

Mark Nessmann Environmental Manager P 920-766-8235 F 920-766-8708



January 13, 2016

Executive Director Waste Facility Siting Board 5005 University Avenue Suite 201 Madison, WI 53705-5400 Secretary Wisconsin Department of Natural Resources 101 South Webster Street P.O. Box 7921 Madison, WI 53707-7921

RE: Expera Specialty Solutions Red Hills Landfill – Phase VI Notice of Negotiated Landfill Agreement

Dear Sir/Madam:

Enclosed please find a complete copy (with attachments) of an Agreement approved and executed by the City of Kaukauna on January 8, 2016 for expansion of the Red Hills Landfill (Phase VI). A copy of this Agreement is provided pursuant to Section WFSB 6.02, Wis. Adm. Code.

Please feel free to contact myself at (920) 766 – 8235 if you have any questions regarding this correspondence.

Sincerely,

Mark Nessmann

Environmental Manager

CC: Bob Jakel - City of Kaukauna

Sally Hronek - WI Department of Natural Resources

AGREEMENT BETWEEN EXPERA SPECIALTY SOLUTIONS LLC AND THE CITY OF KAUKAUNA REGARDING THE RED HILLS LANDFILL

This Agreement Regarding the Red Hills Landfill (the "Agreement") is made and entered into by and between Expera Specialty Solutions LLC ("Expera"), a limited liability corporation engaged in the manufacture of specialty paper with an office located at 600 Thilmany Road, Kaukauna, Wisconsin 54130, and the City of Kaukauna, a Wisconsin municipality with an office located at 201 West Second Street, Kaukauna, Wisconsin 54130 (the "City").

WHEREAS, Expera intends to expand the Red Hills Landfill (the "Landfill") for the disposal of solid waste, which expansion is hereinafter referred to as "Phase 6," and

WHEREAS, Phase 6 will be developed on land owned by Expera within City limits constituting approximately 66.416 acres located in the SE 1/4 of the Fractional NW 1/4, Section 30, T21 N, R19 E, City of Kaukauna, Outagamie County, Wisconsin (locally, west of Haas Road, south of County Road Z and immediately east of the existing Red Hills Landfill) (the "Site"), and

WHEREAS, the City is processing a request to amend the zoning classification for the Site from residential to industrial in order to allow the development of Phase 6 consistent with the City Zoning Ordinance and Comprehensive Plan, and

WHEREAS, Expera and the City have engaged in negotiations regarding Phase 6 as provided for in Section 289.33, Wis. Stats., and

WHEREAS, the parties wish to memorialize the outcome of their negotiations in a written agreement as provided for in Section 289.33(9)(g)-(k), Wis. Stats., and

WHEREAS, Expera and the City are parties to that certain agreement entitled "Agreement for Connecting the Red Hills Landfill to the City of Kaukauna Sanitary Sewer System for Leachate Treatment" between Thilmany, LLC, and the City as of December 20, 2007 (the "Leachate Agreement") to govern discharges of leachate from the Landfill to the City's sanitary sewer collection system (the "Collection System"), and

WHEREAS, Expera and the City are parties to that certain agreement entitled "Agreement" entered into as of December 23, 1996 (the "Recycle Agreement"), allowing the City to maintain and operate a compost and recycle center (the "Recycle Center") on property owned by Expera at the Site, and

WHEREAS, the Wisconsin Department of Natural Resources ("DNR") has established standards for the location, design, construction, sanitation, operation, monitoring and maintenance of solid waste landfills, including Phase 6, and

WHEREAS, Phase 6 will be subject to licensure and regulatory enforcement by DNR,

NOW, THEREFORE, the parties, by their duly authorized representatives, agree as follows:

- 1. <u>Landscaping/Berms</u>. Expera shall develop and maintain screening berms along the south, east, and north boundaries of the Phase 6 site per the Landscape Design Plan contained in Appendix A.
 - a. The City may supplement the berms for Phase 6 with clean material from road construction activities provided such material is available within the Phase 6 construction schedule.
 - b. Expera shall retain a professional landscaper to assist in the design of these berms.
 - c. As the need arises, Expera can supplement construction and maintenance of the berms with excess clay from landfill construction activities as well as beneficial reuse material from other Expera sources.
 - d. The berm along Haas Road will be physically completed (fill material placed) prior to waste material being placed in Phase 6.
 - e. The berm along Highway Z will be completed at a later date but no later than the end of 2024.
 - f. The City will physically construct the south berm for Phase 6 using clean material from road construction activities as material becomes available, or by Expera within 2 years of being informed by the City to do so.

