

SETTLEMENT AGREEMENT

BETWEEN THE
CITY OF MCKINNEY,
CONSTRUCTION RECYCLING AND WASTE CORPORATION,
(CRWC)
AND
380-MCKINNEY, L.P.

EXECUTED DECEMBER 19, 2001

- Ex. A: Legal Description
- Ex. B: Application Requirements and Review Process
- Ex. C: Draft: Avigation and Hazard Easement
- Ex. D: Draft: Bird Control Manual for City of McKinney, Municipal
Landfill and North Texas Municipal Water District

(scanned to g:McKinney)

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF MCKINNEY,
CONSTRUCTION RECYCLING AND WASTE CORPORATION,
AND 380-MCKINNEY, L.P**

This Settlement Agreement (the "Agreement") is by and between the City of McKinney, Texas ("McKinney"), Construction Recycling and Waste Corporation ("CRWC"), and 380-McKinney, L.P. ("380-McKinney") for the purposes and consideration set forth herein.

RECITALS

WHEREAS, McKinney is a home rule city, a municipal corporation organized and operating in accordance with its charter and the laws of the State of Texas; and

WHEREAS, CRWC is a Texas corporation having its principal place of business in Dallas County, Texas; and

WHEREAS, 380-McKinney is a Texas limited partnership with its principal place of business in Dallas County, Texas; and

WHEREAS, 380-McKinney owns certain property (the "Property"), which property is more fully described in the attached Exhibit "A"; and

WHEREAS, CRWC has leased the Property from 380-McKinney and intends to develop the Property as a Type-IV municipal solid waste facility; and

WHEREAS, CRWC has filed with the Texas Natural Resource Conservation Commission (the "TNRCC") an application for a permit to operate a Type IV municipal solid waste facility on the Property (the "Application"), which Application is pending; and

WHEREAS, McKinney filed with the TNRCC a protest to the approval of the Application, and has been granted party status in the contested case proceeding regarding the Application; and

WHEREAS, McKinney and CRWC mutually desire to resolve the dispute between them regarding the proposed Type IV municipal solid waste facility for the Property; and

WHEREAS, McKinney and CRWC mutually desire to enter into this Agreement setting forth the terms and conditions pursuant to which McKinney will withdraw its opposition to the Application and CRWC and 380-McKinney will agree to undertake certain other obligations for the Property as described herein and in the permit to be issued by the TNRCC for the Property.

NOW, THEREFORE, in consideration of the promises, mutual agreements, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in settlement of disputed claims, McKinney, CRWC, and 380-McKinney hereby contract and agree as follows:

ARTICLE I

DEFINITIONS

The following terms and phrases shall have the definitions stated below for purposes of this Agreement:

1.1 "*Application*" means CRWC's application for MSW Permit No. 2278 to operate a municipal solid waste facility that is the subject a hearing before the State Office of Administrative Hearings, SOAH Docket No. 582-01-1848; TNRCC Docket No. 2001-0089-MSW.

1.2 "*City*" or "*McKinney*" shall mean the City of McKinney, Texas.

1.3 "*Commence construction of the Facility*" shall mean any construction activity contemplated by the Permit, including but not limited to, road construction, building improvements, liner construction, and addition of new utilities, but shall not mean any operations related to quarrying.

1.4 "*Commercial hauler*" or "*commercial truck*" means a hauler or truck, hired by another, that is used in the business of hauling or trucking.

1.5 "*CRWC*" means Construction Recycling & Waste Corporation, and any successors or assigns of CRWC.

1.6 "*FAA*" means the Federal Aviation Administration, or any predecessor or successor to that agency.

1.7 "*Facility*" means the Type IV municipal solid waste facility to be authorized, or authorized, under TNRCC MSW Permit No. 2278.

1.8 "*Force Majeure*" shall mean any cause not due to the fault, negligence, or inaction of a Party, and beyond the reasonable control of that Party. Examples of Force Majeure include, but are not limited to, Acts of God; fire; unavoidable accidents; civil war or conditions arising out of or attributable to war (declared or undeclared); floods, storms, earthquakes, and other natural disturbances; and insurrections, riots, and other civil disturbances.

1.9 "*Life of the Facility*" shall mean the period of time until the Facility has permanently stopped accepting waste and has provided notice to the TNRCC of intent to close in accordance with the laws of the State of Texas and the regulations of the TNRCC. The Life of the Facility does not include the period of time necessary for closure and post-closure care maintenance of the Facility in accordance with Commission regulations.

1.10 "*McKinney Landfill*" means the landfill operated by North Texas Municipal Water District, which is located approximately 2 miles NE of the State Highway 121/US 75 intersection, and authorized under TNRCC MSW Permit No. 0568.

1.11 "*Party*" and "*Parties*" means the parties to this Agreement, identified in the introductory paragraph of the Agreement.

1.12 "*Permit*" shall mean TNRCC MSW Permit No. 2278.

1.13 "*Property*" means the property identified in Exhibit A.

1.14 "*TNRCC*" and "*Commission*" mean the Texas Natural Resource Conservation Commission, or any predecessor or successor to that agency.

1.15 "*Type IV Solid Waste*" means waste that is so classified by the TNRCC.

1.16 "*380-McKinney*" shall mean 380-McKinney, L.P., a Texas limited partnership, and any successors or assigns of 380-McKinney.

To the extent that any of the terms defined above are also defined elsewhere in this Agreement, and a conflict exists between the definitions, the definitions stated above shall control. Any term not defined above or elsewhere in this Agreement, shall have the same meaning as provided by Texas statutes and TNRCC regulations, if any.

ARTICLE II

SETTLEMENT OF TNRCC DISPUTE

2.1 Upon execution of this Agreement, McKinney agrees to withdraw its protest of CRWC's Application for the Permit to operate a municipal solid waste facility in SOAH Docket No. 582-01-1848; TNRCC Docket No. 2001-0089-MSW and to dismiss any pending motions in that matter. Within 10 calendar days of the execution of this Agreement, McKinney shall execute and file with the Administrative Law Judge a Motion to Withdraw as a party to the contested case proceeding regarding the Application. McKinney shall also take any other action necessary to terminate its party status in such proceeding.

2.2 Within 15 calendar days of the execution of this Agreement, CRWC agrees to dismiss any pending motions filed against McKinney in SOAH Docket No. 582-01-1848; TNRCC Docket No. 2001-0089-MSW.

2.3 From and after the date of execution of this Agreement, McKinney and its attorneys shall not oppose, protest, challenge, appeal, or otherwise contest the Application. In addition, neither McKinney nor its attorneys will join with, aid or assist, directly or indirectly, any other person, firm corporation or association in opposing, protesting, challenging, appealing or otherwise contesting the Application. Within 10 business days after execution of this Agreement, McKinney shall notify, in writing, each consultant and expert who has performed services for McKinney regarding the Application, informing such consultant that McKinney has

withdrawn from the TNRCC contested case proceeding regarding the Application, that it would not be in the best interest of McKinney for the consultant to participate in such contested case proceeding, and that McKinney requests that the consultant not participate in any way in such contested case proceeding or any other activity opposing the Application.

2.4 CRWC shall ensure the final permit issued by the TNRCC is consistent with this Agreement.

ARTICLE III

CITY DEVELOPMENT PROCESS

3.1 CRWC and 380-McKinney agree to submit to McKinney a complete application and supporting documentation to plat and site plan the Property and to change the current zoning of "AG"-Agricultural to a zoning designation appropriate for a Type IV landfill (collectively referred to hereinafter as the "CRWC/McKinney Application"), such as "ML"-Light Manufacturing or "PD"-Planned Development District. CRWC and 380-McKinney shall pursue the CRWC/McKinney Application until final decision on such application by the City Council. CRWC and 380-McKinney shall submit a site plan as part of the CRWC/McKinney Application for City Council approval as part of any requested zoning of the Property. The site plan for the 136 acre tract comprising the Property, however, shall be provided to McKinney for illustration purposes only, and shall not be subject to McKinney's approval.

3.1.1 The CRWC/McKinney Application shall be deemed complete if it contains each of the documents specified in Exhibit B attached hereto and incorporated herein fully by reference (however, McKinney may waive the requirement to submit any or all of the submittal documents) and any required application fees. With regard to the 136-acre tract, submission by CRWC of the sequential fill plans attached to its Permit application shall suffice as a site plan. Furthermore, since the site plan for the 136-acre tract is being submitted for informational purposes only, the site plan is not required to contain an approval block or be accompanied by a letter of intent in order for the CRWC/McKinney Application to be deemed complete.

3.1.2 McKinney agrees to process the CRWC/McKinney Application as a unified submittal and further agrees to advertise and present the submittals to any approval bodies concurrently (not sequentially). McKinney shall review and comment upon the CRWC/McKinney Application within ten (10) business days of its submittal. CRWC and 380-McKinney shall resubmit their responses to McKinney within five (5) business days of their receipt of any comments requiring responses.

3.1.3 A final decision (the "Final Decision") by McKinney on the CRWC/McKinney Application shall be conclusively deemed to have occurred on the earlier of the following dates: 1) a final decision by the City Council approving, conditionally approving, partially approving or denying, or denying the CRWC/McKinney Application, or 2) a date one-hundred and twenty (120) calendar days after the initial submission by CRWC to McKinney of the CRWC/McKinney Application.

3.1.4 McKinney and CRWC and 380-McKinney agree to process the CRWC/McKinney Application expeditiously and in good faith.

3.2 CRWC shall not Commence construction of the Facility until it has submitted the CRWC/McKinney Application to McKinney, and has obtained a Final Decision from McKinney on the CRWC/McKinney Application. The Parties agree that McKinney shall be entitled, but not limited, to injunctive relief to enforce this paragraph because construction of the Facility before a Final Decision on the CRWC/McKinney Application would render ineffectual a judgment in any litigation to enforce McKinney's regulations relating to the development of the Property. The Parties further agree that Commencement of construction of the Facility by CRWC before the Final Decision is a breach of its obligations contained in this paragraph, and that McKinney would suffer imminent harm, that it would suffer irreparable injury, and that McKinney would have no adequate remedy at law.

3.3 Except as expressly stated in this Agreement, neither party is waiving any rights that it might have under any applicable state or federal Constitutional provisions, statutes, regulations, ordinances or other laws, including, but not limited to, §43.002 of the Texas Local Government Code and §363.112 of the Texas Health & Safety Code.

ARTICLE IV **OPENING DATE AND CLOSURE DATE OF** **MUNICIPAL SOLID WASTE FACILITY**

4.1 CRWC agrees not to accept waste at the Facility until June 1, 2003 or the date the McKinney Landfill no longer accepts waste, whichever is earlier. CRWC may accept waste at the Facility at an earlier date upon written agreement by McKinney.

