

**AMENDED HOST COMMUNITY AGREEMENT**

**AMENDMENT NO. 1 TO THE  
AMENDED HOST COMMUNITY AGREEMENT**

This Amendment No. 1 is made and entered into as of the \_\_\_\_ day of November, 2000 by and between the TOWN OF ANGELICA (the "Town"), a municipal corporation located in Allegany County and HYLAND FACILITY ASSOCIATES ("Hyland"), a New York partnership engaged in the business of solid waste management in the Town of Angelica.

**INTRODUCTION**

WHEREAS, the Town and Hyland are Parties to the Amended Host Community Agreement of December 27, 1999 (the "Amended Host Agreement").

WHEREAS, the Parties desire to amend the Amended Host Agreement to clarify the procedures for the referenda provided in the Amended Host Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties agree as follows:

1. Amendment of Section IV.D. of the Amended Host Agreement.

The first sentence of Section IV.D. of the Amended Host Agreement is hereby amended to read as follows: "No further expansions of the Hyland Project beyond the Total Grandfathered Cell Area, plus supporting facilities, shall be allowed unless the expansion is approved by (1) a permissive referendum, paid for by Hyland, and (2) a majority vote of the Town Board. A permissive referendum may be requested by Hyland at any time, subject to the limitations set forth below, and shall be processed pursuant to Town Law Section

94, in accordance with the procedures set forth in Town Law Section 91, including the voting requirements set forth in that section."

2. Definitions. Capitalized terms used herein which are not otherwise defined herein shall have the meanings as defined in the Amended Host Agreement.

3. Ratification of the Amended Host Agreement. As amended by this Amendment No. 1, the Amended Host Agreement continues in full force and effect.

IN WITNESS WHEREOF, the Parties, through their duly authorized representatives, have executed this Amendment No. 1 as of the date set forth above.

THE TOWN OF ANGELICA

By: Craig Schiau

Craig Schiau

Title: Supervisor

HYLAND FACILITY ASSOCIATES

By: Michael Holmes

Michael Holmes

Title:

VICE PRESIDENT

## AMENDED HOST COMMUNITY AGREEMENT

This Amended Agreement is made this 21 day of Dec, 1999, between the Town of Angelica (the "Town"), a municipal corporation located in Allegany County, New York, and Hyland Facility Associates ("Hyland"), a New York partnership engaged in the business of solid waste management in the Town of Angelica.

WHEREAS, on or about April 23rd, 1996, the Town and Hyland entered into a Host Community Agreement (hereinafter the "Original Host Community Agreement") as part of an overall resolution of then-existing disputes; and

WHEREAS, on or about April 15, 1998, the Town adopted Local Law No. 1 of 1998 relative to landfills within the Town; and

WHEREAS, on or about May 12, 1998, Hyland commenced an action in New York Supreme Court, Allegany County (hereinafter the "Pending Action"), challenging, *inter alia*, Local Law No. 1 of 1998 and the applicability of Local Law No. 1 of 1998 to the Hyland Project; and

WHEREAS, the Town has contested the relief requested by Hyland in the Pending Action; and

WHEREAS, the parties desire to enter into an Amended Agreement to resolve all outstanding differences and to define the rights and obligations of the parties with respect to the Hyland Project on the terms and conditions stated herein.

NOW, THEREFORE, the parties hereby agree as follows:

I. Effective Date of the Amended Host Community Agreement and Applicability.

- both
- A. This Amended Agreement shall become effective on the date when it is executed by parties and all the following events have occurred:
1. The Angelica Town Board has adopted a resolution approving this Amended Agreement and authorizing the Town Supervisor to execute this Amended Agreement on behalf of the Town;
  2. The parties have executed a Stipulation and Order in the Pending Action discontinuing the pending action, with prejudice, subject to the reservation of rights set forth in paragraph IX of this Amended Agreement;
  3. The Angelica Town Board has duly adopted an amendment to Local Law No. 1 of 1998, in the form annexed hereto and incorporated herewith as Exhibit "A", superseding the provisions of Local Law No. 1 of 1998 with the terms set forth in Exhibit "A", and exempting the Hyland Project, as defined in this Amended Agreement, from the applicability of Local Law No. 1 of 1998; and
  4. The Court has approved this settlement pursuant to Town Law Section 68.

