

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 17-10-10-13

IN THE MATTER OF AMENDING THE
LANDFILL GAS USE AGREEMENT
BETWEEN LANE COUNTY AND THE
EMERALD PEOPLE'S UTILITY DISTRICT
(EPUD), AND AUTHORIZING THE COUNTY
ADMINISTRATOR TO EXECUTE THE
AGREEMENT.

WHEREAS, ORS 190.010 and the Lane County Home Rule Charter provide that units of local governments may enter into agreements for the performance of any or all functions and activities that a party to the agreements, its officers or agents, have authority to perform; and

WHEREAS, Lane County owns and operates a landfill, commonly known as the Short Mountain Landfill, which is used for the disposal of solid waste; and

WHEREAS, Organic materials disposed of at the Landfill typically undergo anaerobic decomposition producing methane, carbon dioxide, and other gases (collectively "Landfill Gas") which must be actively collected and managed to reduce potential hazards to human health and the environment; and

WHEREAS, Lane County and the Emerald People's Utility District (EPUD) are parties to a Landfill Gas Recovery and Utilization Agreement, dated September 17, 1986, pursuant to which Emerald has the exclusive right to use Landfill Gas; and

WHEREAS, Since 1991, EPUD has continuously owned, operated and maintained a system to collect the Landfill Gas convert the Landfill Gas to electricity for customers in Lane County; and

WHEREAS, Lane County and EPUD desire to enter into a new Agreement to amend and restate, in its entirety, the terms and conditions of the 1986 Agreement.

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. That the Agreement be amended as presented.
2. That the County Administrator be delegated the authority as described in LM 21.145 to sign the amended Agreement pursuant to this Order.

ADOPTED this 10th day of October, 2017

APPROVED AS TO FORM
Date 10/29/17

LANE COUNTY OFFICE OF LEGAL COUNSEL



Pat Farr, Chair
Lane County Board of Commissioners

LANDFILL GAS USE AGREEMENT

This Agreement is entered into by and between Lane County, a political subdivision of the State of Oregon (“County”), and the Emerald People’s Utility District, a people’s utility district organized pursuant to Chapter 261 of the Oregon Revised Statutes (“Emerald”). Either County or Emerald may be referred to individually as a “Party” in this Agreement, or collectively as the “Parties”.

RECITALS

- A. ORS 190.010 and the Lane County Home Rule Charter provide that units of local governments may enter into agreements for the performance of any or all functions and activities that a party to the agreements, its officers or agents, have authority to perform.
- B. County owns and operates a landfill, commonly known as the Short Mountain Landfill (“Landfill”), which is used for the disposal of solid waste. Organic materials disposed of at the Landfill typically undergo anaerobic decomposition producing methane, carbon dioxide, and other gases (collectively “Landfill Gas”). Landfill Gas must be actively collected and managed to reduce potential hazards to human health and the environment.
- C. Emerald serves electricity customers in Lane County. Since 1991, Emerald has continuously owned, operated and maintained a system to collect the Landfill Gas (“Collection System”) and a generator to convert the Landfill Gas to electricity (“Generator”). The Collection System, Generator and Emerald improvements, wells, transmission lines, pipes and related equipment and facilities are referred to collectively in this Agreement as the “Emerald Facilities.”
- D. County and Emerald are parties to a Landfill Gas Recovery and Utilization Agreement, dated September 17, 1986 (“1986 Agreement”) pursuant to which Emerald has the exclusive right to use Landfill Gas.
- E. County and Emerald desire to enter into this Agreement to amend and restate, in its entirety, the terms and conditions of the 1986 Agreement.

AGREEMENT

1. EFFECTIVE DATE AND TERM

- a. Effective Date. This Agreement is effective January 1, 2018.
- b. Term. Unless extended or terminated earlier in accordance with its terms, this Agreement will terminate 25 years from the Effective Date. The Agreement may be extended in 10-year increments upon mutual agreement of the Parties.

2. COUNTY’S OBLIGATIONS TO OPERATE LANDFILL

- a. Landfill Operations. County is solely responsible, at its sole cost and expense, for permitting, owning, operating and maintaining the Landfill consistent with industry standards and applicable law. County is responsible, at its sole cost and expense, for any improvements or modifications to the Landfill (with the exception of the Emerald Facilities), including without limitation the installation of flare off or similar equipment to manage the Landfill and Landfill Gas in a safe manner or to comply with County's legal obligations. Emerald must

supply County with any records concerning the Emerald Facilities necessary for the County to maintain compliance with regulatory permits maintained for the Landfill.

- b. County will conduct operations at the Landfill without interference to the Emerald Facilities to the extent reasonably feasible for standard landfill operations.
- c. County will take reasonable measures to protect the Emerald Facilities from damage from operational activities and from gas migration. County shall be responsible for any damages to the Emerald Facilities caused by County's operations or gas migration.
- d. County shall notify Emerald at least one year prior to implementing any waste diversion programs expected to reduce methane-producing solid wastes deposited into the Landfill by more than 10 percent compared to the current year solid waste disposal practices.

3. EMERALD'S RIGHTS TO USE LANDFILL GAS.

- a. Emerald will continue to have the exclusive right to use the Landfill Gas, and the exclusive right to generate electricity and produce waste heat from Landfill Gas. Emerald will also have the exclusive right to use, assign, monetize or transfer any Environmental Attributes, which means any and all credits, benefits, emission reductions, offsets and allowances, regardless of how entitled, attributable to the recovery and use of Landfill Gas. Notwithstanding the above, County shall have the right to publicly advertise and receive public credit for such Environmental Attributes jointly with Emerald, but County may not take any action that will reduce the economic benefit received by Emerald from such Environmental Attributes.
- b. In its discretion, Emerald may sell or use the Landfill Gas, constituent components of Landfill Gas, products of Landfill Gas, or by-products of Landfill Gas, or any combination of the foregoing, for any lawful purpose instead of or in addition to generating electricity and producing waste heat from Landfill Gas. In the event Emerald uses the Landfill Gas for any purpose other than generating electricity, Emerald will guarantee that the County's payment (on an annual basis) is not reduced from the amount paid in the last year that Emerald only generated electricity from the Landfill Gas (the "Last Year Amount"). The Last Year Amount will be reviewed every five years and adjusted up or down to reflect changes in market power prices. Any adjustment to the Last Year Amount will be done in the manner described in subsection 6.a. and Exhibit A, which is incorporated in this Agreement by this reference.
- c. Notwithstanding the above, the County may install generating facilities at the Landfill so long as such generating facilities do not use Landfill Gas. Such facilities may include, for example, anaerobic digesters to dispose of food waste. County shall offer Emerald the option to purchase the output from any such power generation facilities that County installs at the Landfill during the term of this Agreement. Emerald shall be allowed to purchase the output from such facility at a discount of \$5 per Megawatt-hour from the then-prevailing day-ahead market price for electricity as reported on the Mid-Columbia index, or on another index as mutually agreed to by the Parties. In the event Emerald decides, in its sole discretion, not to purchase the output from such facility, County may offer such electricity to another purchaser. Emerald shall also have a right to own or purchase ownership in any new power generation facilities that County installs at the Landfill during the term of this Agreement. In the event Emerald decides, in its sole discretion, not to own or purchase ownership in any

new power generation facilities that County installs at the Landfill during the term of this Agreement, County may offer such ownership to another entity.

4. EMERALD FACILITIES.

- a. Emerald has the right to install, maintain, operate, improve and repair the Emerald Facilities at its sole cost and expense at the Landfill. The Emerald Facilities may include anything reasonably necessary and desirable for the purpose of collecting and using the Landfill Gas.
- b. Emerald's employees, agents, representatives, and independent contractors are authorized to enter upon and use that portion of the Landfill and any adjacent or contiguous land owned or controlled by County, without additional cost, to the extent reasonably necessary or convenient for accessing, improving, replacing, repairing and maintaining Emerald Facilities. Emerald will abide by reasonable rules provided in writing by the County for the purpose of controlling access to the Landfill of persons other than Emerald and its employees, agents, representatives, and independent contractors, and Emerald shall require its employees, agents, representatives, and independent contractors to abide by such rules.
- c. Emerald will construct and operate the Collection System to minimize odors and to assist the County with maintaining compliance with permit conditions for the Landfill.
- d. Emerald must make reasonable efforts to locate or otherwise place the Collection System in a way that will not unreasonably interfere with County's existing or planned landfill operations at the Landfill, consistent with Emerald's need to locate the Collection System to optimize efficiency and productivity. Any proposed changes in such locations and placements must be submitted by Emerald to County in writing. County will have 10 days after receipt to make written specific objections, and if no objections are made Emerald may proceed with the changes. If reasonable objections are made by County, the Parties, acting through the Operating Committee, shall attempt to resolve the objections to the satisfaction of the Parties.
- e. Emerald must conduct its operations, as contemplated under this Agreement, in a safe and reasonable manner, and in accordance with the requirements of the governmental permits, approvals, laws, and regulations applicable to such operations.
- f. Emerald has the right to expand the Collection System as warranted by increases in quantities of Landfill Gas and may decrease same as warranted by decreases quantities of Landfill Gas.
- g. Emerald shall obtain all governmental permits and approvals required to conduct Emerald's operations under this Agreement. The County shall, at its expense, use reasonable efforts to assist Emerald in obtaining any such permits and approvals.
- h. Emerald must maintain meters to determine the volume of Landfill Gas used and the electricity generated by the Generator. Emerald shall calibrate the meters for accuracy, as necessary in accordance with manufacturers' specifications and industry practices.

5. COOPERATION.

- a. Operating Committee. The Parties will participate in an Operating Committee of four members, two appointed by each Party. The Operating Committee will meet as necessary to facilitate cooperation and coordination between the County and Emerald, which may include

entering into Memoranda of Understanding (MOUs) to address specific operational issues in a mutually agreeable way. The Operating Committee may also be used to attempt to resolve any dispute between the County and Emerald.

- b. Planning Review. Not less than every two years, the Parties will meet to review changes in laws, regulations, available technology, and energy industry economic trends. At such meetings, the Parties will identify and discuss coordination, operational issues, term extensions, and consider the need for modifications to future operations and needs for independent expertise support.

6. COSTS, PAYMENTS, AND RECORD-KEEPING.

- a. Emerald will make quarterly payments to County equal to \$0.002 per kilowatt-hour of the total amount of electricity generated less the amount consumed in operating the Collection System at the Landfill (“Net Electricity”) generated by Emerald from utilization of the Landfill Gas in the previous quarter. The quarterly payment of \$0.002 per kilowatt-hour will be adjusted every five years to reflect changes in then-prevailing day-ahead market power prices. Exhibit A to this Agreement contains an example of how the kilowatt-hour payment will be adjusted. At no time during the term of this Agreement, however, will the rate of quarterly payments be lower than \$0.002 per kilowatt-hour. Each payment must be accompanied by a statement showing, for the preceding quarter, the number of days of production, the total number of kilowatt-hours of Net Electricity generated at the Landfill by Emerald, the amount Emerald is to pay County, and an estimate of the total number of kilowatt-hours of electricity generated by Emerald at the Landfill. Each quarterly statement and payment will be furnished by Emerald to County by the 15th day of the first month following the end of the preceding quarter of a year (three months).
- b. Emerald will have the right to use, free of costs, reasonable amounts of Landfill Gas, electricity, waste heat, and other energy and energy products produced or recovered by Emerald at the Landfill that are used by Emerald in connection with its Generator and the Emerald Facilities. The amount of electricity used by Emerald shall not be included in the electrical generation quantity used for payments to County under this Agreement.
- c. During the term of this Agreement, Emerald will pay all taxes, if any, that may be levied upon or assessed against the Emerald Facilities. County will pay all taxes, if any, that may be levied upon or assessed against the Landfill.
- d. County has the right to have Emerald’s metering equipment inspected and tested. Emerald shall cooperate in arranging any such inspection or test. Any such inspection or test shall be conducted by a qualified independent third Party, selected with the mutual agreement of Emerald and County. Any such inspection or test shall be conducted in a manner that will not interrupt Emerald’s electricity generation or reduce the amount of electricity generated by Emerald. Any metering equipment found to be defective or inaccurate by an error in registration of more than plus or minus 5 percent shall be repaired, re-adjusted, or replaced by Emerald at Emerald’s expense.
- e. County has the right, with reasonable written notice to Emerald, to inspect at County's sole expense the records of Emerald relating to the generation of electricity or other use of the

Landfill Gas at the Landfill in order to verify the accuracy of the quarterly payments to County. Such inspections shall be conducted during normal business hours at Emerald's place of business. County's right to seek adjustment to the amount paid under this Agreement will be limited to one calendar year from the date of inspection.