4.2 McKinney agrees to provide CRWC written notice of the date the McKinney Landfill will no longer accept waste. McKinney will use its best efforts to provide CRWC with notice of closure at least 90 calendar days prior to such date. At a minimum, McKinney will provide written notice that the McKinney Landfill will no longer accept waste within five (5) business days of the date McKinney receives notice from North Texas Municipal Water District of its intent to close the McKinney Landfill.

4.3 CRWC agrees that it will stop accepting waste at the Facility thirty (30) years from the date it first begins to accept waste. However, CRWC may request McKinney to amend this Agreement to allow CRWC to accept waste at the Facility for a longer period of time.

ARTICLE V **HOST FEE AND CITY INSPECTOR**

5.1 CRWC agrees to pay to McKinney a host fee for each commercial truck that deposits waste at the Facility during the Life of the Facility of \$3.00 for each commercial truck with a capacity equal to or greater than twenty (20) cubic yards ("Large Truck"), and \$2.00 per commercial truck with a capacity less than twenty (20) cubic yards ("Small Truck").

5.2 CRWC will collect the host fee throughout each year for the Life of the Facility and will submit the host fee to McKinney no later than March 1 for the prior calendar year's collections.

5.3 McKinney shall have the right to inspect, at its expense and during the Facility's hours of operation, the Facility records or CRWC records maintained for host fee purposes to verify the accuracy of the host fee payments under this Settlement Agreement, upon reasonable prior notice to CRWC by McKinney.

5.4 In addition to the host fee, CRWC agrees to pay McKinney \$30,000 per year on January 1 of each year for the Life of the Facility, beginning on the first year that CRWC accepts waste at the Facility, to be used at McKinney's discretion to employ an inspector or other employee for the City of McKinney.

5.5 In the first year CRWC begins accepting waste at the Facility, CRWC shall make the payment for the McKinney inspector/employee position within five (5) business days of the date CRWC begins accepting waste. The payment shall be pro rated for the year based on the number of days remaining in the calendar year from the date CRWC begins accepting waste.

ARTICLE VI
HEIGHT OF LANDFILL, AVIGATION EASEMENT
AND BIRD CONTROL PLAN

6.1 CRWC and 380-McKinney agree to cause the Avigation Easement, a draft form of which is attached hereto as Exhibit C, to be recorded in the Collin County Real Property Records within ten calendar (10) days upon the completion of the description of the tracts subjected to the Avigation Easement and of a survey of the Property conducted CRWC. The survey shall be conducted at CRWC's cost and it intended to provide the necessary legal description for the Avigation Easement. The Avigation Easement shall be filed in the Collin County Real Property Records within sixty (60) days from date of this Agreement. McKinney shall not object to any amendment to the Permit sought by CRWC to alter the Facility's configuration on the Property or to increase the capacity of the Facility, as described in the Application, in order to offset any loss of landfill capacity or increased costs to reconfigure the Facility caused by the imposition of the Avigation Easement on the Property. CRWC shall notify McKinney of any amendment to the Permit before seeking it so as to provide McKinney the opportunity to unilaterally revoke the Avigation Easement so that an amendment is unnecessary. CRWC shall not seek a permit amendment to increase the capacity of the Facility or alter its configuration if McKinney revokes the Avigation Easement within thirty (30) days after receipt of notice from CRWC.

6.2 Upon request by CRWC or 380-McKinney, McKinney shall release the Avigation Easement over the Property for the reasons provided in the Avigation Easement.

6.3 The Avigation Easement shall survive any termination of this Agreement.

6.4 CRWC agrees to implement the draft Bird Control Manual attached hereto as Exhibit D as necessary and as to the extent required by the FAA under applicable McKinney Municipal Airport grant assurances. The parties agree that the draft Bird Control Manual may be amended to conform to the FAA requirements applicable to Type IV landfills.

ARTICLE VII

TRAFFIC AND MUD CONTROLS

7.1 CRWC agrees to construct acceleration and deceleration lanes for both the entrance to the Facility and to the quarrying operations conducted on the Property, subject to approval by the Texas Department of Transportation (TxDOT).

7.2 CRWC agrees to have installed at its own expense an overhanging warning signal at the entrance of the Facility, subject to approval by TxDOT. If TxDOT fails to approve an overhanging warning signal, CRWC will have installed two warning signs with yellow flashing lights attached, one for the east bound traffic before the Facility entrance, and one for west bound traffic before the entrance to the quarry operations. The purpose of the signs is to warn traffic on Highway 380 of the entrance and exit of large trucks at the Facility and quarry operations. The size, warning language, and location will be in accordance with the requirements of TxDOT. The installation of signs with yellow flashing lights is subject to approval by TxDOT. If TxDOT fails to approve the warning signs with yellow flashing lights, CRWC will seek approval from TxDOT for warning signs without flashing lights.

7.3 Refusal by TxDOT to permit CRWC to construct acceleration and deceleration lanes as described by Section 7.1 or to permit CRWC to install traffic lights, warning lights, or warning signs does not constitute a breach of this Agreement on the part of CRWC. However, CRWC agrees to seek approval of these traffic controls in good faith.

7.4 CRWC agrees to purchase and have installed two (2) "No Thru Truck Traffic" warning signs at the entrances of the neighborhoods near the Facility. The size, color, height and locations of the signs shall be determined by McKinney's Engineering Department and shall be in accordance with the standards prescribed by McKinney's Engineering Department. The signs shall be installed before CRWC begins accepting waste at its Facility.

7.5 CRWC shall have no maintenance responsibilities for any lights or signs as described in this Article after installation.

7.6 CRWC agrees to remove unsafe accumulations of mud deposited by trucks departing from the Facility on U.S. Highway 380 within one-half (½) mile of the entrances to the Facility and the quarry operations. If mud unsafely accumulates on U.S. Highway 380 within one-half (½) mile of the Facility and quarry entrances as a result of the operations at the Facility, CRWC agrees to prohibit the entrance of additional trucks into the Facility or quarry operations until corrective action has been taken to remove the unsafe accumulations of mud from U.S. Highway 380.

7.7 If wastewater is generated on-site from washing trucks, CRWC shall dispose of such water in the Facility evaporation pond or utilizing other methods approved by the TNRCC.

ARTICLE VIII

HOURS OF OPERATION

8.1 CRWC agrees to accept waste only during the following hours:

Monday through Friday:	8:00 a.m. to 6:00 p.m.
Saturday:	10:30 a.m. to 3:30 p.m.
Sunday:	Closed

8.2 CRWC and 380-McKinney agree that the operations of the Facility shall only occur during the following hours:

Monday through Friday:	8:00 a.m. to 7:00 p.m.
Saturday:	10:30 a.m. to 4:30 p.m.
Sunday:	Closed

8.3 CRWC and 380-McKinney agree that any blasting associated with the quarrying activities on the Property will occur only during the following hours:

Monday through Friday:	9:00 a.m. to 4:00 p.m.
Saturday:	None
Sunday:	None

8.4 CRWC agrees not accept waste at the Facility on the following holidays:

- Thanksgiving
- Christmas
- Fourth of July
- Memorial Day
- Labor Day

8.5 The hours identified in this Article may be changed by CRWC and 380-McKinney upon written consent of McKinney.

8.6 CRWC and 380-McKinney may operate the Facility at hours other than those specified herein in the event of an emergency or a Force Majeure, in which case oral notice shall be given to McKinney as soon thereafter as practicable.

ARTICLE IX

FENCING

9.1 CRWC shall install a chain link fence, topped with barbed wire, parallel to the eastern boundary of the Property.

9.2 CRWC shall conduct an inspection of all perimeter fences twice a month during the Life of the Facility.

ARTICLE X

GROUNDWATER MONITORING AND REPORTS

10.1 CRWC shall notify McKinney of all groundwater sampling done by it or on its behalf, unless McKinney requests it to cease providing such notice.

10.2 During the term of the Agreement, CRWC shall annually sample groundwater for the constituents identified in Tables 1 and 2 of the Application's Attachment 11 to the Site Development Plan, which is incorporated by reference into the Permit. CRWC shall conduct more frequent sampling if warranted by any sampling results.

10.3 CRWC shall deliver copies of all well monitoring reports and groundwater data evaluations to McKinney. CRWC shall evaluate groundwater data in accordance with TNRCC standards to determine if volatile organic compounds or heavy metals are present, if there is any change from background of any of the tested constituents, and, if so, the significance, if any, of such change.

ARTICLE XI

TRIP TICKETS AND NOTICE OF ILLEGAL WASTES

11.1 CRWC's trip tickets shall identify the origin of the waste being delivered to the landfill.

11.2 CRWC shall not accept, but shall reject, any wastes carried by McKinney's contracted hauler that originates within McKinney, unless McKinney and CRWC agree otherwise in writing.

11.3 CRWC shall provide McKinney with a copy of any notice that it provides to the TNRCC of the dumping of illegal wastes at the landfill. "Illegal wastes" are defined, for the purpose of this paragraph, as wastes that are not allowed to be deposited at the Facility pursuant to the TNRCC regulations and the Permit.

ARTICLE XII
SALE AND ASSIGNMENT OF PROPERTY AND FACILITY,
AMENDMENTS TO PERMIT

12.1 CRWC shall provide McKinney with a copy of any proposed modification or amendment to the Permit, no matter how minor.

12.2 In the event CRWC or 380-McKinney assigns, transfers, or sells any portion of CRWC or the Property, CRWC shall require or cause to be required as a condition of any such transfer or sale that the third-party transferee consent to the assumption of CRWC's rights and obligations under this Agreement.

12.3 CRWC and 380-McKinney agree to cause this Agreement and any amendments to be recorded in the Collin County Real Property Records as a covenant running with the land to be binding on any subsequent owners of the land for the term of this Agreement or until this Agreement is otherwise terminated prior to the term of this Agreement.

12.4 McKinney may not assign this Agreement or any of its rights, obligations, or responsibilities hereunder; however McKinney may use third-party subcontractors under its supervision to perform obligations under this Agreement.

ARTICLE XIII
FINANCIAL ASSURANCE

13.1 CRWC shall provide financial assurance for closure and post-closure care of the Facility in accordance with the regulations of the TNRCC and the Permit in the amount of at least \$1,100,000.

ARTICLE XIV
TERM AND TERMINATION OF AGREEMENT

14.1 Unless terminated pursuant to the provisions hereof, this Agreement shall remain valid and enforceable until such time that CRWC has completed post-closure care maintenance of the Facility as required by the laws of the State of Texas and TNRCC regulations, or until superseded by subsequent written agreement.

14.2 CRWC may terminate this Agreement if it is unable to obtain any necessary governmental approval, license, waiver or permit to operate a landfill at the Facility; if any such governmental approval, license, waiver, or permit is withdrawn or canceled; or if CRWC decides to permanently terminate all permitted operations at the Facility and CRWC or the TNRCC closes the Facility in accordance with state statutes and regulations. Notwithstanding the termination provisions above, for so long as the Application is pending before the TNRCC or the Facility is permitted to operate under TNRCC Permit No. 2278, as amended, the Agreement shall remain in effect and shall not terminate.