- B. This Amended Agreement shall supersede the Original Host Community Agreement, except that any dispute concerning the rights and liabilities of the parties between April 23, 1996, and the effective date of this Amended Agreement shall be governed by the Original Host Community Agreement.
- II. Term of Agreement. The term of this Amended Agreement shall be from its effective date through the time when all cell area contemplated by this Amended Agreement, as defined in subparagraph IV (A) below, is full of waste to the extent allowed by the New York Department of Environmental Conservation (ADEC@), unless a successor host community agreement is enacted prior to that date.
- III. Release. The parties hereby release one another and their respective heirs, executors, administrators, successors, and assigns, from any and all actions, causes of action, suits, debts or claims of any kind, including: (1) all claims asserted by either party in the action formerly pending in the United States District Court for the Western District of New York entitled *Herdman v. the Town of Angelica*, (95-CV-0291(LH)); and (2) all claims asserted in the Pending Action. This release is intended to be read in conjunction with paragraph IX of this Amended Agreement and subject to the reservation of rights stated in paragraph IX.
- IV. The Hyland Project.
- A. This Amended Agreement applies to the landfill configuration which was the subject matter of all permit proceedings conducted before the DEC to date, consisting of approximately 29 acres of landfill cells, plus supporting facilities, together with any expansion proposed by Hyland for up to an additional ten (10) acres of landfill cells, plus supporting facilities. For the purposes of this Amended Agreement, The Hyland Project shall include the permitted cell area plus an additional ten (10) acres of cell expansion, for a total of approximately 39 acres of total cell area (hereinafter the "Total Grandfathered Cell Area"). In addition, the Hyland Project shall include any expansion approved in accordance with the procedures specified in subparagraph D of this paragraph at which time the Total Grandfathered Cell Area shall include 39 acres of cell area together with the expansion acreage so approved.
- B. The Town shall not:
1. Oppose any expansion of the Hyland Project up to the Total Grandfathered Cell Area as described in this paragraph IV; provided, however, that nothing herein shall preclude the Town from exercising its right to due process to participate in any permit modification application initiated by Hyland relating to a vertical expansion of the Hyland Project beyond the side slopes and elevation contemplated by the existing permit. The Town shall not oppose any modification of the side slopes within the limits authorized by DEC regulations. Hyland will not apply for a vertical expansion above the height that will be visible from residential structures in existence on the effective date of this Amended Agreement located within the Village of Angelica.

2. Adopt or amend any local laws, codes, rules or regulations to regulate, or take any action to interfere with, or regulate the Total Grandfathered Cell Area, plus supporting facilities; i.e. the Hyland Project, as defined in this paragraph IV;
  3. Oppose any increase in the daily capacity at the Hyland Project, up to a total of 1,000 tons per day, providing that Hyland demonstrates that such an increase in daily tonnage will not have any significant adverse impact on traffic flow based upon a level of service analysis; for the purpose of this agreement, the level of service will not be impacted unless the number of waste vehicles delivering waste to the Hyland Project exceeds 128 trucks per day (on a quarterly average); or
  4. Except as provided in subparagraph's 1, 2, and 3, of this paragraph, the Town Board reserves its right to participate as a party in any permit application and environmental review process, and to present reasons why any such application should or should not be approved, or why particular conditions should be attached to the approval, and to engage in any administrative proceedings or legal proceedings that the Town Board considers appropriate with respect to such an application.
- C. Nothing herein shall preclude the Town from adopting or amending a local law, code, rule or regulation prohibiting expansions of existing solid waste facilities and/or prohibiting new solid waste facilities entirely, providing that the adoption or amendment of a local law, code, rule, or regulation is subject to the rights confirmed for Hyland, as is set forth in this Amended Agreement.
- D. No further expansion of the Hyland Project beyond the Total Grandfathered Cell Area, plus supporting facilities, shall be allowed unless the expansion is approved by (1) a majority of the registered voters of the Town in a permissive referendum, paid for by Hyland, and (2) a majority vote of the Town Board. Any proposed expansion that is subject to the referendum requirements, is limited to four unsuccessful referenda, with no more than one referendum in any calendar year. If an expansion is approved by referendum, there is no limit on the number of times the expansion may be put to a vote of the Town Board. Any expansion proposed following a successful referendum is subject to the same limits; i.e., no more than four referenda and no more than one referendum in any calendar year, with no limit on the number of times the matter may be put to a vote of the Town Board.
- E. In the event that the Town should adopt or amend any local law, code, rule or regulation, enact legislation similar to either Local Law No. 1 of 1988 and/or Local Law No. 1 of 1998 relative to the Hyland Project, or take any action affecting the operation of the Hyland Project, then the Hyland Project, as described in this paragraph IV, shall be deemed vested for the purpose of determining the applicability of any such amendment, legislative enactment, or action to the Hyland Project.

