

RESOLUTION R2013-4

RESOLUTION AUTHORIZING EXECUTION
OF HOST COMMUNITY AGREEMENT
PLANO TRANSFER STATION, L.L.C.

WHEREAS, there has been presented to the City Council of the City of Plano by PLANO TRANSFER STATION, L.L.C., an Illinois Limited Liability Company, a certain HOST COMMUNITY AGREEMENT regarding a Waste Transfer Station; and

WHEREAS, said Agreement has been reviewed by the City Council of the City of Plano.

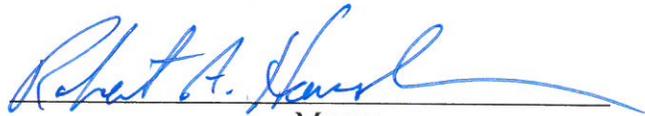
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Plano, Kendall County, Illinois, as follows:

1. That the Mayor and City Clerk are authorized and directed to execute said HOST COMMUNITY AGREEMENT on behalf of the City.

2. Upon execution of said HOST COMMUNITY AGREEMENT, a copy thereof shall be attached to this Resolution.

PASSED by the City Council of the City of Plano on the 25th day of February, 2013.

APPROVED by the Mayor of the City of Plano on the 25 day of February, 2013.



Mayor

ATTEST:



City Clerk

HOST COMMUNITY AGREEMENT

This Agreement ("Agreement") is executed this 27th day of March, 2013, by the City of Plano, Illinois, an Illinois municipal corporation (the "City") and Plano Transfer Station, L.L.C, an Illinois limited liability company ("Transfer Station Operator").

WHEREAS, the City understands that the Transfer Station Operator intends to file with the City an application for siting approval ("Application") under Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. ("Act") for the development, construction and operation of a Transfer Station on the property that is described in this Agreement ("Property"); and

WHEREAS, the Transfer Station Operator does not currently own the Property; the Transfer Station Operator is under contract to either purchase, lease, or operate the transfer station on the Property, which is located within the corporate limits of the City; and

WHEREAS, the City has not consented to or concurred in the Application for siting of the Transfer Station that the Transfer Station Operator proposes to develop, construct and operate on the Property and nothing in this Host Community Agreement shall be deemed by the Transfer Station Operator, the City, other public agencies, the public, or any other person or entity, to indicate that the City has herein or heretofore adopted any position with regard to the proposed Application or the proposed Transfer Station; and

WHEREAS, if the City approves the Application for the siting of the proposed Transfer Station with or without conditions, and if the Illinois Environmental Protection Agency issues permits for the development and

operation of the Transfer Station, and if the Transfer Station Operator develops, constructs and operates the Transfer Station, the Transfer Station Operator is willing to pay to the City, and the City desires to accept Host Benefit Fees as hereinafter set forth.

NOW, THEREFORE, the preceding recitals are incorporated by reference herein and in consideration of the mutual obligations undertaken herein, the receipt and sufficiency of which are hereby acknowledged, it is mutually understood and agreed by the Transfer Station Operator and the City as follows:

1. **Definitions.** When used in this Agreement, the following terms shall have the following meanings:

“Act” shall mean the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq, as amended from time to time.

“Application” shall mean the application under Section 39.2 of the Act that the Transfer Station Operator intends to file with the City requesting siting approval for the Transfer Station on the Property.

“Asbestos-Containing Materials” shall have the meaning provided in 40 CFR 761.

“City Municipal Waste, Landscape Waste and Recyclables” means the Municipal Waste, Landscape Waste and Recyclables collected by or under contract with the City which the City directs to Transfer Station, said material not being mixed with other Municipal Waste, Landscape Waste or Recyclables.

“Construction and Demolition Debris” shall have the meaning provided in

415 ILCS 5/3.160 of the Act and regulations promulgated under the Act.

“Effective Date” shall mean the date on which this Agreement is executed, as shown at the top of the first page of this Agreement.

“Hazardous Waste” shall have the meaning provided in 415 ILCS 5/3.220 of the Act and regulations promulgated under the Act.

“Host Benefit Fees” shall mean the dollar amount per ton of Waste accepted by the Transfer Station Operator at the Transfer Station which the Transfer Station Operator has agreed to pay to the City under this Agreement.

“IEPA” shall mean the Illinois Environmental Protection Agency.

“Industrial Process Waste” shall have the meaning provided in 415 ILCS 5/3.235 and regulations promulgated under the Act.

