

10/27/08

**PHEASANT RUN LANDFILL  
WESTERN EXPANSION  
NEGOTIATED AGREEMENT**

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## INTRODUCTION

This Agreement (hereinafter referred to as "Agreement") is made and entered into by and between Waste Management of Wisconsin, Inc., a Wisconsin corporation (hereinafter referred to as "Operator"), the Town of Paris, a Wisconsin municipal corporation (hereinafter referred to as "Town"), the Pheasant Run Landfill Western Expansion Local Committee, a local committee formed under Wis. Stat. § 289.33(7) (hereinafter referred to as "Local Committee") and the County of Kenosha, a municipal corporation (hereinafter referred to as "County") if it elects to enter into the Agreement.

The Operator initially sought an agreement to allow for an expansion that would yield approximately 22.3 million cubic yards of capacity and later reduced the proposed capacity of the expansion to 18.5 million cubic yards. The Operator sought DNR approval of this reduced capacity which would require variances from the 1,200 foot separation distance requirement between private wells and landfills set forth in Wisconsin Administration Code § NR 812.08(4)(g). Although the DNR initially granted the variances requested by the Operator, the variances were overturned by the State of Wisconsin, Division of Hearings and Appeals, in Case No. IH-06-07, brought by certain adjacent property owners. The decision in this case results in the expansion covered by this Agreement being substantially smaller than the Operator initially sought. The smaller expansion is defined in this Agreement as the Active Fill Area and its footprint and location are shown in the attached Exhibit A. The Active Fill area is expected to have approximately 9 million cubic yards of capacity. The smaller footprint and the location will provide more distance between the Active Fill Area and nearby residents resulting in less impact.

This Agreement is the final product of the negotiating process provided for under Wis. Stat. § 289.33. This Agreement shall be known as the "Pheasant Run Landfill Western Expansion Negotiated Agreement."

Now, therefore, in consideration of the covenants provided for herein, the parties agree as follows:

## ARTICLE I. DEFINITIONS

Whenever used in this Agreement the following terms shall have the meanings set forth below:

- A. **Active Fill Area or Western Expansion** means the actual cubic yard capacity approved by DNR for the expansion area of the Pheasant Run Recycling & Disposal Facility located in the Town of Paris, Kenosha County, Wisconsin, as preliminarily depicted and described in the attached Exhibit A incorporated herein, and which, as proposed, consists of approximately 9 million cubic yards including an overlay onto the existing Northeast Landfill. This approved area shall not include any additional Expansion of the Active Fill Area or any Expansion of the remainder of the Solid Waste Facility for the purpose of providing additional Disposal capacity area at the Solid Waste Facility or at the Active Fill Area.
- B. **Acknowledged Transporter** means any person, firm, or entity licensed by DNR that is identified, orally or in writing, by the Operator, at any time, as a transporter of Solid Waste to and from the Solid Waste Facility, and/or any person who transports Solid Waste to the Solid Waste Facility. The term Acknowledged Transporter does not include the Town or the Residents who are authorized by this Agreement to Store or Dispose of Solid Waste at the Solid Waste Facility.
- C. **Agreement** means this Pheasant Run Landfill Western Expansion Negotiated Agreement, dated, \_\_\_\_\_, 2008, by and between the Town of Paris, a Wisconsin municipal corporation, Waste Management of Wisconsin, Inc., the Pheasant Run Landfill Western Expansion Local Committee, and the County, if the County elects to enter into the Agreement.
- D. **Annual Solid Waste** means all Solid Waste entering the Solid Waste Facility for each 12-month calendar year period following execution of this Agreement.
- E. **County** means the County of Kenosha, a Wisconsin municipal corporation, its officers, employees, and agents and includes, when used in its geographic sense, all the unincorporated land within the boundaries of the County. The County is an affected municipality under Wis. Stat. § 289.01 (1)(a).
- F. **CPI** means the amount of the increase in the Consumer Price Index for All Urban Consumers ("CPI-U"), which will be calculated as  $CPI-U\ 1982-1984 = 100$ , adjusted annually; however the amount of said increase will not be less than 4 ½ percent, and not more than 6 percent *per annum*.
- G. **DNR** means the Wisconsin Department of Natural Resources or any successor agency thereto.
- H. **Discharge** means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of Solid Waste or Hazardous Waste at the Solid

Waste Facility, or the dissemination of such wastes by Acknowledged Transporters bringing wastes to, or traveling to or from, the Solid Waste Facility.

- I. **Disposal or Dispose** means the Discharge, deposit, injection, dumping, or placing of Solid Waste at the Solid Waste Facility. These terms do not include the Storage or Treatment of Solid Waste at the Solid Waste Facility.
- J. **Disposal Operations** means any activities at the Solid Waste Facility related to or associated with the Disposal of Solid Waste, including the constructing, surveying, environmental monitoring, environmental testing, repairing, maintaining, and closing of the Solid Waste Facility, including the Solid Waste covering at the Solid Waste Facility, where any of the above-noted activities occur at any time during the term of this Agreement.
- K. **Emergency** means any circumstance, at any time, at the Solid Waste Facility or at any other location in the County involving the Operator's responsibilities that may jeopardize the public health, safety, and welfare of Town or County property or persons in the County or the environment.
- L. **Environmental Audit** means a review of the operational performance of the Solid Waste Facility. The review shall include, but is not limited to, the following performance indicators: (i) compliance with DNR permits, licensing, and other laws, regulations, or ordinances governing the Solid Waste Facility; (ii) compliance with the provisions of this Agreement; (iii) monitoring of the hydrology/groundwater and leachate at the Solid Waste Facility; (iv) compliance with the Plan of Operation; (v) any active or discontinued operation at the Solid Waste Facility; and (vi) closure and post-closure activities at the Solid Waste Facility.
- M. **Environmental Consultant** means any person, firm, or entity engaged or employed by the Town to perform any Environmental Audit or to provide consultation services regarding the Solid Waste Facility.
- N. **Expansion** means any additional enlargement, at any time, by any means, of the Active Fill Area or of the Solid Waste Facility.
- O. **Final Closure** means the date at which time no further Solid Waste is Disposed in the Solid Waste Facility by the Operator or by any other person, which shall be the earliest of the following:
  - 1. The date the Operator notifies the Town and County, in writing, that the Operator no longer will Dispose of, and will no longer allow any other person to Dispose of, Solid Waste in the Solid Waste Facility;



2. The date DNR orders the Operator, in writing, to no longer Dispose of, and to no longer allow any other person to Dispose of, Solid Waste in the Solid Waste Facility; or
  3. The date the Operator Disposed or allowed Disposal of the number of in-place cubic yards of both Solid Waste and daily and intermediate cover materials in the Solid Waste Facility approved under this Agreement or any subsequent agreement.
- P. **Food Waste** means discarded materials resulting from the handling, processing, storage or consumption of food.
- Q. **Hazardous Waste** means any waste defined as a Hazardous Waste by DNR under Wis. Stat. § 291.05(2), as amended, or identified as a Hazardous Waste by regulations adopted by DNR in Wis. Admin. Code § NR 600, *et seq.*, as amended.
- R. **Initial Term** shall begin as of the date this Agreement is signed and approved by the Operator, the Town, and the Local Committee, and shall continue until Final Closure of the Solid Waste Facility.
- S. **Local Approvals** means any “local approval” as that term is defined in Wis. Stat. § 289.33(3)(d), as amended.
- T. **Local Committee** means the negotiating committee created under Wis. Stat. § 289.33(7).
- U. **Long-Term Care or Long-Term Care Operations** means any activities at the Solid Waste Facility, including routine care, maintenance, and monitoring required by DNR, or any other regulatory agency having authority over the Solid Waste Facility, or the Environmental Consultant, at any time following the Final Closure. Long-Term Care Operations by the Operator and its agents shall not be considered Disposal Operations, Storage Operations, or Treatment Operations at the Solid Waste Facility for purposes of this Agreement.
- V. **Monitoring Plan** means the plan required by DNR to monitor the impact of the Solid Waste Facility on the environment. The Operator will propose a Monitoring Plan in its Plan of Operation, and will implement the Monitoring Plan as it is ultimately approved by DNR. The Monitoring Plan shall comply with Exhibit B attached hereto.
- W. **Operator** means Waste Management of Wisconsin, Inc., its employees, agents, successors, and assigns.
- X. **Pre-existing Local Approvals** means any “pre-existing local approval” as that term is defined in Wis. Stat. § 289.33(3)(fm), as amended.

Y. **Plan of Operation** means the solid waste management procedural requirements outlined in Wis. Stat. § 289.30 and Wis. Admin. Code § NR 514, *et seq.*, as amended, and any additional procedural requirements established and approved under this Agreement.

Z. **Primary Roadways** means those roadways located in the Town, permitted and designated by the Town, as the following access roads to and from the Solid Waste Facility:

U.S. Highway 45, State Highway 50, State Highway 142, and that portion of County Highway K east of U.S. Highway 45 to the current Solid Waste Facility gate.

AA. **Property Owner** shall mean the owner of record of a parcel of real property within the Town.

BB. **Remedial Actions** means those actions consistent with a temporary or permanent remedy which are taken instead of or in addition to Removal Actions in the event of a release or threatened release at the Solid Waste Facility of any pollutant or contaminant into the environment, or to prevent or minimize the release of such pollutants or contaminants such that the pollution or contamination does not migrate to cause any danger to the present or future public health, safety, and welfare of persons or property in the Town and County or to the environment. The term Remedial Actions includes, but is not limited to, actions at the location of the release of the pollutants or contaminants, such as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, clean-up of released pollutants or contaminants, recycling or reuse of pollutants or contaminants, diversion of pollutants or contaminants, destruction of pollutants or contaminants, segregation of pollutants or contaminants, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site Treatment or incinerations, provision of alternative water supplies to Residents, and any monitoring reasonably required to assure that such actions protect the public health, safety, and welfare of the environment. The term includes the permanent relocation of Residents where DNR determines such relocations are more cost-effective than, or environmentally preferable to, the transportation, Storage, Treatment, destruction, or secure disposition off-site of pollutants or contaminants, or other actions that may be necessary to protect the public health, safety, and welfare of persons in the Town and County or to the environment. The term Remedial Actions does not include off-site treatment of pollutants or contaminants, or the storage, treatment, destruction, or secure disposition off-site of such waste, unless DNR determines, in writing, that such actions are:

1. More cost effective than other Remedial Actions; or
2. Are necessary to protect the public health, safety, and welfare of persons in the Town and County or to the environment from a potential or present risk which may be created by further exposure to the continual presence of such pollutants or contaminants.

CC. **Removal Action** means the clean-up of pollutants or contaminants released into the environment, including (i) such actions as may be reasonably taken in the event of release of pollutants or contaminants into the environment from the Solid Waste Facility; (ii) such actions as may be necessary to monitor, assess and evaluate the release, or threat of release, of pollutants or contaminants, the disposal of removed pollutants or contaminants; or (iii) the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health, safety, and welfare of persons in the Town and County or to the environment which may otherwise result from a release, or threat of release, of pollutants or contaminants at or from the Solid Waste Facility. In addition, the term removal Action includes, but is not limited to, (a) security fencing or other measures to limit access to the Solid Waste Facility. In addition, the term Removal Action includes, but is not limited to, (a) security fencing or other measures to limit access to the Solid Waste Facility; (b) the provision of alternative water supplies to Residents; (c) the temporary evacuation of persons in the Town and County; and (d) the housing of threatened Residents.

DD. **Residents** means the non-business natural persons residing within the boundaries of the Town.

EE. **Residential Waste** means residential garbage, rubbish, and refuse (excluding debris resulting from the construction or the demolition of structures, buildings, roads, and other manmade structures to the extent it exceeds 3 cubic yards per week) generated by Residents.

FF. **Solid Waste** means garbage; ash; refuse; rubbish; sludge from a waste treatment plant, a water supply treatment plant, or an air pollution control facility; and other discarded or salvageable materials, including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations and from community activities. Solid Waste may include, but is not limited to, paper, wood, metal, glass, cloth, and products thereof, litter and street rubbish and lumber, concrete, dirt, stone, plastic, bricks, tar, asphalt, plaster, masonry, and other debris resulting from the construction or the demolition of structures, buildings, roads, and other manmade structures. Solid Waste does not include solids or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to permits under Wis. Stat. ch. 283, as amended, or source, special nuclear, or by-product materials as defined in Wis. Stat. § 254.31, as amended. Nor does Solid Waste include yard waste as defined in Wis. Stat. § 287.01(17) provided it is not placed in the Active Fill Area.

GG. **Solid Waste Facility** means the Solid Waste Disposal facility located in the Town of Paris, Kenosha County, Wisconsin described in the attached Exhibit C incorporated herein.

HH. **Special Waste** is waste classified as "Special Waste" by Wis. Stat. § 895.58(1)(d), as amended, or by the Special Waste Plan set out in the Plan of Operation, as approved by DNR.

II. **Standing Committee** means the monitoring committee established under this Agreement and as provided in the attached Exhibit D incorporated herein.

JJ. **Storage or Store** means the holding of Solid Waste at the Solid Waste Facility, at the end of which period the Solid Waste is to be then treated, transported away from the Solid Waste Facility, or ultimately disposed of in the Active Fill Area or other authorized area at the Solid Waste Facility.

KK. **Storage Operations** means any activities at the Solid Waste Facility related to the Storage of Solid Waste, and where all the above-noted activities occur any time during the Initial Term.

LL. **Town** means the Town of Paris, a Wisconsin municipal corporation, its officers, employees, and agents and, when used in its geographic sense, includes all the land within the boundaries of the Town. The Town is an affected municipality under Wis. Stat. § 289.01(1 )(a).

MM. **Treat or Treatment** means any method, technique, or process at the Solid Waste Facility which is designed to change the physical, chemical, or biological character or composition of Solid Waste. The terms Treat or Treatment include, without limitation, incineration, composting and bio-remediation of contaminated soils.

NN. **Treatment Operations** means any activities at the Solid Waste Facility directly related to the Treatment of Solid Waste, where such activities occur at any time during the Initial Term.

OO. **Waste Facility Siting Board** means the Wisconsin Waste Facility Siting Board, as defined in Wis. Stat. ch. 289, or any successor agency thereto.

PP. **Waste Management** means Waste Management of Wisconsin, Inc.

QQ. **Waste Transfer Station** means a facility that receives some portion of its waste directly from collection vehicles, then consolidates and reloads the waste onto larger vehicles for delivery to a final disposal facility. For purposes of this definition, citizen drop off station or community convenience centers shall not be considered waste transfer stations.

## **ARTICLE II. GENERAL INFORMATION AND TERMS**

A. **Site Information.** The name of the Solid Waste Facility is the Pheasant Run Recycling and Disposal Facility. The Active Fill Area is described as the "Pheasant Run Landfill, Western Expansion" and is described in the attached Exhibit A.

B. **Address of Solid Waste Facility.** The address of the Solid Waste Facility, both for location and mailing purposes, shall be 19414 60<sup>th</sup> Street, Bristol, Wisconsin 53104.

C. **Owner.** The current owner of the site is the Operator. The term Operator shall also refer to the corporation's employees, agents, successors, and assigns.

D. **Feasibility Report.** The Operator prepared and submitted, in June 2005, a Feasibility Report, to DNR, which was supplemented by Addendum No.1, dated March 2006 (hereinafter collectively referred to as "Feasibility Report").

E. **Plan of Operation.** A Plan of Operation for the Active Fill Area will be prepared by the Operator. Any Plan of Operation, amendment or modification thereto, is subject to the approval of DNR and pre-approval, prior to submission to DNR, by the Town. Within 30 days of its receipt of each of the proposed section or sections of the Plan of Operation and within 10 days of its receipt of any amendment or modification of the same, the Town shall provide the Operator with any comments or objections thereto. The Operator shall respond to the Town within 10 days and the parties shall, in good faith, attempt to complete Town's approval within 45 days. The Town's approval shall not be unreasonably withheld. The Plan of Operation following approval and any amendments and modifications are incorporated into this Agreement and the Town is hereby granted the authority to enforce the terms and conditions of the Plan of Operation, including any future amendments or modifications. Notwithstanding the foregoing, any future amendments or modifications to the approved Plan of Operation required by DNR or by a change in Statutes or Wisconsin Administrative Code shall not require pre-approval by the Town, prior to submission to DNR. Upon approval by DNR, such amendment or modification shall be incorporated herein by reference, and shall modify this Agreement accordingly. The Operator shall only reimburse the Town for the costs it incurs in having the Operator's Plan of Operation for the Active Fill Area reviewed by the Town's Environmental Consultant; but not to exceed Fifteen Thousand Dollars (\$15,000.00). Such payment shall be made to the Town within thirty (30) days after the Operator's receipt of copies of invoices from the Town setting forth the costs it incurred in having said Plan of Operation reviewed.

F. **Current Zoning.** The Solid Waste Facility described in Exhibit C is zoned A-1, M-4, and C-2. The Operator shall conduct Disposal Operations and other site activities in accordance with this Agreement and all applicable laws and regulations.

G. **Service Area.** For purposes of this Agreement, the proposed service area shall be deemed to include, all Wisconsin counties and all Illinois counties.

H. **Acceptable Waste Types.** The acceptable waste types shall be nonhazardous municipal, commercial, and industrial Solid Waste, including refuse, garbage, and combustible and noncombustible demolition waste, but not including Hazardous Waste. All Special Waste shall be accepted under the conditions set forth in the Plan of Operation, including any future amendments or modifications thereto.

### ARTICLE III. TRANSPORTATION

#### A. Designated Roadways.

1. Primary Roadways. During the Initial Term and extending until 40 years after Final Closure, the Operator, its agents and Acknowledged Transporters for purposes related to any activity at the Solid Waste Facility shall access the Solid Waste Facility using only those routes established as Primary Roadways in this Agreement, or unless otherwise mutually agreed to in writing by the Operator, the Town and the County.

2. Highway Access. The Operator shall take all reasonable actions necessary to redesign or relocate the scales and entrance to the Solid Waste Facility in order to prevent congestion, parking of vehicles or obstruction of traffic on the Primary Roadways related to the staging of vehicles waiting to enter the Solid Waste Facility.

