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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Complainant,	)	
	)	
vs.	)	
	)	Case No. PCB No. 03-191
COMMUNITY LANDFILL COMPANY, INC., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation,	)	
	)	
Respondents.	)	

NOTICE OF FILING

TO: All counsel of Record (see attached Service List)

Please take notice that on November 8, 2005, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, City of Morris' Reply to the Complainant's Response to Cross-Motion for Summary Judgment.

Dated November 8, 2005

Respectfully Submitted,

On behalf of the CITY OF MORRIS

By: Hinshaw & Culbertson LLP

Charles F. Helsten
One of Attorneys

HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

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REPLY OF CITY OF MORRIS TO COMPLAINANT'S RESPONSE TO CROSS-MOTION FOR SUMMARY JUDGMENT

NOW COMES Respondent, CITY OF MORRIS, by and through its attorneys, HINSHAW & CULBERTSON, LLP and in reply to the Complainant's Response to Cross-Motion For Summary Judgment, states as follows:

I. **The City of Morris is Entitled to Judgment Because as a Matter of Law it has Not Conducted Any Disposal Operation Since the Date the Financial Assurance Requirements Went into Effect as to Municipalities (April 9, 1997).**

The State of Illinois has attempted to mislead the Illinois Pollution Control Board by arguing that the City of Morris conducted a waste disposal operation simply because the City of Morris was listed as an operator on permits issued decades ago. As evidence of ownership, the State relies upon two permits which were issued in 1974 and supplemental permits issued in 1978, 1980, and 1989 that list the City of Morris as "owner and operator". However, before April 9, 1997, there was no obligation upon a local unit of government to post any financial assurance. Section 807.601(a) still explicitly provides that "the financial assurance requirement does not apply to the State of Illinois, its agencies and institutions, or to any unit of local government". 35 Ill.Admin.Code 807.601(a). Furthermore, the regulations for new landfills

(Section 811) explicitly provide that "except as provided in subsection (f) this subpart does not apply to the State of Illinois, its agencies and institutions, or to any unit of local government. 35 Ill.Admin.Code 811.700(c). (Emphasis added). Subsection (f) provides "on or after April 9, 1997, no person, other than the State of Illinois, its agencies and institutions, shall conduct any disposal operation at an MSWLF unit that requires a permit under subsection(d) of Section 21.1 of the Act, unless that person complies with the financial assurance requirement of this Part." 35 Ill.Admin.Code 811.700(f). Therefore, at the time that the City of Morris allegedly operated the landfill (prior to 1982) and received the permits that listed it as owner or operator, there was no requirement that the City of Morris post financial assurance. Furthermore, at no time after April 9, 1997 has the City of Morris ever "conduct[ed] any disposal operation" at the site.

"It is clear that whether one is an operator pursuant to the Act depends on the specific facts as a whole." *People v. Bishop*, 315 Ill.App.3d 976, 979, 735 N.E.2d 754, 757 (5th Dist. 2000). "A review of the Pollution Control Board decisions reveals that whether a party's name is listed as an operator in the permit is not the determining factor of whether one is an operator." *Id.* at 979, 735 N.E.2d at 758 (emphasis added). In the *Bishop* case, Dean Bishop argued that he was not the operator; however, the Illinois Appellate Court reviewed the relevant facts and determined that: 1) Dean was frequently at the landfill when inspectors were present, and 2) he worked at the landfill on a continuous basis, (he was observed spreading and compacting waste, operating the front-end loader, conducting a trash-hauling and disposal service, discussed with inspectors conditions at the landfill, on-going violations, and efforts to remedy the violations, and also worked at the landfill in exchange for the use of the landfill). Furthermore, Dean pledged a certificate of deposit of $25,000 for the landfill, expended nearly $75,000 to maintain the landfill, deducted these amounts from his federal income taxes, and listed the landfill as his

principal business on his income tax returns. Unlike the alleged operator in *Bishop*, in this case, it is undeniable that since 1982 the City of Morris has not "conducted" any disposal operation. No employee of the City of Morris worked at the landfill, no employee of the City of Morris was observed spreading and compacting waste, no City employee has operated waste or earth moving equipment at the landfill, and the City has not conducted any waste disposal operations or other operations at the landfill. (See Affidavit of Mayor Dick Kopczick, marked Exhibit A). Thus, pursuant to the determinative facts involved in *Bishop* the City has not conducted a waste disposal operation.

One of the cases relied upon by the *People v. Bishop* court is *Termaat v. City of Belvidere*, PCB 85-129 (1986); 1986 (1986 WL 27133). In *Termaat* the central issue involved was whether or not an individual (as opposed to a municipality) was "conducting any disposal operation" at the site, thereby triggering the need to post financial assurance. (Under the law in effect at that time [1986], there was no requirement that a municipality post financial assurance). The Pollution Control Board noted that the exception against posting financial assurance only applied to "the government unit [as] the owner of the site, but if another person conducts waste disposal on the site, [then] the other person must provide financial assurance for closure." *Id.* at *2. The landfill was jointly owned by the City and the County, and Mr. Anderson was an independent contractor hired to perform certain functions at the landfill in exchange for a monthly payment by the City and County. The scope of work provided included furnishing all equipment, labor, supplies and other items of expense necessary to perform earth work, compact refuse, dispose of landscape waste, and place immediate and final cover. However, the contract explicitly provided that this work was performed "under the direction of the owner and its authorized representative". *Id.* The City and County opened the site each day, maintained the

access road to the scale house, employed persons to perform weigh-ins and collect fees, provided cover and seeding materials, maintained the paved access road from the entrance to the scale house, set rates, and paid all bills. *Id.* at *3. It was noted that Mr. Anderson did not have a lease, and received no income from the operation independent of his monthly fee. Furthermore, the governmental entities maintained a committee that met each month to set rates, collect fees, prepare contracts, pay bills and review conditions at the site. The Pollution Control Board concluded that the two local units of government and not Mr. Anderson were the operator of the site within the meaning of the Act, and, as such, no financial assurance was required to be posted. The Pollution Control Board noted "Mr. Anderson is under the on-going supervision of the City Director of Public Works; his discretion is limited in the performance of his contractual duties and is non-existent in other aspects of site operations." *Id.* at *3.

