

**Settlement Agreement and Amendment**  
**to the Landfill Agreement**

This Settlement Agreement and Amendment to the Landfill Agreement (“Amendment”) is made and entered into on the \_\_\_ day of \_\_\_\_\_, 2014, between the County of Peoria, Illinois and the City of Peoria, Illinois (hereinafter “Owners”), the City of Peoria/County of Peoria Joint Solid Waste Facility Committee (hereinafter “Committee”) and Waste Management of Illinois, Inc. (hereinafter “Contractor”).

**Recitals**

WHEREAS, the Owners, Committee, and Contractor are parties to a Landfill Agreement made on the 26<sup>th</sup> day of December, 1996 (the “Landfill Agreement”) regarding Peoria City/County Landfill No. 2 (the “Landfill”); and

WHEREAS, issues have arisen among the parties to the Landfill Agreement involving most favored nations pricing, landscape waste, soil stockpiling, repair and permitting of the entrance road dam, and the host fee to be paid to the Committee; and

WHEREAS, the Owners claim past damages for Contractor's alleged breach of the most favored nations pricing set forth in Section 6.5a of Exhibit A to the Landfill Agreement, and Contractor claims past damages for the City of Peoria's alleged breach of the landscape waste guarantee set forth in Section 6.5b of Exhibit A to the Landfill Agreement (together, the “Disputes”).

NOW THEREFORE, for and in consideration of the mutual promises, obligations, rights, and covenants set forth herein, the Owners, Committee, and Contractor have amicably agreed to resolve the Disputes and agree to amend the Landfill Agreement as set forth below.

**Agreements**

1. Host Fee. Effective as of January 1, 2013, Sections III.1 and III.3 of the Landfill Agreement are hereby amended by increasing the referenced host fee from

\$1.50 to \$2.15 per ton, with annual increases on each January 1 thereafter of 2½% per year. Any back payments due hereunder shall be made within sixty (60) days of the execution of this Amendment.

2. City of Peoria Rebate. Section III. of the Landfill Agreement is hereby amended by adding a new Section III.6 which states:

“Contractor will pay the City of Peoria a rebate for all Solid Waste (as defined in Exhibit A) delivered to the Landfill on behalf of the City of Peoria in the amount of \$2.80 per ton (“Rebate Multiplier”), effective January 1, 2013, with annual increases of the Rebate Multiplier of 2½% per year on each January 1 thereafter. Any rebates due from Contractor pursuant to this Section shall be paid by January 31<sup>st</sup> of each year for rebates earned in the immediately preceding year.”

Any back payments due hereunder shall be made within sixty (60) days of the execution of this Amendment.

3. Regulatory Submittals. Section II. of the Landfill Agreement is hereby amended by adding a new Section II.2 which states:

“The Committee agrees to act promptly and in good faith in respect to regulatory submittals made by Contractor with respect to the Landfill, including permit modifications submitted to the Illinois Environmental Protection Agency.”

4. Entrance Road Dam. At Contractor’s expense, Contractor will exercise reasonable efforts to resolve all issues with respect to the entrance road dam, consistent with the November 5, 2012 letter from Mackie Consultants attached hereto as Exhibit P, provided that such a resolution can be accomplished for \$150,000 or less. If such a resolution is not feasible or the cost exceeds \$150,000, the Committee and Contractor will discuss alternatives, in good faith, in an effort to resolve the entrance road dam issues. If they are unable to resolve them, either party may submit the issues to arbitration pursuant to the terms and conditions set forth in the Landfill Agreement.

5. Most Favored Nations Pricing. Section 6.5a of the General Conditions within Exhibit A (Specifications) to the Landfill Agreement is hereby deleted in its entirety and replaced with the following:

“In exchange for the City of Peoria’s guarantee to deliver refuse collected and not recycled via its residential collection contract to the Facility, the City of Peoria’s discounted tipping fee shall never exceed the lowest Municipal Waste tipping fee at the Facility under the terms of any contract between a municipality and the Contractor and/or any of its subsidiaries. For the purpose of this Section, municipality means counties, townships, cities, villages, incorporated towns or any committee of such local governmental units. The annual volume historically has been in the range of 35,000 – 37,000 tons per year. The City of Peoria makes no guarantee of volumes.”

6. Landscape Waste. Section 6.5b of the General Conditions within Exhibit A (Specifications) to the Landfill Agreement is hereby deleted in its entirety and marked “Reserved” thereby eliminating the City of Peoria’s obligation to deliver Landscape Waste to the Landfill. Furthermore, Section II.1 of the Landfill Agreement is deleted in its entirety and replaced with the following:

“Contractor shall perform all services listed in the Specifications attached hereto as Exhibit A, including but not limited to permitting, developing, constructing, operating and managing Landfill No. 2 and the Landscape Waste Composting Facility, and certain items of post-closure care for Landfill No. 1, provided however, Contractor may in its sole discretion cease operations of the Landscape Waste Composting Facility at any time.”