14.3. This Agreement may otherwise be terminated only upon written consent of CRWC, 380-McKinney, and McKinney.

ARTICLE XV **FORCE MAJEURE.**

15.1 In the event of any Party, is rendered unable, in whole or in part, by Force Majeure to carry out its obligations under this Agreement, such Party shall give Notice of the particulars of such Force Majeure in writing to the other Parties as soon as practicable after the occurrence of the cause relied on. The obligation of the Party giving Notice, insofar as it is affected by such Force Majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such inability shall as far as practicable, be remedied with all reasonable dispatch. All time periods specified in this Agreement for the performance of obligations or the enjoyment of rights that are affected by Force Majeure shall be extended by the period of time the inability caused by such Force Majeure exists.

15.2 No Party shall be in default if the action of the Party, failure to perform by the Party, or delay in performance by the Party that would otherwise constitute the default was caused by Force Majeure.

ARTICLE XVI **MISCELLANEOUS**

16.1 No agreements, other than this Agreement, now exist or have ever existed between McKinney and CRWC concerning the subject matter of this Agreement.

16.2 This Agreement shall be binding on McKinney, 380 McKinney, and CRWC and shall be binding on and inure to the benefit of the successors and assigns of the respective parties to this Agreement.

16.3 This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof. No modifications of this Agreement shall be of any force and effect whatsoever, except as by subsequent modification in writing signed by the parties.

16.4 Any notice required or permitted to be given under this Agreement by one party to the other shall be in writing and the same shall be deemed to have been served and given if (i) delivered in person to the address set forth below for the party to whom the notice is given or (ii) placed in the United States mail by certified mail, postage prepaid and return receipt requested, addressed to the party to whom the notice is given at the address set forth below. Notice shall be effective upon receipt.

The address for the City of McKinney for all purposes under this Agreement and for all notices herein shall be:

Attn: City Manager
City of McKinney
222 N. Tennessee
McKinney, Texas 75069

The address for CRWC for all purposes under this Agreement and for all notices herein shall be:

Attn: Thomas E. Brosseau
Construction Recycling and Waste Corporation
5950 Berkshire Lane, Suite 700
Dallas, Texas 75225

The address for 380-McKinney for all purposes under this Agreement and for all notices herein shall be:

Attn: Thomas E. Brosseau
380-McKinney, L.P.
5950 Berkshire Lane, Suite 700
Dallas, Texas 75225

From time to time either party may designate another address within the United States for all purposes of this Agreement by giving the other party not less than ten (10) calendar days advance notice of such change of address in accordance with the provisions hereof.

16.5 CRWC shall deliver to McKinney copies of all notices and other documents CRWC is required to file with the TNRCC.

16.6 The section and paragraph headings contained in this Agreement are for reference purposes only and do not affect in any way the meanings or interpretations of this Agreement.

16.7 The provisions of this Agreement shall be governed by and construed and enforced in accordance with the substantive laws of the State of Texas, not taking into account any conflicts of laws principles. However, notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be construed to require CRWC, its agents, consultants, employees, representatives, successors, or assigns to act in violation of any governmental requirement, including, but not limited to, any federal or state legal requirement or any regulatory requirement of the TNRCC or the U.S. Environmental Protection Agency. To the extent any such federal or state governmental requirement is in conflict with any provision of this Agreement, the governmental requirement shall apply.

16.8 This Agreement is performable in Collin County, Texas. Any action at law or in equity brought to enforce any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in Collin County, Texas.

16.9 In the event of a default hereunder by any Party, any other Party shall be entitled to seek damages, specific performance, injunctive relief, or any other remedy to which it might be entitled in law or at equity.

16.10 Whenever the context requires, the gender of all words herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and the plural.

16.11 This Agreement was prepared and drafted jointly by legal counsel representing McKinney, CRWC, and 380-McKinney.

16.12 Exhibit "A," attached hereto, is a description of the Property and is incorporated herein by reference for all purposes.

16.13 Exhibit "B," attached hereto, is a list of documents necessary for a complete CRWC/McKinney Application and is incorporated herein by reference for all purposes.

16.14 Exhibit "C," attached hereto, is the Avigation Easement and is incorporated herein by reference for all purposes.

16.15 Exhibit "D," attached hereto, is the draft Bird Control Manual and is incorporated herein by reference for all purposes.

16.16 If any provision in this Agreement shall for any reason be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and in lieu thereof shall be substituted a new provision that is as near to the intent of the parties without being invalid, illegal or unenforceable.

16.17 The parties hereto covenant and agree that they shall execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Agreement.

16.18 This Agreement may be executed in multiple originals, either copy of which shall be considered to be an original.

16.19 This Agreement shall be effective on the date of execution below.

16.20 The signatories hereto represent and affirm that they have the authority to execute and bind the Party on whose behalf they sign below.


16.21 The Parties agree that nothing in this Agreement shall create any third-party beneficiary rights for any Person.

16.22 In the event of any suit between McKinney and CRWC to enforce or interpret the terms of this Agreement, any suit concerning the subject matter of this Agreement, any suit arising from McKinney's failing to approve the CRWC/McKinney Application, or suit concerning CRWC's right to construct or operate the Facility at the Property, then the prevailing Party shall recover its reasonable attorney's fees, expert witness fees, and all other costs and expenses incurred in resolving the suit from the non-prevailing Party.

EXECUTED AND AGREED TO by the parties hereto this 19th day of December, 2001.

CITY OF MCKINNEY, TEXAS

380-McKINNEY, L.P.

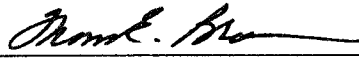
By: 

Printed Name: Lawrence W. Robinson

Title: City Manager

By: McKinney Landfill Development,
LLC

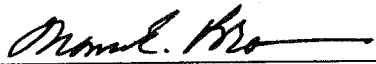
Its General Partner

By: 

Printed Name: Thomas E. Brosseau

Title: Member Manager

CONSTRUCTION WASTE &
RECYCLING CORPORATION

By: 

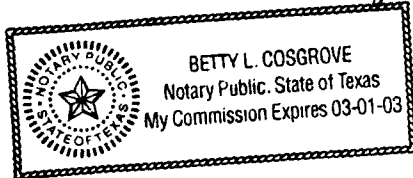
Printed Name: Thomas E. Brosseau

Title: President

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

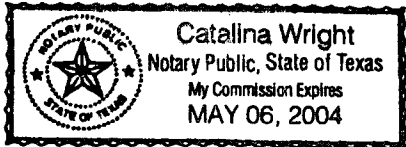
This instrument was acknowledged before me on the 19th day of December, 2001,
by Lawrence Robinson, City Mgr. of the City of McKinney.



Betty Cosgrove
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

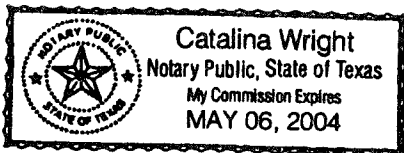
This instrument was acknowledged before me on the 18th day of December, 2001,
by Thomas E. Brosseau, President of Construction and Recycling Waste Corporation, a Texas
corporation.



Catalina Wright
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 18th day of December, 2001,
by Thomas E. Brosseau, sole Member/Manager of McKinney Landfill Development, L.L.C., a
Texas limited liability company, general partner of 380-McKinney, L.P., a Texas limited
partnership, on behalf of said limited partnership.



Catalina Wright
Notary Public, State of Texas

EXHIBIT "A"

[Legal Description]

TRACT 1:

SITUATED IN Collin County, Texas, in the H. T. Chenoweth Survey, Abstract No. 157, being a resurvey of part of the 104 1/3 acres of land described in a deed from John Johnson to J. L. Doggett dated September 24, 1884, recorded in Volume 25, Page 530, of the Collin County Deed Records, being described by metes and bounds as follows:

COMMENCING at an iron pin found beside a corner post at the southeast corner of said 104 1/3 acre tract; Thence westerly with the north line of the 322.446 acre tract Reference Volume 794, Page 333 and with an old established fence and with the south line of said 104 1/3 acre tract as follows: North 89 degrees 34 minutes 15 seconds West, 490.05 feet; North 87 degrees 11 minutes 31 seconds West, 430.81 feet; North 88 degrees 08 minutes 08 seconds West, 294.13 feet; North 88 degrees 01 minute 08 seconds West, 366.79 feet; North 87 degrees 58 minutes 40 seconds West, 346.72 feet; North 89 degrees 20 minutes 27 seconds West, 178.34 feet; North 88 degrees 17 minutes 36 seconds West, 23.29 feet to an iron pin set in said line and fence for a PLACE OF BEGINNING;

Thence westerly with said north line and said south line and with said old established fence as follows:

North 88 degrees 17 minutes 36 seconds West, 317.18 feet; North 89 degrees 24 minutes 00 seconds West, 41.94 feet to an iron pin set in said line and fence for a corner;

Thence North 1 degree 45 minutes 55 seconds East, 1248.0 feet to an iron pin set in the south R.O.W. line of U. S. Highway No. 380 for a corner;

Thence easterly with said south R.O.W. line as follows:

North 80 degrees 57 minutes 46 seconds East, 43.9 feet to an aluminum cap R.O.W. Mon. found;

South 71 degrees 30 minutes 04 seconds East, 329.97 feet to an iron pin found for a corner;

Thence South 1 degree 45 minutes 55 seconds West, 1160.05 feet to the PLACE OF BEGINNING and containing 10.000 acres of land.

TRACT 2:

SITUATED IN Collin County, Texas, in the B. L. Hamm Survey, Abstract No. 375, being a resurvey of the tract of land described in a deed from George Cantrell to B. J. Webster, dated December 15, 1978, recorded in Volume 1202, Page 487 of the Collin County Land Records, and a part of the 322.446 acres of land described in a deed from Carl P. Pratt and wife, Evelyn Ruth Pratt to James N.

