

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this ____ day of _____, 2009 (the “Effective Date”) by and among NJK Farms, Inc. (“NJK”) and the Fountain County Council (“Council”), the Board of Commissioners of Fountain County (the “Commissioners”) and the Fountain County Solid Waste Management District (“FCSWMD”). The Council, the Commissioners and the FCSWMD are collectively referred to herein as the “Defendants”.

WHEREAS, an application was filed with the Indiana Department of Environmental Management (“IDEM”) on November 8, 1991, together with supplementations subsequently made thereto, for approval and authorization to construct and operate a sanitary landfill in Fountain County, Indiana, known as the “Greenview Landfill” and designated by IDEM as Facility Permit 23-03 (“November 8, 1991 Permit Application”);

WHEREAS, the Marion Superior Court (Cause No. 49F12-0402-CP-000317), on November 20, 2008, found that IDEM breached its agreement with NJK with regard to the November 8, 1991 Permit Application and NJK has elected to seek damages from IDEM for that breach, which damages may be awarded in lieu of the approval and/or authorization of the construction and operation of the Greenview Landfill;

WHEREAS, in the event NJK is not issued a permit to construct and/or operate Greenview Landfill, this Agreement shall be null and void and of no effect;

WHEREAS, the Council adopted the Host Fee Ordinance No. 2006-3 on April 10, 2006 (“Host Fee Ordinance”), the FCSWMD adopted its district fee Resolution on April 13, 2006; and the Commissioners adopted county wide zoning in Fountain County by means of Resolution 2008-13, which was passed on April 28, 2008;

WHEREAS, after the passage of Host Fee Ordinance No. 2006-3, Fountain County enacted county-wide zoning which renders the Host Fee Ordinance a legal nullity and of no legal force and effect;

WHEREAS, the Fountain County county-wide zoning renders inapplicable Ind. Code §13-20-2-10, inasmuch as that statute applies only to counties that do not zone under Ind. Code 36-7-4;

WHEREAS, in the event the Greenview Landfill is constructed and/or operated, the Defendants desire to enter into a voluntary Host Fee Agreement with NJK for the facility that is the subject of the November 8, 1991 Permit Application, the terms and conditions of which voluntary Host Fee Agreement are set forth in this Settlement Agreement;

WHEREAS, as provided for by Ind. Code §§36-1-2-5 and 13-21-3-12, the parties desire by this Settlement Agreement to resolve and settle the lawsuits that NJK filed on April 9, 2008 against the Council and the Commissioners in the Fountain Circuit Court under Cause Number 23C01-0804-PL-155, which was subsequently venued to Montgomery Circuit Court under Cause Number 54C01-0810-PL-437 (the “Montgomery County” case) and on April 11, 2008 against the Defendants in the United States District Court for the Southern District of Indiana,

Indianapolis Division, under Cause Number 1:08-cv-0477-LJM-TAB (the “United State District Court” case);

WHEREAS, the parties further wish to extend to each other mutual assurances intended to allow NJK to conduct lawful business as permitted by IDEM at the Greenview Landfill, and to protect the legitimate interests of Defendants in assuring that such operations by NJK or its successors are conducted in accordance with law;

WHEREAS, the parties desire to provide certain payments from revenue generated by NJK as the result of fees (“tipping fees”) charged for the right to dispose of waste in the Greenview Landfill exclusive of state and local fees; and

WHEREAS, the parties further desire to implement, by means of this Settlement Agreement, an understanding by which NJK, on the one hand, and the Defendants, on the other, may proceed in the future;

NOW THEREFORE, in consideration of the foregoing recitals and the following covenants, each of the foregoing and following being material to this Agreement, the parties stipulate and agree as follows:

1. NJK agrees to pay the total amount of Three Dollars (\$3.00) per ton for each and every ton of solid waste that is placed in the Greenview Landfill for final disposal, exclusive of those materials authorized by IDEM to be used for daily, intermediate and final cover. The apportionment of said payments as between the FCSWMD and the Council (on behalf of Fountain County) is in the sole discretion of those entities, except that no payment may be required to be made by NJK to the FCSWMD that would be in violation of applicable State law. Prior written notice to NJK must be given jointly by the Council and the FCSWMD as to the apportionment of said payments as between the Council and the FCSWMD. NJK will pay the Host Fee quarterly, and those payments will be made directly to the Council, or the Council otherwise directs in writing, within thirty (30) days after the close of a given calendar quarter, which payment obligation will begin when waste is first placed in the Greenview Landfill for final disposal. Payments of the District Fee for the benefit of the FCSWMD will be made in accordance with the applicable State law and as provided through resolution passed by the FCSWMD. NJK is required to report to IDEM the amount of waste placed at the Greenview Landfill for final disposal, and the calculation of the Host Fees and District Fees owed under this Settlement Agreement will be based on those amounts as reported to IDEM.