In this case, every IEPA employee who has testified in this matter has conceded that the day-to-day operations of the landfill are performed by CLC and not the City of Morris. There is simply no evidence that the City of Morris ever maintained any roads on the facility, employed any person to perform weigh-ins or collect fees, provided cover and seeding materials for the facility, paid any expenses of the facility, was consulted on or otherwise determined tipping rates for the site, collected any fees, prepared any contracts, or reviewed any conditions at the site. Therefore, the actual conduct of the City clearly establishes that it is not conducting a waste disposal operation, and thus, has no duty to post financial assurances for closure/post-closure care.

The State of Illinois attempts to argue that the City of Morris has conducted a waste disposal operation based upon four factors; (a) permitting, (b) joint action with Respondent Community Landfill Company, (c) financial benefits, and (d) distinguishing the *Berger* case.

First, it is well established that the fact that one's name appears on the permit as an operator does not mean that one is conducting waste disposal operations, thereby subjecting it to the financial assurance regulations. Rather, it is incumbent upon the Board to look at the facts of the case to determine who was truly conducting landfill operation at the site. *People v. Bishop*; *Termaat v. City of Belvidere*. Furthermore, as explained above, the permits that the State is attempting to rely upon were issued at a time when the City of Morris was excluded from posting financial assurance by the Illinois regulations. Those regulations changed with the passage of Section 811, and Subpart (C) carried forward the exclusion of municipalities from liability for posting financial assurance unless the municipality conducted disposal operation after April 9, 1997. (Section 811.700(c), (f)). Therefore, the Illinois legislature recognized that it was quite possible, if not likely, that a municipality might be listed as an operator of a landfill on a permit, but that fact alone would not subject the municipality to the financial assurance requirement unless that municipality actually conducted waste disposal operations after April 9, 1997. The State of Illinois has presented absolutely no evidence that the City of Morris ever conducted the day-to-day waste disposal operations of the landfill since that date.

Second, the State of Illinois asserts the City engaged in some amorphous form of joint venture with CLC, and that the City "contracted with Respondent Community Landfill Company, applied for and was issued joint waste permits, provided non-compliant financial assurance..., litigated the validity of the Frontier Bonds along with CLC, and failed to replace the Frontier Bonds with substitute financial assurance." However, none of these assertions establish that the City of Morris was in anyway conducting waste disposal operations at the site. Contracting with CLC does not establish the conduct of landfill operations at the site. Moreover the State does not clearly indicate what "contract" it is referring to between CLC and the City of

Morris. Regardless, it is well established that merely contracting with an operator does not make the other contracting party the "conductor" of a landfill operation. *People v. Bishop; Termaat,* and *Berger*. Indeed, in both *Termaat* and *Berger* a party who contracted with the actual operator was determined not to be the operator. Furthermore, the PCB has consistently held that merely being the owner of a landfill does not mean that one is conducting landfill operations. *Id.* The only specific contract identified by the State of Illinois is a lease agreement between the City of Morris and CLC. That lease agreement is attached hereto as Exhibit B, and explicitly establishes that CLC is the entity that conducts all landfill operations, rather than the City of Morris. The *Termaat* case relied on the fact that the independent contractor did not have a lease for the site as an determinative element that established he was not conducting a waste disposal operation. In the present case, the right to conduct a waste disposal operation was contractually conveyed to CLC. At no time did the City of Morris supervise or direct the activities of CLC at the landfill site. In the present case, the State is merely attempting to artificially extend the financial assurance requirements to the City of Morris, but the law is clear that the City bears no responsibility to post financial assurance where it does not conduct waste disposal operations. The State also alleges that the City provided "non-compliant financial assurance", and asserts that the City failed to post compliant financial assurance when the Frontier bonds were determined insufficient. In other words, the State is employing the "damned if you do and damned if you don't" argument. However, as explained above, an owner actually has no requirement to post financial assurance, and if an owner voluntarily decides to post financial assurance, because an operator is unable to unwilling to do so, that does not create a burden upon the owner to forever from that point forward continue to post financial assurance. Again, the law only imposes a requirement from posting financial assurance upon one who "conduct[s] any

disposal operation". 35 Ill.Admin.Code 811.700(f). The posting of financial assurance for closure/post-closure care of a landfill is not the conducting of a disposal operation. Obviously, under the plain meaning of these terms, only a party who is on site physically accepting waste at a landfill, developing cells for the disposal of that waste, and overseeing and supervising those activities is conducting a waste disposal operation. A municipality (or even an investor) who is merely agreeing to accommodate in part the financial assurance needs of an operator is not conducting a waste disposal operation under the plain meaning of those terms.

Third, the State next asserts that the City has acquired financial benefit from the landfill operation, and that somehow that means the City is conducting a waste disposal operation. Again, the State provides absolutely no legal basis for its assertion that receiving financial benefit from a landfill operation magically converts the owner of a site into an operator. Indeed, the State itself acquires income and real estate taxes as a result of the landfill operations; does that make the State an operator of the landfill? Likewise, any independent contractor that performs services for the landfill receives financial benefit, and the law is clear that those independent contractors are not responsible for posting closure/post-closure financial assurances. *Termaat*. Almost every new landfill that is sited in Illinois involves a host fee agreement with the hosting government. Even when a county or city does not own the land, an agreement is entered into with the operator establishing that certain tipping fees will be paid to the host community which will be used to offset the economic impacts of hosting a landfill site. This host fee arrangement does not magically result in a host community being deemed to be conducting waste disposal operations, thereby subjecting the host community to the obligation to post financial assurances. If such were the case, no local unit of government would ever vote in favor of siting a landfill, as doing so would subject that local unit of government to the

possibility of having to post financial assurance for the closure and post-closure care of the landfill. Such an argument by the State is simply disingenuous and ridiculous.

