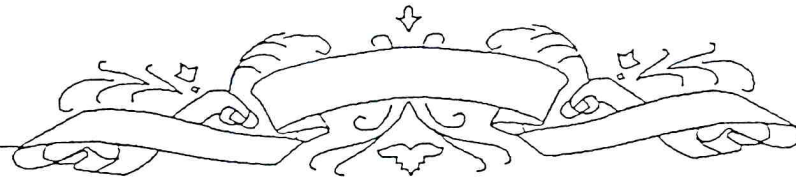


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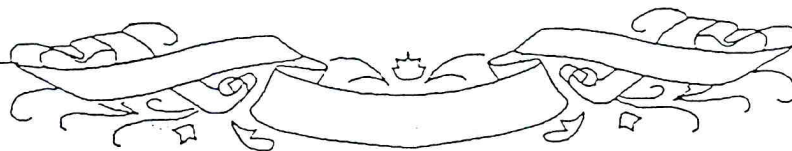
APR 30 1991

WASTE FACILITY  
SITING BOARD



# LANDFILL AGREEMENT

Between Emerald Park, Inc.  
and City of Muskego



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## RECITALS

WHEREAS, Emerald Park, Inc., a Wisconsin corporation, herein referred to as "Applicant", "Landfill Operator", and "Operator", desires to open and operate a sanitary landfill for the disposal of municipal, commercial and industrial nonhazardous waste (the "Landfill"), and

WHEREAS, the applicant proposes to locate said landfill in the City of Muskego, Waukesha County, Wisconsin, on real property more specifically depicted in Exhibit "A" hereto attached and incorporated by reference and made a part of this Agreement.

AND WHEREAS, the City of Muskego is a municipal corporation existing by virtue of the laws of the State of Wisconsin (herein referred to as the "City"), and has a duty and obligation to insure the best interests of the health, safety and welfare of the community including the environmental health and economic concerns of its citizenry, and by virtue of Chapter 144 of the Wisconsin Statutes, has joined the County of Waukesha (herein referred to as the "County") in appointing members to a local negotiating committee to negotiate with the applicant concerning said proposed landfill,

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties agree as follows:

### GENERAL PROVISIONS

A. This Agreement shall be applicable to the present Applicant/Operator, its successors and assigns.



## SPECIFIC PROVISIONS

1. Commencement Date and Term. The commencement date of this agreement shall be the date on which the City formally approves the negotiated agreement between the applicant and the local negotiating committee.

The terms of this agreement shall continue in effect until the Applicant/Operator is relieved of the site responsibility by the State of Wisconsin and United States of America notwithstanding other provisions of this Agreement. Where specific terms in the Agreement set a shorter period of time, the time as enumerated in the paragraph shall take precedence over this provision. Terms and conditions of operation and closure required by the State of Wisconsin (DNR) and United States of America (EPA) shall constitute terms and conditions of this Agreement.

2. Standing Committee. The Applicant, City and County agree to the formation of a Standing Committee. Membership on the Committee shall consist of one (1) member appointed by the Waukesha County Board Chairman and approved by the Waukesha County Board of Supervisors, one (1) member of the Muskego City Council appointed by the Mayor, two (2) residents of the City of Muskego residing within the area contained on Exhibit "C-1". The two (2) resident members shall be appointed by the Common Council. In addition, the landfill Applicant/Operator shall appoint one (1) representative who shall also serve on the Committee. The committee shall have the functions and powers enumerated under Exhibit "B" attached to this Agreement.

From the direct payment to the City of Muskego, after receipt of payment for a period of six months, the City shall provide \$5,000.00 to the Standing Committee. Each year an additional \$5,000.00 shall be provided to the Standing Committee until the Standing Committee has received budgeted funds of \$15,000.00. Once the \$15,000.00 level is reached, the City shall provide only such funds as are necessary to bring the Standing Committee's budget to \$15,000.00 in each successive year, but in no event shall the City have to contribute more than \$5,000.00 in any given year in order to maintain the budget.

The funds provided to the Standing Committee shall be used to carry out the duties of the Standing Committee, including an appropriate reimbursement for members of the Standing Committee with the exception of the member appointed by the Landfill.

In addition, said funds may be used for technical assistance to the Standing Committee which shall include: All scientific testing relevant to the landfill site and all consulting and legal assistance when required to advise the Standing Committee and carry out its powers.

Landfill Operator agrees to provide information concerning technical and scientific data to the Standing Committee which it has obtained and has available for its own purposes.

3. Responsibility of Applicant/Operator for Water. The Applicant/Operator shall install an in-ground water tank, to prevent freezing, with a capacity of not less than 25,000 gallons, or a surface pond which has a stand pipe (dry hydrant) which allows

all weather access. The exact size and design of the surface pond shall be approved by the City of Muskego Fire Department prior to construction of the landfill. The pond shall be located within the facility's perimeter fence and, if possible, shall be located within 300 feet of the buildings constructed on the site. In addition, the fire department shall be furnished with a key to the facility gate, or other arrangements shall be made to allow the department access to the pond for off-site fires. The operator shall confer with the local fire chief prior to finalizing the design for on-site buildings and shall comply in all respects with local fire protection ordinances that apply to the on-site buildings.

4. Construction and Operation Requirements. In the construction and operation of the landfill site the Applicant/Operator agrees to comply with all the requirements of this contract, the ordinances of the City of Muskego and County of Waukesha of general application and such ordinances appropriately within the police powers of the City and County which are not in violation of Wis. Stat. s. 144.445.

In addition to such requirements at law the Applicant/Operator agrees to the following:

A. Replacement of Water Supply. In the event any existing well in the City of Muskego within the area defined in Exhibit "C", herein incorporated by reference and made a part of this Agreement, becomes contaminated after the issuance of a landfill license, the Landfill operator shall be responsible for



providing a supply of drinkable water and a new permanent water supply. Time is of the essence and the permanent water supply shall be completed within thirty (30) days or as soon as possible after all necessary approvals are obtained for connection to public or community water supply. The term "permanent water supply" shall include a well, group or common well, area well, or hook up to a public or community water supply. In the event of bacteriological contamination which can be corrected by decontamination procedures Applicant/Operator shall have the opportunity to decontaminate the well. However, if the problem reoccurs a permanent solution shall be undertaken. The Applicant/Operator shall have discretion upon the approval of the City of Muskego at the Applicant/Operator's expense to extend the city water to the area or connection to a community well as an alternative to providing new deeper wells or alternative water supply.

The Applicant/Operator to the extent desired may pre-test any well or wells within this area for PCB's, pesticides or bacteriological contamination. Such pretest shall take place before site use begins. This testing shall be done at the Applicant/Operator's expense. In the event a well owner does not allow pre-testing of their well, they shall not be eligible for the protections afforded by this paragraph. In the event a test shows contaminants as aforesaid in the well, unless the condition is rectified by the property owner at the property owner's expense, the Applicant/Operator shall not be responsible for the well replacement under this Agreement.

After pre-testing which would demonstrate none of the aforesaid contaminants or if no pre-testing is undertaken by the Applicant/Operator of any individual well, and the well is later found to have said contaminants, Applicant/Operator shall supply water under this Agreement. If the Applicant/Operator disputes that their activities were responsible for or caused the contamination, Applicant/Operator shall obtain an assignment from each resident who is serviced by either city water or a community well or who has been provided with a deeper well and bottled water to pursue such rights and actions without recourse to the recipient (unless the recipient has caused the contamination) and may pursue any other parties they deem to be responsible for the cause. The Applicant/Operator shall have no obligation under this paragraph unless and until the affected property owner executes and delivers such assignment of claims. All recovery of its costs had against any third party shall become the property of the Applicant/Operator. Nothing in this Agreement however shall be construed to affect the right of any citizen to commence suit against Applicant/Operator for any property damage or personal injury associated with their operations and nothing herein shall be construed to require an assignment of any and all claims of the property owner but only an assignment of the claims based on the expenses and other damages which the Applicant/Operator has assumed.

The water protection agreement shall continue in full force and effect, and be binding on the Applicant/Operator, for a



period of forty (40) years from the date of termination of actual landfilling activities.

B. Drainway. Applicant/Operator shall restore, dredge and improve the primary drainage ditch to Big Muskego Lake to its original depth prior to commencing any operations at the landfill site. The Applicant/Operator's obligation under this paragraph shall be subject to the City obtaining necessary access and the City obtaining all necessary permits from all local, state and federal regulating agencies, and the Applicant/Operator shall diligently assist the City in preparing and drafting all necessary plans and filling out all applications and in paying all costs of drafting, design, applications, approvals and reviews incurred by the City in processing the necessary permit applications. Applicant/Operator's responsibility shall be limited to \$60,000.00 under the terms of this paragraph. After the initial restoration of the drainway, Applicant/Operator will be responsible to clean sedimentation caused by the site at their own expense.

Additionally, the Applicant/Operator shall construct and maintain a storm water detention facility capable of detaining on-site storm water flows as provided in the Applicant's feasibility report and required by the Muskego City Engineer, which was approved on the 1st day of August, 1988 and is identified as Drawing Number 1397.03-11, Base Grade/Engineering Modifications Plan Sheet 11 of 15 and is herein incorporated by reference, prior to the date of this Agreement.

C. Sewer. Upon direction by the City of Muskego when sewer becomes available the Applicant/Operator shall pay all costs for the design and installation of public sanitary sewers, force mains, lift stations and related facilities to service the landfill site for leachate and effluent disposal from the site. Sewer shall be considered "available" when it has been brought to the proximity of the intersection of Ryan Road and North Cape Road.

The duty upon the Applicant/Operator to construct and install a public sanitary sewer shall require them to construct a sewer that meets the specifications set out in Exhibit "F", hereto attached and incorporated by reference as a part of this Agreement.

The Applicant/Operator shall be subject to all standard rates, charges and conditions under the City of Muskego sewer use ordinance. Applicant/Operator shall pay all costs for the design and installation of the sanitary sewers, force mains, lift station and related facilities as specified in Exhibit "F" to service the landfill site for leachate and effluent disposal from the site. The plans, specifications and submittal of all documents relating to the sanitary sewer system shall be reviewed and approved by the City Engineer of the City of Muskego. Applicant/Operator shall be bound to install sewer, upon the request of the City, within 7.5 years commencing with the date of licensing. If however at any time after 7.5 years the site capacity remaining is 50% or more of the approved capacity, the City shall have the right to require, and the Applicant/Operator shall install sewer.

