

AMENDED FACILITY OPERATING AGREEMENT

WHEREAS, THE CITY OF PARIS, a Municipal Corporation (the City), and SCOTT INGRUM, d/b/a IWD II Inc., an Illinois Corporation (IWD) entered into a Facility Operating Agreement on October 13, 2003 regarding an arrangement to operate the municipal solid waste transfer station, located at 12783 E. 950th Road, Paris, Illinois, and

WHEREAS, the original term of the Agreement provided it would run from ten (10) years from October 13, 2003 with two (2) additional five (5) year periods at the option of IWD by notifying the City, and

WHEREAS, IWD wishes to invest money in proving the facility, and

WHEREAS, to properly amortize the investment to be made, it is necessary to adjust the term of the Agreement to provide for three (3) additional five (5) years options by IWD.

THEREFORE, on this 13<sup>th</sup> day of Aug., 2007, the CITY OF PARIS, a municipal corporation and SCOTT INGRUM, d/b/a IWD II Inc., an Illinois Corporation enter into the below described Facility Operating Agreement readopting the provisions of the original Agreement with an adjustment to Paragraph 3, being the term of years on the original Agreement.

RECITALS

A. The City own a fully permitted municipal solid waste transfer station located at 12783 E. 950<sup>th</sup> Rd., Paris, Illinois (the "Facility").

B. The City and IWD desire to enter into an arrangement pursuant to which IWD will have the exclusive right to use and operate the Facility in accordance with the terms and subject to the conditions of this Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Use and Occupancy. The City hereby grants to IWD the exclusive right to use and operate the Facility during the term (as defined below) for conduct of a transfer station/tipping floor operation and recycling operation, along with such other activities as are reasonably related or incidental thereto (the "Permitted Uses"). IWD's use of the Facility shall be free from molestation, eviction or disturbance by the City, or any person claiming by, through or under it, subject to the terms and conditions of this Agreement.

2. Restriction on Sources of Waste. IWD agrees that it shall not: (i) accept for processing at the Facility, waste of any type collected from a distance of more than forty-five (45) miles from the Facility; or (ii) allow more than 2% of the waste handled at the Facility to be generated from the State of Indiana.

3. Term. Unless earlier terminated pursuant to the provisions of this Agreement, the term of this Agreement shall commence on the date hereto and terminate on the tenth anniversary of the Agreement; being October 13, 2013; provided, however, IWD may, at its option, extend the term by up to three (3) additional periods of five (5) years each, by notifying the City of its intent to extend the term at least sixty (60) days prior to the end of the then current period.

4. Operation; Revenues. IWD will, at its sole cost and expense, use, manage and operate the Facility. IWD will develop rules, regulations, transfer and other fees, deductions, discounts, credits or allowances at the Facility, and will furnish such information to the City, which must be approved by the City prior to taking affect. IWD shall have the right to petition to the City to increase fees, but no oftener than annually; provided however, that any increases mandated by the State of Illinois, taxes or fees may be imposed without petition or approval by the City. IWD shall furnish all labor and maintenance necessary to operate the facility. IWD shall retain all revenue and income from operation of the facility during the term.

5. Permits. The City hereby licenses to IWD the right to operate the facility under the authority of the City's permits and approvals for the Facility. The City shall use its best efforts to maintain and retain such permits and approvals during the term. IWD shall have the right, but not the obligation, to obtain its own permits and approvals for the Facility. The City and IWD shall cooperate in obtaining any permits and approvals required by the City or IWD for IWD to use and operate the Facility. If an issue arises with respect to the compliance of the Facility with the permits and approvals governing the Facility or IWD's operation thereof, IWD shall have the right, at IWD's option, to deal directly with the appropriate agency to resolve this issue. The City shall cooperate with and provide assistance to IWD as may be necessary to resolve the compliance issue so as to minimize any impact of the compliance issue on the operations of the Facility.

At the end of the term all permits for the Facility shall belong to the City.