[Legal continued]

Muns and Ross Forney, Trustees, dated August 23, 1971, recorded in Volume 794, Page 333 of the Collin County Deed Records, being described by metes and bounds as follows:

BEGINNING at an iron pin found beside a corner post at the west, southwest corner of said 322.446 acre tract;

Thence South 2 degrees 39 minutes 19 seconds West, 775.60 feet with an established fence and with the east line of said Cantrell to Webster Tract to a point in the center of The East Fork of the Trinity River, at the southeast corner of said Cantrell to Webster Tract;

Thence generally in a northwesterly direction and with the center of said East Fork and with the south line of said Cantrell to Webster Tract as follows:

North 63 degrees 03 minutes 42 seconds West, 85.01 feet;

North 69 degrees 12 minutes 47 seconds West, 93.50 feet;

North 86 degrees 30 minutes 18 seconds West, 154.78 feet;

North 62 degrees 50 minutes 21 seconds West, 115.04 feet;

North 19 degrees 05 minutes 47 seconds West, 211.96 feet;

North 9 degrees 53 minutes 59 seconds East, 154.12 feet;

North 2 degrees 17 minutes 21 seconds East, 238.80 feet;

North 12 degrees 27 minutes 04 seconds West, 351.86 feet;

North 28 degrees 58 minutes 12 seconds West, 182.30 feet;

North 44 degrees 29 minutes 18 seconds West, 111.01 feet;

North 63 degrees 09 minutes 30 seconds West, 91.44 feet;

North 82 degrees 17 minutes 14 seconds West, 270.02 feet to a point in said East Fork, at the southwest corner of said Cantrell to Webster Tract;

Thence North 3 degrees 31 minutes 00 seconds East, 1255.60 feet to an iron pin found at the northwest corner of said Cantrell to Webster Tract;

Thence easterly with an established fence and with the north line of said Cantrell to Webster Tract and with the north line of said 322.446 acre tract as follows:

South 89 degrees 24 minutes 00 seconds East, 873.69 feet;

South 88 degrees 17 minutes 36 seconds East, 340.47 feet;

South 89 degrees 20 minutes 27 seconds East, 178.34 feet;

[Legal continued]

South 87 degrees 58 minutes 40 seconds East, 346.72 feet;

South 88 degrees 01 minute 08 seconds East, 366.79 feet;

South 88 degrees 08 minutes 08 seconds East, 294.13 feet;

South 87 degrees 11 minutes 31 seconds East, 430.81 feet;

South 89 degrees 34 minutes 15 seconds East, passing an existing iron pin set beside a corner post at 490.05 feet and continuing in all 503.02 feet to a point on the south edge of and in the east-west center of a steel pipe cattle guard, in said north line for a corner;

Thence southerly with the center of a rock road as follows:

South 15 degrees 26 minutes 47 seconds West, 125.63 feet; South 11 degrees 05 minutes 18 seconds West, 237.96 feet;

South 9 degrees 34 minutes 14 seconds West, 525.24 feet; South 12 degrees 41 minutes 58 seconds West, 136.01 feet;

South 18 degrees 27 minutes 56 seconds West, 144.71 feet; South 28 degrees 06 minutes 19 seconds West, 181.18 feet;

South 9 degrees 46 minutes 53 seconds West, 151.86 feet; South 7 degrees 29 minutes 20 seconds East, leaving said rock road at approximately 300 feet and continuing in all 396.16 feet to an iron pin set in the south line fence of said 322.446 acre tract;

Thence westerly with the south line of said 322.446 acre tract and with an old established fence as follows:

North 87 degrees 58 minutes 08 seconds West, 596.16 feet; North 88 degrees 43 minutes 07 seconds West, 304.05 feet;

North 88 degrees 13 minutes 46 seconds West, 1128.22 feet to the PLACE OF BEGINNING and containing 136.79 acres of land.

The property conveyed hereby is the same property as acquired by Grantor by deed dated May 15, 1995, from Sportsman-Webster Partnership to McKinney 150, L.P., recorded as instrument No. 95-0037345, Land Records of Collin County, Texas; and by deed dated May 15, 1995, from Barefoot 207, L.L.C. to McKinney 150, L.P., recorded as instrument No. 95-0033268, Land Records of Collin County, Texas. Grantor intends to convey only such property as it acquired by such deeds.

EXHIBIT "B"

Application Requirements and Review Process

Zoning Change Requests

A complete Zoning Change application consists of:

- ❖ A completed application form, signed by the owner of the property,
- ❖ A letter of intent that will:
 - Define acreage of subject property
 - Specify existing zoning district
 - Specify requested rezoning district in accordance with the City of McKinney Zoning Ordinance No. 1270, including any exceptions to the zoning district
 - Define the reason(s) why the applicant is proposing to rezone the subject property
 - Describe any special considerations (i.e. requested variances from the standard zoning districts, unique characteristics of subject property)
 - Describe in detail the location of the property [Example: approximately (distance) feet South of (street name), approximately (distance) feet North of (street name), approximately (distance) feet East of (street name), and approximately (distance) feet West of (street name).]
 - Request Planning & Zoning Commission and City Council consideration dates,
- ❖ If the requested zoning district is a "PD" – Planned Development District, the uses to be allowed and/or specific development standards desired,
- ❖ A General Development Plan, or preliminary site plan, showing that the property can be development according to the proposed development standards and other city regulations,
- ❖ 25 FOLDED blueline prints @ 24" x 36", and 1 @ 11" x 17" showing the location of the zoning change request,
- ❖ Metes and bounds description, and
- ❖ The application fee of \$325.00, plus \$15.00 per acre up to 250 acres, and \$8.00 per acre thereafter.

The review process begins with the city staff at the meeting of the Development Review Committee. Once the item is scheduled for consideration by the Planning & Zoning Commission at a public hearing, the applicant is responsible for posting the required zoning notification signs on the property one week before the hearing, and providing the required affidavit of posting to the Planning Department, as required by §41-133 of the City of McKinney Code of Ordinances. The signs must be maintained on site until consideration by the City Council, and an affidavit of sign maintenance provided. Signs must be removed within two weeks of City Council action or the withdrawal of the case.

Platting

A complete application for a plat will include:

- ❖ 25 FOLDED blueline prints @ 24" x 36" and 1 @ 11" x 17", AUTOCAD (.dwg format) file on 3½" diskette (if available):
 - For preliminary-final plats:
 - Drawings should be 24" x 36".
 - Scale of 1 inch = 100 feet

- State plane coordinates, point of beginning, and 1 other corner on boundary

Existing features inside subdivision

- Topography to be shown with contour intervals of five feet, or less if requested by the city engineer.
- The locations, widths, and names of all existing or platted streets, alleys, easements, existing permanent buildings, railroad rights-of-way, and other important features such as creeks, abstract lines, political subdivisions or city limits, and school district boundaries.
- Existing sewers, water mains, culverts, or other underground structures with pipe sizes, grades, and locations indicated.

Existing features outside subdivision

- Features shall be identified for a distance of 200 feet outside the proposed subdivision. Property lines and the names of adjacent subdivisions and/or the names of record of adjoining parcels of unsubdivided land shall be indicated. Features outside the subdivision should be shown in lighter or dashed lines as appropriate to distinguish from features within the subdivision.

New features inside subdivision

- The boundary line, accurate in scale, of the tract to be subdivided, with accurate distances and bearings indicated.
- The layout, designations, names and widths of any and all proposed streets, alleys and easements.
- The layout, lot numbers, setback lines, and approximate dimensions of proposed lots and blocks.
- All parcels of land intended to be dedicated or reserved for public use, or reserved in the deeds for the use of all property owners in the proposed subdivision, or reservations for other uses, together with the purpose or conditions and limitations of such reservations, if any.
- A schematic plan of the proposed water and sanitary sewer lines and related facilities, and proposed drainage facilities including drainage areas, preliminary estimated runoff, points of concentration, and the location of proposed lines, inlets, culverts, and bridges. Such utility and drainage plans may be submitted on separate sheets at the same scale as the preliminary-final plat.
- Location map at a scale of one inch to 2,000 feet showing existing and proposed major features covering an area of at least one mile in all directions from the proposed subdivision, as requested by city engineer.

Title information

- The proposed name of the subdivision with section or sequencing designation, as appropriate.
- North point, scale, date and acreage of the proposed subdivision.
- The names and addresses of the owner, developer and land planner, engineer, and/or surveyor, as appropriate.
- The tract designation, abstract and other description according to the real estate records of the city or county.
- Total number of lots, and designation and amounts of land of the proposed uses within the subdivision.

Approval block

- The following certificate shall be placed on the preliminary-final plat by the subdivider:

“Approved for Preparation of Record Plat”

Chairperson
Planning and Zoning Commission
City of McKinney, Texas

Mayor
City of McKinney, Texas

Date

Date

➤ For record plats:

- Drawings should be 24” x 36”.
- Scale of 1 inch = 100 feet
- State plane coordinates, point of beginning, and 1 other corner on boundary

Features to be shown

- All necessary data to locate and reproduce the final plat on the ground must be shown on the final plat.
- The boundary lines with accurate distances and bearings, a metes and bounds description of the boundary with an error of closure not to exceed one in 5,000, exact acreage, and the exact location and width of all existing or platted streets intersecting the boundary of the tract.
- Bearings and distances to the nearest established street lines, official monuments, or subdivision corner, which shall be found and accurately described on the final plat. Abstract lines and municipal and school district boundaries shall be shown.
- An accurate location of the subdivision in reference to the deed records of the county which shall include the volume and page of the deed of the property to be subdivided.
- The layout, width, and names of all streets and/or alleys with the bearings and distances between points of curvature.
- The length of all arcs, radii, internal angles, points of curvature, length and bearing of the tangents. Such data to be provided on a table keyed to the curves on the final plat.
- The location, width, and description of all easements for right-of-way provided for public services, utilities or fire lanes and any limitations on use of the easements.
- All lot lines with accurate dimensions in feet and hundredths and with bearings and angles to street and alley lines to the nearest second. A certification that each and every lot complies with the minimum size requirements (acreage or square footage) of either this chapter or the zoning ordinance as appropriate; lots of lesser size shall be individually identified and sized in tabular form.
- For all lots located wholly or partially within or immediately adjacent to a floodplain area, as designated on maps provided by the Federal Insurance Administration, a designation of the minimum finish floor elevation allowed, which shall be at least two feet above the 100-year flood elevation at that point.
- A continuous and sequential lettering and/or numbering of blocks and lots within the subdivision.
- Required building setback lines.

- An accurate outline description and area to the nearest hundredth of an acre of all parcels of land which are offered for dedication or reserved for public use, or reserved in the deeds for the use of all property owners in the proposed subdivision or reservations for other uses, together with the purpose and conditions or limitations of such reservations and/or dedications, if any.
- The accurate location, material and approximate size of all monuments and benchmarks.
- A location map of the proposed subdivision at a scale of one inch to 2,000 feet showing existing and proposed major features covering an area of at least one mile in all directions from the proposed subdivision if requested by the city engineer.

Title information

- The proposed name of the subdivision with section or sequencing designation, as appropriate.
- North point, scale and date.
- The names and addresses of the owner, developer and land planner, engineer, and/or surveyor responsible for actual design of the subdivision.