- f. If County requires relocation of Emerald's facilities, improvements, equipment, wells, transmission lines, or pipes to facilitate continued expansion of the landfill, County must reimburse Emerald for any and all costs incurred for the relocation. County's right to require Emerald to relocate any infrastructure is subject to Emerald's prior written approval, which shall not be withheld unreasonably.

7. INSURANCE

- a. During the term of this Agreement, Emerald will maintain insurance coverage at its sole cost, as follows: (1) workers compensation insurance, as required by Oregon law; (2) personal injury and property damage insurance for injury or damage to third persons resulting from Emerald's operations under this Agreement, in a combined single limit of not less than two million dollars (\$2,000,000) for death or injury or for property damage as a result of any one occurrence; and (3) automobile insurance for bodily injury and property damage in a combined single limit of not less than two million dollars (\$2,000,000). Emerald must furnish certificates of insurance evidencing the insurance coverage required by this paragraph. Emerald shall give County notice at least 30 days before cancellation or material change in any insurance coverage required under this Agreement.
- b. During the term of this Agreement, County will maintain insurance coverage at its sole cost, as follows: (1) workers compensation insurance, as required by Oregon law; (2) personal injury and property damage insurance for injury or damage to third persons resulting from County's operations under this Agreement, in a combined single limit of not less than two million dollars (\$2,000,000) for death or injury or for property damage as a result of any one occurrence; and (3) automobile insurance for bodily injury and property damage in a combined single limit of not less than two million dollars (\$2,000,000). Emerald acknowledges that County is self-insured pursuant to Oregon Statutes, and agrees that said self-insurance will be acceptable for satisfying the requirements and limits established in this agreement. County must provide a description of County's self-insurance plan evidencing the equivalent coverage required by this paragraph. County shall give Emerald notice at least 30 days before cancellation or material change in any insurance coverage required under this Agreement.

8. INDEMNIFICATION

To the extent permitted by the Oregon Constitution, and to the extent permitted by the Oregon Tort Claims Act, and to the extent otherwise provided for in private contracts of insurance, the Parties agree to indemnify, defend, and hold each other, their agents, officers and employees, harmless from all damages, losses and expenses, including but not limited to attorney fees, and to defend all third-party claims, proceedings, lawsuits, and judgments arising out of the Agreement or resulting from the other Party's negligence. Neither Party to this Agreement will be required to indemnify or

defend the other Party for any liability arising solely out of wrongful acts of its own officers, employees or agents.

9. MODIFICATION AND TERMINATION

- a. Modification. No modification or amendment to this Agreement will bind either Party unless in writing and signed by both Parties.
- b. Termination upon mutual agreement. The Parties may jointly agree to terminate this Agreement at any time by written agreement.
- c. Termination for Events of Default. The non-defaulting Party may terminate this Agreement for Events of Default pursuant to Section 10.
- d. Emerald's Right to Terminate. Emerald may terminate this Agreement at any time by providing not less than 180 days advance written notice to County if Emerald determines, in its reasonable discretion, either that there are insufficient quantities of recoverable and usable Landfill Gas at the Landfill, or that the value of such Landfill Gas is insufficient, to pay Emerald's costs to collect and to use the Landfill Gas, including without limitation costs of capital improvements, debt service requirements, taxes and assessments, payments to County, and operation and maintenance.
- e. Survival of Financial Obligations Following Termination. Upon termination of this Agreement for any reason, each Party shall remain liable to the other Party for any unpaid financial obligations arising, and for Emerald's use of Landfill Gas, prior to termination until such financial obligations are satisfied in full. Notwithstanding the forgoing, upon termination of this Agreement Emerald shall not be liable to the County for any forgone revenues or lost profits that would have otherwise been payable by Emerald to the County arising after the termination date.
- f. Termination Payment. If either Party elects or agrees to terminate this Agreement as allowed in this Section, County shall make a termination payment to Emerald in an amount equal to the unamortized value of Emerald's investment in the Emerald Facilities. For purposes of calculating the termination payment, the "unamortized value" of each of Emerald's Facilities is the capital investment made by Emerald in each such unit, including improvements thereto, less one-thirtieth (1/30) of such capital investment for each full year after the investment was made. Upon such payment by County to Emerald, County shall become the owner of the Emerald Facilities. This termination payment is in addition to any other payments that may be owing by County to Emerald under this Agreement or at law.

10. EVENTS OF DEFAULT

- a. Notice and Opportunity to Cure. In the event either Party reasonably believes that the other Party is at any time not in compliance with the provisions of this Agreement, the first Party shall notify the second Party in writing of the alleged breach hereof. The second Party shall have 60 days after receipt of such notice in which to dispute the alleged default or to comply with the obligations set forth in the notice. The first Party shall have the right to terminate this Agreement upon written notice to the second Party if the second Party fails to properly dispute the alleged default or comply with its obligations. If the breach cannot reasonably be

cured within said 60-day period, the second Party shall not be in default if the second Party commences to cure the default within said period and diligently and in good faith continues to cure the default.

- b. Remedies. Upon an Event of Default this Agreement, the non-defaulting Party may elect to terminate the Agreement as provided in this Section 9, and may also seek damages in a court of competent jurisdiction from the other Party for any injury or loss it has sustained due to the breach.

11. DISPUTES

The Parties are required to use good faith efforts to resolve any disputes that may arise under this Agreement. In the event that the Parties are unable to negotiate a resolution to any dispute under this Agreement, either Party may thereafter initiate legal action before any court having jurisdiction over the matter.

12. MISCELLANEOUS PROVISIONS

- a. Complete Agreement. This Agreement contains the entire agreement of the County and Emerald with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings including, without limitation, the 1986 Agreement.
- b. Waiver. Failure of either Party to enforce any provision of the Agreement does not constitute a waiver or relinquishment by the Party of the right to such performance in the future nor of the right to enforce that or any other provision of this Agreement.
- c. Severability. If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions are not affected; and the rights and obligations of the Parties are to be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- d. Time is of the Essence. The Parties agree that time is of the essence with respect to all provisions of this Agreement.
- e. Binding on Successors and Assigns. The provisions of this Agreement are binding upon and inure to the benefit of the Parties to this Agreement, their respective successors, and assigns.
- f. No Third-Party Beneficiaries. The County and Emerald are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or may be construed to give or provide any benefit or right to third persons, either directly or indirectly, that is greater than the rights and benefits enjoyed by the general public, unless that party is identified by name in this Agreement.
- g. Headings. The headings and captions in this Agreement are for reference and identification purposes only and may not be used to construe the meaning or to interpret the Agreement.
- h. Force Majeure. Neither Party will be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that Party.

- i. Assignment. No change or division in the ownership of the Landfill or assignment of the right to payments under this Agreement shall operate to enlarge the obligations or diminish the rights of Emerald. No change, division, or assignment of such rights shall be binding upon Emerald until 30 days after Emerald has been furnished with the original or a certified copy of the instrument evidencing the same.
- j. Multiple Counterparts. This Agreement and any subsequent amendments may be executed in several counterparts, facsimile or otherwise, all of which when taken together will constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed will constitute an original.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the signatories hereto represent that they have been authorized to enter into this Agreement on behalf of the Party for whom each executes by signing below.

AGENCY:

COUNTY:

EMERALD PEOPLE’S UTILITY DISTRICT

LANE COUNTY, OREGON

By: _____ By: _____

Title: General Manager _____ Title: _____

Date: _____ Date: _____

Emerald People’s Utility District
 33733 Seavey Loop Road
 Eugene, Oregon 97405
 Attn: General Manager

Lane County, Public Service Building
 125 E. 8th Avenue
 Eugene, Oregon 97401
 Attn: County Administrator

Attachments:

Exhibit A

Exhibit A: Quarterly Payment Adjustment Examples

Example 1

The example below assumes the quarterly payment is due for an adjustment at the end of the year 2016. The adjustment occurs by comparing the average wholesale market price from the five-year period 2012-2016 to that of the five year period 2007-2011 and calculating a percentage change. This percentage change would then be applied to the current quarterly payment rate (in this example, \$0.0020/kWh). In the scenario below, wholesale prices have **decreased**, which would result in the quarterly payment rate dropping below \$0.0020/kWh. Because this is described as a floor within Section 6.a., the rate would be held at \$0.0020/kWh.

Historical pricing information will be based on the day-ahead Mid-Columbia all-hours index or the equivalent index prevailing at the time. If an all-hours index is not published, it will be calculated as a weighted average using the appropriate time period indices, such as On Peak and Off Peak. Pricing information will be accessed from the U.S. Energy Information Administration (EIA), if available, or from the appropriate wholesale market exchange.

Historical Market Pricing Mid-C All Hours Index			
	<u>\$/MWh</u>	<u>\$/kWh</u>	
2007	\$51.42	\$0.0514	
2008	\$58.98	\$0.0590	
2009	\$32.58	\$0.0326	
2010	\$32.81	\$0.0328	
2011	\$23.81	\$0.0238	
5-year average ('07-'11)		\$0.0399	A
2012	\$19.28	\$0.0193	
2013	\$32.55	\$0.0325	
2014	\$33.59	\$0.0336	
2015	\$23.50	\$0.0235	
2016	\$20.28	\$0.0203	
5-year average ('12-'16)		\$0.0258	B
Pricing Change		-35.3%	C = B/A-1
Current Payment Rate (\$/kWh)		\$0.0020	D
New Payment Rate		\$0.0013	E = D * (1+C)
New Payment Rate (with floor)		\$0.0020	F = MAX(E, \$0.0020)

***Note: Prices above are only for example and do not reflect actual pricing over this time period.**

Example 2

The example below assumes the quarterly payment is due for an adjustment at the end of the year 2016. The adjustment occurs by comparing the average wholesale market price from the five-year period 2012-2016 to that of the five year period 2007-2011 and calculating a percentage change. This percentage change would then be applied to the current quarterly payment rate (in this example, \$0.0020/kWh). In the scenario below, wholesale prices have **increased**, which would result in the quarterly payment rate increasing from \$0.0020/kWh to \$0.0025/kWh.

Historical pricing information will be based on the day-ahead Mid-Columbia all-hours index or the equivalent index prevailing at the time. If an all-hours index is not published, it will be calculated as a weighted average using the appropriate time period indices, such as On Peak and Off Peak. Pricing information will be accessed from the U.S. Energy Information Administration (EIA), if available, or from the appropriate wholesale market exchange.