6. Ownership of Improvements and IWD Equipment. Title to all improvements shall remain the property of the City, subject to the rights of IWD, as set forth in this Agreement. Notwithstanding the foregoing, however, IWD may bring furniture, fixtures and other moveable equipment into or onto the Facility, and such equipment shall be the property of IWD and may be removed by IWD at any time.

7. Utilities. Except as may be agreed to by the City, IWD shall be solely responsible for payment of all utilities and services that are furnished to or used at the Facility; provided, however, that with respect to utilities and services furnished by the City, the rates that the City charges IWD for all sewer, water and other municipal services shall be at least as favorable to IWD as the rates charged to any other user for similar volumes of services.

8. Improvements by the City/IWD. Without the prior written consent of IWD, which consent IWD may grant or withhold in its sole and absolute discretion, during the term, the City shall not alter, modify, replace, extend, reconfigure, repair or improve, or cause to be altered, modified, replaced, extended, reconfigured, repaired or improved, the improvements or the Facility if the same (i) would interfere with IWD's use of the Facility, as provided in this Agreement, or adversely affect IWD's revenues from the Facility, or (ii) would adversely affect the structural integrity, size or overall capacity of the Facility. During the term, IWD, in its sole discretion and at its sole cost and expense, may alter, modify, replace, extend, reconfigure, repair or improve, or cause to be altered, modified, replaced, extended, reconfigured, repaired or improved, the improvements or the Facility, in any legal manner it deems necessary or desirable, in its sole discretion, to carry on any permitted uses. IWD hereby agrees to make at least One Hundred Fifty Thousand Dollars (\$150,000) in capital improvements at the Facility during the first twenty-four (24) months of the term.

9. City Cooperation. Within fifteen (15) days after written notice, the City shall consider any and all applications and petitions made by IWD to any governmental or administrative group in connection with the use,

development and occupancy of the Facility (in accordance with the terms of this Agreement) which require the joinder or consent of the City; provided, however, that the City shall not be obligated to incur any monetary obligation as a result of its joinder, or consent to any application or petition under this Section unless the obligation is payable by the City hereunder.

10. Insurance. During the term, IWD agrees to carry general liability, workers' compensation and property coverage in amounts it deems adequate, but sufficient in any event to cover replacement of the building at the Facility. IWD shall provide the City with a certificate of insurance upon reasonable request.

11. Payment of Taxes. The City shall pay all real estate taxes in accord with the provisions of the all applicable federal, state or local statutes, laws, ordinances, regulations, rules, codes and governmental orders. The City shall supply IWD with evidence of payment of any taxes imposed on the Facility or improvements within ten (10) days after the City receives a written notification that IWD desires such evidence of payment. IWD shall pay all taxes imposed on any property of IWD located on the Facility or attributable to IWD's business operations in the Facility. IWD shall supply the City with evidence of payment of such taxes within ten (10) days after IWD receives a written notification that the City desires such evidence of payment.

12. Indemnification for Closed Landfill. The City agrees to indemnify, defend and hold IWD and its shareholders, officers, directors, representatives, employees and agents harmless from and against any and all claims, costs, losses, liabilities, damages, injuries, fines, penalties, assessments and expenses, including reasonable attorneys fees (collectively, the "Losses") paid, incurred or suffered by IWD and arising from or related to the closed landfill on which the Facility is located.

13. Indemnification for Operations. IWD agrees to indemnify, defend and hold the City and its commissioners, officers, representatives, employees or agents harmless from and against any and all losses (provided that the City parties shall tender their defense to IWD, and IWD shall bear the cost of one firm of attorneys selected by IWD following consultation with the City regarding the selection of such firm in connection with such defense) paid, incurred or suffered by the City and its agents, and directly resulting from IWD's operation of the Facility during the term.

