

YAHARA AREA INTERGOVERNMENTAL AGREEMENT
Between the County of Dane and the City of Madison

THIS AGREEMENT, entered into by and between the County of Dane, a quasi-municipal corporation in the State of Wisconsin (hereinafter referred to as “County”), and the City of Madison, a municipal corporation of the State of Wisconsin (hereinafter referred to as “City”), is effective as of the date by which both parties have signed hereunder and according to the terms and conditions set forth herein.

WITNESSETH:

WHEREAS, the County has been providing solid waste disposal at the Dane County Landfill Site No. 2, or the Rodefild Landfill (hereinafter referred to as “Rodefild Landfill” or “Landfill No. 2”) for nearly 40 years, but its current capacity is only projected to last until approximately 2030; and,

WHEREAS, the County desires to continue its solid waste disposal program for the benefit of Dane County citizens and municipalities, but the County is in need of land to site a new landfill or “Landfill No. 3”; and,

WHEREAS, the City relies upon the County for its solid waste disposal needs and desires to continue its solid waste disposal locally, which is a more environmentally sustainable and cost effective approach; and,

WHEREAS, it is in both Parties’ interests to work together to find a future landfill site, ideally close to the Rodefild Landfill; and,

WHEREAS, the County has preliminary plans to develop Landfill No. 3, a compost operation, and sustainable business park (hereinafter collectively referred to as the “Sustainability Campus” or “Project”) with the intent to divert waste and create local circular economies; and,

WHEREAS, the City has determined that it is appropriate to make an approximately 232 acre portion of property owned by the City and currently used for the Yahara Hills Golf Course (the “Golf Course”), which property is due south of the Rodefild Landfill, available to the County for Landfill No. 3 and the Sustainability Campus; and,

WHEREAS, given numerous related issues between the Parties arising from this land sale and the future Landfill No. 3 and Sustainability Campus development, the Parties find it necessary to enter into an agreement to clearly define the mutual understandings and expectations associated with the sale of a portion of the Yahara Hills Golf Course for future landfill purposes, and for annexation of county owned land and extension of the urban service area and utilities to said county-owned land; and,

WHEREAS, Section 66.0301 Wisconsin Statutes, authorizes cities, villages, towns, counties, and other public agencies to enter into agreements for receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law.

NOW, THEREFORE, in consideration of the above recitals and mutual covenants of the parties, the receipt and sufficiency of which is acknowledged by each party for itself, the Parties do agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the mutual understandings and expectations of the Parties arising from the City's sale of a portion of the Yahara Hills Golf Course to the County to facilitate the future development of Landfill No. 3 and the Sustainability Campus along with further development of adjacent county owned land.
2. Initial Land Sale. As detailed in the Sustainability Campus and Landfill Development Agreement (the "Development Agreement") entered into contemporaneously with this Agreement, the City will be entering into a purchase and sale agreement with the County that will result in the sale of two parcels making up the east side of the Golf Course. The purchase and sale agreement is included as Exhibit D to the Development Agreement. The combined site, following Wisconsin Department of Transportation acquisitions, will be approximately 232 acres in size. The parcels involved are the following:
 - 7101 US Hwy. 12 & 18, parcel no. 251-0710-254-0099-7
 - 4502 Brandt Rd., parcel no. 251-0710-361-0099-0

As set forth in more detail in the purchase and sale agreement, in the event that the development and operation of Landfill No. 3 does not proceed, the City may repurchase all or portions of the property.

3. Golf Lease. Following the land sale, and as noted in the Development Agreement, County agrees to lease back portions of the Golf Course to the City to allow the City to continue golf operations on the land until such time as those areas are needed by the County. The Golf Course Leasebacks are attached to the Development Agreement as Exhibit E. The intent of the Parties is that the City's golf operations will remain intact as long as possible. This lease shall include the following terms:
 - a. The golf lease shall be \$1 annually.
 - b. The term of the lease shall be structured such that it will not require subdivision of the leased lands (i.e., a lease not to exceed 10 years).
 - c. The golf lease shall include the following timetable:
 - (1) The existing 36 holes shall remain operational through the 2024 golf season;
 - (2) 27 holes will remain operational through the 2025 golf season;
 - (3) 18 holes will remain operational through the 2042 golf season at a minimum, or longer, by means of automatic annual lease renewals, if a third cell or other configuration on land currently being sold extends the life expectancy of the currently proposed future landfill without the need for a future land sale.

