

**COUNCIL ACTION FORM**

**SUBJECT: AMES SANITARY LANDFILL ENVIRONMENTAL COVENANT WITH IOWA DEPARTMENT OF NATURAL RESOURCES**

**BACKGROUND:**

The City of Ames operated a sanitary landfill, permitted by the Iowa Department of Natural Resources (IDNR) until 1996. In 1996 the landfill was transitioned from an operating landfill to a 30-year post closure permit administered by IDNR. This post closure permit requires routine scheduled monitoring of water and gas wells located on and around the landfill, twice yearly physical inspections of the entire landfill property, and submission of semi-annual reports to IDNR, all conducted by a professional engineer.

On-going City staff work to monitor the landfill and maintain stable conditions has enabled the landfill to make an early transition into the next phase, which is an environmental covenant. **This action releases the City from the current permit and establishes reduced monitoring and reporting requirements.**

**The environmental covenant is perpetual with the land title and is binding on the City and any future owners of the property to manage risk of future exposure by limiting specified activities on the property and establishing affirmative obligations.** Some of the general restrictions include prohibiting excavations deeper than two feet, removal of municipal waste, drinking wells, structures, and vegetation burns. Additionally, the leachate collection system, fence and gate, and landfill cap must be maintained, and biennial inspections by a professional engineer must take place.

**ALTERNATIVES:**

1. Approve the Ames Sanitary Landfill environmental covenant with the Iowa Department of Natural Resources.
2. Do not approve the Ames Sanitary Landfill environmental covenant with the Iowa department of Natural Resources and continue with the current permit.

**CITY MANAGER'S RECOMMENDED ACTION:**

This environmental covenant reduces on-going requirements for the closed Ames landfill due to its stability and compliance record. It ensures the site will be maintained in an environmentally sound manner.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 as described above.

**Preparer Information:** HLW Engineering Group  
204 West Broad Street  
Story City, Iowa 50248

**Taxpayer Information:** City of Ames, Iowa  
515 Clark Avenue  
PO Box 811  
Ames, IA 50010

**Return Document to:** City of Ames, Iowa  
515 Clark Avenue  
PO Box 811  
Ames, IA 50010

**Grantors:**  
City of Ames, Iowa  
515 Clark Avenue  
PO Box 811  
Ames, IA 50010

**Grantees:**  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319

## IOWA SOLID WASTE PROGRAM ENVIRONMENTAL COVENANT

This environmental covenant is established pursuant to Iowa Code (IC) chapter 455I entitled Uniform Environmental Covenants Act.

*City of Ames, Iowa*, hereafter "grantor", and the Iowa Department of Natural Resources (DNR) in its capacity as an agency of Iowa state government enter into this environmental covenant for the purpose of subjecting the affected property described below to certain activity and use limitations in accordance with the terms and conditions as specified and the authorities granted the DNR in Iowa Code (IC) chapter 455I, § 455B.103(7), and DNR rules in chapter 567 Iowa Administrative Code (IAC) 113.

**1. Affected Property.** The grantor is the fee title owner of the property located in Ames, Iowa. The grantor operated the City of Ames Sanitary Landfill under IDNR Permit 85-SDP-08-88C on the property. The affected property is legally described as:

The Southeast Quarter of the Southwest Quarter of the Northeast Quarter; the Southwest Quarter of the Southwest Quarter of the Northeast Quarter; the Northwest Quarter of the Northwest Quarter of the Southeast Quarter; Lot 4 of the Southeast Quarter lying North of the Chicago & Northwestern Railway Right-of-Way; and Lot 2, Block 5 Landfill Addition to Ames, Iowa; all being in Section 1, Township 83 North, Range 24 West of the 5<sup>th</sup> P.M. in Story County, Iowa.

Parcel Information is included in Exhibit A. Ownership Documentation is included in Exhibit B.

Hereinafter, the affected property will be referred to as "the property."

