

Resolution 2013-03-12

Motion by: Fox
 Second by: VANDER SANDEN

Dist.	Supervisor	Y	N	Abs
13	Alber	X		
18	Bailey	X		
3	Bloomer	X		
11	Breitenmoser	X		
1	Caylor	X		
19	Fox	X		
10	Giese	X		
12	Gilk	X		
15	Lee	X		
16	Loka	X		
14	Lussow		X	
17	Nelson		X	
4				
21	Pike	X		
8	Plant			X
22	Rankin			X
7	Rusch	X		
5	Saal	X		
20	Vander Sanden	X		
2	Weaver			X
6	Woller	X		
9	Zeitz	X		
Totals		16	2	2
Carried				
Defeated				
Amended				
Voice vote				
Roll call				

Approving the Local Siting Agreement for the Lincoln County Landfill North Expansion

WHEREAS, landfill owners wishing to expand or build a new facility in the State of Wisconsin must notify and negotiate with affected local communities to create a "Local Siting Agreement" for that expansion or new facility; and

WHEREAS, §289 of the Wisconsin State Statutes establishes the requirement to provide such notice, the parameters for the negotiation discussions and how to adopt such agreements once accomplished; and

WHEREAS, Lincoln County has provided proper notice to the Towns of Birch and Merrill as well as to Lincoln County via their Clerks and has participated in negotiations with a Local Siting Committee, formed and authorized by the State of Wisconsin Waste Facility Siting Board, made up of representatives from the Towns of Birch and Merrill; and

WHEREAS, The discussions have resulted in a negotiated agreement; and

WHEREAS, The Solid Waste Committee has reviewed the agreement and recommended its approval to the Lincoln County Board of Supervisors; and

WHEREAS, The complete "Local Siting Agreement" is attached hereto.

NOW, THEREFORE BE IT RESOLVED, the Lincoln County Board of Supervisors hereby approves the "Local Siting Agreement" and authorizes its submittal to the State of Wisconsin Waste Facility Siting Board.

Dated this 19th day of March, 2013.

Introduced by: Solid Waste Committee

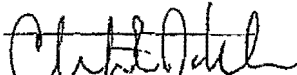
Date Passed Out of Committee: March 6, 2013 by a vote of 5-0

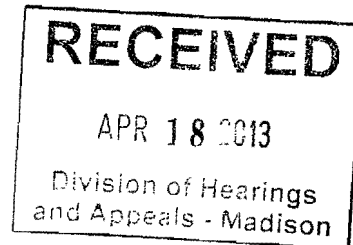
Fiscal Impact: \$16,666 in annual host fee payments, paid over 16 years beginning in 2014 (total of \$266,666), and reimbursement of actual negotiation expenses to the Local Siting Committee of up to \$20,000; financed by operating revenues

Drafted by: Daniel Miller

STATE OF WISCONSIN)
) SS:
 COUNTY OF LINCOLN)

I hereby certify that this resolution/ordinance is a true and correct copy of a resolution/ordinance adopted by Lincoln County Board of Supervisors on:


 Christopher J. Marlowe
 County Clerk



LANDFILL SITING AGREEMENT

This Agreement executed between Lincoln County, a political subdivision of the State of Wisconsin (hereinafter called the "County"), the Town of Merrill, a municipality in Lincoln County (hereinafter called the "Town") and the Town of Birch, a municipality in Lincoln County (hereinafter called the "Town of Birch") on this 19th day of MARCH, 2013. For purposes of this Agreement, the term "County" shall mean Lincoln County, a political subdivision of the State of Wisconsin, and its servants, agents, employees and successors in interest to this Agreement.

This Agreement is made pursuant to Section 289.33, Wis. Stats., and shall run with that certain parcel of land known as the Lincoln County Landfill Site (formerly known as the Nelson property), more specifically described as:

The Northwest $\frac{1}{4}$ of Section 3, Township 32 North, Range 7 East, Town of Merrill, Lincoln County, Wisconsin, consisting of 160 acres.

In consideration of the mutual covenants and agreements contained herein, the parties contract as follows:

A. TERM OF CONTRACT. This agreement shall be binding on all parties, their heirs, successors and assigns for the period of landfill operations and forty (40) years after the site closure, or for a period of time equivalent to any maintenance or long-term care required by subsequent statutory amendments, and except as otherwise noted to the contrary within this Agreement.