“Landfill Waste” means all Waste destined for a landfill and does not include any Landscape Waste, recyclable Construction and Demolition Debris, Recyclables, or other Waste, which is not destined for a landfill for disposal.

“Landscape Waste” shall have the meaning provided in 415 ILCS 5/3.270 of the Act and regulations promulgated under the Act.

“Liquid Waste” shall have the meaning provided in 35 IAC 811.107(m)(3)(A).

“Municipal Waste” shall have the meaning provided in 415 ILCS 5/3.290 of the Act, and shall include garbage, general household and commercial

waste, industrial lunchroom or office waste, Construction and Demolition Debris, and white goods. Municipal Waste specifically excludes Landscape Waste.

“Operations Date” shall mean the first day of business at which Waste is accepted at the Transfer Station.

“Portable Empty Container” shall have the meaning provided in 415 ILCS 5/3.475(c)(2) and any liner for any such container.

“Property” shall mean a parcel of approximately three to six (3-6) acres, located west of Eldamain Road, Little Rock Township, Kendall County, State of Illinois, as more particularly described on Exhibit A to this Agreement, which the Transfer Station Operator proposes to use for the development, construction and operation of the Transfer Station.

“Recyclables” shall mean any recyclable materials, whether or not source-separated, which the Transfer Station Operator determines to accept.

“Regular Business Hours” of the Transfer Station shall mean 6:00 a.m. to 6:00 p.m. on weekdays and 6:00 a.m. to 1:00 p.m. on Saturdays, with no operation on Sundays or federal holidays, provided that on the Saturday following any federal holiday Regular Business Hours may be extended by the Transfer Station Operator to 6:00 p.m.

“Special Waste” shall have the meaning provided in 415 ILCS 5/3.475 of the Act and regulations promulgated under the Act.

“Transfer Station” shall mean the transfer station, as defined in 415 ILCS 5/3.500 of the Act and regulations promulgated under the Act, to be developed, constructed and operated on the Property and subject to this

Agreement.

“Transfer Station Operator” means Plano Transfer Station, L.L.C, an Illinois limited liability company and shall include its successors.

“Waste” shall have the meaning provided in 415 ILCS 5/3.535 of the Act and regulations promulgated under the Act, and shall include all types of waste and Recyclables otherwise defined in this Agreement. “Waste” does not include “Hazardous Waste”.

Any term not otherwise attributed to it shall have the same meaning as under the Act.

2. **Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall expire on the date on which the use of the Property permanently ceases to be as a Transfer Station.

3. **Authorization for Transfer Station Development, Construction and Operation.** The Transfer Station Operator shall be responsible for obtaining approval of the Application and for obtaining all other permits and authorizations which are necessary under applicable law for the development, construction or operation of the Transfer Station on the Property. Transfer Station Operator shall provide the City with a reasonable opportunity to review and comment upon any application to modify or amend any IEPA permit before such is filed, provided that the City’s approval cannot be unreasonably withheld or delayed. The City must approve any new operator of the Transfer Station and must approve any change of controlling interest of greater than 49% in the Transfer Station Operator or in any of its parent companies or members. The City’s approval cannot be unreasonably withheld or delayed for a period in excess of 60 days. Should the City fail to act on a notification of change

within said 60 day period, the requested change shall be deemed accepted.

4. **Waste Acceptable for Delivery to the Transfer Station.**

- a. The Transfer Station Operator may accept delivery at the Transfer Station of any Waste which it is permitted to accept by the IEPA and which it is not otherwise prohibited from accepting under this Agreement.
- b. Waste which may be accepted at the Transfer Station under this Agreement includes the following: Construction & Demolition Debris, Landscape Waste, Municipal Waste, Non-liquid Industrial Process Waste, Recyclables, and Special Waste not specifically prohibited under this Agreement.

5. **Waste Not Acceptable for Delivery to the Transfer Station.** The Transfer Station Operator shall not knowingly accept delivery of, treat or dispose of any of the following types of Waste at the Transfer Station:

- a. Asbestos-Containing Materials;
- b. Hazardous Waste;
- c. Liquid Waste;
- d. All types of Special Waste, unless approved by resolution of the City Council.
- e. Any other Waste deemed unacceptable for delivery to the Transfer Station as a condition of siting approval by the City, under permits

issued by the IEPA, or under regulations promulgated by the Illinois Pollution Control Board.