Historical Market Pricing Mid-C All Hours Index			
	<u>\$/MWh</u>	<u>\$/kWh</u>	
2007	\$34.96	\$0.0350	
2008	\$43.22	\$0.0432	
2009	\$25.42	\$0.0254	
2010	\$23.48	\$0.0235	
2011	\$24.33	\$0.0243	
5-year average ('07-'11)		\$0.0303	A
2012	\$31.76	\$0.0318	
2013	\$39.53	\$0.0395	
2014	\$45.37	\$0.0454	
2015	\$36.17	\$0.0362	
2016	\$35.76	\$0.0358	
5-year average ('12-'16)		\$0.0377	B
Pricing Change		24.4%	C = B/A-1
Current Payment Rate (\$/kWh)		\$0.0020	D
New Payment Rate		\$0.0025	E = D * (1+C)
New Payment Rate (with floor)		\$0.0025	F = MAX(E, \$0.0020)

****Note: Prices above are only for example and do not reflect actual pricing over this time period.***

AMENDMENT #3 TO LANDFILL GAS RECOVERY
AND UTILIZATION AGREEMENT BETWEEN
LANE COUNTY AND THE EMERALD PEOPLE'S UTILITY DISTRICT

s Amendment #3 modifies the Landfill Gas Recovery and Utilization agreement made
the 17th day of September, 1986, by and between Lane County (County) and the Emerald
People's Utility District (Emerald).

Amend the language in Paragraph 8.4, in its entirety, to read as follows:

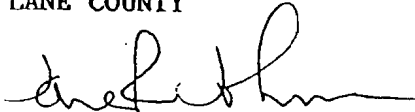
8.4 "County may terminate this Agreement if both of the following conditions exist
on December 1, 1991: (1) Emerald has not started to generate electricity and
(2) Emerald has not signed contracts for the purchase of equipment for, or
other development of, its operations at the Short Mountain Landfill and has
not spent seventy five percent (75%) of the contract price for the
construction of facilities for the recovery and utilization of landfill gas.
However, the date on which generation shall occur shall not go beyond July 1,
1992 unless such failure to generate electricity is excused by the provisions
of Article 16, except that no such excuse premised on a delay in obtaining any
required permit or governmental authorization shall extend beyond December 1,
1993."

Add to the end of Paragraph 19.9 the following new language:

19.9 "In the event that Emerald pays for any of its development and construction
out of revenues, Emerald's costs for the purpose of calculating the value of
operating margin shall be annualized and shall include an in-lieu debt service
charge as if Emerald had issued tax-exempt bonds and incurred an actual annual
debt service. The in-lieu interest rate to be used for this purpose shall be
the most recently listed State of Oregon A rated, 20 year bond index published
twice monthly in the Oregon Bond Calendar by the Municipal Debt Advisory
Commission through the Oregon State Treasury, plus the difference between the
"20 Bond G.O. Index" and the "25 Bond Revenue Index" as listed in the trade
magazine "Bond Buyer". The in-lieu interest rate shall be separately
calculated and determined each time capital funds are acquired over the life
of the project."

All other terms and conditions of the original agreement not amended herein are to
remain in full force and effect.

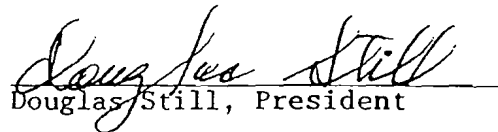
LANE COUNTY



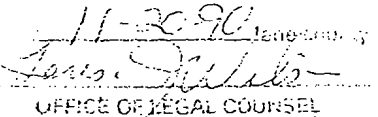
County Administrator

11-21-90
Date

EMERALD PEOPLE'S UTILITY
DISTRICT


Douglas Still, President

November 8, 1990
Date

APPROVED AS TO FORM
11-20-90

OFFICE OF LEGAL COUNSEL

AMENDMENT #2 TO LANDFILL GAS RECOVERY
AND UTILIZATION AGREEMENT BETWEEN THE
COUNTY OF LAND AND THE EMERALD PEOPLE'S
UTILITY DISTRICT

For valuable consideration received, this Amendment #2 modifies the Landfill Gas recovery and utilization Agreement made the 17th day of September, 1986, by and between the County of Lane County, Oregon (County) and the Emerald People's Utility District (Emerald).

- (1) Paragraph 1.5 of Article 1 shall read as follows:

"1.5. Should Emerald determine in its sole judgment that the results of its testing and evaluation indicate that the Short Mountain Landfill is suitable for the economic recovery and utilization of Landfill Gas in Commercial Quantities, Emerald shall give written notice to County of its determination no later than October 1, 1989."

- (2) Paragraph 3.2 of Article 3 shall read as follows:

"3.2. Emerald shall pay County an advance payment of twenty-five thousand dollars (\$25,000.00) upon Emerald's giving written notice to the County that Emerald's initial electricity generating equipment is installed and functioning, as provided for in Paragraph 2.4 of this Agreement. The payment specified in this Paragraph 3.2 is an advance on future payments contemplated under this Agreement, and is not in addition to such payments."

- (3) Paragraph 3.4 of Article 3 shall read as follows:

"3.4. Following the first notice given County under Paragraph 2.4, Emerald shall make quarterly payments to County. Payments contemplated under this Paragraph 3.4 shall not commence until after the total amount of such contemplated payments exceeds the sum of twenty-five thousand dollars (\$25,000) plus any Minimum Payments made pursuant to Paragraph 3.5. Each payment under this paragraph shall equal the greater of (1) four and five tenths percent (4.5%) of the value of the Net Electricity, measured in kilowatt-hours, generated by Emerald from utilization of the Landfill Gas in the previous quarter, or (2) one-half of the Value of the Operating Margin.

- (4) Paragraph 3.5 of Article 3 shall read as follows:

"3.5. During the first year of generating electricity, Emerald shall pay County quarterly payments in accordance with Paragraphs 3.2 and 3.4. Thereafter, Emerald shall pay County, unless excused under the provisions of Article 16, the greater of: (1) the quarterly payment calculated under Paragraph 3.4, or (2) a Minimum Quarterly Payment of \$3,750.

- (5) Paragraph 5.2 of Article 5 shall read as follows:

"5.2. County shall make available to Emerald, without cost (other than the payments contemplated under Article 3), a mutually acceptable site or sites on the Short Mountain Landfill sufficient in size and adequate in location to accommodate the construction and operation by Emerald of Landfill Gas processing plant, electricity generating equipment, and related facilities, and Emerald shall have the free and exclusive right of ingress and egress at all times to and from the said plant site(s). The location and size of said plant site(s) may be changed by the agreement of both parties or by arbitration."

- (6) Paragraph 8.1 of Article 8 shall read as follows:

"8.1. This Agreement may be terminated by either party if Emerald has not given written notice to the County of Emerald's determination of suitability within the time provided for in Paragraph 1.5 of this Agreement."

- (7) Paragraph 8.4 of Article 8 shall read as follows:

"8.4. County may terminate this Agreement if Emerald has not started to generate electricity from Landfill Gas by December 1, 1990 unless such failure to generate electricity is excused by the provisions of Article 16, except that no such excuse premised on a delay in obtaining any required permit or governmental authorization shall extend beyond December 1, 1992."

- (8) Paragraph 8.10 of Article 8 shall read as follows:

"8.10. In any termination effected under Paragraph 8.3 of this Agreement, either party may seek damages in a court of competent jurisdiction from the other party for any injury or loss it has sustained for any breach not cured in accordance with Paragraph 8.3. If Emerald rightfully terminates this agreement under Paragraph 8.3, the damages to which Emerald is entitled from County shall include the Unamortized Value of Emerald's investment in its facilities, improvements, equipment, wells, transmission lines, and pipes then in service at the Short Mountain Landfill and Emerald's Prorated Cost of Facility Removal, plus any other damages it is entitled to under the law of contracts. In addition, if Emerald has made the twenty-five thousand dollar (\$25,000.00) advance payment described in Paragraph 3.2 of this Agreement, County shall pay Emerald the sum of \$25,000.00 plus the amount of Minimum Payments Emerald made pursuant to Paragraph 3.5, less the amount of quarterly payments, if any, determined in accordance with Paragraph 3.4, and if Emerald has not yet given its first

notice to County under Paragraph 2.4, County shall also pay Emerald the sum of ten thousand dollars (\$10,000.00) and shall reimburse Emerald for all costs Emerald has incurred to the date of termination in connection with Emerald's Landfill Gas recovery utilization operations."

- (9) Paragraph 17.2 of Article 17 shall read as follows:

"17.2. All notices to be sent of County shall be sent to:

Lane County Waste Management Division
Public Service Building
125 E. 8th Avenue
Eugene, OR 97401
ATTN: Michael Turner"

- (10) Paragraph 17.3 of Article 17 shall read as follows:

"17.3. All notices to be sent to Emerald shall be sent to:

Emerald People's Utility District
33733 Seavey Loop Road
Eugene, OR 97405
ATTN: Alan Zelenka"

- (11) New Paragraphs 19.8 and 19.9 of Article 19 shall read as follows:

"19.8. Value of Net Electricity.
The value of the Net Electricity shall be based on Emerald's average cost of electricity from sources other than the Short Mountain Landfill, as follows: For the preceding calendar year, add the dollar amount of Emerald's demand cost to the dollar amount of Emerald's energy costs, and divide the sum of these two amounts by the total number of kilowatt-hours of electricity that Emerald handled in that year, to yield a value of electricity expressed in dollars per kilowatt-hours (to the nearest ten-thousandth of a dollar). The resulting dollar per kilowatt-hour amount shall then be multiplied by the Net Electricity produced from the

Landfill Gas during the preceding quarter, as measured in kilowatt-hours, to determine the value of the Net Electricity."

"19.9. Value of the Operating Margin.

The value of the Net Electricity, as calculated in accordance with Paragraph 3.4, less all Emerald's reasonable costs for its facilities and operations relating to the Short Mountain Landfill Gas Recovery Project under this Contract for the previous quarter, which costs include: capital, construction, and debt service costs; labor and fringe costs; operation, repair, replacement, maintenance, and equipment expenses; insurance, defense, and claims costs; contracted services; taxes; supplies; reasonable administrative costs; and legal and governmental or other fees (excluding payments to County described in Paragraphs 3.2, 3.4, and 3.5)."

All other terms and conditions of the original agreement not amended herein are to remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed in their respective names on this 21ST day of JUNE, 1989.

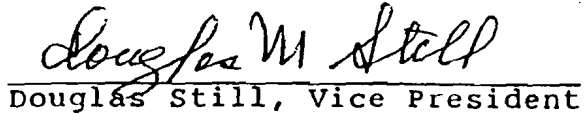
County of Lane County

Emerald Peoples Utility
District



Jim Johnson
County Administrator

C-13-89


Katherine Schacht, President
Douglas Still, Vice President

AMENDMENT #1 TO LANDFILL GAS RECOVERY
AND UTILIZATION AGREEMENT BETWEEN THE
COUNTY OF LANE AND THE EMERALD PEOPLE'S
UTILITY DISTRICT

For valuable consideration received, this Amendment #1 modifies the Landfill Gas recovery and utilization Agreement made the 17th day of September, 1986, by and between the County of Lane County, Oregon (County) and the Emerald People's Utility District (Emerald).

(1) Paragraph 1.3 of Article 1 shall read as follows:

"1.3. The easement granted by the County to Emerald for testing and evaluation shall not be terminated before December 31, 1988."

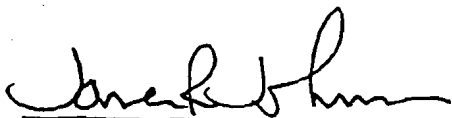
(2) Paragraph 1.5 of Article 1 shall read as follows:

"1.5. Should Emerald determine in its sole judgment that the results of its testing and evaluation indicate that the Short Mountain Landfill is suitable for the economic recovery and utilization of Landfill Gas in Commercial Quantities, Emerald shall give written notice to County of its determination no later than December 31, 1988."

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names on this 21st day of JUNE, 1989.