14. Covenant Against Condemnation or Sale. The City covenants that it shall not, during the term, unless consented to in writing by IWD (which consent IWD may grant or withhold in its sole and absolute discretion), (i) initiate or join in any condemnation or eminent domain proceedings, or any conveyance in lieu thereof, which in any way affects the Facility, this Agreement or any improvement used in connection with the operation of the Facility, or (ii) sell, lease or otherwise transfer any interest in the Facility or the property on which the Facility is located.

15. Improvements. If any improvements, including sewer, utility lines, roads or other infrastructure items are damaged or destroyed, IWD may, in its sole and absolute discretion, (i) restore and repair such improvements, in which event this Agreement shall remain in effect, or (ii) terminate this Agreement by written notice of its election to do so to the City within ninety (90) days after the date of such damage or destruction, in which event this Agreement shall terminate on the date notice is given by IWD.

16. Total Destruction. If the Facility is totally destroyed (or damaged to such an extent as to render the Facility or the building unsuitable for the permitted uses) due to fire or other casualty, IWD may, in its sole and absolute discretion, (a) restore, repair or replace the Facility

or the building, in which event this Agreement shall remain in effect, or (b) terminate this Agreement by written notice of its election to do so given to the City within ninety (90) days after the date of such damage or destruction, in which event this Agreement shall terminate on the date notice is given by IWD.

17. Default by IWD. Any one or more of the following events shall constitute an event of default by IWD under this Agreement:

(i) IWD shall fail or refuse to pay any money or perform any indemnity or other act which it is obligated to pay or perform under this Agreement which is not cured by IWD within thirty (30) days after receipt of written notice from the City; provided, however, that if such default shall be of such a nature that it cannot be reasonably cured or remedied within such thirty (30) day period, but IWD shall have, in good faith, commenced curing or remedying such default within such period and shall thereafter diligently proceed therewith to completion, the default shall not be an event of default until the expiration of any such reasonable period, which, in no event, shall extend longer than one hundred twenty (120) days after receipt by IWD of such notice, or

(ii) IWD filed for protection under the United States Bankruptcy Code or fails to make payments when due to the City.

18. The City's Remedies. Upon or after the occurrence of any event of default specified in Section 17, the City may, at its option, do any or all, or any combination of the following:

(a) Perform, at IWD's expense, any such act required to be performed by IWD under the Agreement, and any amounts advanced by the City for such purposes shall be due from IWD to the City within thirty (30) days after notice by the City to IWD of such payment, with interest at the prime interest rate as established by an average of the prime rate of the four banks at Paris, Illinois, plus five percent (5%), on the date of the default from the date of payment thereof by the City until repayment thereof to the City by IWD.

(b) Pursue against IWD any remedy (other than termination of this Agreement) available at law or in equity.

19. Default by the City. Any one or more of the following events shall constitute an event of default by the City under this Agreement:

(i) The City fails or refuses to pay any money or perform any indemnity, or any other act which it is obligated to pay or perform under this Agreement, which is not cured by the City within thirty (30) days after receipt of written notice from IWD; provided, however, that if such default shall be of such a nature that it cannot reasonably be cured or remedied within such thirty (30) day period, but the City shall have, in good faith, commenced curing or remedying such default within such period, and shall thereafter diligently proceed therewith to completion, the default shall not be an event of default until the expiration of any such reasonable period, which, in no event, shall extend longer than one hundred twenty (120) days after receipt by the City of such notice; or

(ii) The City files for protection under the United States Bankruptcy Code or fails to make payments when due to IWD.

20. IWD's Remedies. Upon or after the occurrence of any event of

default specified in Section 18, IWD may, at its option, do any or all, or any combination of the following:

(a) Perform, at the City's expense, any such act required to be performed by the City under the Agreement, and amounts advanced by IWD for such purposes shall be due from the City to IWD within thirty (30) days after notice by IWD to the City of any such payment, with interest at the prime interest rate as established by an average of the prime rate of the four banks at Paris, Illinois, plus five percent (5%), on the date of the default from the date of payment thereof by IWD, until repayment thereof to IWD by the City.