7. Operating Hours. Section 2.13 of the General Conditions within Exhibit A (Specifications) to the Landfill Agreement is hereby deleted in its entirety and replaced with the following:

“The Committee agrees to allow Contractor to reasonably limit its operating hours for Landfill No. 2 (including the Landscape Waste Composting Facility, if operated), provided, however, that Contractor will not open after 7:00 a.m. on weekdays and Saturdays, or close before 4:00 p.m. on weekdays and Noon on Saturdays without the prior written approval of the Committee. With twenty-four (24) hours notice, the parties may temporarily change the hours of operation of the Facility within permit limitations to respond to emergency conditions provided, however, the hours shall return to the normal hours of operation as soon as the emergency conditions no longer exist. The Contractor may close the Facility to observe the following holidays:

January 1;  
Memorial Day;  
July 4;  
Labor Day;  
Thanksgiving Day; and  
December 25.”

8. Stockpile Agreement. The parties to this Agreement acknowledge that a January 28, 2003 agreement between the Owners, the Committee, and Contractor provided, *inter alia*, certain rights to the Contractor for use of the Option Property (therein identified) for soil stockpile purposes and for alternative access to Landfill No. 2 (the “Soil Stockpile Agreement”). The parties acknowledge that the timeframe for such rights expressed in the Soil Stockpile Agreement should be extended. However, the parties further anticipate that Peoria City/County Landfill, Inc. will be conducting investigation, siting, development, construction, and/or operation activities on parts of the Option Property in respect to the Expansion Solid Waste Facility (Landfill No. 3) during this extended timeframe.

In order to address any conflict which may arise in respect to an extension of the timeframe for those soil stockpile and access rights of CONTRACTOR expressed in the Soil Stockpile Agreement and the rights and requirements of Peoria City/County

Landfill, Inc. in respect to its activities regarding the Expansion Solid Waste Facility (Landfill No. 3) during this extended timeframe, the parties agree that Section 2 of the Soil Stockpile Agreement shall be deleted in its entirety and replaced with the following:

“2. Use of Option Property; Notice of Projected Date for Cessation of Acceptance of Waste At Landfill No. 2.

(a) Subject to the provisions of this Section 2, CONTRACTOR will have the right to use the Option Property, as shown in Exhibit A hereto, as a location to stockpile soil materials as needed to construct, operate and close Landfill No. 2, and as an alternative means of access to and from Landfill No. 2. Unless terminated or modified as stated below, this right shall continue until eighteen months after CONTRACTOR ceases accepting waste for disposal at Landfill No. 2.

Soil materials shall be stockpiled only in those areas which: (1) are identified on the attached Exhibit A as the “Soil Stockpile Area”; (2) are agreed upon in writing by the Parties; or (3) are being used by the Contractor as of January 10, 2014 for soil stockpile purposes and which are identified by handwriting and confirmed by the Parties’ initials placed on Exhibit A as of the date of executing this Agreement amendment.

(b) CONTRACTOR shall advise the COMMITTEE twenty-four months in advance of that date when the CONTRACTOR projects it will cease accepting waste for disposal at Landfill No.2. Thereafter, CONTRACTOR shall provide the COMMITTEE with monthly reports of information relating to said date, including the volume of waste accepted for disposal at Landfill No. 2 during the preceding month, available airspace for disposal of waste at Landfill No. 2 on the last date of the preceding month, and any potential changes in the date CONTRACTOR has projected that it will cease accepting

waste for disposal at Landfill No. 2. Said reports will be provided by CONTRACTOR to the COMMITTEE by the 15<sup>th</sup> of each month until such time as CONTRACTOR has ceased accepting waste for disposal at Landfill No. 2.

(c) So long as air space is available, CONTRACTOR shall continue to accept waste for disposal at Landfill No. 2 in the normal course of business and consistent with reasonable commercial practice in the industry and shall not manipulate or redirect waste streams away from Landfill No. 2 so as to intentionally extend the life of Landfill No. 2.

(d) The rights of CONTRACTOR to use the Option Property as set forth in Section 2(a) may be limited upon either of the following:

(i) If OWNERS, in their reasonable opinion, determine that an area(s) being used by CONTRACTOR for soil stockpile or access purposes pursuant to Section 2(a) is or will by the Triggering Date referenced below be needed for landfill space or for investigation, siting, development, construction, or operation purposes by Peoria City/County Landfill, Inc. in respect to the Expansion Solid Waste Facility (Landfill No. 3); or

(ii) If an area(s) being used by CONTRACTOR for soil stockpile or access purposes pursuant to Section 2(a) is or will by the Triggering Date referenced below be needed by the OWNERS in order for the OWNERS to comply with the terms of the existing Landfill Agreement between the OWNERS and Peoria City/County Landfill, Inc. dated December 11, 2009, as amended on May 10, 2012.