- d. The County and the City's Parks Division shall agree ahead of time on which holes and portions of the golf course shall be closed, and which portions shall remain open. County will be responsible for delineating the boundaries of golf, which boundaries shall be communicated by City staff to its golfing customers, and enforced as necessary.
 - e. Notwithstanding the terms of the lease, the County shall have the ability to continue landfill related due diligence on the leased land so long as it does not interrupt the golf operations. If access is needed to portions of the leased land for such purposes, County shall work with Yahara Hills Golf Course staff to plan such activities in order to avoid any conflict with users of the Golf Course.
 - f. City will have access and full use of the existing golf maintenance facility on the east side of the Golf Course. This use shall include acceptable access from the maintenance facility to the existing golf holes for the purpose of golf maintenance through the 2028 golf season. This use will be covered by a lease separate from the golf lease.
 - g. The County shall have site access at and over the maintenance building driveway for purposes of Sustainability Campus construction and operating the compost facility starting October 1, 2025.
 - h. City will have access to lands being sold through 2026 for the purposes of setting up and reconfiguring the irrigation system to serve remaining golf holes. Modifications or improvements to the course and irrigation system shall be approved by the County and performed at the sole cost of the City. This use will be covered by a temporary access easement separate from the golf lease.
4. Project Development. The land purchased from the City will be used consistent with the Conceptual Site Plan presented in Exhibit A. Contingent on approvals and permits, the Project will include a compost operation that has the ability to accept food waste, a sustainable business park that will target recycling, waste diversion and other solid waste related businesses, and a landfill. The intent of the project is to create local circular economies and provide continued waste management options for Dane County residents and municipalities.
- a. Landfill Licensing and Permitting. City will agree not to file a contested case or other litigation regarding the siting, expansion or design of the landfill and agrees not to assist any opponent of the proposed siting, and will issue a letter of support for the proposed landfill. City will also support the County's variance request for reducing the required setback from a landfill to a park, although the variance itself may be subject to future Common Council approval.
 - b. Zoning and Approvals. County will agree to comply with any applicable City zoning and development approval standards for the siting and development of the future Campus.

- c. Sewer Service. City will allow for transmission of leachate from the landfill site and will support sanitary sewer service extension to the site through a central urban service area expansion. The future landfill shall be a customer of the Madison Sewer Utility and responsible for discharge consistent with established rates. City cannot guarantee acceptance of waste waters at Madison Metropolitan Sewerage District.
- d. Erosion Control and Stormwater Management. Erosion control and stormwater management permits for the future landfill and compost site development shall fall under the jurisdiction of the Dane County Land & Water Resources Department. The County shall not be required to obtain any approvals or permits from the City for erosion control or stormwater at the future landfill and compost site. Storm water approvals for the sustainable business park will be under the jurisdiction of the City. Modifications to the proposed DOT stormwater pond shall be subject to the approval of City as set forth in the Development Agreement.
- e. Wetland Restoration and Area Stormwater Management. The Parties will look to collaborate on potential wetland restoration and stormwater management improvements for the Yahara area.
- f. Recreation Planning. The Parties will work collaboratively to identify the recreational needs of the community in the Rodefild and Yahara areas, and work to align plans for parks and open space in the area, including working with other municipalities if necessary.
- g. Southern Access Road. The Parties, along with the Ho-Chunk Nation, have an interest in the development of a future southern access road connecting CTH AB and the Mill Pond Road area. The County agrees that any platting or development of the Golf Course will dedicate this future public right-of-way.
- h. Future Land Sale. As detailed in the Development Agreement, the City is agreeable to considering the future sale of additional portions of the Golf Course for the purposes of future landfill expansion as set forth in Exhibit B.
- 5. Solid Waste Agreement. The County will undertake the development of Landfill No. 3 and continue to accept the solid waste generated by the City of Madison as set forth in the Solid Waste Agreement.
- 6. Utility Extensions and Annexation.
 - a. City has agreed to extend certain urban services to some of the County owned lands located east of the Rodefild Landfill, north of USH 12 & 18 and east of CTH AB. As a condition of this service extension, County has agreed to City's request to annex the County owned lands in this area, including the East District Highway Garage, Medical Examiner's building and future solar farm.
 - b. City agrees that it will not interfere with any revenue agreement made between the solar farm developer and the Town of Cottage Grove or payments made thereunder.

- c. City agrees to allow the solar farm development to carry forward while in the Town of Cottage Grove. Unless earlier annexation of these lands is desired by the County, annexation of these lands will occur once solar farm construction is substantially completed, which is expected to occur by April 1, 2023. If substantial completion of the solar farm is not complete by then, the County will inform the City Planning Division and annex these lands within 90 days of substantial completion. Substantial completion of the solar farm shall be the point when construction activity on the land is complete.
- d. City agrees to have its building inspector and fire inspector perform an inspection of the current Medical Examiner's building and the current East District Highway Garage to generate a report of observations and deficiencies. The City and County shall mutually agree to a timeline for the County to correct any identified deficiencies and the City shall provide a written statement of code compliance, if requested, prior to the County submitting a petition for annexation. The County will submit petition for annexation no later than 90 days of effective date of this Agreement.
- e. A map showing the County owned lands subject to this annexation requirement is attached hereto as Exhibit C. The County will submit a petition for annexation of "Area A" in accordance with timeline determined in Para d. above. The County will submit annexation petitions for "Area B" and "Area C" in accordance with timeline determined in Para c. above.