2. Permitted Waste.

- a. Solid Waste associated with facilities operated by Expera in Kaukauna ("Thilmany") and DePere ("Nicolet") can be placed in Phase 6 subject to the conditions set forth herein. Wastes from other facilities are not allowed except as provided for in Section 2.c. below.
- b. Waste from the Nicolet facility shall be limited to 10,000 tons per year, or 15% of the total annual waste placed in Phase 6. Notwithstanding the foregoing, in no event shall waste from the Nicolet facility placed in Phase 6 exceed 10,000 tons per year.
- c. Non-hazardous material from other facilities can be placed in Phase 6 if (i) such material is recognized as beneficial use material by DNR and (ii) Expera notifies the City Engineer in advance that such material will be placed in Phase 6 for beneficial use (e.g., daily cover, internal berms, etc.).
- d. Should the Kaukauna facility close and cease to generate Solid Waste eligible for placement in Phase 6, then Section 2.b. shall no longer apply and waste from the Nicolet facility shall no longer be eligible for placement in Phase 6.

3. <u>Transportation and Routes.</u>

- a. Preferred routes to the Landfill shall be as follows: (i) from the Thilmany Mill trucks will use Thilmany Road, Elm Street, Island St and Dodge Street (Hwy Z), and (ii) from the Nicolet Mill trucks will use Main Ave, I-41/US-41, Lawe St, and Dodge Street (Hwy Z). Notwithstanding these preferred routes, Expera may use other routes as necessary to assure the timely and effective delivery of solid waste to the Landfill.
- b. Recognizing that upgrades/changes to Haas Road and County Road Z are likely to be made during the term of this Agreement, Expera and the City will coordinate efforts to maintain adequate transportation routes that mitigate potential impacts to the City while assuring adequate access to the Landfill by Expera.

4. <u>Tipping Fees</u>.

- a. Expera shall pay a tipping fee to the City for solid waste placed in Phase 6 at a rate of \$1.00 per ton for waste originating from the Thilmany facility and \$4.00 per ton for waste originating from the Nicolet facility. These fees shall remain fixed for all waste placed into Phase 6.
- b. Fees shall be paid by Expera to the City on a quarterly basis within 30 days after the end of each calendar quarter.
- c. Fees paid to the City shall be managed and utilized pursuant to the provisions of Section 10 below.
- d. Beneficial use material originating from the Thilmany facility, the Nicolet facility or any other facility under Section 2.c. above are not considered solid waste for purposes of this Agreement and are not subject to the tipping fees described herein.
- 5. <u>Sewer Connections</u>. The Leachate Agreement remains in full force and effect with the following understanding:
 - a. Expera's right to connect and discharge the "Landfill's leachate collection system" to the City's Collection System shall be deemed to include leachate from operations associated with Phase 6.
 - b. Upon the start of construction of Phase 6 by Expera, the entire 66.416 acres associated with the Site shall be subject to the area-wide sewer assessments referenced in the Leachate Agreement.
 - c. Based on Expera's experience with the Landfill in general, and based on the design of Phase 6 in particular, Expera expects the monthly average leachate discharge to the Collection System to be 55,000 75,000 gallons/day on a monthly average basis.