B. INDEMNIFICATION AND HOLD HARMLESS.

It is hereby agreed that Lincoln County shall, in perpetuity, indemnify and hold harmless the Town, Town of Birch, their elected and non-elected officials, officers, employees and duly appointed town committees, including the local siting committee(s) and their individual members (hereinafter collectively referred to as the "indemnified parties"), from and against any and all claims, actions, orders, damages, losses, judgments, demands and liabilities (including attorney fees and costs of defense or proceedings) that are asserted, ordered, imposed or result against the indemnified parties, arising out of the design, siting, construction, operation, use, maintenance, control, repair, administration, monitoring, expansion, closure and long-term care of the landfill site; providing that the County is provided with a written notice within forty-five (45) days of any Notice of Claim (as defined in sec. 893.80, Wis. Stats. or any successor thereto). A failure to give timely notice shall not bar the claim if the County had actual notice and the Town shows that the delay or failure to give the requisite notice has not been prejudicial to the County.

It is further agreed that in carrying out these duties to indemnify and hold harmless, the County shall control the defense and means of said lawsuits, administrative

proceedings or other types of proceedings. It is agreed by the parties that the County shall be responsible to pay any costs of representation of the indemnified parties.

By entering into this indemnification agreement, neither the County nor the indemnified parties intend to nor do they in any manner waive any applicable statutory limitations of liability or any public policy, statutory or other defenses available to them.

C. ACCEPTANCE OF WASTE. The County shall not intentionally or knowingly allow and shall use affirmative reasonable measures to prevent the disposal of hazardous waste, as those terms are defined by NR 661, WI Admin Code or any successor thereto, in said landfill.

The County shall not intentionally or knowingly allow and shall use affirmative reasonable measures to prevent the disposal of any waste in the landfill not otherwise authorized by the landfill's plan of operation as approved by the Wisconsin DNR.

In the event that the County becomes aware of the disposal of any waste in the landfill not allowed by the provisions of this section of the agreement, it shall promptly advise the Town of Merrill of the date, types, amounts, transporter and sources of such waste that were deposited at the landfill to the full extent known by the County. Said notice to be in writing and delivered to the Town of Merrill Clerk.

In the event the County desires to modify or change the type, character or designation of waste accepted for disposal at the landfill facility by pursuing amendment or revocation of all or parts of the Plan of Operation, County Ordinances 15.01(1)(f)(g)(h) and 15.04 or this Agreement, the County shall notify the Town of any such intent.

D. PREVENTION OF ROAD SIDE DEBRIS. It is the desire of both the County and Town to prevent and limit to the fullest extent possible, debris from materials being transported to the landfill from becoming dislodged from the load and becoming refuse along the roadside or adjacent properties. To that end, the County has enacted ordinances with penalties to discourage such occurrences.

Should future conditions or occurrences warrant the enactment of additional ordinances to accomplish the purpose and intent of this provision, the County agrees to consider enactment of such ordinances upon the request of the Town.

The County shall be responsible for enforcement of the ordinances passed in furtherance of the purpose of this provision. The Town may bring any alleged or apparent violation of this provision (¶D of Agreement) or any ordinance enacted pursuant thereto, to the County's attention by providing written notice to the County Solid Waste Manager. The County shall respond to any such alleged or apparent violation by taking reasonable measures to investigate, remedy and, if necessary, enforce the violations.

The County shall periodically perform an inspection of and, as necessary, collect loose refuse and debris from the designated access roads within the Town of Merrill. Whereas the County shall retain discretion as to the frequency and timing of such inspections, the County shall, at a minimum, perform at least three such inspections per year.

E. DISPOSAL OF TOWN OF MERRILL GOVERNMENTAL WASTE. During the period of operation (prior to closure) of the proposed landfill, the County agrees that it shall accept the waste actually generated by the Town governmental bodies, provided such waste is of the type and character that is normally accepted by the County at the landfill and can be legally so accepted. This shall apply solely to the waste of the present nature and type generated by the Town and it shall not apply to additional types of waste generated by the Town through the provision of additional governmental services. (i.e. garbage pickup green box system, road side waysides, etc.) It is the express intent that such waste will be of the nature of the town highway equipment waste and other governmental entities waste, but shall not include wayside waste or residential waste. Waste collected by the Town from Town road ditches that is illegally or improperly placed or ends up in the ditch, shall be accepted at the landfill at no charge to the Town.