3. Reconstruction of Local Roads. To the extent allowed by law, the Town and County, during the Initial Term and extending until 40 years after Final Closure, shall have the right, at any time, to suspend vehicle traffic flow to and from the Solid Waste Facility, and to temporarily close a portion of any Primary Roadway in order to reconstruct, repair, resurface, and maintain any local roads, and shall have the right, at any time, to suspend vehicle traffic flow to and from the Solid Waste Facility, and to temporarily close any roads, at any time, for emergency purposes.

4. Temporary Access Roadway. If, during the Initial Term and extending until 40 years after Final Closure, any portion of a Primary Roadway has been scheduled to be closed for reconstruction, repair, resurfacing, or maintenance, and if a written application has then been submitted to the Town and County by the Operator requesting that a temporary access roadway to the Solid Waste Facility in the Town and County be designated, then the Town and County shall make all reasonable efforts to designate a temporary access roadway (hereinafter referred to as "Temporary Access Roadway") for the Operator, its agents and Acknowledged Transporters. A Temporary Access Roadway will be designated when reasonable vehicle safety and reasonable personal safety can be assured, and where road conditions will allow. The Operator shall pay the cost of construction of the Temporary Access Roadway. In addition, the Operator shall pay the costs of maintenance of the Temporary Access Roadway associated with its use, such costs to be reimbursed 30 days after presentation of an invoice to the Operator, by the Town or County. This Temporary Access Roadway shall be maintained by the Town or County for vehicle use by the Operator, its agents and Acknowledged Transporters. This Temporary Access Roadway shall be maintained by the Town or County in an attempt to assure, at all times, vehicle access to and from the Solid Waste Facility by the Operator, its agents and Acknowledged Transporters.

B. **Vehicle Requirements.** During the Initial Term and extending until 40 years after Final Closure, the Operator shall use, and shall require its agents and Acknowledged Transporters to use, transport vehicles that are designed, constructed, loaded, and maintained, and equipped with proper covers in such a manner as to prevent or substantially eliminate any portion of any Solid Waste in such transport vehicles from discharging, leaking, spilling, falling, or blowing out of such vehicles onto any public or private lands in the County, excluding the Active Fill Area.

The Operator shall not Store, Treat or Dispose Solid Waste at any location at the Solid Waste Facility that does not arrive at the Solid Waste Facility in transport vehicles that are designed, constructed, loaded, and maintained in such a manner, and that are equipped with proper covers in such a manner, as to prevent or substantially eliminate any portion of any wastes in such transport vehicles from Discharging, leaking, spilling, falling, or blowing out of such transport vehicles onto any public or private lands in the County, excluding the Active Fill Area at the Solid Waste Facility.

C. **Litter and Discharge Beyond the Solid Waste Facility.**

1. **Solid Waste and Hazardous Waste Discharge Reports.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall report any Solid Waste or Hazardous Waste Discharge to the Town Clerk, the County Clerk and the Standing Committee, in writing, within 48 hours of the Operator receiving any information related to any Discharge in the County, if such Discharge occurred when the Operator, or its agents, were collecting and/or transporting authorized or unauthorized Solid Waste or Hazardous Waste to and from the Solid Waste Facility, and if the Discharge occurrence was caused by the Operator or by its agents. This provision does not apply to any authorized Solid Waste Disposed by the Operator, or by its agents, in the Active Fill Area or any other authorized area of the Solid Waste Facility.

The Operator, upon oral or written knowledge of any Discharge by the Operator, or its agents, onto any public or private lands in the County, other than any Solid Waste Disposed in the Active Fill Area or any other authorized area of the Solid Waste Facility, shall immediately take all reasonable efforts to contain and then to remove the Discharge from these lands.

The Operator, upon oral or written knowledge of any Hazardous Waste Discharge by the Operator, or its agents, onto any public or private lands in the County, including, but not limited to, the Solid Waste Facility, shall immediately take (i) all reasonable actions to contain and remove the Hazardous Waste; (ii) all reasonable actions to protect the public health and safety of persons in the County; and (iii) all reasonable actions to protect the natural resources in the County.

The Operator, in its written notice, shall describe the location of the Discharge, the date of the occurrence, if known, the type and amount of the Solid Waste or Hazardous Waste Discharge, if known, and the suspected cause of the Discharge, if known.

2. **Discharge Removal on Roadways.** The Operator, during the Initial Term, shall police and remove any Discharge, including litter, from the Primary Roadways

or from rights-of-way next to the Primary Roadways within one (1) mile from the entrance to the Solid Waste Facility.

D. **Transporters of Solid Waste.**

1. **List of Acknowledged Transporters.** Within 30 days after execution of this Agreement, the Operator shall prepare a list of its Acknowledged Transporters. The list shall contain the names, addresses, and telephone numbers of the Acknowledged Transporters. The initial list shall be filed with the Town Clerk and the County Clerk, and shall be updated annually from the date of execution of this Agreement. Such updates shall be submitted to the Town Clerk, the County Clerk and the Standing Committee.

This provision requiring names, addresses, and telephone numbers of Acknowledged Transporters shall not apply to the Town or to Residents authorized by this Agreement to Store Solid Waste at the Solid Waste Facility or Dispose of Solid Waste at the Active Fill Area or any authorized area in the Solid Waste Facility, or drop off recyclable materials at the Solid Waste Facility.

2. **Persons Authorized.** No person, firm, or entity, including the Operator, shall, during the Initial Term, transport Solid Waste to the Active Fill Area or any other area of the Solid Waste Facility until a license has been issued by DNR and the Operator has complied with all applicable federal and state Solid Waste laws and regulations related to the operation of the Solid Waste Facility. The Operator shall not Store or Treat or Dispose Solid Waste, or authorize any other parties to Store or Treat or Dispose Solid Waste, at any location at the Solid Waste Facility, unless such activity has been approved by DNR, and then only if the Operator has complied, or will comply, with any existing federal and state Solid Waste Disposal Facility laws and regulations, and municipal ordinances that are not waived or made inapplicable by this Agreement. The restrictions set forth above do not apply to the Town and Residents who may be authorized by the Operator to Store, Treat or Dispose Residential Waste collected from residences in the Town or at a citizen drop off station or at Storage containers located at the Solid Waste Facility or elsewhere in the Town, nor to the Storage by the Operator of inert demolition waste, recyclable materials, tires, and/or compostable material, as authorized by DNR.

The Operator understands and agrees that Disposal of Solid Waste by Acknowledged Transporters as provided herein does not reduce, nullify, or eliminate any obligation of the Operator under this Agreement or pursuant to applicable law.

3. **Termination of Acknowledged Transporters.** The Operator shall terminate an Acknowledged Transporter who repeatedly violates provisions of this Agreement. Violations shall include, but are not limited to, failure to use Primary Roadways, pursuant to Section III.A.1., above; failure to meet vehicle requirements, pursuant to Section III.B., above; improper Discharge of waste on roadways; or for any other activity that would constitute a violation of this Agreement.



**ARTICLE IV.**  
**OPERATIONS AT OR NEAR THE SOLID WASTE FACILITY**

**A.     Reports**

1.     **Copies of Reports from the Operator.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall provide simultaneously to the Town, the County, and the Standing Committee, complete copies of all written reports and written correspondence provided by the Operator to DNR or to any other state or federal environmental agency, or to any state or federal court, where those reports and correspondence are associated with the Solid Waste Facility, including, but not limited to, letters, court documents, technical reports, testing data, recording data, and monitoring data. These copies shall be provided by the Operator at no cost and may be provided electronically.

2.     **Copies of Reports from Government Agencies.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall provide simultaneously to the Town, the County, and the Standing Committee, within three business days of the Operator's receipt, complete copies of all written reports and written correspondence received by the Operator from DNR or from any other state or federal environmental agency, or from any state or federal court, when these reports and correspondence are associated with the Solid Waste Facility, including, but not limited to, letters, court documents, technical reports, testing data, recording data, and monitoring data. The Operator shall, upon receipt from DNR or from any other state or federal environmental agency of any notice of noncompliance or notice of violation associated with the Solid Waste Facility, provide the Town, the County and the Standing Committee, with a complete copy of said notice within 48 hours of the receipt of this information. These copies shall be provided by the Operator at no cost and may be provided electronically.

3.     **Residential Concerns.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall provide simultaneously to the Town, the County, and the Standing Committee, within three business days of the Operator's receipt, complete copies of all written letters, written reports, and other written correspondence received by the Operator from public officials of the County, public officials of the Town, or from any resident of the County where the above-noted letters, reports, or correspondence are associated in any way with the Solid Waste Facility. These letters, reports, or correspondence shall include, but are not limited to, complaint letters, court documents, technical reports, testing data, recording data and monitoring data. These copies shall be provided by the Operator at no cost and may be provided electronically.

B.     **Operator Responsibility.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall be fully responsible to the Town and the County to take reasonable steps to insure that the Operator and the Acknowledged Transporters, and their employees and agents, transport Solid Waste to and from the Solid Waste Facility, and conduct any other Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations related to or at the Solid Waste Facility, in full

compliance with all provisions of this Agreement and all applicable laws, regulations, or ordinances. The Operator shall not allow access by its agents, its Acknowledged Transporters, or any other party to the Solid Waste Facility for purposes of Disposing, Storing, or Treating of Solid Waste in the Active Fill Area or any other authorized area in the Solid Waste Facility, or for any other purposes associated with any Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations related to or at the Solid Waste Facility, if the Operator has knowledge that the above-noted agents, Acknowledged Transporters, or other parties are not complying, or have not complied, with the applicable provisions of this Agreement, including, but not limited to, the following sections:

- a. Article III., Transportation;
- b. Section IV.D., Hours and Days of Operation; and
- c. Section IV.J., Fire, Disaster and Hazard Control.

C. **Notice of Agreement.** The Operator, during the Initial Term, shall notify, in writing, its agents and Acknowledged Transporters who are allowed by the Operator to transport Solid Waste to and from the Solid Waste Facility of the applicable provisions of this Agreement. Such written notice shall be provided to such agents and Acknowledged Transporters when they commence transporting Solid Waste.

D. **Hours and Days of Operation.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall not conduct any construction, Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations at the Solid Waste Facility, nor shall it allow any construction, Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations by its agents, Acknowledged Transporters, or any other parties at the Solid Waste Facility, before 6:30 a.m., Monday through Saturday. The Operator will be permitted to warm up equipment and vehicles beginning at 6:00 a.m., Monday through Saturday. The Operator shall terminate all construction, Disposal Operations, Storage Operations, Treatment Operations, and Long-Term Care Operations, and it shall not allow any construction, Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations by its agents, Acknowledged Transporters, or any other parties at the Solid Waste Facility, after 4:00 p.m., Monday through Friday, and after 1:00 p.m. on Saturday. Covering operations may continue until 5:00 p.m. Monday through Friday and until 2:00 p.m. on Saturday; provided, however, that on those Saturdays which follow a legal holiday that falls on a weekday, Disposal Operations, Storage Operations, Treatment Operations, and Long-Term Care Operations may continue until 3:00 p.m., and covering operations may continue until 4:00 p.m. The above-noted hours and days of operation may be amended by mutual agreement of the Town and Operator, including on a temporary basis for excavation of the Active Fill Area, installation of landfill liner and in the event of inclement weather.

The Operator shall not conduct any construction, Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations, nor shall it allow any construction, Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations by its agents, Acknowledged Transporters, or any other parties at the Solid Waste Facility on Sundays or on the following holidays: Christmas Day, Easter, Thanksgiving, Labor Day, New Year's Day, Memorial Day, and Independence Day. Any operation herein shall be deemed to include the operation of any vehicles, machinery, or equipment.

Notwithstanding the above-noted provisions, if any Emergency should occur at the Solid Waste Facility, the Town and the County shall be allowed to enter the Solid Waste Facility at any time, and shall be allowed to then take the appropriate and necessary actions at the Solid Waste Facility to protect the public health, safety, and welfare of persons in the Town and the County or to the environment and to protect public or private property, other than the Solid Waste Facility, and shall be allowed to take appropriate and necessary actions to protect the natural resources of the Town and the County and to authorize the Operator to take such actions. Such actions in an Emergency shall not include Disposal, Storage, or Treatment of Solid Waste at the Solid Waste Facility.

E. **Dust, Dirt, and Debris Control at the Solid Waste Facility.** The Operator, during the Initial Term, and extending until 40 years after Final Closure, shall take the appropriate and necessary actions to control the blowing of dust and debris from the Solid Waste Facility, and shall take appropriate or necessary actions to control the Discharging of other Solid Waste or pollutants or contaminants from the Solid Waste Facility onto any lands outside the Solid Waste Facility. The Operator shall Dispose Solid Waste in the Active Fill Area or any other authorized area in the Solid Waste Facility, and shall conduct any construction, Disposal Operations, Storage Operations, Treatment Operations, and Long-Term Care Operations at the Solid Waste Facility in such a manner that utilizes available technology, equipment, and manpower to minimize odors, litter, dust, dirt, debris, or other materials, or any substance that might be carried by wind or other means across the boundary of the Solid Waste Facility onto any lands outside the Solid Waste Facility. The Operator shall apply all appropriate or necessary daily cover materials on the Solid Waste Disposed in the Active Fill Area or any other authorized area in the Solid Waste Facility to prevent the blowing of litter and debris.

F. **Stockpiled Soil.** Within 30 days from the execution of this Agreement, Operator shall provide to the Town, for approval by the Town or its designee, an annual plan regarding the use and storage of stockpiled soil within the Solid Waste Facility. If no stockpiling will occur in the upcoming year, a letter so stating this fact shall meet this requirement. Such plan shall be updated annually from the date of this Agreement until no stockpiled soil is stored at the Solid Waste Facility. Annual plans shall be subject to review and approval by the Town or its designee; such review shall be completed within 30 days of its receipt of the same and such approval shall not be unreasonably withheld. The plan shall detail the projected use and storage that year of all stockpiled soil, and the additions or changes if any, that year to the inventory of stockpiled soil. The plan shall be prepared so as to minimize interference with the use or enjoyment of surrounding properties. At no time, with exception of the berms, shall soil be (i) stockpiled within 160 feet of any roadway (ii) stockpiled in excess of the height of the berms so as to be visible

from any adjacent roadways if within 500 feet of any boundary of the Solid Waste Facility; (iii) piled in excess of 30 feet in height; nor (iv) stockpiled outside of the Solid Waste Facility within the Town.

G. **Groundwater Monitoring.** The Operator shall undertake any groundwater monitoring (including private wells), as provided in the Plan of Operation and in the Monitoring Plan approved by DNR and as required by Article IV. Section EE (Residential Well Testing) hereof. The Operator shall conduct the well sampling as provided in the Monitoring Plan, including obtaining water samples of wells identified in the Monitoring Plan, and performing background tests for all of the parameters described therein.

H. **Noise and Air Quality** The Operator shall comply with all reasonable noise control measures as requested by the Town, the County or the Standing Committee. In no event shall the noise created by the Operator cause the noise level at any residential property in the vicinity of the Solid Waste Facility site which is not owned by the Operator to exceed 65 decibels, as indicated in a certified decibel meter reading, with the exception of Operator's construction of screening berms, maintenance of berms, and mowing. The Operator shall also be in conformity with all applicable DNR air quality standards or any other regulatory agency having authority over the Solid Waste Facility.

I. **Rodent and Insect Control at the Solid Waste Facility**

1. **Prevention of Rodents and Insects.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall Dispose Solid Waste in the Active Fill Area in such a manner, and shall conduct any Disposal Operations, Storage Operations, Treatment Operations, and Long-Term Care Operations at the Solid Waste Facility in such a manner, as to prevent or eliminate rodent and insect harborage.

2. **Control of Rodents and Insects.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall take appropriate and necessary actions to control any rodents and any insects at the Solid Waste Facility. The Operator shall exterminate, for public health reasons, any rodents and insects at the Solid Waste Facility. The Operator shall apply at the Solid Waste Facility pesticides or rodent control measures at appropriate levels to prevent any damage to or injury to public property or private property in the Town, to prevent damage or injury to any persons in the Town, and to prevent damage to the natural resources in the Town.

J. **Fire, Disaster and Hazard Control.**

1. **Creation of Fire Hazards..** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall conduct any Disposal Operations, Storage Operations, Treatment Operations, and Long-Term Care Operations in such a manner, as to prevent fires and explosions, and to prevent or eliminate any fire hazards or any potentially explosive hazards, from occurring at the Solid Waste Facility.

2. **Public Nuisance.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall conduct any Disposal Operations, Storage Operations, Treatment Operations, and Long-Term Care Operations, in such a manner as to prevent any public nuisance in the Town and the County from occurring as a result of the Solid Waste Facility or its operations, including public nuisances associated with polluted groundwater, polluted air, and polluted surface water.

3. **Private Nuisance.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall conduct any Disposal Operations, Storage Operations, Treatment Operations, and Long-Term Care Operations at the Solid Waste Facility in such a manner, as to prevent any private nuisance in the County from occurring as a result of the Solid Waste Facility or its operations, including any private nuisances associated with polluted groundwater, polluted air, and polluted surface water. In the event that a private nuisance occurs, or in the event the Operator causes any individual Property Owner damages or other harm which forms the basis of a cause of action, including trespass, negligence, or any other violation of this Agreement for which an individual is aggrieved, such individual may bring an action against the Operator for appropriate relief. The prevailing party in any such action shall be entitled to the reasonable attorney fees and costs incurred by that party.

4. **Hazardous Waste Nuisance.** The Operator shall not, at any time during the Initial Term and extending until 40 years after Final Closure, Dispose, Store, or Treat Hazardous Waste in the Active Fill Area or at any other location at the Solid Waste Facility, nor shall it allow Disposal, Storage, or Treatment of Hazardous Waste by its agents, Acknowledged Transporters, or any other party in the Active Fill Area or at any other location at the Solid Waste Facility. The Operator, whenever appropriate and necessary, shall separate, remove, contain, cover, or isolate any particular Solid Waste or any particular Hazardous Waste that has been Disposed, Stored, or Treated in the Active Fill Area or at any other location at the Solid Waste Facility in such a manner as to prevent a public or private nuisance in the County, to prevent any liberation of hazardous or poisonous gas from the Solid Waste Facility to any other location in the County, to prevent any liberation of Hazardous Waste from the Solid Waste Facility to any other location in the County, or to prevent any damage to the natural resources of the Town or County; Enforcement of this section shall be as set forth under Sections IV.J.2. and IV.J.3., above, and Sections IV.K. and IV.L., below.