7. Other

- a. Project Assessments. The City acknowledges that the County will not be specially assessed for the USH 12 & 18 and CTH AB interchange project. The City and the County are both separately entering into agreements with Wisconsin Department of Transportation (WDOT) regarding the funding for that project and improvements made thereunder.
- b. Remnant Parcel. Following WDOT's USH 12 & 18 and CTH AB project, the City will agree to discuss selling the City's remnant land interests adjacent to the Rodefild Landfill. The vacant former "Yahara Wood Processing Site" located at 7401 US Hwy 12 & 18, parcel no. 251-0710-251-0098-5, is currently subject to a lease by Dane County (doc. no. 5078421) for uses associated with the Rodefild Landfill.

8. Conflicting Terms. As noted herein, other Agreements relating to the Golf Course, Landfill No. 3, and the Sustainability Campus will be entered into by the Parties contemporaneously with this Agreement. In the event of any inconsistency, conflict or ambiguity as to the rights and obligations of the parties under this Agreement or the related agreements, it is the intent of the Parties that the terms of this Agreement shall control and supersede any such inconsistency, conflict or ambiguity as to the subject matters contained herein.

9. Non-Discrimination. In the performance of the obligations under this Agreement, the parties agree to abide by their own respective affirmative action plans and in doing so agree not to discriminate, in violation of any state or federal law, against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. The parties further agree not to discriminate, in violation of any state or federal law, against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
10. Liability. Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, boards, commissions, agencies, officers, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions including providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, agents, boards, commissions, agencies, officers and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes.
11. Authority. Each party warrants for itself that it has complied with all applicable statutes, rules, orders, ordinances, requirements and regulations to execute this Agreement, and that the person or persons executing this Agreement on its behalf is authorized to do so.
12. Amendment. This Agreement may be amended only by written agreement of the parties.
13. Enforcement. This Agreement shall be governed by the laws of the State of Wisconsin. Any act by either party in violation of this Agreement shall be remedied by the courts of the State of Wisconsin. This Agreement is intended to provide both Parties with the right and standing to seek any available legal or equitable remedy to enforce or seek damages for the breach of this Agreement.
14. Waiver. Any waiver by any party to a breach of any term or condition of this Agreement shall not be considered a waiver of any subsequent breach by the party of the same term or any other term or condition of this Agreement.
15. Binding Effect. The Parties have entered into this Agreement under the authority of Wis. Stat. Sec. 66.0301. The Parties agree that this Agreement shall be binding upon both parties, as well as their respective successors and assigns.
16. No Third Party Beneficiary. This Agreement is intended to be solely between the County and the City. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement.

17. Construction. The Parties acknowledge that this Agreement is the product of negotiations between the Parties and that, prior to the execution hereof, each Party has had full and adequate opportunity to have this Agreement reviewed by, and to obtain the advice of, its own legal counsel with respect hereto. Nothing in this Agreement shall be construed more strictly for or against either party because that party's attorney drafted this Agreement or any part hereof. No terms or conditions contained in this Agreement shall be construed to create a situation where performance becomes impossible, nor shall any provision herein be construed to create a conflict with any duty or obligation that the County may have under any existing or future statute, rule or regulation of the United States of America, the State of Wisconsin, or any federal or state agency having jurisdiction over the design and operation of the Landfill.
18. Titles. The titles to sections, subsections and paragraphs used in this Agreement are for informational purposes only, except where it may be necessary to an understanding of the content of the Agreement.
19. Severability. In the event that any portion of this Agreement is invalidated or held unenforceable by a court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
20. Force Majeure. Neither party to this Agreement shall be liable for failure to perform any duty or obligation that said party may have under this Agreement where such failure has been occasioned by any act of god, fire, strike, inevitable accident, war, pandemic or other public health emergency, court order or binding determination of a governmental agency.
21. Counterparts; Electronic Delivery. This Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the Parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed by their proper officers on the day and year written below.

FOR THE COUNTY OF DANE

Joe Parisi, County Executive

Date

Scott McDonnell, County Clerk

Date

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael Haas, City Attorney

Date

Execution of this Agreement by the City of Madison is authorized by Resolution Enactment No. RES __ - _____,
ID No. _____, adopted by the Common Council of the City of Madison on _____, 20__.

EXHIBIT A
Conceptual Site Plan (3/1/2022)

EXHIBIT B
Overview Map and Option Property

EXHIBIT C
Map of Annexation Area