If other users connect to the sewer extension financed by the Applicant/Operator, the City of Muskego shall, if legal, assess such users for a portion of the costs financed by the Applicant/Operator on the uniform basis applied by the City of Muskego as of the date of such connection with interest on the unpaid assessments at the City's standard rates. All assessment payments and interest shall be delivered to the Applicant/Operator upon receipt. If it is held by a Court of competent jurisdiction that the City of Muskego cannot assess and deliver said assessment payments and interest to the Applicant/Operator, then the City shall not be obligated to do so and if it has already done so, the Applicant/Operator shall reimburse the City. City agrees that it will not challenge the legality of such assessment.

D. Traffic and Roads. To the extent that improvements are needed for City Streets, County Roads or State Highways as the result of the operation of the landfill site, the Applicant/Operator shall pay for the costs of said improvements. Said improvements shall include all design and construction necessary to provide an adequate ingress and egress to the site as determined by the City of Muskego, County of Waukesha and State of Wisconsin.

The landfill operator shall not accept waste from any hauler who hauls waste on Union Church Drive west of S.T.H. "45".

E. Miscellaneous.

To the extent it is determined that there are any wetlands on the property, landfill operator herein agrees to



continue and maintain said wetlands without alteration and no surface water runoff will be allowed from the landfill into the natural drainway which will alter and/or effect in anyway any area determined to be a wetland. Provided, however, that with the approval of the Department of Natural Resources if wetlands located on the subject property are relocated on said property, and provided that said relocation of wetlands will have no adverse effect or impact on property off the site, wetlands may be altered accordingly.

In addition thereto, Applicant/Operator agrees that during construction and operation it will not allow water to flow from the landfill site at any excessive rate or at excessive volume into the natural drainway. Excessive rate and volume herein means a rate that will cause the flow of water from the landfill site to spill over the natural banks of the drainway. Such steps and such expense shall be undertaken by the Applicant/Operator to insure the adequacy of the drainway to provide for flow from the landfill site. Applicant/Operator will further respect the rights of the City of Muskego off the site to regulate and enforce the appropriate use of the drainway.

Applicant/Operator herein agrees that it will follow the construction design plan approved by the Department of Natural Resources after review of the feasibility report and that compliance with those requirements shall become a part of this Agreement. If there is a breach of the construction requirements, that shall constitute a breach of the Agreement.

In addition to the berm for site containment, a fence, comparable to the fence bordering the north boundary of said property, shall be placed around the landfill site as set out in Exhibit "D" hereto attached and incorporated by reference as a part of this Agreement. The Applicant/Operator herein agrees that under no circumstances shall the depth of the landfill site exceed that set out in the approved feasibility report. Applicant/Operator herein agrees that the height shall not exceed 875 feet MSL except for cap and final cover. However, Applicant/Operator shall be allowed adjustments in the event WDNR modifies the horizontal limits or design which would reduce the designed capacity. It is mutually agreed, however, that design capacity will not exceed the capacity outlined in the current feasibility report.

5. Zoning Approval. Applicant/Operator herein respects the duties and responsibilities of the City of Muskego and the County of Waukesha to enforce its laws and ordinances concerning land use in an equal unbiased manner and that said laws were designed to protect the health, safety, welfare and morals of the community.

Upon the signing of this Agreement by Applicant/Operator and the City of Muskego after approval by the Siting Committee, all pre-existing local approvals preventing the site and recycling facility are modified accordingly. Specifically, the zoning for the site is Industrial I-2 Zoning to allow the landfill and recycling facility with a conditional use permit. Upon the change in zoning, the terms of this Agreement shall become the conditional



uses under the zoning. Nothing herein shall be construed to eliminate the zoning of the City of Muskego. The terms of this Agreement are the terms of the conditional use under the zoning changes herein agreed to and adopted by the City of Muskego. If the Applicant/Operator fails to comply with any of the terms of this Agreement which are the conditional uses, the City of Muskego shall have the right to proceed under the procedures applying to conditional uses under the ordinances of the City. Failure to so remove all pre-existing local approvals shall render the Agreement null and void.

All non-discriminatory and non-arbitrary provisions of the zoning ordinance, such as set back, side yard, and other such enactments shall continue except for any provisions for local permits or licenses to operate a sanitary landfill and recycling facility such as the provisions of section 11.03 of the City of Muskego Municipal Code. Applicant/Operator may remove clay necessary for the creation of the landfill site, however permitting for the hauling routes under City ordinance shall be approved by the City. In addition, no clay extraction other than that necessary to the creation of the landfill site shall be allowed without a permit of approval by the City of Muskego.

Applicant/Operator shall adhere to the building code requirements and shall be required to apply for all building permits. The City of Muskego shall not adopt any ordinance or administrative rule or undertake any act of any arbitrary or discriminatory nature in the review and issuance of such permits

designed to frustrate the development of the landfill site and recycling facility. The City, however, does not waive any rights that it has which do not violate Wisconsin or federal law.

6. Final Use. After termination of the landfill operation the landfill Operator will take all steps required by law, both State and Federal, to preserve the environmental integrity of the landfill site and to warrant, indemnify and insure the health, safety and welfare of all inhabitants, the City of Muskego and the County of Waukesha. Applicant/Operator further agrees to follow all ordinances, directions and mandates of the City of Muskego and County of Waukesha concerning the land use of the site after landfill activities have terminated.

7. Direct Payment to City. Applicant/Operator agrees to pay \$2,000,000.00, plus the National Consumer Price Index, over fifteen (15) years, however, payable as follows:

A. Base Formula.

\$66,600.00 per year for the first two years of operation; and

\$143,600.00 for years three (3) through fifteen (15).

All of said payments are to be made monthly, commencing thirty days after receipt of a license to operate the site. The payments shall be indexed annually for inflation in accordance with the National Consumer Price Index, All Urban Consumers (CPIAUC).

B. Alternate Formula.

As an alternate to the formula in paragraph 7-A., above, the Applicant/Operator shall pay in accordance with the formula set

out here if the dollar amount in a given year exceeds the dollar amount under the "Base Formula".

Within thirty (30) days, at the end of each year from the commencement of actual fill activities, Applicant/Operator shall provide the City of Muskego with a survey under seal from a licensed surveyor or professional engineer stating the percentage of space remaining in the landfill and the percentage amount of space used during the year. The report shall be based upon the number of tons remaining in the landfill relative to the original design space of 1,420,000 tons reported in the feasibility study. To the extent such space is used by Applicant/Operator, the Applicant/Operator shall pay an annual fee to the City of Muskego. The fee shall be based upon the following parameters and formula:

1. The total space of the landfill shall be considered to be 1,420,000 tons as stated in the feasibility report design capacity.
2. Annually, from the date of commencement of the placement of waste on the site, the applicant shall report:
  - a) Total space in the landfill expressed in tons = TS
  - b) The total space remaining in the landfill expressed in percentage = RS
  - c) The difference of space used from prior years from the current year expressed in percentage = DS

The percentage of space used in each calendar year shall be multiplied by the total space of the landfill resulting in the net tons placed in the landfill for the preceding year. The Applicant/Operator shall pay \$1.40 per ton of waste placed in the landfill. The \$1.40 cost per ton shall be adjusted annually based upon the Consumer Price Index, All Urban Consumers, (CPIAUC). The annual payment would then be based upon the following formula:



DS x TS x \$1.40 (CPIAUC) = Annual Payment

In the event the Applicant achieves greater compaction densities than reported in the Feasibility Report Design Capacity, there will be no adjustment to the formula. Applicant/Operator upon making the alternate calculations will pay any additional sum over and above the sum paid on the monthly basis to the City of Muskego within sixty (60) days from the end of each annual year.

The consumer price index (CPI) to be used shall be the National Consumer Price Index - All Urban Consumers. However, the annual increase shall not be less than 4% per annum or greater than 7% per annum in any calendar year.

8. Direct Payment to County. From the funds paid under paragraph 7 "Direct Payment to the City" there shall be deducted 2.5 cents per ton which shall be paid to the County. Calculation of the 2.5 cents per ton shall be based on the formula set out in paragraph 7(b).

9. Records. The Applicant/Operator shall allow the Standing Committee, the City of Muskego and the County of Waukesha complete and open access to all of its books, records, documents and reports relating to volume and type of waste received or placed in the landfill site. This information shall be available and provided upon request at all times during normal business operations.

10. Negotiating Committee Expenses. The Applicant/Operator herein agrees to reimburse the City of Muskego and County of Waukesha for all reasonable and necessary expenses of the local negotiating committee relating exclusively to the negotiation of this Agreement, including the fees paid by the County to County

representatives for attendance at negotiating committee meetings, and for all other members of the committee the amount of Thirty-five (\$35.00) Dollars per meeting. In addition thereto, Applicant/Operator herein agrees to reimburse the City of Muskego for all reasonable and necessary expenses incurred by the committee, including attorney fees and disbursements, independent consultant fees and disbursements, and other necessary and related expenses incurred by the local negotiating committee. Any outstanding balance not paid during negotiations by Applicant/Operator shall be paid upon the signing of the Agreement by the City of Muskego. Applicant/Operator shall be given a credit against the amounts due and owing under the direct payment to the City for one/half of any amounts paid for negotiating committee expenses, as defined in this paragraph, which exceed \$50,000.00. Applicant/Operator agrees that it will not receive reimbursement for the payment of the Negotiating Committee expenses as defined in this paragraph which do not exceed \$50,000.00.

11. Municipal Responsibilities to Constituents. The parties to this agreement understand that the City of Muskego and the County of Waukesha have certain duties and responsibilities to the health, safety and welfare of the community and to enforce its laws, ordinances and regulations, and to seek enforcement of appropriate administrative codes, State and Federal, statutes, laws and ordinances, and that said responsibilities are responsibilities that the municipalities cannot waive or contract away.



Nothing in this agreement shall be construed to limit the City in passing any enactment or requiring any condition or permit which is not expressly prohibited by Wis. Stat. s. 144.445 as it presently exists or as modified in the future. The City of Muskego reserves from this Agreement any future rights they may receive by amendments or deletions to the existing siting laws. All pre-existing local approvals as defined by 144.445(3)(fm) shall continue in force with the exception of those specifically waived by this Agreement. In the event the legislature changes the law allowing local enactments, regulation and permits, nothing in this Agreement shall be construed to limit the authority of the City of Muskego, or County of Waukesha to act under such laws. However, no law shall be enacted designed to prohibit the continuation of the landfill until its approved capacity is completed. The Agreement in other respects shall continue in full force and effect.