In a last ditch effort to argue that the City of Morris is somehow conducting landfill operations, the State points out that in *Berger,* the individual that was determined to be the operator was in fact listed on the permits as an operator, and that the permits themselves were not transferred to the owner of the landfill. Once again, the existence of one's name on a permit is not dispositive of whether that entity is actually conducting landfill operations. Furthermore, the *Berger* case was offered for the purpose of showing that the owner of a landfill site is not automatically deemed to be an operator of the landfill, and, rather, there must be a determination by the Pollution Control Board as to whether one is actually conducting a landfill operation before imposing the financial assurance requirements. The State of Illinois apparently wants to avoid this determination, and morph the law to establish that owners and operators both must post financial assurance, regardless of who is actually conducting the operation. Fortunately, that is not the status of the law, and it is simply undeniable that the City of Morris is not, and has not, conducted landfill operations at this site since April 9, 1997, and, therefore, is not required to post financial assurance for the site, and is entitled to judgment as a matter of law.

II. Enforcing the Act as Written Does Not Result in Absurd Results.

As is often argued by a party who is attempting to avoid the plain language of a statute, the State of Illinois argues that enforcement of the statute will lead to absurd results. The State argues that "clearly, the provisions of subpart (g) must be interpreted to require owners and operators to provide financial assurance, although either party may arrange it." (State's Response Brief, pg. 12). However, the plain language of the financial assurance regulations repeatedly provide "an owner or operator" shall post financial assurance. 811.700, 706, et seq.

If the legislature meant to require owners and operators to post financial assurance it would have so provided. It is improper for the State to invite the Pollution Control Board to supplant its will over that of the Legislature and, in essence, engage in agency-made legislation. Rather, the plain language of the statute or regulation must be followed.

The State also argues that employing the plain language of these standards would result in only the person/party who is physically involved in disposing of waste being subjected to financial assurance responsibility. (State's Response Brief, pg. 10). In the first instance, there is nothing absurd or repugnant about requiring only the entity that is actually operating a landfill to post financial assurance for closure and post-closure care, and the State has failed to point to any regulation or case that states otherwise. Secondly, whether an owner who is not a unit of local government would be subjected to the financial assurance requirements is simply not at issue in this case, and should not and need not be decided at this time. The law is absolutely clear that a unit of local government is exempt from the financial assurance requirements unless it conducted landfill operations after April 9, 1997. 811.700(c), (f). The legislature clearly contemplated that municipalities such as the City of Morris might have been listed as operators, or even conducted landfill operations, before April 9, 1997, but as long as they did not conduct such operations after that milestone date, the municipality will not be required to post financial assurance. Therefore, the State's alleged concern about inviting non-governmental property owners to set up shell business entities to avoid the Board's landfill management regulations is simply an effort to divert the Board from the actual issues involved in this case. Furthermore, if such a shell company were established, one could simply employ one or more of many theories of common enterprise liability (i.e., piercing the corporate veil, alter ego, defacto merger, mere continuation,

substantial continuation, etc.). In this particular case, CLC is obviously not the alter ego of the City of Morris.

Employing the plain language of 811.700(f) does not conflict with subpart (g) of the regulations. Interestingly, the State cites 811.700(b) and 706 as somehow being in conflict with 700(f). However, even reviewing the language highlighted by the State establishes that these subparts are certainly not in conflict, because the Act consistently provides that an owner or operator shall post financial assurance, and at no time does it provide an owner and operator shall post as the State argues was somehow actually intended by the legislature. The State argues that because closure/post-closure financial assurance is mandatory, if the operator fails to provide it, then the owner must. What the State refuses to recognize is that a failure to post financial assurance by either the owner or operator would only results in a violation by the operator of these financial requirements pursuant to the plain language of the statute. In other words, the statutes and regulations clearly provide that financial assurances "shall" be posted, and pursuant to the force and effect of the regulations in question, the State permits those assurances to be posted by either the owner or operator. However, if an operator conducts a landfill operation without having financial assurances posted, this constitutes a violation of the standard by the operator, and not the owner. If indeed the State had required that both the owner and operator post financial assurance, it could have easily provided for such in the language of both the statute and the regulations in issue. It has not done so, and, as a matter of fact, the plain language of these directives explicitly excludes municipalities from posting financial assurance when these units of local government have not conducted waste disposal operations since April 9 of 1997. This Board need only enforce the plain language of the statute and regulations in question to award summary judgment in favor of the City of Morris.

III. **The City of Morris has Committed No Violations, Willful or Otherwise.**

As explained above, the law is absolutely clear that the City of Morris is excluded from posting financial assurance in this case. When the uncontroverted facts in this case are reviewed, it is undeniable that at no time since April 9, 1997 has the City of Morris conducted landfill operations at the site, and, therefore, the City of Morris is excluded from the financial assurance requirements of the Act and regulations. At a minimum, the City of Morris has had much more than a good faith basis for its assertion that it has been in complete compliance with the law and regulations. Therefore, the City of Morris has not committed "wilful" and repeated violations.

WHEREFORE, the City of Morris, prays that its Motion for Summary Judgment be granted and the motion of the State of Illinois be denied.

Dated: NOVEMBER 9, 2005

Respectfully Submitted,

On behalf of the CITY OF MORRIS

By: Hinshaw & Culbertson LLP

Charles F. Helsten
One of its Attorneys

Richard S. Porter
One of its Attorneys

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AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on November 8, 2005, she served a copy of the foregoing upon:

Mr. Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Fl.
Chicago, IL 60601

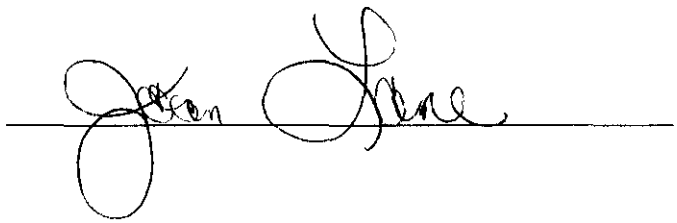
Scott Belt
Scott Belt and Associates, PC
105 E. Main Street, Suite 206
Morris, IL 60450

Clarrisa Grayson
Mark LaRose
LaRose & Bosco, Ltd.
200 N. LaSalle Street, Suite 2810
Chicago, IL 60601

Ms. Dorothy Gunn, Clerk
Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, IL 60601

Bradley Halloran
Hearing Officer
Pollution Control Board
100 W. Randolph, Suite 11
Chicago, IL 60601

By depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above.



