1666 of Records, page 664, in Lake County, Illinois; thence West along the last described line for a distance of 248.31 feet (measured) to a point on the West line of the Northwest Quarter of Section 8; thence South along the West line of the Northwest Quarter of Section 8, for a distance of 634.18 feet (record) to the point of beginning, all in Lake County, Illinois.

## EXHIBIT A



LakeCounty  
Geographic Information System  
Map Printed on 1/3/2008

Map Printed on 1/3/2008



Veolia Property

## Expansion Property within Veolia Property