12. Exception. In the event the Applicant/Operator has violated either, (a) the terms of this Agreement; (b) a municipal ordinance not expressly prohibited by Wis. Stat. s. 144.445; (c) a State of Wisconsin Administrative Code provision; (d) a State of Wisconsin Statute; (e) a Federal code or regulation, which results in restraint or stay of operation of the site; the Applicant/Operator shall be bound by this Agreement to continue payments on a monthly basis for a period of 90 days. Thereafter, if the facility becomes operative at a later date payment shall commence.

13. Area To Be Served By Facility. Applicant/Operator can accept waste only from a source which is legal to accept under the laws of the State of Wisconsin, as they now exist or as amended in the future. Failure to comply with the law shall constitute a breach of this Agreement.

14. Assignment, Transfer and Sale. Applicant/Operator shall have the right to transfer, sell, lease or otherwise convey the lands which are the subject of this Agreement to any other person, entity or corporation, provided that the warranties, indemnifications and sureties meet the standards set out in paragraph 16, together with reasonable assurances that said person, entity or corporation can maintain the warranties, indemnifications and sureties during the course of this contract. Applicant/Operator shall not transfer, sell, lease or otherwise convey the lands which are the subject of this Agreement to any other person, entity or corporation, nor shall the Applicant/Operator assign or transfer this Agreement to any other person, entity or corporation unless such other person, entity or corporation is controlled by the Applicant/Operator or is under common control with the Applicant/Operator without said person, entity or corporation verifying to the City of Muskego and County of Waukesha its ability to comply with paragraph 15 of this Agreement.

15. Warranty, Indemnification and Liability. Applicant/Operator herein agrees to be responsible for all acts involved in the construction, operation, closure, and long-term care of the

landfill site. Applicant/Operator herein agrees to warrant, indemnify and defend the City of Muskego, County of Waukesha, Landfill Siting Committee, Standing Committee, and all their representatives, counsel and agents, against all uninsured or excess claims, demands, suits, damages and legal costs therein, arising out of the construction, operation, closure, and/or long term care of the landfill. The parties herein designated shall be referred to as "Additional Insureds".

The Applicant/Operator will provide sufficient surety to establish its ability to fund the indemnification contained in this paragraph. The established surety shall be not less than \$1,000,000.00 in excess of any insurance the "additional insureds" may have insuring them against liability claims and defense costs, If "additional insureds" have no insurance insuring them against liability claims or defense costs, the surety in this paragraph shall still apply. Nothing in this paragraph shall be construed to limit the total indemnification provided in the proceeding paragraph. The \$1,000,000.00 shall apply in the first year from the signing of this contract and shall be increased annually in each subsequent year based on the NCPIAUC, U. S. Department of Labor, Bureau of Labor Statistics. The surety shall be as follows:

1. Environmental impairment liability insurance which names the Additional Insureds;
2. A letter of credit guaranteed and naming the Additional Insureds as beneficiaries;
3. Cash escrow account in the names of the Additional Insureds, as beneficiaries;  
or



4. A surety bond naming the Additional Insureds as beneficiaries.

The surety shall commence on the date of construction. The NCPIAUC shall apply for each year thereafter until fifteen (15) years after the date of commencement of landfill activities, at which time the amount of the fund shall remain constant continuously thereafter during the period of long term care.

The form of financial assurance shall be deposited with the City of Muskego prior to the issuance by the WDNR of an operating license for the landfill or prior to the first act of physical construction of the landfill. The term of financial assurance provided under this paragraph shall commence upon issuance of a WDNR license and continue until the WDNR releases the financial assurances provided by the Applicant/Operator under Wis. Stat. s. 144.443. The financial assurance herein shall be separate from the financial assurance for closure and long term care required by WDNR.

Any surety bond, environmental impairment liability insurance or letter of credit, shall provide that such financial assurance may not be modified without the prior written consent of the City and County and may not expire, except upon ninety (90) days prior written notice to the City and County. The Applicant/Operator may convert to another form of surety allowed under the terms of this paragraph. In the event the landfill Operator fails to renew such form of financial assurance, or substitute another form of financial assurance permitted under this

paragraph 15, sixty (60) days prior to the expiration of the existing form of financial assurance, the City or County may call the entire amount of such surety bond or letter of credit and the financial assurance contract with the guarantor shall so provide. Any cash escrow account shall be held and invested by a third party escrow agent, acceptable to the landfill Operator, the County and the City, pursuant to a mutually agreeable escrow contract entered into by the City, County and landfill Operator.

The term "Indemnatee" shall include the City of Muskego, its employees, agents, counsel and representatives; the County of Waukesha, its employees, agents, counsel and representatives; the Siting Committee, its employees, agents, counsel and representatives; and the Standing Committee, its employees, agents, counsel and representatives. In the event of any uninsured or excess claim or demand against Indemnatee as a result of landfill negotiation, operation, site activity, or closure, the Landfill shall assume the defense to the extent that there is no policy of insurance in effect protecting the Indemnitees from liability and providing a defense. Indemnatee shall, within a reasonable time, notify in writing the Landfill operator of such claim or demand specifying the nature of the claim or demand and the amount or estimate to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim or demand). This indemnification, which shall cover in the event of a suit against the Indemnitees, is not to be construed as a release of any claim the Indemnitees may have against Applicant/Operator for liability



damages, and is not to be construed as a release of any right by way subrogation which the insurance provider for the Indemnitees may have by way of subrogation derived from the insured, indemnitee. Any claim, settlement, award or judgment by way of subrogation against the Applicant/Operator paid by the insurance shall not reduce the indemnification provided to the indemnitees herein.

If the Landfill Operator believes that the claim is not one for which it has assumed liability, indemnification or surety under this Agreement, it shall notify the Indemnatee within ten (10) days or less, if time is of the essence, from receipt of notice of claim that it will not defend the claim. Such determination shall be made under this Agreement applying the laws of the State of Wisconsin as they apply to contracts of insurance, surety, warranty and indemnification. All disputes shall be resolved in accordance with Wisconsin law.

Upon an acceptance of the defense, the Applicant/Operator, hereinafter referred to as "Indemnitor" shall either promptly undertake all legal means of defense or settle the claim without any costs of defense, liability or damage to the Indemnatee.

In the event that a claim is lost the Applicant/Operator shall bear sole responsibility for the payment of any claim. Said claim shall be satisfied out of the assets of the Landfill Operator. To the extent the Landfill Operator is unable to satisfy said claims, the Landfill Operator may pay the claim from the surety provided. However, nothing herein shall release the

Landfill Operator, Indemnitor, for total responsibility for payment of the claim.

16. Liability Protection In General. The Applicant/Operator will be responsible for injuries, sickness, disease, damage, personal injury, property damage, property loss, loss in value of property, whether real or personal, as a result of the construction, operation, closure and long-term care of the landfill site. The Applicant/Operator will provide insurance as surety to cover possible claims. The established insurance or surety shall be not less than \$1,000,000.00 in the form of Environmental Impairment Liability Insurance, a guaranteed letter of credit, cash escrow account which balance is maintained, surety bond, or guarantee of a corporation qualified and licensed to do business in the State of Wisconsin having a liquid net worth in the State of Wisconsin of at least \$2,000,000.00 maintained at all times. In the event of a desire to transfer the property to any other entity, said warranty, indemnification, and surety shall continue in effect unless substituted pursuant to paragraph 15 or otherwise agreed as acceptable to the Standing Committee and the City of Muskego. Any change, alteration or substitution of insurance or surety, shall follow the format set out in paragraph 15 except as to amount which shall follow this paragraph. In addition thereto, the Applicant/Operator herein certifies that prior to operation it will have tangible assets of not less than \$950,000.00 in land, will make improvements on the site in an amount of \$3,100,000.00, and the value of tangible assets will be maintained at not less

than 1.3 million after depreciation during the active life of the site. The surety provided shall not be construed as a limit of the liability of the Applicant/Operator.

17. Covenants Of Landfill Operator Regarding Application, Construction, Use and Operation.

A. Types of Waste. The Applicant/Operator shall accept only the following types of "solid waste" as defined in Wis. Stat. s. 144.01(15):

1. Municipal solid waste;
2. Non-hazardous industrial waste;
3. Incinerator ash from Waukesha and Milwaukee Counties.

Applicant/Operator will not accept any hazardous waste as defined at the present time by NR 181, or as presently defined by Federal law, and in addition thereto, shall not accept any hazardous waste to the extent future State or Federal enactments will make the requirements more stringent.

In addition thereto, Applicant/Operator will not accept any solid waste which exhibits characteristics of a hazardous waste when the criteria of NR 181.14 of the Administrative Code of the State of Wisconsin, March 1988, are applied.

Applicant/Operator shall not accept a substance which is a hazardous waste even if reduced in concentration by mixing with a non-hazardous substance either on or off the premises.

Applicant/Operator will not accept any solid waste which contains any portion of a substance which is a "hazardous waste" as defined in Chapter 181, Administrative Code of the State of



Wisconsin, or Federal Law, whichever requirement is more stringent.

Applicant/Operator agrees that no waste will be accepted from any jurisdiction or entity that does not comply with Wisconsin Act 335. If said act is amended, changed or deleted its application will vary accordingly.

B. Hours Of Operation. The Applicant/Operator shall not conduct any physical operations whatsoever on the site other than during the hours commencing at 6:30 a.m. to 5:00 p.m., Monday through Friday, and 7:00 a.m. to 12:00 p.m. on Saturday. Applicant/Operator shall provide a three-day leachate storage capacity as part of the design of the site. During the construction there shall be no physical operation of the site except between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, and 7:00 a.m. to 12:00 p.m. on Saturday. There shall be no physical activity or operation on the site on New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day or Easter Day. There shall be no physical activity or operation on the site on Sundays.

The landfill may be operated from 7:00 a.m. until 5:00 p.m. on Saturdays following a week in which one of the above listed holidays occurs, however, this shall not apply to any Saturday which is part of the holiday weekend.