6. **Communication Between the City and the Transfer Station Operator.**

From and after the Operations Date:

- a. The Transfer Station Manager shall be the City's point of contact for matters relating to the Transfer Station or this Agreement;
- b. The Transfer Station Manager shall have an office at the Property;
- c. The Transfer Station shall maintain a telephone number for public inquiries, complaints, and customer calls. This phone number will be answered by a person employed or retained by the Transfer Station Operator during Regular Business Hours. The Transfer Station Operator shall also provide a voice mail telephone number and a website for public inquiries and complaints. The voice mail will direct inquiries to the website after regular business hours. All complaints shall be logged and shall note the nature of the complaint and the resolution of the complaint. All complaints will be thoroughly investigated by the Transfer Station Operator within twenty four (24) hours. In addition, the Transfer Station Operator shall provide the City with an emergency telephone number for contacting the Transfer Station Operator at any time in the event of an emergency;
- d. All records required (either by federal, state, or city approvals, permits or regulations or Transfer Station Operator commitments) to be maintained by the Transfer Station Operator shall be in a form approved by the City of Plano and, at a minimum, a word-searchable electronic form shall be maintained and all hand written

reports shall be scanned into an electronic format;

- e. Applicant shall maintain a website with an email address to report complaints concerning the operations of the Transfer Station. All complaints shall be logged and shall note the nature of the complaint and the resolution of the complaint; and
- f. Transfer Station Operator shall, at its sole cost and expense, prepare and submit to the City a semi-annual performance audit of the facility. Said performance audit shall consist of a description of complaints by date received, the resolution and date of resolution thereof. The performance audit shall additionally include the name and contact information for each complainant and such additional information reasonably requested by the City. Further, the Transfer Station Operator shall supply the same information as from time to time requested by the City.

7. **Delivery of City Municipal Waste, Landscape Waste and Recyclables.**

The fee charged to the City or its Contractor by the Transfer Station Operator regarding City Municipal Waste, Landscape Waste and Recyclables shall be no greater than any such fee paid by any other customer for similar or smaller quantities of Municipal Waste, Landscape Waste and Recyclables received at the Transfer Station.

8. **Preference for City Residents and Businesses.** The Transfer Station Operator agrees to hire City residents and agrees that it shall give preference to suitably skilled applicants residing in the City before hiring other applicants for work at the Property, to the extent that such preference does not violate any state or federal employment and civil rights laws. Further, the Transfer Station Operator agrees that for all work performed at the Property, it shall require its contractors to give preference to new

employees from suitably skilled applicants residing in the City before hiring applicants residing elsewhere. The Transfer Station Operator further agrees that it shall give preference to firms located in the City which provide a competitive price or bid (where bidding is required) and which are capable of performing the required work before contracting with or otherwise retaining firms headquartered elsewhere.

9. **Courtesy Facilities.** The Transfer Station Operator agrees to incorporate a courtesy drop-off area into the facility design, for the convenient use and benefit of the citizens of the City. The drop-off area will accept Recyclables. The Transfer Station Operator may restrict the materials and quantity of materials accepted. Citizens will be additionally allowed to drop-off Municipal Waste and Landscape Waste for which the Transfer Station Operator may impose a fee for the weight or volume of such materials.
10. **Coordination and Cooperation with City Programs.** The Transfer Station Operator and the City shall reasonably cooperate with each other in securing federal or state grants or other aid for recycling and other waste collection and disposal programs, provided that neither the Transfer Station Operator nor the City shall be required to fund or match funding for any such grants or programs.
11. **Operations, Storage, Recyclables and Containers.**
 - a. All tipping of Waste at the Transfer Station shall be on the tipping floor inside the transfer building, and, except as provided in Section 11.b. below, the Transfer Station Operator shall have the tipping floor free of waste and cleaned with a mechanical street sweeper by the end of each operating day;

- b. No Waste shall be left on the tipping floor inside the transfer building or outside the transfer building on the Property overnight, except:
 - i. In no more than 2 partially filled transfer trailers, provided that such trailers are stored inside the transfer building and suitably covered;
 - ii. Recyclables shall be stored inside the transfer building in designated locations and may remain in the transfer building until full loads of sorted Recyclable material are assembled.
- c. No more than 4 cleaned and empty Waste collection containers may be stored outside the transfer building;
- d. No more than four (4) cleaned empty transfer trailers may be stored outside the transfer building and then for no more than 24 hours;
- e. Should the capacity of the transfer building for inside storage be reached, Construction and Demolition Debris may be stored, but not processed, in not more than 2 covered containers outside the transfer building overnight and, under no circumstances, for more than 24 hours. Nothing herein shall relieve the Transfer Station Operator from its obligation to control litter, odor, noise, and dust;
- f. Provided, however, that no more than a total of 8 containers or transfer trailers, referred to in Sub-paragraphs c, d, and e of this paragraph, shall be stored on the site at any time.
- g. Operations for Construction and Demolition Debris must conform to

the City Code and any applicable regulations or standards of the State of Illinois or any of its agencies including but not limited to those concerning noise, lighting, dust and odor control;

