

RODEFELD LANDFILL EXPANSION AND SOLID WASTE 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, 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, which agreement was recorded with the Dane County Register of Deeds on February 6, 1986 as doc. No. 1920750 (the “1984 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 Rodefild Landfill (hereinafter referred to as “Landfill”); and,

WHEREAS, on December 20, 1993, the County, the City, the Town of Blooming Grove and the Town of Cottage Grove entered into a negotiated agreement pursuant to Wis. Stat. Sec. 144.445 (now Sec. 289.33) regarding the first expansion of the Landfill (the “1993 Negotiated Agreement”); and,

WHEREAS, on June 3, 1994, the Parties entered into a land sale and Landfill Expansion Real Estate Agreement, which agreement was recorded with the Dane County Register of Deeds on June 6, 1994 as doc. No. 2607108 (the “1994 Land Sale Agreement”), that allowed the County to expand the Landfill; and,

WHEREAS, the County has been providing solid waste disposal at the Landfill for nearly 30 years, and the 1994 expansion capacity has nearly been reached. The County now wishes to expand the Landfill to extend the life of the solid waste facility and has applied to Wisconsin Department of Natural Resources (WDNR) for an operation permit and construction permit to expand the Landfill; and,

WHEREAS, the County, the City, and the Town of Cottage Grove have separately conducted negotiations relating to the proposed second expansion of the Landfill pursuant to Wis. Stat. Sec. 289.33, and, subject to the approval by the County Board of Supervisors, the City Common Council and the Town of Cottage Grove Board, will be entering into a Negotiated Agreement Relating to the Second Rodefild Landfill Expansion (the “2014 Negotiated Agreement”) concurrently with this Agreement; and,

WHEREAS, the City supports the proposed second expansion of the Landfill and is agreeable to selling City land to the County to facilitate this expansion; and,

WHEREAS, the Parties further desire to enter into a ten-year waste stream agreement to ensure the economic viability of the Landfill 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 Rodefild Landfill Expansion and 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, the sale and lease of City land adjacent to the Landfill, and other issues associated with the operation and proposed second expansion of the Landfill.
2. Term. The term of this Agreement shall be from January 1, 2014 through December 31, 2023.
3. Waste Stream. The City guarantees the County a solid waste stream at the Landfill 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 Landfill.
 - b. The City will be free to use solid waste diversion programs.
 - c. The City shall not be subject to any minimum tonnage guarantees.
4. Tipping Fees.
 - a. Base Fees. The County will charge the City the following tipping fees for disposal of solid waste:
 - 1) January 1, 2014 – June 30, 2014: \$43.50/ton (\$30.503/ton County charges).
 - 2) July 1, 2014 – December 31, 2014: \$46.50/ton (\$33.503/ton County charges).
 - 3) January 1, 2015 – December 31, 2015: \$48.50/ton (\$35.503/ton County charges).
 - 4) Commencing January 1, 2016: \$50.00/ton (\$37.003/ton County charge).

- b. Future Fee Increases. Commencing January 1, 2017 the County may increase the County portion of the tipping fee by no more than 3.5% over the prior year's County portion of the tipping fee. If an increase is implemented, 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 increase under this subsection. Any proposed increase in tipping fees in excess of 3.5% shall require approval of the City.
- c. State Tipping Fees. The base fees in subsection a. include State imposed tipping fees of \$12.997/ton as of March, 2014. At anytime during 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 authority.

