

Landfill Agreement
Outagamie County Northwest Landfill

1.0 AGREEMENT

THIS AGREEMENT is made and effective as of the ___ day of _____, 20___, by and between Outagamie County, Wisconsin ("County") the City of Appleton ("Appleton"), the Village of Little Chute ("Little Chute") and the Town of Grand Chute ("Grand Chute"), all having their territory within the County, Wisconsin.

2.0 RECITALS

WHEREAS, Outagamie County owns property located as described in Section 4.3 below, where the County intends to own, operate and manage an expansion to an existing landfill named the Northwest Landfill (the "Landfill") and;

WHEREAS, Outagamie County intends to complete the siting process and begin accepting Solid Waste for Disposal at the Landfill and;

WHEREAS, Outagamie County, Appleton, Little Chute, and Grand Chute all agree that the Landfill is necessary and support its operation and;

WHEREAS, the parties to this agreement all recognize the need for cooperation, coordination, and responsible forward planning for the development of the Landfill and its associated activity and;

WHEREAS, Wis. Stat. § 66.0301 authorizes villages, towns and counties to cooperate by contract for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law, and a contract under this subsection may bind the contracting parties for the length of time specified in the contract and;

WHEREAS, the siting of Outagamie County Northwest Landfill in the location and configuration herein detailed, under the conditions, responsibilities, duties and obligations of each party as set forth herein, effectuates the consensus of such parties and is in the best interest of those parties and their residents.

3.0 DEFINITIONS

Airspace means the capacity of a landfill defined by the volume between the top of the leachate drainage layer and the bottom of the final cover.

County means Outagamie County.

Daily Cover means cover that meets the requirements of § NR 506.05, Wis. Admin. Code.

Department means the Wisconsin Department of Natural Resources or its successor agency.

Disposal, Dispose, or Disposing means the discharge, deposit, injection, dumping, or placing of Solid Waste in the Landfill.

Final Closure means the date after which no further Solid Waste shall be Disposed in the Landfill by the County or by any other person.

Hazardous Waste means waste as defined in Wis. Stat. § 291.01(7).

Landfilling Operations or Landfill Operations means the following activities of the County at the Landfill related to or associated with the Landfill: the constructing, repairing, and operating (including the extraction, transportation, and placement of clay, Daily Cover, rooting zone materials, and topsoil and including the operation of equipment) of the Landfill site, and the accepting and Disposing of Solid Waste and closing of the Landfill; Landfilling Operations terminate at Final Closure.

Long-Term Care means activities at the Landfill, including care, maintenance, and monitoring in and around the Landfill which occur anytime following the Final Closure of the Landfill.

Municipality or Municipalities means the Village of Little Chute, the City of Appleton, and the Town of Grand Chute, and their officers, employees, and agents.

Plan of Operation means the plan of operation for the Landfill that was submitted by the County to the Department pursuant to Wis. Stat. § 289.30, as approved by the Department, and subsequent plan modifications approved by the Department.

Solid Waste means waste as defined in Wis. Stat. § 289.01(33), and shall also include Yard Waste, as defined under Wis. Stat. § 287.01(17).

4.0 GENERAL

4.1 Applicability

This Agreement shall be applicable to the County, Appleton, Little Chute, and Grand Chute, and their successors or assigns as provided for under Section 11.3 of this Agreement.

4.2 Term and Commencement

The commencement date of this Agreement shall be the date upon which it is approved by the governing bodies of all of the parties. Except where otherwise specifically stated, the term of this Agreement shall be from the commencement date until completion of the placement of final cover on the Landfill after Final Closure of the Landfill.

4.3 Site Information

(a) Address — the address of the Landfill is 1419 Holland Road, Appleton, WI 54911-8947.

(b) Legal Description — the Landfill is located in the S 1/2 of NW1/4 and the NW 1/4 of SW 1/4 of Section 17, T21N, R18E, Village of Little Chute, Outagamie County, Wisconsin.

(c) Landfill Area. the Landfill consists of approximately 80.7 acres for Solid Waste Disposal as shown on Exhibit A.