HINSHAW & CULBERTSON LLP
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EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS Complainant, vs. COMMUNITY LANDFILL COMPANY, INC., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation. Respondents.	)	Case No. PCB 03-191

AFFIDAVIT

STATE OF ILLINOIS COUNTY OF WINNEBAGO	)	SS

I, Mayor Richard Kopczick, the undersigned being first duly sworn on oath depose and state as follows:

1. I am the Mayor of the City of Morris, and have been the Mayor since May 1, 2001.

2. I am familiar with the real estate owned by the City of Morris, which is leased to Community Landfill Company, Inc. (CLC) to operate a landfill at that site.

3. Prior to being elected Mayor, I was an Alderman for the City of Morris since May 1, 1995.

4. I am also familiar with the complaint filed by the People of the State of Illinois alleging that the City of Morris is required to post financial assurances for said landfill.

5. At no time on or after April 9, 1997, has the City of Morris conducted any disposal operation at the landfill operated by Community Landfill Company, Inc.

6. At no time on or after April 9, 1997, has the City of Morris spread waste at the landfill, compacted waste, operated equipment at the landfill, performed inspections of the site,

set any consumer rates for the landfill, paid the bills of the landfill or its operator CLC, placed cover over the landfill, constructed or developed any portion of the landfill, or otherwise acted as the operator of the landfill.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies 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.

DATED: 11-8-05

Richard Kypriotis

HINSHAW & CULBERTSON LLP
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Rockford, IL 61105-1389
815-490-4900

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PEOPLE OF THE STATE OF ILLINOIS Complainant, vs. COMMUNITY LANDFILL COMPANY, INC., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation. Respondents.	)	Case No. PCB 03-191

AFFIDAVIT

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

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6. At no time on or after April 9, 1997, has the City of Morris spread waste at the landfill, compacted waste, operated equipment at the landfill, supervised the operation of the site,

set any consumer rates for the landfill, paid the bills of the landfill or its operator CLC, placed cover over the landfill, constructed or developed any portion of the landfill, or otherwise acted as the operator of the landfill.

DATED: 11-8-05

Mayor Richard Kopczick

SUBSCRIBED and SWORN to
before me this 8th day of November, 2005.

Notary Public

"OFFICIAL SEAL"
Wm. J. Cheshareck
Notary Public, State of Illinois
My Commission Exp. 11/17/2005

WJC 11-8-05

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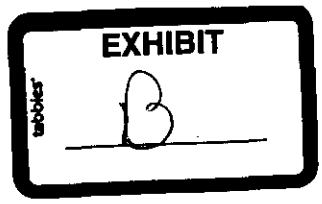

LEASE AGREEMENT

Lease made this 1st day of July, 1982, by and between THE CITY OF MORRIS, ILLINOIS, A Municipal Corporation, hereinafter referred to as "LESSOR", and COMMUNITY LANDFILL CO., An Illinois Corporation, of Joliet, Illinois, hereinafter referred to as "LESSEE".

W I T N E S S E T H :

WHEREAS, Lessor presently owns a parcel of property in Morris Township, Grundy County, Illinois, which is presently licensed as a sanitary landfill; and

WHEREAS, Lessee is in the business of operating regional pollution control facilities, more commonly known as sanitary landfills; and

WHEREAS, Lessee desires to lease from Lessor those premises hereinafter described, as a sanitary landfill; and

WHEREAS, Lessor and Lessee believe that it will be in their mutual interest to enter into this Lease Agreement.

NOW, THEREFORE, in consideration of the promises hereinabove set forth and the mutual covenants hereinafter contained, the parties do hereby agree as follows:

SECTION I

The Lessor in consideration of the rent hereinafter required

to be paid by Lessee and of the agreements hereinafter contained, does hereby lease to Lessee exclusively during the term hereof for the sole purpose of operating a regional pollution control facility in accordance with and pursuant to all laws, rules and regulations promulgated and adopted by all agencies of the federal, state and county governments, including the Illinois Environmental Protection Agency for a Class II landfill, that real estate belonging to the Lessor and described on the attached Exhibit A.

SECTION II

This Lease shall commence on the 1st day of July, 1982, and shall terminate on the 30th day of June, 1999, or at such earlier date as the demised premises have reached full capacity for the collection of Permit II waste, whichever date is earlier; subject, however, to Section XVI hereof.

SECTION III

After the issuance of a Class II operating permit by the Illinois Environmental Protection Agency, Lessee shall pay to the Lessor, and the Lessor agrees to accept therefore for the operation of such regional pollution control facility an annual minimum royalty of Fifteen Thousand ($15,000.00) Dollars, the first payment to be made upon Lessee receiving its operating permit pursuant to Section VIII hereof, and thereaftor on or

.45 per yd Tax ?
Jan 1, 1987 ?

each year of this Lease. Lessee forthwith agrees that Lessor shall be entitled to a royalty in the amounts as follows:

A. For a period from July 1, 1982, to June 30, 1983, the sum of $0.08 per cubic yard of compacted material and $0.02667 per cubic yard of uncompacted material;

B. For a period from July 1, 1983, to June 30, 1984, the sum of $0.0824 per cubic yard of compacted material and $0.02747 per cubic yard of uncompacted material;

C. For a period from July 1, 1984, to June 30, 1985, the sum of $0.0849 per cubic yard of compacted material and $0.02829 per cubic yard of uncompacted material;

D. For a period from July 1, 1985, to June 30, 1986, the sum of $0.0874 per cubic yard of compacted material and $0.02914 per cubic yard of uncompacted material;

E. For a period from July 1, 1986, to June 30, 1987, the sum of $0.0900 per cubic yard of compacted material and $0.03001 per cubic yard of uncompacted material;

F. For a period from July 1, 1987, to June 30, 1988, the sum of $0.0927 per cubic yard of compacted material and $0.03091 per cubic yard of uncompacted material.

