

Date:	Reference No.:	Agenda Item No.:
6/7/2012	Lease	

Subject: Lease Agreement Between Town of Brownsburg(Landlord) & Hendricks Co. Solid Waste Management(Tenant)

Summary of Request:

This Lease Agreement is between the Town of Brownsburg (Landlord) and the Hendricks County Solid Waste Management District (tenant) for property located at 104 E. Main Street, Brownsburg. This is a two (2) year lease commencing on January 1, 2012 and ending on December 31, 2013 with an option for two (2) additional (2) year terms. The monthly rental rate in the amount of \$750.00 will commence on January 1, 2013 along with the continuance of paying all utilities. The Town of Brownsburg or the Hendricks County Solid Waste Management could terminate the lease with 120 day written notice. This agreement was approved by the Hendricks County Solid Waste Management on May 22, 2012 and has been signed by their Executive Director.

Financial Summary:

Budget Funds Available	If Yes, Amount
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	

	Line Item Name	Line Item Number
Budget Fund Information:		

Recommend Bid/Contract Amount: _____

Estimated Project Costs: (whole numbers)	Architecture/Engineering	
	Construction/Procurement	
	Contingency	
	Miscellaneous Costs	
	TOTAL ESTIMATE	
	Future Expenses (if any)	
	Revenue Generated (if any)	

Department Head Approval: _____

Date: _____

Assistant Town Manager Approval:

Date:

ATM Comments:

Supporting Documentation:

Lease Agreement between Town of Brownsburg and Hendricks County Solid Waste Management for property located at 104 E. Main Street. Minutes from Hendricks County Solid Waste Management showing approval of the lease.

Action Requested:

Approval and Execution of Lease Agreement

Town Manager Approval:

Shant A. Kirkling

Date:

6/7/2012

TM Comments:

The Town is grateful that the Solid Waste District is using our building but wanted to make sure that we were being fiscally responsible with our assets. This lease is a good step in that direction as we are beginning to look at ways to improve our revenue streams and spend our money wisely. I recommend approval.

LEASE

THIS LEASE, entered into by the Town of Brownsburg, Indiana (hereinafter referred to as "Landlord") and the Hendricks County Solid Waste Management District, (hereinafter referred to as "Tenant");

WITNESSETH THAT Landlord and Tenant, in consideration of their mutual undertakings, agree as follows:

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord:

**104 East Main Street
Brownsburg, Indiana**

Hereinafter referred to as "Leased Premises" and all appurtenances thereto for one (1) term of two (2) years, commencing on January 1, 2012 and ending on December 31, 2013, unless sooner terminated, with an option for two (2) additional two (2) year terms, and Tenant without demand or notice shall pay a monthly rental rate of Seven Hundred Fifty Dollars and 00/100 (\$750.00) payable on or before the first day of each month beginning January 1, 2013 at the address of the Landlord set forth in this Lease, or such other address as Landlord by notice shall direct, all upon the following covenants, terms and conditions:

1. USE, COMPLIANCE WITH LAWS, SIGNS

The Leased Premises shall be used by Tenant only for the purpose of operating the Hendricks County Solid Waste Management District and for no other purpose. Tenant shall keep or cause to be kept the Leased Premises in a clean and orderly condition, and shall conduct business therefrom in a careful and safe manner. Tenant shall not use the Leased Premises or maintain them in any manner constituting a violation of any ordinance, statute, regulation, or order of any governmental authority, including without limitation zoning ordinances, nor shall Tenant maintain, permit or suffer any nuisance to occur or exist on the Leased Premises.

2. SURRENDER AND HOLDOVER

Upon the expiration or sooner termination of this Lease, Tenant shall surrender to Landlord the Leased Premises, together with all other property affixed to the Leased Premises in the same order and condition with Tenant received them, the effects of ordinary wear, acts of God, casualty, insurrections, riot or public disorder accepted. If Tenant shall remain in possession of all or any part of the Leased Premises after the

expiration of the term of this Lease, with consent of the Landlord, then the Tenant shall be a lessee from month to month at the same rental and subject to all of the applicable covenants, terms, and conditions hereof.

3. ASSIGNMENT AND SUBLETTING

The Tenant shall not sub-lease the Leased Premises without the prior written approval of the Landlord. This prohibition shall include any act which has the effect of an assignment or transfer and which occurs by operation of law. Any such sub-lessee shall be bound by the terms of this Lease along with the Tenant and references herein to Tenant shall also mean any sub-lessee of Tenant. The Landlord must approve and agree to accept any proposed sub-lessee.

4. ALTERATIONS AND MAINTENANCE OF LEASED PREMISES

Tenant shall not cause or permit any alterations, additions, or changes of or upon any part of the Leased Premises without first obtaining the written consent of the Landlord. All alterations, additions, changes, and improvements to the Leased Premises shall be made in accordance with all applicable laws and shall become the property of the Landlord.