4.4 Early Termination of Landfilling Operations

The parties to this Agreement all agree that the County retains the right to terminate Landfilling Operations at the Landfill at any time; this determination is to be in the sole discretion of the County. Such a determination will not negate the County's responsibilities for proper closure of the Landfill.

5.0 LANDFILL OPERATIONS AND DESIGN

The County shall operate the Landfill in conformance with all applicable federal and state statutes, laws, regulations, and permits and with all local ordinances, regulations, and permits not made inapplicable under this Agreement. In addition, the County shall operate the Landfill in accordance with this Agreement.

5.1 Screening Berms and Vegetation

The County shall create, install and maintain a system of berms and vegetation in accordance with the approved Plan of Operation for the Landfill.

5.2 Water Drainage and Erosion Control

The County shall take measures to control erosion of soils or vegetation and water run-off from the Landfill in accordance with the approved Plan of Operation.

5.3 Windblown Refuse

The County shall control windblown refuse at all times to the extent possible. The County shall pick up all material from the Landfill that has blown outside the fenced area of the Landfill or is collected along the fence perimeter, unless permission for access is not granted by offsite property owners.

5.4 Odor Control

The County shall take measures to control noxious, offensive, and foul odors from the Landfill. The Landfill shall comply with NR 429.03 malodorous

emissions standards to the extent applicable, provided that such compliance shall not prevent the continued use or operation of the Landfill. Odor control efforts shall include, at a minimum, the following:

- A. The County shall maintain and utilize a landfill gas collection system that is as effective as or more effective than the system installed and used at the Northeast Landfill, including horizontal and vertical gas collection wells.

- B. The County shall maintain and utilize an odor suppression system for the Landfill. The odor suppression system shall provide at least equivalent odor suppression as compared to the system offered by the Weaver Group that delivers the neutralizing agent in a vapor state and uses a neutralizing agent that chemically interacts with odorous molecules. The odor suppression system shall be operated in a manner to effectively reduce detectable odors that originate from the landfill beyond the landfill boundaries. This odor suppression system will include, at a minimum, a partial perimeter system, operated year-round, and a mobile unit operated at least seasonally to be deployed at the active working face or at other locations where odor may occur during Landfilling Operations. All data from this system shall be made available to the Municipalities upon written request.

- C. The County shall notify Municipalities immediately upon learning of a substance or item that is not normally received within the usual course of business and that is particularly malodorous or noxious. The County shall utilize economically-feasible best management practices to suppress or neutralize particularly malodorous or noxious waste as soon as possible upon receipt of such substances or items. Upon expiration of any existing contract between the County and a provider of Alternative Daily Cover Materials (“ADC”) such as paper mill sludge, the County shall require providers of incoming ADC to mitigate any particularly malodorous ADC odors prior to delivery of ADC to the Landfill. If the County receives delivery of particularly malodorous ADC the County shall deploy odor neutralizing products such as odor shell by LSC Environmental and/or equivalent odor neutralizing product to support reduction in overall ADC odor and the County shall inform the provider to cease delivery of ADC to the

Landfill until such time as the provider executes a plan to mitigate such odors from ADC delivered by the provider.

D. The County shall comply with the requirements of NR 429.03(2)(b).

5.5 WEBSITE CONTACT

The County shall maintain a page on their website for citizens to submit requests for information and comments (including complaints) about landfill operations. Users of this page shall be provided the opportunity to designate a comment as a “complaint” when submitting their contact to the County. The County shall provide Municipalities with a report that details the number of contacts received and when and what actions were taken in response to each complaint at the biannual meeting under Section 5.14. In addition, all data from this system shall be made available to the Municipalities at other times upon written request.

5.6 Daily Cover

The County shall provide Daily Cover in accordance with the approved Plan of Operation to control offensive odor and prevent windblown refuse.

5.7 Compliance with Plan of Operation

The County shall fully comply with the Plan of Operation as approved by the Department for the Landfill.

