

# DRAFT

## AGREEMENT FOR DEPOSIT OF FILL

THIS AGREEMENT, entered into by and between the CITY OF MILWAUKEE, a Wisconsin municipal corporation (hereinafter referred to as the "City") and (hereinafter referred to as the "Tech").

### W I T N E S S E T H:

WHEREAS, the Tech is desirous of locating a suitable site for deposit of certain fill material that shall be excavated in conjunction with activities associated with the Lynde & Harry Bradley Technical and Trade School construction project; and

WHEREAS, the City is desirous of accommodating the Tech's objectives in this respect by facilitating the deposit of this fill material at the site of a former landfill, located in the vicinity of Mitchell International Airport, which is currently owned by the City and as more fully described hereinbelow; and

WHEREAS, the City and the Tech have reached agreement as to the terms and conditions pursuant to which the Tech may deposit this fill material at the aforementioned former landfill site and have executed this Agreement setting forth those terms and conditions;

NOW, THEREFORE, it is agreed by and between the City and the Tech as follows:

1. Consent to Deposit and Grade Fill Material. The City grants permission to the Tech to deposit and grade certain fill material (as more particularly described below) upon the site of the City-owned former landfill, situated in the vicinity of Mitchell International Airport, commonly known as the "South College Avenue Landfill," and located in the Northwest ¼ of Section 3, Town 5 North, Range 22 East of the Fourth Principal Meridian, City of Milwaukee, Milwaukee County (hereinafter referred to as the "Landfill"), in accordance with the terms and conditions specified in this Agreement. A legal description of the Landfill is attached hereto as Exhibit A, and is incorporated herein by reference.

2. Description of Fill Material. The material to be deposited and graded by the Tech upon the Landfill pursuant to this Agreement (hereinafter referred to as the "Fill Material") shall be up to approximately 20,000 cubic yards of fill, generated from the Lynde & Harry Bradley Technical and Trade School construction project, as more particularly described and characterized in a letter dated April 19, 2001 and transmitted by Professional Service Industries, Inc. to Mr. James Schmidt of the Wisconsin Department of Natural Resources (hereinafter referred to as the "WDNR"). A true, correct and complete copy of this letter is attached hereto as Exhibit B, and is incorporated herein by reference. The Materials Handling Plan dated April 19, 2001 which was attached to Exhibit B is also incorporated herein by reference.

The Tech warrants and represents that it has retained Professional Service Industries, Inc. to conduct certain analytical tests upon various samples of the Fill Material, in order to determine the presence and concentrations of certain metals, petroleum-based substances, and other contaminants therein; that the results of those tests are set forth in the Soil Management Plan (an attachment to Exhibit B incorporated herein by reference) and that the information presented therein is true and accurate to the best knowledge and belief of the Tech and of Professional Service Industries, Inc.

3. Additional Analysis of Fill Material. The Tech shall, at its sole cost and expense, arrange for and conduct additional analysis of a minimum of one (1) representative soil sample for every 5000 cubic yards of the Fill Material in accordance with the requirements of "Soil Testing Protocol", a true, correct and complete copy of which is attached hereto as Exhibit C, and is incorporated herein by reference. For each soil sample, the Tech shall attach a fully completed and signed "Soil Sample Certification" in the form attached hereto as Exhibit D and incorporated herein by reference.

The Tech shall provide the City with a complete copy of the results of the analysis and of an attached, fully-completed and signed "Soil Sample Certification" for each soil sample, and a complete copy of any additional or supplementary reports associated with the additional analysis conducted pursuant to this Section as soon as these results and/or other materials become available. The City and/or its authorized agent or representative shall review and approve the analytical results attached to the "Soil Sample Certification" applicable to each proposed 5,000 cubic yard shipment of Fill Material. Should the analytical results attached to "Soil Sample Certification" indicate that any soils contain polychlorinated biphenyls (PCBs) or that they would be classified as a "hazardous waste", the City shall, in that event, have the sole and unfettered option to reject the Fill Material (in whole or in part) and/or to terminate this Agreement, by providing written notice thereof to the Tech as provided in Section 16 hereinbelow. Any Fill Material already deposited upon or within the Landfill that is determined by the City not suitable for disposal shall be removed by the Tech at the direction of the City. If by visual observation or by odor the Fill Material differs significantly from the soil sample collected and analyzed, the Tech shall notify the City prior to shipping the Fill Material to the Landfill.

4. Procedure for Deposit of Fill Material. The Fill Material shall be deposited upon the central portion of the Landfill, more particularly upon the area depicted upon the map attached hereto as Exhibit E and incorporated herein by reference. The Tech shall observe those provisions set forth in Exhibit B and attachments, except as modified and/or supplemented by the provisions of this Agreement.