Certificates required

- Certification by a registered public surveyor, registered in the State of Texas, to the effect that the plat represents a survey made by him or under his direct supervision and that all the monuments shown thereon actually exist, and that their location, size and material are correctly shown.
- A certificate of ownership and dedication, of a form approved by the plan administrator, of all streets, alleys, parks, open spaces and public ways to public use forever, signed and acknowledged before a notary public by the owner and any and all lienholders of the land, and a complete and accurate description of the land subdivided and dedications made.
- A certificate, signed by the city tax assessor, stating that all taxes and assessments then due and payable on the land contained within the subdivision have been paid.
- The following certificate shall be placed on the record plat in a manner that will allow the filling in of the certificate by the proper party:

“Approved and Accepted”

Mayor
City of McKinney, Texas

Date

- ❖ For commercial plats, a Conceptual Site Plan showing access and circulation from public streets into the proposed subdivision, and between the lots of the proposed subdivision is required for concurrent consideration,
- ❖ For property containing floodplain, a flood study, showing the 100 year fully-developed floodplain,
- ❖ Proposed provisions of a facilities agreement, if requested by applicant,
- ❖ Application Fee

Preliminary-Final Plat: \$200.00 base fee, plus \$12.00 per acre
Record Plat: \$325.00 base fee, plus \$25.00 per acre

- ❖ A Letter of intent that will:
 - Define acreage of subject property
 - Specify whether or not there is an approved conceptual site plan for the subject property (Commercial property only)
 - State the proposed number of lots and common areas.
 - State the reason(s) for proposed common areas (i.e.: To accommodate Screening & Buffering treatment, Develop a Private Recreation Facility)
 - Describe in detail the location of the property [Example: approximately (distance) feet South of (street name), approximately (distance) feet North of (street name), approximately (distance) feet East of (street name), and approximately (distance) feet West of (street name).]
 - State if the applicant requesting consideration of a facilities agreement for deferment of public improvements, pro-rata reimbursements, etc.
 - Describe any special considerations (i.e. requested variances, unique characteristics of subject property)
 - Specify if the proposed plat is a Replat
 - Specify if the proposed plat is a Residential Replat
 - Request a Planning & Zoning Commission consideration date
 - Specify existing zoning district
- ❖ Application, filled out completely, and signed by both the applicant and the owner
- ❖ Tree survey/plan and application, including tree permit application (see Tree Survey/Plan Request Checklist)

Site Plans

A complete site plan application will include:

- ❖ Twenty-five (25) 24" x 36" FOLDED bluelines and One (1) 11" x 17" blueline of the site plan, showing:

General

- Applicant's name, address, and phone number
- Development location (include subdivision, lot number, and address)
- Locator Map
- Proposed use or uses
- Zoning district (attach copy of ordinance governing subject property)
- Lot area (net and gross)
- Lot coverage
- Location of all existing buildings or structures on lot
- Building size and total floor area in square feet(separated by use)
- Building height (including height of any canopies)
- Adjacent land uses and improvements
- Location of hazardous chemical storage
- Scale: one inch (1") equals twenty feet (20'), thirty feet (30') or forty feet (40')
- Location of any on-site items (kiosks, sanitation containers, drop boxes, etc.)
- Easements

- Location and type of all existing and proposed screening, including screening of sanitation containers, parking areas, vehicles awaiting repair, open storage, etc.
- Location of areas of major tree cover
- Required landscape areas
- Fire hydrants (both existing and proposed)
- Additional information as deemed necessary to adequately evaluate the site or development plan

Site circulation and parking.

- Drive approach dimensions and radii (both inside and outside turning radii)
- Delineation and width of internal circulation roadways
- Distances between driveways and intersecting streets
- Number of required parking spaces and number of parking spaces provided, including handicapped parking spaces
- Parking dimensions (typical 10' x 18')
- Stacking spaces and drive-through lane location
- Location of curb stops relative to front of parking stall. Note: Wheel stops are not permitted in lieu of curbs
- Handicapped ramps (required at all intersections)
- Building entrances
- Sidewalk dimensions
- Fire lanes meeting fire code standards (typically 24 feet wide), (fire lanes to be shaded)
- Delivery truck docks
- Sanitation container locations
- Medians, islands, barriers, and channelization
- Width of adjacent streets, alleys, or other access abutting property
- Length, width, and taper of turn bays
- The following notations should be added to the site plan:
 - ◆ The sanitation container screening walls will be brick masonry, stone masonry, or other architectural masonry finish, including a metal gate, primed and painted, and the sanitation container screening walls, gate, and pad site will be constructed in accordance with the City of McKinney design specifications.
 - ◆ Mechanical and heating and air conditioning equipment in non-residential uses shall be screened from view from the public right-of-way and from adjacent residential properties.
 - ◆ The lighting for the subject property will be constructed in conformance with Section 41-106 Lighting and Glare Regulations of the City of McKinney Code of Ordinances.

Utilities (include on a separate drawing)

- Existing and proposed water mains (include size and valve locations)
- Water meter size and location
- Existing and proposed sewer mains (include size, manholes and cleanout)
- Sewer service size (provide cleanout at property line)
- Existing and proposed utility easements

- Existing and proposed fire hydrants (include any nearby off-site hydrants)
- Existing and proposed fire lines and appurtenances
- Location and size of irrigation meters
- Location and size of grease and sand traps
- Location and size of sampling pits
- Location and type of pretreatment

Drainage (include on a separate drawing)

- Existing and proposed elevation at critical points
- Drainage area map (if site over one acre)
- On-site collection system
- One hundred (100) year flood elevation (if in flood-prone area)
- Existing and proposed contours at two-foot (2') intervals
- Existing and proposed drainage structures (include size and type)
- Existing and proposed culverts (use six-to-one sloped headwall)
- Direction of surface drainage (must be discharged into existing waterway or public right-of-way)

❖ Twenty-five (25) 24" x 36" FOLDED blueines and One (1) 11" x 17" blueine of the landscape plan (including irrigation plan) showing:

- Minimum scale of 1" = 40'
- Location, size, and species of all trees to be preserved
- Location of all plant and landscaping material to be used, including plants, paving, benches, screens, fountains, statues, earthen berms, ponds (to include depth of water), topography of site, or other landscape features
- Species, size, spacing, and quantities of all plant material to be used in a tabular form
- Affidavit on the plan stating that irrigation, sprinkler, or water systems, including placement of water sources, shall be provided
- Person(s) responsible for the preparation of the landscape plan, including affidavit of their qualifications to prepare said plan
- Mark indicating North
- Date of the landscape plan, including any revision dates
- Planting details
- Percentage of total site in permanent landscaping
- Percentage of street yard in permanent landscaping
- Dimensions of all landscape areas
- Number of required trees and number of trees provided
- Location of all existing and planned overhead and underground utilities shall be shown on the landscape plan (or on an accompanying utility plan drawn at the same scale, if necessary for clarity),

❖ One (1) 24" x 36" FOLDED blueine and One (1) 11" x 17" blueine of the lighting plan (including a letter of compliance by a qualified lighting expert, such as an engineer, architect, landscape architect, lighting manufacturer's representative, or lighting contractor, stating that "The proposed lighting for the subject property is in conformance with the Lighting and Glare Regulations as specified within Section 41-106 of the City of McKinney Code of Ordinances."

❖ Tree survey/plan showing:

- Applicant's name, address, and phone number
 - Locator map
 - North arrow
 - Property lines, with dimensions
 - Engineering Scale (not larger than 1"=200')
 - Location of all right-of-way, and easements (existing, or proposed with associated construction project)
 - Location of all buildings, structures, pools, parking and vehicular maneuvering areas, utilities, sidewalks, and other improvements (existing or proposed)
 - Adjacent land uses, and zoning of adjacent properties
 - Creeks, lakes, and other water features (existing or proposed)
 - Location of FEMA one-hundred year floodplain, NRCS lake tree preservation zone, or erosion hazard setback easement.
 - Any proposed non-disturbance areas
 - Location, species, and size of all trees of at least six inches (6") caliper at four feet six inches height (4' 6") outside of any non-disturbance area
 - Any additional information necessary to review the survey/plan,
- ❖ A Traffic Impact Analysis, describing the impact of the proposed development on city streets, and the need for additional improvements.
 - ❖ Application Fee: \$250.00,
 - ❖ A Letter of intent that will:
 - Specify proposed uses with specific operations defined (i.e.: Office Building, Warehouse Building, Child Care Center, Church) (Example: Office/Warehouse Building including printing and laminating facilities)
 - State square footage of proposed building
 - State if the proposed development going to be developed in phases?
 - State if there is going to be more than one use, then will each use be operated and maintained by one owner (Example: Daycare and Church)
 - Define the acreage of subject property
 - Describe in detail the location of the property [Example: approximately (distance) feet South of (street name), approximately (distance) feet North of (street name), approximately (distance) feet East of (street name), and approximately (distance) feet West of (street name).]
 - Request Planning & Zoning Commission and City Council consideration dates, if applicable
 - Describe any special considerations (i.e. requested variances, unique characteristics of subject property)
 - Specify existing zoning district,
 - ❖ Application, filled out completely, and signed by both the applicant and the owner.

EXHIBIT "C"

DRAFT AVIGATION AND HAZARD EASEMENT

Date: , 2001

Grantor: 380-McKinney, L.P.

Grantor's Address: Attn: Thomas E. Brosseau
380-McKinney, L.P.
5950 Berkshire Lane, Suite 700
Dallas, Texas 75225

Grantee: City of McKinney, a municipal corporation situated in Collin County,
Texas

Grantee's Address: City of McKinney
222 N. Tennessee
McKinney, Texas 75069

Grantor's Property:

(i) That certain 136.79 acre tract of land, situated in the B. L. Hamm Survey, Abstract No. 375, Collin County, Texas, being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof, and being the same property conveyed in a deed from _____ to 380-McKinney, L.P. dated _____ and recorded in Volume _____, Page _____, Real Property Records of Collin County, Texas ("Tract I"); and

(ii) That certain 10.000 acre tract of land situated in the B. L. Hamm Survey, Abstract No. 375, Collin County, Texas, being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof, and being the same property conveyed in a deed from _____ to 380-McKinney, L.P., dated _____ and recorded in Volume _____, Page _____, Real Property Records of Collin County, Texas ("Tract II").

(Tract I and Tract II are hereinafter collectively referred to as "Grantor's Property.")

In consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant, sell, and convey unto Grantee, its successors and assigns, an easement and right of way in, across and through the air space over the following real property: (i) that portion of Tract I of Grantor's Property described as *[insert surveyed property description describing this portion of*

the property as follows: the westerly most portion of Tract I of Grantor's Property lying west of a line extending from an iron pin found beside a corner post at the southeast corner of Tract II of Grantor's Property, being described as the beginning point for Tract II, thence continuing in a southerly direction to an iron pin found beside a corner post at the west, southwest corner of Tract I, being described as the beginning point of Tract I, thence continuing South 2E39'19" West, 775.60 feet with an established fence and with the east line of said Cantrell to Webster Tract to a point in the center of the East Fork of the Trinity River, at the southeast corner of the said Cantrell to Webster Tract,] and designated by cross-hatching on Exhibit "B" attached hereto and made a part hereof, and (ii) all of Tract II of Grantor's Property and designated by cross-hatching on Exhibit "B" attached hereto and made a part hereof, (both Tracts shall be referred to collectively hereinafter as the "Easement Tract"). This air space easement which is granted shall exist above an imaginary plane extending over the Easement Tract beginning at an elevation of 650.3 feet above Mean Sea Level (the "Easement"), for the unobstructed use and passage of all types of aircraft (as hereinafter defined) landing at or taking off from the Airport (as hereinafter defined).