V. Road Improvements and Site Access.

A. Access to Herdman Road and the Hyland Project.

1. Herdman Road was abandoned to Hyland pursuant to the terms of the Original Host Community Agreement. Notwithstanding the abandonment of Herdman Road, any resident of Allegany County shall be entitled to enter upon Herdman Road during normal working hours for the purpose of accessing or observing Hyland's operations.
2. At any time during construction of the facility or after operations have begun, any Town official, or any person employed in a professional capacity by the Town Board, such as an engineer, shall have the privilege of visiting, touring, or inspecting Hyland's facility or any specific components of Hyland's operations, without restriction. Subject to reasonable restrictions adopted by Hyland regarding the timing, frequency, and manner of visits or inspections, any resident of Allegany County may also visit and inspect the facility. For reasons of safety and to avoid interference with operations, Hyland shall designate one or more employees to be available at all times to accompany any such visitor, and no person shall be entitled to visit or inspect Hyland's operations unaccompanied. Hyland shall accommodate all such visitors during normal working hours.
3. Except as provided in paragraphs 1 and 2 above, Hyland reserves the right to prohibit any person from entering onto its premises without its consent.
4. Hyland shall, moreover, be entitled to deny entry onto any part of its property and to refuse visiting privileges to any person who commits any illegal, destructive, or disruptive act directed toward Hyland, on Hyland's property or Herdman Road.

B. Repair of Peacock Hill Road Following Upgrade. Hyland has upgraded Peacock Hill Road pursuant to the terms of the Original Host Community Agreement. Hyland shall maintain the structural integrity of Peacock Hill Road (i.e., undertake any capital improvements required) between the State-maintained portion of Route 17 and Herdman Road in a condition that is suitable for use by trucks traveling to and from the Hyland Project, and Hyland shall be responsible for any damage caused to Peacock Hill Road by reason of the negligence of Hyland or the negligence of operators of vehicles associated with the construction or operation of the Hyland Project. Nothing in this Amended Agreement shall obligate Hyland to be responsible for snow and ice removal on Peacock Hill Road or any other public roadway.

C. Unforeseen Traffic Congestion. If traffic on Peacock Hill Road increases beyond 128 trucks delivering waste to the Hyland Project per day (on a quarterly average), such that

a truck climbing lane or other modification to Peacock Hill Road is needed to alleviate traffic congestion, Hyland shall pay all costs associated with the design and construction of modifications to Peacock Hill Road.

- D. Village and State Consent. The parties acknowledge that a segment of Peacock Hill Road between Route 17 and Herdman Road is owned by the State and maintained by the Village of Angelica (the "Village"). The failure of the Village and/or the State to consent to the improvements and maintenance contemplated under the original Host Community Agreement, or as described herein, shall not affect the validity of this Amended Agreement or the parties' obligations regarding the remaining segments of Peacock Hill Road.
- E. Transportation of Waste. Hyland shall adopt rules and policies to require all persons transporting solid waste to, and returning from, the Hyland Project to travel directly from Exit 31 on Route 17 to Peacock Hill Road and to return via the same route, and to prohibit the transportation of waste through the Village except to the extent necessary to exit from, or enter onto, Exit 31 on Route 17. Such rules and policies shall provide that Hyland may refuse loads from trucks that do not comply with the route limitations.

VI. Limitations on Operations.

- A. Waste Prohibitions. Hyland shall not store or dispose of any licensed material requiring a radioactive material license from any state or federal agency or regulatory authority within the Town of Angelica, and shall not make application to convert the Hyland Project to a hazardous waste landfill, or to site a new hazardous waste landfill on the property currently owned by Hyland. For the purposes of this Agreement, hazardous waste landfill shall have the same meaning as a facility that is regulated by Subtitle "C" of the Resource Conservation and Recovery Act, 42 U.S.C.A. Sections 6901 et seq., and Environmental Conservation Law, Article 27, Title 9, and the rules and regulations promulgated under those acts.
- B. Incineration Prohibition. Hyland shall not construct or make application for the construction or operation of a waste incinerator within the Town of Angelica.
- C. Alternate Solid Wastes.
1. In the event that Hyland determines to apply to the DEC for approval to dispose of alternate solid waste materials at the Hyland Project, Hyland shall provide 30- days advance notice to the Town Board that such an application will be made, which notice shall set forth all material terms of the application that Hyland proposes to make.
  2. The Town Board reserves its right to participate as a party in any such permit application and environmental review process, and to present reasons why any



such application should or should not be approved, or why particular conditions should be attached to approval, and to engage in any administrative proceedings or legal proceedings that the Town Board considers appropriate with respect to such an application....