Under special circumstances either as the result of adverse weather conditions or where such operation is in the best interest of the public, the Applicant/Operator shall be allowed to operate at a time outside of the schedule herein imposed upon



obtaining the approval of the Chairman of the Standing Committee. If the Chairman denies the approval, the Applicant/Operator may make such request to the entire Standing Committee and have available the normal procedures as outlined under the Standing Committee, Exhibit "B".

C. Traffic Matters. The Applicant/Operator shall pave all site roads with concrete or asphalt to a distance of 800 feet from State Highway 45. Applicant/Operator shall provide such gravel as necessary to the active area of the landfill site. The service shall be of such a character and shall be maintained in a fashion to abate dust. Applicant/Operator shall comply with all State, County and Municipal directives concerning traffic controls, site access and traffic safety considerations and shall pay such expenses as necessary to create an appropriate traffic pattern in compliance with State, County and Local approval and requirements and shall follow such directives concerning access routes to the site by Applicant/Operator and waste haulers. As to County and City ordinances and resolutions, the Applicant/Operator will follow such directives to the extent that such directives are not arbitrary or discriminatory.

The Applicant/Operator shall keep the roads on the site in a good state of repair during construction of the landfill and during the life of the landfill site and after closure for as long as the road is used on the site. The Applicant/Operator shall agree to apply water calcium chloride and such other dust suppressants as needed in the area adjacent to the on site roads.

The determination of need shall be made by the Standing Committee or their designated representative.

D. Compliance with Applicable Law. The Applicant/Operator will comply at all times with the terms of this Agreement and shall operate the site at all times in compliance with local ordinances to the extent such ordinances are not in violation of Wis. Stat. s. 144.445. The Applicant/Operator agrees to comply with State Codes, Administrative Codes and Regulations, State Statutes, and Federal Regulations and Codes. Any failure to comply with the aforesaid shall constitute a violation of the Agreement.

E. Environmental Monitoring. All environmental monitoring shall be in accordance with NR 508 or as set forth in the feasibility study whichever is more restrictive and plan of operations approvals for the landfill, and shall, at a minimum include:

Operational Ground Water and Surface Water Monitoring

A. Sample Locations

1. Monitoring Wells

MW-3A and B  
MW-4A, B and C  
MW-5A and B  
MW-8A and B  
MW-13A, B and C  
MW-14A and B  
MW-16A and B  
MW-18A and B

2. Gradient Control System

At inclined lift station

3. Surface Water

At the sedimentation basin outlet

## B. Sampling Parameters

### 1. Quarterly sampling parameters

Field Temperature	Hardness
Field Conductivity	Chloride
(Field at 25°C)	Dissolved Iron
Field pH	Total Suspended
	Sediment
Alkalinity	(Sedimentation
cod	basin only)

### 2. Annual Sampling Parameters (VOC) SCAN using EPA methods 601 and 602

#### Parameter

Bromodichloromethane  
Bromoform  
Bromomethane  
Carbon tetrachloride  
Chlorobenzene  
Chloroethane  
2 - Chloroethylvinyl ether  
Chloroform  
Chloromethane  
Dibromochloromethane  
1,2 - Dichlorobenzene  
1,3 - Dichlorobenzene  
1,4 - Dichlorobenzene  
Dichlorodifluoromethane  
1,1 - Dichloroethene  
1,2 - Dichloroethane  
1,1 - Dichloroethane  
trans - 1,2 - Dichloroethene  
1,2 - Dichloropropane  
cis - 1,3 - Dichloropropene  
trans - 1,3 - Dichloropropene  
Methylene Chloride  
1,1,2,2 - Tetrachloroethane  
Tetrachloroethene  
1,1,1 - Trichloroethane  
1,1,2 - Trichloroethane  
Trichloroethene  
Trichlorofluoromethane  
Vinyl chloride  
Benzene  
Chlorobenzene  
1,2 - Dichlorobenzene  
1,3 - Dichlorobenzene  
1,4 - Dichlorobenzene  
Ethylbenzene  
Toluene

C. Water Level Measurements

At all monitoring wells and in gradient control system.

D. Frequency

Monitoring wells: Quarterly or Annually  
During Operation as Noted  
Sedimentation Basin: Once a year while discharging.

Sampling shall continue for the designated parameters even if the DNR determines in the future that sampling for one or more of such parameters is not required.

If at any time it is determined by the Department of Natural Resources or the Environmental Protection Agency that additional environmental monitoring requirements are needed, the Applicant/Operator will immediately comply. Such to groundwater, leachate, gas or other features of the Landfill.

F. Future Environmental Considerations. Applicant/

Operator herein agrees that all monitoring procedures and all operation procedures which constitute the latest state of the art will be employed in order to insure the health, safety and welfare of the community, and the natural environment. As new methods of monitoring and operation become available, Applicant/Operator herein agrees to employ the same without reservation.

An annual review of the most advanced methods of monitoring and operation shall be undertaken by the Applicant/Operator, Standing Committee, and the Standing Committee Consultant, and a report of such methods shall be compiled. Applicant/Operator herein agrees that all monitoring procedures and all operation procedures which constitutes the latest state of the



art will be employed. As used herein the term "state of the art" shall be the latest and most sophisticated or advanced stage of technology recognized to be effective to a reasonable degree of scientific probability and acceptable to the Wisconsin Department of Natural Resources.

Applicant/Operator agrees that it will prevent the emission into the ambient air of any substance or combination of substances which will cause either an objectionable odor or interpose a danger to the health, safety and welfare of the natural and human environment. Upon complaint to the Standing Committee by any three (3) individuals or any municipality, the Standing Committee shall exercise its powers of review and implement the procedures outlined in this Agreement to the extent it is deemed appropriate concerning such problems. The Applicant/Operator herein agrees to cooperate with and follow the directives and mandates of the Standing Committee, Wisconsin Department of Natural Resources, and the Federal Environmental Protection Agency.

G. Waste Stockpiling. The Applicant/Operator shall not stockpile any waste and all waste shall be covered daily, except as provided under "Recycling".

H. Odor Abatement. The Applicant/Operator agrees to control odor from the landfill. All odorous materials shall be buried as soon as they are received at the site and shall not be disturbed thereafter. The Applicant/Operator shall apply daily cover to all solid waste. An active gas system will be built into each phase and will be activated after final cover is installed on

each phase. The Applicant/Operator agrees to implement an active state of the art gas and odor control system at the landfill for a period of not less than thirty (30) years after the site has been completely closed. The Standing Committee shall have the right to review the plan of operations including the gas control system, at the time it is submitted to the Department of Natural Resources for approval.

I. Dust Abatement. The Applicant/Operator shall adequately gravel all non-paved roads and roadways within the designated landfill area. These roads and roadways shall only be in the immediate vicinity of the active area of the site. Applicant/Operator shall agree to apply water, calcium chloride and other dust retardants as needed. In the event of a dispute the Standing Committee shall determine need. Applicant/Operator agrees to maintain a vegetative cover on all areas which are disturbed and not being actively used, and in addition thereto, on all berms constructed around the perimeter of the site.

J. Blowing Debris Control.

In addition to a berm and appropriate fencing around the perimeter of the site, the Applicant/Operator shall:

- i. Install additional windbreaks (trees and shrubs.
- ii. The Applicant/Operator will use portable fencing windscreens in the active areas of the site.
- iii. The fencing which will be used as controls will be cleaned of litter and debris daily, and returned to the active area for disposal. Further, if any litter escapes the landfill, the

Applicant/Operator agrees to pick up litter on neighboring property with prior permission of the owners, and return it to the active area for disposal.

iv. During windy weather, the Applicant/Operator will:

- a. maintain the disposal area in well-screened areas.
- b. compact the waste loads immediately after waste is deposited.
- c. apply liberal quantities of cover soil.

In addition, Applicant/Operator agrees to comply with all provisions of NR 504.05(10)(a) regarding fences and windblown debris control.

K. Landfill Vector Control. The Applicant/Operator agrees to control pests or vectors through proper compacting and covering the waste and grading of the site to eliminate ponded water, and by implementing proper rodent baiting program inside the fenced area.

The Applicant/Operator further agrees to pay for a professional pest control specialist to regularly monitor the site no less than four times per year.

L. Mud Tracking. The Applicant/Operator agrees to maintain the paved entrance free of mud tracked from vehicles from the landfill. This will be done by maintaining graveled access roads inside the site and sweeping or washing down paved roads inside the site.



M. Drainage and Erosion Control. The Applicant/Operator agrees to submit final drainage and erosion control plans for approval by the Waukesha County Soil Conservation Service, and agrees to provide copies to the Standing Committee, the Clerk of the City of Muskego, and the Clerk of the County of Waukesha.

18. Contested Case Hearing. For and in consideration of the consummation of this Agreement, the City of Muskego agrees to dismiss the contested case hearing concerning the feasibility report, and the City further agrees not to commence any contested case procedures against the Applicant/Operator concerning the plan of operation and/or licensure of the landfill or to petition for judicial review of the Wisconsin Department of Natural Resources decision pertaining to the feasibility report, plan of operation and/or licensure of the landfill. In addition, the City of Muskego agrees to withdraw from the pending litigation challenging either environmental impacts, assessments or feasibility of the proposed landfill.

19. Property Protection Provision. All residences (including properties which contain residences but which are zoned residential, agricultural, forest or flood plain/wetland) within the area defined in Exhibit "C", attached hereto and incorporated herein by reference, shall be eligible for property protection as follows:

- A. The owner shall cause all or a part of their property to be listed for sale at an amount not less than the fair market value as calculated on their property tax statement as of December 31, 1990, plus 10% of that amount. This figure shall increase annually based on the Wisconsin



Department of Revenue, Index of Economic Factors for like property in the City of Muskego. Said property shall be listed for a period equal to the average listing time then prevailing as recorded by the Milwaukee Realtors Multiple Listing Service, however, not to exceed 150 days. If at the expiration of that period of time the property has not sold at the value listed, the property owner may request the Applicant/Operator to pay them the 1990 fair market value as listed on the real estate property tax statement, plus 10%, plus the Wisconsin Department of Revenue, Index of Economic Factors for like property. In order to be eligible the property owner(s) may list the property themselves but must advertise it in a newspaper of general circulation not less than twice per week. The property owner(s) may choose to use a real estate broker and all advertising and promotion shall be at the discretion of said real estate broker.