The easement granted herein shall be appurtenant to and for the benefit of the real property situated in Collin County, Texas now known as McKinney Municipal Airport, including any additions thereto wherever located, hereafter made by City of McKinney or its successors and assigns, and as the same may be removed from time to time (collectively, the "Airport") and shall be for the use of the City of McKinney, its successors and assigns, and their respective guests and invitees, and persons with whom either may contract, including any and all persons, firms, entities or corporations operating aircraft to or from the Airport.

The grant of the easement herein shall include the grant of all rights and privileges which may be alleged to be incident to or resulting from the use and enjoyment of said easement, including, but not limited to the right to cause in all airspace above or in the vicinity of the surface of Grantor's Property such noise, vibrations, fumes, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of said aircraft), fear, interference with sleep and communication and any and all other effects that may be alleged to be incident to or caused by the operation of aircraft over or in the vicinity of Grantor's Property or in landing at or taking off from, or operating at or on said Airport; and Grantor does hereby fully waive, remise, and release any right or cause of action which it may now have or which it may have in the future against Grantee, its successor and assigns, their respective officers, employees, agents, representatives, invitees, guests, and persons with whom either may contract, due to such noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating at or on said Airport.

As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, to include, but not limited to, jet aircraft, propeller driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all types of aircraft or vehicles now in existence or hereafter developed, regardless of existing or future noise levels, for the purpose of transporting persons or property through the air, by whoever owned or operated.

The easement granted herein includes the continuing right to prevent the erection or growth upon the Easement Tract of any building, structure, tree, or other object, extending into the Easement above the Easement Tract or any portion thereof, and to remove from said air space, or at the sole option of the Grantee, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree or other objects now upon, or which in the future may be upon the Easement Tract, together with the right of ingress to, egress from, and passage over Grantor's Property for the above purpose.

For the consideration herein above set forth, Grantor, for itself, its heirs, administrators, executors, successors, and assigns, does hereby agree that for and during the life of said easement and right of way, Grantor will not hereafter erect, permit the erection or growth of, or permit or suffer to remain upon the Easement Tract any building, structure, tree or other object extending into the Easement above the Easement Tract or any portion thereof, and that it shall not hereafter use or permit or suffer the use of the Easement Tract in such a manner as to create electrical interference with radio communication between any installation upon said Airport and aircraft, or as to make it unreasonably difficult for a reasonable, prudent pilot to distinguish between airport lights and others, or to permit any use of the Easement Tract that causes a discharge of fumes, dust or smoke in such quantities that actually impair visibility within the Easement above the Easement Tract.

TO HAVE AND TO HOLD said easement and right of way, and all rights appertaining thereto unto the Grantee, its successors, and assigns, until said Airport shall be permanently abandoned and shall cease to be used for airport purposes.

It is understood and agreed that the aforesaid covenants and agreements shall run with the land and shall be binding upon Grantor and the heirs, administrators, executors, successors and assigns of the Grantor until any one or more of the following events shall have occurred:

1. The Airport shall be permanently abandoned and cease to be used for airport purposes;
2. No landfill is placed on the Easement Tract and Municipal Solid Waste Permit No. 2278, issued by the Texas Natural Resource Conservation Commission, is cancelled, withdrawn, or terminated.
3. Within twelve (12) years of the date of this Easement if construction of a second runway has not commenced at the Airport, or, if a second runway is ever constructed, it is constructed in such a manner or at such a location that regulations of the U.S. Federal Aviation Administration do not require the height limitations or other restrictions on the Easement Tract specified in this Easement.

IN WITNESS WHEREOF, Grantor has executed this instrument as of the date first written above.

380-McKINNEY, L.P.

By: McKinney Landfill Development,
L.L.C., its general partner

By: Thomas E. Brousseau
Sole Member/Manager

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

 This instrument was acknowledged before me on the _____ day of _____, 2001,
by Thomas E. Brousseau, sole Member/Manager of McKinney Landfill Development, L.L.C., a
_____ limited liability company, general partner of 380-McKinney,
L.P., a _____ limited partnership, on behalf of said limited partnership.

Notary Public, State of Texas

EXHIBIT "D"

Draft

Bird Control Manual For City Of McKinney

Municipal Landfill and North Texas Municipal Water District

**Prepared by
Geo-Marine, Inc.
Panama City, Florida**

Draft

1. **Introduction.** The purpose of this manual is to provide guidance in controlling nuisance birds that are attracted to the City of McKinney Municipal Landfill. Birds are attracted to the landfill to feed on exposed waste and to loaf on the large, open secure areas surrounding the facility. Control of birds is necessary to ensure safe aircraft operations at the City of McKinney Municipal Airport and to minimize potentially adverse impacts on the birds that may feed on the anthropogenic food sources. This manual will identify personnel responsible for oversight of the program, personnel designated to implement the program, equipment requirements, training, permits, and record keeping.
 - 1.1. **Background.** The City of McKinney Municipal Airport is located approximately 7,000 feet northeast of the landfill. Aircraft approaching runway 35 do not cross directly over the landfill. Federal Aviation Administration Advisory Circular AC 150/5200-33 provides airport operators guidance concerning airport landfill separation. The regulation applies to public-use airports under FAA certification and considers waste disposal sites as incompatible if located within: a. 10,000 feet of any runway end used or planned to be used by turbine powered aircraft; b. 5,000 feet of any runway end used or planned to be used by piston powered aircraft; and c. a five mile radius of a runway end and the waste disposal site attracts or sustains hazardous bird movements from feeding, water or roosting areas into, or across the runways and/or approach and departure patterns of aircraft. Due to the proximity of the airport and associated air traffic patterns as well as the location of Lake Lavon and the East Fork of the Trinity River, a comprehensive control effort at the landfill facility is critical to continued safe flight operations at the airport.
2. **Bird Species of Concern in the McKinney Area.** A variety of bird species of concern to aviation are found in the McKinney region. Bird species that pose potential hazards to aviation include large flocking species, large soaring species, and smaller species that fly in very dense flocks. Groups of birds found in this region which fall into these categories include: the Order *Falconiformes* (vultures, hawks, and falcons); the Order *Charadriiformes* (gulls and other shorebirds), and the Order *Passeriformes* (perching birds). Specifically, the Black Vulture, the Turkey Vulture, the Ring-billed Gull, and the blackbird complex (Common Grackle, Boat-tailed Grackle, European Starling, Red-winged Blackbird, Brewer's Blackbird, Rusty Blackbird, and Brown-headed Cowbird) are of greatest concern to aviation safety.
 - 2.1. **Bird Species.** Thirty-nine bird species were identified on or near the landfill during the initial survey. Of greatest concern are the Turkey Vulture, the Black Vulture, Cattle Egrets, and blackbird complex. Gull species, particularly the Ring-billed Gull, are common on landfills in this region, but generally do not arrive until mid to late November depending upon weather changes in the northern latitudes.

- 2.2. **Vegetation.** Much of the area around the landfill site has been cleared of dense trees, shrubs, and under story. The areas that are in development for disposal provide large open areas upon which a variety of bird species will loaf. Additionally, the sloped sides of the active cell are sparsely vegetated and provide loafing areas for vultures and blackbirds.
- 2.3. **Open Water.** There is little open water at the landfill site. A small storm water pond is located near the scale house, but appears to have minimum attraction. Wilson Creek runs south of the landfill, but has extensive canopy from surrounding trees and provides minimal attraction to species of concern.
3. **Survey Results.** The landfill and airport have been conducting monthly surveys at the landfill and airport since 1993. Data are currently being compiled to determine any monthly and daily trends.
4. **Control Program.** Bird Control efforts at the landfill are the responsibility of _____ (972) 542-XXXX. This person shall ensure that designated bird control staff are properly trained and equipped to disperse potentially hazardous bird species at the landfill. Designated bird control staff is listed in Appendix A. Bird Control at the facilities will include both passive control (habitat management) and active control (harassment).
- 4.1. Passive methods will include:
- 4.1.1. Maintaining as small of an active site as possible
 - 4.1.2. Reduction of standing water (puddles)
 - 4.1.3. Improved daily cover (ensuring all waste is covered)
 - 4.1.4. The installation of wire barriers over waste or ponds (if required)
 - 4.1.5. Maintaining tall vegetation on large open fields to discourage loafing.
- 4.2. Active Bird control at the landfills will require a strong coordinated effort at both the landfill and airport during early morning hours. Dispersal activity at one facility alone may only shift the birds to the other site and could result in a "ping-pong" effect and subsequently increase the bird movements near aircraft. A list of equipment for bird control is listed in Appendix B. Active dispersal methods include:
- 4.2.1. Pyrotechnics. Both .22 cal and 12 gauge cracker shells, screamers, and bangers should be used.
 - 4.2.2. Propane Cannons. The use of an integrated system such as the "Scare Wars" system offered by Reed-Joesph will reduce habituation and reduce manpower requirements while improving overall effectiveness of the cannons.
 - 4.2.3. Bioacoustics. These include taped distress calls of birds played over a loud external speaker system. These systems are often considered

ineffective by individuals who are not familiar with the proper use of the equipment. Bioacoustics often reduce the cost of pyrotechnic rounds.

5. **Monthly Control.** Monthly control programs are outlined in Appendix C. Some of these programs are based upon general knowledge of the area and will be updated as more survey data becomes available. Active Control Methods are provided in Appendix D.
6. **Permits.** Federal and State Permits for active harassment of birds at the landfill are not required. However, due to the possibility of an incidental take and the periodic requirement to reinforce harassment with lethal methods, a depredation permit will be requested from the US Fish and Wildlife Service through the US Department of Agriculture. Permit application will be made in early June 2000. Detailed records on dispersal activities will be maintained according to the data sheet provided in Appendix E. Annual depredation reports will be filed with the US Fish and Wildlife Service in January of each year. Additional depredation assistance will be obtained through the US Department of Agriculture, Wildlife Services, (USDA-APHIS-WS).
7. **Training.** All landfill staff involved in bird reductions efforts should attend annual training on the safe use of dispersal equipment as well as bird identification class. The airport will provide initial training. Training Records and General References are provided in Appendix F.
8. **Communications.** Communications concerning bird control activity at the landfill is critical. Prior to any dispersal activity, the designated bird control supervisor at the landfill will contact the McKinney Municipal Airport Tower XXX-XXXX to determine if aircraft are operating in the vicinity of the airport. The air traffic controller on duty will provide clearance for dispersal activity.