3. In the event that any such permit modification is granted by the DEC, and Hyland ultimately disposes of alternate solid waste materials at the Hyland Project, the Town shall be entitled to tipping fees on such waste, as provided in paragraph VIII(A) herein, and the tons of alternate solid waste materials shall be considered in all respects for purposes of determining the termination date of this Amended Agreement as provided in paragraph II.

D. Additional Safeguards. Hyland shall, at all times, operate the Hyland Project with the following safeguards regardless of whether they are required by the DEC permit applicable to the facility:

1. Gas Collection. Hyland shall design, install, operate and maintain a gas collection system to collect and treat landfill gases generated at the Hyland Project.
2. Pore Pressure Relief. Each cell shall be constructed with a pore pressure relief system below the liner system.
3. Pore Pressure Relief Leak Detection. The pore pressure relief system shall be designed and constructed to allow separate monitoring of each subcell as an additional means of leak detection.

VII. Right of Inspection, Reporting, and Notice.

A. Inspections.

1. In addition to the rights of access set forth in paragraph V(B) above, members of the Town Board, or their designated inspectors or representatives, shall have the right to inspect, monitor, or verify Hyland's operations or testing procedures, or to perform their own tests or analyses whenever the Town Board deems it necessary or appropriate, subject to Hyland's right to participate in any such tests or analyses through split sampling. This right of inspection shall survive closure of the Hyland Project. For the purposes of this paragraph, closure shall mean that the facility has been closed in accordance with applicable requirements of the DEC.
2. Hyland shall cooperate fully with any such measures and shall assist the Town and its representatives and designees, as needed. Such procedures shall be conducted so as not to interfere with the operation of the Hyland Project.

3. The Town may engage professional assistance for purpose of inspecting, monitoring, verifying, or analyzing any aspect of Hyland operations. Hyland agrees to reimburse the Town of Angelica for the costs of independent inspections up to the sum of \$10,000 per year. Annually, commencing on the anniversary date of this Amended Agreement, Hyland shall pay the sum of \$10,000 to the Town. If the Town elects not to utilize the whole of such sum during any in year, the Town may accumulate any unspent balance in a special fund. Any accumulated funds shall be utilized for engineering services only consistent with the terms of this subparagraph. The payments contemplated by this subparagraph shall terminate upon closure of the Hyland Project.
- B. Reporting. Hyland shall provide the Town with copies of the following documents within 15 days after they are submitted to the DEC or, if they are not required to be submitted to the DEC, within 15 days after they become available to Hyland:
1. Hyland's annual report on post-closure costs and surety fund deposits;
  2. Proof of closure and post-closure costs and surety fund deposits;
  3. All quarterly reports required by the DEC with respect to waste tonnage received at the Hyland Project;
  4. All water quality reports relative to monitoring at the Hyland Project;
  5. Any test results of leachate quality; and
  6. Any applications for new permits, permit modifications, or permit renewals.
- C. Access to other documents. During the term of this Amended Agreement, Hyland shall also provide the Town, within 5 days of a written request from the Town Board, from the Town Supervisor, or from any attorney or engineer employed by the Town, copies of any other reports or correspondence submitted to, or received from, any state or federal agency relative to the operation of the Hyland Project.
- D. Public Access to Documents. The Town of Angelica may make any of the foregoing documents available to the public for inspection.
- E. Annual Budget Projections and Monthly Reporting. Annually, at a date specified by the Town on at least 30-days written notice to Hyland, Hyland shall submit to the Town an annual budget projection of the anticipated host community fees to be paid to the Town during the upcoming year. Monthly, by the 15th day of each month, Hyland shall report to the Town the total volume of waste received during the preceding month, together with a calculation of the host community fees associated with such volume. The parties agree to work cooperatively to facilitate the orderly reporting of budget projections and information, as contemplated by this paragraph.

- F. Notification Concerning Permit Modifications. Hyland shall, at least ninety (90) days in advance of any modification requested from the DEC that is classified as a major modification under applicable DEC regulations, provide written notice to the Town of Hyland's intent to request a major modification. Such notice shall include sufficient detail to apprise the Town of the nature and purpose of the requested modification. Hyland shall, at least thirty (30) days prior to any application to the DEC for a modification that is classified as a minor modification under applicable DEC regulations, provide written notice to the Town. Such notice shall include sufficient detail concerning the nature and purpose of the requested modification. Nothing herein, however, shall require any advance notification to the Town regarding any modification that is effectuated through the construction process or as part of the construction certification process. At least thirty (30) days following any modification implemented through the construction process or the construction certification process, written notice shall be provided to the Town regarding the nature and purpose of each modification.