5.8 Facility Specifications

The Plan of Operation for the Landfill was approved by the DNR (including engineering design and footprint size) and includes but is not limited to the following specifications:

- Total Airspace volume of 12,165,000 cubic yards
- Total footprint area shown on Exhibit A attached hereto
- Estimated final top elevation after installation of final cover of 885 feet, based on mean sea level datum.

The County and the Municipalities all support the adoption of these specifications, and hereby waive any objections to such specifications under Section 8.0 below.

5.9 Waste Restrictions

The County shall accept only Solid Waste allowed under Department regulations for Disposal. The County shall not seek modification of the Plan of Operation to allow disposal of Hazardous Waste in the Landfill.

5.10 Fire Protection

The County shall separately contract with the Town of Vandebroek, or another qualified fire department, for fire protection services for the entire NWLF and all active and closed landfills within the solid waste campus until the date of Final Closure of the Landfill. The County shall also maintain a fire protection emergency response protocol, plan, and emergency contact chart and disseminate same to all fire departments with mutual aid agreements for fire services with the Village of Little Chute and the Town of Vandebroek and to other fire departments that may respond to a fire at the landfill. The County shall make its facilities available at reasonable times for special training of emergency response personnel at reasonable times.

5.11 Street Cleaning

The County shall be responsible for street sweeping on Holland Road within the limits of the Village of Little Chute until the date of Final Closure. The County shall conduct a visual inspection of this portion of Holland Road each day that the Landfill is open to accept Disposal of Solid Waste and shall conduct street sweeping activities if any debris related to the Landfill is present on this portion of Holland Road. Street sweeping shall also be conducted at least twice weekly regardless of the results of visual inspection. Information on street sweeping activities shall be provided to the Municipalities upon written request.

5.12 Vector Control Model

The County shall strictly follow the Massachusetts Model for seagull and pest control as set forth in the Manual for Gull Control at Massachusetts Landfills dated May, 1998.

5.13 Video Monitoring System

The County shall provide real-time access to its video monitoring system by the Outagamie County Public Safety Communications Center. Upon written request, The County shall provide recorded video from the County's video monitoring system to other parties subject to the County's record retention plan and the limitations under Wis. Stat. ch.

19. The County's video monitoring system shall panoramically monitor each phased cell of the landfill.

5.14 Biannual Meetings

The County Committee Chair that has jurisdiction, the Landfill Manager, and the Municipalities shall meet twice a year if determined by one or more of the Municipalities to be necessary.

6.0 MUNICIPAL SERVICES

6.1 Leachate Transmission

Leachate from the Landfill will be accepted by the City of Appleton pursuant to the City of Appleton's permit process and subject to the execution of a subsequent agreement between the County and the City of Appleton.

7.0 MITIGATION GRANT TO MUNICIPALITIES

7.1 To mitigate the Landfill effects on the Municipalities, including but not limited costs for administration and enforcement of this Agreement, citizen comments and complaints, costs for road maintenance and repair, municipal service costs, site visits, and other mitigation costs, the County shall grant a sum of \$100,000 for each year in which Solid Waste is accepted and disposed of in the Landfill up to a maximum cumulative grant amount of \$1,500,000, to be split among the Municipalities. The first annual payments of this grant to the Municipalities shall be made no later than January 31 of the year following the year in which Solid Waste is first accepted and disposed of in the Landfill. All subsequent required annual grant payments shall be made annually no later than January 31 if Solid Waste was accepted and disposed of in the Landfill the preceding year.

7.2 The grant shall be divided as follows: 67 percent of each grant payment shall be made to the Village of Little Chute, 25 percent of each grant payment shall be made to the City of Appleton, and 8 percent of each grant payment shall be made to the Town of Grand Chute. For illustrative purposes, this means that if, as expected, the maximum grant amount is paid to the Municipalities over the life of this agreement, a total of \$1,005,000 will be paid to the Village of Little Chute, \$375,000 will be paid to the City of Appleton, and \$120,000 will be paid to the Town of Grand Chute. If, at any point during the term of this agreement, those portions of the Town of Grand Chute which make Grand Chute an Affected Municipality are entirely annexed by the City of Appleton, and upon written notice from the City of Appleton and the Town of Grand

Chute, then any remaining grants to the Town of Grand Chute will instead be granted to the City of Appleton in addition to the grant money it is already receiving.

