

SOLID WASTE AGREEMENT
For 2023-2032
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, on August 15, 1973 the County and the City (hereinafter referred to collectively as the “Parties”) entered into a waste stream agreement (the “1973 Waste Stream Agreement”) in which the City agreed to close its solid waste disposal facilities and use County disposal facilities; and,

WHEREAS, on January 16, 1984 the Parties entered into a land sale agreement that allowed the County to construct and operate a solid waste facility located at 7102 U.S. Hwy 12 & 18 in the City of Madison, Dane County, Wisconsin, known as Dane County Landfill Site No. 2, or the Rodefeld Landfill (hereinafter referred to as “Rodefeld Landfill” or “Landfill No. 2”). Subsequent land sale agreements between the Parties that enabled the expansion of the Rodefeld Landfill were entered into in 1994 and 2014; and,

WHEREAS, as part of the 2014 land sale, on April 16, 2014, the Parties entered into a Rodefeld Landfill Expansion and Solid Waste Agreement (the “2014 Solid Waste Agreement”) to set forth the terms and conditions agreed to by the Parties regarding the City’s solid waste stream, tipping fees, daily cover and other issues associated with the operation of the second expansion of the landfill. The term of this Agreement was from January 1, 2014 through December 31, 2023; and,

WHEREAS, the County has been providing solid waste disposal at the Rodefeld Landfill for nearly 40 years, but its current capacity is only projected to last until approximately 2030; and,

WHEREAS, the City and the County are in agreement that it is in their mutual interests for the City to sell a portion of the City’s Yahara Hills Golf Course to the County for use as a future landfill (“Landfill No. 3”) to replace the Rodefeld Landfill, along with a compost site and sustainable business park (hereinafter collectively referred to as the “Sustainability Campus”); and,

WHEREAS, as a condition of this land sale and overall agreement relating to Dane County Landfill No. 3, the Parties wish to enter into an updated solid waste agreement, to replace and supersede the 2014 Solid Waste Agreement and ensure the economic viability of the County’s landfill operations and provide the City with the most cost effective means of solid waste disposal during the next decade; 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 Solid Waste Agreement (“Agreement”) is to set forth the terms and conditions agreed to by the Parties regarding the City’s solid waste stream, tipping fees, daily cover and other City materials, and other issues associated with the County’s operation of the Rodefild Landfill and Landfill No. 3 (hereinafter referred to as “the County’s landfill operations”), as well as the to-be-developed County compost site.
2. Term; Renewal. The term of this Agreement shall be from January 1, 2023 through December 31, 2032. There shall be no right to automatic renewal of this Agreement. No later than January 2032 the Parties shall commence good faith negotiations to reach a new waste stream agreement to enable the City to adequately plan for its 2033 budget.
3. Waste Stream. The City guarantees the County a solid waste stream at the County’s landfill operations as follows:
 - a. The City will bring all of its solid waste, as defined by Wis. Stat. Sec. 289.01(33), to be landfilled to the County’s landfill operations.
 - b. The City will be free to use solid waste diversion programs, which programs result in solid waste being sent to facilities other than a landfill.
 - c. The City shall not be subject to any minimum tonnage guarantees.
4. Tipping Fees. The County shall charge the City the following tipping fees for solid waste disposal at County landfill operations (“Tipping Fees”):
 - a. Base Fees. Commencing January 1, 2023, the County will charge the City \$50.88/ton (\$37.88/ton County charges) for disposal of solid waste.
 - b. Fee Increases. If the County elects to raise fees, it will notify the City no later than June 30th of the year prior to the effective date of the increase. For the years 2024 and 2025, the County will increase the tipping fee by no more than 1.75% over the prior year’s tipping fee. After 2025, the County may increase the tipping fees by no more than 3% over the prior year’s tipping fee in 2026, 2029 and 2032 and by no more than 1.75% over the prior year’s tipping fee in all other years. If a larger increase is deemed necessary, the County shall notify the City no later than June 30th of the year prior to the effective date of the increase. The County will provide the City with financial information supporting the need for any proposed increase in excess of the limits defined above.

- c. State Tipping Fees. The base fees in subsection a. include State imposed tipping fees of \$12.997/ton as of February 2022. At any time during the term of the Agreement tipping fees may be increased or decreased to account for increases or decreases in State tipping fees, or additional solid waste fees imposed by the State or other regulatory authorities.