Thereafter Lessor shall be entitled to receive as a royalty per cubic yard of compacted material and per cubic yard of uncompacted material an amount equal to the royalty paid for the period referred to in Paragraph F above multiplied by the following fraction in effect at the time the material is deposited.

1. For Compacted Material:

Lessee's dumping charge per cubic yard of compacted material charged to its customers at the time the yardage is deposited divided by Lessee's weighted average dumping charge per cubic yard of compacted material for the period set forth in Subparagraph F

above.

2. For Uncompacted Material:

Lessee's dumping charge per cubic yard of uncompacted material charged to its customers at the time the yardage is deposited divided by Lessee's weighted average dumping charge per cubic yard of uncompacted material for the period set forth in Subparagraph F above.

The denominator in the above fractions shall remain the same at all times but the numerator shall change whenever the dumping charge changes. Lessee shall be entitled to receive credit against the minimum annual royalty payment for yardage deposted until the yardage of material collected during any year exceeds the annual minimum royalty payment. Thereafter, any royalty amounts in excess of the minimum annual royalty shall be paid to Lessor within ten (10) days after the end of the first month and for each successive month thereafter that such yardage amounts deposited exceed the minimum annual royalty.

SECTION IV

During the term of this Lease, Lessee agrees to keep accurate books, records and invoices on all yardage of refuse deposited at the landfill site hereinbefore described. Within forty-five (45) days of the end of each annual term hereof, Lessee shall submit to Lessor a statement to be certified as correct, which sets forth the yardage of refuse authorized to be deposited under Illinois Environmental Protection Agency Permit

II upon Lessor's premises. Lessor may once in any calendar year cause an audit of the business of Lessee to be made by a certified public accountant of Lessor's own selection, and if the statements of yardage previously made by Lessee to Lessor shall be found to be less than the amount of Lessee's yardage as shown by such audit, Lessee shall immediately pay the cost of such audit, as well as the additional compensation therein shown to be payable by Lessee to Lessor; otherwise, the cost of such audit shall be paid by Lessor.

SECTION V

Lessee agrees to use consecutively numbered tickets for all dumping on the premises during the term of this Lease. Lessee further agrees to submit copies of all dumping tickets to Lessor monthly and to provide Lessor with access to its records during normal business hours.

SECTION VI

Lessee shall, with the prior written consent of Lessor, have the right, at its own expense, to construct buildings upon the premises for its own use at any time during the lease term and to make alterations to such buildings. Lessor assumes no liability of any kind for such construction or alterations to any contractor or subcontractor or laborer or materialmen. Such buildings constructed on the premises shall become a part of the

premises and shall belong to Lessor without compensation to Lessee at the expiration of this Lease. Such construction, alterations and additions may be made under the following conditions:

A. That the total market value of the premises shall not be lessened by reason of any such construction, alteration or addition.

B. That the work shall be done in a good and workmanlike manner.

C. That all such construction, additions and alterations shall be expeditiously completed in compliance with all legal requirements applicable thereto.

D. That all work done in connection with such construction, additions or alterations shall be done in accordance with the requirements of all fire prevention and building codes as may be applicable to the City of Morris and general public liability insurance for the benefit of Lessor and Lessee as their interests may appear, and shall be maintained by Lessee at all times when any such work is in progress in connection with such construction, additions or alterations.

E. Lessee will not permit any mechanic's liens or liens to be placed upon the premises or any building or improvement thereon during the term hereof, and in case of the filing of any such lien, Lessee will promptly pay the same. If default in

payment thereof shall continue for thirty (30) days after written notice thereof from Lessor to the Lessee, the Lessor shall have the right and privilege at Lessor's option of paying the same or any portion thereof with out inquiry as to the validity thereof, and any amount so paid, including expenses and interest, shall be so much additional indebtedness hereunder due from Lessee to Lessor and shall be repayed to Lessor immediately on rendition of a bill therefore.

SECTION VII

It is the understanding of the parties hereto that Lessee shall keep the lease premises insured as follows:

A. All insurance provided for in this Paragraph VII shall be procured by Lessee at its sole cost and expense under valid and enforceable standard form policies issued by insurance companies licensed to do business in the State of Illinois.

B. Lessee shall carry fire and extended coverage insurance on any buildings that it may construct upon the premises during the entire term of this Lease in an amount equal to at least eighty (80%) percent of the valuation of the buildings, land and all additions or improvements made thereon by either party, written by a reliable insurance company or companies authorized to do business in the State of Illinois. The policy shall be written in the names of and for the benefit of Lessor and Lessee as their respective interests may appear.

C. Lessee agrees to maintain in effect throughout the term of this Lease public liability insurance covering the demised premises and appurtenances utilized by it in the amount of Five Hundred Thousand ($500,000.00) Dollars for injury to or death of any one person, One Million ($1,000,000.00) Dollars for injury to or death of any number of persons in one occurrence, property liability insurance in the amount of One Hundred Thousand ($100,000.00) Dollars, and an umbrella policy for liability for injury to person or property in the amount of $2,000,000.00. Such insurance shall be the standard form liability policy and shall specifically insure Lessee against all liability assumed hereunder, as well as liability imposed by law, and shall insure both Lessor and Lessee. The insurance companies shall agree by endorsement on the policy or policies issued by it or by independent instruments furnished to the Lessor that it will give to the Lessor fifteen (15) days written notice before the policy or policies in question shall be altered or canceled. Premiums paid by Lessee on such liability insurance obtained by Lessee shall not be considered as additional rental under this Lease.

D. Lessee agrees to obtain workman's compensation insurance which shall provide coverage for all of its employees who work upon the demised premises in an amount of not less than the statutory requirements. Lessee agrees to submit to Lessor a certificate of insurance evidencing the fact that the Lessee has

secured such insurance. The insurance company shall agree to furnish to Lessor by endorsement on the policy or policies issued by it or by independent instruments that it will give to Lessor written notice before policy or policies in question shall be altered or canceled. Premiums paid by Lessee shall not be considered as an additional rental under this Lease.

E. Insurance claims by reason of damage or destruction to any portion of the leased premises shall be adjusted by Lessee and Lessor.