8.0 WAIVERS

8.1 Waiver of Local Approvals

By approval of this Agreement, the Municipalities agree that local approvals as defined in Wis. Stat. s. 289.33(3)(d) do not apply to the Landfill. Except as provided under Section 8.4, the Municipalities waive any arguments, claims, or defenses that the County is required to re-initiate the local approval process under Wis. Stat. ch. 289 with respect to the Landfill or that the County is subject to any local approvals under Wis. Stat. s. 289.33(3)(d) with respect to the Landfill.

If the County seeks any modification from DNR for the Plan of Operation it shall concurrently notify the Municipalities of such request. At the request of one or more of the Municipalities, the County shall meet with each requesting Municipality to provide information about and answer questions relating to such request.

8.2 Waiver of Contested Case Hearings and Petitions for Judicial Review

By approval of this Agreement, except as provided under Section 8.4, each Municipality forever waives its rights to request any contested case hearing, participate in a contested case hearing, seek judicial review, and/or participate in a judicial review proceeding relating to the decision(s) of the Department regarding the approval of the initial site report, feasibility report, Plan of Operation, Operating License, or any other aspect of the Landfill project regarding the siting, design and/or construction, operation, and closure of the Landfill, unless the contested case hearing or judicial review proceeding is in support of giving effect to the terms of this Agreement.

8.3 Waiver of Municipality Claims

A. The Municipalities and the County acknowledge and agree that the siting, construction, operation and closure of the Landfill, and other activities related thereto, are anticipated to have some effects on the Municipalities (the "Effects"). Without limitation, the Effects might include those involving roads, traffic, safety, noise, and need for additional public and emergency services, and other effects. The Municipalities and the County agree that the obligations undertaken

by the County in this Agreement are designed to mitigate the Effects, and the Municipalities agree not to sue or otherwise seek compensation from the County for the Effects, except as set forth herein.

B. Nothing in this Agreement may be construed to preclude the Municipalities from taking any action, including the filing of legal actions, to enforce the provisions of this Agreement, provided that such actions shall not prevent the continued use or operation of the Landfill.

C. This section shall not apply to the City of Appleton with respect to its acceptance of leachate as set forth in Section 6.1 of this Agreement.

8.4 Limitation of Waivers

Notwithstanding Sections 8.1 and 8.2, the Municipalities retain their rights to object to modifications to the Landfill if those modifications result in either (i) an expansion of more than 5% of the Landfill footprint area or capacity, or (ii) an increase of more than 5 feet over the Landfill height as defined in Section 5.7, unless such modifications are required by the Department and not sought by the County, or unless otherwise agreed to by the Municipalities.

8.5 Waiver of Default or Breach

The waiver by either party of a default or breach of any provision of this Agreement by another party shall not be construed to operate as a waiver of any subsequent default or breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not be construed to operate as a waiver of any default or breach.

8.6 Waiver of Notice of Claim Requirements

By approval of this Agreement, the Municipalities and County hereby waive the Notice of Claim requirements in Wis. Stat. §893.80(1d) for any legal action to enforce the provisions of this Agreement.

8.7 No Waiver of Special Assessments

Nothing in this Agreement limits any of the Municipalities' statutory right to specially assess the County in accordance with the law.

8.8 Notice of Violation of this Agreement

If a Municipality deems that any of the provisions of this Agreement are being violated, the Municipality may notify the County in writing and indicate the nature of the violation and the time within which the violation must be corrected.

Whenever the County is notified in writing of a violation, the County shall either:

1. Commence correction of all violations immediately and shall correct all violations within the time frame as determined by the Municipality. If such corrections are not commenced immediately or corrected within the time frame as determined the Municipality may proceed to enforce the Agreement under the terms herein.