VIII. Payments to the Town by Hyland.

- A. Tipping Fee. Hyland shall pay to the Town of Angelica tipping fees at the rate of \$1.50 for each ton of waste received at the Hyland Project. All tipping fees shall be paid on a quarterly basis within 30 days after each quarter (as established by the DEC).
- B. Adjustment to Tipping Fee. On the effective date of this Amended Agreement, the tipping fee is \$1.58 per ton of waste received at the Hyland Facility, which represents 7.17% of the average gross tipping fee received at the Hyland Facility for the twelve months ending September 30, 1999. For the purpose of this subparagraph, average gross tipping fee shall mean the average price received by Hyland for all solid waste disposed at the Hyland Facility during a given time period, exclusive of transportation charges. Annually, commencing upon the anniversary date of this Amended Agreement, the tipping fee shall be adjusted up or down as a formula based upon 7.17 percent of the average gross tipping fee charged by Hyland over the twelve months immediately preceding October 1st of each year; provided, however, that if the amount resulting from the formula is less than \$1.58 per ton, the tipping fee shall be \$1.58 per ton for that year. On or before the Anniversary date of this Amended Agreement, Hyland shall certify to the Town the increase or decrease in the tipping fee payable to the Town. Such certification need not include any information on the tipping fees charged by Hyland. All information provided to the Town shall be maintained as confidential business information and shall not be disclosed to anyone. The Town may review, at its own expense, Hyland's records pertinent to the gross tipping fee charged to third parties through an independent Certified Public Accountant, provided that the Certified Public Accountant agrees to sign a confidentiality agreement consistent with the terms of this paragraph. Any dispute over the amount of the tipping fee payable to the Town shall be subject to the dispute resolution provisions of paragraph X of this Amended Agreement. Any report or information submitted by a Certified Public

Accountant to the Town pursuant to this paragraph and any dispute resolution sought pursuant to paragraph X shall be subject to the confidentiality provisions of this paragraph.

C. Other Fees. In 1996, Hyland paid to the Town the sum of \$250,000.

D. Application of Tipping Fees to Taxes.

1. Hyland's obligation to pay Town taxes unaffected. The payment of tipping fees and other payments provided herein shall not affect the obligation of Hyland to pay annual Town taxes, as determined by the assessed valuation of the Hyland Project. Hyland retains its right to seek review of its assessment, including judicial review.
2. Use of tipping fees by the Town. As part of each annual budget, the Town shall identify how the host community fees will be used to meet the Town's budget needs.

E. Recycling Fees.

1. In the event that Hyland recycles and sells any ash, metal, gas, electricity, or any other products from the solid waste extracted from the ash monofill ("Recyclable Product"), then Hyland shall pay to the Town, on a quarterly basis, a recycling fee equal to 5 percent of Hyland's gross receipts from the sales of Recyclable Product. For the purpose of this Amended Agreement, gross receipts shall mean all amounts received by Hyland for the sale of Recyclable Product. No recycling fees shall be required for Recycled Product that is utilized on site.
2. Within thirty days after the end of each quarter of Hyland's fiscal year, Hyland shall furnish to the Town quarterly statements showing gross receipts from the sale of Recyclable Product. Hyland shall make its books and records pertaining to the gross receipts from the sale of Recyclable Product only available to the Town, or its designated representatives, on a periodic basis for review or audit.

F. Special Assessments and Taxes. Hyland may offset against any amounts due to the Town under the terms of this Amended Agreement, any amount that Hyland is required to pay to the Town by reason of any special assessments or taxes, other than real property taxes, imposed by the Town relative to Hyland, its property, equipment, employees, and/or business operations. Any such setoff shall be subject to the dispute resolution provision of paragraph X of this Amended Agreement.