5. Daily Cover, Other City Materials and Services.

- a. Primary Source of Cover. The County agrees that its primary source of daily cover and/or alternate daily cover (ADC) shall be the dredge spoils, street sweeping debris, contaminated soils and vector debris received from the City.
- b. Charge for Cover. The County shall charge the City \$13.10/ton for street sweepings debris, vector debris and contaminated soils suitable for use as daily cover and/or ADC, subject to the limitations set forth herein. Any material that is not suitable for use as daily cover and/or ADC will be charged the City's full tipping fee under Subsection 4.
- c. Contaminated Soils. If necessary, the City will work with WDNR to establish the suitability of any contaminated soils for use as ADC before use.
- d. Dredge Spoils.
 - 1) The County will accept dredge spoils from the City at no cost, up to a maximum of 100,000 tons over the term of the Agreement, and no more than 20,000 tons in any calendar year.
 - 2) If necessary, the City shall establish that these dredge spoils are non-hazardous and appropriate to be landspread or piled in mounds outside the area where landfill activities will take place. Any material that must be landfilled will be charged the City's full tipping fee under the Agreement.
 - 3) Representatives from Dane County Solid Waste Division and the City Engineering Division shall meet in October each year to discuss the anticipated quantity of dredge spoils for the upcoming year, to determine timing of material delivery to the Landfill, and to determine locations where these dredge spoils will be deposited upon Landfill property. The City bears all responsibility and expense to properly deposit these dredge spoils on the Landfill property consistent with WDNR requirements. The City is granted reasonable access rights for this purpose. The entire disposal process

involving these dredge spoils shall be coordinated with the County and shall not interfere in any manner with Landfill activities. If there is not sufficient space on the Landfill property for the dewatering process, the City must dewater the material prior to bringing it to the Landfill property.

- e. Wood Chips. The City will provide the Landfill with wood chips from the City's chipping operation, as needed, at no charge to the County.
 - f. Limitations. Notwithstanding any other language in the Agreement, the total quantity of dredge spoils, street sweeping debris, vector debris and contaminated soils that the County is required to accept under this Section is limited to that amount of materials actually needed on site for daily cover and/or ADC as determined by the Solid Waste Manager.
 - g. City Services. The City may agree to provide to the County, upon request (a) annual City Water Utility cleanout of leachate and sanitary sewer pipes at Landfill pursuant to NR 506.07(5)(c); and (b) televising of leachate and sanitary pipes at the Landfill by City Water Utility every 5 years, pursuant to NR 506.07(5)(e). The City may charge the County to recoup its expenses for these services.
6. Land Sale and Land Lease. In order to facilitate the expansion of the Landfill, the City will agree to sell and lease City-owned lands adjoining the Landfill to the County, on the terms and conditions set forth in the accepted March 17, 2014 offer to purchase, and as further set forth herein:
- a. Land Sale. The City will convey fee title to 54.94 acres of City owned land adjoining the Landfill to the County for two-hundred and thirteen thousand two-hundred and eighty dollars (\$213,280). The land to be sold consists of parcels A-1 and B-1 as described on the February 21, 2014 Plat of Survey prepared by AECOM, and attached hereto as Exhibit A.
 - b. Land Lease. The County will lease the City's remaining 9.588 acre parcel of land adjoining the Landfill to the County for one dollar (\$1) per year. The land to be sold consists of parcel C-1 as described on Exhibit A. The lease shall stipulate that the County will maintain the leased area (mowing, other turf maintenance, erosion control and tree maintenance). The City reserves the right to use and enjoy the leased area consistent with the lease terms, provided that such use and occupancy shall not interfere with the County's use of the property for ground water monitoring, soil stockpiles, or other landfill purposes. The City shall have the right to transfer the leased area to WisDOT or to use the leased area for transportation purposes in the event the leased area is needed by WisDOT for said purposes.
 - c. CTH AB Expansion. In the event that WisDOT requires expansion of County Highway AB in its current location, the Parties shall share equally the cost of any necessary land acquisition and relocation costs to accommodate the highway

expansion along County Highway AB on the east and west sides from USH 12 to the northern boundary of the Landfill property.