2. Inform the Municipality in writing why the County believes no violation of the agreement has occurred.

9.0 RELATION TO PRIOR AGREEMENTS

Except as otherwise expressly provided in this Agreement, this Agreement shall not supersede any prior agreement between any of the parties to this Agreement.

10.0 REIMBURSEMENT OF LEGAL FEES

County shall reimburse the Village of Little Chute for the legal fees incurred in the negotiation and drafting of this Agreement by the Landfill Siting Committee within 30 days of receipt of a detailed invoice from the Village.

11.0 CONSTRUCTION AND OPERATION OF AGREEMENT

11.1 Interpretation

This Agreement should be interpreted as though jointly drafted by the parties.

11.2 Relationship of the Parties

Except as otherwise expressly provided in this Agreement, no party to this Agreement shall by virtue of this Agreement have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other party and nothing in this Agreement shall be construed to make any party a partner, agent, or legal representative of any other party or to create any fiduciary relationship between or among the parties.

11.3 Assignment

- A. Any party may assign its interest hereunder to any successor in ownership or operation of the Landfill, with the prior written approval of all of the other parties, which approval shall not be unreasonably conditioned or withheld. Any such assignee shall assume all of the obligations, commitments, duties and responsibilities of the assigning party under this Agreement.
- B. Any attempted assignment not expressly provided for in this Agreement or made contrary to this Section shall be void and a violation of this Agreement. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties pursuant to this Section.

11.4 Agreement Modifications

This Agreement shall be modified only by written agreement duly executed by all parties.

11.5 Severability

In the event that any provision or section of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the invalidity of such provision or section shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect

11.6 No Third-party Beneficiaries

No Provision of this Agreement is intended for the benefit of any person except the parties hereto. No interest on behalf of any third-party beneficiary is created by this Agreement.

11.7 Default Provisions

A party shall be in default under this Agreement if it fails to perform any of its responsibilities, duties and obligations set forth herein, and such failure continues for a period of thirty (30) days after the defaulting party's receipt of written notice of such failure from another party. In the event of such default, the non- defaulting parties shall be entitled to exercise any rights and remedies expressly defined in this Agreement and any or all available rights and remedies at law or in equity.

11.8 Captions

The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define or limit the scope or intent of the various provisions, terms, or conditions in the Agreement.

11.9 Representations and Authority

Each party to this Agreement represents and warrants as follows:

- A. It is duly organized, validly existing and has the power and authority to consummate the transactions contemplated by this Agreement.
- B. All proceedings necessary for it to consummate the transactions contemplated by this Agreement have been duly taken in accordance with law.
- C. The persons executing this Agreement on behalf of the party have been duly authorized to execute this Agreement.

11.10 Signatures

The parties agree that fax or electronically-scanned signatures shall be binding on the parties hereto.

This Agreement may be signed in counterparts and such counterparts when taken together shall constitute one agreement.

11.11 Further Action

Each of the Parties agrees from time to time to execute and deliver such instruments, and to take such further action not inconsistent with the provisions of this Agreement, as may be necessary in order to fully perform and carry out the terms and intent of this Agreement.

11.12 Notice

All notices or communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified or registered mail, postage prepaid, addressed as follows:

- (a) If to Outagamie County:

Director of Solid Waste 1419 Holland Road

Appleton, WI 54911

(b) If to City of Appleton: Mayor

City of Appleton

100 N. Appleton Street Appleton, WI 54911-4700

(c) If to Village of Little Chute:

Village Administrator and Village President 108 West Main
St.

Little Chute, WI 54140

(d) If to Town of Grand Chute:

Town Administrator and Town Chairperson 1900 West
Grand Chute Blvd.

Grand Chute, WI 54913

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the
day and year set forth below.