IX. Reservation of Rights and Joint Defense of This Amended Agreement.

- A. Reservation of Rights. The making and execution of this Amended Agreement shall not be construed as a waiver or concession on the part of either party with respect to any matter asserted in the course of litigation between the parties, or with respect to the legality, constitutionality, or enforceability of Local Law No. 1 of 1988, Local Law No. 1 of 1998, and the Amendment to Local Law No. 1 of 1998 Exhibit ("A"), or the applicability of such laws to the Hyland Project.
- B. Covenant Not to Sue.
1. Notwithstanding the foregoing, Hyland agrees that it will make no claims regarding the legality, constitutionality, or enforceability of Local Law No. 1 of 1988 and/or Local No. 1 of 1998, as they apply to the Hyland Project, in any administrative proceeding or legal proceeding in any court until and unless the Town has breached any material term of this Amended Agreement which imposes an obligation upon the Town or unless the Town should enact local legislation purporting to amend Local Law No. 1 of 1988 and/or Local law No. 1 of 1998 to make their prohibitions and/or requirements applicable to Hyland, or enact similar legislation affecting the operation of the Hyland Project.
  2. For the purposes of this Amended Agreement, the material terms of this Amended Agreement which impose an obligation on the Town include each obligation of the Town defined in the following paragraphs of this Amended Agreement: paragraph I (relating to the events required prior to the effective date of this Amended Agreement); paragraph IV(B) (relating to prohibitions); paragraph V(A) (relating to road abandonment or the alternative road upgrade); paragraph V(C) and (D) (relating to the upgrade and repair to Peacock Hill Road), and paragraph IX(C) (relating to joint defense of this Amended Agreement). Each obligation of the Town stated in this paragraph or any legislative enactment identified in paragraph IX (B)(1) shall be considered in the disjunctive for the purpose of determining whether Hyland's right to challenge Local Law No. 1 of 1988 and/or Local Law No. 1 of 1998, as they relate to the Hyland Project, has been revived.
- C. Joint Defense. Should any person commence legal proceedings to challenge (1) this Amended Agreement; (2) the 1996 amendment to Local Law No. 1 of 1988 adopted in furtherance of the Original Host Community Agreement; (3) the amendment to Local Law No. 1 of 1998 (Exhibit "A") adopted pursuant to the terms of this Amended Host Community Agreement; or (4) the procedures by which they were effectuated, both parties agree to defend this Amended Agreement, the 1996 amendment to Local Law No. 1 of 1988, the Amendment to Local Law No. 1 of 1998 (Exhibit "A"), and/or the procedures by which they were effectuated. Both parties shall cooperate in organizing and coordinating a joint defense so as to avoid duplicative or unnecessary legal fees, expenses, and disbursements, and Hyland shall indemnify the Town for all such fees, expenses, and disbursements reasonably incurred in connection with any such defense.

D. Defense of Local Law No. 1 of 1988 and/or Local Law No. 1 of 1998 and/or the Amendment to Local Law No. 1 of 1998 (Exhibit "A").

1. If at any time during the term of this Amended Agreement any party should seek or attempt to site another waste disposal facility within the Town of Angelica, the Town reserves its right to assert that Local Law No. 1 of 1988 and/or Local Law No. 1 of 1998 and/or the Amendment to Local Law No. 1 of 1998 (Exhibit "A") are valid and enforceable and to enforce their provisions against that party.
2. In that event, Hyland agrees that, at the request of the Town Board, it will cooperate with the Town Board and will participate, to the extent that such participation is not inconsistent with the reservation of rights stated in this Amended Agreement, in any litigation between the Town and the party seeking to site another waste disposal facility within the Town by supplying any affidavits or other factual materials reasonably requested by the Town or its attorneys for purposes of such litigation.
3. No such assistance or cooperation from Hyland shall be construed or be deemed to be an admission by Hyland regarding the legality of Local Law No. 1 of 1988 and/or Local Law No. 1 of 1998 and/or the Amendment to Local Law No. 1 of 1998 (Exhibit "A"), or their applicability to the Hyland Project, or be construed to be in derogation of the reservation of rights contained in this Amended Agreement.

X. Resolution of Disputes.

- A. Negotiation. In the event of a dispute between the parties, the parties shall attempt in good faith to resolve any controversy or claim arising out of, or relating to, this Amended Agreement promptly by negotiations between senior representatives of the parties.
- B. Mediation.
  1. In the event that the parties are unable to resolve any dispute through negotiation, the parties agree to mediate any such dispute. The parties agree that mediation shall be conducted promptly and efficiently in an effort to resolve any such dispute.
  2. Any party desiring to invoke mediation shall send notice to the other party regarding the issues to be mediated. Both parties shall, within ten days of such a notice, agree upon a mutually acceptable mediator who shall be independent and impartial, have full authority to implement the process required by this paragraph, and have full authority to schedule meetings and to require the

production or exchange of relevant information as is necessary to promptly resolve the dispute. If the parties cannot agree upon a mediator within 10 days of such notice, then the dispute shall be referred to JAMS/Endispute, Inc., 73 Tremont Street, Boston, Ma. 02108-4101 (617) 228-0200, for the appointment by them of a mediator reasonably local to Allegany County. Both parties shall pay the cost of the mediator equally.