County of Lane County

Emerald People's Utility
District



Jim Johnson
County Administrator

6.13.89



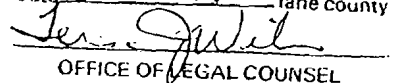
Katherine Schacht, President

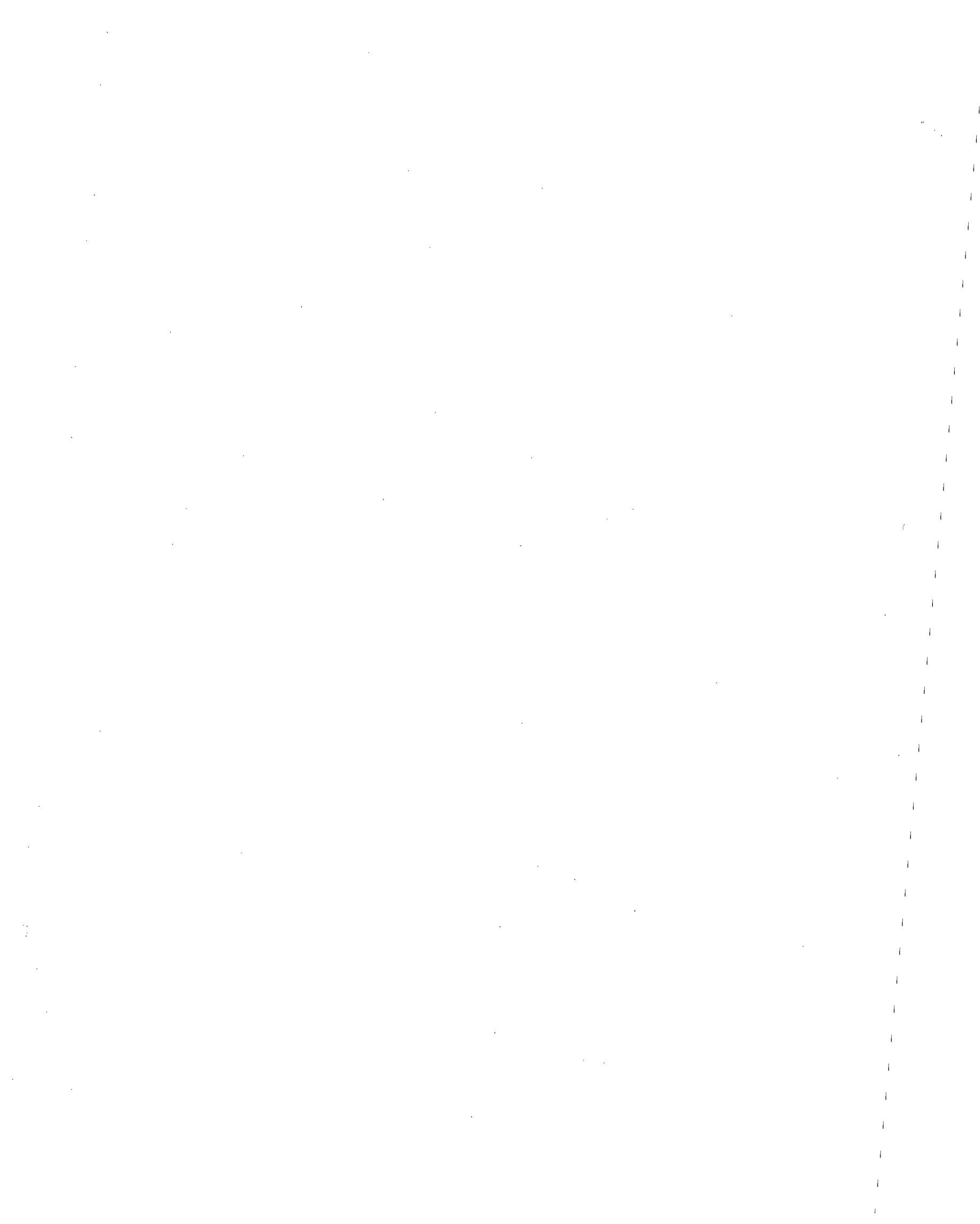


Douglas Still, Vice President

APPROVED AS TO FORM

Date 6-7-89 lane county


OFFICE OF LEGAL COUNSEL



LANDFILL GAS RECOVERY AND UTILIZATION AGREEMENT
BETWEEN THE COUNTY OF LANE COUNTY AND
THE EMERALD PEOPLE'S UTILITY DISTRICT

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LANDFILL GAS RECOVERY AND UTILIZATION AGREEMENT

This Landfill Gas recovery and utilization Agreement is made this 17th day of September, 1986, by and between the County of Lane County, Oregon, a political subdivision of the State of Oregon (hereinafter referred to as County) and the Emerald People's Utility District, a municipal corporation organized pursuant to Chapter 261 of the Oregon Revised Statutes (hereinafter referred to as Emerald).

RECITALS

County owns and operates a landfill, commonly known as the Short Mountain Landfill, which is used for the disposal of solid wastes. County expects to dispose in the Short Mountain Landfill substantially all of the solid waste that is generated in the Eugene-Springfield metropolitan area and vicinity (currently approximately 150,000 tons per year), for at least the next thirty-five years.

Refuse materials in landfills typically undergo anaerobic decomposition that produces methane, carbon dioxide, and other gases. Some of these gaseous products of anaerobic decomposition are combustible, and some are foul-smelling. County owns and would like to recover and utilize Landfill Gas at the Short Mountain Landfill in order to reduce the incidence of foul odors

and produce revenues for the County's use. County expects to continue landfill operations at the Short Mountain Landfill while Landfill Gas recovery and utilization activities take place. Landfill operations are the County's first priority for the Short Mountain Landfill. County expects to receive revenue from Landfill Gas recovery and utilization operations as long as such operations are economically feasible. In 1985, County requested proposals for "Services for Recovery of Landfill Gas," and after a public selection process, selected Emerald to provide those services.

Emerald is a publicly-owned utility that serves electricity customers in Lane County. Emerald is interested in recovering Landfill Gas from the Short Mountain Landfill in order to produce electricity and waste heat. Performance by Emerald under this Agreement, including any investment by Emerald in facilities, equipment, and improvements at the Short Mountain Landfill, is made in reliance on County's assurances given in this Agreement and on Emerald's independent testing and evaluation. Emerald expects to recover its investment and in addition receive net economic benefits from the Landfill Gas recovery and utilization activities over the term of this Agreement, to the mutual benefit of the parties. Emerald expects to expand its Landfill Gas facilities and operations at the Short Mountain Landfill, and thereby increase net economic benefits to Emerald and County, as the volume of recoverable Landfill Gas increases over time.

ARTICLE 1

Testing and Evaluation Phase

1.1 County hereby grants to Emerald the exclusive right to test the Short Mountain Landfill in order to determine whether Landfill Gas can be recovered economically from the Short Mountain Landfill in Commercial Quantities. Emerald, at its sole expense, will commence testing and evaluation of the Short Mountain Landfill for Landfill Gas recovery and utilization.

1.2 During the Testing and Evaluation Phase, Emerald may do each and every thing, recognizing County's need for landfill operations, at the Short Mountain Landfill that is reasonably necessary or desirable for the purpose of determining the suitability and feasibility of establishing and operating Landfill Gas recovery and utilization facilities. County shall cooperate in Emerald's testing and evaluation.

1.3 The term of this easement granted by the County to Emerald for testing and evaluation is twenty-four (24) months, commencing with the date of this Agreement.

1.4 Emerald shall conduct its testing and evaluation in such a manner so as not to interfere unreasonably with County's landfill operations at the Short Mountain Landfill. After completion of its testing and evaluation, Emerald shall make reasonable efforts to return any portions of the Short Mountain Landfill that Emerald has disturbed significantly to their previous condition, except that Emerald is not obligated to

remove any test equipment and is not obligated to fill any test wells.

"1.5. Should Emerald determine in its sole judgment that the results of its testing and evaluation indicate that the Short Mountain Landfill is suitable for the economic recovery and utilization of Landfill Gas in Commercial Quantities, Emerald shall give written notice to County of its determination no later than October 1, 1989."

ARTICLE 2

Operational Phase

2.1 Upon giving County notice under Paragraph 1.5 above, which notice initiates the Operational Phase of this Agreement, Emerald will, at its sole expense, commence and prosecute the engineering, design, governmental authorization, procurement, construction, and operation of the necessary facilities for collecting, treating, processing, and utilizing Landfill Gas, including any facilities required to comply with any applicable and valid environmental laws and regulations. In conducting its engineering and design, Emerald shall use the services of at least one consultant knowledgeable and respected in the field of landfill gas projects. In making design, purchase, installation, and maintenance decisions, Emerald shall seriously consider the long-range reliability consequences of its decisions with the goal (but not the obligation) of achieving 85% operating

reliability. A general written description and a copy of Emerald's site plan shall be delivered by Emerald to County prior to the commencement of construction of any said facilities. County shall have thirty (30) days after receipt thereof to object in writing to the location of any of the facilities, improvements, or equipment, including wells, transmission lines, and pipes, to be constructed or used upon the Short Mountain Landfill by Emerald, which objection may only be made if any such location or placement will unreasonably interfere with County's existing or planned landfill operations upon the Short Mountain Landfill. Any such objection will be reasonable and will be specific and will include reasons for such objection and alternative locations or placements. In the event that no written objection by County is received by Emerald during said thirty (30) day period, the location of Emerald's facilities, improvements, and equipment, including but not limited to wells, transmission lines, and pipes, shall be deemed approved by County. Approval by County under this Paragraph 2.1 shall not be deemed satisfaction of any permit or regulatory review otherwise required by law.

2.2 Upon receipt of County's objection(s) under Paragraph 2.1, Emerald shall make reasonable efforts to relocate or otherwise place such facilities, improvements, equipment, wells, transmission lines, or pipes in a way that will not unreasonably interfere with County's existing or planned landfill operations upon the Short Mountain Landfill, consistent with Emerald's need

to locate or place such facilities, improvements, equipment, wells, transmission lines, and pipes, so as to optimize efficiency and productivity. Such revised locations and placements shall be submitted by Emerald to County and County shall have ten (10) days after receipt to make further written specific objections (if any of the revised locations or placements will unreasonably interfere with County's existing or planned operations upon the Short Mountain Landfill), failing which such revisions shall be deemed approved. If further specific objections are made by County, the parties, acting through the Operating Committee, shall make a reasonable attempt to resolve their differences pursuant to Paragraph 18.2. After such attempt, Emerald, at its election, may further revise said locations or placements to meet County's objections, or may terminate this Agreement.

2.3 Once County has approved (or has been deemed to have approved) the location of any of Emerald's facilities, improvements, equipment, wells, transmission lines, or pipes, County shall not have the right to compel Emerald to move or relocate same without Emerald's prior written approval, which shall not be withheld unreasonably. County shall pay Emerald any and all costs incurred by Emerald in effecting the County's requested movement(s) or relocation(s).

2.4 After completion of the construction and necessary break-in of the facilities, Emerald will commence the collection, processing, and utilization of the Landfill Gas obtained from the

Short Mountain Landfill, subject to the other provisions of this Agreement. Emerald shall notify County when the initial electricity generating equipment is installed and functioning, and shall thereafter notify County whenever the installed electrical generating capacity at the Short Mountain Landfill is increased or decreased.

2.5 Emerald shall have exclusive use of the Landfill Gas produced by or in the Short Mountain Landfill, and shall have the exclusive right to generate electricity and produce waste heat from Landfill Gas at the Short Mountain Landfill. Emerald shall have the right to do each and every thing reasonably necessary or desirable for the purpose of recovery and utilizing Landfill Gas, unless expressly provided otherwise elsewhere in this Agreement. Emerald shall be deemed to have possession and control over Landfill Gas only when and to the extent Landfill Gas has entered any above-ground pipes, collection systems, or facilities owned by Emerald.