5. **Security Personnel.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall have the responsibility and duty to the Town and the County to employ or retain at the Solid Waste Facility the appropriate and necessary employees or personnel to provide and maintain proper security in the Active Fill Area or at any other location at the Solid Waste Facility for the purpose of preventing or substantially reducing any physical access by unauthorized parties to the Solid Waste Facility.

K. **Court Action by Town, County or Standing Committee.** In addition to any other remedy, the Town, the County or the Standing Committee, during the Initial

Term and extending until 40 years after Final Closure, notwithstanding any contrary provisions of this Agreement, may commence and maintain, individually or jointly, legal actions against the Operator under the common law of public nuisance, trespass, negligence, strict liability, breach of contract, and/or agency, or under any applicable state and federal statutory or common laws, for damages and costs suffered by the Town or County related to or associated with any public nuisance or physical injury to any party or any property caused by or alleged to have been caused by the Operator arising in any way as a result of any anticipated or unanticipated occurrences in the Town or County related to or associated with the Solid Waste Facility which are caused by the Operator or its agents, including, but not limited to, occurrences related to or associated with Disposal, Storage, or Treatment of Solid Waste or Hazardous Waste in the Active Fill Area or at any other location at the Solid Waste Facility, occurrences related to or associated with the transportation of Solid Waste or Hazardous Waste to and from the Solid Waste Facility by the Operator or its agents, and any occurrences related to or associated with any Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations at the Solid Waste Facility.

If the Town, County or the Standing Committee prevails in any such action as noted above against the Operator, the Operator shall be liable for any and all costs and damages suffered by the Town. The Town, County or the Standing Committee shall be entitled to seek and receive abatement of any public nuisance that may be related to or associated with the Solid Waste Facility which they have proved to be caused by the Operator or its agents.

In addition, the party, in any such legal action, or in any action enforcing any term of this Agreement found to have prevailed, shall be awarded by the court its reasonable attorney fees, its reasonable expert fees, and any other reasonable legal costs.

L. **Administrative Action.** The Town and the County, during the Initial Term and extending until 40 years after Final Closure, notwithstanding any provisions of this Agreement, may petition DNR under Wis. Stat. §§ 289.92 or 291.89, as amended, to initiate action by DNR against the Operator for a violation or an alleged violation by the Operator of any rule promulgated or special order, plan approval, license, or any term or other condition of a license established or issued by DNR wherein any such violation or alleged violation is related to or associated with the Solid Waste Facility. The Operator retains the right to assert any defense it may have related to any petition.

M. **Temporary/Emergency Closure** During the Initial Term, the Operator shall notify, in writing, within 48 hours, the Town Clerk, the County Clerk and the Standing Committee regarding any temporary Emergency, or ordered, Final Closure of the Active Fill Area or any other area in the Solid Waste Facility, including any ordered temporary, Emergency, or ordered, Final Closure of the Active Fill Area or any other area in the Solid Waste Facility, wherein such order is made by DNR or by any other state or federal agency, or by any state or federal court. The Operator shall provide in its written notice to the Town and the County the specific reasons, if known, for a temporary, Emergency, or ordered Final Closure of the Active Fill Area or any other area in the Solid Waste Facility.

N. **Access to the Solid Waste Facility.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall allow the Town, the County and the Standing Committee, by their respective officers, employees, or agents, the right to immediately obtain access to and enter the Solid Waste Facility during any Emergency or alleged violation of this Agreement. The above-noted parties, in addition, shall have the right to obtain access to and enter the Solid Waste Facility during all other times upon 24-hours oral or written notice from the Town, the County or the Standing Committee. Physical access to the Solid Waste Facility shall be allowed:

1. To inspect, audit, and monitor Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations at the Solid Waste Facility;
2. To sample and test groundwater, leachate, and air quality at the Solid Waste Facility (provided that any sampling or testing must be performed by a licensed professional engineer using methods and materials approved by DNR; the Operator may provide an employee to accompany such engineer;
3. To sample and test characteristics of the Solid Waste at the Solid Waste Facility; or
4. To take any appropriate and necessary action at the Solid Waste Facility during any Emergency to protect the public health, safety, and welfare of persons in the Town and the County or to the environment, and/or to take any appropriate and necessary action to protect the natural resources of the Town and the County.

At all times, the designated officers, employees, or agents of the Town, the County and the Standing Committee shall be accompanied by an agent of the Operator, if provided. In addition, the activities of the designated officers, employees, or agents shall be conducted so as to not interfere with normal business operations at the Solid Waste Facility. Such persons shall comply with the Operator's reasonable safety rules and procedures, which shall be provided in advance.

O. **Repair, Maintenance, and Reconstruction Obligations.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall have the responsibility to the Town and the County to:

1. Properly and timely maintain, repair, and reconstruct the Solid Waste Facility;
2. Properly and timely provide Long-Term Care of the Solid Waste Facility; and

3. If appropriate and necessary, temporarily or permanently close the Active Fill Area or any other authorized area in the Solid Waste Facility for Disposal Operations if, at any time, the failure by the Operator to properly and timely maintain, repair, reconstruct, or properly and timely provide Long-Term Care of the Solid Waste Facility, and/or its failure (if appropriate and necessary) to temporarily or permanently close the Active Fill Area or any other authorized area in the Solid Waste Facility for Disposal Operations is likely to present a substantial danger of creating a public or private nuisance in the Town or County, or is likely to create a substantial danger to the public health, safety, and welfare of persons in the Town, the County or to the environment, or is likely to cause substantial damage to the natural resources in the Town or the County.

P. **Hazardous Waste Disposal Notice.** The Operator, during the Initial Term and extending until 40 years after Final Closure, upon its receipt of any information that Hazardous Waste has been transported to the Solid Waste Facility, or information that any Hazardous Waste has been Stored, Treated, Disposed, or handled in any way by the Operator, its agents, Acknowledged Transporters, or by any other parties in the Active Fill Area, or any other location at the Solid Waste Facility, shall give notice, orally, within 24 hours of its receipt of the information, to the Town Clerk, the County Clerk, the Director of Emergency Government for Kenosha County and the Standing Committee. The Operator, in addition, shall notify the above-noted parties, in writing, within 48 hours of the receipt of this information. Such notice shall describe the date of the occurrence and the type, amount, and source of Hazardous Waste. The Operator, upon receipt of such information, shall immediately commence any appropriate and necessary action to properly remove or to properly contain the Hazardous Waste at the Solid Waste Facility.

Q. **Hazards Notice.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall orally notify the Town Clerk, the County Clerk, the Director of Emergency Government for Kenosha County and the Standing Committee within 24 hours of the receipt of information by the Operator of the following known or suspected hazards or known or suspected occurrences in the Solid Waste Facility, or in the Town or County when directly related to the Solid Waste Facility, or at any other location at the Solid Waste Facility: fires, explosions, contaminated or polluted surface water, contaminated or polluted groundwater, explosive or combustible gases, and hazardous gases or hazardous dust. The Operator, in addition, shall report in writing within 48 hours of the receipt of the information by the Operator regarding the above-noted known or suspected hazards and known or suspected occurrences, the location of such hazards or occurrences, any incidents of damage to persons or property that may have occurred as a result of the above-noted known or suspected hazards or occurrences, and actions taken or actions to be taken in the future by the Operator regarding the above-noted known or suspected hazards or known or suspected occurrences. If, at any time, the Town or County is notified of a hazardous condition, as described above, or should the Operator fail to undertake, in a diligent fashion, appropriate Remedial Action or Removal Action, then the



Town and/or the County are each authorized to undertake any and all Remedial Actions and/or Removal Actions deemed appropriate, in its sole discretion. In the event such Remedial Actions or Removal Actions are taken, the Operator shall reimburse the Town and/or County for the cost of all such actions, as provided in Article V., below.

R. **Responsible Managers.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall provide to the Town, the County and the Standing Committee, the names, titles, addresses, and telephone numbers of any responsible manager(s) retained or employed by the Operator whose responsibilities and authority shall include the management, control, and administration of the Solid Waste Facility. The names, titles, addresses, and telephone numbers of the responsible manager(s) shall be provided within 20 days after this Agreement is executed by the Local Committee, the Town, and the Operator, and shall be updated whenever necessary thereafter, in writing, to provide the most current names, titles, addresses, and telephone numbers of the current responsible manager(s).

S. **Height Restrictions.** The maximum height of the proposed Active Fill Area shall not exceed 880 feet above sea level.

T. **Erosion and Run-off**

1. **Erosion Restrictions.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall control surface water runoff and erosion in accordance with the provisions of the Plan of Operation, as amended, and any previous plan of operation for the Solid Waste Facility on file with DNR.

2. **Abatement of Erosion.** The Operator, during the Initial Term and extending until 40 years after Final Closure, upon written notice by the Town, the County or the Standing Committee describing to the Operator the location of any surface water run-off or erosion Discharged from the Solid Waste Facility onto any other lands located in the County which violates the Plan of Operation, as amended, and any previous plan of operation for the Solid Waste Facility on file with DNR, shall, within three days of receipt of the written notice, take appropriate and necessary actions to abate or remove the described run-off or erosion from such other lands, subject to the Operator's right to challenge the same via arbitration under Section IV.Y.3.e., below.

U. **Standing Open Water and Wetlands.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall take appropriate action to prevent the standing of water at the Solid Waste Facility, except for those sedimentation basins and ponds approved by DNR and other regulatory agencies

V. **Surface Water.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall take the appropriate and necessary actions to direct all surface water coming in contact with any Solid Waste at the Solid Waste Facility into an appropriately maintained leachate collection system. The Operator shall take the appropriate and necessary actions to direct all surface water not coming into contact with

the Solid Waste into the appropriately maintained sedimentation basin located at the Solid Waste Facility. The Operator shall not discharge water, nor shall it allow the discharge of water, from any sedimentation basin at the Solid Waste Facility into any surface water drainage area at the Solid Waste Facility until the surface water discharge complies with the appropriate regulations and requirements of DNR.

W. **Prohibition Against Hazardous Waste Disposal.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall not knowingly transport Hazardous Waste to the Solid Waste Facility, nor shall it knowingly Dispose Hazardous Waste in the Active Fill Area or at any other location at the Solid Waste Facility. The Operator, in addition, shall not knowingly allow its agents, Acknowledged Transporters, or any other parties to transport Hazardous Waste to the Solid Waste Facility, nor shall it knowingly allow the above-noted parties to Dispose Hazardous Waste in the Active Fill Area or at any other location at the Solid Waste Facility. This provision shall in no way be construed or interpreted by any person to be less stringent than any regulations of DNR relating to the Disposal, Storage, or Treatment of Hazardous Waste at any location, including in the Active Fill Area and any other location at the Solid Waste Facility. This provision shall in no way be construed or interpreted by any person to mean that the Town or County authorizes or approves, in any way, of the Disposal, Storage, or Treatment of Hazardous Waste at the Solid Waste Facility or any operations related thereto.

X. **Change in Ownership.**

1. This Agreement shall be binding upon and applicable to the present Operator, Waste Management of Wisconsin, Inc., its successor and assigns, and to all parties to whom the Operator may transfer any or all of its ownership interests or contracts or subcontracts relating to its operations and responsibilities at the Solid Waste Facility.

2. In conjunction with Section IV.X.1., above, the Operator, shall notify the Town, the County and DNR of any and all proposed changes in ownership or operation of the Solid Waste Facility, and, at least 60 days prior to the effective date of such proposed change in ownership or operation, shall provide proof that any such successor or assign has notice of, and acknowledges, this Agreement and the duties and obligations hereunder.

3. In conjunction with the foregoing, the Operator shall not transfer any of its interest in the operation of the Solid Waste Facility or of its property interest in the Solid Waste Facility unless such party or parties can be demonstrated by the Operator to have the ability, both financially and operationally, to comply with the requirements of this Agreement, DNR, the landfill license, and/or State law. The Operator shall provide documentation sufficient to demonstrate the same prior to transferring any such interests. The Town and the County shall have standing to challenge such transfer if the transferee does not have the ability, financially and operationally, to comply with the requirements of this Agreement, DNR, the landfill license and/or State law. The Town and the County shall have 60 days from the receipt of the aforementioned documentation in which to bring

an action in circuit court to prevent or avoid such transfer, unless such deadline is extended by mutual agreement of the Town or the County and the Operator.

4. In conjunction with the foregoing, in the event the Operator transfers any of its interest in the operation of the Solid Waste Facility or of its property interest in the Solid Waste Facility, Waste Management, Inc. shall remain bound by the Guaranty that is part of this Agreement, unless the transferee can provide a replacement guaranty that is at least equivalent to the Guaranty provided by Waste Management, Inc. and unless the Operator or Waste Management, Inc. can demonstrate that the replacement guarantor has the ability, both financially and operationally, to comply with the requirements of this Agreement, the DNR, the landfill license, and/or State law (the ability of the replacement guarantor, both financially and operationally, to comply with the requirements of this Agreement, the DNR, the landfill license, and/or State law is hereinafter also referred to as the "compliance ability of the replacement guarantor"). The Operator or Waste Management, Inc. shall provide documentation sufficient to demonstrate the same. The Town and the County shall have standing to challenge the sufficiency of the replacement guaranty or challenge the compliance ability of the replacement guarantor. The Town and the County shall have 60 days from the receipt of the aforementioned documentation in which to bring an action in circuit court to challenge the sufficiency of the replacement guaranty or challenge the compliance ability of the replacement guarantor, unless such deadline is extended by mutual agreement of the Town or the County and the Operator or Waste Management, Inc. In the event the sufficiency of the replacement guaranty is not challenged by the Town or the County, and the Town and the County do not challenge the compliance ability of the replacement guarantor, upon presentation to the Town and County of an original replacement guaranty in the same form as the Guaranty provided by Waste Management, Inc. hereunder, the Guaranty provided by Waste Management, Inc. shall be released and of no further force and effect and Waste Management, Inc. shall have no obligation under said Guaranty. In the event the Town or the County challenges the sufficiency of the replacement guaranty, or challenges the compliance ability of the replacement guarantor, and a final nonappealable court judgment or decision finds that the replacement guaranty is not at least equivalent to the Guaranty provided by Waste Management, Inc. hereunder, or that the replacement guarantor does not have the ability, financially and operationally, to comply with the requirements of this Agreement, the DNR, the landfill license and/or state law, then the Guaranty of Waste Management, Inc. shall not be released. In the event the Town or County challenges the sufficiency of the replacement guaranty, and a final nonappealable court judgment or decision finds that the replacement guaranty is at least equivalent to the Guaranty provided by Waste Management, Inc. hereunder, and that the replacement guarantor has the ability, financially and operationally, to comply with the requirements of this Agreement, the DNR, the landfill license and/or state law, then upon presentation to the Town and the County of an original replacement guaranty in the same form as the Guaranty provided by Waste Management, Inc. hereunder, the Guaranty of Waste Management, Inc. shall be released and of no further force and effect and Waste Management, Inc. shall have no obligation under said Guaranty.

Y. **Operation Terms**

1. **Disposal Operations, Storage Operations, and Treatment Operations.** The Operator shall not conduct Waste Transfer Station operations at the Solid Waste Facility during the Initial Term and extending until 40 years after Final Closure. During the Initial Term, the Operator shall be allowed to construct, operate, repair, maintain, and close the Solid Waste Facility, and it shall also be allowed to continue to conduct Solid Waste Disposal Operations on the currently-licensed facility and at the Active Fill Area, without any further payment to the Town or the County of any fees, charges, taxes (except real and personal property taxes), and without the further issuance of any licenses, approvals, or permits, and without being subject to any further conditions, except as specifically provided for in this Agreement. It is the intent of the parties that this Agreement supersedes any and all fees, charges, taxes (except real and personal property taxes), licenses, approvals and permits imposed by Town and County ordinances, except as specifically provided for in this Agreement.

However, during the Initial Term, the Operator shall conduct Solid Waste Disposal, and it shall only allow Solid Waste Disposal Operations by its agents, at the Solid Waste Facility subject to the requirements and specific provisions established in this Agreement.

The Operator, during the Initial Term and extending until 40 years after Final Closure, shall not conduct Storage Operations, nor shall it allow any Storage Operations at the Solid Waste Facility, except as noted below, except with the written approval of DNR and the Town and the County, subject to the requirements and specific provisions established in this Agreement.

The Operator during the Initial Term shall not conduct Treatment Operations, nor shall it allow any Treatment Operations at the Solid Waste Facility, except with the written approval of DNR (if required) and the Town and the County, subject to the requirements and specific provisions established in this Agreement. The Town's and the County's approval of any Treatment Operations shall not be unreasonably withheld.

This above-noted provision restricting Storage and Storage Operations by the Operator at the Solid Waste Facility shall not apply to the Operator when the Town and Residents have been authorized to Store Solid Waste collected from only Solid Waste sources in the Town or at a citizen drop off station or at any Storage containers.

This section shall not apply to existing operations currently permitted by DNR.

2. **Initial Operations, Closure Operations, and Post-Closure Operations.** The Operator, during the Initial Term, shall be fully responsible to the Town and the County to properly maintain, construct, repair, and close the Solid Waste Facility, and to properly conduct Disposal Operations, authorized Storage and Treatment Operations at the Solid Waste Facility.

The Operator, after the date of Final Closure and extending until 40 years after Final Closure, shall be responsible to the Town and the County to provide the proper Long-Term Care Operations at the Solid Waste Facility.

The Operator, during the Initial Term and extending until 40 years after Final Closure, shall be responsible to the Town and the County to take any appropriate and necessary Removal Actions or Remedial Actions at the Solid Waste Facility.