- d. Expera shall provide advance notice to the City if the discharge from Phase 6 to the Collection System is expected to exceed 200,000 gallons/day.
- 6. <u>Wetlands</u>. The City agrees that any wetlands that need to be taken for the Phase 6 expansion are not high value and that Expera is free to pursue all available methods to mitigate such wetlands.
- Artz and Xiong Parcel. Expera has acquired title to the so-called "Artz Parcel" [Lot Two (2) of Certified Survey Map No. 5718 as filed with the Register of Deeds Office for Outagamie County, Wisconsin, on November 27, 2007, in Volume 33 of Certified Survey Maps on page 5718, as Document No. 1775118; being located in part of the Northeast 1/4 of the Northwest 1/4 of Section Thirty (30), Township Twenty-one (21) North, Range Nineteen (19) East, Town of Buchanan, Outagamie County, Wisconsin] subject to a life estate by the current occupant thereof, as well as the "Xiong Parcel" [Lot One (1), Certified Survey Map No. 5718 as filed with the Register of Deeds Office for Outagamie County, Wisconsin, on November 27, 2007, in Volume 33 of Certified Survey Maps on page 5718 as Document No. 1775118; being located in part of the Northeast 1/4 of the Northwest 1/4 of Section Thirty (30), Township Twenty-one (21) North, Range Nineteen (19) East, Town of Buchanan, Outagamie County, Wisconsin]. Expera agrees to file a Petition for Annexation of the Artz Parcel and the Xiong Parcel to the City - with a request to rezone such parcels from residential to industrial - within 180 days after execution of this Agreement and to take reasonable steps thereafter (short of appeal) to achieve timely annexation and rezoning by the City.
- 8. Private Well Sampling. Expera will be subject to certain landfill well sampling requirements imposed by DNR. In addition to those requirements, Expera agrees to operate a well sampling program for private wells existing prior to the construction of Phase 6 and located within 1,200 feet of the boundaries of Phase 6. In order for private well owners to participate in this program, they must agree to have their wells sampled by Expera prior to waste material being placed in Phase 6. Expera will contact all eligible well owners to determine their willingness to participate in this program.
- 9. <u>Recycle Center</u>. The City will be allowed to relocate the Recycle Center within the area shown on the drawing in Appendix B unless there is mutual agreement to move to an alternate location within the Site.
 - a. Expera presently intends to fill Phase 6 from north to south, which would enable the Recycle Center to maintain in its present location for a number of years. Notwithstanding these plans, Expera shall be entitled to require relocation of the Recycle Center by the City with advance written notice to the City of one year.
 - b. Expera will offer the City a 10-year lease if and when the Recycle Center is moved within the area shown on the drawing in Appendix B. Such lease will automatically renew unless either Expera or the City decide to end it with notice of at least 6 months prior to the end of the lease.
- 10. Management of Tipping Fees by the City.

- a. All tipping fees paid by Expera shall be held and managed by the City in one of two separate funds as follows:
 - i. "City Fund." 50% of tipping fees for waste originating from the Thilmany facility, and 100% of tipping fees for waste originating from the Nicolet facility, shall be placed and accounted for in the "City Fund."
 - ii. "Thilmany Fund." The remaining 50% of tipping fees for waste originating from the Thilmany facility shall be placed and accounted for in the "Thilmany Fund."
 - iii. Assets in the City Fund are earmarked for use on projects directly related to Landfill activities, such as road maintenance along trucking routes to the Landfill, work on sewer lines pumping leachate from the Landfill, and park or riverfront improvements. The first project to be funded out of the City Fund shall be up to \$25,000 for playground equipment for the proposed park near the corner of Haas Road and County Highway CE ("Haas Road Park"). Upon request by the City, Expera agrees to fund up to \$25,000 in expenses for this project in advance (i.e., before assets are placed in the Thilmany Fund). Should Expera provide such funds in advance, it can subsequently withhold payment of that portion of the tipping fee earmarked for the City Fund until Expera is reimbursed the full \$25,000 advance payment.
- b. Assets in the Thilmany Fund shall be reimbursed to Expera for approved "Environmental Projects" undertaken by Expera.
 - i. Work eligible for approval as an Environmental Project by Expera must relate in some way to beautification/property enhancement, energy conservation, water conservation, or odor reduction.
 - ii. In order to seek reimbursement from the Thilmany Fund, Expera must first submit a project proposal to the City Public Works Director. The Public Works Director will present the proposal to the City Planning Commission for review and approval. The Planning Commission shall take action on the proposal in a timely manner and notify Expera whether the proposal has been approved or not. If the proposal is denied or approved with conditions, the rationale therefor shall be provided to Expera.
 - iii. Reimbursement to Expera for approved Environmental Projects shall be made within 30 days after the Public Works Director verifies that any given project has been completed in a manner consistent with the approved scope for such project.
 - iv. The first Environmental Project eligible for the Thilmany Fund is the Grand Kakalin history information kiosk. Upon request by the City, Expera agrees to fund up to \$10,000 in expenses for this project in advance (i.e., before assets are placed in the Thilmany Fund). Should Expera provide such funds

in advance, it can subsequently withhold payment of that portion of the tipping fee earmarked for the Thilmany Fund until Expera is reimbursed the full \$10,000 advance payment.