5. Daily Cover and Materials for Beneficial Reuse.

- a. Quantities. Commencing in 2023, the County agrees that it will accept from the City up to 8,000 tons annually, or 16% of the total quantity of City's municipal solid waste tonnage from the previous year, whichever is greater, of materials approved by Wisconsin Department of Natural Resources (WDNR) for use as daily cover, alternative daily cover (ADC), or for beneficial reuse within the landfill.
- b. Charge for Cover. The County shall charge the City \$13.10 per ton for materials that are suitable and approved for use as daily cover, ADC or beneficial reuse. Any material that is not suitable for these purposes and requires landfilling will be charged the City's full Tipping Fee.
- c. Fee Increases. Commencing January 1, 2024 the County will increase the charge for Cover in Subsection b, using the same procedures as set forth in Sec. 4.b.
- d. Additional Quantities. Dane County will accept up to an additional 2,000 tons of material per year suitable for use as daily cover, ADC or for beneficial reuse within the landfill at a rate of an additional \$12.997/ton over the current rate for Cover to account for State imposed tipping fees. Any approved material above the annual cap allowed in Subsection a. and this Subsection will not be considered alternative daily cover and will be charged normal Tipping Fees.
- e. Approved Materials. Materials used for daily cover, ADC or beneficial reuse must be consistent with the Rodefild Landfill or Landfill No. 3's approved Plan of Operation and Special Waste Program (or "Special Waste Plan"). Additional materials and waste streams may be considered for daily cover or ADC but may require Plan of Operation modification approval from the WDNR. Waste materials approved by WDNR and the Rodefild Landfill's Plan of Operation for use as cover, ADC or for beneficial reuse as of February 2022, include:
 - 1) Street sweepings
 - 2) Grit screenings
 - 3) Construction and demolition fines
 - 4) Petroleum contaminated soils that meet the requirement of the Special Waste Program

- f. Limitations. Materials used for cover must not create nuisance conditions (excess odors, unwanted pests, etc.) or create operational issues (unstable roadways, working surfaces, etc.). County reserves the right to reject or redirect landfill materials not suitable for cover.
 - g. Approvals. The County will work in good faith to submit applications necessary to obtain WDNR approval of other potential cover materials. City will reimburse the County for any review fees or costs associated with obtaining such approvals. County will not be held liable for any delay in receiving approvals or denial of applications. The County will include the City Engineering Division in meetings with the WDNR on these requests.
6. Special Projects. The County will work in good faith to accept additional materials from special projects (including but not limited to clean soils, contaminated soils, and dredge materials) for use as clean fill or for beneficial reuse as cover soils or road or berm construction within the landfill. Any material that is not suitable for these uses and that requires landfilling will be charged the normal Tipping Fees.
- a. Notifications. Representatives from Dane County Department of Waste & Renewables and the City Engineering Division shall meet in October each year to discuss the anticipated special projects for the upcoming year, to determine timing of material delivery to the County's landfill operations, discuss material properties, and to determine locations where these materials could be stockpiled or beneficially used at the County's landfill operations.
 - b. Laboratory Analysis. The City shall be responsible for facilitating and providing laboratory results to demonstrate that the material is either suitable for use as clean fill outside of the landfill limits of waste or for beneficial use within the landfill.
 - c. Dredge Materials. The City shall establish an effective sampling and analysis plan to identify suitable beneficial uses, dewatering protocols, and disposal options for dredge spoils. This sampling and analysis plan shall be completed and in place before materials will be accepted at the landfill. Sampling and analysis plan shall meet requirements set forth by the WDNR, or other regulatory authority on the matter, and the Dane County Special Waste Program. Any material that cannot be beneficially reused and must be landfilled will be charged normal Tipping Fees. Any material not permitted for disposal at the County's solid waste operations due to high levels of contamination, will be disposed of in another manner at the responsibility of the City. The County shall begin discussions with the WDNR for approval of dredge materials as alternative daily cover no later than January of 2023.
 - d. Delivery. The City bears all responsibility and expense to properly deposit these special materials at the Landfill consistent with WDNR, County and other applicable requirements. The entire disposal process involving these materials from special projects shall be coordinated with the County and shall not interfere in any manner with Landfill activities.

- e. Limitations. Notwithstanding any other language in the Agreement, the total quantity of materials the County is required to accept under this Section is limited to that amount of materials actually needed on site for clean fill, daily cover and/or ADC as determined by the Director of Waste & Renewables.