SECTION VIII

The parties hereto do hereby understand and agree that the use of the premises as a Class II permit regional pollution control facility requires the issuance of two permits by the Illinois Environmental Protection Agency. The first permit is referred to as a development permit. This permit allows the applicant to develop the demised premises in accordance with the rules and regulations of the agency in order to determine ultimately whether such site is suitable for use as a sanitary landfill. If the Environmental Protection Agency determines that such site is suitable, it will thereupon issue to the development permitee an Operating Permit. Lessor agrees to cooperate with Lessee, at no expense to Lessor, for the purpose of renewing the permits previously issued to Lessor. If it is required by the

Illinois Environmental Protection Agency, Lessor agrees to execute all applications and other documents that may be required to secure such permits. In addition, Lessor further agrees to execute all applications and other documentation that may be required by the County of Grundy to approve such site as a regional pollution control facility. Lessor and Lessee do hereby agree that Lessee's obligation for the payment of any rental under the terms of this Lease is contingent upon Lessee receiving an Operating Permit for the use of this facility as a Class II sanitary landfill under and pursuant to the terms, provisions, rules and regulations of the Illinois Environmental Protection Agency. In the event Lessee is unable to obtain such operating permit within ninety (90) days of the date of this Lease Agreement, such Agreement shall become null and void.

SECTION IX

Lessor further agrees to co-operate with Lessee in amending the Operating Permit previously issued to Lessor to permit above-grade fill on the site to a maximum height of forty-five (45) feet, rather than the present twenty-five (25) feet.

SECTION X

Lessee has examined and knows the condition of the premises and has received the same in good order and repair and acknowledges that no representations as to the condition and the

repair thereof have been made by Lessor, or their agents prior to or at the execution of this Lease that are not herein expressed. Lessor shall not be obligated to incur any expenses for repairing any improvements upon said demised premises or connected therewith, and Lessee at its own expense will keep the demised premises including all appurtenances in good repair and in compliance with all local rules, general regulations, laws, statutes and ordinances of all federal, state and county government having jurisdiction over the demised premises, including all rules and regulations of the Illinois Environmental Protection Agency. Lessee will, as far as possible, keep said improvements from deterioration due to ordinary wear and from falling temporarily out of repair. If Lessee does not make repairs as required hereto promptly and adequately Lessor may, but need not make, such repairs and the cost thereof, and such costs shall be so much additional rental immediately due from and payable by Lessee to Lessor. At the termination of this Lease, Lessee will cover the landfill site with materials approved by the Illinois Environmental Protection Agency.

SECTION XI

Lessor and Lessee do hereby agree that nothing contained herein shall be interpreted to convey any interest that Lessor may have in the mineral rights upon the demised premises to Lessee, and that Lessor shall have full and unrestricted right to

the use and benefit of such mineral rights; provided that during the term of this Lease any methane gas that may be generated as a result of the operation of the sanitary landfill shall be the sole and exclusive property of the Lessee.

SECTION XII

Lessee will pay in addition to the rent above specified all water rents, sewerage charges, gas and electric light and power bills taxes, levied or charged on the premises, for and during the time for which this Lease is granted, and in case water rents and bills for gas, electric light and power shall not be paid when due, Lessor shall have the right to pay the same, which amount so paid together with any sums paid by Lessor to keep the premises in a clean and healthy condition as above specified, are declared so much additional rent and payable with the installment of rent next due thereafter; provided that in no event shall Lessor be obligated for any water rents, sewerage charges, gas and electric light and power bills that may be taxed or levied or charged.

SECTION XIII

All operations shall be conducted in a safe and prudent manner, and it is agreed that should any dispute arise between Lessor and Lessee regarding the conduct of operations in a safe and prudent manner, such dispute shall be referred to the

Illinois Environmental Protection Agency for decision, such decision to be final and binding on both parties. In addition, Lessee will comply with all laws, rules and regulations of any governmental authority affecting Lessee's operations in the leased premises, and will on request, furnish Lessor with supporting evidence of such compliance.

SECTION XIV

Lessor acknowledges that Lessee intends to operate the landfill on the premises six (6) days per week, fourteen (14) hours per day, or such additional days and hours as the Lessee determines necessary. Lessor agrees not to adopt any ordinances, rules, regulations or other limitations affecting the ability of Lessee to operate the landfill less than six (6) days per week, fourteen (14) hours per day.

SECTION XV

Lessor acknowledges that it is Lessee's intention to attempt to acquire an additional parcel of real estate immediately adjacent to, and southeast of, the leased premises and consisting of approximately eighteen acres. If Lessee acquires said real estate, Lessee agrees to convey it to Lessor for a nominal consideration of Ten Dollars. Said parcel shall become part of the demised premises upon conveyance to Lessor and shall be subject to all of the terms and conditions of this Lease

Agreement.

SECTION XVI

Lessee agrees to accept all qualified waste collected from residents and commercial establishments of Lessor for deposit in the landfill operated on the premises for a period of fourteen (14) years from the date of this Agreement. Lessee shall be obligated to accept said waste regardless of the entity collecting the waste and delivering it to the landfill. This waste shall be received by Lessee at the same charges as applicable to other similar waste deposited in the landfill, which charges shall not be excessive.

Lessee agrees the City of Morris engineer shall monitor the use of the landfill by Lessee. In the event the City engineer shall determine that the capacity of the landfill is being utilized at a rate which could affect the ability of Lessee to accept Class II waste from the City of Morris for the fourteen year period above required, Lessor shall so notify Lessee and Lessee shall affirmatively show to Lessor its policy for future utilization of the landfill so as to establish its ability to satisfy Lessee's obligation to accept Class II waste from the City of Morris for the fourteen year period above required.

SECTION XVII

Each of the following events shall constitute a default or

breach of this Lease by Lessee:

A. If Lessee or any successor assignee of Lessee while in possession shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or shall voluntarily take advantage of any such act by answer or otherwise.

B. If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against Lessee, or if a receiver or trustee shall be appointed for all or substantially all of the property of Lessee and such proceedings shall not be dismissed or the receivership or trusteeship vacated within thirty (30) days after the institution or appointment.