- h. No concrete shall be crushed at the Transfer Station or on the Property;
- i. The Transfer Station Operator shall conduct all operations in a manner that is protective of the public health, safety, welfare, groundwater resources, and the environment. The Transfer Station Operator shall strictly comply with all City Ordinances and all applicable laws, ordinances, rules and regulations, including but not limited to Pollution Control Board regulations and the City Code;
- j. Further, at a minimum, the Transfer Station Operator shall provide a street sweeper to remove mud and dust tracked on to hard surfaces inside and outside the Property including onto public roads within three-fourths (3/4) mile of the Property on an as needed basis, but not less frequently than daily. All access drives, parking areas, storage areas and vehicle maneuvering areas on the Property shall be paved and swept with a street sweeper as needed, but not less frequently than daily;
- k. The City acknowledges that incidental to the Transfer Station Operations, white goods, rebar and other scrap metal may be accumulated, and stored in covered containers. The Transfer Station Operator shall remove such material no less than bi-weekly; and
- l. The Transfer Station Facility and any area used for the outdoor storage of any material or equipment will be fenced and visually

screened from viewing from off the Property by means of said fence and appropriate landscaping. A cyclone fence with privacy slats shall not be utilized for this purpose on any street frontage of the Property.

- m. In the case of any emergency situation, the Transfer Station Operator may request, and the Mayor of the City of Plano may authorize, a temporary suspension of the operation rules provided that the temporary suspension does not violate other City Ordinances or IEPA Permits.

12. **City Inspection of the Transfer Station.** The City may, during Regular Business Hours of the Transfer Station, inspect the Transfer Station for compliance with this Agreement, the Site Plan, conditions of approval, conditions of any IEPA permit, City Ordinances and any other applicable laws or regulations.

13. **Operating Hours of the Transfer Station.**

- a. The Transfer Station may accept delivery of Waste during its Regular Business Hours;
- b. The following activities are not restricted to the Regular Business Hours of the Transfer Station:
 - i. Loading Waste inside the Transfer Station;
 - ii. Transfer Station cleaning;
 - iii. Office work and administrative activities;

- iv. The indoor processing of Construction and Demolition Debris not involving concrete crushing; and
- v. Any other activities performed inside the transfer building with the doors closed.

14. **Public Health Safety and Welfare.** The Transfer Station Operator shall:

- a. Promptly investigate, respond to and remedy the cause of complaints from the City, residents and commercial entities, regarding litter. The Transfer Station Operator shall respond to such complaints on the business day the complaint was received by the Transfer Station Operator, if the complaint was received prior to noon on the day received, and in any case not later than the end of regular business hours on the business day following receipt of the complaint by the Transfer Station Operator. The Transfer Station Operator shall maintain a log of all complaints received, and shall supply to the City upon request, a copy of the log showing the date each complaint was received, a summary of the nature of the complaint, the disposition of the complaint, and the date of such disposition;
- b. The Transfer Station Operator shall abide by the litter control plan as approved by the City as a result of the siting process. At a minimum, the Transfer Station Operator shall patrol and remove litter from the Property, all public streets within three-quarters (3/4) mile from the gate of the Transfer Station, and all of that part of Eldamain Road between Corneils Road and Route 34 until Eldamain Road north of the Property is improved to accommodate heavy truck traffic, at which time litter patrols shall extend from

Galena Road to Route 34; and

- c. Pay a per incidence special fire response fee for any fire which requires a response from the Little Rock-Fox Fire Protection District.
 - d. Contribute \$4000 per year to the Little Rock-Fox Fire Protection District. Such contribution shall be utilized for special tools, training or procedures required to assure the safety of the facility and its personnel. Such fee shall be prepaid for the first 4 years in the amount of \$16,000, payable at occupancy permit of the transfer station.
 - e. Operate in compliance with this Agreement, the terms of any siting approval and all applicable laws, ordinances, regulations and permits.
15. **Siting Application.** The Transfer Station Operator shall provide the following plans consistent with the terms of this Agreement as a part of its siting application:
- a. A Landscaping plan;
 - b. A plan describing the insurance coverage reasonably necessary for the Transfer Station which shall, at a minimum, contain the following policies and limits:
 - i. Commercial General Liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and a combined limit of Two Million Dollars (\$2,000,000);

- ii. Excess liability insurance, covering claims in excess of the underlying insurance in the Commercial General Liability policy, with a Three Million Dollars (\$3,000,000) minimum limit;
- iii. Workers Compensation Insurance as required by the laws and regulations of the State of Illinois;
- iv. Employer's Liability Insurance in the amount of One Million Dollars (\$1,000,000) per accident; and
- v. Environmental Impairment and Liability Insurance covering on and off site contamination in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and a combined limit of Four Million Dollars (\$4,000,000) in the aggregate.