**2. Risk Management and Institutional Controls.**

In accordance with Chapter 455B of the Iowa Code, municipal solid wastes were permitted to be disposed on the affected property by the DNR under solid waste disposal project permit 85-SDP-08-88C issued to the *City of Ames, Iowa*.

The permit, investigations and reports are available for review in the DNR Solid Waste files under permit 85-SDP-08-88C.

The presence of buried municipal solid wastes on the property may present a risk to the public health and the environment if certain activities occur on the property. As such, the Director, pursuant to their authority under IC § 455B.103(7), has determined that an environmental covenant is necessary to manage the risk of future exposure by limiting specified activities on the property and establishing affirmative obligations.

**3. Reopening.** The signatories acknowledge that in the event that the activity and use limitations provided in the environmental covenant fail to serve their intended purpose—including the prevention of exposure to contamination—DNR could elect to reopen its review and regulatory

oversight of the contaminant condition on the property as provided under the terms of this covenant, IC chapter 455I, and applicable DNR administrative rules.

**4. Identity of Grantor(s) and Holder(s).**

**GRANTOR:** City of Ames, Iowa  
**HOLDERS:** None  
**AGENCY:** Iowa Department of Natural Resources

**5. Representations and Warranties.** The grantor(s) warrants to the other signatories to this covenant the following:

- a. The grantor is the sole fee title owner of the property;
- b. The grantor holds sufficient fee title to the property to grant the rights and interests described in this covenant free of any conflicting legal and equitable claims.

**6. Running with the Land.** This environmental covenant is perpetual with the land title as provided in IC § 455I.9 until modified or terminated. The terms of this environmental covenant are binding on the grantors and all successors in interest, assigns and all transferees acquiring or owning any right, title, lien or interest in the property and their heirs, successors, assigns, grantees, executors, administrators and devisees. The term "transferee," as used in this environmental covenant, shall mean any future owner of any interest in the property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders and/or lessees.

**7. Activity and Use Limitations and Terms.** The property is subject to the following activity and use limitations:

- a. Except for excavations less than 2 feet deep or emergency and non-emergency repairs of existing structures including landfill caps and leachate management systems, all construction activities taking place on the property referred to in Exhibit A – Parcel Number and Legal Descriptions of the Affected Property must be pre-approved by the DNR.
- b. No deposited municipal waste shall be excavated, disrupted, or removed from the site without first providing written notice to the DNR.
- c. Construction of drinking water wells within the boundaries of the property shall require pre-approval by the DNR. "Drinking water wells" are defined as any groundwater wells used as a source of drinking water by humans and groundwater wells used primarily for the production of food or medicine for human consumption in facilities characterized with the standard industrial codes group 283 for drugs and 20 for foods.

- d. Construction of residences within the boundaries of the property must be pre-approved by the DNR.

*In addition to the general restrictions above, the following specific restrictions are imposed:*

- a. *Restrictions and use limitations and terms due to continued management of landfill gas:*
  - 1) There shall be no placement of or construction of enclosed structures on the landfill cap.
  - 2) There shall be no controlled vegetation burns on the property.
- b. *Restrictions and use limitations and terms due to continued management of leachate:*
  - 1) The leachate collection system will continue to be operated and maintained. The leachate from the leachate collection system shall be disposed of at a treatment works with a NPDES Permit.
- c. *Restrictions and use limitations and terms related to site access:*
  - 1) The fencing near the current entrance gate and the gate shall be maintained in perpetuity.
- d. *Restrictions and use limitations and terms related to land use:*
  - 1) The landfill's cap integrity must be maintained in perpetuity.
  - 2) Biennially, the site shall be inspected by a professional engineer licensed in the State of Iowa, to verify that the property activity and use limitations enumerated in this covenant have been complied with. A report of the inspection shall be sent to the Solid Waste Section of the Agency within 30 days of completion.

**8. Notice of Non-Compliance.** Any property owner or subsequent transferee of an interest in the property shall notify the DNR as soon as possible of conditions which would constitute a breach of the activity and use limitations in paragraph seven (7) if they have actual knowledge of these conditions or would reasonably be deemed to have knowledge within the normal course of administration of their property interest.