C. If Lessee shall fail to pay Lessor any rent or additional rent when the rent shall become due and shall not make the payment within thirty (30) days after notice thereof by Lessor to Lessee.

D. If Lessee shall fail to perform or comply with any of the conditions of this Lease and if the non-performnce shall continue for a period of thirty (30) days after notice thereof by Lessor to Lessee, or if the performance cannot be reasonably had within the thirty (30) day period and Lessee shall not in good faith have commenced performance within the thirty (30) day period and shall not diligently proceed to completion of performance.

E. If Lessee shall vacate or abandon the lease premises.

F. .If Lessee fails to obtain an operating permit for a Class II landfill from the Illinois Environmental Protection Agency.

SECTION XVIII

In the event of any default hereunder as set forth in paragraph XVII, the rights of Lessor shall be as follows:

A. Lessor shall have the right to cancel and terminate this Lease as well as all of the right, title and interest of Lessee hereunder by giving to Lessee not less than five (5) days notice of cancellation and termination. On expiration of the time fixed in the notice this Lease and the right title and interest of Lessee hereunder shall terminate in the same manner and with the same force and effect, except as to Lessee's liability as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.

B. Lessor may reenter the premises immediately and remove the property and personnel of Lessee and store the property in a public warehouse or a place selected by Lessor at the expense of Lessee. After reentry Lessor may terminate the Lease in giving five (5) days written notice of termination to Lessee. Without the notice, reentry will not terminate the Lease. On termination Lessor may recover from Lessee all damages proximately resulting

from the breach, including the cost of recovering the premises, which sum shall be immediately due Lessor from Lessee.

C. Lessee shall be liable for all expenses of the reletting, and for all costs that may be incurred in properly covering the landfill site and other events of closure according to the rules and regulations of the Illinois Environmental Protection Agency; provided that in the event Lessor relets the site to another party for the purpose of continuing a sanitary landfill operation, Lessee shall not be responsible for the cost of the closure of the landfill.

SECTION XIX

Lessee will allow Lessor free access to the premises for the purpose of examining or exhibiting the same or to make any needful repairs or alterations thereof which Lessor may see fit to make and will allow to have placed upon the premises at all times ntoices of "For Sale" and "To Rent" and will not interfere with the same.

SECTION XX

The parties acknowledge that the drainage of surface water for the premises leased hereunder is to the east through ditches constructed by the Lessor around property owned by it which was formerly used for the City of Morris Landfill.

Lessee agrees to maintain said drainage ditches as they now

exist at its own expense during the term of this Lease.

Lessor hereby grants to Lessee an easement for drainage purposes and for the purpose of maintaining said ditches across that real estate described in the attached Exhibit B.

XXI.

Lessee covenants and agrees that it will protect and save and keep the Lessor forever harmless and indemnified against and from any penalty or damages or charges imposed for any violation of any laws or ordinances, whether occasioned by the neglect of Lessee or those holding under Lessee and that Lessee will at all times protect, indemnify and save and keep harmless the Lessor against and from any and all loss, costs, damage or expenses, arising out of or from any accident or other occurrence on or about the premises, causing injury to any person or property whomsoever or whatsoever and will protect, indemnify and save and keep harmless the Lessor against and from any and all claims and against and from any and all loss, cost, damage or expense arising out of any failure of Lessee in any respect to comply with and perform all the requirements and provisions hereof.

SECTION XXII

Lessee will pay and discharge all reasonable costs, attorneys' fees and expenses that may be incurred by Lessor, in enforcing the convenants and agreements of this Lease and Lessor

will pay and discharge all reasonable costs, attorneys' fees and expenses that may be incurred by Lessee in enforcing the covenants and agreements of this Lease.

SECTION XXIII

Lessee shall not sublease any part of the demised premises, or assign this Lease, without the prior written consent of Lessor, their heirs or assigns and if Lessee shall violate this provision, it shall be lawful for Lessor, their heirs or assigns to reenter the premises hereby leased or any part thereof and to repossess the premises, anything herein contained to the contrary notwithstanding.

SECTION XXIV

All the covenants and conditions and obligations herein contained shall be binding upon and enure to the benefit of the respective heirs and successors and assigns of the parties hereto to the same extent as if each such heir, successor and assign were in each case named as a party to this Lease. This Lease may not be changed, modified or discharged except by writing signed by Lessor and Lessee.

SECTION XXV

In the event permits to operate Class II sanitary landfills are suspended, revoked or canceled because of substantial changes of any governmental law, rule, or policy, this Lease shall become

null and void and Lessee shall no longer be obligated to Lessor except for any rents that may be due and for the proper closure of the landfill site.

SECTION XXVI

Lessor agrees to do everything within its power to maintain the tax exempt status of the real estate leased hereunder. In the event the lease hold interest of Lessee or any part of the real estate is assessed for real estate tax purposes, Lessee agrees to pay all real estate taxes resulting from said assessment. Lessee shall pay for all legal expenses and costs incurred by Lessor in maintaining the tax exempt status of the real estate leased hereunder.

SECTION XXVII

All notices required or permitted hereunder shall be in writing and may be given by certified mail, first class mail, or during regular business hours by delivery by messenger or by delivering in person to the person named below until further notice to the contrary is given by any one of the parties hereto:

LESSOR:	LESSEE:
City of Morris Morris City Hall Morris, IL 60450	Community Landfill Company 25 North Ottawa Street Joliet, IL

All notices by mail shall be deemed delivered when deposited with the United States Postal Service.

SECTION XXVIII

For the purposes of this Lease Agreement, the term "Class II Landfill" shall mean a sanitary landfill operated in accordance with the Illinois Environmental Protection Act and all regulations issued thereunder for the sole purpose of accepting "municipal waste" as that term is defined in the Illinois Environmental Protection Act.