Further, the Transfer Station Operator shall add and maintain the City as an additional insured on all such insurance policies for the term of this Agreement at the Transfer Station Operator's sole cost and expense.

- c. Plans, as agreed to by the City, to control noise, litter, vectors, mud tracking, fire, spills, accidents, dust and odor (including as a minimum misting to control odor and dust) as well as video monitoring; and
- d. A traffic control plan which shall include routes of vehicles entering and leaving the Transfer Station as well as plans for all necessary road improvements.

16. **Host Benefit Fees.** From and after the Operations Date, the Transfer Station Operator shall pay to the City, Host Benefit Fees based on the quarterly average tonnage of Landfill Waste per operating day. For purposes of this calculation, each operating weekday (Monday through Friday) shall count as one (1) operating day, and each operating Saturday shall count as one-half (1/2) operating day. Further, in no event shall the number of operating days in the Operating Year exceed 286 for purposes of this calculation.
- a. The Host Benefit Fee on the quarterly average tonnage of Landfill Waste per operating day shall be as follows:
 - i. \$2.29 per ton, if the average tonnage per operating day accepted by the Transfer Station is from 1 to 499 tons;
 - ii. \$2.34 per ton on all tonnage, if the average tonnage per operating day accepted by the Transfer Station is from 500 to 999 tons;
 - iii. \$2.39 per ton on all tonnage, if the average tonnage per operating day accepted by the Transfer Station is over 1000.
 - b. For each ton of Landscape Waste accepted by the Transfer Station during a calendar quarter or portion thereof, the Transfer Station Operator shall pay to the City a Host Benefit Fee of \$0.25 per ton;
 - c. The Host Benefit Fees in subsection (a) of this section shall remain unadjusted until the fourth (4th) anniversary of the Execution Date

of this Host Community Agreement;

- i. On the fourth anniversary of the Execution Date of this Host Community Agreement and on each anniversary thereafter, all Host Benefit Fees shall be increased or decreased annually by the percentage increase or decrease during the previous calendar year in the Consumer Price Index (CPI-U) for Chicago-Kenosha-Gary – All Items. Any such adjustment shall not exceed 4% per annum but shall never be decreased below the base fees established in paragraph a. above. If said Index shall cease to be published, the City and the Transfer Station Operator shall designate a comparable index which shall then be used for determining the annual rate of increase or decrease.

- iii. Rounding;
 - A. Adjusted Host Benefit Fees shall be rounded upward to the nearest cent.

- d. The Transfer Station Operator shall:
 - i. Maintain complete and accurate books and records of Waste, Landscape Waste and Recyclables accepted at the Transfer Station sufficient to determine the amount of Host Benefit Fees payable to the City, including without limitation weight tickets for each vehicle delivering Waste, Landscape Waste and Recyclables to the Transfer Station;

- ii. Make such books and records available for inspection and copying by the City or its agent upon reasonable notice of not less than 24 hours at the Transfer Station during Regular Business Hours of the Transfer Station, or as otherwise required by this Agreement or any conditions of siting approval;
 - iii. Remit Host Benefit Fees payable to the City on a quarterly basis, not later than the last calendar day of the calendar month following the end of each calendar quarter, for the preceding calendar quarter; and
 - iv. Submit with each payment of Host Benefit Fees to the City an accounting by day of the amount of fees payable to the City, including tons of Waste, Landscape Waste and Recyclables accepted during the calendar quarter for which payment is made.
- e. The City shall cause a copy of any report of an audit by the City of the books and records of the Transfer Station to be delivered to the Transfer Station Operator within thirty (30) calendar days from receipt thereof.
 - i. If any such audit report establishes that there has been an underpayment of Host Benefit Fees to the City, the Transfer Station Operator shall remit the amount of the underpayment to the City within thirty (30) calendar days from receipt from the City of notice of the underpayment and a copy of the report;

- ii. If any such audit report establishes that there has been an overpayment to the City:
 - A. The Transfer Station Operator may take a credit against amounts otherwise payable to the City in the amount of the overpayment; or
 - B. If there are no such amounts against which to take a credit, the City shall remit the overpayment to the Transfer Station Operator within thirty (30) calendar days from the City's receipt of the audit report and a written demand from the Transfer Station Operator.