5. Supplemental Procedures Applicable to Deposit of Fill Material. The Tech shall at all times comply with the following procedures throughout the course of the activities conducted pursuant to this Agreement:

- (a) The Tech shall be provided with ingress to and egress from the landfill by means of a gate located at 1701 East College Avenue.
- (b) The Tech shall provide and station personnel at the gate located at 1701 East College Avenue to control and supervise Tech access to the Landfill at all times that the Tech may be transporting Fill Material thereto. The Tech shall not deposit any soils or other material upon or within the Landfill other than those originating from the Lynde & Harry Bradley Technical and Trade School construction project.
- (c) The Tech shall not in any manner interfere with any access to the Landfill by Super Excavators, Inc., C.G. Schmidt, New Berlin Grading, Inc. or their designees.
- (d) The Tech shall confine the deposit and grading of Fill Material upon and/or within the Landfill to the hours of the day commencing at 7:00 A.M. and ending at 7:00 P.M.
- (e) The Tech shall clean up and remove any soil or dirt tracked onto East College Avenue or other streets or thoroughfares located in the vicinity of the Landfill as a result of Tech activities at the Landfill, prior to the end of every working day.
- (f) The Tech shall deposit the Fill Material so that the top elevation of the Fill Material shall be a minimum of 18 inches below the finish elevations shown on

the Final Grading Plan; which is attached as Exhibit F and is incorporated herein by reference. Existing material already deposited on the site by others shall be removed and stockpiled at the direction of the City in order to place the Fill Material at the proper elevations.

6. Compliance with WDNR Requirements; Permits. The Tech shall, at all times, fully comply with all conditions and requirements imposed by the WDNR with respect to the transport or disposal of the Fill Material or any Tech work or Tech operations conducted pursuant to this Agreement, including, but not limited to, those WDNR directives set forth in its letter of 2001; a true, correct and complete copy of which is attached hereto as Exhibit G, and is incorporated herein by reference. Unless otherwise specifically directed by the WDNR, the Tech shall also comply with all provisions of the Material Handling Plan for the Lynde & Harry Bradley Technical and Trade School incorporated herein by reference.

The Tech shall obtain, and pay for, all necessary permits that may be required in conjunction with the deposit of Fill Material upon or within the Landfill.

7. Erosion Control. The Tech shall repair any damage to the Erosion control measures that have been installed at the Landfill caused by their operations at the Landfill.
8. Reimbursement of City Costs. The Tech shall promptly and fully reimburse the City for any and all administrative and oversight costs and expenses that the City may incur as a consequence of this Agreement including with any Tech activities, work or operations conducted pursuant to this Agreement. The Tech's obligation to reimburse the City hereunder shall also extend to any additional or incremental costs that may be incurred by the City in conjunction with the closure of the Landfill as a consequence of this Agreement. The City shall invoice the Tech for any costs and expenses to be reimbursed to this section.

9. Indemnification and Defense of City. To the fullest extent by law, the Tech agrees to defend, indemnify and hold harmless the City of Milwaukee, its officers, agents and employees from and against all claims, demands, damages, liability (including, but not limited to, environmental liability), suits, judgments, awards, decrees, attorney's fees, losses, costs and expenses of any kind or nature whatsoever which may come against the City of Milwaukee on account of injury or death of any person or persons or damage to any property occurring directly or indirectly, in whole or in part, as a consequence of this Agreement, including the performance or lack of performance or activities, work or operations conducted pursuant to this Agreement, or as a consequence of negligence, by the Tech or its employees, agents or servants, including, without limitation, those related to Environmental Compliance and Obligations, as defined in Section 11 below. The indemnifications contained herein shall survive the completion of the Tech activities, work or operations conducted pursuant to this Agreement, or any termination of this Agreement occasioned by any default by the Tech or by the Tech's non-compliance with any of its provisions.

The City of Milwaukee shall tender the defense of any claim or action at law or in equity or of any regulatory proceeding, arising, in whole or in part, out of the indemnifications and other obligations set forth in the preceding paragraph to the Tech and/or its insurer and, upon such tender, it shall be the duty of the Tech and its insurer to defend such claim, action or regulatory proceeding, without cost or expense to the City of Milwaukee.

10. Insurance. The Tech must furnish to the City, prior to the commencement of any activities, work or operations within the scope of this Agreement, certificates of insurance which confirm that the Tech's contractor(s) has the types and amounts of insurance referenced in Subsections (a) through (d) below. The Tech shall require any contractors that it may engage in conjunction with any activities, work or operations conducted pursuant to this Agreement to carry and maintain the types and amounts of insurance required hereunder. The Tech is

fully responsible for assuring contractor compliance with all of the insurance requirements specified hereunder.