All property owners within the area above described, to be eligible for said relief, must have owned the property on or before December 31, 1990; however if the property owner(s) who owned said property before December 31, 1990 made a transfer

- (a) to a spouse,
- (b) to a parent,
- (c) to a child,
- (d) to a step-parent or step-child,
- (e) to a son-in-law or daughter-in-law,
- (f) to a trust, trustee, principal or agent,
- (g) solely in order to provide a release for security, debt, or obligation,
- (h) by Will, decedent or survivorship,

such rights as the principal owner(s) holding the property before December 31, 1990 shall transfer to any new owner under such provisions and upon their sale they may exercise the option herein stated. Ownership as defined in this section of the Agreement shall include any contract or lease with option to purchase.

For purposes of this Paragraph 19, the term "residences" shall include any contiguous or adjacent property zoned residential, agricultural, forest or flood plain/wetland that contains a residence. This Paragraph 19 shall apply if all, or a portion of said property, is sold.

If property is destroyed by any cause, the Applicant/Operator shall not be responsible for the payment under this section for the full amount of the property under this Property Protection unless the property is restored to a condition equivalent to its prior condition. To the extent that an out-building is destroyed and the landowner does not desire to rebuild the building, the property protection shall be adjusted by computing the value of the property as if the building had not been on the property. The formula for evaluation shall be as stated in the first paragraph of Section 19 - A, except the initial figure shall be the fair market value of the land and remaining improvements as calculated on their property tax statement as of December 31, 1990 plus 10% of that amount.

It is herein agreed and understood that the Applicant/Operator shall not be required to purchase more than five (5) properties in any given calendar year. The order of acquisition of said properties shall be based on the order of date that said property is first advertised or listed for sale.

- B. All property owners within the area above described.
- C. Property protection shall commence if the Applicant/Operator obtains a favorable determination of feasibility and if all litigation on the issue of site feasibility has been concluded or waived by a lapse of time or settlement. Eligibility shall continue for five (5) years after the landfill site has been accepted into long term care by the Wisconsin Department of Natural Resources.

The term "Wisconsin Department Of Revenue, Index of Economic Factors" as herein used refers to an annual adjustment based on the percentage of change in stated value of Class T properties in the City of Muskego resulting from "economic change", as reported on Wisconsin Department Of Revenue, Bureau of Property Tax "Statement of Changes in Merged Equalized Value by Type of Change." For reference, the adjustment for the years 1985 through 1990 would have been as follows:

<u>Change From</u>	<u>Change To</u>	<u>Equalized Value</u>	<u>Economic Change</u>	<u>Percent Change</u>
1985	1986	\$406,627,100	(\$12,814,000)	-3.15%
1986	1987	401,919,900	6,072,000	1.51%
1987	1988	415,688,300	28,087,000	6.76%
1988	1989	457,219,100	18,574,900	4.06%
1989	1990	499,618,500	34,817,200	6.97%

20. Sociological Impacts. City of Muskego recognizes that the landfill will have an impact on the quality of life of certain residential properties listed on Exhibit "E" hereto attached. City of Muskego will pay 15% of the total funds received annually by the application of the direct payment or formula payment, whichever is larger, divided equally on the basis of the number of residential units listed on Exhibit "E" hereto attached and incorporated by reference. "Residential Property" shall include all properties zoned residential with a residence, and all agriculturally zoned properties which contain a residence. To be eligible, the owner must have owned the property on August 1, 1990. The amount received, 15%, shall be divided by the number of residential properties listed on Exhibit "E". In the event of a transfer of ownership the payment shall run with the land. The payment shall continue as long as funds are received by the City from the Applicant/Operator under this Agreement. Any residences constructed after August 1, 1990 shall not be added or included in this sociological impact provision. From the first payments made by the Landfill, by Applicant/Operator, all said funds shall apply to pay-off the negotiating committee expenses first before this paragraph will become effective. In the event Applicant/Operator, or any other landfill company, acquires any property rights in an eligible residential property they shall not qualify to participate in the division of proceeds under this paragraph regardless of the use being made of the property.



21. Recycling Agreement. The Applicant/Operator shall attempt to make a reasonable effort to recycle materials at the site. All recycling activities shall take place at a separate location on the site away from the daily landfill operations. All recycling operations shall be conducted in a separate covered building or all recyclable materials shall be stored in containers that may be closed at the end of each days operation. Applicant/Operator agrees to follow all future rules and regulations regarding recycling that may be imposed by State, County or Local regulations except for any provisions for local permits or approvals to operate a recycling facility. Applicant/Operator shall be allowed to compost subject to future rules and enactments for approval. To the extent the City of Muskego has any authority it may regulate composting, however such approval shall not unreasonably be withheld.

22. Limitations on Future Development. The Applicant/Operator herein agrees that it will not own, operate or develop, acquire or expand any other landfill site in the City of Muskego, whether such site be non-hazardous or hazardous. This shall apply to Creative Resource Ventures, Ltd., all corporations and individuals holding stock in Creative Resource Ventures, Ltd., Emerald Park, Inc. Said corporations and individuals will sign an authorization allowing Emerald Park, Inc., by the signing of this Agreement, to bind them to this provision. Nothing herein shall be construed to limit or grant future expansion of the subject site.

23. Miscellaneous Conditions. The terms of this Agreement shall be incorporated upon the granting of a zoning change as terms of the conditional uses under the zoning of the City of Muskego. The Agreement, upon the signing, shall become effective upon the granting of a zoning change.

The Applicant/Operator shall give a minimum of sixty (60) working days notice to the City of Muskego and the Standing Committee prior to the start of construction of any new cells on this site. Applicant/Operator may remove such clay as is necessary from the site for the construction of the landfill. No other clay shall be removed from the landfill site without the expressed written permission, or under the rules and ordinances, of the City of Muskego.

24. Applicable Law. The laws of the State of Wisconsin shall govern the terms of this Agreement.

25. Failure To Comply With Agreement.

If the Applicant/Operator fails to comply with the Agreement, the City of Muskego, County of Waukesha, Citizens Affected, or the Standing Committee, either jointly or severally, shall have the right to pursue all remedies under the Agreement, and in addition thereto, shall have the right and standing to pursue all remedies at law or at equity.

To the extent costs and disbursements and attorney fees are expended by the City of Muskego, County of Waukesha, Citizens Affected, or the Standing Committee, either jointly or severally, the Court shall have the right to award such fees as are just and

equitable under the circumstances.

Nothing in this section is to be construed to override the option of the Standing Committee to exercise authority under the Standing Committee Procedures.

26. Local Approvals. Applicant/Operator and City acknowledge that there are local approvals which pre-existed all notices by Applicant/Operator in accordance with the provisions of 144.445 as "local approvals" are defined. It is understood by and between the parties that local approvals not expressly waived, modified or changed by this Agreement shall continue in full force and effect.

27. Termination of Certain Paragraphs Upon Closure of Site. The provisions of the following paragraphs shall terminate when the active fill operation at the Landfill Site ceases. Those paragraphs are as follows: 4(c) and (d), 5, 7, 8, 10, 12, 13, 14, 17((a), (b), (c) and (g), 18, 20 and 21. All the remaining paragraphs of the Agreement shall survive the closure of the site.

Dated this 29th day of APRIL, 1991.

EMERALD PARK, INC.

By: Ted Grayzel  
VICE President

By: Jack C. Miles  
Secretary

Dated this 23RD day of APRIL, 1991.

CITY OF MUSKEGO

By: Wayne L. Selenia  
Mayor

By: Frank Marendia  
Clerk



## A P P E N D I X

### EXHIBIT:

- A Map Depicting Site
- B Standing Committee Procedures
- C Well And Property Protection Area
- D Site Survey With Fence Outlined
- E Properties Eligible For Sociological Impact Funds
- F Sanitary Sewer Service Construction Parameters

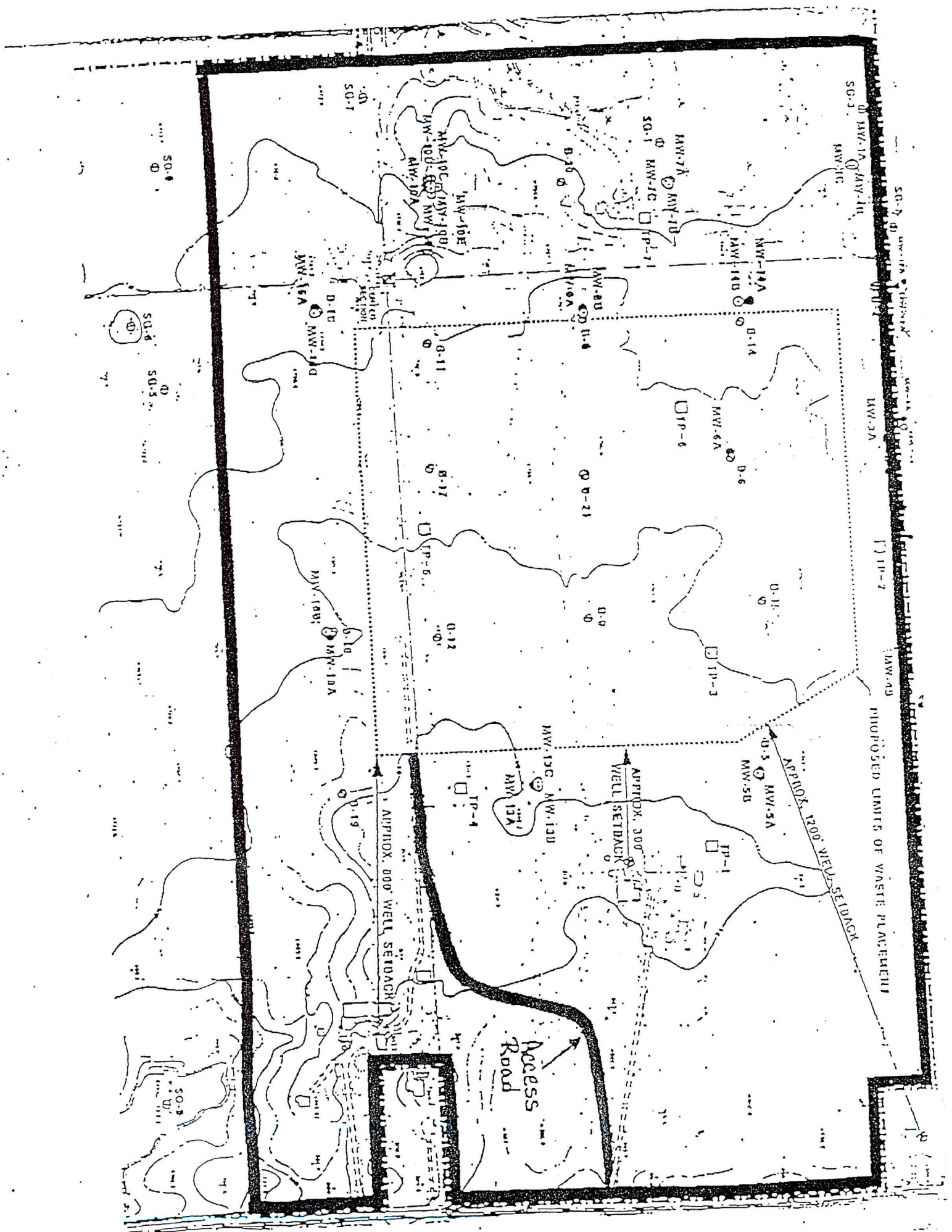


EXHIBIT "B"

STANDING COMMITTEE PROCEDURES

STANDING COMMITTEE:

A. Purpose. The City of Muskego (herein referred to as the "City"), the County of Waukesha (herein referred to as the "County"), and Emerald Park, Inc. (herein referred to as the "Applicant/Landfill Operator") agree to establish and participate in a committee to regulate and monitor the construction, operation, closure and long-term care of the landfill site.