- f. The City must notify the Transfer Station Operator in writing of any dispute regarding payment of Host Benefit Fees to the City within two (2) years from the last calendar day of the month for which disputed fees are payable. Otherwise, any such dispute is deemed waived;

- g. The Transfer Station Operator shall not be required to pay or reimburse to the City, or otherwise compensate the City or its agent for costs incurred in connection with the routine inspecting, copying or auditing of books and records of the Transfer Station. However, if a dispute arises between the City and the Transfer Station Operator regarding the amount of Host Benefit Fees payable to the City, and the City determines that it is necessary to conduct a special audit in connection with such dispute, the Transfer Station Operator shall reimburse the City for all reasonable costs incurred by the City in connection with such special audit;

- h. The City acknowledges that the books and records of the Transfer Station contain information which constitutes trade secrets within the meaning of the Illinois Trade Secrets Act. The City shall treat all information obtained from inspection and copying of books and records of the Transfer Station as confidential and shall disclose or permit disclosure of such information to persons other than the City, its employees or agents only as required by law or in a legal action subject to a protective order. The Transfer Station Operator may redact trade secrets or other confidential information from books and records of the Transfer Station prior to inspection or copying by the City or its agents, provided such redactions do not include numerical or other information required to determine the amount of Host Benefit Fees payable to the City. Notwithstanding anything to the contrary herein, upon the request of the City, the Transfer Station Operator shall provide a customer list and the amount of Landfill Waste each customer brought to the Transfer Station in the period of time requested by the City; and
- i. If this Agreement is terminated, Host Benefit Fees shall be paid to the date of termination and no further payments of Host Benefit Fees shall be due from the Transfer Station Operator to the City.

17. **Benefits to the Transfer Station.** In consideration for the Transfer Station Operator's agreement herein to locate the Transfer Station in the City, and for Host Benefit Fees as provided in this Agreement, the City:

- a. Shall not levy any new taxes or assess any fees which are not uniformly assessed but rather are assessed upon a class based on the ownership or operation of a waste transfer station or solid waste management facility and which directly impact the services

rendered by the Transfer Station Operator;

- b. Shall grant the Transfer Station Operator or its affiliate a City business license to operate as a Waste hauler within the City, and if the City conducts a formal selection process, permit said Transfer Station Operator or its affiliate to bid on the City Municipal Waste hauling contract, upon payment of applicable licensing fees; and
- c. Shall not, for a period of one (1) year after the date of this Agreement, enter into any host agreement, or other agreement providing host community benefits to the City, with another party who proposes to or does file a request for siting approval under Section 39.2 of the Act for a transfer station and/ or a landfill.

18. **Assignment of Agreement.** This Agreement shall be binding on the Transfer Station Operator, its successors and assigns.

19. **Recordation of Agreement.** This Agreement shall be deemed to be a covenant running with the land. Prior to the Operations Date, the Transfer Station Operator shall cause a copy of this Agreement to be recorded in the Office of the Kendall County Recorder.

20. **Default.**

- a. If Transfer Station Operator or the City commits a material breach of this Agreement in regard to payment, the breaching party shall have a period of thirty (30) calendar days from and after receipt of written notice from the other of such breach in which to cure the breach. If the breaching party fails to cure the breach during such period, the breaching party shall be in default;

- b. If Transfer Station Operator or the City commits a material breach of this Agreement other than in regard to payment, the breaching party shall have a period of thirty (30) calendar days from and after receipt of written notice from the other of such breach in which to cure the breach, or a longer period if the breaching party has diligently attempted to cure the breach during such period but has been unable to do so. If the breaching party fails to cure the breach during such period, as extended, the breaching party shall be in default;
 - c. The City recognizes that the cure of breach may require regulatory approval from the IEPA or some other regulatory agency and that the time of preparation of a request for such approval as well as the time it takes for the regulatory agency to review such a request shall be part of the cure period;
 - d. In the event that either party is in default under this Agreement, the party not in default shall have the right to enforce all rights and remedies under this Agreement, as well as to pursue any other remedy now or hereafter available under applicable law; and
 - e. Except as set forth in Section 19.c. of this Agreement, nothing in this Agreement to the contrary shall delay or hinder the immediate enforcement of this Agreement, ordinance or law which may, in any manner, negatively impact the public health, safety or welfare.
21. **Enforcement of Agreement.** In any action to enforce this Agreement, the non-defaulting party shall be entitled to an award of all attorney's fees incurred in connection with such action.
22. **Indemnification.** The Transfer Station Operator shall defend, indemnify

and hold the City, its agents, servants, officers, employees, consultants and attorneys harmless from and against all third party claims, judgments, orders, fines, penalties and other liabilities (including without limitation reasonable attorney's fees and costs) resulting from the negligence of the Transfer Station Operator during operation by the Transfer Station Operator of the Transfer Station or arising out of this Agreement.