Presently, pursuant to Lincoln County Ordinance 15.04, certain designated items are accepted at the landfill facility for recycling purposes only. These items picked up by the Town in or near a road right of way in the Town of Merrill or actually generated by the Town of Merrill governmental bodies shall be accepted free of charge by the County at the landfill facility. In the event the County subsequently limits or ceases to accept the designated items for recycling purposes, the County shall not be obligated to accept those items from the Town of Merrill.

F. PAYMENTS TO TOWN OF MERRILL.

The County agrees to make, in the manner set forth below, payments to the Town of Merrill:

1. The County shall make an annual payment to the Town of Merrill for 16 years. Each annual payment will be in the amount of \$16,666. The first payment will be due within 90 days of the acceptance of waste in Phase IV of the expanded landfill. The remaining annual payments shall be made by no later than one year from the anniversary date of the first (or successive) payments.
2. After the County has made 16 payments of \$16,666 to the Town of Merrill, the County shall have no further obligation to make payments to the Town of Merrill pursuant to this provision for as long as the "Northern Expansion" as referenced in the Plan of Operation dated February, 2013 remains

operational, is accepting waste and there is no further expansion at the landfill. Any additional or further expansions of the landfill will require that this provision and the entire agreement be renegotiated pursuant to §289.22, Wis. Stats.

3. In the event that the landfill is closed prior to Lincoln County making the 16 payments to the Town of Merrill as required above, then, and only in that event, will the County's duty to make payment to the Town of Merrill cease and terminate. The annual payment required by subsection (1) shall become due and payable if the landfill is not closed as defined below on or for any day of the year for which the payment is due.

For purposes of this section, the landfill will be considered closed if:

- (a) The landfill ceases to accept any waste or other material for deposit or dumping into the landfill, and
- (b) The County initiates closure of the landfill pursuant to and subject to Wisconsin Department of Natural Resources regulations, and
- (c) If the County ceases to accept waste and later reopens Phase IV and/or V, the agreed upon payment schedule will be reinstated.

G. FIRE PROTECTION. For purposes of fire protection, the County as owner and operator of the landfill shall be treated as any other land owner or resident of the Town. Any charges for fire calls or other fire protection services provided to the landfill shall be billed to the County in the same manner and in the same amount as said services would be billed to any other resident of said town. The Town shall document such charges and the same will be promptly paid by the County.

H. FOR REIMBURSEMENT OF NEGOTIATING EXPENSE, INCLUDING LEGAL AND CONSULTANT FEES.

Based upon an itemized billing, the County shall reimburse the local landfill siting committee, through and by payment to the Town of Merrill, for actual costs incurred, including

legal and consultant fees incurred by the local committee, relating to the negotiation activities of said committee under §289.33(8)(b), Wis. Stats. Reimbursement shall not exceed \$20,000. Per diem and mileage for committee members shall not exceed the rates to Town Board members for Town Board or committee meetings. Reimbursement and compensation to local siting committee members shall be at the same rate as received by members of other Town of Merrill committees.

I. WAIVER OF LOCAL APPROVALS. It is recognized by both the County of Lincoln and the Town of Merrill that the Town of Merrill had a pre-existing local approval being Ordinance No. 1-81 at the time that the Nelson Site was chosen for the landfill; said ordinance requires a permit to deposit litter, garbage and other waste within the Town of Merrill and to deposit such material without such a permit is unlawful. In part, this Agreement is entered into by the County in consideration of the Town of Merrill's waiver of this ordinance or at its option the granting of such a permit, as to the existing landfill and proposed expansion at the current landfill site. The Town of Merrill does by this Agreement waive the applicability of said ordinance to the existing landfill and proposed expansion. Additionally, through this Agreement, the Town of Merrill relinquished its rights to:

1. Negotiate and/or arbitrate any and all items or issues relating to the siting of the landfill and its proposed expansion which are not covered by this Agreement and as to the items covered by this Agreement, the Agreement shall be binding.
2. Enforce any existing town ordinances and/or regulations impacting upon the location of and siting of the landfill and proposed expansion.
3. Pass any rules, ordinances or regulations relating to the siting location or operation of the landfill and proposed expansion by Lincoln County.