2. The Defendants, and each of them, are providing a schedule, attached hereto as Exhibit “A,” that identifies (a) each and every local law that applies to the Greenview Landfill related to the construction and operation of that landfill and (b) each and every federal and/or State of Indiana law that applies to the construction and operation of that landfill that requires approval and/or authorization by local entities. The list of such laws, statutes regulations or other conditions included in the list is applicable only to the November 8, 1991 Permit Application. Defendants represent and warrant that the attached Exhibit “A” is correct and complete as of the Effective Date hereinabove written.

3. The Defendants, and each of them, represent and warrant that the November 8, 1991 Permit Application is for a facility that either has, or is eligible and qualified to receive, any local

license, permit, special exception, variance, zoning classification, approval and/or authorization needed in order to be constructed and/or operated under each and every law identified as applicable under paragraph two (2) above, as relates to the construction and operation of a landfill, and further represent and warrant that the entire existing Greenview Landfill property currently owned by NJK in the approximate area of 192 acres is grandfathered under any and all applicable zoning requirements for the construction and/or operation of a solid waste landfill as outlined in the November 8, 1991 Permit Application.

4. The Defendants, and each of them, represent and warrant that either (a) any of the licenses, permits, special exceptions, variances, zoning classifications, approvals and/or authorizations as listed in paragraph two (2) above is inapplicable to the Greenview Landfill or (b) if applicable, that the Greenview Landfill has or is eligible and qualified for issuance of each and every such license, permit, special exception, variance, zoning classification, approval and/or authorization required under paragraph two (2) above at such time as it commences construction or operation, as may be required for issuance of same.

5. The Defendants, and each of them, represent and warrant that they shall refrain from enacting any rule, regulation, ordinance and/or resolution designed to cause or contribute to their breach of this Agreement and/or that would be inconsistent with the right of Greenview Landfill to be constructed and/or operated pursuant to any IDEM operating or construction permit issued to NJK for the Greenview Landfill. Further, the Defendants stipulate and agree that the Greenview Landfill cannot be treated disparately from any other lawful business located in Fountain County, excepting issues unique to the nature, business and risks of operating a landfill. If, and in the event, the Defendants, or any of them, take any action to materially impair NJK's ability to function as a going concern, then NJK shall serve notice upon the Defendants, or such of them to have taken such action, giving notice of the action complained of and ninety (90) days in which to cure same. If and in the event the Defendant entity thus served fails or refuses to cure same by the end of the ninety (90) day period, NJK shall be free to file suit for damages and any other relief in a court of competent jurisdiction. Provided further, however, that the aforesaid ninety (90) day notice provision shall not prohibit NJK from seeking necessary preliminary or emergency injunctive relief against actions deleterious to its ability to function as a going concern that cause or threaten to cause irreparable harm, said harm defined to include reduction or cessation in business income.

6. Written notice for NJK shall be sent to the attention of Dr. George W. Pendency, 6770 Spirit Lake Drive, Bldg. #1, Suite #201, Indianapolis, Indiana 46220. Written notices to the Defendants shall be addressed as follows: for the Commissioners, *Fountain County Auditor, 301 4 th St, Covington, IN 47932*; for the Council, *Fountain County Auditor, 301 4 th St, Covington, IN 47932*; and for the FCSWMD, *Fountain County Auditor, 301 4 th St, Covington, IN 47932*.

7. Due, in part, to Defendants expectation that NJK comply with all state and federal laws pertaining to the operation of the landfill, and their continuing duty to promote the public health, safety, comfort, morals, convenience, and general welfare of the citizens of Fountain County, NJK agrees that the Defendants, and each of them, retain the right to file a citizens' suit against IDEM if, and in the event, IDEM fails to perform oversight of the Greenview Landfill in a manner satisfactory to the Defendants, or each of them, or if it is in violation of state and federal laws.

8. The parties stipulate and agree that any expansion of the Greenview Landfill beyond the area of approximately 192 acres currently owned by NJK is not subject to the aforementioned zoning grandfathering or any other term of this Agreement. In order to be grandfathered, any expansion of the Greenview Landfill must be restricted to the 192 acres and a modification to the November 8, 1991 Permit Application. If IDEM requires an entirely new permit application to be filed, such proposed activity is not subject to grandfathering.