In the instance of either (d)(i) or (d)(ii), OWNERS shall provide at least six months, but no more than twelve months, prior written notice to CONTRACTOR of the expected date (the "Triggering Date") upon which such area(s) shall be so needed by OWNERS and the written notice shall identify the area(s) so needed. Upon receipt of said written notice, CONTRACTOR shall, prior to the Triggering Date: (1) remove from the Option Property any soil stockpiled on the Option Property in the area(s) so identified in the written notice or move such soil to an agreed-upon location on the Option Property; and (2) desist using the area(s) so identified in the written notice for alternative access to and from Landfill No. 2. After the Triggering Date, CONTRACTOR shall have no further right to use that portion of the Option Property identified in said written notice. Further, in the instance of either (d)(i) or (d)(ii), OWNERS shall work in good faith with CONTRACTOR to identify alternative areas of the Option Property which are efficient for CONTRACTOR'S soil stockpile activities and for access to and from Landfill No. 2.

(e) CONTRACTOR shall be solely responsible for the cost of removing any soil stockpiled on the Option Property.

(f) CONTRACTOR shall pay the OWNERS \$1.00 per cubic yard for any soil stockpiled by CONTRACTOR and not beneficially reused by CONTRACTOR or OWNERS. The existing survey for the designated area is shown in Exhibit B. At the conclusion of this contract, the CONTRACTOR shall resurvey the disturbed areas and calculate the volume for payment. The OWNER shall have the right to conduct independent surveys and calculations to verify the quantity. Payment shall be made before termination of the contract.

(g) CONTRACTOR shall be responsible to obtain all permit approvals prior to disturbing the soil. All CONTRACTOR operations

shall be conducted in compliance with all State and Federal laws and regulations. Any use by the CONTRACTOR other than stockpiling of soil will be subject to review and approval by the OWNERS, as described in the existing Landfill Agreement. The CONTRACTOR shall not have the exclusive use of the property. The OWNERS reserve the right to allow others to use the access road and develop areas outside of the stockpile areas.”

9. Mutual Release. The parties hereto hereby release and forever discharge each other, their respective officers, directors, employees, agents, parents, members, subsidiaries, affiliates, representatives, shareholders, attorneys, successors, heirs and assigns, from (i) such claims, demands, debts, liabilities and causes of action at law or in equity they may have arising out of the Disputes which accrued prior to the date of this Amendment; and (ii) such claims, demands, debts, liabilities and causes of action at law or in equity arising from any alleged delay(s) by the Committee and/or Owner in acting upon a regulatory submittal made by Contractor with respect to the Landfill, including permit modifications submitted to the Illinois Environmental Protection Agency, where such delay occurred prior to the date of this Amendment. The parties hereto state, certify, and affirm that they are the sole owner of the matters released hereby and have not assigned or had an assignment taken against them which might impair their right to make or execute this Amendment, or any provision herein. This release is limited exclusively to those matters described herein as the Disputes and such regulatory submittals described in this paragraph.

10. No Admission of Liability. The parties understand and acknowledge that this Amendment constitutes a compromise and settlement of disputed claims with no party being deemed or construed to have been at fault or to have liability of any kind to any other party arising out of the Disputes.

11. No Other Changes. Except as modified herein, all other terms and conditions of the Landfill Agreement and Soil Stockpile Agreement shall remain unchanged and continue in full force and effect without modification.

12. Interpretation. The parties agree that this Amendment is the result of negotiations of the parties and that this Amendment has been jointly drafted with the input, consent, and advice of counsel for all parties. Consequently, no presumption shall arise for, or against, any party in the interpretation of this document on the basis that such party was the draftsman of this Amendment. Capitalized words used but not otherwise defined herein shall have the meaning assigned to them in the Landfill Agreement.

13. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall constitute an original but taken together shall constitute one agreement. To expedite the execution of this Amendment, the parties agree that executed counterparts may be transmitted by facsimile or .pdf attachments to email, which copies shall be fully binding on the executing party.

14. Authority. Each person signing this document on behalf of a party hereto expressly warrants to all others that he or she is the duly authorized and acting agent of said party and that he or she has the full authority of that party to execute this Amendment on its behalf, and that in so doing, the party is bound by the terms hereof.

COUNTY OF PEORIA, ILLINOIS

CITY OF PEORIA, ILLINOIS

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

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

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

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

CITY OF PEORIA/COUNTY OF PEORIA  
JOINT SOLID WASTE FACILITY COMMITTEE

WASTE MANAGEMENT OF  
ILLINOIS, INC.

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

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

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

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