After the date of Final Closure, the Operator shall (i) cease transportation of Solid Waste to the Solid Waste Facility; (ii) prevent any further transportation of Solid Waste to the Solid Waste Facility; (iii) cease Disposal of any Solid Waste at the Solid Waste Facility, (iv) prevent any further Disposal of Solid Waste at the Solid Waste Facility; and (v) not conduct or allow any Disposal Operations, Storage Operations, or Treatment Operations at the Active Fill Area or at any other location at the Solid Waste Facility.

3. **Monitoring and Control of Solid Waste Facility.**

a. **Environmental Audit.** During the Initial Term and extending until 40 years after Final Closure, the Town and the County shall have the right to conduct Environmental Audits to verify the Operator's compliance with all federal, state, and local laws, rules, or regulations applicable to the Solid Waste Facility and/or to verify the Operator's compliance with this Agreement, the Plan of Operation, as amended, and any previous plan of operation for the Solid Waste Facility on file with DNR. During the Initial Term, the Operator shall reimburse the Town for the cost of audits, but not to exceed \$20,000.00 every two years ("Payment Period"), cumulative, which amount shall be adjusted by the increase in the CPI between reimbursements; but not less than 4 ½ percent nor greater than 6 percent *per annum*. The Operator shall reimburse the Town for the costs of audits conducted by the Town during the 40-year post-closure period, in an amount not to exceed \$5,000.00 every five (5) years, cumulative, which amount shall be adjusted by the increase in the CPI between reimbursements; but not less than 4 ½ percent nor greater than 6 percent *per annum* commencing on the date of Final Closure. If a dispute should arise under this subsection, it shall be resolved by the dispute resolution provision of Section IV.Y.3.e., below. "Cumulative" shall mean any amount not expended in any Payment Period shall be available in any subsequent Payment Period for reimbursement.

b. **Environmental Response** The Operator shall complete environmental monitoring as detailed in the Monitoring Plan, the Plan of Operation, and any amendments thereto, and any previous plan of operation for the Solid Waste Facility on file with DNR, during the Initial Term and extending until 40 years after Final Closure. In the event monitoring indicates a statistical increase in contaminants or a level exceeding regulatory limits at the approved on-site monitoring devices/locations that can be attributed to the Solid Waste Facility, the Operator shall promptly install additional monitoring devices off-site and modify the associated DNR permit to include additional points in the Monitoring Plan, the Plan of Operation, as amended, and any previous plan of operation for the Solid Waste Facility on file with DNR. In the event that the monitoring indicates a statistical increase in contaminants or detection of methane gas at the off-site monitoring device/location, the Operator shall promptly take all actions necessary to correct and remedy any violations. In the event there is any problem detected or complaint received by the Town, the County or the Standing Committee regarding the Solid Waste Facility, the Town, the County or the Standing Committee shall provide the Operator, within 10 business days of detection of the problem or receipt of the complaint, a written request for review. The Operator shall provide a correction plan, within 15 days of receipt of the

written request. The correction plan shall (i) state the problem or nature of the complaint, (ii) identify the likely cause of the problem or nature of the complaint, and (iii) provide a solution to correct the problem or remedy the complaint. The entity making the request or its authorized agent shall approve or disapprove the plan within 10 business days of receipt. If approved, the Operator shall take all necessary actions to implement the correction plan. If a dispute should arise under this subsection, it shall be resolved by the dispute resolution provision of Section IV.Y.3.e., below. In addition the Operator shall provide the Town, the County or the Standing Committee with a written log of any complaint received directly by the Operator, within 10 business days of receiving such complaint.

c. **Environmental Consultant.** In addition to the Environmental Audit, the Town and/or the County, from time to time during the Initial Term and until 40 years after Final Closure, at their sole discretion, may engage the services of an Environmental Consultant to provide expertise and/or assistance relating to compliance with this Agreement. The Operator shall cooperate with the Environmental Consultant and give the Environmental Consultant access to the Solid Waste Facility and its records. If a dispute should arise under this section it shall be resolved under the dispute resolution provision of Section IV.Y.3.e., below.

d. **Topographic Map.** The Operator shall annually develop a topographic survey of the Solid Waste Facility, except that in 2014 and 2017 the Operator shall instead conduct an aerial topographic survey of the Solid Waste facility. The Operator shall provide the Town and the County or their designees with a copy of each topographic survey at a scale of not more than 1 inch = 400 feet. In addition, the Operator shall prepare and provide a cut and fill analysis of the topography versus (i) the permitted top of waste grades; and (ii) the previous year's topography. The cut and fill analysis shall be provided in a plan view (isopach map) showing contours of cut and fill, and shall indicate a total net and bank cubic yards of cut and fill for each scenario listed above.

e. **Dispute Resolution.** Disputes that arise under Sections II.E., IV.T.2., and IV.Y.3.a. through IV.Y.3.c., above, shall be resolved by arbitration. In the event of a dispute, the Town and/or the County and their designees, and the Operator shall, within 10 days, select a third party to arbitrate such dispute, whose decision shall be binding. In the event the two parties cannot agree on the selection of a third party within 10 days, then either party may immediately petition the Chief Judge of Kenosha County, Wisconsin, for the appointment of an arbitrator, whose decision shall be final. The costs of the arbitration process shall be paid equally by the parties to the arbitrated dispute.

f. **NOV Audit.** If the Operator receives a Notice of Violation (NOV) from DNR that results in substantial environmental harm; the Town may conduct an audit and the Operator shall, upon receipt of an invoice from the Town, reimburse the Town the cost of the audit, but not to exceed \$25,000.00 which maximum shall be adjusted annually by the increase in the CPI but not less than 4 ½ percent nor greater than 6 percent. The costs of the audit shall be reimbursed separately from the Environmental Audit costs referenced in Section IV.Y.5.a., above

4. **Expansion.** The Solid Waste Facility shall not be expanded without the approval of the Town.

5. **Local Approvals.** As used herein, the term "Participating Municipalities" shall mean the Town and County. Except as otherwise provided herein, the following are hereby waived: all applicable ordinances, regulations, permits, licenses, zoning, Local Approvals and Pre-existing Local Approvals of the Participating Municipalities that may be required of the Operator to allow it to construct, operate, maintain, fill, erect berming in, repair and close the Active Fill Area and provide Long-Term Care of the Active Fill Area and to conduct Disposal Operations, Storage Operations, Treatment Operations, Removal Actions, Remedial Actions, landfill gas extraction activities and landfill gas to energy operations at the Solid Waste Facility, and undertake investigations at the Solid Waste Facility, and conduct landfilling activities at the Active Fill Area, and to continue to conduct such activities on the currently-licensed landfills,. This waiver includes the waiver of all fees and enforcement provisions of the above described ordinances, regulations, permits, licenses, zoning, Local Approvals and Pre-Existing Local Approvals. This waiver shall continue until 40 years after Final Closure or until the Long-Term Care responsibility of the Operator ceases. This waiver shall extend to Long-Term Care Operations which the Operator must undertake pursuant to DNR regulations pertaining to the Solid Waste Facility.

These regulatory and enforcement waiver provisions do not apply for any other uses, operations or businesses at the Solid Waste Facility except: (i) those uses, operations and businesses that are directly and specifically related to and consistent with Solid Waste Disposal Operations at the Active Fill Area and that are currently-licensed, and (ii) those licensed uses that are being undertaken by the Operator at the time of execution of this Agreement. Any other expansion or other use, operation or business at the Solid Waste Facility shall first be approved by the Town. These regulatory and enforcement waiver provisions do not apply to allow Operator to operate a collection and transportation service or a Waste Transfer Station at the Solid Waste Facility.

Notwithstanding the foregoing, these regulatory and enforcement waiver provisions do not include speed limits, issuance of Waste hauler permits (with a fee not to exceed what is reasonable and customary), litter control, building permits, rules of the road, road obstruction, excavation powers, fire safety permits, or zoning at locations other than the Solid Waste Facility. Any recycling involving melting, smelting, or other remanufacture or reuse of recyclables, or any tire shredding or composting beyond that currently undertaken shall be subject to the conditional use permit and permit process as set forth in the Town and County ordinances. Any other use of the Solid Waste Facility not referred to in this Section IV.Y.5. shall be subject to approval by the Town and County pursuant to the normal procedures. This Agreement specifically supersedes the Town and County zoning and ordinances to the extent that the uses of the property described in Exhibit C and referred to in this Agreement as the Solid Waste Facility are consistent with the uses permitted in this Section IV.Y.5.

Except as set forth herein, these regulatory and enforcement waiver provisions do not apply in any way to or waive any authority the Town may have now or may in the future

have to control or regulate, by regulation, ordinance, permit, license or by order, the uses, operations and businesses at the Solid Waste Facility or at the currently-licensed landfills, where these orders, permits, licenses, or ordinances are deemed necessary by the Town Board to protect the public health, safety, and welfare of persons in the Town or to the environment and/or to prevent a public or private nuisance.

The parties agree that the Town is the appropriate governing body for approval under Wis. Stat. § 289.33(9)(j), and that this Agreement shall be binding upon the Participating Municipalities. All zoning and conditional use permit requirements of the Participating Municipalities are waived for the Solid Waste Facility for the uses of the Solid Waste Facility described in this Section IV.Y.5.

Z. **Standing Committee.** The Operator and the Local Committee shall agree to the formation of a Standing Committee, which will consist of the Town Chairman, who shall serve as Chairperson of the Standing Committee; two adult Residents appointed by the Town Board; one adult citizen-at-large representative who resides in close proximity to the Landfill, who shall be appointed by the Town Board; and one representative of the Operator. The Standing Committee shall have the functions described in Exhibit D, however, all actions of the Standing Committee shall be subject to review and approval by the Town Board. Specifically, the Standing Committee shall exercise its powers pursuant to the procedures set out in Exhibit D. The Operator will reimburse up to \$2,500.00 of the Standing Committee's costs annually. The remainder of the Standing Committee's costs shall be borne by the Town provided the Standing Committee receives prior approval of such costs by the Town. The Operator's contributions to the Standing Committee shall increase by annually by the increase in the CPI but not less than 4 1/2 percent nor greater than 6 percent, effective January 1<sup>st</sup> following the execution of this Agreement and continuing for 40 years following Final Closure.

AA. **Litter Prevention.** The Operator shall require all Acknowledged Transporters to clean the backs of their trucks before leaving the Solid Waste Facility to ensure no Solid Waste is deposited on or along any roadway. The Operator shall install a perimeter fence around the Solid Waste Facility and temporary fencing within the Solid Waste Facility to prevent the blowing or scattering of Solid Waste.

BB. **Active Fill Limitations.** No Solid Waste shall be disposed in the Active Fill Area until closure of the North 80.

CC. **Waste Quantity Limitation.** The quantity of Annual Solid Waste Disposed in the Active Fill Area shall not exceed 1,000,000 tons per year, except that if Operator accepts less than 1,000,000 tons in any year, it may accept the difference in the following year, in addition to the authorized 1,000,000 tons per year. This Waste Quantity Limitation shall be prorated per month during the year when Solid Waste is first Disposed in the Active Fill Area.

DD. **Prior Approval of Sewer Lines.** The Operator, or its agents, successors, assigns, and/or transferees as described in Section IV.X., above, shall not install any sewer line within the Solid Waste Facility without the written approval of the Town. Operator



agrees it will not petition for annexation of any part of the Solid Waste Facility during the Initial Term of this Agreement.

EE. **Residential Well Testing** Not more often than quarterly, and only upon the request of Property Owners whose properties lie within one-quarter mile of the Solid Waste Facility, the Operator shall provide, at its expense, free testing for the parameters in Exhibit B of the water wells of said Property Owners, and the Operator shall report the results of said testing to the Standing Committee.

FF. **Landscaping Plan** The Operator agrees to comply with the Landscaping Plan attached hereto as Exhibit H. The Operator will work with the Town and its Environmental Consultant to avoid the use of non-native species in implementing the Landscaping Plan.

## **ARTICLE V. FINANCIAL OPERATIONS RELATED TO THE SOLID WASTE FACILITY**

A. **Indemnification to Town and County** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall indemnify, hold harmless, and defend the Town and the County and their officers, employees, and agents, the Local Committee members appointed under Wis. Stat. § 289.33, and the Standing Committee members, from any and all liability, loss, cost, expenses (including costs of defense, experts, reasonable attorney fees, Removal Action costs, and Remedial Action costs), interest, and damages that the parties indemnified hereunder might suffer or pay out to another as a result of any claim, demand, suit, or action, or right of action (in law or equity) arising against the Town and the County and their officers, employees, and agents, the Local Committee members appointed under Wis. Stat. § 289.33, or the Standing Committee members as a result of an injury (including death) or damage to any person or property, brought by any party wherein such injury or damage arises in any way as a result of any anticipated or unanticipated occurrences, as defined below, including any act or omission, negligent or otherwise, of the parties indemnified hereunder, or of the Operator or its agents, in connection with the Active Fill Area, the Solid Waste Facility, or with any other obligation from the landfill operations described in this Agreement. For purposes of this Agreement, occurrences shall be deemed to be those associated with the negotiation/arbitration process that occur pursuant to Wis. Stat. ch. 289, as amended, occurrences which result from the actions or negligence of the Operator or its agents in connection with the Disposal, Storage, or Treatment of Solid Waste or Hazardous Waste in the Active Fill Area or at any other location at the Solid Waste Facility, or at operations related thereto, and occurrences which result from the actions or negligence of the Operator or its agents in connection with any Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations at the Solid Waste Facility or at any operations related thereto.

Except as provided below, the above-noted provision shall include full reimbursement to the Town, the County and their officers, employees, agents, and experts, and to the Local Committee members and the Standing Committee members, by the Operator, of the legal fees and the legal costs incurred in the legal defense of the Town, the County and their

officers, employees, and agents, and by the Local Committee members appointed under Wis. Stat. § 289.33, and the Standing Committee members. Additionally, except as provided below, the Town, the County and the above-noted parties shall have the right to select for legal defense their own attorney(s), with full reimbursement for any legal fees and costs to be made to such attorney(s) by the Operator.

Notwithstanding the language above, the Operator need not indemnify the Town, the County or their respective officers, employees, or agents, or the Local Committee members appointed under Wis. Stat. § 289.33, or the Standing Committee members wherein it is found by a court of competent jurisdiction that the injury or damage was the result of the sole negligence or the intentional, wanton, or willful acts of the Town, the County or their respective officers, employees, or agents, or the Local Committee members appointed under Wis. Stat. § 289.33, or the Standing Committee members, or any combination thereof. All claims for indemnification by the Town, the County or the other parties listed under this section shall be asserted and resolved as follows:

1. In the event that any claim or demand for which the Operator would be liable to the Town, the County or the other parties hereunder (collectively, "Indemnatee"), is asserted against or sought to be collected from Indemnatee by a third party, Indemnatee shall promptly notify the Operator, in writing, of such claim or demand, specifying the nature of such claim or demand and the amount of the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim and demand). This written notification shall be referred to as the "Claim Notice." The Operator shall have 15 days from the time the Claim Notice is post-marked, or such shorter time as may be reasonably required under the circumstance ("Notice Period"), to notify the Indemnatee:
  - a. Whether or not the liability of the Operator to such party hereunder with respect to such claim or demand is disputed; and
  - b. Whether or not the Operator desires, at its sole cost and expense, to defend the Indemnatee against such claim or demand.
2. In the event that the Operator notifies the Indemnatee within the Notice Period of its desire to defend the Indemnatee against such claim or demand, except as hereinafter provided the Operator shall have the right to defend by appropriate proceedings, which proceedings shall be promptly settled or prosecuted by it to a final conclusion. To the extent that a defense against any such claim or demand or any portion thereof is finally unsuccessful, it shall conclusively be deemed an indemnification obligation by the Operator. If the Indemnatee desires to participate in, but not control,

any such defense or settlement, it may do so at its sole cost and expense.

3. If the Operator elects not to defend the Indemnatee against any claim or demand, whether or not giving the Indemnatee timely notice as provided above or otherwise, then the Indemnatee shall defend such claim and shall use the procedures under Section V.A.4., below, to challenge the Operator's decision not to defend. In the event the Indemnatee prevails in its challenge of the Operator's election, then the Indemnatee's costs and expenses shall be deemed an indemnification obligation of the Operator.
4. Disputes regarding the liability of the Operator to the Indemnatee under this section shall be resolved by arbitration in the manner provided in Section V.E.1., below. While awaiting resolution of such disputes, costs incurred from any action taken by a party to protect its interests or any loss suffered due to inaction may be the subject of a claim brought before the arbitration panel handling the dispute as to liability.
5. Notwithstanding any of the foregoing language, this Agreement does not waive, and is not in any way intended to waive, any of the protections afforded a municipality by statute, including those established by Wis. Stat. § 893.80.

**B. Property Guarantees and Letter of Credit.**

1. **Property Value Protection Plan.** The Property Value Protection Plan shall be administered in accordance with the attached Exhibit E incorporated herein. A failure to comply with the terms of the Property Value Protection Plan shall constitute a breach of this Agreement, subject to all the rights and remedies of contract law and subject to any penalties or enforcement rights set out in this Agreement.

The Operator shall, within 30 days after this Agreement is executed, provide to the Property Owners of the properties listed in Exhibit E, a Property Protection Agreement for their review, approval and signature. Once such agreement is delivered to the Property Owner, the Property Owner shall have 30 days within which to review and determine if he or she desires to enter into the Property Protection Agreement. If the Property Owner does enter into the Agreement, a signed copy shall be returned to the Operator. The Operator shall notify the Town and provide a copy of each Property Protection Agreement it receives for the records of the Town. It is agreed that no Property Protection Agreement will require any Property Owner to abandon their right to object to the landfill, to pursue any action, to be a party to an action, or to initiate action in order to participate in the Property Protection Agreement.

2. **Letter of Credit.** In the event of a transfer of ownership, any successor of the Operator, or any party that provides a replacement guaranty under Section

IV.X.4., above, during the Initial Term and extending until 40 years after Final Closure, shall maintain, in favor of the Town and the County, a letter of credit in the amount of \$250,000.00, until 40 years after the Final Closure of the Solid Waste Facility. Beginning on the first anniversary of this Agreement and annually thereafter, said amount shall be adjusted by the increase in the CPI for the prior 12 months; but not less than 4 ½ percent nor more than 6 percent. The parties agree that during the period when said letter of credit is in force and effect, the Town or the County may draw upon said letter of credit for reimbursement of losses, costs, expenses, damages, and liabilities incurred by the Town or the County as a result of the failure of the Operator to comply with the terms and conditions of this Agreement.