- c. The City Fund shall be capped at \$100,000. Whenever the City Fund reaches \$100,000, Expera is excused from paying any further tipping fees to the City Fund provided there is no agreement in place to exceed the cap to fund a larger project. The cap on the City Fund can be exceeded for designated future projects if agreed to by the City and Expera.
- d. The Thilmany Fund shall also be capped at \$100,000, except that when the cap is reached Expera must continue paying that portion of the tipping fee earmarked for the Thilmany Fund to the City, and the City can use any excess in the Thilmany Fund above \$100,000 for any use at its sole discretion provided there is no agreement in place to exceed the cap to fund a larger project. The cap on the Thilmany Fund can be exceeded for designated future projects if agreed to by the City and Expera.
- e. The City shall provide an accounting of both the City Fund and the Thilmany Fund on at least a quarterly basis. Assets in either the City Fund or the Thilmany Fund can roll over from year to year except that the caps described in subsections c and d above shall apply throughout.

11. Miscellaneous.

- a. <u>Headings</u>. Titles to paragraphs are for informational purposes only, except where necessary to obtain an understanding of the contents of each paragraph.
- b. <u>Successors</u>. Each item of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties to this Agreement pursuant to Section 144.445(11), Wis. Stats.
- c. <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin and applicable Federal laws.
- d. <u>Notices</u>. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent to the persons named below or their designated successors by certified mail.

If to Expera at:

Mill Manager 600 Thilmany Road Kaukauna, WI 54130 To the City at:

Director of Planning and Community Development 201 W. Second Street Kaukauna, WI 54130

- e. <u>Modification</u>. This Agreement constitutes the entire understanding of the parties hereto and no changes, amendments or alterations shall be effective unless signed by both parties.
- f. <u>Waiver</u>. A waiver by the other party of a breach or failure to perform shall not constitute a waiver of any subsequent breach or failure.
- g. Provisions Severable. If any provision of this Agreement shall be finally held or declared by a Court of competent jurisdiction, including any Appellate decision thereon, to be invalid, illegal or unenforceable under any law applicable thereto, such provisions shall be deemed deleted from this Agreement with impairing or prejudicing the validity, legality or enforceability of the remaining provisions hereof.
- h. <u>Force Majeure</u>. No 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 an act of God, fire, strike, inevitable accident, war, court order or binding determination of a governmental agency, or any cause outside the reasonable control of the party which has the duty to perform.
- Effective Date. This Agreement shall be effective when executed on behalf of both Expera and the City. Each individual executing this Agreement represents that he/she has authority to do so on behalf of the party for whom he/she signs.

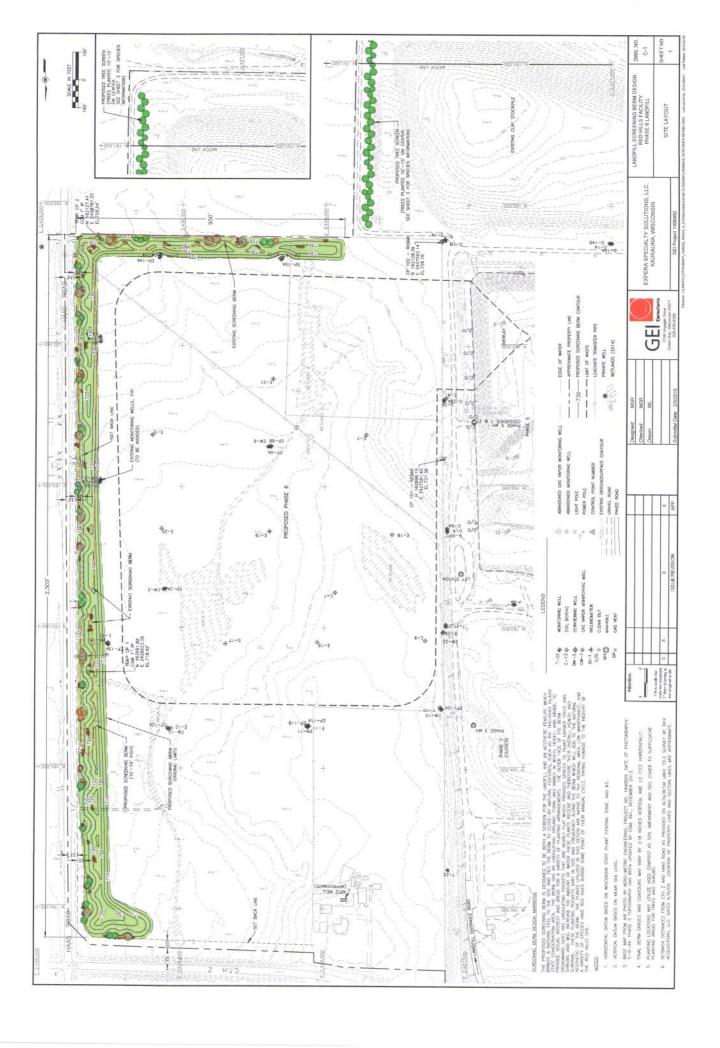
Date: January <u>4</u> , 2016	EXPERA SPECIALTY SOLUTIONS LLC LEE R. HAMNEN - THELMANY MEN MANAGER
	CITY OF KAUKAUNA
	CITY OF KAUKAUNA
Date: January <u>§</u> , 2016	- Land Land
	- Mayor