(a) Worker's Compensation and Employer's Liability

Coverage Amounts

Worker's Compensation		Statutory
Employer's Liability		
Bodily Injury by Accident	each accident	\$100,000
Bodily Injury by Disease	each employee	\$100,000
Bodily Injury by Disease	policy limit	\$500,000

To Include

Other state's coverage  
United States Longshoremen and Harbor  
Worker's Endorsement (Required only when the contract  
involves work on navigable bodies of water)

(b) Commercial General Liability

Limits of Liability

Bodily Injury/Property		
Damage	each occurrence	\$1,000,000
	general aggregate	\$1,000,000
	products/completed	
	operations aggregate	\$1,000,000
Personal Injury	aggregate	\$1,000,000

To Include

Occurrence form  
Premises/operations coverage  
Products/completed operations coverage including extension of coverage for  
two (2) years after acceptance of work by the City of Milwaukee  
Independent contractors (Owners/Contractors Protective) coverage  
Contractual liability for risks assumed in this agreement  
No exclusion for explosion, collapse, or underground occurrences

(c) Automobile Liability

Limits of Liability

Bodily Injury/Property		
Damage	each accident	\$1,000,000

To Include

Coverage on all owned, non-owned, and hired vehicles

Coverage for environmental liability related to transport of soils and/or other waste materials

(d) Umbrella Liability

Limits of Liability

Personal Injury/Property		
Damage	each occurrence	\$2,000,000
	aggregate	\$2,000,000

To Include

Occurrence form  
First dollar defense coverage  
Insuring agreement which will provide excess protection to the primary coverages

For coverages referred to in Section 10 (b), (c), (d), the City of Milwaukee shall be named as an additional insured.

The worker's compensation and employers liability certificate should confirm that thirty (30) days notice of cancellation must be provided. For all other insurance coverages referenced above, sixty (60) days notice of cancellation must be provided.

A separate certificate need not be filed if the Tech's contractor(s) has a current certificate on file with the City of Milwaukee. It is the responsibility of the Tech to make this determination and to provide evidence of coverage if a previous certification has been filed. No Tech activities, work or operations under this Agreement may occur after a certificate has expired or been canceled unless a new or renewal certificate is provided prior to the expiration or cancellation date of the previous certificate. The Tech shall have the responsibility of ensuring that valid certificates are on file for its contractor(s) that is plans to engage pursuant to this Agreement.

11. Environmental Compliance and Obligations

- (a) Compliance with Environmental Regulations. The Tech shall fully comply with all statutes, regulations, and other applicable requirements imposed by any federal, state, or municipal agency with respect to the composition of any Fill Material to be excavated, transported, or deposited upon the Landfill, pursuant to this Agreement and/or with respect to the performance of any work or other operations conducted by the Tech (hereinafter referred to as "Environmental Requirements"). The Tech shall not cause, permit or suffer the existence or commission by the Tech, its agents, officers, employees,



contractors, subcontractor, invitees, or by any other person of any violation of any Environmental Requirements or of any of the provisions of this Section.

- (b) Composition of Material, Hazardous Material, Environmental Liens. The Tech warrants and covenants that the Fill Material to be transported to, and deposited upon the Landfill pursuant to this Agreement shall not be or constitute hazardous waste, nor shall it contain regulated concentrations of polychlorinated biphenyls ("PCBs") and shall be both consistent with the WDNR approval already in place for the Landfill and within the scope of the WDNR approval for this project attached hereto as Exhibit F. The Tech shall not cause, permit or suffer any hazardous waste or regulated PCB containing material (as defined by applicable federal or state statutes or regulations) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined, or used upon, about, or beneath the Landfill or any portion thereof. The Tech shall not create or suffer to exist with respect to the Landfill any lien, security interest, or other charge or encumbrance of any kind relating to the environmental condition of the Landfill including (without limitation) any lien imposed pursuant to sec. 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9607 (L)) or any similar state statute.

- (c) Obligation to Investigate and/or Remediate. The Tech shall, upon demand of the City, and at its sole cost and expense, promptly take all actions to investigate and/or remediate the environmental condition of the Landfill which may be required by any federal, state or local governmental agency or political subdivision which is necessitated by, or attributable to, any violation of Environmental Requirements or of any of the provisions of this Section, or otherwise by or to the presence upon, about, or beneath the Landfill of Fill Material transported to or deposited upon the Landfill by the Tech and/or by any work, activities or operations conducted by the Tech upon the Landfill. In the event that the Tech performs any environmental investigation, audit and/or test of the Fill Material

that it deposited upon or within the Landfill, it shall promptly provide to the City full and complete copies of any results and/or reports that are generated in connection therewith.