3. Any compromise achieved through mediation shall be memorialized in a report rendered by the mediator. In the event that the dispute is not resolved through mediation within sixty (60) days after the mediator has been appointed, the mediator shall render a report regarding the nature of this dispute, the mediator's opinion as to how the dispute should be resolved, and the mediator's opinion regarding which party is at fault in the dispute. The report rendered by the mediator shall be non-binding and shall not be admissible in court against either party, except in connection with an application for attorney's fees as provided in paragraph X(D) below.
4. Any time limit in this paragraph may be extended by mutual agreement of the parties.

C. Availability of Judicial Relief. In addition to any rights or remedies that the Town might otherwise be entitled to invoke, the Town may seek enforcement of any provision of this Amended Agreement in a legal or equitable proceeding in State Supreme Court seeking appropriate injunctive relief, which relief may include an order and judgment affirmatively directing Hyland to comply with the obligations imposed by this Amended Agreement, an order and judgment directing Hyland to refrain from conduct prohibited by this Amended Agreement, an order and judgment directing Hyland to pay monetary sums required under this Amended Agreement, or a judgment declaring the rights of the Town under this Amended Agreement. Hyland shall have all rights and remedies available to it in law or in equity, and nothing in this Amended Agreement shall be construed to limit those rights or remedies. However, no action may be maintained by either the Town or Hyland until the processes contemplated by paragraphs X(A) and (B) have been completed.

D. Expenses of Enforcement. In the event that the Town prevails in any action against Hyland alleging any violation of any provision of this Amended Agreement and a right to relief where the Town has participated in mediation and received a favorable report from the mediator regarding the same issues advanced in the litigation, the Town shall be entitled to recover reasonable attorneys' fees, filing fees, and other expenses and disbursements reasonably accrued in connection with the prosecution of the action or proceeding.

XI. Landfill Oversight Committee and Enforcement of Violations.

- A. Landfill Oversight Committee. In order to foster an open exchange of information and to address issues associated with the Hyland Project, the parties agree to cooperate in the creation of a Landfill Oversight Committee. The Landfill Oversight Committee will consist of one representative appointed by the Town Board, one representative appointed by Hyland, and one representative appointed by the two appointees. The role of the Landfill Oversight Committee shall be: (1) to review all issues of concern to the Town associated with the operation of the Hyland Project and how the Hyland Project interfaces with the Town under the terms of the Amended Host Community Agreement; and (2) to resolve enforcement disputes. The Landfill Oversight Committee will be authorized to hire an independent consultant with an annual budget in the amount of \$5,000, to be reimbursed by Hyland. These fees will be in addition to the funds for engineering fees provided in paragraph VII(A)(3).
- B. Nuisance Violations. In order to prevent nuisance violations relating to odors, dust, blowing litter and noise, the Landfill Oversight Committee is empowered to assess penalties against the Hyland Project for the violations defined below. At any time when the Landfill Oversight Committee believes that a violation has occurred, it shall send written notice to Hyland regarding the specifics of the violation, including the date and time of the violation, the conditions observed and the person who observed such conditions. All such notices shall require the concurrence of 2/3 of the Landfill Oversight Committee prior to issuance, and shall be based upon the personal observations of members of the Landfill Oversight Committee and/or demonstrative evidence (such as photographs, affidavits, consultants' reports, and the like) that depict the conditions which are the subject of the complaint. Hyland and the Landfill Oversight Committee shall negotiate in good faith to resolve the alleged violation and to correct any problems identified in the alleged violation. In the event that Hyland and the Landfill Oversight Committee have not agreed to compromise the alleged violation, Hyland shall, within 30 days after receipt of the notice of the alleged violation, either (1) pay the assessed penalties; or (2) dispute the penalty by requesting binding arbitration. In the event that the Town Board disputes any result arrived at between Hyland and the Landfill Oversight Committee, the Town Board may dispute the result by requesting binding arbitration. Binding arbitration shall be conducted in accordance with Article 75 of the Civil Practice Law and Rules and the Rules of the American Arbitration Association, and shall occur in Allegany County, New York, with single arbiter. The party requesting the arbitration shall be responsible for the costs of the arbitration. Hyland and the Town Board shall be parties to any such arbitration.
- C. Schedule of Nuisance Violations:
1. Blowing litter offsite: Not less than \$25.00 nor more than \$100.00.
  2. Dust conditions that extend offsite: Not less than \$50.00 nor more than \$100.00.