**9. Notice to Lessees.** Grantor, any holder with a property interest sufficient to grant a lease of the property, and any subsequent transferee shall incorporate the activity and use limitations of this covenant either in full or by reference to this instrument in any lease, license, or other instrument granting a right to possession of the property.

**10. Access to Property.** Reasonable access to the property is granted to the DNR or any authorized representative of the DNR, public or private, for the purpose of implementation, monitoring and enforcement of the terms of this environmental covenant. The DNR, its authorized representatives or other persons entitled to access shall provide the current owner of the property with reasonable notice, an explanation of the reasons for entry and the scope of onsite activities prior to access. Right of access includes, but is not limited to, the following activities:

- a. repair and maintenance of remedial action equipment, soil caps, groundwater monitoring wells and associated aboveground or subsurface structures,
- b. fencing and other technological controls,
- c. groundwater sampling and monitoring,
- d. additional drilling,
- e. construction of soil boring and/or groundwater monitoring wells, and,
- f. other activities authorized or otherwise directed by the DNR.

**11. Groundwater Hazard Statement Notice.** IC § 558.69 requires submission of a groundwater hazard statement and disclosure if solid waste or hazardous waste exists on the property as defined in IC § 455B.411(3) or if the DNR determines that solid waste exists on the property that is potentially hazardous. If solid waste or hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with DNR rules. The signatories and all subsequent transferees required to submit a groundwater hazard statement under IC § 558.69 shall make reference to this environmental covenant in substantially the following form—filling in the blanks with the relevant and applicable details:

THE INTEREST CONVEYED IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED (date (day/month/year: \_\_ / \_\_ / \_\_)), RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE STORY COUNTY RECORDER ON (date (day/month/year: \_\_ / \_\_ / \_\_)) IN (document, book and page, or parcel number: \_\_\_\_\_).

THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: The property is subject to the following activity and use limitations:

- a. Except for excavations less than 2 feet deep or emergency and non-emergency repairs of existing structures including landfill caps and leachate management systems, all construction activities taking place on the property referred to in Exhibit A – Parcel Number and Legal Descriptions of the Affected Property must be pre-approved by the DNR.
- b. No deposited municipal waste shall be excavated, disrupted, or removed from the site without first providing written notice to the DNR.
- c. Construction of drinking water wells within the boundaries of the property shall require pre-approval by the DNR. “Drinking water wells” are defined as any groundwater wells used as a source of drinking water by humans and groundwater wells used primarily for the production of food or medicine for human

consumption in facilities characterized with the standard industrial codes group 283 for drugs and 20 for foods.

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  - 2) There shall be no controlled vegetation burns on the property.
- b. *Restrictions and use limitations and terms due to continued management of leachate:*
  - 1) The leachate collection system will continue to be operated and maintained. The leachate from the leachate collection system shall be disposed of at a treatment works with a NPDES Permit.
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  - 1) The fencing near the current entrance gate and the gate shall be maintained in perpetuity.
- d. *Restrictions and use limitations and terms related to land use:*
  - 1) The landfill's cap integrity must be maintained in perpetuity.
  - 2) Biennially, the site shall be inspected by a professional engineer licensed in the State of Iowa, to verify that the property activity and use limitations enumerated in this covenant have been complied with. A report of the inspection shall be sent to the Solid Waste Section of the Agency within 30 days of completion.

**12. Modification and Termination.** Modification or termination of the terms of this covenant shall comply with the standards in IC chapter 455I and applicable DNR administrative rules. The terms of this environmental covenant may be modified or terminated by written consent of the Director of the DNR, the then current fee simple title owner and all original signatories (unless exempted under the provisions of IC § 455I.10(1)"c" in accordance with and subject to the provisions of IC § 455I.10). The termination or modification is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any modification or termination of this environmental covenant shall be in accordance with IC § 455I.9 and such additional terms as specified in this covenant.