APPENDIX A LANDSCAPE DESIGN PLAN

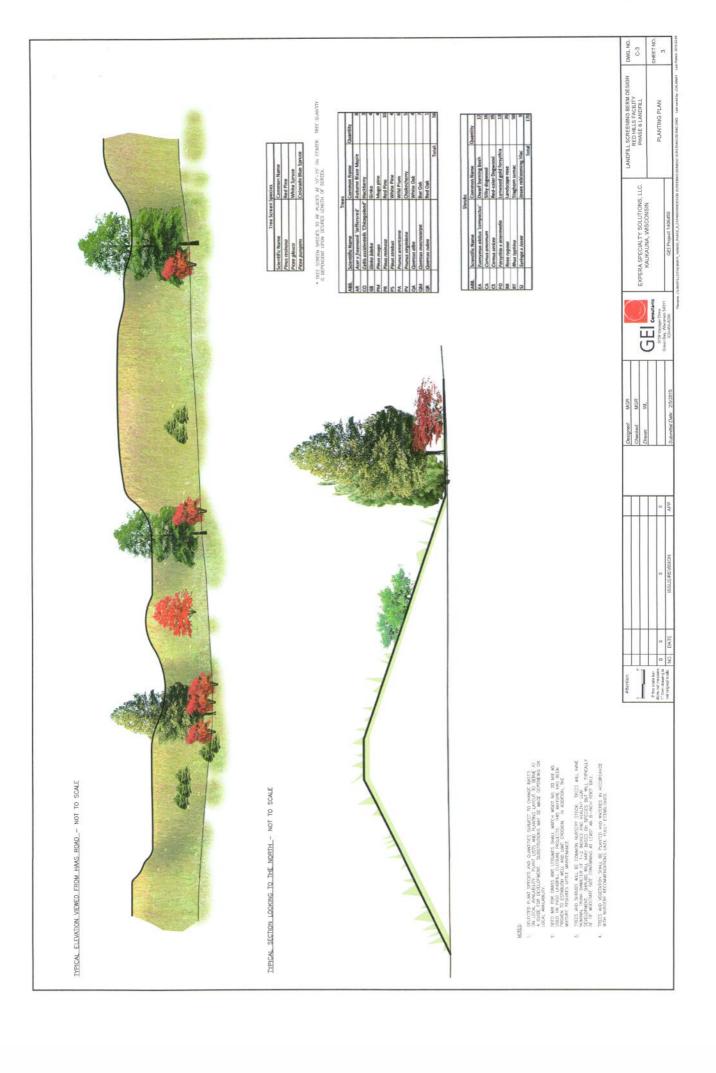
Sheet 1 – Site Layout

Sheet 2 – Grading and Planting Plan

Sheet 3 – Planting Plan







APPENDIX B

CITY OF KAUKAUNA RECYCLE CENTER

Sheet 1 - City of Kaukauna Recycling Area