C. **Pollution Legal Liability Insurance.** The Operator, or any party that provides a replacement guaranty under Section IV.X.4., above, during the Initial Term and extending until 40 years after Final Closure, shall name and maintain the Town and the County as additional named insureds on a pollution legal liability insurance policy having a face-amount of not less than \$40,000,000.00, in aggregate for the Solid Waste Facility. This policy has been reviewed and approved by the attorneys for the Town. A certificate of insurance with respect to this policy is attached as Exhibit F. Operator shall provide complete copies of any replacement policy at least 30 days prior to changing such policies. Said policy shall contain a provision requiring a 90-day written notice to the Town and the County prior to cancellation for any reason.

D. **Enforcement of Security Requirements.** Failure to provide and to maintain the Letter of Credit or the insurance described above shall subject the Operator to immediate enforcement action, under which the Town or the County shall have the right to seek and obtain a court order to compel compliance with the provisions herein, together with costs and attorney fees and such other remedies as may be available to the Town and the County, at their sole option.

E. **Compensation for Costs, Expenses, and Damages to Town.**

1. **General Reimbursement of Costs, Expenses, and Damages.** The Operator, during the Initial Term and extending until 40 years after Final Closure, shall fully reimburse the Town, the appropriate municipal fire service units, emergency government units and the appropriate municipal ambulance service units within 20 days after the Town, the appropriate municipal fire service units, emergency government units or the appropriate municipal ambulance service units submit to the Operator a written invoice documenting for the Operator the total dollar amount due from the Operator for the reasonable and necessary costs and expenses and actual damages incurred by the Town, the appropriate municipal fire service units, emergency government units or the appropriate municipal ambulance service units as a result of responding to certain occurrences, individually or jointly, and then acting individually or jointly upon certain occurrences, namely:

- a. Fires, explosions, accidents, or any other emergencies occurring at the Active Fill Area or at any other location at

the Solid Waste Facility, or any fires, explosions, accidents, or any other emergencies occurring at any other location in the Town which occurred as result of the transportation of Solid Waste to and from the Solid Waste Facility by the Operator or its agents, which occurred as a result of the Disposal, Storage, or Treatment of Solid Waste in the Active Fill Area or at any other location at the Solid Waste Facility, or which occurred as a direct result of the Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations at the Active Fill Area or at any other location at the Solid Waste Facility.

- b. Solid Waste or Hazardous Waste Discharges occurring in the Active Fill Area or at any other location at the Solid Waste Facility, or Solid Waste or Hazardous Waste Discharges occurring at any other locations in the Town, which occur as a direct result of the transportation of Solid Waste to and from the Solid Waste Facility by the Operator or its agents, which occur as a result of the Disposal, Storage, or Treatment of Solid Waste in the Active Fill Area or at any other location at the Solid Waste Facility, or which occur as a result of any Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations at the Solid Waste Facility. These costs and expenses incurred by the Town, emergency government units and by the appropriate municipal service units may specifically include any Remedial Action costs and any Removal Action costs.
- c. Any other occurrences at the Solid Waste Facility which occurred as a direct result of Disposal, Storage, or Treatment of Solid Waste in the Active Fill Area or at any other location at the Solid Waste Facility, or which occurred as a direct result of Disposal Operations, Storage Operations, Treatment Operations, or Long-Term Care Operations at the Solid Waste Facility wherein the Town, the appropriate municipal fire service units, emergency government units or the appropriate municipal ambulance service units determined, jointly or individually, that it was appropriate and necessary for the Town and/or the appropriate municipal service or emergency government unit to incur reasonable and necessary costs and expenses in providing specific services and specific benefits in order:
  - (1) To prevent a public nuisance in the County;

- (2) To protect the public health, safety, and welfare of persons in the County; or
- (3) To protect the natural resources in the County; and,

in addition, that the Town and/or the above-noted appropriate municipal service or emergency government units then determined it was appropriate and necessary that the Operator reimburse the Town and/or the appropriate municipal service or emergency government units for providing the specific services and for providing the specific benefits. These services and benefits provided by the Town and/or by the appropriate municipal service or emergency government units to the Operator may include any Remedial Action costs or any Removal Action taken by the Town or the appropriate municipal service or emergency government units.

The Town, the appropriate municipal fire service units, emergency government units or the appropriate municipal ambulance service units shall be entitled under this subsection to reimbursement or payment from the Operator for their specific costs, expenses, and damages incurred in their providing specific services and specific benefits if:

- (a) The total amount of the costs, expenses, and damages that were incurred by the Town or the appropriate municipal service or emergency government unit, when submitted by written invoice by the Town and/or the said appropriate municipal service or emergency government unit to the Operator, was more than \$20.00 in amount;
- (b) The specific costs, expenses, and damages submitted for payment to the Operator were incurred by the Town or the appropriate municipal service or emergency government unit, and such costs, expenses, and damages were, at the time the specific services and benefits were provided, the type and amount of costs, expenses, and damages that would normally be assessed or charged directly to any party by the Town or by such appropriate municipal service or emergency government unit for the specific services or specific benefits provided; and
- (c) Such public services are over and above those normally provided to Residents.

Notwithstanding the foregoing, the Operator retains the right to retain the services of private fire service units or private ambulance service units, as it deems appropriate, to respond to any of the above-noted occurrences. Further, the Operator agrees to provide the appropriate municipal fire service units and ambulance service units and emergency government advice about the appropriate chemicals and means to respond to any fires, explosions, accidents or releases that may occur at the Solid Waste Facility.

Any controversy or claim by the Town or the Operator arising out of or relating to the amount due the Town from the Operator, or paid by the Operator to the Town, pursuant

to this subsection shall be settled by arbitration in accordance with the rules of the American Arbitration Association and in accordance with Wis. Stat. ch. 788, as amended. Judgment upon the award rendered by the arbitrators may be entered in any court in the State of Wisconsin having competent jurisdiction. The loser in arbitration shall pay any reasonable attorney fees and legal costs of the other party or parties.

2. **Reimbursement for Negotiation Expenses.** The Operator agrees to pay all reasonable expenses of the Town for its actual attorney's fees, Environmental Consultant fees, costs, and expenses incurred in the negotiation of this Agreement and for obtaining approval of this Agreement, or any modifications hereto, by the Town. Said negotiation expenses shall be paid no later than 15 days after the commencement of the Initial Term.

3. **Reimbursement for Administrative Costs and Expenses.** In addition to reimbursement for the Environmental Audit, the Operator, during the Initial Term and extending until 40 years after Final Closure, shall annually reimburse the Town, commencing with the first annual reimbursement payment due on or before January 31, 2009 for the year 2008, for the reasonable and necessary clerical costs, and expenses the Town has incurred during the prior year as a direct result of the Solid Waste Facility, including reasonable and necessary costs and expenses associated with any provision of this Agreement, including environmental audits (said costs, fees and expenses hereinafter collectively referred to as "clerical and administrative costs and expenses"). The Town by January 10<sup>th</sup> of each year, commencing first on or before January 10, 2009, shall submit to the Operator a detailed written invoice of their clerical and administrative costs and expenses from the prior year that were incurred as a direct result of the Solid Waste Facility, including any reasonable and necessary clerical and administrative costs and expenses associated with any provisions of this Agreement or environmental audit. To require the annual reimbursement payment in any one year from the Operator, the invoiced amount submitted must exceed \$100.00. The Town in its written invoices submitted to the Operator, shall include any copies available to them of the following:

- a. Any receipts for proof of payment of any clerical and administrative costs and expenses incurred as a direct result of the Solid Waste Facility for its purchase or lease of supplies and materials or its purchase or retention of services; and
- b. Copies of any hourly billing statements or other billing statements received from employees, agents, independent contractors or professionals employed or retained as a direct result of the Solid Waste Facility or this Agreement.

The Town shall submit for payment to the Operator by their invoices only those reasonable and necessary clerical and administrative costs and expenses incurred by them that are directly related to the Solid Waste Facility, including clerical and administrative costs and expenses directly related to this Agreement. Such clerical and administrative costs and expenses may be costs and expenses incurred by the Town related to or

associated with providing or purchasing necessary clerical and administrative services. Clerical and administrative service costs and expenses may include, but are not limited to, municipal secretarial and municipal supervisory wage and salary costs, public official *per diem* costs, and any cost and fees for retained professional and technical personnel.

Clerical and administrative material and supply costs and expenses may include, but are not limited to, long distance telephone costs, copying costs, Solid Waste educational material purchase costs, file cabinet purchase costs, travel and lodging costs, stationery purchase costs, stamp purchase costs, public meeting publication costs, and Solid Waste seminar attendance costs.

The maximum amount required to be reimbursed by the Operator for any one year for the above-noted clerical and administrative costs and expenses shall be \$2,500.00 per year. Such clerical and administrative costs and expenses to be reimbursed and to be paid by the Operator are to be reasonable and necessary costs and expenses that are costs and expenses that are over and above other specific costs and expenses to be reimbursed and paid by the Operator pursuant to other provisions of this Agreement.

Any controversy or claim arising out of or relating to the amount due or the amount paid by the Operator for the above-noted costs and expenses reimbursement shall be settled by arbitration in accordance with the rules of the American Arbitration Association and in accordance with Wis. Stat. ch. 788, as amended. Judgment upon the award rendered by the arbitrators may be entered in any court in the State of Wisconsin having competent jurisdiction. The party losing in arbitration will pay the reasonable attorney fees and legal costs of the prevailing party.

## **ARTICLE VI. COMPENSATION TO TOWN**

### **A. Direct Payments.**

1. **Payments.** Until Disposal of Solid Waste begins in the Western Expansion, the Operator shall continue to pay to the Town a direct payment pursuant to Landfill Operation Agreement Number 7, dated December 21, 2004. Upon commencement of the Disposal of Solid Waste in the Western Expansion, or no later than January 1, 2010, the Operator shall pay to the Town a direct payment of \$4.20 per ton for all Solid Waste Disposed of in the Solid Waste Facility. No direct payment shall be paid for daily cover (whether soil or other materials) required to be applied pursuant to the Plan of Operation or for Disposal of Residential Waste received by the Operator from Residents, the Town and the County and Disposed by the Operator at no charge pursuant to Section VI.B., below or the Operator's Agreement with the County dated April 17, 2000, as amended.

Commencing on the first of the month after the first anniversary of commencement of Disposal of Solid Waste in the Western Expansion and annually thereafter as long as the Operator continues to receive Solid Waste in the Solid Waste Facility, the direct payment



rate shall be further adjusted by the increase in CPI for the prior twelve months but not by less than 4 ½ percent nor more than 6 percent per year.

However, in the event the Operator has not begun to Dispose of Solid Waste in the Western Expansion prior to January 1, 2010, the direct payment of \$4.20 per ton shall be adjusted on January 1, 2011 and annually thereafter as long as the Operator continues to receive Solid Waste in the Solid Waste Facility by the increase in the CPI for the prior twelve months but not by less than 4 ½ per cent nor more than 6 per cent per year.

In addition to the foregoing direct payments which the Operator is required to pay to the Town for all Solid Waste Disposed of in the Solid Waste Facility, the Operator shall, upon the commencement of the Initial Term of this Agreement, also pay to the Town fifty per cent (50%) of the direct payment provided for above for each ton of Food Waste accepted for Treatment at the Solid Waste Facility.

Monthly, the Operator shall compute the amount of the direct payment based on the monthly tonnage of all weight tickets and scale records for each month. Direct payments shall be made within 30 days of the end of the prior month for the chargeable Solid Waste and Food Waste received during the prior month.

2. **Accounting.** Within 30 days after the end of the prior month that Solid Waste is Disposed in the Solid Waste Facility or Food Waste is Treated at the Solid Waste Facility, the Operator shall submit to the Town a statement in the form set forth on the attached Exhibit G incorporated herein.

Any payment that is received late shall accrue interest at the rate of 1-1/2 percent per month. Such late payment interest charges shall be calculated on a daily basis, and shall be compounded on a monthly basis until fully paid.

The Operator shall provide to the Town, the County, and the Standing Committee all documents submitted to DNR pertaining to the recording and documentation of the Solid Waste received. In addition, the Town or the Standing Committee may inspect the originals of such documentation or the daily records upon which such summaries are based upon reasonable prior notice.

The Operator agrees to weigh all solid waste received on certified scales and to provide access to the Town and Standing Committee of all weight tickets and scale records.

3. **Minimum Monthly Payment.** Upon commencement of the Initial Term of this Agreement, the minimum monthly payment of \$100,000.00 per month required to be paid by the Operator to the Town pursuant to Landfill Operation Agreement Number 7 shall be increased to \$150,000.00 per month; but shall continue to be subject to the "force majeure" provisions contained in Landfill Operation Agreement Number 7. Each of said minimum monthly payments shall be deemed a credit against the direct payments imposed by Section VI.A.1. In any month it appears that the total of the direct payments for the prior month are less than \$150,000.00 the Operator shall pay into the general fund of the Town the minimum monthly payment; unless the average of the direct payments to the Town for the prior 12 months exceeds \$150,000.00. In such event, the Operator shall not be required to pay the monthly minimum. This monthly minimum payment obligation shall apply to the last 12 months of Disposal in the Active Fill Area.

Operator shall advise the Town, based on topographic surveys (see Article IV, Section Y. 3.d) when it has less than 12 months capacity remaining in the Active Fill Area.

B. **Residential Waste.** The Operator, during the Initial Term, shall make the citizen drop off station or collection bins located at the Solid Waste Facility available to Residents for the purpose of Disposal of their Residential Waste, excluding household hazardous waste, every day the landfill is open, during its hours of operation, at no charge. The Operator shall also provide access for Residents who own or operate farms in the Town for dump trucks and similar farm vehicles to enter the Solid Waste Facility to dispose of their Residential Waste. Such access will also be limited to the hours set forth above in Section IV.D., above. Items not permitted by state law for Disposal at the Solid Waste Facility shall be excluded from Disposal by Residents. The free disposal of Residential Waste to be provided by Operator to Residents shall not include curbside collection of Residential Waste. The Operator may establish a separate gate for drop-off of Residential Waste.

In the event that the Town chooses to go to a Town-wide waste hauler, the Operator shall agree to work with such waste hauler to provide for the orderly, free Disposal at the Active Fill Area or any other authorized area in the Solid Waste Facility of the Residential Waste. If said hauler brings Residential Waste generated by Residents to the Active Fill Area or any other authorized area in the Solid Waste Facility, then, notwithstanding the foregoing, the Operator shall pay to the Town the lesser of:

1. The amount invoiced and actually paid to the Operator by the Town's waste hauler for waste Disposal of Residential Waste at the Active Fill Area or any other authorized area in the Solid Waste Facility; or
2. A sum equaling the prevailing disposal rate in pounds which the Operator is billing the Town's waste hauler times the number of Residents times an assumed 2-1/2 pounds of waste per person per day for the month. The Town shall have determined the number of Residents based upon the most current census data increased by the number of new residential units built in the Town after the taking of said census, assuming 3-1/2 persons per new residential unit.

Such an amount shall be rebated to the Town on or before the 10<sup>th</sup> day following each and every month that the Town is serviced by a Town-wide waste hauler. However, the Operator shall not be required to rebate any of the taxes, fees, duties or surcharges the Operator is required to collect from generators or haulers of this waste.

C. **Town Recycling.** The Operator, during the Initial Term, shall provide recycling services free of charge to Residents, which shall meet all the requirements imposed by Wisconsin Statutes, including any amendments or further requirements that are added during the term of this Agreement. Said recycling services shall include providing collection containers at the Solid Waste Facility for recyclable materials that Residents are required to recycle under Wisconsin law (hereinafter referred to as "recyclable materials"). The Operator shall allow Residents to place said recyclable materials in the provided

collection containers free of charge. The recycling services to be provided by Operator shall not include curbside collection of recyclable materials. The Operator shall annually certify the amount of recyclable materials being received at the Solid Waste Facility to satisfy state requirements or other information needed by the Town. The Operator shall refuse to accept Residential Waste for disposal in the Active Fill Area or any other authorized area in the Solid Waste Facility if a Resident has failed to separate recyclable materials from Residential Waste. The Town shall define and provide regulations pertaining to recyclable materials dropped off at the Active Fill Area or any other authorized area in the Solid Waste Facility by Residents.

D. **Direct Payment Surcharge.** If the Operator exceeds the Annual Solid Waste limitation described in Section IV.CC., above, the Operator shall pay a surcharge equal to 120 percent of the per ton direct payment amount described in Section VI.A.1., above, for each additional ton that exceeds the Annual Solid Waste limitation.

## **ARTICLE VII. GENERAL PROVISIONS**

A. **Terms and Interpretation of this Agreement.** This Agreement shall cover the Solid Waste Facility. It is the intention of the parties that upon execution of this Agreement, it shall supersede the following agreements between the Parties: the original Landfill Operation Agreement dated July 9, 1982, the Amendment to the Landfill Operation Agreement dated November 19, 1984, the Landfill Operation Agreement Number 2, dated October 20, 1986, Landfill Operation Agreement Number 3, dated February 18, 1991, the Landfill Operation Agreement Number 4, dated February 27, 1995, the Landfill Operation Agreement Number 5, dated June 10, 1996, the Landfill Operation Agreement Number 6, dated December 12, 2000, and with the exception of the provision continuing the direct payments and continuing the minimum monthly payment (at an increased amount) under Section VI., above, the Landfill Operation Agreement Number 7, dated December 21, 2004. Upon execution, these prior agreements shall be of no further force or effect. The agreements between the Operator and the County, dated April 17, 2000, as amended, shall not be superseded by this Agreement and shall continue in full force and effect.