9. Paragraph one (1) hereof notwithstanding, NJK agrees that, with respect to the fee of Three Dollars (\$3.00) per ton, following the first full year of payment of same, the total fee shall be adjusted, upward or downward, so as to be equal to Ten Percent (10%) of the weighted mean of tipping fees per ton charged by the Greenview Landfill during the immediate preceding year, an example of which is shown on the attached Exhibit "B", with said adjustment to be recalculated annually on the anniversary of said initial adjustment date. Further provided that no component of the tipping fee shall exceed the amount limited by applicable state law as to such fees. Provided further that the allocation of the fees to FCSWMD and County may from time to time be reallocated at the convenience of defendant(s) and such reallocation may be made for the purpose of remaining under any overall cap or limit imposed by any law, or otherwise imposed as to any such fee.

10. The county (acting through its Commissioners) and the FCSWMD have the right to inspect the landfill at all reasonable times during regular business hours upon reasonable notice.

11. NJK will seek to optimize environmental benefits through energy recovery (methane utilization) and to benefit the local community through such efforts to the extent reasonable and practicable.

12. The parties stipulate and agree that, upon the execution of this Settlement Agreement, they shall stipulate to the dismissal, with prejudice, of the Montgomery County and United States District Court cases, each party to bear its own costs and attorney fees.

13. The parties stipulate and agree that this Settlement Agreement is the entire Agreement of the parties relating to its subject matter, that no modification of this Agreement may be made without the written consent, as evidenced by signature, of the other party(ies), and that each person signing this Agreement on behalf of NJK, the Council, Commissioners, or FCSWMD is authorized to do so and to bind his or her principal.

14. The Defendants represent and warrant that they have taken all procedural steps required by Indiana law to properly give notice, deliberate upon, and vote in favor of entering into this Agreement and are thereby authorized to consummate same.

15. Upon consummation of this Agreement the Defendants can and shall pass all legislation necessary to effectuate the terms of this Settlement Agreement.

16. To the extent permitted by law this Agreement shall be deemed the Host Fee Agreement. The parties, consistent herewith, agree to cooperate and confer regarding its implementation.

NJK FARMS, INC.

By: _____

George W. Pendygraft

Title: President

Date: _____

BOARD OF COMMISSIONERS OF FOUNTAIN COUNTY

Approved by the Board of Commissioners of Fountain County on this ___ day of _____, 2009, by a vote of ___ to ___.

By: _____

Its: _____

FOUNTAIN COUNTY COUNCIL

Approved by the Fountain County Council on this ___ day of _____, 2009, by a vote of ___ to ___.

By: _____

Its: _____

FOUNTAIN COUNTY SOLID WASTE MANAGEMENT DISTRICT

Approved by the Fountain County Solid Waste Management District on this ___ day of _____, 2009, by a vote of ___ to ___.

By: _____

Its: _____

Exhibit "A"

Description of Local Law Applying to Construction And Operation of Landfill	Ordinance/Resolution/Rule	Date Passed
Host Fee/Council	Ordinance 2006-3	April 10, 2006/ Repealed by this Settlement Agreement
District Fee/FCSWMD	Resolution	April 13, 2006 Repealed by this Settlement Agreement
Zoning Ordinance/ Commissioners	Ordinance 2008-13	April 28, 2008

Federal and/or State of Indiana Law Applying To Construction and Operation of Landfill That Requires Approval And/or Authorization By Local Entities	Ordinance/Resolution/Rule	Date Passed
None	Not Applicable	Not applicable

Exhibit “B”

A hypothetical example of how the adjustment of the total fee under Paragraph 1 would be made pursuant to Paragraph 9 of the Settlement Agreement is set forth below.

Assumptions for Hypothetical:

- 1) The adjustment will be made for the upcoming year of operation based on data obtained from the operations during the immediate prior year.
- 2) 550,000 tons placed in the Greenview Landfill for final disposal during prior year.
- 3) The “tipping fee,” exclusive of state and local charges, was \$35 per ton for 200,000 tons and \$40 per ton for 350,000 tons.

Calculation of Weighted Tipping Fee:

- 4) The weighted tipping fee is $\$35 \text{ per ton} \times 200,000 \text{ tons}$ plus $\$40 \text{ per ton} \times 350,000 \text{ tons}$, all of which is divided by 550,000 tons, for a weighted “tipping fee” of \$38.18 per ton.

Calculation of Total Fee to be paid to the Council and the FCSWMD:

- 5) The total fee (which would be allocated as the Host Fee and District Fee based on prior written notice to NJK) to be paid per ton would be \$3.82 per ton, for a total payment of \$2,101,000 under the assumptions posited for this example. Again, the allocation of these funds as between FCSWMD and the Council is in the total discretion of the Defendants, FCSWMD and the Council.