Appendix A

Designated Bird Control Staff

Name	Position	Phone	Date of Training

Appendix B

Bird Control Equipment

Item	Quantity	Unit Cost	Extended Cost
.22 Cal Pyrotechnic Pistol Single Shot	4	\$30	\$120
Bird Bombs (100)*	10	\$35	\$350
Bird Whistlers (100)*	10	\$37.50	\$350
M-8 Scareaway Propane Cannons	2 (with rotomat base)	\$575	\$1150
Bioacoustic Equipment (mobile) Bird Guard	1	\$580	\$580
Shotgun (12 ga)	1	\$350	\$350
12 ga. Cracker Shells (100)*	4	\$100	\$400
Storage Containers	1	\$200	\$200
Eye Protection	4	\$10	\$40
Hearing Protection	4	\$15	\$60
Gloves	4	\$15	\$60

*Pyrotechnic rounds have short shelf life and failure rate will increase if not kept in a cool, dry storage area. Keep enough rounds on hand to ensure harassment efforts are not adversely impacted by shortage.

Appendix C- Monthly Bird Control

January

Primary Species of Concern: Ring-billed Gull, Black Vulture, Turkey Vulture

Secondary Species of Concern: Egrets, Grackles, Starlings, Blackbirds

Control:

1. Pyrotechnics
2. Propane Cannon
3. Distress Calls

Safety: Ear Protection, Eye Protection, Gloves

Biology:

Ring-billed Gulls are now wintering in the McKinney area. The majority of the birds that feed at the landfill arrive from southeast of the landfill in the vicinity of Lake Lavon. This movement begins within 30 minutes of sunrise and generally lasts for at least one hour. Gulls should be dispersed immediately upon arrival, rather than waiting for a number to build up. Immediately disperse these birds! There may only be two or three birds, but harass them immediately. Gull feeding patterns are also altered by weather. During overcast and rain days, special attention should be taken to prevent gulls from loafing in open areas away from the working face. Vultures will be present, but in lower numbers than in previous months. Grackles, starlings, and other blackbirds will be found in large flocks in early morning and late afternoon.

Notes:

February

Primary Species of Concern: Ring-billed Gull, Black Vulture, Turkey Vulture

Secondary Species of Concern: Grackles, Starlings, Blackbirds

Control:

1. Pyrotechnics
2. Propane Cannon
3. Distress Calls

Safety: Ear Protection, Eye Protection, Gloves

Biology:

Ring-billed Gulls are still the primary concern. Turkey Vultures and Black Vultures are still common as well. Continual harassment with pyrotechnics will move these birds. Grackles, starlings, and blackbirds will continue to form dense flocks in early morning and late afternoon throughout the McKinney area. You may observe these flocks passing over the landfill as they leave and return to their roost areas. Disperse these birds immediately if they stop on the landfill. If waterfowl become common on the retention pond, place a propane cannon near the pond for a few days. Continue to patrol the areas with dense vegetation and trees to insure no large flocks of birds congregate and establish overnight roosts.

Notes:

March

Primary Species of Concern: Ring-billed Gull, Black Vulture, Turkey Vulture

Secondary Species of Concern: Egrets, Grackles, Starlings, Blackbirds

Control:

1. Pyrotechnics
2. Propane Cannon
3. Distress Calls

Safety: Ear Protection, Eye Protection, Gloves

Biology:

The large flock of Ring-billed Gulls will most likely leave the McKinney area by the middle of this month. Migrating Turkey Vultures may also pass through, but are also easy to frighten with pyrotechnics. If cold weather persists through the month, grackles, starlings, and blackbirds will continue to form dense flocks in the area and may attempt to roost in the dense trees near the radio controlled model aircraft field. The population dynamics of wintering blackbirds in New Orleans often reflect control efforts at various locations downtown and consequently these birds may appear in great numbers when they have been dispersed from an area that they have been using. Fortunately, these birds will be sensitive to pyrotechnics and are easily driven away. Also, during March, a number of migratory songbirds will pass through the McKinney region.

Notes:

April

Primary Species of Concern: Black Vulture, Turkey Vulture

Secondary Species of Concern: Egrets, Grackles, Starlings, Blackbirds

Control:

1. Pyrotechnics
2. Propane Cannon
3. Distress Calls

Safety: Ear Protection, Eye Protection, Gloves

Biology:

The large winter population of Ring-billed Gulls have most likely left the McKinney region and are no longer a bird control concern at the Landfill. Turkey Vultures and Black Vultures will be the focus of bird control from April through October. Migrant Turkey Vultures will continue through the area, and summer residents will establish roosts and feeding areas. Vultures should be harassed as soon as they are identified in the vicinity of the landfill. Cattle Egrets should be dispersed as soon as they congregate around the active area and on the retention ponds.

Notes:

May

Primary Species of Concern: Black Vulture, Turkey Vulture

Secondary Species of Concern: Egrets, Grackles, Starlings, Blackbirds

Control:

1. Pyrotechnics
2. Propane Cannon

Safety: Ear Protection, Eye Protection, Gloves

Biology:

Vulture activity will increase this month. As temperatures rise throughout the day, thermal activity will increase providing lift for vultures to soar. Careful overnight cover will help minimize odor attraction of Turkey Vultures. Be particularly aware of vultures arriving near closing time and over weekends. Vultures arriving late in the afternoon or on weekends will attempt to pick around the cover looking for food items. Weekend and evening security staff must immediately disperse vultures that fly low over the site or land near the active face.

Notes:

June

Primary Species of Concern: Black Vulture, Turkey Vulture

Secondary Species of Concern: Egrets, Grackles, Starlings, Blackbirds

Control:

1. Pyrotechnics
2. Propane Cannon

Safety: Ear Protection, Eye Protection, Gloves

Biology:

Turkey Vulture and Black Vultures are the critical species to manage this month. With strong summer thermals, they can easily soar to altitudes that would conflict with aircraft in the traffic pattern at the airport. If these birds are not successful in getting food on the landfill, they will not persist. Easily frightened by pyrotechnics, an occasional bird may habituate to the harassment program and may require a depredation action. In this case it will be necessary to contact the US Department of Agriculture, Animal Damage Control, for assistance. Vulture activity will be greatest within 1 hour of closing time and on weekends.

Notes:

July

Primary Species of Concern: Black Vulture, Turkey Vulture

Secondary Species of Concern: Egrets, Grackles, Starlings, Blackbirds

Control:

1. Pyrotechnics
2. Propane Cannon

Safety: Ear Protection, Eye Protection, Gloves

Biology:

Turkey Vulture and Black Vultures continue to be the critical species to manage this month. With strong summer thermals, they can easily soar to altitudes that would conflict with aircraft in the traffic pattern at the airport. Easily frightened by pyrotechnics, an occasional bird may habituate to the harassment program and may require a depredation action. In this case it will be necessary to contact the US Department of Agriculture, Wildlife Services, for assistance. Vulture activity will be greatest within 1 hour of closing time and on weekends when vehicle activity is reduced or absent. It is important for weekend security staff to disperse vultures with pyrotechnics as soon as they are observed in the area.

Notes:

August

Primary Species of Concern: Black Vulture, Turkey Vulture

Secondary Species of Concern: Egrets, Grackles, Starlings, Blackbirds

Control:

1. Pyrotechnics
2. Propane Cannon

Safety: Ear Protection, Eye Protection, Gloves

Biology:

The next two months will see a peak in Turkey Vulture and Black Vultures activity. A maximum effort to harass birds will be required in the morning hours between 9:00 A.M. and 11:00 A.M. and in the late afternoon from 4:00 P.M. to 6:00 P.M. as vultures look for food in the dryer months. The increase in vultures observed in the vicinity of the landfill during this month is an reflects the increased numbers of these birds in the geographic region during this time of year. Active harassment with pyrotechnics is important and the use of these devices may increase this month.

Notes:

September

Primary Species of Concern: Black Vulture, Turkey Vulture

Secondary Species of Concern: Grackles, Starlings, Blackbirds

Control:

1. Pyrotechnics
2. Propane Cannon

Safety: Ear Protection, Eye Protection, Gloves

Biology:

A continued peak in Turkey Vulture and Black Vulture activity. A maximum effort to harass birds will be required in the morning hours between 9:00 A.M. and 11:00 A.M. and in the late afternoon from 4:00 P.M. to 6:00 P.M. as vultures look for food in the dryer months. The increase in vultures observed during this month reflects the increased numbers of these birds in the geographic region during this time of year. Patrol the utility towers and the areas with taller trees to prevent vultures from establishing roosts.

Notes:

October

Primary Species of Concern: Black Vulture, Turkey Vulture

Secondary Species of Concern: Egrets, Grackles, Starlings, Blackbirds

Control:

1. Pyrotechnics
2. Propane Cannon

Safety: Ear Protection, Eye Protection, Gloves

Biology:

Migration of vultures will result in daily fluctuations in the number of birds passing over the landfill. On days with strong surface winds, vultures will soar closer to the ground and will be more easily controlled with pyrotechnics. Place the propane cannons near the active face, and another ready in case the birds begin to loaf on open areas. On warmer days with light winds, thermals will develop providing enough lift for vultures to soar at great altitudes. Active control early and late will help minimize the number of birds in the vicinity of the landfill.

Notes:

November

Primary Species of Concern: Ring-billed Gull, Black Vulture, Turkey Vulture

Secondary Species of Concern: Egrets, Grackles, Starlings, Blackbirds

Control:

1. Pyrotechnics
2. Propane Cannon
3. Distress Calls

Safety: Ear Protection, Eye Protection, Gloves

Biology:

The first big cold front that passes through the area in November will very likely mark the arrival of the wintering population of Ring-billed Gulls. These birds are used to feeding on landfills and will explore the McKinney area for other food sources. It is critical to harass the gulls the very first time they arrive at the landfill. A strong effort in the beginning will pay big dividends throughout the winter months. Vultures will continue to be present, but thermal activity may not be as strong as in the previous three months so they should not soar at hazardous altitudes above the landfill. With cold weather coming to the area, attention should be turned to large flocks of grackles, starlings, and blackbirds that form dense flocks in the McKinney area during winter months. Large flocks may pass through the landfill area in early morning as birds move away from roosting areas in town to feed in surrounding areas. Large flocks form again in the evening hours when birds return to downtown roosts. It is important to disperse these flocks as soon as they arrive with pyrotechnics. Again, a big effort in November will pay off in December and January.