23. Schedule of Performance.

- a. The Transfer Station Operator shall have no obligation to file the Application with the City. However, if the Application is filed, the Transfer Station Operator will use its best efforts to file the Application at the earliest practicable time following the Effective Date of this Agreement; and
- b. If the City approves the Application, the Transfer Station Operator shall have no obligation to file an application for permits from the IEPA. However, the Transfer Station Operator may file such application for permits at any time after approval of the Application by the City.

24. Approval of Application.

- a. The City has not, by entering into this Agreement with the Transfer Station Operator, predetermined whether it will approve, approve with conditions, or disapprove the Application, and has not pre-judged whether Transfer Station Operator and the proposed Transfer Station will meet the criteria for approval under Section 39.2 of the Act;
- b. The City shall review the Application in accordance with the criteria

set forth in 415 ILCS 5/39.2. If requested by the Transfer Station Operator, the City shall conduct a pre-filing review of the siting application at the Transfer Station Operator's sole cost and expense, including but not limited to all fees, costs and expenses related to consultants, experts and attorneys;

- c. The City shall have no duty to act or not act on the Application except as may be required by IEPA rule; and

- d. The Transfer Station Operator shall be responsible for the payment of all fees and reimbursement of all costs, including but not limited to consultants, hearing officers, attorneys and court reports associated with the City's review of, hearing and any appeal related to the Application, provided, however, that if the City denies the Application and the Transfer Station Operator does not appeal such denial, the fees and costs shall stop accruing upon notification from the Transfer Station Operator providing written notice to the City that it will not appeal the denial. None of the aforesaid shall affect this Agreement in any way. In addition, the Transfer Station Operator shall pay the application fee required by the City's Pollution Control Facility Facilities Siting Ordinance, and pursuant to Section 8-7-3 of the City's Siting Ordinance, that the initial application fee shall be \$150,000, it being recognized that the filing fee for a transfer station is less than that appropriate for a landfill. In the event that, at any time prior to the conclusion of the siting approval decision, the city has expended such sums as to reduce the unspent balance of the application fee to an amount less than \$100,000.00, the Applicant will be notified in writing and shall have fourteen (14) days to deposit with the city clerk an additional sum of

money to bring the balance of the Application fee back to \$150,000.00, unless the City Council, by affirmative vote, determines that a lesser sum shall be permitted.

25. **Compliance with Applicable Laws.** The Transfer Station Operator shall conduct operations at the Transfer Station in accordance with all applicable federal, state, and local laws.

26. **General Provisions.**

- a. Amendments. This Agreement may be terminated, amended or otherwise modified only by written agreement duly executed on behalf of the City and the Transfer Station Operator;
- b. Captions. Captions in this Agreement are for the convenience of reference only and do not affect this Agreement or its interpretation;
- c. Exclusivity. This Agreement sets forth the entire, final and exclusive Agreement and understanding of the City and the Transfer Station Operator in respect to the matters covered hereby;
- d. Governing Law, Venue and Jurisdiction. This Agreement and all disputes hereunder shall be governed by the laws of the State of Illinois. Venue and jurisdiction over all disputes arising under or in connection with this Agreement shall reside in the Circuit Court of Kendall County. The Parties consent to removal of any action filed elsewhere to the Circuit Court of Kendall County;
- e. Notification. All notices and other correspondence required or

permitted under this Agreement shall be given at the following addresses or such other addresses as the City or the Transfer Station Operator may in writing designate:

CITY OF PLANO:

Mayor
City of Plano
17 E. Main St.
Plano, IL 60545

COPIES TO:

Thomas W. Grant
(or his successor in Office as City Attorney)
Attorney at Law
200 Hillcrest Avenue
P.O. Box 326
Yorkville, IL 60560

TRANSFER STATION OPERATOR:

Plano Transfer Station, L.L.C.
123 West Washington Street Suite 214
Oswego, Illinois 60543