B. Membership. Any party having a conflict of interest, either economic or otherwise, affecting their ability to serve the best interests of the health and safety of the human environment by virtue of anticipated or pending negotiations for the sale of land, goods or services to, or the receipt of such from the landfill operator shall not be appointed to the Standing Committee. This shall not apply to the Applicant/Operator's representative.

Each public member of the committee shall serve a term of three (3) years. There shall be no prohibition to reappointment of members of the committee for successive terms. The city shall be allowed to initially stagger the terms of the three (3) appointees. The committee shall elect from amongst its members an individual to function in the capacity of chairperson; however, the representative of the landfill operator shall not serve as chairperson of the committee. The chairpersons of the committee shall have the right to vote on all issues brought before the committee. The Applicant/Operator shall designate a representative to fill a three (3) year term; however, the designated representative may give a proxy to another party, employee or representative of the Applicant/Operator who may act at the meeting under said proxy with the complete authority of the representative of the landfill designated on the committee.

C. Replacement and Removal. A committee member appointed by the City and County or the Applicant/Operator may voluntarily resign at any time, and any committee member appointed by the city shall automatically be removed from the committee effective from the date that member no longer resides in the area as above stated. Upon the occurrence of either, the city, or if applicable, the county shall promptly appoint a replacement.

Any committee member may be removed by the committee for good cause and upon a four/fifths (4/5ths) vote of the entire committee.



D. Quorum. Three (3) members shall constitute a quorum for the purpose of transacting all business before the committee.

E. Documents. Copies of all technical reports and monitoring data supplied to the Federal Environmental Protection Agency or the State of Wisconsin, Department of Natural Resources, by the Applicant/Operator pertaining to the landfill site described herein shall be provided free of charge to each member of the committee.

F. Meetings. The committee shall establish a schedule of meetings for the purposes of review, explanation and discussion of said technical data and the status of the landfill site construction, operation, closure and long-term care. Special meetings of the committee may be called by any member of the committee upon five (5) days written notice for the purpose of addressing any issue of concern involving the landfill site construction, operation or closure. Upon the occurrence of an event deemed by any committee member to constitute an emergency condition, a special meeting may be called with less than five (5) days notice, provided due diligence is undertaken in an attempt to reach each member personally. The public may attend any committee meeting; however, to the extent not required by law, Wisconsin Statutes Chapter 19 shall not apply. "Due diligence" shall be complied with when any notice called for by this agreement shall be personally delivered or sent by certified mail (with a receipt evidencing notice prior to the meeting) to all members at the address listed by them with the committee.

G. Committee Responsibility. The committee shall have the right and responsibility to conduct periodic on-site inspections of the landfill site or shall have the right to designate a representative to undertake the inspection. However, the committee or representative shall contact the employee in authority or apparent authority on the site and advise said employee of any on-site inspection. If in the judgment of the majority of the committee members the landfill site or operations at the site are not in compliance with the provisions of this agreement, the committee shall have the right to serve notice of non-compliance specifically stating the violation by the Applicant/Operator. Such directive shall be in writing at which time the Applicant/Operator shall either correct the violation forthwith or indicate in writing any objections it has to the committee's decision.

H. Emergency Authority to Committee. Certain landfill site conditions, such as dust, noise, odor and debris, can present an immediate noxious condition requiring that emergency measures be taken to cause the condition to cease and desist. Upon complaint to the committee, the committee may immediately investigate the landfill condition. If in the committee's opinion, by majority vote, there is a violation of a condition of this Agreement, the committee shall immediately inform the



Applicant/Operator to correct the violation. If said violation is not immediately corrected the Applicant/Operator agrees to comply with orders of the Standing Committee to either correct or cease operation for a period of not less than one (1) day with the exception of Friday and Saturday which shall not exceed three (3) days. Nothing herein shall be construed to limit or prevent the City of Muskego from exercising its rights under the Safety Ordinances if there is a threat to public health or safety.

In the event of a special meeting of the committee if the majority of the committee determine there is a violation and the Applicant/Operator refuses to correct said condition, the committee by its appropriate representatives may bring an action in the Waukesha County Circuit Court, including an action for temporary injunction, restraint, mandamus or may seek any other relief at law or equity. Nothing herein shall limit the City of Muskego, or County of Waukesha, to otherwise enforce this Agreement.

In the event that said injunction, order or mandamus is granted or that the committee is successful concerning said litigation the Applicant/Operator shall pay the standing committee actual attorney fees incurred to bring said action. Nothing herein shall require the chairperson or the committee to take Court action if they deem appropriate another course of action, either under this Agreement or otherwise.

I. Committee Powers. In the event of a complaint during the construction, operation, closure and long-term care of the landfill site which is brought to the attention of the committee, the committee or designated representative shall have the right to investigate the complaint. The Applicant/Operator shall cooperate with said investigation. Upon a determination that there is no violation, or that said condition has been corrected to the satisfaction of the committee at the time the committee meets, the committee shall so advise the complainant. There shall be no further responsibility on the committee to act concerning said issue. The public shall have the right to speak before the committee concerning any alleged violation by the landfill Applicant/Operator.

In the event the committee determines by majority vote that there is a violation, the committee shall order the Applicant/Operator to bring the landfill site into compliance within a reasonable time. The Applicant/Operator shall have a duty to cooperate with the directive of the committee. For a second or continuing violation of a same or similar nature the committee shall have the right to fine the operator. However in no event shall the fine exceed \$400.00 per day for each day of violation. This shall not limit any other rights of the committee or the municipalities under the terms of this agreement.

J. Right to Review. In the event the Applicant/Operator shall disagree with the order or directive of the committee under paragraph I, the Applicant/Operator shall have the right to appeal to arbitrators appointed by mutual consent of the parties. The arbitrators shall determine (a) whether or not the committee has abused its discretion, or (b) whether or not the committee actions were arbitrary and capricious, or (c) whether or not the committees' actions were based on substantial facts in the record. Applicant/Operator agrees to be bound by the determination of the arbitrators.

All hearings shall be open to the general public who shall have the right to address the hearing examiner.

In the event the arbitrator determines the actions of the committee were in violation of the aforesaid standards, the arbitrator may enter such findings as he deems appropriate, and either dismiss the complaint or remand the matter to the committee for further proceedings not inconsistent with his ruling. In the event the arbitrators determine the findings of the committee were not (a) an abuse of discretion, (b) arbitrary or capricious, or (c) the committees' actions were based on substantial facts in the record, the order of the committee shall be binding on the Applicant/Operator.

Arbitrators shall be appointed as follows: Each party shall select an arbitrator. These two arbitrators shall select a third arbitrator. Upon hearing and review the three arbitrators shall decide any issues brought before them. In the event the decision of the arbitrators cannot be unanimous, majority shall rule.

K. Form of Proceedings Before the Committee. All proceedings before the committee may be informal, however, if the operator or complainant requests, said proceedings shall be conducted in a format comparable to a contested case hearing. The committee shall have the right to adopt a formal procedure on their own motion. Minutes of the proceedings shall be kept by a secretary appointed by the committee.

Specifically, the complainant or Applicant/Operator shall be entitled to the swearing of witnesses, the presentation of testimony, the transcription of the proceedings, the right to cross-examine witnesses, the findings of the committee shall be in writing and shall include findings of fact and orders which shall specify the contractual, ordinance, code, or law violation upon which the determination of the committee is made. If no request for such procedure is made either by the complainant or the Applicant/Operator under informal proceedings, the committee shall nevertheless reduce its findings, determination or order to writing.

L. Contact Person. The Applicant/Operator shall supply a local committee with the names, addresses and telephone numbers of three representatives of the Applicant/Operator, one of whom shall be available at all times, including weekends, holidays, and emergency hours. Each of the three parties, individually, shall have complete authority to act and bind the Applicant/Operator concerning all matters contained in this agreement and relevant to issues involving the landfill site.