- (d) Obligation to Indemnify, Defend and Hold Harmless. The Tech agrees, on behalf of itself, its successors, and assigns to indemnify and hold harmless the City of Milwaukee, its officers, agents, and employees, from and against all claims, demands, damages, liability (including but not limited to environmental liability), suits, judgments, awards, decrees, attorneys' fees, costs and expenses of any kind or nature whatsoever which may come against the City on account of investigation and/or remediation of the environmental condition of the Landfill and which is necessitated by, or attributable to, the presence upon, about or beneath the Landfill of any violation of Environmental Requirements or any "hazardous waste" or other material that may cause or engender environmental liability, arising from or caused by the Fill Material transported to or deposited upon the Landfill by the Tech and/or by any work, activities, or operations conducted by the Tech upon the Landfill. The Tech further, on its behalf and on behalf of its successors and assigns agrees to fully indemnify, defend, reimburse and hold harmless the City from the burden and expense of defending all claims, suits, regulatory or administrative proceedings or arbitration proceedings that may occur in relation to any claimed environmental condition upon the Landfill within the scope of the indemnification provided by this subsection. The foregoing obligation applies even if such claims, suits or proceedings are groundless, false or fraudulent, and further includes the obligation of fully and promptly paying and discharging (when they may become due) any and all judgments, penalties or other sums that might be assessed upon the City as a result of any such claims, suits or proceedings within the scope of the indemnification provided by this subsection.

- (e) Extent and Survival of Obligations. The Tech's obligations under the provisions of this Section (as more fully set forth in subparagraphs (a) through (d) above) shall survive the

expiration or termination of this Agreement, and shall be fully binding upon the Tech and its agents, officers, employees, contractors, subcontractors, invitees, successors and assigns.

12. Default. Should the Tech default upon any of its obligations or responsibilities hereunder or otherwise fail to comply with any of the provisions of this Agreement, the City shall provide notice of the Tech advising it of said default and/or non-compliance together with a demand to immediately cease and desist therefrom and to cure and remedy all losses or damages occasioned thereby. For this purpose, a facsimile transmission from the City to the Tech's facsimile transmission number shall be deemed to constitute sufficient notice. Should the Tech fail to cease and desist from its default and/or non-compliance and fail to cure all losses or damages occasioned thereby within five (5) days following the date of the City's notice of default, the City may, at its sole option, terminate this Agreement and direct that all activities, work and/or operations thereunder immediately cease.

13. Time for Completion. The Tech shall complete all activities, work or operations conducted pursuant to this Agreement (including, but not limited to, the deposit of any Fill Material upon or within the Landfill), on or before July 1, 2001. This date for completion may be modified or extended only by a written amendment to this Agreement, subscribed to by both parties hereunder.

14. Waiver. One or more waivers by any party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such party.

15. Sole Agreement, Amendment. This Agreement and all Exhibits attached thereto contain all of the agreements and covenants made between the parties hereto, shall be binding upon the parties hereto, their respective successors and assigns, and their respective agents, officers, employees, contractors, and subcontractors. It may not be modified orally or in any other manner other than by amendment, in writing, subscribed to by both of the parties to this Agreement.

16. Notices. Unless otherwise specifically provided herein, any notices provided for or given pursuant to this Agreement shall be deemed sufficient if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, or by receipted personal delivery to the parties as follows:

City of Milwaukee  
Department of Public Works  
841 North Broadway  
Milwaukee, WI 53202  
Att: Mariano A. Schifalacqua, Commissioner

17. Severability, Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin. If any term or provision of this Agreement or any Exhibits attached hereto, or the application thereof to any person or circumstance shall, to any extent, be declared invalid or unenforceable, then the remainder of this Agreement and attached Exhibits, or its application to persons or circumstances other than these as to which it has been declared invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement and attached Exhibits shall be valid and be enforced to the fullest extent permitted by law.

18. Approval. IT IS FURTHER AGREED AND UNDERSTOOD that this Agreement must be submitted to the Common Council of the City of Milwaukee, and that the same must be approved by the Common Council and its execution authorized.

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives, executed this Agreement of the day and year written below.

Dated at Milwaukee, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

In the Present of:

CITY OF MILWAUKEE

\_\_\_\_\_

By: \_\_\_\_\_  
Mariano A. Schifalacqua  
Commissioner of Public Works

In the Presence of:

\_\_\_\_\_

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

\_\_\_\_\_

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