2.6 Emerald shall conduct its construction activities and operations in such a manner so as not to interfere unreasonably with County's use of the Short Mountain Landfill. Emerald shall be responsible for the operations and production with respect to the Landfill Gas produced by or in the Short Mountain Landfill.

2.7 Emerald shall take reasonable measures to protect its own facilities from damage from gas migration; however, Emerald shall have no other liability for the control or containment of or any damage occasioned by Landfill Gas migration.

2.8 County shall accept for disposal, at no charge to Emerald, any liquid by-products or condensate from Emerald's operations at the Short Mountain Landfill that County is allowed to accept under Oregon Department of Environmental Quality regulations.

2.9 County shall, in accordance with generally accepted safe landfill practices, deposit in the Short Mountain Landfill substantially all of the solid wastes produced in the Eugene-Springfield metropolitan area and vicinity, exclusive of toxic wastes, hazardous wastes, and Recycled Materials. Except as otherwise provided in this Paragraph 2.9, so long as the Short Mountain Landfill is capable of receiving additional solid wastes, within its design limits, County shall not otherwise utilize or dispose of such solid wastes. After seven (7) years, but not before, County may give notice of its intent to decrease the volume or change the composition, or both, of the solid wastes County is obligated to deposit in the Short Mountain Landfill. Such notice shall be given no less than two years in advance of when County may decrease the volume or change the composition of the solid wastes. Emerald shall have no obligation to expand or add to its facilities, improvements, equipment, wells, transmission lines, or pipes upon receiving County's notice, unless otherwise agreed by the parties. At the end of the two year notice period, the County may decrease the volume or change the composition, or both, of the solid wastes, in the manner and to the extent it notified Emerald. If such

notice is given, County and Emerald shall negotiate appropriate economic adjustments to this Agreement. If County and Emerald cannot reach a mutual agreement on the appropriate economic adjustments to this Agreement, the matter shall be submitted to Arbitration as provided in Article 18 of this Agreement. Emerald has the sole option of continuing Landfill Gas recovery and utilization operations under either the negotiated terms or those determined through Arbitration, or of terminating this Agreement pursuant to Paragraph 8.11.

2.10 Emerald shall conduct its operations in a reasonable manner, in accordance with generally accepted work, maintenance, repair, safety, health, and environmental practices.

2.11 Except as provided otherwise in Paragraph 2.12 below, Emerald will expand its facilities, improvements, equipment, wells, transmission lines, and pipes as warranted by increases in Commercial Quantities of Landfill Gas and may decrease same as warranted by decreases in Commercial Quantities of Landfill Gas.

2.12 County expects that Emerald will place some of its Landfill Gas collection facilities on or in an area of the Short Mountain Landfill that is now at an interim fill depth. County intends at some time in the future to place one additional layer of landfill materials at the area that is at an interim fill depth. Within three (3) months following the date of this Agreement, County shall clearly designate to Emerald the area where it intends to place an additional layer of landfill materials, and an approximate time schedule for such action.

County will not commence placing an additional layer of landfill materials at the area of interim fill depth where Landfill Gas collection facilities are in place, thereby potentially disrupting Emerald's Landfill Gas recovery operations at that area, until or unless there is at least an equivalent amount of Landfill Gas reasonably available to Emerald elsewhere at the Short Mountain Landfill. County will, when placing an additional layer of landfill materials on the area of interim fill depth, consistent with good landfill practices, minimize disruption to interim fill areas, minimize losses of Landfill Gas, and minimize reductions in the quantity of recoverable Landfill Gas. For so long as it takes the County to complete the placing of an additional layer of landfill materials on an area of interim fill depth, any Landfill Gas produced from the interim fill depth area shall not be considered as Commercial Quantities of Landfill Gas for the purposes of Paragraph 2.11 above. [Emerald shall not be expected to expand its facilities, improvements, equipment, wells, transmission lines, and pipes as provided in Paragraph 2.11, until and unless, and only to the extent, that the Commercial Quantities of Landfill Gas reasonably available from completed fill areas (which does not include the area of interim fill depth) exceeds the quantity of Landfill Gas reasonably available from the area of interim fill depth.]

2.13 This Agreement shall remain in force for a term of ten (10) years, and shall be renewed automatically for ten year periods, and shall continue as long as Landfill Gas is produced

and recovered in Commercial Quantities (or while such obligation is excused pursuant to Article 16), unless sooner terminated in accordance with Article 8.

ARTICLE 3

Payments to County

3.1 Emerald shall pay County ten thousand dollars (\$10,000.00) upon the parties' execution of this Agreement.

"3.2. Emerald shall pay County an advance payment of twenty-five thousand dollars (\$25,000.00) upon Emerald's giving written notice to the County that Emerald's initial electricity generating equipment is installed and functioning, as provided for in Paragraph 2.4 of this Agreement. The payment specified in this Paragraph 3.2 is an advance on future payments contemplated under this Agreement, and is not in addition to such payments."

3.3 Emerald shall have the right to use, free of costs and without obligation to make payments to County thereon, reasonable amounts of Landfill Gas, electricity, waste heat, and other energy and energy products produced or recovered by Emerald at the Short Mountain Landfill that are used by Emerald in connection with its Landfill Gas recovery and utilization operations. The amount of electricity used to determine payments

under Paragraph 3.4 shall not be deemed to include the quantity of electricity used by Emerald pursuant to this Paragraph 3.3.

"3.4. Following the first notice given County under Paragraph 2.4, Emerald shall make quarterly payments to County. Payments contemplated under this Paragraph 3.4 shall not commence until after the total amount of such contemplated payments exceeds the sum of twenty-five thousand dollars (\$25,000) plus any Minimum Payments made pursuant to Paragraph 3.5. Each payment under this paragraph shall equal the greater of (1) four and five tenths percent (4.5%) of the value of the Net Electricity, measured in kilowatt-hours, generated by Emerald from utilization of the Landfill Gas in the previous quarter, or (2) one-half of the Value of the Operating Margin.

"3.5. During the first year of generating electricity, Emerald shall pay County quarterly payments in accordance with Paragraphs 3.2 and 3.4. Thereafter, Emerald shall pay County, unless excused under the provisions of Article 16, the greater of: (1) the quarterly payment calculated under Paragraph 3.4, or (2) a Minimum Quarterly Payment of \$3,750.

3.6 Emerald shall furnish County with a statement each quarter, commencing with the first quarter after notice is given pursuant to Paragraph 2.4 that electrical generating equipment that utilizes Landfill Gas has been installed and is functioning at the Short Mountain Landfill. Each statement shall show for

the preceding quarter the number of days of production, the total number of kilowatt-hours of Net Electricity generated at the Short Mountain Landfill by Emerald, the value of that Net Electricity (determined in accordance with Paragraph 3.4), the amount Emerald is to pay County, and an estimate of the total number of kilowatt-hours of electricity generated by Emerald at the Short Mountain Landfill, if such estimate can be produced at no cost to Emerald. Each quarterly statement and payment due under this Article 3 shall be furnished by Emerald to County on the 15th day of the first month following the end of the preceding quarter of a year (three months).

3.7 Emerald may sell or use the Landfill Gas, constituent components of Landfill Gas, products of Landfill Gas, or by-products of Landfill Gas, or any combination of the foregoing, instead of or in addition to generating electricity and producing waste heat from Landfill Gas, with the consent of County, which consent shall not be unreasonably withheld. Except as provided in Paragraph 3.3, payments for any sale or use of Landfill Gas by Emerald, other than using Landfill Gas to generate electricity or produce waste heat from the generation of electricity, shall be negotiated at such time as Emerald exercises its option to make such sale or utilization.

3.8 If Emerald begins receiving revenue or value from the use (other than as provided for in Paragraph 3.3), sale, or exchange of waste heat produced by generating electricity from Landfill Gas at the Short Mountain Landfill, a waste heat factor

shall be included in the following ten year contract period. Emerald shall then include in the quarterly payments it makes to the County fifty percent (50%) of the net revenue or value received by Emerald from the use, sale, or exchange of waste heat from the Short Mountain Landfill, less ten thousand dollars (\$10,000) per installed engine-generator unit that produces waste heat that is actually used, sold, or exchanged by Emerald for revenue or value. The net revenue or value is the difference between the total revenue or value received by Emerald from the use, sale, or exchange of waste heat from the Short Mountain Landfill and the incremental cost of making the waste heat available for use, sale, or exchange which is above and beyond the costs associated with generating electricity from Landfill Gas.

3.9 After the first three contract periods (thirty years), commencing in the fourth ten year period provided for in Paragraph 2.13, a factor reflecting Emerald's use of fully amortized equipment shall be included in the payments Emerald makes to County under this Article 3. For purposes of this paragraph, Emerald's equipment and facilities shall, in accordance with generally accepted accounting principles, be amortized on a straight-line basis over a thirty (30) year period, commencing on the date each such equipment or facility is placed in service. If any such equipment or facility is still in service thirty (30) years after it was placed in service, Emerald shall pay County each quarter an amount equal to one-two hundred

fortieth (1/240) of the original cost of each such equipment or facility, provided that no such payment shall be made for any equipment or facility after it is removed from service.

ARTICLE 4

Metering and Verification

4.1 Emerald shall, at its sole expense, install meter(s) to determine the amount of Net Electricity, as measured in kilowatt-hours, generated by utilizing the Landfill Gas at the Short Mountain Landfill. Emerald shall test, or cause to have tested, the meter(s) for accuracy, before or reasonably soon after installation.

4.2 County shall have the right, upon reasonable written notice to Emerald, through its duly authorized representative (including an independent certified public accountant), to inspect at its sole expense the records of Emerald relating to the generation of electricity from Landfill Gas at the Short Mountain Landfill, in order to verify the accuracy of the quarterly payments to County. Such inspections shall be conducted during normal business hours at Emerald's place of business.

4.3 Upon reasonable written notice to Emerald, County may, at its sole expense, cause to have the metering equipment inspected and tested. Emerald shall cooperate in arranging any such inspection or test. Any such inspection or test shall be conducted by a qualified independent third party, selected by the

mutual agreement of Emerald and County. Any such inspection or test shall be conducted in a manner that will not interrupt Emerald's electricity generation or reduce the amount of electricity generated by Emerald. Any metering equipment found to be defective or inaccurate by an error in registration of more than plus or minus five percent (5%) shall be repaired, re-adjusted, or replaced by Emerald at Emerald's expense.

4.4 If any of the inspections or tests provided for in Paragraph 4.3 disclose an error exceeding five percent (5%), either plus or minus, proper correction, based on the inaccuracy found, shall be made of the previous readings for the period that is the lesser of two quarters, or the period since the most recent such inspection or test, in the amount such meter shall have been shown to be in error by such inspection or test. Any correction in statements and payments shall be made in the next quarterly statement rendered, and such correction, when made, shall constitute full adjustment of any claim between Emerald and County arising out of such inaccuracy of the metering equipment. If any of the inspections or tests provided for herein disclose an error not in excess of five percent (5%), either plus or minus, there shall be no correction in previous statements and payments.

ARTICLE 5

Use of Short Mountain Landfill

5.1 Emerald and its employees, agents, representatives, and independent contractors shall be authorized to use that portion of the Short Mountain Landfill and any adjacent or contiguous land owned or controlled by County, without cost (other than the payments contemplated under Article 3), to the extent reasonably necessary or convenient for Emerald's facilities and operations hereunder, including the construction, maintenance, and use of all necessary buildings, improvements, equipment, machinery, wells, pipelines, utility poles and lines, roads, gates, fences, and signs, and shall have the free right of ingress and egress at all times to and from said property. Emerald shall abide by reasonable rules provided in writing by the County for the purpose of controlling access to the Short Mountain Landfill of persons other than Emerald and its employees, agents, representatives, and independent contractors, and Emerald shall require its employees, agents, representatives, and independent contractors to abide by such rules.