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December 18, 1990

EXHIBIT C

Property and Well Protection Area

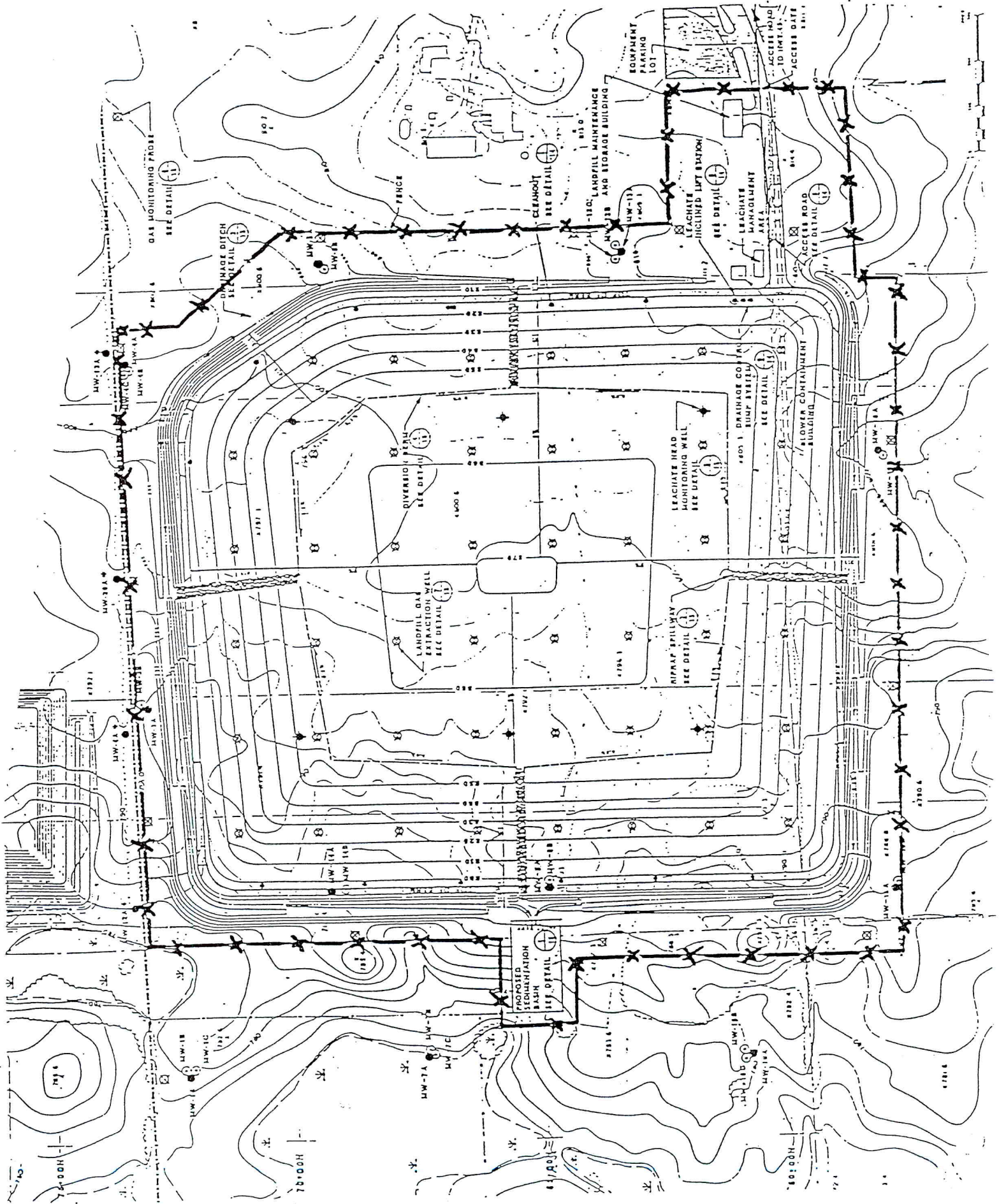
All residents within the area defined as follows:

All that part of Section 25, 26, 35 and all of Section 36, Town 5 North, Range 20 East, City of Muskego, Waukesha County, Wisconsin, bounded and described as follows:

Beginning at the Southeast corner of Section 36; thence Westerly on Union Church Road, and the South line of Sections 35 and 36 to a point of the West 1/8 line of Section 35; thence Northerly along said 1/8 line to a point of intersection with Thode Road; thence continuing Northerly along the centerline of Thode Road to a point 200 feet North of the centerline of S.T.H. "36"; thence Northeasterly along a line 200 feet parallel to the North right-of-way line of S.T.H. "36" to a point of intersection with the East line of Section 25, said point being 200' North of S.T.H. "36"; thence Southerly along the East line of Sections 25 and 36 to the point of beginning.

NOTE: Attached hereto see pocket part identified as Exhibit C-1, an aerial photograph showing the boundaries contained in the legal description above described.

# EXHIBIT D



—X—X— fence

## Property Protection List for Emerald Park Area

List No.	Tax Key No.	Shares	Name & Address	1990 Assessed Value	1990 Market Value	1990 Value + 10%
1	2257 975	1	Margaret Ann Ivers * S98 W12532 Loomis Road Muskego, Wisconsin 53150	72,200	83,993	92,392
2	2257 985	1	Clarence J. Wagner 5835 S. 108th Street Hales Corners, Wisconsin 53130	60,500	70,382	77,420
3	2257 986	1	Margaret L. Slak S98 W12772 Loomis Drive Muskego, Wisconsin 53150	82,700	96,208	105,828
4	2257 987	1	Karl L. & Dawn Brien S98 W12808 Loomis Road Muskego, Wisconsin 53150	64,800	75,384	82,922
5	2257 989	1	LaVerne J. Bartes S98 W12878 Loomis Road Muskego, Wisconsin 53150	76,900	89,460	98,406
6	2257 990	1	Mark A. Weissbrodt S98 W12904 Loomis Road Muskego, Wisconsin 53150	63,400	73,755	81,131
7	2257 991	1	Marilyn Canfield S98 W12932 Loomis Road Muskego, Wisconsin 53150	52,500	61,075	67,182
8	2257 992	1	John F. Eckstein S98 W12970 Loomis Road Muskego, Wisconsin 53150	88,600	103,071	113,378
9	2259 980	1	Robert C. Boehm W124 S10227 S. 124th Street Muskego, Wisconsin 53150	76,700	89,228	98,150
10	2259 981	1	Sylvia Petroviak W124 S10077 S. 124th Street Muskego, Wisconsin 53150	141,500	164,611	181,073

\* This property is a residential duplex located in commercial zoned area included by mutual agreement



## Property Protection List for Emerald Park Area

List No.	Tax Key No.	Shares	Name & Address	1990 Assessed Value	1990 Market Value	1990 Value + 10%
11	2259 982	1	Claude A. Eigenberger S99 W13201 Loomis Road Muskego, Wisconsin 53150	62,500	72,708	79,979
12	2259 983	1	Norman Jung S99 W13277 Loomis Drive Muskego, Wisconsin 53150	70,000	81,433	89,577
13	2259 985 2259 984	1	Gerald Martins S100 W13399 Loomis Drive Muskego, Wisconsin 53150	1,200 68,800	1,396	1,536
14	2259 986	1	Joseph Lentz S100 W13421 Loomis Drive Muskego, Wisconsin 53150	71,600	83,295	91,624
15	2259 987	1	John Wertz S100 W13449 Loomis Drive Muskego, Wisconsin 53150	71,300	82,946	91,240
16	2259 988	1	Barbara L. Tesch S100 W13475 Loomis Dr Muskego, Wisconsin 53150	75,700	88,064	96,871
17	2259 989	1	Larry & Connie Lossman S100 W13497 Loomis Road Muskego, Wisconsin 53150	83,300	96,906	106,596
18	2259 990	1	Donald Dibb S100 W13547 Loomis Drive Muskego, Wisconsin 53150	71,900	83,644	92,008
19	2259 992	1	Russell/Donna Jankowski S102 W13815 Loomis Drive Muskego, Wisconsin 53150	142,600	165,891	182,480
20	2259 993 001	1	Alice L. Marold S102 W13945 Loomis Drive Muskego, Wisconsin 53150	99,100	115,286	126,815

## Property Protection List for Emerald Park Area

List No.	Tax Key No.	Shares	Name & Address	1990 Assessed Value	1990 Market Value	1990 Value + 10%
21	2259 995	1	Loretta Jung S99 W13259 Loomis Drive Muskego, Wisconsin 53150	71,700	83,411	91,752
22	2259 995 001	1	Jeffrey & Kathleen Arbinger S99 W13381 Loomis Drive Muskego, Wisconsin 53150	71,300	82,946	91,240
23	2259 996	1	Verner L. Lund S100 W13510 Loomis Drive Muskego, Wisconsin 53150	70,100	81,550	89,705
24	2259 997	1	Daniel/Lynn Fischer S100 W13474 Loomis Drive Muskego, Wisconsin 53150	63,300	73,639	81,003
25	2259 999	1	Eugene & V. Schultz S100 W13402 Loomis Drive Muskego, Wisconsin 53150	66,000	76,780	84,458
26	2260 989	1	Edmund Malkowski W124 S10293 S. 124th Street Muskego, Wisconsin 53150	38,800	45,137	49,651
27	2260 993	1	Robert J. White S99 W12953 Loomis Drive Muskego, Wisconsin 53150	74,800	87,017	95,719
28	2260 994	1	Ronald Peuse S99 W12917 Loomis Road Muskego, Wisconsin 53150	60,400	70,265	77,292
29	2260 995	1	Gene & Karen Lang S99 W12897 Loomis Road Muskego, Wisconsin 53150	61,400	71,429	78,571

## Property Protection List for Emerald Park Area

List No.	Tax Key No.	Shares	Name & Address	1990 Assessed Value	1990 Market Value	1990 Value + 10%
30	2260 996	1	Ellsworth W. Brace S99 W12857 Loomis Road Muskego, Wisconsin 53150	58,300	67,822	74,604
31	2260 997	1	David E. Koopmeiners S99 W12817 Loomis Road Muskego, Wisconsin 53150	70,600	82,131	90,344
32	2260 998	1	Evelyn/Margaret Krause W125 S9905 North Cape Muskego, Wisconsin 53150	89,600	104,235	114,658
33	2297 993	1	Dale & Maureen Martin S103 S14578 Muskego, Wisconsin 53150	62,400	72,592	79,851
34	2297 994	1	Thomas P. Campbell S103 W14697 Loomis Drive Muskego, Wisconsin 53150	82,600	96,091	105,700
35	2297 994 001	1	Jack Lyman S103 W14727 Loomis Drive Muskego, Wisconsin 53150	82,700	96,208	105,828
36	2297 995	1	Charles Wriedt S102 W14459 Loomis Drive Muskego, Wisconsin 53150	81,200	94,463	103,909
37	2297 998 2297 999	2	Donald L. Albrecht S103 W14305 Loomis Drive Muskego, Wisconsin 53150	248,800	289,437	318,381
38	2297 999 01	1	Allan & K. Albrecht S103 W14363 Loomis Drive Muskego, Wisconsin 53150	89,100	103,653	114,018
39	2298 978	1	N.J. Sobieski S103 W14823 Loomis Drive Muskego, Wisconsin 53150	69,800	81,201	89,321