J. DESIGNATED ACCESS. The designated access to the landfill site shall be from County Road K to County Road R; County Road R to the landfill access road constructed Northerly from County Road R to the landfill and proposed landfill expansion. The private landfill access road known as Landfill Lane shall never revert, default or otherwise be designated a town road. The County shall retain responsibility for the currently designated landfill access road for the term of this agreement.

The landfill access road from County R to the landfill facility, known currently as Landfill Lane, shall be maintained in perpetuity by the County or the new property owner. All costs and expenses associated with maintaining Landfill Lane shall be borne by the County or the new property owner.

In the event the designated access to the landfill becomes unusable for waste

transportation or landfill facility access for any period of time, the County and the Town shall reach an agreement regarding an available, alternative route. The County shall be responsible, financially and otherwise, for any and all damages or loss suffered by the Town that is caused by the use of the alternate route.

K. DISPUTE RESOLUTION PROCESS. The County designates the landfill manager as its representative to whom the Town of Merrill, by its Chair or legal representative, may serve, by first class mail, a written notice of an alleged violation of any of the terms and provisions of this agreement by the County.

Upon receipt of any such written notice by the County through its designated representative, the County shall be allowed ten calendar days in which to cure or remedy the alleged violation unless it is claimed in the written notice that the County must act immediately to prevent irreparable harm or damages to the Town or any one of its citizens, in which case the County will be required to act immediately. Within fifteen days of receipt of the written notice, the County shall reply in writing to the Town, by first-class mail, to the Town of Merrill Clerk, indicating that the alleged violation (1) has been resolved or cured, describing the actions or procedures undertaken to resolve or cure the violation; (2) will be resolved or cured by further actions as described in the response, along with a timetable of anticipated events; or (3) that the County does not agree that existing conditions or operations constitute a violation of the agreement as alleged.

Whereas the County and the Town mutually agree to utilize good faith efforts to resolve differences regarding alleged violations of this agreement, in the event the County and Town do not reach agreement and the Town continues to allege an ongoing violation, the County and Town agree to the following dispute resolution procedure:

1. The County and the Town of Merrill agree to appoint a 3-person committee, fully authorized by each party, to resolve the alleged existing violation. The committee shall agree to meet at least one time to attempt resolution of the alleged existing violation. Any agreement reached regarding the alleged existing violation shall be placed in writing and attached as an addendum to this agreement. Each party shall bear their own costs of this process. Meetings shall take place at the Town of Merrill Town Hall or as mutually agreed.
2. If both parties agree, a professional mediator, agreed upon by the parties or appointed by the State Siting Board, will be utilized to assist with resolution of disputes through the process of one or more meetings. The cost of the mediator shall be borne equally by the County and Town of Merrill.

Other costs associated with the mediation will be borne by the party incurring the expense.

3. Neither the County nor the Town of Merrill waive any right to bring a civil action in Circuit Court, Lincoln County to seek enforcement of an alleged violation or breach of this agreement. However, the parties do agree and intend that the above-stated resolution process shall act as a condition precedent to the bringing of any such civil action.
4. Nonrestriction of Legal Rights: Nothing in this contract waives, abridges, restricts or prohibits the County or the Town from contesting any order, action or decision of the DNR or other state or federal agency related in any respect to the Solid Waste Disposal Facility or operations related thereto or from exercising in any manner any of its legal rights, except as provided herein.

L. TRANSFER, LEASE OR ASSIGNMENT.

The County, during the term of this contract and for forty (40) years after final closure, may transfer, sell, lease, contract or assign the solid waste disposal facility, its operations at the solid waste disposal facility or its responsibilities and duties at the solid waste disposal facilities, or any of the County's duties and responsibilities under this agreement to any person or entity. In the event of any such sale, lease, transfer or assignment, all of the terms, conditions, duties and responsibilities of this agreement shall be binding upon the assignee/lessee/buyer or other successor entity.

The County shall be required to provide a written notice to the Town of Merrill within five days of any transfer, sale, lease or assignment covered by this provision.