"5.2. County shall make available to Emerald, without cost (other than the payments contemplated under Article 3), a mutually acceptable site or sites on the Short Mountain Landfill sufficient in size and adequate in location to accommodate the construction and operation by Emerald of Landfill Gas processing plant, electricity generating equipment, and related facilities, and Emerald shall have the free and exclusive right of ingress and egress at all times to and from the said plant site(s). The location and size of said plant site(s) may be changed by the agreement of both parties or by arbitration."

5.3 County agrees to grant such rights of way and easements on or adjacent to the Short Mountain Landfill as may be necessary or convenient for Emerald.

5.4 County will maintain in reasonable condition the main access road to and within the Short Mountain Landfill and will take no action to inhibit Emerald's access to the plant site provided for in Paragraph 5.2 or to any other portion of the Short Mountain Landfill reasonably necessary or convenient for Emerald's facilities and operations hereunder. County is not obligated to maintain any access road that is used exclusively by Emerald.

5.5 County shall add materials to, and operate, the Short Mountain Landfill in a manner reasonably intended to maximize the recoverable quantity of usable Landfill Gas, consistent with good landfill practices. County shall not unreasonably interfere with Emerald's operations at the Short Mountain Landfill.

5.6 County may continue any regular landfill operations at the Short Mountain Landfill.

5.7 County and Emerald anticipate that there may in the future be uses at the Short Mountain Landfill of Landfill Gas or its by-products, other than electricity generation, including but not limited to the use of waste heat, at the Short Mountain Landfill. The parties agree to cooperate in the evaluation and, if reasonable, the development of such other uses of Landfill Gas or its by-products.

5.8 Except as stated herein, County reserves to itself all property rights at the Short Mountain Landfill, including, but not limited to, the right to develop or permit development of portions of the site for recreational facilities, the right of reasonable and safe public access to the site, and the right to seek proposals and enter contracts for the use of resources at the site other than Landfill Gas and the organic components of the landfill materials themselves, so long as the exercise or contemplated exercise of any property right by County does not unreasonably make more burdensome, or interfere with, Emerald's operations under this Agreement.

ARTICLE 6

Removal of Facilities

Emerald shall, within six months after the termination of this Agreement, remove all above-ground structures, fixtures, machines, and equipment that Emerald has placed on the Short Mountain Landfill, except that Emerald shall have no obligation to remove any roads, foundations, and fences. Emerald shall have the right to enter the Short Mountain Landfill after the termination of this Agreement for the purpose of removing structures, fixtures, machines, and equipment. Upon termination of this Agreement, any underground collection system at or in the Short Mountain Landfill shall become the property of County, and Emerald shall have no further responsibility or liability for such collection system.

ARTICLE 7

Security Measures

Emerald shall have the right at its sole cost to install and establish those security devices and procedures it believes are reasonably necessary or desirable to protect Emerald's facilities, equipment, and other improvements and to prevent damage or injury to property or people. Emerald and County shall each use its best efforts to prevent damage to the other's facilities, equipment, and other improvements and to promote public safety. This Article 7 shall not excuse or relieve either party from any liability attributable to its own negligence or its own intentional acts or omissions.

ARTICLE 8

Termination

"8.1. This Agreement may be terminated by either party if Emerald has not given written notice to the County of Emerald's determination of suitability within the time provided for in Paragraph 1.5 of this Agreement."

8.2 Emerald may terminate this Agreement under the termination provisions of Paragraph 2.2 or if it is unsuccessful in obtaining in a timely manner any required governmental permit, approval, or authorization to conduct the Landfill Gas recovery and utilization activities contemplated by this Agreement.

8.3 In the event that either party reasonably concludes that the other party is at any time not in compliance with the provisions of this Agreement, that party (first party) shall notify the other party (second party) in writing of the facts relied upon as constituting a breach hereof, and second party, if in material default, shall have sixty (60) days after receipt of such notice in which to comply with the obligations imposed by this notice. First party shall have the right to terminate this Agreement upon written notice to second party if second party fails to comply with lawful obligations imposed by first party's notice within the sixty (60) day period, unless such failure is excused by the provisions of Article 16. If the breach cannot reasonably be cured within said sixty (60) day period, second party shall not be in default if second party commences to cure the default within said period and diligently and in good faith continues to cure the default.

8.4 "County may terminate this Agreement if both of the following conditions exist on December 1, 1991: (1) Emerald has not started to generate electricity and (2) Emerald has not signed contracts for the purchase of equipment for, or other development of, its operations at the Short Mountain Landfill and has not spent seventy five percent (75%) of the contract price for the construction of facilities for the recovery and utilization of landfill gas. However, the date on which generation shall occur shall not go beyond July 1, 1992 unless such failure to generate electricity is excused by the provisions of Article 16, except that no such excuse premised on a delay in obtaining any required permit or governmental authorization shall extend beyond December 1, 1993."

8.5 In accordance with Paragraph 2.13, Emerald may terminate this Agreement at the end of any ten (10) year contract period when Landfill Gas is no longer produced and recovered in Commercial Quantities. Emerald shall give County ninety (90)

days written notice in advance of the effective date of any termination, under this Paragraph.

8.6 Emerald may terminate this Agreement at any time there are insufficient quantities of recoverable and usable Landfill Gas at the Short Mountain Landfill to pay all of Emerald's reasonable costs of recovery and utilization of Landfill Gas, including without limitation costs of capital improvements, debt service requirements, taxes and assessments, payments to County, and operation and maintenance.

8.7 Emerald may terminate this Agreement at any time it determines that the total cost (expressed as dollars per kilowatt-hour of Net Electricity Emerald generates at the Short Mountain Landfill) of Emerald's capital improvements, debt service requirements, taxes and assessments, payments to County and any other expenses of its Landfill Gas recovery and utilization operations, is greater than seventy-seven and one-half percent (77 1/2%) of Emerald's cost of electricity from sources other than the Short Mountain Landfill (expressed as dollars per kilowatt-hour). If Emerald so terminates this Agreement, Emerald shall pay County, as full liquidated damages, and in lieu of any and all other damages, an amount equal to four (4) quarterly Minimum Payments then in effect, as calculated under Paragraph 3.5. These liquidated damages are agreed by the parties to be reasonable.

8.8 Emerald may terminate this Agreement if there is a substantial reduction in the quantity or quality of Landfill Gas

\$ 17,000

from that reasonably expected at the time of execution of this Agreement that was not caused by the fault of County or Emerald. If there has been such a reduction, County will pay Emerald one-half (1/2) of Emerald's Prorated Cost of Facility Removal and one-half (1/2) of the Unamortized Value of Emerald's facilities, improvements, equipment, wells, transmission lines, and pipes then in service at the Short Mountain Landfill, and there shall be no further liability of either party for payments otherwise anticipated under this Agreement but not yet accrued or for any other contract damages.

8.9 Any termination may be effected only by giving written notice to the other party. Any termination effected under Paragraphs 8.1, 8.2, 8.4, 8.5, or 8.6 of this Article 8 shall be without liability for any payments otherwise anticipated under this Agreement but not yet accrued or for any other contract damag

"8.10. In any termination effected under Paragraph 8.3 of this Agreement, either party may seek damages in a court of competent jurisdiction from the other party for any injury or loss it has sustained for any breach not cured in accordance with Paragraph 8.3. If Emerald rightfully terminates this agreement under Paragraph 8.3, the damages to which Emerald is entitled from County shall include the Unamortized Value of Emerald's investment in its facilities, improvements, equipment, wells, transmission lines, and pipes then in service at the Short Mountain Landfill and Emerald's Prorated Cost of Facility Removal, plus any other damages it is entitled to under the law of contracts. In addition, if Emerald has made the twenty-five thousand dollar (\$25,000.00) advance payment described in Paragraph 3.2 of this Agreement, County shall pay Emerald the sum of \$25,000.00 plus the amount of Minimum Payments Emerald made pursuant to Paragraph 3.5, less the

amount of quarterly payments, if any, determined in accordance with Paragraph 3.4, and if Emerald has not yet given its first notice to County under Paragraph 2.4, County shall also pay Emerald the sum of ten thousand dollars (\$10,000.00) and shall reimburse Emerald for all costs Emerald has incurred to the date of termination in connection with Emerald's Landfill Gas recovery utilization operations."

8.11 Emerald may terminate this Agreement in accordance with the provisions of Paragraph 2.9. In Emerald's notice of termination under this paragraph, Emerald shall specify the effective date of termination, which shall be no more than seven (7) years after the notice is given. For such specified period the terms of this Agreement then in effect shall continue, other than as modified by Paragraph 2.9. If Emerald terminates the Agreement pursuant to this paragraph, it shall be entitled to damages calculated as of the effective date of termination. Such damages shall be determined in accordance with Paragraph 8.10, except that any damages other than the Unamortized Value of Emerald's investment in its facilities and Emerald's Prorated Cost of Facility Removal shall be reduced by a factor determined by dividing the operating life of the Short Mountain Landfill from January 1, 1977 to the effective date of termination by a

DECREASE IN REVENUE

reasonable estimate of the landfill's total operating life expectancy based on the solid waste filling conditions existing prior to any change notified by County under Paragraph 2.9.

ARTICLE 9

Warranty of Title

County hereby warrants and agrees to defend the title to the Short Mountain Landfill and the Landfill Gas produced by or in the Short Mountain Landfill up to the point Emerald has control over such Landfill Gas as defined in Paragraph 2.5; warrants that during the term of this Agreement, and any extension thereof, Emerald shall have the quiet enjoyment of its rights under this Agreement; and warrants that there are currently no interpretations of land use restrictions imposed by or through the County that would prohibit or unreasonably interfere with any of Emerald's activities contemplated under this Agreement.

ARTICLE 10

Taxes

Emerald shall, during the term of this Agreement, pay all taxes, if any, that may be levied upon or assessed against the plant site to be identified under Paragraph 5.2 and the facilities, equipment, and improvements constructed or installed by Emerald in, on, or adjacent to the Short Mountain Landfill under this Agreement which are owned by Emerald.

ARTICLE 11

Indemnification

County and Emerald agree to defend, indemnify, and hold the other party, including the other party's officers, employees, servants, agents, and independent contractors, harmless from and against any and all claims, costs, damages, demands, actions, liabilities, or losses (including reasonable attorney fees) for injury or death to person(s) or for damage or loss to property arising out of or caused by its own operations or activities on the Short Mountain Landfill or on the contiguous or adjacent property, unless such injury, death, damage, or loss is caused by the wrongful or negligent act of the other party or that other party's officer(s), employee(s), servant(s), agent(s), or independent contractor(s).

ARTICLE 12

Insurance

12.1 Emerald shall, during the term of the Operational Phase of this Agreement, maintain insurance coverage at its sole cost, as follows: (1) Worker's Compensation insurance, as required by Oregon law; (2) Personal injury and property damage insurance for injury or damage to third persons resulting from Emerald's operations under this Agreement, in a combined single limit of not less than one million dollars (\$1,000,000.00) for death or injury or for property damage as a result of any one

occurrence.

12.2 Emerald shall furnish County certificates of insurance evidencing the insurance coverage required by this Article 12. Emerald shall give County notice at least thirty (30) days before cancellation or material change in any insurance coverage required under this Agreement.

ARTICLE 13

Performance Bond

13.1 Emerald shall provide, commencing with the Operational Phase of this Agreement, and maintain until termination of this Agreement, a performance bond in the amount of twenty-five thousand dollars (\$25,000.00). This bond shall guarantee the faithful performance by Emerald of all of Emerald's obligations under this Agreement. The surety shall be required to give written notice of intention to cease acting as surety at least ninety (90) days in advance of such event.