COPY TO:

Rory K. McGinty
Law Offices of Rory K. McGinty
5202 Washington Street Ste. 5
Downers Grove, IL 60515

Notices shall be deemed to have been given and effective as follows:

- i. When delivered personally; or
 - ii. If mailed, two (2) days after being deposited in the U.S. mail, registered or certified, return receipt requested, to the address shown above; or
 - iii. If deposited with a commercial courier for next day delivery, one (1) day after being so deposited.
- f. Payments. Payments of Host Benefit Fees shall be made by the Transfer Station Operator to the City Collector, City of Plano, 17 E. Main Street, Plano, IL 60545;
- g. Recitals. The Recitals are a part of this Agreement;
- h. Severability. If any provision of this Agreement or any document executed in connection herewith shall be or become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality or enforceability of the remaining provisions contained herein or therein shall not be affected or impaired. In such case, the Parties shall achieve the purpose of the involved provision by agreeing to a new, legally valid and enforceable provision, which shall become part of this Agreement or such document;
- i. Singular and Plural. The use of the singular form includes the

plural and use of the plural form includes the singular;

- j. Third Parties. Nothing in this Agreement is intended to confer any right or remedy on any person other than the City and the Transfer Station Operator, and their respective successors and permitted assigns, nor is anything in this Agreement intended to affect or discharge any obligation or liability of any third persons to the City or the Transfer Station Operator, nor to give any such third person any right of action or subrogation against the City or the Transfer Station Operator; and

- k. Waiver. The failure of the City or the Transfer Station Operator at any time to require the performance of any provision of this Agreement shall not affect its right to enforce the provision at a later time. No waiver of any nature by the City or the Transfer Station Operator, whether by conduct or otherwise, shall be deemed to be a continuing waiver.

(Remainder of Page Blank)

IN WITNESS WHEREOF, the undersigned have affixed their signatures on behalf of the City and the Transfer Station Operator this 27 day of March, 2013.

FOR THE CITY:



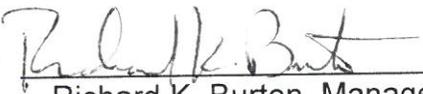
Mayor, City of Plano

ATTEST:



City Clerk

FOR THE TRANSFER STATION OPERATOR:
PLANO TRANSFER STATION, L.L.C.

By: 

Richard K. Burton, Manager

AFTER RECORDING MAIL TO:

Thomas W. Grant
200 Hillcrest Avenue
P O Box 326
Yorkville, Illinois 60560

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EXHIBIT A

LEGAL DESCRIPTION:

BEGINNING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 13; THENCE SOUTH 00 DEGREES 55 MINUTES 52 SECONDS EAST, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, 1,323.41 FEET; THENCE NORTH 89 DEGREES 55 MINUTES 28 SECONDS WEST, ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER, 1,326.28 FEET; THENCE NORTH 00 DEGREES 55 MINUTES 41 SECONDS WEST, ALONG THE WEST LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER, 1,324.45 FEET; THENCE SOUTH 89 DEGREES 52 MINUTES 46 SECONDS EAST, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, 1,326.23 FEET TO THE PLACE OF BEGINNING, ALL IN TOWNSHIP 37 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LITTLE ROCK TOWNSHIP, KENDALL COUNTY, ILLINOIS

EXCEPT FOR:

THAT PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 37 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LITTLE ROCK TOWNSHIP, KENDALL COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 13; THENCE NORTH 89 DEGREES 52 MINUTES 46 SECONDS WEST, 1326.23 FEET; THENCE SOUTH 00 DEGREES 55 MINUTES 41 SECONDS EAST, 114.85 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 52 MINUTES 46 SECONDS EAST, 315.00 FEET; THENCE SOUTH 00 DEGREES 55 MINUTES 41 SECONDS EAST 873.00 FEET; THENCE NORTH 89 DEGREES 52 MINUTES 25 SECONDS WEST, 315.00 FEET; THENCE NORTH 00 DEGREES 55 MINUTES 41 SECONDS WEST 872.97 FEET TO THE POINT OF BEGINNING.

SAID EXCEPTION ALSO BEING DESCRIBED AS: LOT 1 IN KENDALL FARMS INDUSTRIAL SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 37 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LITTLE ROCK TOWNSHIP, KENDALL COUNTY, ILLINOIS.

(DESCRIPTION DERIVED FROM: T:\City of Plano.2012\Waste Transfer Station\LEGAL DESCRIPTION 2013.From Rick Burton.doc)