B. **Notice to Parties** Under this Agreement, any notices required by the terms and conditions of this Agreement are, at minimum, to contain the address and names of the parties as noted below, are to be sent by first class mail to such parties, and are to be considered by each party as written notice when received, except as otherwise specifically provided herein. It is further understood that the Town, the County, the Operator, the Local Committee and the Standing Committee shall each be responsible to provide to the other parties any appropriate change of address or any appropriate change of name by providing the other parties with a written "Notice of Address Change" or "Notice of Name Change." Such notices shall be sent by certified mail to the addresses noted below. The current names and addresses are:

1. Pheasant Run Recycling and Disposal Facility  
19414 60<sup>th</sup> St.  
Bristol, WI 53104

The Operator shall provide a contact person at this address through Final Closure and shall be required to keep current telephone numbers available to the Town and the Standing Committee. Furthermore, a 24-hour emergency telephone number shall be provided at all times.

2. Town of Paris  
Town Hall  
16607 Burlington Road  
Union Grove, WI 53182
3. Kenosha County  
County Clerk  
1010 56<sup>th</sup> St.  
Kenosha, WI 53140-3738
4. Kenosha County  
Director of Emergency Government  
Public Safety Building  
1000 55<sup>th</sup> Street  
Kenosha, WI 53140-3738

C. **Headings.** The titles to the sections of this Agreement are for informational purposes only, except where such titles may be necessary for an understanding of the content of the paragraph.

D. **Governing Law.** This Agreement and the provisions contained herein will be construed, enforced, and governed, in all respects, in accordance with the laws and statutes of the State of Wisconsin.

E. **Waiver.** Any waiver by any party of a breach of any term or condition of this Agreement shall not be considered a waiver of any subsequent breach by a party of the same term or condition or any other term or condition of this Agreement.

F. **Complete Agreement.** Except as set forth herein this Agreement supersedes all prior contracts or agreements, whether oral or written, that were or could have been negotiated, pursuant to Wis. Stat. § 289.33, between the Town, the County, the Operator, and the Local Committee and except the agreements between the County and the Operator dated April 17, 2000, as amended.

G. **No Construction Against Drafting Party.** This Agreement has been reached through arm's length negotiations between the parties and with all parties having

the advice of counsel or the opportunity to consult with counsel, and shall not be interpreted against any party on the basis that this Agreement was drafted by said party.

H. **Amendment** This Agreement may be amended only by a written agreement between the Town and the Operator.

I. **Covenant to Run with the Land.** The terms and conditions contained herein shall be deemed a covenant running with the land and any party shall be free to file an abridgement of this Agreement with the Kenosha County, Wisconsin, Register of Deeds setting forth said restriction.

J. **Severability.** In the event any section, clause, paragraph, or phrase of this Agreement is deemed to be wholly or partially invalid or unenforceable by a court of law of competent jurisdiction, the remaining sections of this Agreement shall be fully valid and enforceable.

K. **Binding Effect.** Upon approval of this Agreement by the Town under Wis. Stat. § 289.33(9)(k), this Agreement shall bind the Town, the County, the Operator, the Local Committee, and their respective legal heirs, legal representatives, legal successors and legal assigns as provided in Wis. Stat. §§ 289.33(9)(k) and 289.33(11).

L. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates set forth below.

**LOCAL COMMITTEE:**

PHEASANT RUN LANDFILL WESTERN  
EXPANSION LOCAL COMMITTEE

Dated: Oct. 28<sup>th</sup> 2008

By: Virgil Gentz  
Virgil Gentz

Chairman and authorized signatory by majority vote of and on behalf of the Pheasant Run Landfill Western Expansion Local Committee

Approved as to form:

Dated: 10/31/08

By: Michael P. Carlton  
Michael P. Carlton, Esq.  
Counsel to Local Committee

**OPERATOR:**

**WASTE MANAGEMENT OF WISCONSIN,  
INC.**

Dated: 10/31/08

By: Michael E. Fleming  
Michael E. Fleming, Vice President

**TOWN:**

**TOWN OF PARIS,**

**a Wisconsin municipal corporation**

Dated: 01/28/2008

By: Virgil Gentz  
Virgil Gentz, Town Chairman

Dated: 10-28-08

Attest: Linda M. Terry  
Linda Terry, Clerk

Approved as to Form:

Dated: \_\_\_\_\_

By: Kim A. Howarth  
Kim A. Howarth, Esq.  
Special Town Counsel

**COUNTY:**

**COUNTY OF KENOSHA, WISCONSIN, a  
municipal corporation**

Dated: 12/16/08

By: Jim Kreuser  
Jim Kreuser, County Executive

Dated: 12/17/08

Attest: Edna R. Highland  
Edna Highland, County Clerk

Approved as to Form:

Dated: 12-17-08

By: Frank V. Volpintesta  
Frank V. Volpintesta, Esq.  
Kenosha County Corporation Counsel

## GUARANTY

Waste Management, Inc., for valuable consideration, including the mutual covenants and benefits stated in the Pheasant Run Landfill Western Expansion Negotiated Agreement (hereinafter referred to as the "Agreement") by and between the Town of Paris, Pheasant Run Landfill Western Expansion Local Committee and Waste Management of Wisconsin, Inc., a subsidiary of Waste Management, Inc., such consideration and the receipt of which is hereby acknowledged, does hereby guaranty the payment and performance of the obligations of Waste Management of Wisconsin, Inc. provided for in the Agreement, in the event Waste Management of Wisconsin, Inc. fails to perform.

This Guaranty shall remain in force upon a transfer of ownership of the Pheasant Run Recycling & Disposal Solid Waste Facility, provided, however, that if the transferee provides, in the manner set forth in Section IV.X.4. of the Agreement, a guaranty that is at least equivalent to the guarantee provided hereunder, and if Waste Management of Wisconsin, Inc. or Waste Management, Inc. can demonstrate that the replacement guarantor has the ability, both financially and operationally, to comply with the requirements of this Agreement, DNR, the landfill license, and/or State law, then this Guaranty shall be released and of no further force and effect and Waste Management, Inc. shall have no obligation under this Guaranty.

Waste Management, Inc. acknowledges receipt of the Agreement and certifies that the officers signing below have authority to act on behalf of Waste Management, Inc. A notarized copy of a certification by the secretary or assistant secretary of Waste Management, Inc. reflecting such authority is attached hereto.

WASTE MANAGEMENT, INC.

Dated: 11/10/08 By: Chin Chie

Its: Vice President & Treasurer

And

Dated: 11/10/08 By: David R. Paul

Its: Assistant Treasurer

## GUARANTY

Waste Management, Inc., for valuable consideration, including the mutual covenants and benefits stated in the Pheasant Run Landfill Western Expansion Negotiated Agreement (hereinafter referred to as the "Agreement") by and between the Town of Paris, Pheasant Run Landfill Western Expansion Local Committee and Waste Management of Wisconsin, Inc., a subsidiary of Waste Management, Inc., such consideration and the receipt of which is hereby acknowledged, does hereby guaranty the payment and performance of the obligations of Waste Management of Wisconsin, Inc. provided for in the Agreement, in the event Waste Management of Wisconsin, Inc. fails to perform.

This Guaranty shall remain in force upon a transfer of ownership of the Pheasant Run Recycling & Disposal Solid Waste Facility, provided, however, that if the transferee provides, in the manner set forth in Section IV.X.4. of the Agreement, a guaranty that is at least equivalent to the guarantee provided hereunder, and if Waste Management of Wisconsin, Inc. or Waste Management, Inc. can demonstrate that the replacement guarantor has the ability, both financially and operationally, to comply with the requirements of this Agreement, DNR, the landfill license, and/or State law, then this Guaranty shall be released and of no further force and effect and Waste Management, Inc. shall have no obligation under this Guaranty.

Waste Management, Inc. acknowledges receipt of the Agreement and certifies that the officers signing below have authority to act on behalf of Waste Management, Inc. A notarized copy of a certification by the secretary or assistant secretary of Waste Management, Inc. reflecting such authority is attached hereto.

**WASTE MANAGEMENT, INC.**

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Its: \_\_\_\_\_

And

Dated: \_\_\_\_\_ By: \_\_\_\_\_

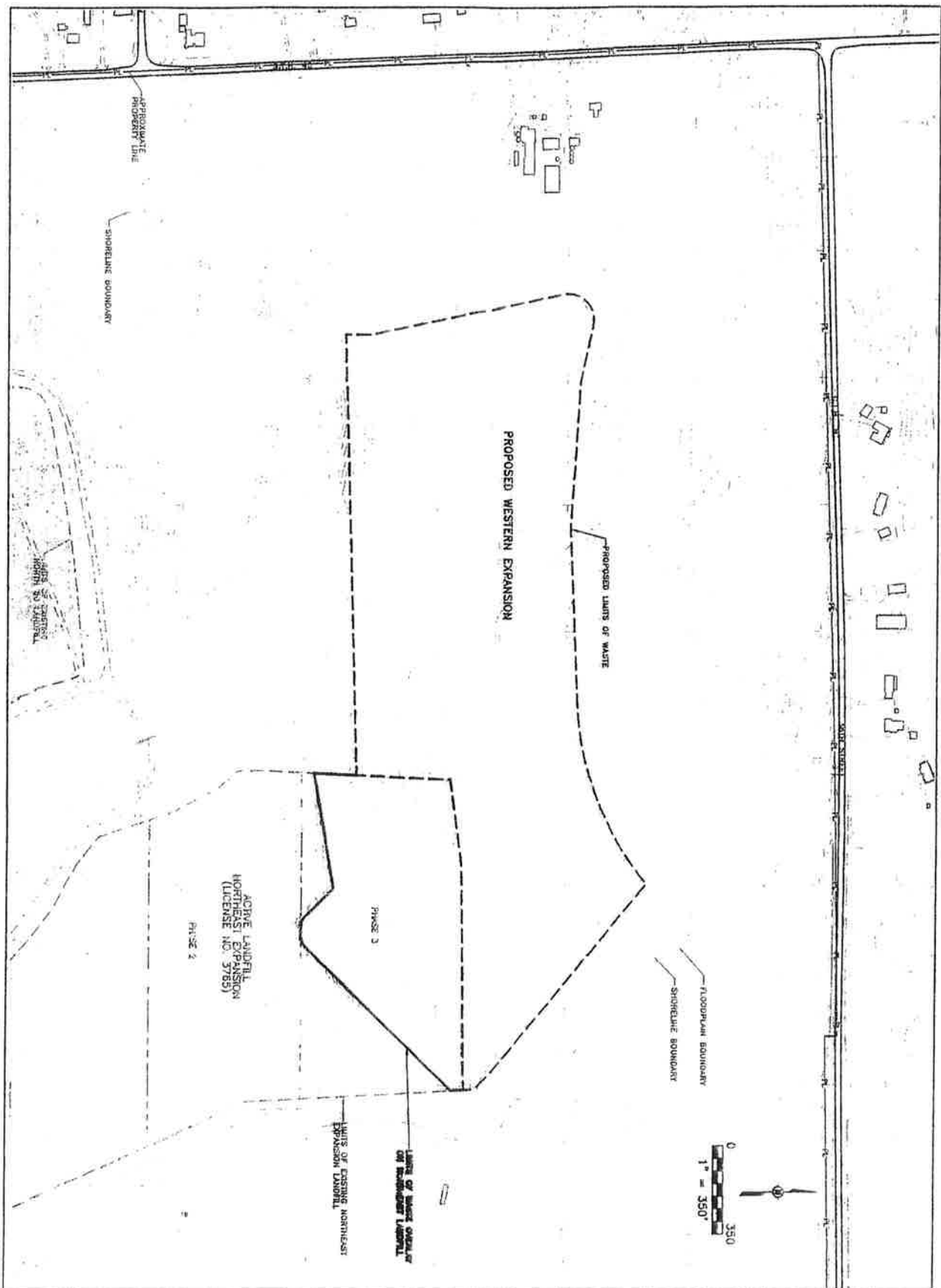
Its: \_\_\_\_\_



**EXHIBIT A**  
**ACTIVE FILL AREA**

*Legal Description*

[To be provided.]



**PROPOSED EXPANSION LIMITS**  
**WASTE MANAGEMENT OF WISCONSIN, INC.**  
**PHEASANT RUN RDF - WESTERN EXPANSION**  
**TOWN OF PARIS, KENOSHA COUNTY, WISCONSIN**

5/17/2008  
 10:00 AM  
 Sheet 1 of 1  
 10:00 AM

STS: AECOM

Drawn	KJC 5/16/2008
Checked	DTL 5/16/2008
Approved	DTL 5/16/2008
Project Number	200801252
Scale	1

## **EXHIBIT B**

### **MONITORING PLAN**

#### **A. Plan of Operations – Site Monitoring Plan.**

A site monitoring plan will be submitted with the Plan of Operation that verifies the performance of the facility by monitoring groundwater quality and the presence of landfill gas beyond the limits of waste.

The Town will retain an Environmental Consultant to review the Plan of Operation documents that are required by the DNR for permitting of the expansion. The reviewing Environmental Consultant will conduct progress reviews and a final document review prior to submittal to the WDNR. The reviews will be conducted to assure that the Plan of Operation addresses design issues concerning the Town.

#### **B. Groundwater Monitoring Wells.**

Monitoring wells shall be designed as early detection monitoring devices, spaced within 300 feet of the limits of waste and at an appropriate lateral spacing to assure detection within the shallow and deeper water bearing strata.

The Operator shall replace existing monitoring wells and piezometers located along the north and west boundaries of the proposed facility that are more than 300 feet from the proposed limits of waste. The Operator shall install the replacement monitoring wells with new identification numbers and retain all original monitoring locations as part of the groundwater monitoring well network. The original wells will serve as sentinel monitoring points and will be incorporated into a groundwater monitoring program that will be included in the Plan of Operation. The frequency of monitoring the sentinel (original) wells shall be once every five years for the first ten years and then bi-annually thereafter.

The Operator shall install an additional monitoring well nest composed of three wells east of the proposed Active Fill Area between MW233 and MW85. The shallow and intermediate wells shall be installed at the water table and to the depth of the proposed base of the Solid Waste respectively. The deep well shall be installed to approximately 100 feet below existing grade (595 feet AMSL) if significant sand and gravel is not encountered between this depth and 15 feet below the base of the Solid Waste. The wells shall be incorporated in the groundwater monitoring well network and the locations shall also be presented in the Plan of Operation.

The new well installation shall be coordinated such that all wells and piezometers will be installed at least 8 months prior to waste placement in the expansion cell adjacent to the new monitoring points. This will allow for monthly background monitoring of the new installations prior to waste placement in the adjacent cell.

In addition, a further review of the Plan of Operation by the DNR or the Environmental Consultant may determine that additional monitoring wells are required to be added, or that wells should be relocated. Upon such a review, the Operator shall work with the DNR

and/or the Environmental Consultant to establish the locations and depths of the new or relocated wells.

**C. Gas Monitoring Probes.**

Landfill gas monitoring probes will be spaced within 150 feet of the limits of waste and at a depth that provides early detection of potential gas migration toward neighboring properties. The gas probe spacing along the northern and western portions of the Active Fill Area shall not exceed 800 feet. The locations of the monitoring points shall be presented in the Plan of Operation.

**D. Residential Well Testing.**

The residential well testing shall include monitoring for the following parameters:

- Odor
- Color
- Turbidity
- Temperature °C
- Field Conductivity
- Field pH
- Hardness
- Alkalinity
- Chloride
- Any parameter detected in any monitoring well required by this Agreement or by the Plan of Operation, as approved by WDNR, shall be added to foregoing list and shall remain on this list as long as the parameter continues to be detected in any monitoring well.

**EXHIBIT C**  
**SOLID WASTE FACILITY**  
[To be provided]

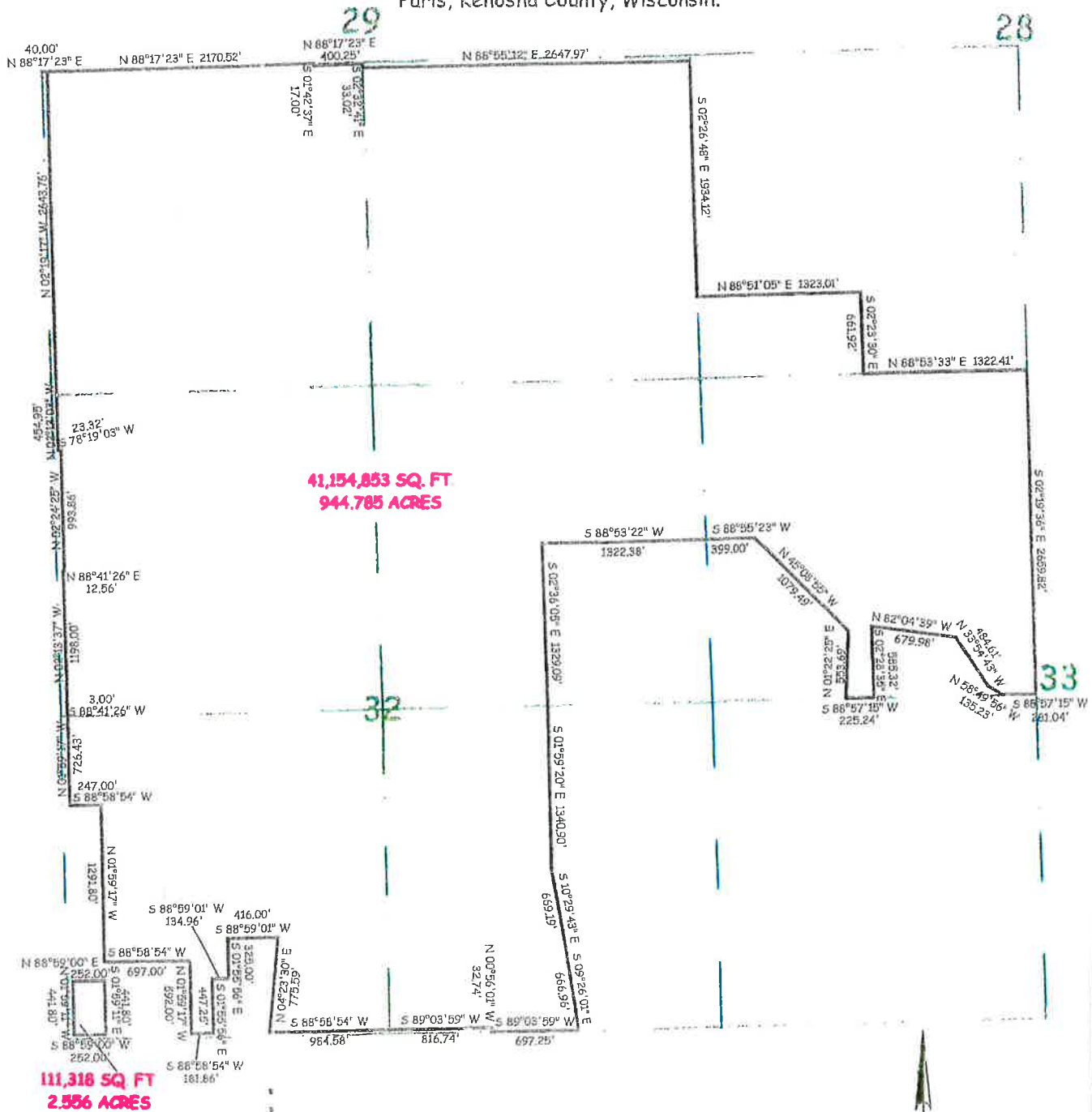
Waste Management of Wisconsin, Inc.  
Pheasant Run RDF  
Legal Description of property ownership located in  
Part of Sections 28, 29, 32 & 33, Township  
2 North, Range 21 East in the Town of  
Paris, Kenosha County, Wisconsin,  
Described as follows:

Commencing at the West  $\frac{1}{4}$  corner of Section 29, Township 2 North, Range 21 East; thence N  $88^{\circ}17'23''$  E, 40.00 feet to the point of beginning; thence continuing N  $88^{\circ}17'23''$  E, 2170.52 feet; thence S  $01^{\circ}42'37''$  E, 17.00 feet; thence N  $88^{\circ}17'23''$  E, 400.25 feet; thence S  $02^{\circ}32'41''$  E, 33.02 feet; thence N  $88^{\circ}55'12''$  E, 2647.97 feet; thence S  $02^{\circ}26'48''$  E, 1934.12 feet; thence N  $88^{\circ}51'05''$  E, 1323.01 feet; thence S  $02^{\circ}23'30''$  E, 661.92 feet; thence N  $88^{\circ}53'33''$  E, 1322.41 feet; thence S  $02^{\circ}19'36''$  E, 2659.82 feet; thence S  $88^{\circ}57'15''$  W, 281.04 feet; thence N  $58^{\circ}49'56''$  W, 135.23 feet; thence N  $33^{\circ}54'43''$  W, 484.61 feet; thence N  $82^{\circ}04'39''$  W, 679.98 feet; thence S  $02^{\circ}28'35''$  E, 585.32 feet; thence S  $88^{\circ}57'15''$  W, 225.24 feet; thence N  $01^{\circ}22'25''$  E, 553.69 feet; thence N  $45^{\circ}08'55''$  W, 1079.49 feet; thence S  $88^{\circ}55'23''$  W, 399.00 feet; thence S  $88^{\circ}53'22''$  W, 1322.38 feet; thence S  $02^{\circ}36'05''$  E, 1329.09 feet; thence S  $01^{\circ}59'20''$  E, 1340.90 feet; thence S  $10^{\circ}29'43''$  E, 669.19 feet; thence S  $09^{\circ}26'01''$  E, 666.96 feet; thence S  $89^{\circ}03'59''$  W, 697.25 feet; thence N  $00^{\circ}56'01''$  W, 32.74 feet; thence S  $89^{\circ}03'59''$  W, 816.74 feet; thence S  $88^{\circ}58'54''$  W, 984.58 feet; thence N  $04^{\circ}23'30''$  E, 775.59 feet; thence S  $88^{\circ}59'01''$  W, 416.00 feet; thence S  $01^{\circ}55'56''$  E, 325.00 feet; thence S  $88^{\circ}59'01''$  W, 134.96 feet; thence S  $01^{\circ}55'56''$  E, 447.25 feet; thence S  $88^{\circ}58'54''$  W, 181.86 feet; thence N  $01^{\circ}59'17''$  W, 592.00 feet; thence S  $88^{\circ}58'54''$  W, 697.00 feet; thence N  $01^{\circ}59'17''$  W, 1291.80 feet; thence S  $88^{\circ}58'54''$  W, 247.00 feet; thence N  $01^{\circ}59'17''$  W, 726.43 feet; thence S  $88^{\circ}41'26''$  W, 3.00 feet; thence N  $02^{\circ}13'37''$  W, 1198.00 feet; thence N  $88^{\circ}41'26''$  E, 12.56 feet; thence N  $02^{\circ}24'25''$  W, 993.86 feet; thence S  $78^{\circ}19'03''$  W, 23.32 feet; thence N  $02^{\circ}12'03''$  W, 454.95 feet; thence N  $02^{\circ}19'17''$  W, 2643.76 feet to the point of beginning. Containing 944.785 acres of land more or less.

Together with the following non-contiguous parcel described as follows:

Commencing at the Southwest corner of Section 32; thence N  $88^{\circ}59'00''$  E, 50.00 feet; thence N  $01^{\circ}59'11''$  W, 33.00 feet to the point of beginning; thence continuing N  $01^{\circ}59'11''$  W, 441.80 feet; thence N  $88^{\circ}59'00''$  E, 252.00 feet; thence S  $01^{\circ}59'11''$  E, 441.80 feet; thence S  $88^{\circ}59'00''$  W, 252.00 feet to the point of beginning. Containing 2.556 acres of land more or less.

Waste Management of Wisconsin, Inc.  
Pheasant Run RDF  
Exhibit of property ownership located in  
part of Sections 28, 29, 32 & 33, Township  
2 North, Range 21 East in the Town of  
Paris, Kenosha County, Wisconsin.



Prepared for:  
Waste Management of Wisconsin, Inc.  
Pheasant Run RDF  
19414 60th Street  
Bristol, WI 53104

Bernklau  
Surveying, Inc.  
N64 W24801 Main St., Suite 103  
SUSSEX, WI 53089  
(262) 246-0718

## EXHIBIT D

### STANDING COMMITTEE

A. **Purpose.** The parties herein agree that there shall be a "Standing Committee," which shall serve as a forum for the benefit of the general public, and particularly for those people with special interest as a result of their proximity to the Solid Waste Facility.

B. **Membership.** Membership of the Standing Committee shall consist of the Town Chairman, two adult Residents appointed by the Town Board, one adult citizen-at-large representative who resides in close proximity to the Solid Waste Facility, who shall be appointed by the Town Board; and one representative of the Operator.

C. **Term.** All Standing Committee members shall serve until they are either replaced, removed, or resign their position, pursuant to Section D., below.

D. **Replacement, Removal, and Resignation.** A Standing Committee member appointed by the Town Board may voluntarily resign or be removed by the Town Board without cause at any time, and any Standing Committee member appointed by the Town Board shall automatically be removed from the Standing Committee effective from the date that member no longer resides in the Town. Upon the occurrence of either, the Town Board shall promptly appoint a replacement.

E. **Quorum/ Voting.** Three members shall constitute a quorum. Each member present shall have one vote. A majority of those votes cast by the members present in person shall be the act of the Committee.

F. **Meetings.** The Standing Committee may establish a schedule for meetings for the purposes of review, explanation, and discussion of said technical data and the status of the Solid Waste Facility construction, operation, and closure. Special meetings of the Standing Committee may be called by any member of the Standing Committee upon five days written notice for the purpose of addressing any issue of concern involving the Solid Waste Facility construction, operation, or closure. Upon the occurrence of an event deemed by any Standing Committee member to constitute an Emergency condition, a special meeting may be called with less than five days notice, provided each Standing Committee Member is personally notified. The public may attend any Standing Committee meeting. Any written notice called for in this Agreement shall be deemed effectively provided when either personally delivered or sent by mail to all members at the addresses listed by them with the Standing Committee.

G. **Violations.** If, in the judgment of the majority of the Standing Committee members, the Solid Waste Facility is not being constructed or operated in compliance with the Operator's approved Plan of Operation, or with any applicable state statute or regulation or any other provision of law, whether it be in law or equity, the Standing Committee may serve written notice of such perceived noncompliance upon, and may make recommendations to, the Operator. Similarly, if any aspect of the construction,



operation, or closure of the Solid Waste Facility causes or is likely to cause, in the judgment of the majority of the Standing Committee, a problem due to noise, dust, debris, odor, maintenance of access road, litter, traffic flow, traffic patterns, inadequate screening or fencing, or any other problem, the Standing Committee may serve upon the Operator written notice of the Standing Committee's concern, and make recommendations to remedy or address such concern.

Nothing herein shall be construed to limit the rights of the Town to enforce the terms of this Agreement whether or not the Standing Committee has secured notice of noncompliance or taken any other action. Similarly, nothing herein shall be construed to limit any legal or equitable right of any neighboring property owner with respect to individual legal rights pursuant to law. Furthermore, the existence of the Standing Committee shall not constitute a waiver of any Town, or local property owners' public duties, rights, or privileges pursuant to law.

H. **Enforcement.** Provided said action has been pre-approved by the Town Board, the Town and the Operator hereby stipulate that the Standing Committee shall have legal standing in its own name to enforce any provision of law or any provision of the negotiated settlement if the Operator fails to remedy the concern of the Standing Committee as hereinbefore stated. Upon receipt of any notice of noncompliance or notice of an issue of concern to the Standing Committee, the Operator shall immediately investigate any allegation of noncompliance or issue of concern made by the Standing Committee, and shall, if possible, take action as is necessary to alleviate and/or correct the situation within 24 hours. The Operator shall deliver a written report concerning the investigation and any resulting Remedial Action to the Standing Committee within 72 hours of receipt of the original notice. The Operator may petition the Standing Committee for an extension of the above time limits and, upon showing sufficient cause, the Standing Committee, within the time frames hereinbefore stated, may pursue such remedies as are available at law or in equity as if it had full standing at law to bring such action. Subject to the foregoing, and in addition to the right to enforce the provisions of this Agreement by any legal means, the Standing Committee is hereby empowered to impose a penalty of and the Town is authorized to collect up to \$500.00 per day for repeated violations of any of the terms or provisions of this Agreement. Any such penalty imposed shall be paid by the Operator within 30 days. If not paid, it shall constitute an equitable charge and continuing lien upon the Solid Waste Facility enforceable by the Town and added to the forthcoming year's tax bill. Any penalty collected under this section shall be added to the Town general fund.

## **EXHIBIT E**

### **PROPERTY PROTECTION**

It is herein agreed that all of the listed Property Owners of the specific properties set out in this Exhibit shall be entitled to the opportunity to enter into a Property Protection Agreement with Waste Management

The current owners are shown for information purposes only:

	<b><u>Property Owner</u></b>	<b><u>Tax Key No.</u></b>
1.	Jones	45-4-221-292-0405
2.	Gohlke (Residence/Business)	45-4-221-292-0411
3	Blackowicz	45-4-221-291-0305
4	Kevek	45-4-221-291-0310
5	Truesdell	45-4-221-283-0105
6	Poisl	45-4-221-283-0110
7	Poisl	45-4-221-283-0116
8	Gosai (Bagwangi)	45-4-221-283-0410
9	Billingsley	45-4-221-284-0200
10	Jackson	45-4-221-283-0404
11	Tower	45-4-221-283-0402
12.	Kornely	45-4-221-283-0405
13.	Infusino, Ernie	45-4-221-323-0403
14.	Nikula	45-4-221-323-0310
15.	Beth	45-4-221-323-0303

	<u>Property Owner</u>	<u>Tax Key No.</u>
16.	Harper	45-4-221-323-0215
17.	Callahan	45-4-221-311-0405
18.	Lindenberger	45-4-221-311-0301
19.	Grabot	45-4-221-311-0150
20.	Murphy (f/k/a Marquardt)	45-4-221-311-0105
21.	Zeihen	45-4-221-311-0110
22.	Wilson	45-4-221-304-0435
23.	Sopa (f/k/a Haisma)	45-4-221-304-0430
24.	Bevry (Somers)	45-4-221-304-0112
25.	Bevry	45-4-221-304-0102
26.	Sommerfeldt/Hernandez	45-4-221-323-0220

## PROPERTY VALUE GUARANTEE

This Agreement ("Agreement") made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between Waste Management of Wisconsin, Inc., a Wisconsin corporation having its principal offices at W132N10487 Grant Drive, Germantown, Wisconsin, 53022 ("**Waste Management**" or "**Guarantor**") and \_\_\_\_\_, residing in the Town of Paris, Kenosha County, Wisconsin ("Property Owners").

### RECITALS

**WHEREAS**, Property Owners own eligible Property as described herein ("Property") that Property having the legal description as follows:

[INSERT LEGAL DESCRIPTION OF PROPERTY]

**WHEREAS**, Guarantor desires to alleviate concerns about the preservation of property values located in proximity to Pheasant Run Recycling & Disposal Facility ("Landfill");

**WHEREAS**, Guarantor has or will attempt to enter into agreements with the Town of Paris and Kenosha County and has obtained conditional approval of feasibility from the Wisconsin Department of Natural Resources ("WDNR") for an expansion of the Landfill ("Expansion") and;

**WHEREAS**, Property Owners are desirous of preserving equity in the Property, by ensuring that if the Property described herein is sold at a price less than the AGREED TO ASKING PRICE as a result of proximity to the Landfill, as determined by the procedures contained herein, the Guarantor will guarantee payment to the Property Owners of such difference; and

**WHEREAS**, Guarantor desires to avoid panic selling of properties within close proximity of the Landfill,

### IT IS HEREBY AGREED AS FOLLOWS:

1. **EFFECTIVE DATE OF AGREEMENT.** This Agreement shall become effective and binding on Guarantor when the Guarantor and the Town enter into an agreement for the Expansion and the WDNR approves Guarantor's "as built" plans for the Expansion; provided that the Property Owners have signed and returned a copy of this Agreement within 30 days of their receipt of the same.

Notwithstanding the foregoing, if an administrative agency or court of competent jurisdiction rules or holds that the WDNR's approval of the Expansion of the Landfill has been in excess of or in violation of said governmental body's authority or otherwise unlawful, then Guarantor's obligations under this Agreement shall be null and void.

2. **ELIGIBILITY: EXERCISE OF GUARANTEE.** Property identified in Exhibit E of the agreement between the Town of Paris and Waste Management is covered by this guarantee. Owners of such Property who are owners of record at the time of the signing of the agreement between the Town of Paris and Waste Management and

continue to be owners at the time of sale, or their legitimate heirs or assigns as described in Paragraph 15, are eligible to exercise this guarantee. In the event that the Property Owners wish to sell their eligible Property, and exercise the guarantee set out in this Agreement, they shall notify Guarantor of same in writing by certified mail and thereafter they shall make a good faith effort to sell said Property by entering into a listing contract with a licensed real estate broker pursuant to the terms herein.

3. **QUALIFIED PROFESSIONAL APPRAISER.** For the purposes of this Agreement, a "qualified professional appraiser" shall mean a person who is licensed by the State of Wisconsin, not related to the Property Owners who is not an employee or contractor of Waste Management and does not otherwise have a business relationship with Waste Management, and who is a member of at least one national appraisal association. All appraisal reports shall conform to the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

4. **AGREED TO ASKING PRICE.** The asking price of the Property described herein may be mutually agreed to by the Property Owners and the Guarantor. Such price shall be considered the AGREED TO ASKING PRICE. The AGREED TO ASKING PRICE may be mutually amended by the Property Owners and Guarantor at any time, subject to agreement.

5. **DETERMINATION OF ASKING PRICE BY APPRAISAL.** If the parties are unable to agree on the asking price of the Property, then the Guarantor shall hire, at its expense, a qualified professional appraiser, and shall notify Property Owner of such appraiser. If the Property Owner objects to the Guarantor's choice of appraisers, it shall state those objections, in writing, within ten days of the notification of the choice of appraisal, to Guarantor. In the event Property Owner reasonably objects, the Guarantor shall choose another qualified professional appraiser, and proceed as described below.

When a qualified professional appraiser is hired pursuant to this Paragraph 5, he or she shall be instructed to determine the fair-market value of the Property as follows:

- a. Assume that no Landfilling activities have been undertaken or will be undertaken at Pheasant Run;
- b. Utilize comparable property, located a sufficient distance away from the Landfill so that, in the opinion of the appraiser, the selling price of that Property was not influenced by the presence of the Landfill;
- c. Utilize comparable property, located approximately the same distance from major population centers so that in the opinion of the appraiser the selling price of the comparable property was not influenced by its closer proximity to new or existing population centers;
- d. Establish a fair market value which is based upon the use and

zoning classification of the Property on the effective date of the Appraisal (without considering sales contingent on rezoning);

e. Prepare a full narrative appraisal, which conforms to the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute;

f. Prepare the appraisal in full compliance with any and all state standards and state regulations which pertain to the preparation of an appraisal of the Property except those standards and regulations which conflict with these instructions;

g. The appraiser shall consider in the appraisal, the condition of the premises, both interior and exterior, by retaining, at Guarantor's expense, a home inspector to inspect the premises;

h. The appraiser shall also consider in the appraisal the condition of the private sewer system by retaining, at Guarantor's expense, a licensed inspector to inspect said system;

i. The appraiser shall consider in the appraisal the water quality and condition of private well, by retaining, at Guarantor's expense a licensed plumber to inspect said system and test the water quality;

j. The appraisal shall not consider the price paid for any property acquired for by the Guarantor.

If Property Owner and Guarantor accept the appraised value, then such value shall constitute the AGREED TO ASKING PRICE, and the Property Owners shall offer the above-described Property for sale at no less than that price.

If either the Property Owner or the Guarantor does not accept the appraised value, the non-accepting party may retain a second qualified professional appraisal, of its choice, who shall not be made aware of the first appraised value and who shall determine the fair market value of the above-described Property on the basis of Paragraph 5 (a) through (i) above. If neither party accepts the original appraisal, they shall agree on a second qualified professional appraiser and split the costs. In the event a second appraised value is obtained pursuant to this paragraph and is within fifteen percent (15%) of the first appraisal, the AGREED TO ASKING PRICE shall be the arithmetic average of the original appraised value and the second appraised value, unless the Guarantor is unsatisfied with such value.