- from  
penalties;  
a fine of  
correct the  
provided
3. Odor conditions that are detectable at neighboring residences or other areas regularly occupied by humans: Not less than \$100.00 nor more than \$250.00.
  4. Noise conditions that violate the noise limitations set forth in the DEC permit applicable to the Hyland Project ( for the purpose of this provision, property owned by Hyland shall include any property over which Hyland has acquired a noise easement): Not less than \$250.00 nor more than \$500.00.
  5. For any violation that is alleged to be a continuing violation, Hyland shall have a period of 10 days to correct the violation following receipt of written notice the Landfill Oversight Committee without incurring additional fines or provided, however, that the Landfill Oversight Committee may assess not less than \$100.00 and no more than \$500.00 should Hyland fail to alleged ongoing violation at the conclusion of the 10-day grace period in this paragraph.
- D. The remedies stated in this paragraph shall be cumulative to any remedies the state may have regarding alleged nuisance violations.

XII. Miscellaneous Provisions.

- A. Transfer or sale of business. Hyland is prohibited from transferring or selling the business that constitutes the Hyland Project to any other person or entity, unless that person or entity shall first execute and deliver to the Town a written agreement that the person or entity will be bound by the provisions, terms, and conditions of this Amended Agreement and will comply with them in all respects.
- B. Successors and Assigns. This Amended Agreement shall be binding upon the parties and their successors and assigns, shall be recorded in the office of the Allegany County Clerk, and shall be deemed to run with the land now owned by Hyland adjacent to the Hyland Project.
- C. Severability. If any provision of this Amended Agreement is adjudged to be void, invalid, or illegal by a final judgment of a court of competent jurisdiction, then the remaining provisions shall remain in effect.
- D. Notices. Any notice required to be given under the terms of this Amended Agreement may be given by depositing the same in the United States mail, First Class, postage prepaid, or hand delivering the notice. Notices shall be addressed as follows:

To Hyland:

Michael Holmes (or his designated successor)  
Hyland Facility Associates  
6653 Herdman Road  
Angelica, New York 14709

To the Town: Craig Schlau (or his successor)  
Town Supervisor  
Town of Angelica  
Town Hall  
Angelica, New York 14709

- E. Counterparts. This Amended Agreement may be executed in one or more counterparts, each of which shall be deemed an original.
- F. Construction of this Amended Agreement. The captions of the sections and paragraphs are for convenience only and shall not be considered or referred to in resolving questions of construction.
- G. Choice of Law and Venue. This Amended Agreement and its construction and interpretation shall be governed by the laws of New York, and any action to enforce this Amended Agreement or any of its terms or provisions shall be commenced in New York Supreme Court, Allegany County.
- H. Entire Agreement. This Amended Agreement constitutes the entire agreement of the parties and supersedes all prior discussions, agreements, and understandings between the parties. There are no agreements or understandings between the parties, written or unwritten, that are not expressed in this Amended Agreement.

1. Amendments. No amendment to this Amended Agreement shall be valid unless made in writing and executed by both parties.

TOWN OF ANGELICA

By: Craig Schlau  
Craig Schlau, Town Supervisor

HYLAND FACILITY ASSOCIATES

By: Michael Holmes  
Michael Holmes

STATE OF NEW YORK )  
COUNTY OF Allegany ) ss.:

On this 2nd day of December, 1999, before me personally came Craig Schlau, to me personally known, who being by me duly sworn, did depose and say that he resides in Angelica, New York; that he is the Supervisor of the Town of Angelica, the municipality named in and which executed the foregoing Instrument; that he executed the foregoing instrument by authority of the Town Board of the Town of Angelica, by and with the consent of the municipality and as and for the act and deed of said municipality.

Connie L. Schuld  
Notary Public

STATE OF NEW YORK )  
COUNTY OF Tompkins ) ss.:

CONNIE L. SCHULD  
Notary Public, State of New York  
Allegany County No. 015C6081187  
June 3, 20 00

On this 21st day of December, 1999, before me personally came Michael Holmes, personally known, who being by me duly sworn, did depose and say that he resides in Chicago, New York; that he is the VP of Hyland Facility Associates, a partnership described in and which executed the above Instrument; that he knows that he executed the foregoing instrument by authority of the partners of said partnership, by and with their consent and as and for the act and deed of the partners of said partnership.

Lisa L. Spencer  
Notary Public

LISA L. SPENCER  
Notary Public, State of New York  
No. 01SP6018081  
Qualified in Tompkins County  
Commission expires 12/28/ 02