Notes:

December

Primary Species of Concern: Ring-billed Gull, Black Vulture, Turkey Vulture

Secondary Species of Concern: Egrets, Grackles, Starlings, Blackbirds

Control:

1. Pyrotechnics
2. Propane Cannon
3. Distress Calls

Safety: Ear Protection, Eye Protection, Gloves

Biology:

Ring-billed Gulls are now wintering in the McKinney area. The vast majority of these birds in the areas will roost on Lake Lavon. Gull feeding patterns are also altered by weather. During overcast and rain days, special attention should be taken to prevent gulls from loafing in open areas away from the working face. Vultures will be present, but in lower numbers than in previous months. Grackles, starlings, and other blackbirds will form large flocks in early morning and late afternoon as they move to and from their roost sites. These birds prefer downtown roost sites as the brick/stone buildings and asphalt parking lots hold heat through the night and create artificial canyons, blocking cold winter winds. Additionally, dense trees in park areas provide closely packed branches for communal roosts and food is available from outdoor restaurants and litter.

Notes:

Appendix D. Active Control Methods

Active Control Methods - Bioacoustics (Distress Tapes)

Use for: Gulls, Starlings and Blackbirds

Operation:

1. Identify species of bird to be dispersed
2. Select the appropriate distress call tape and load into the cassette deck
3. Drive vehicle as close to the bird/flock as possible
4. Play the distress call for 10 - 15 seconds
5. If birds do not disperse, use pyrotechnic pistol, then repeat distress call
6. Do not continue to play the tape for more than 15 seconds and not more frequently than 3 times in one hour

Safety: No specific safety requirements

Potential Problems:

1. Habituation
2. Mobbing - Birds may attack the speakers!

General Information:

Bioacoustics are tapes of distress or alarm calls of specific bird species. It is critical to select the correct distress call tape for the species of birds to be dispersed. Distress calls work best when used in conjunction with other methods, such as the pyrotechnic pistol. Do not be alarmed if birds respond by coming towards the mounted speakers. This behavior, known as mobbing, is the result of curiosity or an attempt to drive away a predator that may threaten the flock. When birds exhibit mobbing behavior, they are easily dispersed with the pyrotechnic pistol. The most common mistake in the use of bioacoustics is allowing the tape to run for too long and too often. Use this method carefully and it can be highly effective.

Active Control Methods - Wire Grid System (Overhead Barriers)

Use for: Gulls,

Operation:

1. All putrescible waste must be tipped under the net/barrier
2. Report all damage to the net to the operations manager immediately
3. Disperse birds from surrounding areas with other active control

methods

Safety: No specific safety requirements

Potential Problems:

1. Mechanical Failures - tears, barrier supports
2. Birds are allowed to walk under the net

General Information:

Overhead wire barriers, nets, and grid systems have been used since the mid 1980's in areas with extreme gull problems. The systems range from parallel wires with spacing up to 10 meters to a 3 foot by 3 foot square grid, to a complete net system. Some systems are permanently installed and moved infrequently while others are suspended from mobile platforms that are moved every few days. Barrier systems can be very effective in keeping gulls away from the active face and serve a secondary function for litter control. Because these systems are expensive and somewhat fragile, they should only be used after careful consultation with an avian wildlife biologist.

Active Control Methods - .22 Caliber Pyrotechnic Pistol

Use for: Gulls, Starlings and Blackbirds, Vultures, Waterfowl

Operation:

1. Move as close to bird/flock as possible
2. Load pistol once you are as close as possible, first load the primer, then the Screamer or banger (pyrotechnic round) taking care to put the fuse end toward the barrel
3. Aim the pistol over the bird/flock at a 45 degree angle, with arm fully extended
4. If bird/flock move to land nearby, immediately approach the flock and repeat the procedure
5. Use combinations of screamers and bangers

Safety:

1. Always wear ear and eye protection and gloves!
2. Do not shoot directly at the ground
3. Be aware of dry grass and brush - Have a fire extinguisher near by
4. Use firearm safety at all times
5. Use only .22 cal blanks designed for the pistol!!

Potential Problems:

1. Habituation - if used too often, birds will get used to the noise
2. Fire hazards - if rounds explode on the ground during dry condition

General Information:

The pyrotechnics pistol will be the most commonly used control device on the facility. It is most effective when a combination of screamers and bangers are used. Care must be taken to not to over use the device or become complacent about safety. Always wear safety glasses and hearing protection when using this method. Additionally, wear gloves and always fire the pistol with your arms fully extended away from your body. If the weapon fails to fire, hold the barrel down range, away from other people and equipment for 30 seconds before attempting to remove the pyrotechnic round. Store unused pyrotechnics in a cool dry place and rotate stock frequently.

Active Control Methods - Propane Cannons

Use for: Gulls, Starlings and Blackbirds, Vultures, Waterfowl

Operation:

1. Move the cannon frequently to reduce habituation (at least every 2 - 3 days)
2. Do not let the cannon run continuously, vary the fire pattern, do not operate for over 1 hour at a time. Use a 1 hour rest interval.
3. Mount cannon on raised platform or tripod to improve performance
4. Use in combination with other control methods

Safety:

1. Always wear ear and eye protection
2. Locate away from dry grass and brush - Fire extinguisher near by
3. Mark cannon and propane tank with flagging to prevent heavy equipment from running over the cannon/tank

Potential Problems:

1. Habituation - if cannon stays in one place too long, birds will habituate
2. Fire hazards - do not set up in dry grassy areas

General Information:

Propane cannons are mechanical devices that produce loud explosions that are louder than a shotgun blast. Depending on the make and model of the propane cannon, these explosions can be timed to have irregular blast patterns with some having multiple blasts followed by irregular intervals. These devices work by igniting a small amount of propane with either a flint or piezo electric ignition system. Propane cannons have been very effective in deterring a variety of bird species, but are most effective on waterfowl, gulls, and blackbirds.

Some newer model propane cannons (such as the Reed-Joseph M-8) can be mounted on a rotating base that allow the barrel of the gun to swing in random directions. This along with a random fire pattern will reduce habituation in birds and allow the cannon to be moved on a less frequent basis.

Appendix E.
Record of Training
and
Bird Control Log

NTMWD
McKinney, Texas

Training Record

The individuals listed below have received training on bird identification, bird behaviors, active and passive bird control methods and tactics, federal and state permit requirements, documentation, and safety.

Name	Date	Course	Instructor	Score

Before Dispersing Birds Contact McKinney Tower 542-XXXX

[illegible]

Appendix F. General References

d. Bruun, B. B., C.S. Robbins and H. Zim. 1983. Birds of North America. Golden Press, New York.

E. Jarman, P. 1993. A manual of airfield bird control. British Crown Copyright 1992/DRA. United Kingdom. 143p.

4. The following list are vendors/sources for distress and alarm call tapes:

a. Signal Education Aids
2314 Broadway
Denver, Colorado 80205
(303) 295-0479

b. Laboratory of Ornithology
Cornell University
159 Sapsucker Woods Rd.
Ithica, New York 14850
(607) 255-5056

c. Borror Laboratory of Bioacoustics
Ohio State University
1735 Neil Avenue
Columbus, Ohio 43210-1293
(614) 292-2176

1. Below are listed vendors for pyrotechnics.

a. Reed-Joseph International Company
232 Main Street
PO Box 894
Greenville, Mississippi 38702
(800) 647-5554

b. Margo Suppliers. Ltd.
Site 20, Box 11, R.R. 6
Calgary, Alberta T2M4L5
(403) 285-9731

6. Related Scientific and Professional Meetings.

a. Bird Strike Committee - USA (BSCUSA)
This organization was formed in 1991 as a joint effort by the FAA, USAF, and USDA, to facilitate the exchange of information, promote the collection and analysis of accurate wildlife strike data, promote the development of new technologies for reducing wildlife hazards, promote professionalism in wildlife

management programs on airports through training and advocacy of high standards of conduct for airport biologists and bird patrol personnel, and be a liaison to similar organizations in other countries. The organization is directed by an 8-person steering committee consisting of 2 members each from the FAA, USDA, Department of Defense, and the aviation industry Wildlife Hazards Working Group. Bird Strike Committee - USA meets annually. For more information please call: (419) 625-0242

b. Bird Strike Committee - Canada (BSCC)

This organization is sponsored by Transport Canada and the Department of National Defense and is aimed at providing a mechanism for discussion of matters relating to bird hazard awareness and wildlife control at Canadian airports. The organization includes membership from various government departments including: Agriculture Canada, Canadian Museum of Nature, and Canadian Wildlife Service. Associate members include representatives from all major Canadian airlines, aviation industry members and associations, and others. BSCC meets twice each year. For additional information please call: (613) 990-1402

c. Bird Strike Committee - International

This long standing committee, formerly Bird Strike Committee - Europe, is an international forum for the discussion of all topics relating to bird and wildlife hazards to aviation. Meetings are held every two years and include working groups on Aerodrome Bird Hazards, Radar and Remote Sensing, Aircraft Component Design and Testing, and Military Low-level Operations. For additional information please contact: UK Crawley (0293) 573225

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF MCKINNEY,
CONSTRUCTION RECYCLING AND WASTE CORPORATION,
AND 380-MCKINNEY, L.P**

This Settlement Agreement (the "Agreement") is by and between the City of McKinney, Texas ("McKinney"), Construction Recycling and Waste Corporation ("CRWC"), and 380-McKinney, L.P. ("380-McKinney") for the purposes and consideration set forth herein.

RECITALS

WHEREAS, McKinney is a home rule city, a municipal corporation organized and operating in accordance with its charter and the laws of the State of Texas; and

WHEREAS, CRWC is a Texas corporation having its principal place of business in Dallas County, Texas; and

WHEREAS, 380-McKinney is a Texas limited partnership with its principal place of business in Dallas County, Texas; and

WHEREAS, 380-McKinney owns certain property (the "Property"), which property is more fully described in the attached Exhibit "A"; and

WHEREAS, CRWC has leased the Property from 380-McKinney and intends to develop the Property as a Type-IV municipal solid waste facility; and

WHEREAS, CRWC has filed with the Texas Natural Resource Conservation Commission (the "TNRCC") an application for a permit to operate a Type IV municipal solid waste facility on the Property (the "Application"), which Application is pending; and

WHEREAS, McKinney filed with the TNRCC a protest to the approval of the Application, and has been granted party status in the contested case proceeding regarding the Application; and

WHEREAS, McKinney and CRWC mutually desire to resolve the dispute between them regarding the proposed Type IV municipal solid waste facility for the Property; and

WHEREAS, McKinney and CRWC mutually desire to enter into this Agreement setting forth the terms and conditions pursuant to which McKinney will withdraw its opposition to the Application and CRWC and 380-McKinney will agree to undertake certain other obligations for the Property as described herein and in the permit to be issued by the TNRCC for the Property.

NOW, THEREFORE, in consideration of the promises, mutual agreements, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in settlement of disputed claims, McKinney, CRWC, and 380-McKinney hereby contract and agree as follows:

TX
Filed for recording in the
Collin County Clerk's Office
Honorably Helen Stalder
Collin County Clerk
On Dec 9, 2001
At 9:44am
Doc/Num : 0165966
Recording/Receipt #: 131.00
42546