7. Organics. The County will develop a composting program that will accept yard waste, leaves, and food waste (“organic materials”) from the City commencing no later than April 1, 2026.
 - a. Charge for Organic Materials. The County will charge the City a base rate of \$190,000 per year for the management of yard waste included as part of this Agreement.
 - b. Food Waste. The County will accept up to 24,000 pounds of food waste per year from the City at no additional charge. Accepted materials will be limited to food scraps, including small amounts of meat and dairy that are collected at City drop off locations. Accepted materials will not include paper products, plastics, packaging, sanitary waste or other non-food waste products. Accepted materials, fees, contamination limits, and delivery requirements associated with larger scale food waste composting will be negotiated outside of this Agreement.
 - c. Fee Increases. Commencing January 1, 2027, the County may increase fees for organic materials consistent with the terms set forth in Sec. 4.b.
 - d. Contamination. County retains the ability to reject loads of yard waste or other organic materials that have unreasonable amounts of trash or non-suitable materials. Rejected materials will be disposed of at the landfill at full tipping fees.
 - e. Limitations. Development of the composting program and acceptance of food waste is contingent on the land sale, permitting and approvals required for the operation of a compost or organics management facility at the Sustainability Campus.

8. Other City Materials and Services.
 - a. Wood Chips. The City will provide County landfill operations with wood chips from the City’s large item chipping operation, as needed, at no charge to the County.
 - b. Future Recycling Programs. The County retains the right to negotiate future tipping fees and special fees for other materials and future waste diversion programs. Fees for materials not specified in this Agreement will be charged to the City at posted rates in effect at that time.

9. County Solid Waste Revenue. The County agrees that County personnel costs for the Corporation Counsel position that are partially funded by solid waste revenue will not exceed 2014 amounts, plus any increases necessary to cover the continued costs of that

position. The County agrees to not transfer any other revenues from solid waste funds to support any programs or expenditures that are not related to the solid waste program. This provision in no way limits the use of revenues from the sale of end-products created from the Rodefild Landfill gas or Landfill No. 3 gas.

10. Records Disclosure. Upon request, the County will agree to provide the City with a summary of revenues and tonnage of waste received by County landfill operations. This data shall be specific to each solid waste operation, or just limited to the tonnage and revenue from gate or tipping fees at the landfills themselves. County reserves the right to withhold priority or confidential business information.
11. Future Closure, Sale or Transfer of Landfill Operations. The County retains the right to cease landfill operations if it is no longer economically feasible. The County will give the City no less than 12 months notice if it decides to cease operations. If, during the term of this Agreement, the County decides to sell either Landfill, the City shall have a right-of-first-refusal regarding any offers to purchase. If either Landfill is sold to a third party, this Agreement shall be binding upon the third party unless waived by the City.
12. Operational Concerns. In addition to those matters set forth in any negotiated agreement associated with the landfills or as required by State law, the County shall be responsible for the costs directly related to the operation of the Landfills, including public improvements, such as highway construction and road building, operational activities, ongoing maintenance requirements and Landfill monitoring responsibilities.
13. Local Approvals.
 - a. Erosion Control and Stormwater Management. Erosion control and stormwater management permits for the Landfill operations 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 landfills.
 - b. City Approval Process. Any approvals required from the City to expand the landfill operations or perform any work at the landfills shall not be unreasonably withheld.
14. Other Agreements.
 - a. This Agreement is being entered into concurrently with other agreements necessary to effectuate the land sale and development of Landfill No. 3 and the Sustainability Campus. 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.
 - b. This Agreement, upon its effective date, specifically supersedes the 2014 Solid Waste Agreement.

15. Contingencies. The Parties' obligations under this Agreement are contingent upon compliance with all of the provisions of the Development Agreement and Yahara Intergovernmental Agreement entered into contemporaneously with this agreement. If Landfill No. 3 is not constructed, for whatever reason, either Party may give prompt notice to the other of the inability to proceed. This Agreement will expire one year from said notice and the Parties will work in good faith to renegotiate this Agreement.
16. Amendment. This Agreement may be amended only by the written agreement of both of the Parties hereto.
17. Entire Agreement. This Agreement represents the entire agreement between the Parties with regards to the subject matters contained herein, and, except as otherwise noted, supersedes all prior negotiations, representations or agreements, either written or oral dealing with the City's solid waste stream, tipping fees, daily cover, organics disposal and other issues associated with the City's solid waste disposal.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.

24. 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.
25. 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.
26. 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.
27. 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 County and the City, by their respective authorized agents, have caused this Agreement to be executed, effective as of the date by which all parties hereto have affixed their respective signatures.

FOR THE COUNTY OF DANE

Joe Parisi, County Executive

Date

Scott McDonell, County Clerk

Date

Execution of this Agreement by the County is authorized by _____, adopted by the Board of Supervisors of Dane County on _____, 2022.

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 is authorized by Resolution Enactment No. RES ___ - _____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2022.