## Property Protection List for Emerald Park Area

List No.	Tax Key No.	Shares	Name & Address	1990 Assessed Value	1990 Market Value	1990 Value + 10%
40	2298 979	1	Robert & Sharon Skiff S104 W15043 Loomis Drive Muskego, Wisconsin 53150	59,400	69,102	76,012
41	2298 980	1	Wieselmann Trust S104 W15169 Loomis Drive Muskego, Wisconsin 53150	58,300	67,822	74,604
42	2298 981 001	1	Mayme Wieselmann S104 W15169 Loomis Drive Muskego, Wisconsin 53150	69,100	80,386	88,425
43	2298 997 001	1	Daryl & Barbara Condon S104 W15020 Loomis Drive Muskego, Wisconsin 53150	65,000	75,617	83,178
44	2299 999	1	Anton Starich S110 W14800 Un'N Church Muskego, Wisconsin 53150	51,500	59,912	65,903
45	2300 999 2303 996	1	Harvey & Jacqueline Schweitzer S110 W14230 Un'N Church Muskego, Wisconsin 53150	122,700	142,741	157,015
46	2301 997	1	R & D Mittelstaedt 7620 E. Wind Lake Road Wind Lake, Wisconsin 53185	58,400	67,939	74,732
47	2302 999 2302 997	1	Jos. Leslie Cronin * S103 W13999 Loomis Drive Muskego, Wisconsin 53150	164,300	191,135	210,249
48	2303 997	1	Frank Geboy 111 S. Elm Grove Road Brookfield, Wisconsin 53005	69,700	81,084	89,193
49	2303 998	1	Mary Addy Anderson S110 W13458 Un'N Church Muskego, Wisconsin 53150	92,900	108,074	118,881

\* Value adjusted to reflect 20 rather than 10 acres.

## Property Protection List for Emerald Park Area

List No.	Tax Key No.	Shares	Name & Address	1990 Assessed Value	1990 Market Value	1990 Value + 10%
50	2304 998	1	Elizabeth Johnson 2304 W. National Avenue Milwaukee, Wisconsin 53204	108,700	126,454	139,100
51	2299 996	1	Ralph Louchbaum S110 W14718 Union Church Road Muskego, Wisconsin 53150	113,800	132,387	145,626
52	2264 998 2264 988 001	2	Marvin Pellman S102 W14043 Loomis Drive Muskego, Wisconsin 53150	179,100	208,353	229,188
Total Shares		54				

*Adjusted values are a projection based on increases of 2.5% each year.*

List No.	1991 Adjusted Value	1992 Adjusted Value	1993 Adjusted Value	1994 Adjusted Value	1995 Adjusted Value
1	94,702	97,069	99,496	101,983	104,533
2	79,355	81,339	83,373	85,457	87,593
3	108,474	111,186	113,965	116,815	119,735
4	84,995	87,120	89,298	91,531	93,819
5	100,866	103,388	105,973	108,622	111,338
6	83,159	85,238	87,369	89,553	91,792
7	68,862	70,584	72,348	74,157	76,011
8	116,213	119,118	122,096	125,148	128,277
9	100,604	103,119	105,697	108,340	111,048
10	185,599	190,239	194,995	199,870	204,867



*Adjusted values are a projection based on increases of 2.5% each year.*

List No.	1991 Adjusted Value	1992 Adjusted Value	1993 Adjusted Value	1994 Adjusted Value	1995 Adjusted Value
11	81,979	84,028	86,129	88,282	90,489
12	91,816	94,111	96,464	98,876	101,348
13	1,574	1,613	1,654	1,695	1,737
14	93,915	96,262	98,669	101,136	103,664
15	93,521	95,859	98,256	100,712	103,230
16	99,292	101,775	104,319	106,927	109,600
17	109,261	111,993	114,792	117,662	120,604
18	94,308	96,666	99,082	101,560	104,099
19	187,042	191,718	196,511	201,424	206,460
20	129,985	133,235	136,566	139,980	143,479



*Adjusted values are a projection based on increases of 2.5% each year.*

List No.	1991 Adjusted Value	1992 Adjusted Value	1993 Adjusted Value	1994 Adjusted Value	1995 Adjusted Value
21	94,046	96,397	98,807	101,277	103,809
22	93,521	95,859	98,256	100,712	103,230
23	91,947	94,246	96,602	99,017	101,492
24	83,028	85,104	87,231	89,412	91,647
25	86,569	88,734	90,952	93,226	95,556
26	50,892	52,165	53,469	54,805	56,176
27	98,112	100,565	103,079	105,656	108,297
28	79,224	81,205	83,235	85,316	87,449
29	80,536	82,549	84,613	86,728	88,896



*Adjusted values are a projection based on increases of 2.5% each year.*

List No.	1991 Adjusted Value	1992 Adjusted Value	1993 Adjusted Value	1994 Adjusted Value	1995 Adjusted Value
30	76,470	78,381	80,341	82,349	84,408
31	92,603	94,918	97,291	99,723	102,216
32	117,524	120,463	123,474	126,561	129,725
33	81,847	83,894	85,991	88,141	90,344
34	108,343	111,051	113,828	116,673	119,590
35	108,474	111,186	113,965	116,815	119,735
36	106,507	109,169	111,898	114,696	117,563
37	326,340	334,499	342,861	351,433	360,218
38	116,869	119,790	122,785	125,855	129,001
39	91,554	93,842	96,189	98,593	101,058



*Adjusted values are a projection based on increases of 2.5% each year.*

List No.	1991 Adjusted Value	1992 Adjusted Value	1993 Adjusted Value	1994 Adjusted Value	1995 Adjusted Value
40	77,912	79,860	81,857	83,903	86,001
41	76,470	78,381	80,341	82,349	84,408
42	90,635	92,901	95,224	97,604	100,045
43	85,258	87,389	89,574	91,813	94,109
44	67,550	69,239	70,970	72,744	74,563
45	160,940	164,964	169,088	173,315	177,648
46	76,601	78,516	80,479	82,491	84,553
47	215,505	220,893	226,415	232,076	237,877
48	91,422	93,708	96,051	98,452	100,913
49	121,853	124,899	128,022	131,222	134,503

*Adjusted values are a projection based on increases of 2.5% each year.*

List No.	1991 Adjusted Value	1992 Adjusted Value	1993 Adjusted Value	1994 Adjusted Value	1995 Adjusted Value
50	142,577	146,141	149,795	153,540	157,378
51	149,267	152,998	156,823	160,744	164,762
52	234,918	240,791	246,810	252,981	259,305

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EXHIBIT F  
EMERALD PARK LANDFILL  
SANITARY SEWER SERVICE CONSTRUCTION PARAMETERS

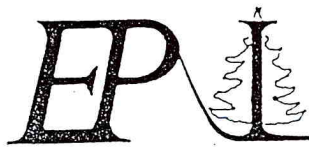
Equipment

- 1 - Pre-fabricated sewage lift station capable of a minimum peak flow design capacity of 156 gallons per minute.
- 1 - Wetwell Structure
- 1 - Standby Power Source

7050 L.F. 6" Sewage Force Main

Lift Station location shall be at the approximate center of Section 36 adjacent to U.S. Highway 45. The 6" forcemain shall parallel U.S. Highway 45. From the point of connection to the intersection of Ryan Road and North Cape Road in the City of Muskego.





# Emerald Park Inc.

6411 Mineral Point Road, Suite E, Madison, WI 53705 (608-276-6082)

February 12, 1991

City of Muskego  
Emerald Park Landfill  
Local Negotiating Committee  
c/o Matthew Quinn, Esq.  
Hand & Quinn, S.C.  
932 Lave Avenue  
Racine, WI 53403

Dear Attorney Quinn:

The undersigned individuals and corporations are all of the shareholders of Emerald Park, Inc. and Creative Resource Ventures, Ltd. We hereby authorize Emerald Park, Inc. by the execution of the Landfill Agreement between Emerald Park, Inc. and the City of Muskego, to bind the undersigned during the term of the Agreement, as renewed, extended, modified or amended from time to time, to the provisions of Section 22 of the Landfill Agreement which reads as follows:

"22 Limitations on Future Development. The Applicant/Operator herein agrees that it will not own, operate or develop, acquire or expand any other landfill site in the City of Muskego, whether such site be nonhazardous or hazardous. This shall apply to Creative Resource Ventures, Ltd., all corporations and individuals holding stock in Creative Resource Ventures, Ltd., Emerald Park, Inc. Said corporations and individuals will sign an authorization allowing Emerald Park, Inc., by the signing of this Agreement, to bind them to this provision. Nothing herein shall be construed to limit or grant future expansion of the subject site."

EMERALD PARK, INC.

BY: Robert T. Glebs  
Robert T. Glebs, President

CREATIVE RESOURCE VENTURES, LTD.

BY: Robert T. Glebs  
Robert T. Glebs, President

COSTAIN RESOURCE MANAGEMENT, INC.

BY: Philip S. Cali  
Philip S. Cali, President

(Original, with actual signatures, are with City of Muskego's signed copy of Agreement)

Joseph P. Tate  
Joseph P. Tate

Dennis DeVetter  
Dennis DeVetter

151 Timothy Ziegler  
Timothy Ziegler

151 Joseph Steltenkamp  
Joseph Steltenkamp

151 Joyce DeBeck  
Joyce DeBeck

151 Joyce DeBeck, Custodian WUGMA  
Joyce DeBeck, Custodian, for J. W. De Hogoboom  
WUGMA for  
John W. DeBeck Hogoboom

151 Colleen Duckwitz  
Colleen Duckwitz

Joseph P. Tate  
Joseph P. Tate

Dennis DeVetter  
Dennis DeVetter

Timothy Ziegler  
Timothy Ziegler

Joseph Steltenkamp  
Joseph Steltenkamp

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Joyce DeBeck

151 Joyce DeBeck, Custodian WUGMA  
Joyce DeBeck, Custodian, for J. W. DeBeck Hogoboom  
WUGMA for  
John W. DeBeck Hogoboom

Colleen Duckwitz  
Colleen Duckwitz



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Joseph P. Tate

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Dennis DeVetter

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Timothy Ziegler

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Joseph Steltenkamp

x Joyce A. DeBeck  
Joyce DeBeck

x Joyce A. DeBeck  
Joyce DeBeck, Custodian,  
WUGMA for  
John W. DeBeck Hogoboom

Colleen Duckwitz  
Colleen Duckwitz