(b) Pursue against the City any remedy (other than termination of this Agreement) available at law or in equity.

21. Governing Law. This Agreement shall be construed and applied in accordance with the laws of the State of Illinois.

22. Binding Effect. This Agreement shall be binding upon and inure to the benefit of, to the extent provided herein, the parties hereto and all parties having or acquiring or claiming through the City and IWD, any right, title or interest in or to any portion of, or interest or estate in, the Facility and all covenants, agreements, conditions and undertakings in this Agreement shall be construed as covenants running with the Facility site.

23. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable, but so as to most nearly retain the intent of the parties. If such modification is not possible, such provision shall be severed from this Agreement. In either case, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

24. Assignment. IWD may not assign this Agreement, or any portion thereof, without first obtaining the prior written consent of the City, which shall not be unreasonably withheld or delayed.

25. Notices. Any notice, request, demand, approval or consent to be given under this Agreement shall be in writing and shall be deemed to have been given when mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at the following addresses:

To the City:

City of Paris  
City Clerk's Office  
206 South Central Avenue  
Paris, IL 61944  
Attn: City Manager

To IWD:

IWD II INC.  
P.O. Box 1088  
Paris, IL 61944

Either party may, at any time, change its address by mailing a notice, as specified in this Section, that such change is desired, and setting forth the new address.

26. Holding Over. Should IWD hold over in use of the Facility after the expiration of the term, without the execution of a new agreement or

extension or renewal agreement, IWD shall be deemed to be using the Facility from month-to-month, subject to such use being terminated by either party upon at least thirty (30) days written notice, as though the term of this Agreement had continued, and otherwise subject to all other terms, covenants and conditions of the Agreement, insofar as the same may be applicable to a month-to-month use agreement.

27. Relationship. IWD, its employees, agents and contractors, shall not be considered employees or agents of the City, or to have been authorized to incur any expense on behalf of the City, or to act for or to bind the City. Neither party shall be liable for any acts, omissions or negligence on the part of the other party, its employees or agents, resulting in either personal injury or property damages. The City and IWD shall not be construed to be landlord and tenant, partners, joint ventures, tenants in common or joint tenants, in the operation of the Facility, and shall not be deemed to be in any other relationship other than licensor-licensee. The relationship created hereby is solely that of licensor-licensee, and IWD has no possessory or other right, title, interest or estate in the Facility, other than the right to use it and operate it as provided in this Agreement.

28. Entire Agreement. This Agreement, together with the other documents and agreements contemplated hereby, terminates and supersedes all prior understandings or agreements on the subject matter hereof. The Agreement may be modified only by a further writing that is duly executed by both parties.

29. Use and Benefit. The rights, privileges, easements and appurtenances granted by this Agreement are not public, but are private rights, privileges, easements and appurtenances intended for the use and benefit of IWD.

30. Further Assurance. The parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances, and to take all such further action as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.

31. No Third Party Beneficiary. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity, including the public, as a third party beneficiary, under any law or otherwise.


32. Memorandum of Agreement. At the request of either party, the City and IWD will execute and deliver a memorandum of agreement in recordable statutory form, summarizing the terms of this Agreement, which may be recorded by the requesting party at its own expense.

33. Construction. The headings in this Agreement are inserted for convenience only, and shall not constitute a part of this Agreement nor be used to construe or interpret any of its provisions. The parties have participated jointly in the negotiation and drafting of this Agreement. If a question of interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

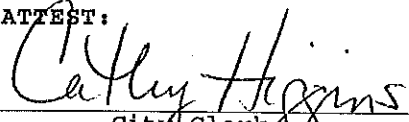
34. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed the day and year first above written.

THE CITY OF PARIS,

By:   
Its Mayor


ATTEST:

  
City Clerk

IWD II INC.,

By:   
Its President

ATTEST:

  
Its Secretary