- d. Kettle Field. The lands making up Parcel A-1 are currently managed by the City Parks Division and include, along the northern portion of the lands, an area known as Kettle Field. Kettle Field is currently used by the Madison Area Radio Controlled Society (MARCS) for the operation of radio controlled flying devices. The County has accommodated this use on these lands since the 1984 land sale agreement between the Parties, and, through agreements with the City and the 1993 Negotiated Agreement, has allowed MARCS members to use the Landfill property to access Kettle Field for nearly thirty years. Accordingly, upon the sale of Parcel A-1 to the County, the County agrees to accommodate the continued use by MARCS of Kettle Field through the end of 2014, subject to any safety concerns that the County may have regarding the use of this land during expansion activity at the landfill.
7. County Solid Waste Revenue. The County agrees that County personnel costs for Corporation Counsel and the Highway Commissioner positions that are partially funded by solid waste revenue will not exceed 2014 amounts, plus any increases necessary to cover the continued costs of those positions. 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 Landfill gas.
8. Records Disclosure. The County will agree to annually provide the City with a summary of revenues and tonnage of waste received by the Landfill. 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 Landfill itself.
9. Future Closure, Sale or Transfer of Landfill Operations. The County retains the right to cease landfill operations at the Landfill 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 the Landfill, the City shall have a right-of-first-refusal regarding any offers to purchase. If the Landfill is sold to a third party, this Agreement shall be binding upon the third party unless waived by the City.
10. Operational Concerns. In addition to those matters set forth in the 2014 Negotiated Agreement, the County shall be responsible for the cost of public improvements, including highway construction and road building, Landfill operational activities, ongoing maintenance requirements and Landfill monitoring responsibilities, established to be directly related to the Landfill.
11. Local Approvals.
 - a. Rezoning. This Agreement and the Landfill expansion is contingent upon City rezoning approval for the entire existing and newly acquired Landfill properties.

The Parties hereby affirm that they will make good faith efforts to complete the rezoning process as soon as possible, and no later than June 15, 2014. To facilitate prompt consideration of the County's rezoning and SIP applications for the property being sold by City to County, prior to the land sale the City agrees to co-sign the rezoning and SIP petitions as the current land owner upon the County's request.

- b. Erosion Control and Stormwater Management. Erosion control and stormwater management permits for the Landfill 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 Landfill.
- c. City Approval Process. Any approvals required from the City to expand the Landfill or perform any work at the Landfill shall not be unreasonably withheld.

12. Other Agreements.

- a. This Agreement is being entered into concurrently with the 2014 Negotiated Agreement, along with the documents necessary to effectuate the land sale and land lease as described in Section 6 above.
- b. Except as set forth in Subsection c., this Agreement specifically supersedes those rights, responsibilities and obligations of the Parties detailed in the 1973 Waste Stream Agreement, the 1984 Land Sale Agreement, the 1993 Negotiated Agreement and the 1994 Land Sale Agreement.
- c. The following provision of the 1984 Land Sale Agreement is not superseded by this Agreement, and shall remain binding upon the Parties based upon the language in the original agreement:
 - 1) Section 13: The City's right of first refusal over the "hope park" lands to the north of the landfill.

13. Contingencies. The Parties' obligations under this Agreement are contingent upon the approval of the 2014 Negotiated Agreement, the land sale and land lease as described in Section 6 above, rezoning approval as described in Section 11.a. above and the issuance of a Landfill expansion construction permit by the WDNR.

14. Amendment. This Agreement may be amended only by the written agreement of both of the Parties hereto.

15. Entire Agreement. Except for the 2014 Negotiated Agreement and the accepted March 17, 2014 offer to purchase, this Agreement represents the entire integrated agreement between the Parties with regards to the Landfill expansion and Landfill operation, and, except as otherwise noted, supersedes all prior negotiations, representations or agreements, either written or oral dealing with the Landfill expansion and the Landfill operation.

16. 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.
17. 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.
18. 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.
19. 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, except as otherwise noted in Section 9 above.
20. 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.
21. 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.
22. 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.

23. 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.
24. 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, court order or binding determination of a governmental agency.

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 _____, 2014.

FOR THE CITY OF MADISON

Paul R. Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Eric Veum, Risk Manager

Date

Approved as to form:

Michael P. May, 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 _____, 2014.

EXHIBIT A

Plat of Survey by AECOM