OUTAGAMIE COUNTY

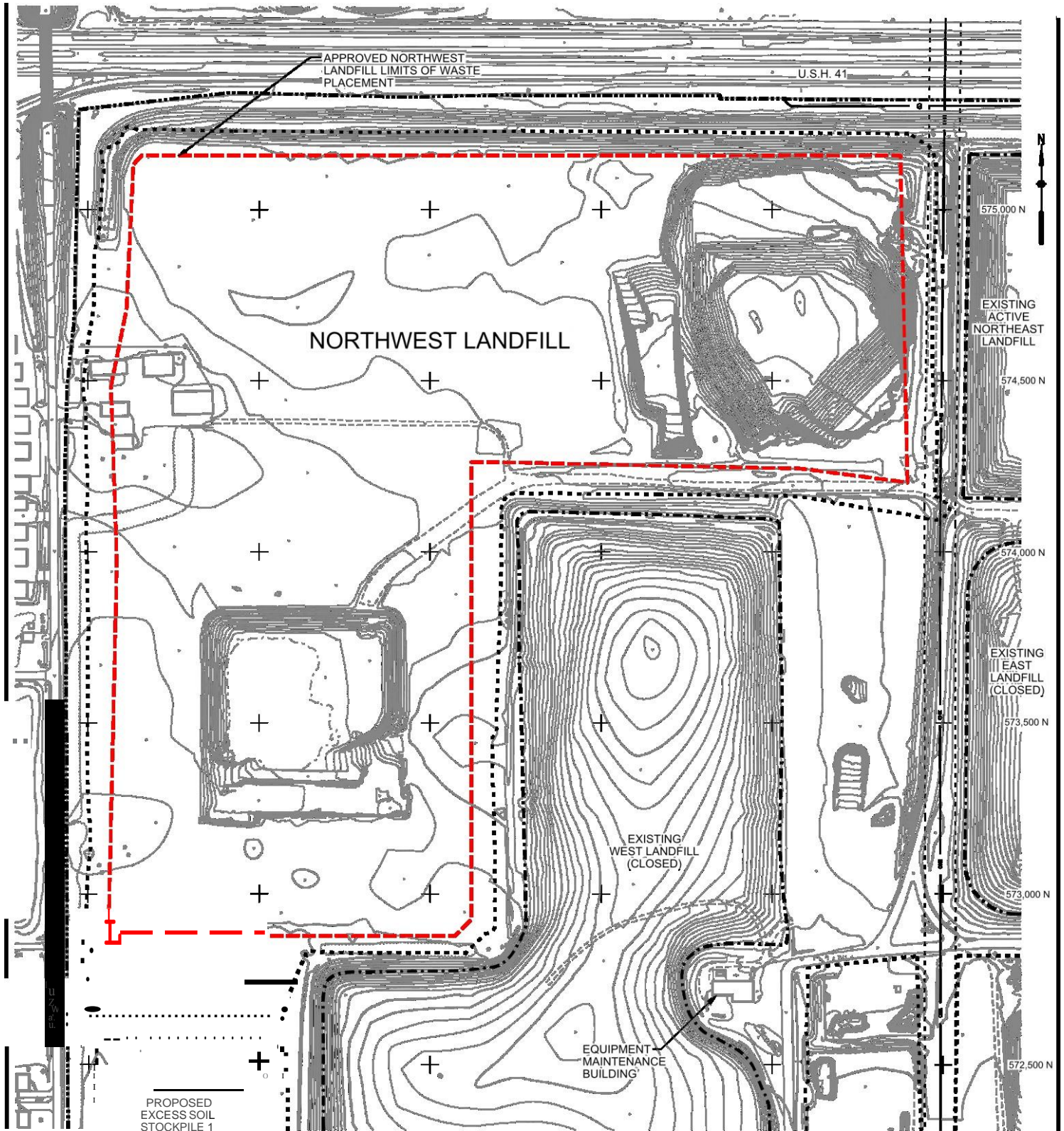
Thomas M. Nelson
County Executive

Jeff Nooyen
County Board Chairman

CITY OF APPLETON

VILLAGE OF LITTLE CHUTE

TOWN OF GRAND CHUTE



OUTAGAMIE COUNTY LANDFILL

FIGURE 1

NORTHWEST LANDFILL

Exhibit A
Landfill Agreement

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Outagamie County Northwest Landfill



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