SECTION XXVIX

To guarantee the fulfillment of all terms and conditions of this Lease Agreement, Lessee agrees to deposit with Lessor within ten (10) days after the execution of this Lease Agreement a letter of credit issued by a financial institution licensed by the State of Illinois or by the United States Government in the amount of $50,000.00. This letter of credit shall remain in effect the entire term of this Lease Agreement and shall be conditioned on the Lessee duly performing all conditions and obligations under this Lease Agreement. Said letter of credit shall provide in the event of a default by Lessee, which default shall remain uncured for thirty (30) days after written notice to Lessee, that Lessor shall be entitled to immediately draw against said letter of credit in the amount of the default or the sum of $50,000.00, whichever is less.

SECTION XXX

Lessee agrees not to transfer a controlling interest of the stock of Lessee without the prior written consent of Lessor, which consent shall not be reasonably withheld. It is the intent of this provision that Lessor be aware of the principals of Lessee and have an opportunity to object to a transfer of controlling interest if Lessor believes it would adversely affect it under this Lease Agreement.

The parties agree that this provision shall not be applicable to a public offering of stock by Lessee or to the merger of Lessee into a publicly held corporation.

SECTION XXXI

This Lease Agreement will be governed both as to interpretation and performance under the Laws of the State of Illinois.

IN WITNESS WHEREOF, the Lessor and the Lessee by and through its President and Corporate Secretary have executed this Lease Agreement on the day and year first above written.

CITY OF MORRIS

BY: James R. Washburn

ATTEST:

Marjorie Warren by
Clerk Audrey Hydall, Dep.

COMMUNITY LANDFILL COMPANY, An Illinois Corporation

BY: Robert J. Crum

Its President

ATTEST:

Robert A. Branch
Corporate Secretary

GUARANTEE OF ROYALTY

In consideration of the execution of this Lease Agreement by Lessor, the undersigned hereby personally guarantee the royalty payments to be paid by Lessee to Lessor as required by Section III of this Lease Agreement.

DATED: July 1, 1982

Robert J. Quinn

Edward H. Quinn

Robert A. Bonnell

LEGAL DESCRIPTION
LANDFILL, WEST SIDE

Commencing at the northeast corner of Section 3, Township 33 North, Range 7 East of the Third Principal Meridian, said point being the POINT OF BEGINNING; thence due South along the east line of said Section 3 for a distance of 156.00 feet; thence South 48° 00' 44" West for a distance of 1777.80 feet; thence South 89° 34' 40" West for a distance of 1016.00 feet to a point which falls on the east right-of-way line of the Chicago, Rock Island and Pacific Railroad spur line; thence North 00° 39' 20" West along said east right-of-way line for a distance of 454.20 feet; thence North 05° 38' 00" East along said east right-of-way line for a distance of 100.00 feet; thence North 18° 04' 00" East along said east right-of-way line for a distance of 100.00 feet; thence North 27° 48' 00" East for a distance of 50.00 feet to a point which falls on the southerly right-of-way line of the main tracks of the Chicago, Rock Island and Pacific Railroad; thence North 50° 44' 00" East along said southerly right-of-way line for a distance of 369.27 feet; thence due South along said southerly right-of-way line for a distance of 38.75 feet; thence North 50° 44' 00" East along said southerly right-of-way line for a distance of 1813.00 feet; thence South 39° 16' 00" East along said southerly right-of-way line for a distance of 70.00 feet; thence North 50° 44' 00" East for a distance of 700.00 feet to a point which falls on the east line of Section 34, Township 34 North, Range 7 East of the Third Principal Meridian; thence due South along said east line for a distance of 1069.90 feet to the point of beginning, containing 64.03 acres, more or less, all located in the Northeast Quarter ($NE\frac{1}{4}$) of Section Three (3) Township Thirty-three (33) North, Range Seven (7) East and the Southeast Quarter ($SE\frac{1}{4}$) of Section Thirty-four (34), Township Thirty-four (34) North, Range Seven (7) East of the Third Principal Meridian, City of Morris, County of Grundy, and State of Illinois.

June 29, 1982

EXHIBIT A

ADDENDUM TO LEASE AGREEMENT

THIS ADDENDUM entered into this 1st day of July, 1982, by and between THE CITY OF MORRIS, ILLINOIS, A Municipal Corporation, hereinafter referred to as "Lessor", and COMMUNITY LANDFILL CO., An Illinois Corporation, of Joliet, Illinois, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, Lessor and Lessee have negotiated a Lease Agreement for premises to be operated by Lessee as a Sanitary Landfill; and

WHEREAS, the parties hereto, in consideration of entering into said Lease Agreement and covenants contained herein, desire to add the following provisions to said Lease Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

1. ESTABLISHMENT OF CONTINGENCY FUND. Lessor has indicated its intention of establishing a contingency fund by setting aside $5,000. of the annual minimum royalty required by Section III of the Lease Agreement, which contingency fund would be used solely to satisfy contingent liabilities resulting from the operation of a Sanitary Landfill on the leased premises by Lessee or, if not necessary for said purpose, to be used to improve the leased premises at the termination of the Lease Agreement for recreational uses by residents of the City of Morris.

2. CONTRIBUTIONS TO FUND BY LESSEE. In the event Lessor establishes a contingency fund as referred to in

Paragraph 1 above, within 120 days from the date of this Addendum to Lease Agreement, by adopting any and all necessary ordinances or resolutions;, and in the further event Lessor makes annual contributions to said fund as referred to in Paragraph 1 above, Lessee hereby agrees to contribute to said fund an amount equal to 1/2 of the contribution by Lessor up to a maximum contribution by Lessee of $2,500. in any 12-month period. Payments by Lessee shall be made within 30 days after being advised by Lessor that Lessor has made its annual contribution. Lessee agrees that this contribution shall be over and above any sums required to be paid by it under the Lease Agreement.

3. TERM. This Addendum shall remain in full force and effect during the term of the Lease Agreement.

4. EFFECT OF ADDENDUM. This Addendum shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, The Lessor and the Lessee by and through its President and Secretary have executed this Addendum to Lease Agreement on the day and year first above written.

CITY OF MORRIS

BY: James R. Washburn

ATTEST:

Audrey Hydack
Dep. Clk.
CLERK

COMMUNITY LANDFILL COMPANY, An Illinois Corporation.

ATTEST:

BY: Robert J. Lanin

Its President

Corporate Secretary