13. **Enforcement.** The terms of this environmental covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with IC § 455I.11.

14. **Severability.** If any provision of this environmental covenant is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. **Governing Law.** This environmental covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

16. **Recordation.** Within thirty (30) days after DNR approval of this environmental covenant, the grantor[s] shall record the environmental covenant in the same manner as a deed to the property with the Story County Recorder's Office.

17. **Effective Date.** The effective date of this environmental covenant shall be the date upon which the fully executed environmental covenant has been properly recorded with the Story County Recorder's Office.

18. **Notice.** Unless otherwise notified in writing by the DNR, any document or communication required by this environmental covenant shall be submitted to:

Iowa Department of Natural Resources  
Solid Waste Section Supervisor  
Wallace State Office Building  
502 E 9<sup>th</sup> Street  
Des Moines, IA 50319

19. **Subordination and Consent.** By signing this environmental covenant, the signatories knowingly and intelligently acknowledge their consent to the terms of this agreement and agree to subordinate their interest in the property. The following persons have expressly consented and subordinated interests:

None.



**ACKNOWLEDGMENTS**

**GRANTORS**

\_\_\_\_\_ Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
Mayor  
City of Ames, Iowa

\_\_\_\_\_ Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
City Clerk  
City of Ames, Iowa

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person or persons who executed the foregoing instrument, and acknowledge that this person or persons executed the same as his/her/their voluntary act and deed.

\_\_\_\_\_,  
Notary Public for State of Iowa

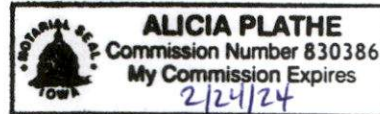
**AGENCY:**

Kayla Lyon Signed this 6<sup>th</sup> day of July, 2021  
Kayla Lyon  
Director, Iowa Department of Natural Resources

State of Iowa )  
County of Polk ) ss.

On this 6<sup>th</sup> day of July, 2021, before me personally appeared Kayla Lyon, known to me to be the Director of the Iowa Department of Natural Resources or the lawful designee of the Director who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

Alicia Plathe  
Notary Public for State of Iowa



## **Exhibit A – Parcel Number and Legal Descriptions of the Affected Property**

Story County Parcel No. 0901200030 [Locally known as 1898 E 13<sup>th</sup> Street]

The Southeast Quarter of the Southwest Quarter of the Northeast Quarter of Section 1, Township 83 North, Range 24 West of the 5<sup>th</sup> P.M., in Story County, Iowa.

AND

Story County Parcel No. 0901200040 [Locally known as 1888 E 13<sup>th</sup> Street]

The Southwest Quarter of the Southwest Quarter of the Northeast Quarter of Section 1, Township 83 North, Range 24 West of the 5<sup>th</sup> P.M., in Story County, Iowa.

AND

Story County Parcel No. 0901400010 [Locally known as 1600 Watt Street]

The Northwest Quarter of the Northwest Quarter of the Southeast Quarter of Section 1; and Lot 4 of the Southeast Quarter of Section 1 lying North of the Chicago & Northwestern Railway Right-of-Way; all in Township 83 North, Ranges 24 West of the 5<sup>th</sup> P.M., in Story County, Iowa.

AND

Story County Parcel No. 0901400020 [Locally known as 1800 Watt Street]

Lot 2, Block 5, Landfill Addition to Ames Iowa, in Section 1, Township 83 North, Range 24 West of the 5<sup>th</sup> P.M., in Story County, Iowa.

## **Exhibit B – Ownership Documentation (Root of Title Documents)**

1. Acknowledgment of Consent & Dedication dated December 14, 1963, and filed in Book 123, at Pages 440-441, with the Recorder of Story County, Iowa.
2. Warranty Deed filed July 6, 1964, in Book 125, at Page 457, as Inst. No. 7371, filed with the Recorder of Story County, Iowa.
3. Warranty Deed filed December 16, 1975, in Book 157, at Page 726, as Inst. No. 7267