Regardless of any transfer, sale, lease, contract or assignment, the County will indemnify the Town from any losses, expenses, damages, judgments or liabilities incurred by the Town of Merrill that arise solely as a result of any insolvency, bankruptcy, lack of financial responsibility or other financial failure of the successor entity involved in the transfer, lease, sale or assignment of the landfill or landfill operation.

M. REPORTS REGARDING OPERATIONS AT SOLID WASTE FACILITY.

Reports Distributed by the County

The Town Clerk, during the term of this contract, and for forty (40) years after final closure, shall (if requested in writing to Lincoln County) receive a copy of any report or

correspondence provided by the County to the DNR or to any other state or federal agency pertaining to violations, non-compliance issues and plans of operation modifications.

Hazardous Discharge or Spill

The County, during the term of the contract and for forty (40) years after final closure, shall notify the Town Clerk within twenty- four (24) hours of any known discharge or spill of any potentially hazardous material or substance occurring at the solid waste management facility or within the boundaries of the Town of Merrill.

N. PUBLIC AND PRIVATE NUISANCE. The County, during the term of this contract and extending for forty (40) years after final closure, shall not conduct disposal operations, dispose, store, treat or handle solid waste or construct, operate, maintain, close or provide long-term care at the solid waste management facility, in such a manner that constitutes a public nuisance or a private nuisance.

O. SUPERVISION. Lincoln County shall provide supervision at the landfill site during all hours of operation and/or that the site is open. Any public access to the landfill site shall be limited to that area reserved for public disposal and recycling, which area shall be clearly defined.

Lincoln County shall ensure that necessary personnel is on site at all times that the site is open to ensure that no unauthorized dumping is performed.

P. ON-SITE VISITS. The Town of Merrill, by its officers, employees, representatives or agents, shall, upon reasonable notice to the County landfill manager, have the right to conduct periodic, on-site visits of the disposal site while accompanied by the County landfill manager. Such visits shall be limited to normal landfill operating hours.

Q. USES AFTER CLOSURE. The landfill site, after closure, shall be used only for such uses as will protect the integrity of the cap. The use of such site shall be consistent with the plan of operation and shall consist of a wildlife corridor or open spaces.

R. GOVERNING LAW. This Agreement, unless otherwise set forth, shall be construed, enforced and governed in all respects in accordance with the Wisconsin laws, statutes, regulations and Administrative Code provisions in effect as of the date of this Agreement.

S. WAIVER. Any waiver by a party of a breach of any term or condition of this Contract shall not be considered a waiver of any subsequent breach of the same term or any other term or condition of this Agreement.

T. PRESUMPTION OF DRAFTSMANSHIP. In the event it is necessary to construe the language of this Agreement, it is agreed the construction shall take place without a presumption of draftsmanship against any party to this Agreement.

U. MODIFICATION. This Agreement constitutes the entire understanding of the parties hereto and no changes, amendments or alterations shall be effective unless signed by both parties.

V. PROVISIONS SEVERABLE. If any provision of this Agreement shall be finally held or declared by a court of competent jurisdiction, including any appellate court decisions thereon, to be invalid, illegal or unenforceable under any law applicable thereto, such provision shall be deemed deleted from this Agreement without impairing or prejudicing the validity, legality or enforceability of the remaining provision hereof.

W. CITATIONS. For purposes of this Agreement, any citation to a local, state or federal statute or regulation shall include any and all modifications, amendments, all revisions thereto after the effective date of this Agreement.

X. FORCE MAJEURE. 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, war, court order or binding determination of a governmental agency.

XI. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the Solid Waste Landfill.

Dated: 03/19/2013, 2013.

TOWN OF MERRILL

LINCOLN COUNTY

William Burgener
Chairman

Robert Lussow
Chairman, Lincoln County Board

Naomi Fischer
Town Clerk

CHRIS WILSON
County Clerk

[Signature]
Local Siting Committee Member

[Signature]
Chairman, Lincoln County Board
Solid Waste Committee

[Signature]
Local Siting Committee Member

Henry Kuebler
Local Siting Committee Member

Geordie Kuebler
Local Siting Committee Member

TOWN OF BIRCH
Harry L. Lokemoen
Local Siting Committee Member

Debra J. [unclear]
Local Siting Committee Member

[unclear]
Town Chairman

Cynthia R. Lokemoen
Town Clerk

Daniel Hill
Local Siting Committee Member

Ryan S. Ryan
Local Siting Committee Member