13.2 Emerald may, upon County's approval of the escrow instructions, which approval shall not be withheld unreasonably, in lieu of its obligation under Paragraph 13.1 to provide and maintain a performance bond, place twenty-five thousand dollars (\$25,000.00) in an escrow account, with all interest from such account to be paid to Emerald. This escrow account shall guarantee the faithful performance by Emerald of all of Emerald's obligations under this Agreement.

ARTICLE 14

Assignment

14.1 Neither County nor Emerald may sell or assign any interest it may have in this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Upon any such sale or assignment of a party's interest herein, that party shall be relieved of any further obligation hereunder as to the interest sold or assigned.

14.2 Emerald may delegate the performance of any obligation it may have under this Agreement without the prior consent of County. Emerald shall give County written notice of any such delegation. Emerald shall remain responsible for any performance it may delegate.

14.3 The terms, conditions, and provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns, and delegates.

14.4 No change or division in the ownership of the Short Mountain Landfill or assignment of the right to payments under this Agreement shall operate to enlarge the obligations or diminish the rights of Emerald. No change, division, or assignment of such rights shall be binding upon Emerald until thirty (30) days after Emerald has been furnished with the original or a certified copy of the instrument evidencing the

same.

ARTICLE 15

Compliance With Laws

15.1 Emerald and County shall comply with all valid laws, rules, regulations, and executive orders of the United States and of the State of Oregon and its political subdivisions that are applicable to this Landfill Gas recovery and utilization operation.

15.2 Emerald shall, at its expense, obtain and comply with all necessary governmental permits required to conduct its operations under this Agreement.

15.3 County shall, at its expense, use reasonable efforts to assist Emerald in obtaining governmental permits and approvals required to conduct Emerald's operations under this Agreement.

15.4 Emerald may contest the validity or applicability of any law, rule, regulation, or order with which it must comply under this Agreement, or the amount or legality of any taxes it is obligated to pay, or any liens for which it may be responsible; provided that Emerald shall indemnify and hold County harmless against any loss that County suffers as a result of such contest.

15.5 At Emerald's request and sole expense, County shall

cooperate in any contests described in Paragraph 15.4 above and shall sign any lawful instrument or document necessary to such contest. The obligations of County in Paragraphs 15.3 and 15.5 shall not apply to or affect the County in any of its roles as a governmental agency exercising regulatory, taxing, land use, or building permit authority.

15.6

15.6.1 County and Emerald, as appropriate, shall pay promptly, as due, all persons supplying labor or material for the prosecution of the work provided for in this Agreement.

15.6.2 County and Emerald, as appropriate, shall pay promptly all contributions or amounts due to the State Industrial Accident Fund and the State Unemployment Compensation Fund from County or Emerald or any subcontractor in connection with the performance of this Agreement.

15.6.3 County and Emerald shall not permit any lien or claim to be filed or prosecuted against Emerald or County on account of any labor or material furnished.

15.6.4 County and Emerald, as appropriate, shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

15.6.5 If County or Emerald fails, neglects, or refuses to make prompt payment of any claim for labor or material furnished to it or its subcontractor by any person in connection with this Agreement as such claim becomes due, the other party may pay such claim to the person furnishing the labor or materi

and charge the amount of payment against funds due or to become due to the first party by reason of this Agreement. The payment of a claim in the manner authorized hereby shall not relieve the nonpaying party, or its surety, from its obligation with respect to any unpaid claim.

15.6.6 County or Emerald, as appropriate, shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to its employees, of all sums which it agrees to pay for such services and all moneys and sums which it collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

15.6.7 County and Emerald shall employ no person for more than eight hours in any one day, or forty hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it. In such cases, County or Emerald, as appropriate, shall pay the laborer at least time and a half pay for all overtime in excess of eight hours a day and for work performed on Saturday and on any legal holidays specified in ORS 279.316. Notwithstanding the foregoing, the provisions of ORS 279.340 and 279.342 shall apply.

15.6.8 The hourly rate of wage to be paid to workers upon all public works shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the

locality where such labor is performed, in accordance with ORS 279.348 to 279.356, or ORS 261.345(2), as may be applicable.

15.6.9 Emerald and County agree to make all provisions of this Agreement applicable, as appropriate, to any subcontractor performing work under this Agreement.

ARTICLE 16

Force Majeure

16.1 This Agreement shall not be terminated, in whole or in part, except as provided in Paragraphs 8.2 and 8.4, nor shall either party be held liable in damage, for failure to comply herewith, if compliance is prevented by, or the failure is a result of, any law, order, ordinance, rule, regulation, or action (other than by Emerald or County), or due to force majeure. The term "force majeure" as used herein shall mean an event or condition beyond a party's reasonable control, including, but not limited to, an act of God or nature; catastrophe; labor disturbance; unreasonable delay in obtaining any required permit or governmental authorization; war; sabotage; underground conditions, site conditions, or chemical or organic substance(s) causing damage to Emerald's equipment or facilities, any of which were not reasonably discoverable at the time of design and construction of Emerald's Landfill Gas recovery and utilization facilities; unavailability or delays in delivery of any product

labor, fuel, service, or material; or failure or breakdown of Emerald's equipment that requires the equipment not be used for thirty days or longer period of time.

16.2 If Emerald's operations are at any time prevented or affected by any of the causes referred to in Paragraph 16.1, the performance of its obligations to the extent so prevented or affected shall be excused without liability hereunder, and this Agreement shall continue in full force and effect.

ARTICLE 17

Communications

17.1 Any notice or communication to be given under this Agreement shall be in writing. Notices may be hand-delivered or sent by regular United States mail, postage prepaid, and properly addressed. Notices shall be considered duly given and received on the second weekday after the date of mailing, except for any notices that are required by this Agreement to be actually received by the party to whom sent.

"17.2. All notices to be sent of County shall be sent to:

Lane County Waste Management Division
Public Service Building
125 E. 8th Avenue
Eugene, OR 97401
ATTN: Michael Turner"

"17.3. All notices to be sent to Emerald shall be sent to:

Emerald People's Utility District
33733 Seavey Loop Road
Eugene, OR 97405
ATTN: Alan Zelenka"

17.4 Either party may change the address at which it is to receive notice by written notice of such change of address given to the other party.

ARTICLE 18

Arbitration of Disputes

18.1 All controversies or claims arising out of or relating to this Agreement shall be governed by the provisions of this Article 18 and by the provisions of Paragraph 8.10.

18.2 County and Emerald agree to create an Operating Committee in order to facilitate cooperation and to avoid and resolve disputes relating to operations at the Short Mountain Landfill. County and Emerald shall each appoint two persons to serve on the Operating Committee. The Operating Committee may meet from time to time to facilitate cooperation and to attempt to resolve any controversy or claim arising out of or relating to this Agreement by negotiating in good faith. The parties may, by mutual agreement, use a mediator to facilitate such negotiations.

18.3 In the event that any controversy or claim arising out of or relating to this Agreement, or any breach thereof, is not settled by negotiation, such controversy or claim shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Oregon court having jurisdiction thereof.

This Agreement's terms and conditions, which establish the arbitrator's power to resolve disputes, are jurisdictional. Whenever possible, such terms and conditions shall be strictly construed to effect the plain meaning of the parties' contract. To the extent not inconsistent with the Commercial Arbitration Rules of the American Arbitration Association, the rules of evidence and procedure applicable in the Circuit Court of Oregon for Lane County shall apply to any arbitration conducted under this Paragraph 18.3.

18.4 In the event that there are no Commercial Arbitration Rules of the American Arbitration Association then in effect, the provisions of ORS 33.210 to 33.340 (1985) shall control.

ARTICLE 19

Definitions

19.1 Commercial Quantities: Amounts of Landfill Gas deemed by Emerald in its sole judgment to be sufficient to pay for all costs of recovery and utilization of Landfill Gas, including without limitation costs of capital improvements, debt service requirements, taxes and assessments, payments to County, and operation and maintenance, plus a reasonable amount in addition to all such costs.

19.2 Landfill Gas: Any and all gases, including but not limited to methane and carbon dioxide, that are produced by decomposition of material in or at the Short Mountain Landfill; the term Landfill Gas also includes any and all components or

products recovered in association with such gases.

19.3 Net Electricity: The quantity of electricity produced by Emerald from Landfill Gas at the Short Mountain Landfill, less the quantity of electricity used by Emerald for the collection, treatment, processing, and utilization of Landfill Gas and any of its byproducts, including reasonable losses associated with the transformation of electricity generated at the Short Mountain Landfill.

19.4 Prorated Cost of Facility Removal: For the purposes of Paragraphs 8.8 and 8.10, the Prorated Cost of Facility Removal shall be the reasonable costs for physically removing Emerald's facilities, improvements, equipment, transmission lines, and pipes still in service as provided in Article 6 less one-thirtieth (1/30) of such reasonable costs for each full year each such item has been in service.

19.5 Recycled Materials: Any inorganic materials, clothing, newspaper, cardboard, used dimensional lumber, and up to ten thousand (10,000) cubic yards of yard debris which are never delivered to a County solid waste facility for landfill disposal because of commercial or source-separated recycling, even if such recycling is sponsored or conducted by the County. The volume of yard debris that qualifies as Recycled Materials under this Paragraph shall be adjusted, if necessary, so that such volume in any future year shall have the same relationship to 10,000 incoming cubic yards as the population of the Eugene-Springfield standard metropolitan statistical area in that

future year shall have to the present population of 200,000.

19.6 Short Mountain Landfill: The real property owned by County and currently operated by County as a solid waste disposal facility, illustrated in Exhibit "A", and further described as follows:

The East 1/2 of the Northeast 1/4, the Northeast 1/4 of the Southeast 1/4, Section 35; the Northwest 1/4, the West 1/2 of the Northeast 1/4, the North 1/2 of the Southeast 1/4, the North 1/2 of the Southwest 1/4, and Lots 1, 2, 3, and 4 of Section 36, all in Township 18 South, Range 3 West of the Willamette Meridian, in Lane County, Oregon; EXCEPTING that portion lying Westerly of the Easterly line of property conveyed to Oregon State Highway Commission, by Deed recorded November 4, 1953, Reception No. 16251, Lane County Oregon Deed Records, and by Deed recorded April 28, 1950, in Book 414, Page 57, Lane County Oregon Deed Records, in Lane County, Oregon.

19.7 Unamortized Value. For purposes of Paragraphs 8.8 and 8.10, the Unamortized Value of each of Emerald's facilities, improvements, equipment, wells, transmission lines, and pipes is the original cost of each such unit less one-thirtieth (1/30) of its original cost for each full year the unit has been in service.

"19.8. Value of Net Electricity.

The value of the Net Electricity shall be based on Emerald's average cost of electricity from sources other than the Short Mountain Landfill, as follows: For the preceding calendar year, add the dollar amount of Emerald's demand cost to the dollar amount of Emerald's energy costs, and divide the sum of these two amounts by the total number of kilowatt-hours of electricity that Emerald handled in that year, to yield a value of electricity expressed in dollars per kilowatt-hours. (to the nearest ten-thousandth

of a dollar). The resulting dollar per kilowatt-hour amount shall then be multiplied by the Net Electricity produced from the Landfill Gas during the preceding quarter, as measured in kilowatt-hours, to determine the value of the Net Electricity."

"19.9. Value of the Operating Margin.

The value of the Net Electricity, as calculated in accordance with Paragraph 3.4, less all Emerald's reasonable costs for its facilities and operations relating to the Short Mountain Landfill Gas Recovery Project under this Contract for the previous quarter, which costs include: capital, construction, and debt service costs; labor and fringe costs; operation, repair, replacement, maintenance, and equipment expenses; insurance, defense, and claims costs; contracted services; taxes; supplies; reasonable administrative costs; and legal and governmental or other fees (excluding payments to County described in Paragraphs 3.2, 3.4, and 3.5)."