In such event, the first two appraisers shall hire a third qualified professional appraisal, at the sole expense of the Guarantor, who shall not be made aware of either the first or second appraised values, and who shall determine the fair market value of the above-described Property on the basis of Paragraph 5 (a) through (i) above. The AGREED TO ASKING PRICE will then be the arithmetic average of the three appraised values within fifteen percent (15%) of each other and if none are within 15 percent of each other the third appraisal shall conclusively determine the

AGREED TO ASKING PRICE for the purpose of this Agreement.

6. **LISTING WITH BROKER.** Property Owners shall utilize the services of a real estate broker who shall be licensed in Wisconsin, shall not related to the Property Owners and, unless waived by the Guarantor, shall be a member of the Board of Realtors Multiple Listing Exchange. Property Owners shall give Guarantor notice of the broker with whom they wish to contract and shall obtain Guarantor's approval of said broker. Guarantor will not unreasonably withhold such approval. If the Guarantor objects to the Property Owners' choice of brokers, it shall state those objections, in writing, to Property Owners. In the event Guarantor reasonably objects, the Property Owners shall choose another broker, and proceed as described above. As sellers of the Property, Property Owners shall be responsible for the broker's fee. Nothing herein shall prevent the Property Owner from marketing the Property at a value higher than the AGREED TO ASKING PRICE as determined herein.

7. **TERM OF LISTING.** Property Owners shall list the Property, at the AGREED TO ASKING PRICE as determined in Paragraphs 4 or 5 above, or at a higher value. During the listing term, Property Owners shall accept any offer to purchase for the AGREED TO ASKING PRICE, or any offer to purchase otherwise acceptable to the Guarantor.

Said listing contract shall provide: (a) that the broker shall list the Property in the multiple listing exchange; (b) that the Property will be so listed until the occurrence of either the (i) sale of the Property or (ii) expiration of a period of 270 days; (c) that the broker shall not be entitled to any commission after the expiration of the listing contract, and (d) that the broker shall not be entitled to any commission on any amount of the purchase price paid by the Guarantor.

The Property Owners shall cooperate with the broker in obtaining a purchaser pursuant to the terms set forth in the listing agreement and shall make, in good faith, all reasonable efforts necessary to conclude a sale pursuant to the said terms.

8. **OFFERS TO PURCHASE.** The Property Owners shall accept any offer of purchase for the AGREED TO ASKING PRICE and, in such event, Guarantor will have no liability to Property Owners. Property Owners shall provide the Guarantor with written notification of every Offer to Purchase that they receive for the Property and agree, for a period of 270 days, not to accept any offer below the AGREED TO ASKING PRICE without the express and written approval of the Guarantor. In no event shall the Property Owners entertain anything other than good faith, bona fide offers of purchase.

9. **PARTIES' DUTY TO CONSULT.** If no offer to purchase for the AGREED TO ASKING PRICE or any offer to purchase otherwise acceptable to the Guarantor has been received within 135 days after the commencement of the listing with the broker; then the Property Owners must contact the Guarantor and the parties must meet to discuss a possible reduction in the AGREED TO ASKING PRICE. The parties shall, in good faith consider mutually agreeing, pursuant to Paragraph 4, to an amendment to the

AGREED TO ASKING PRICE.

10. **GUARANTOR'S CONSENT TO PURCHASE.** Guarantor shall have the right to make counter offers on any offers to purchase which are below the AGREED TO ASKING PRICE. In the event the purchaser accepts any such counter offer made or requested by the Guarantor, or in the event the Guarantor otherwise consents to a sale of the Property below the AGREED TO ASKING PRICE, the Guarantor shall pay the Property Owners, at closing, the difference between the AGREED TO ASKING PRICE and the sales price so established.

11. **GUARANTOR'S OBLIGATION TO PURCHASE.** If the Property Owners have not received an offer of purchase at the AGREED TO ASKING PRICE within 135 days after the Property Owners have consulted with the Guarantor pursuant to the duty imposed above in Paragraph 9, and the Guarantor has not consented to the sale of the Property below the AGREED TO ASKING PRICE, the Guarantor shall be required to purchase the Property upon being requested by the Property Owners, in writing, to do so. It is the intention of the parties that the Guarantor's obligation to purchase shall not arise for at least 270 days after the property has been listed for sale with the broker. However, if the Guarantor has a reasonable good faith belief that the value of the Property has dropped below the AGREED TO ASKING PRICE as initially determined by the procedures set out in Paragraphs 4 and 5, and as possibly adjusted by the procedure set out above in Paragraph 9; then the Guarantor may request that the appraiser who made the initial appraisal pursuant to Paragraph 5 reappraise the Property using the procedure set out in Paragraph 5. If this appraisal results in a lower value, this value shall be the new AGREED TO ASKING PRICE. The parties may similarly, utilizing the remaining procedures of Paragraph 5, seek to have the other appraiser reappraise the Property. The new AGREED TO ASKING PRICE shall be established according to the procedures of Paragraph 5.

12. **EVIDENCE OF TITLE.** Upon fifteen (15) days after making such written request for Guarantor to purchase their Property, Property Owners shall provide to the Guarantor a commitment for a title insurance policy to be issued in the name of the Guarantor in the amount of the AGREED TO ASKING PRICE as provided above. After receipt of such commitment, the Guarantor shall have thirty (30) days to notify the Property Owners of any defects in title which shall make the same unmerchantable. Any such defects shall be cured at the expense of the Property Owners. If any defect cannot be cured and the Guarantor is unwilling to waive the same, then the Guarantor shall have no obligation to purchase said Property.

13. **DOCUMENTS REQUIRED FOR CLOSING; PRORATIONS; CLOSING COSTS.** In the event that the Property Owners have merchantable title, the closing shall occur within sixty (60) days after the Property Owners give written notice to the guarantor, or within sixty (60) days after the Property Owners cure any defects in the title to make it merchantable. The Property Owners shall convey said real estate to the Guarantor by good and sufficient Warranty Deed, free and clear of all liens and encumbrances, except municipal and zoning ordinances; recorded easements; recorded building and use restrictions and covenants; and general taxes levied in the year of closing.



Property Owners shall warrant and represent that they have neither notice nor knowledge of any undisclosed:

- A. Planned or commenced public improvements which may result in special assessments or otherwise materially affect the property.
- B. Government agency or court order requiring repair, alteration or correction of any existing condition.
- C. Underground Storage Tanks or any structural, mechanical, or other defects of material significance affecting the property, including, but not limited to inadequacy for normal residential use of mechanical systems, waste disposal systems and well, unsafe well water according to state standards, and the presence of any dangerous or toxic materials or conditions affecting the property.
- D. Wetland (as depicted upon a then current Wisconsin Department of Natural Resources wetland map) and shoreland regulations affecting the property.

Further, the Property Owners shall pay at closing all conveyancing costs typically paid by a seller, including, but not limited to: real estate transfer tax and recording fees. The Property Owners shall also execute, at closing, a standard affidavit as to liens and possession and shall provide lien waivers from all contractors, subcontractors and material men who have provided services or materials for said Property within six (6) months prior to closing. Real estate taxes for the year of closing shall be prorated based upon the real estate taxes assessed and levied for the prior year and if the residential Property is a part of a larger tax parcel, then the tax proration shall be based upon the taxes for the improvement plus the percentage of the taxes which approximates the percentage of the land comprising the Property compared to the total land included in the tax parcel. The Property Owners shall be responsible for and shall pay all utilities through the date of closing. Possession and physical occupancy of the premises shall be given to the guarantor at closing. Prior to closing the Property Owners shall give the Guarantor, or its agent, the right to inspect the property for the purpose of determining the existence of any damage to the premises which may have occurred between the date of the first appraisal and the date of the closing. The Property Owners shall be responsible for all damage in excess of normal wear and tear and any claim for such damage shall be presented to the Property Owners prior to closing; or such claim shall be waived. Property Owners shall repair such damage prior to closing or the reasonable cost of such repair shall either be deducted from the sales price, or at the Property Owners' option, be escrowed from the sales proceeds with a non-party pending judicial determination of any dispute regarding liability therefore or cost thereof.

14. **TERMINATION OF GUARANTOR'S OBLIGATIONS.** This Agreement shall terminate and Guarantor shall have no obligation to guarantee the purchase price once waste is no longer disposed of at the Landfill. For this Agreement "waste is no longer being disposed of" shall occur when: (a) the disposal of waste at the Landfill has been permanently terminated as the result of an order, judgment, or decree

issued by a federal, state, or local agency, court, or unit of government having jurisdiction under administrative code, statute, law, or ordinances; (b) any agency having jurisdiction fails to issue or revokes any license, permit, or approval needed by the Guarantor to operate the Landfill; (c) the Landfill has reached its approved design capacity; or (d) the Guarantor voluntarily elects to permanently cease disposing of waste at the Landfill despite the fact that there is remaining capacity.

15. **ASSIGNMENT OR TRANSFER.** Neither this Agreement nor the rights under it may be assigned, conveyed, or otherwise transferred by Property Owners. The guarantee given by Guarantor to guarantee the Property value and to purchase the Property is personal, and does not run with the land; however, said Agreement shall inure to the benefit of the Property Owners, their personal representatives, trustees, guardians, custodians or their heirs; but, in all events, shall terminate as described in Paragraph 14.

16. **APPLICATION OF LAW; DISPUTES.** This Agreement shall be construed consistent with law in the State of Wisconsin. Disputes concerning the application or terms of this Agreement shall be subject to the Circuit Court jurisdiction of Kenosha County.

17. **ENTIRE AGREEMENT.** By exercising this Agreement, the Property Owners agree that any and all prior Property Value Guarantee Agreements between themselves and the Guarantor are hereby null and void and are replaced by this Agreement.

***GUARANTOR:***

Waste Management of Wisconsin, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATE: \_\_\_\_\_

***PROPERTY OWNERS:***

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT F**  
**POLLUTION LEGAL LIABILITY INSURANCE**  
[To be provided]

**MARSH****CERTIFICATE OF INSURANCE**CERTIFICATE NUMBER  
HOU-000818985-01

## PRODUCER

Marsh USA Inc.  
1000 Main Street, Suite 3000  
Houston, TX 77002

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

## COMPANIES AFFORDING COVERAGE

## COMPANY

A AMERICAN INTERNATIONAL SPECIALTY LINES INS CO

## COMPANY

B

## COMPANY

C

## COMPANY

D

WMI -50/50-PLL-08-11

PHEAS

## INSURED

PHEASANT RUN RECYCLING  
& DISPOSAL FACILITY  
A SUBSIDIARY OF WASTE MANAGEMENT INC.  
18414 80TH STREET  
BRISTOL, WI 53104

## COVERAGES

This certificate supersedes and replaces any previously issued certificate for the policy period noted below.

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	<b>GENERAL LIABILITY</b>				<b>GENERAL AGGREGATE</b> \$
	<input type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b>				<b>PRODUCTS - COM/OP AGG</b> \$
	<input type="checkbox"/> <b>CLAIMS MADE</b> <input type="checkbox"/> <b>OCCUR</b>				<b>PERSONAL &amp; ADV INJURY</b> \$
	<input type="checkbox"/> <b>OWNER'S &amp; CONTRACTOR'S PROT</b>				<b>EACH OCCURRENCE</b> \$
					<b>FIRE DAMAGE (Any one fire)</b> \$
					<b>MED EXP (Any one person)</b> \$
	<b>AUTOMOBILE LIABILITY</b>				<b>COMBINED SINGLE LIMIT</b> \$
	<input type="checkbox"/> <b>ANY AUTO</b>				<b>BODILY INJURY (Per person)</b> \$
	<input type="checkbox"/> <b>ALL OWNED AUTOS</b>				<b>BODILY INJURY (Per accident)</b> \$
	<input type="checkbox"/> <b>SCHEDULED AUTOS</b>				<b>PROPERTY DAMAGE</b> \$
	<input type="checkbox"/> <b>HIRED AUTOS</b>				
	<input type="checkbox"/> <b>NON-OWNED AUTOS</b>				
	<b>GARAGE LIABILITY</b>				<b>AUTO ONLY - EA ACCIDENT</b> \$
	<input type="checkbox"/> <b>ANY AUTO</b>				<b>OTHER THAN AUTO ONLY:</b>
					<b>EACH ACCIDENT</b> \$
					<b>AGGREGATE</b> \$
	<b>EXCESS LIABILITY</b>				<b>EACH OCCURRENCE</b> \$
	<input type="checkbox"/> <b>UMBRELLA FORM</b>				<b>AGGREGATE</b> \$
	<input type="checkbox"/> <b>OTHER THAN UMBRELLA FORM</b>				\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>				<b>WC STATUTORY LIMITS</b> <b>OTHER</b>
	<input type="checkbox"/> <b>THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE:</b> <input type="checkbox"/> <b>INCL</b> <input type="checkbox"/> <b>EXCL</b>				<b>EL EACH ACCIDENT</b> \$
					<b>EL DISEASE-POLICY LIMIT</b> \$
					<b>EL DISEASE-EACH EMPLOYEE</b> \$
A	<b>OTHER</b>	PLS 5444079	01/01/08	01/01/11	<b>Each Incident</b> 40,000,000
	<b>Pollution Legal Liability</b>				<b>Aggregate</b> 40,000,000
					<b>is Excess the SIR</b>
					<b>Self Insured Retention Limit</b> 5,000,000

## DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

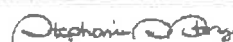
Certificate holder is included as additional insured where required by written contract but only for liability arising out of the operations of the Named Insured.

## CERTIFICATE HOLDER

Town of Paris  
16607 Burlington Road  
Union Grove, WI 53182

## CANCELLATION

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

AUTHORIZED REPRESENTATIVE  
Marsh USA Inc.  
BY: Stephanie S. Story

MM1(3/02)

VALID AS OF: 04/24/08

# EXHIBIT G

## MONTHLY SCALE REPORT

DATE: \_\_\_\_\_

Linda Terry, Treasurer  
Paris Township  
16607 Burlington Road  
Union Grove, WI 53182

Dear Mrs. Terry:

We are sending this letter in advance of the check payable to the Town of Paris in the amount of \_\_\_\_\_ dollars and \_\_\_\_\_ cents (\$ \_\_\_\_\_). This check will be for the month of \_\_\_\_\_ 2008. Below is a schedule of how that amount was determined.

TOTAL NONFOOD TONS RECEIVED \_\_\_\_\_ @ \$3.57 Per Ton = \$ \_\_\_\_\_

COMPOST TONS RECEIVED (\_\_\_\_\_) @ \$3.57 Per Ton = \$ \_\_\_\_\_

BIO/DAILY COVER TONS RCVD (\_\_\_\_\_) @ \$3.57 Per Ton = \$ \_\_\_\_\_

MSW TONS RECEIVED \_\_\_\_\_ @ \$3.57 Per Ton = \$ \_\_\_\_\_

FOOD WASTE TONS RECEIVED \_\_\_\_\_ @ \$1.785 Per Ton = \$ \_\_\_\_\_

TOWN OF PARIS DISPOSAL (\_\_\_\_\_) @ \$3.57 Per Ton = \$ \_\_\_\_\_

TOWN RESIDENTIAL DISPOSAL (\_\_\_\_\_) @ \$3.57 Per Ton = \$ \_\_\_\_\_

KENOSHA COUNTY DISPOSAL (\_\_\_\_\_) @ \$3.57 Per Ton = \$ \_\_\_\_\_

*PAYMENT FOR SOLID WASTE  
DISPOSAL*

\_\_\_\_\_ @ \$3.57 Per Ton = \$ \_\_\_\_\_

TOTAL MONTHLY PAYMENT \$ \_\_\_\_\_

AVERAGE OF THE MONTHLY PAYMENTS PAID IN  
PAST 12 MONTHS \$ (\_\_\_\_\_)

IF THE TOTAL MONTHLY PAYMENT AND THE 12 MONTH AVERAGE ARE LESS  
THAN \$150,000.00, MINIMUM MONTHLY PAYMENT \$ \_\_\_\_\_

If you should have any questions, please do not hesitate to contact me at 262-857-7956.

Sincerely,

---

Tom Dixon, Site Manager

Cc: Kenosha County Department of Planning & Development

**EXHIBIT H**  
**LANDSCAPING PLAN**


[To be provided]

# PLANT TABLE




## LEAF DECIDUOUS

NTITY	SYMBOL	SCIENTIFIC NAME	COMMON NAME	CODE NAME	PLANTING SIZE	OUTSTANDING FEATURES
		ASSORTED TREES	ASSORTED OAKS (MAPLES & HACKBERRY A POSSIBLE SUBSTITUTE)	ASST	2 1/2" CAL	NATIVE, HARDY, FALL COLOR

## EVER GREEN

NTITY	SYMBOL	SCIENTIFIC NAME	COMMON NAME	CODE NAME	PLANTING SIZE	OUTSTANDING FEATURES
		ASSORTED EVERGREEN	ASSORTED EVERGREENS INCLUDING PINE, SPRUCE, & FIR	ASST	6'	YEAR ROUND SCREENING

## B

NTITY	SYMBOL	SCIENTIFIC NAME	COMMON NAME	CODE NAME	PLANTING SIZE	OUTSTANDING FEATURES
		CORNUS SERICIA 'BAILEY'	BAILEY RED TWIG DOGWOOD	BAIL	36"	OUTSTANDING FEATURES
		FORSYTHIA X 'NORTHERN SUN'	NORTHERN SUN FORSYTHIA	FORS	36"	RED TWIGS IN WINTER
		VIBURNUM DENTATUM	ARROWWOOD VIBURNUM	ARRO	36"	YELLOW FLOWERS IN SPRING
						BURGUNDY FALL COLOR



# PHEASANT RUN RDF

STATE HIGHWAY 45 & COUNTY "N" PARKS, WISCONSIN



DESIGNED BY MARK SCHMIDT  
DRAWN BY MICHAEL PALUA  
MARCH 16TH, 2007  
REVISED MAY 15TH, 2008

Sheet  
L1

SCALE: 1"=140'