- 19.9 "In the event that Emerald pays for any of its development and construction out of revenues, Emerald's costs for the purpose of calculating the value of operating margin shall be annualized and shall include an in-lieu debt service charge as if Emerald had issued tax-exempt bonds and incurred an actual annual debt service. The in-lieu interest rate to be used for this purpose shall be the most recently listed State of Oregon A rated, 20 year bond index published twice monthly in the Oregon Bond Calendar by the Municipal Debt Advisory Commission through the Oregon State Treasury, plus the difference between the "20 Bond G.O. Index" and the "25 Bond Revenue Index" as listed in the trade magazine "Bond Buyer". The in-lieu interest rate shall be separately calculated and determined each time capital funds are acquired over the life of the project."

20.1 Obligations of Parties: All obligations of County and Emerald under this agreement are expressly set forth herein, and no other obligation or covenants are to be implied hereunder.

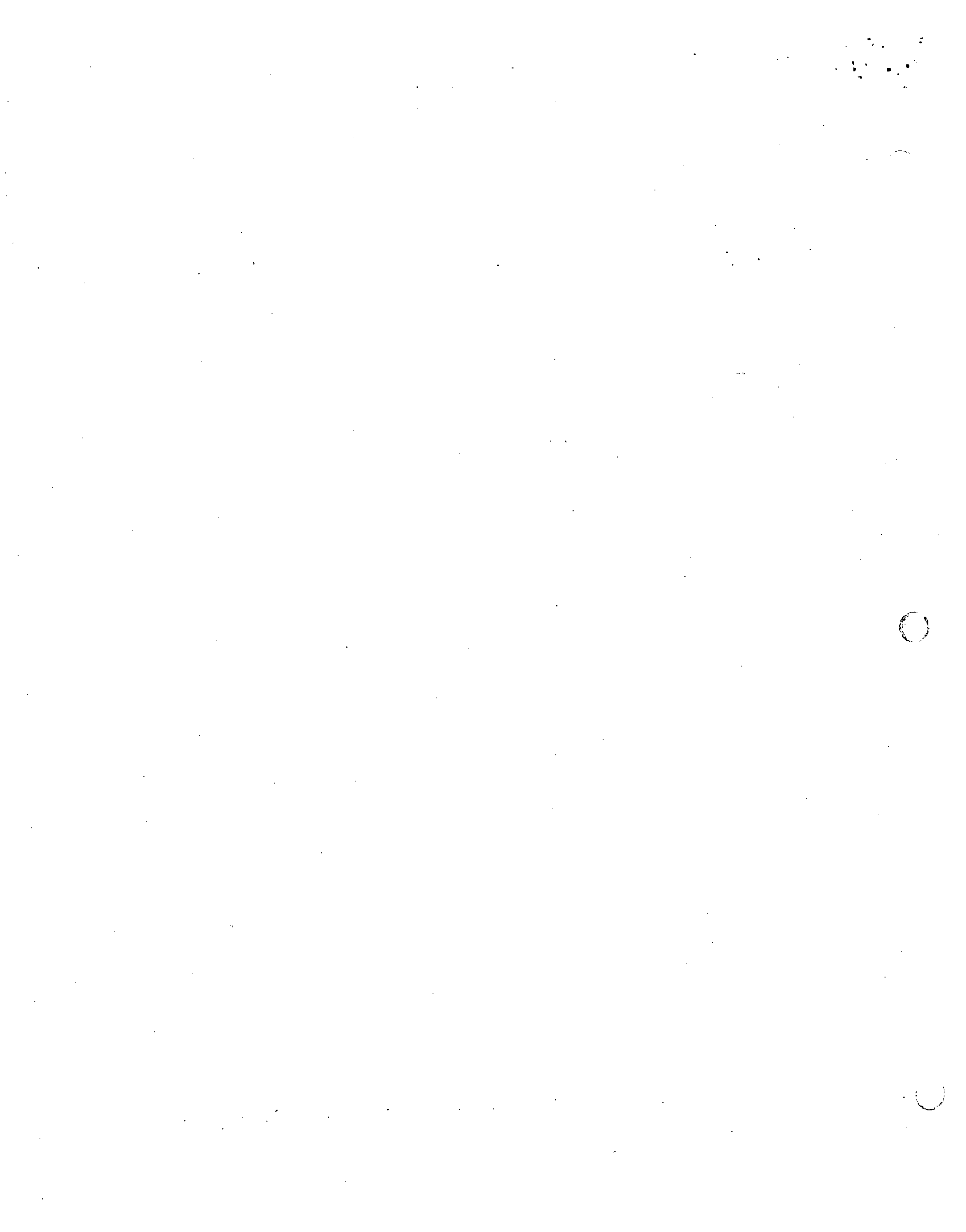
20.2 Entire Agreement: This Agreement is intended by the parties to constitute a complete, final, and exclusive expression of their agreement with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein. This Agreement shall supersede all prior communications, representations, or agreements, either oral or written, between the parties.

20.3 Modification: This Agreement shall not be changed or modified except by a subsequent agreement in writing signed by both parties.

20.4 Waiver: The waiver by either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this agreement shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar thereto.

20.5 Headings: The headings or captions at the beginning of each article or at the beginning of a paragraph are not intended to act as a limitation on the scope or meaning of the article or paragraph itself. The headings or captions are included for the convenience of the reader only.

20.6 Construction: Each party has been represented by counsel during the negotiations leading up to the drafting and execution of this Agreement. Each party has thoroughly reviewed this Agreement and the exhibits which are attached hereto with that respective party's counsel. The rule of construction of a written agreement as construed against the party preparing or



drafting such agreement shall specifically not be applicable to the interpretation of this Agreement.

20.7 Exhibits: All exhibits attached to this Agreement shall be deemed part of this Agreement and incorporated herein, where applicable, as if fully set forth herein.

20.8 Warranty of Authority: Each party hereby warrants that the execution and delivery of this Agreement and the performance of such party hereunder have been authorized by all necessary actions, that the person or persons executing this Agreement on behalf of such party are competent and fully authorized to do so, and that the execution of this Agreement is the lawful and voluntary act of such party.

20.9 Severability: Invalidation of any term or provision herein by judgment or court order, or otherwise, shall not affect any other provisions, which shall remain in full force and effect.

20.10 Execution of Other Documents: The parties agree to execute whatever documents are necessary to effectuate the purposes of this Agreement.

20.11 Persons Affected: This Agreement is not intended to nor shall it confer any right or benefit whatsoever upon any person or entity other than the parties hereto. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Agreement.

20.12 Several Obligations: Except where specifically stated

in this Agreement to be otherwise, the duties, obligations, and liabilities of the parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either party. Each party shall be individually and severally liable for its own obligations under this Agreement.

20.13 Simultaneous Execution: This Agreement shall be simultaneously executed and delivered in two counterparts, each of which when so executed and delivered shall be deemed to be an original, and shall constitute one and the same instrument.

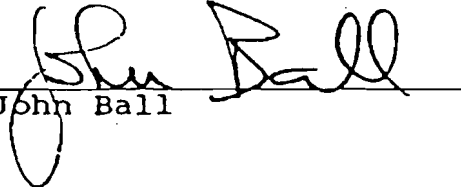
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names as of the first above written.


COUNTY OF LANE COUNTY

EMERALD PEOPLE'S UTILITY DISTRICT

BY: 
Chuck Ivey, Chair


BY: 
Ron Davis, President

BY: 
John Ball

BY: 
Douglas M. Still
Vice President

APPROVED AS TO FORM

Date 10-3-86 Lane County


OFFICE OF LEGAL COUNSEL

BY: *Peter DeFazio*
Peter DeFazio

BY: *Sigrid Rasmussen*
Sigrid Rasmussen
Treasurer

BY: *Bill Rogers*
Bill Rogers

BY: *Jim Capps*
Jim Capps

BY: *Gerald H. Rust, Jr.*
Gerald H. Rust, Jr.

BY: *Dick Eymann*
Dick Eymann

SHORT MOUNTAIN LANDFILL

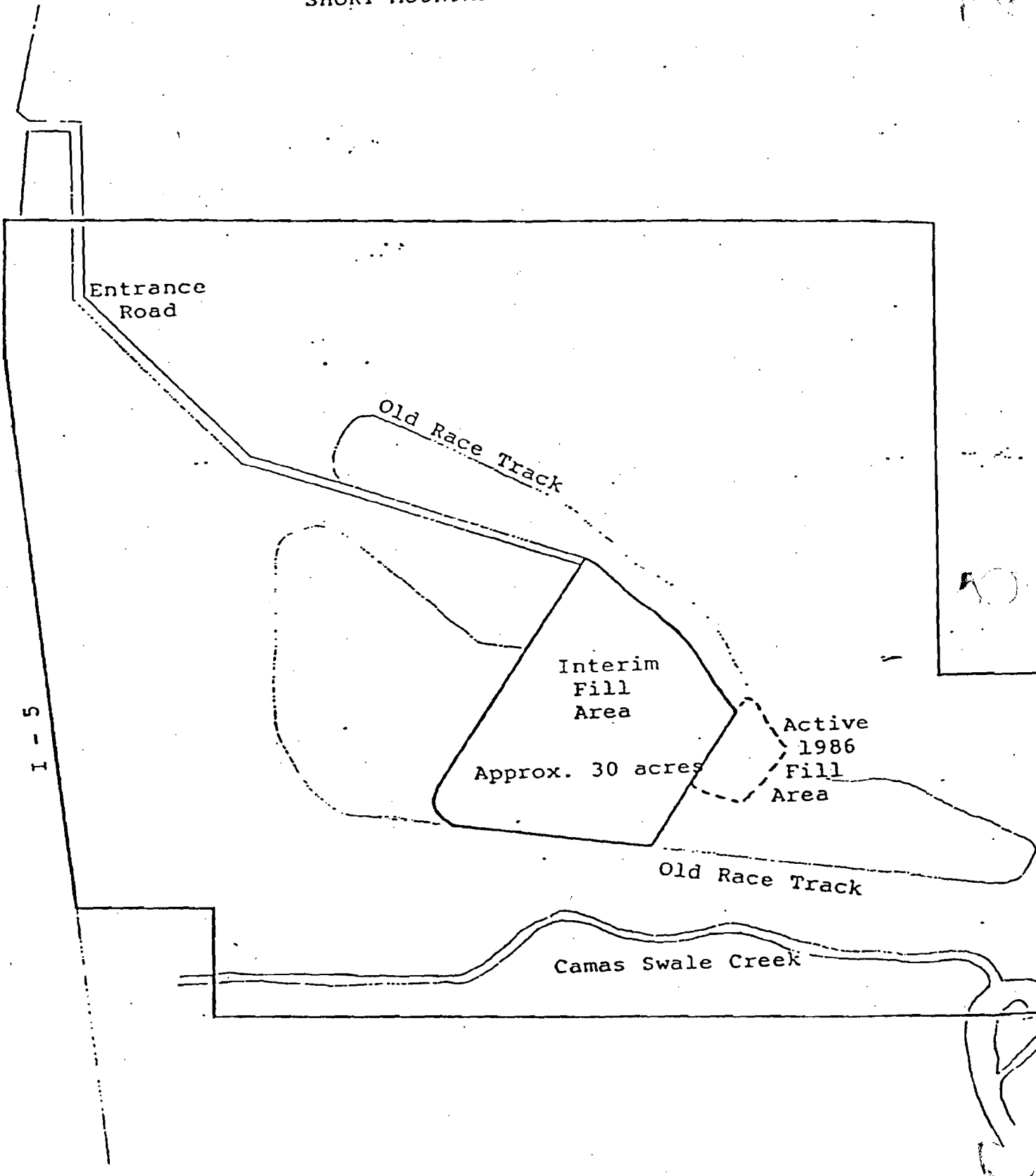


EXHIBIT A