Landlord, upon written notice, shall make all repairs necessary to maintain the following in the same condition they are now in:

- A. The exterior and structural walls including store fronts, doors and glass, structural floors including floor coverings, foundations, roofs, gutter, and exterior downspouts of the Leased Premises;
- B. All appurtenances to the Leased Premises including, without limitation, lobbies, stairways, storage areas, passageways, sidewalks, driveways, parking areas, canopies, common area lighting, landscaping, office park sign and directory board; and
- C. Water, sewage, gas, and electrical lines from the public mains up to the point of entry to the Leased Premises;

except to the extent that the acts or neglect of Tenant, its employees or invitees necessitates such repairs; provided however, nothing contained herein shall require Landlord to make any structural changes and/or repair and/or to make any changes required for compliance issues that are determined to be material by Landlord. Tenant shall make all other repairs not required to be made by Landlord to maintain the Leased Premises in the same condition they are now in. Tenant accepts the Leased Premises in their present condition. Tenant shall not be obligated under this provision to repair any injury to the Leased Premises resulting from

fire or other casualty. The preceding sentence is not intended to limit, modify, or release Tenant from any liability it may have for causing any damage or destruction.

5. INDEMNIFICATION

Regardless of whether or not, separate, several, joint or concurrent liability may be imposed upon Landlord, Tenant shall indemnify and hold harmless Landlord from and against all damages, claims and liability arising from or connected with Tenant's control or use of the Leased Premises, including without limitation, any damage or injury to person or property; provided however, Tenant shall not be responsible for any damage to the Leased Premises caused by the nearby residents that park in the gravel area to the north.

If Landlord shall, without fault, become a party to litigation commenced by or against Tenant, then Tenant shall Indemnify and hold Landlord harmless. The indemnification provided by this section shall include Landlord's legal costs and fees in connection with any such claim, action or proceeding. Tenant does hereby release Landlord from all liability for any accident, damage or injury caused to person or property on or about the Leased Premises, unless so caused by acts or negligence of the Landlord.

6. EVENTS OF DEFAULT-EARLY TERMINATION

A. Landlord's Right to Terminate:

Landlord may terminate this Lease with or without cause as more specifically set forth below:

- A. *Without Cause:* Landlord, with one hundred twenty (120) days prior written notice to Tenant, may terminate this Lease without cause at any time hereunder.
- B. *For Cause/Default:* In addition to Landlord's right to terminate this Lease without cause, Landlord shall also have the ability to terminate this Lease for cause/default as set forth below. Any of the following shall be deemed an event of default which will allow the Landlord to terminate this Lease:
 1. The failure to pay any installment of rent when the same becomes due and the failure continues for a period of fifteen (15) days;
 2. Tenant's failure to perform or observe any other covenant, term or condition of this Lease to be performed or observed by Tenant and if curable, the failure continues for fifteen (15) days after notice thereof is given to Tenant;
 3. Abandonment of Leased Premises;
 4. Use of the Leased Premises or maintenance of them in any manner constituting a violation of any ordinance, statute, regulation, or order of any

governmental authority, including without limitation zoning ordinances, or Tenant maintaining, permitting or suffering any nuisance to occur or exist on the Leased Premises; and

5. Failure of Tenant and Landlord during the entire term hereof to keep in full force and effect a policy of public liability insurance with respect to the Leased Premises.

In the event of default for reasons other than abandonment, the Landlord shall give written notice to the tenant of the default and Tenant shall have 30 days to correct such default or vacate the Leased Premises.

I. Upon the occurrence of any event of default Landlord may exercise its right to any of the following options, in addition to any other remedy or right it has hereunder or by law:

A. Re-enter the Leased Premises, without demand or notice, and resume possession by an action in law or equity or by force or otherwise and without being liable in trespass or for any damage and without terminating this Lease. Landlord may remove all persons and property from the Leased Premises and such property may be removed and stored at the cost of the Tenant;

B. Terminate this Lease at any time upon the date specified in a notice to Tenant. Tenant's liability for damages shall survive such termination. Upon termination such damages recoverable by Landlord from Tenant shall, at Landlord's option, be either an amount equal to "*Liquidated Damage*" or an amount equal to "*Indemnity Payments*".

1. "*Liquidated Damage*": Means an amount equal to the excess of the rentals provided for in this Lease which would have been payable hereunder by Tenant, had this Lease not so terminated, for the period commencing with such termination and ending with the date set for the expiration of the original term granted (hereinafter referred to as "Unexpired Term"), over the reasonable rental value of the Leased Premises for such Unexpired Term.

2. "*Indemnity Payments*": Means an amount equal to the rent and other payments provided for in this Lease which would have become due and owing from time to time during the Unexpired Term plus the cost and expenses paid or incurred by Landlord from time to time in connection with:

- a. Obtaining possession of the Leased Premises;
- b. Removal and storage of Tenant's or other occupant's property;
- c. Care, maintenance, and repair of the Leased Premises;
- d. Reletting the whole or any part of the Leased Premises;
- e. Repairing, altering, renovating, partitioning, enlarging, remodeling or otherwise putting the Leased Premises, either separately or as part of larger premises, into condition acceptable to, and reasonably necessary to obtain new lessees; and

- f. Making all repairs, alterations and improvements required to be made by Tenant hereunder and of performing all covenants of the Tenant relating to the condition of the Lease Premises, less the rent and other payments, if any, actually collected an allocable to the Leased Premises or to the portions thereof relet by Landlord. Tenant shall on demand make indemnity payments monthly and Landlord can sure for all indemnity payments as they accrue.
 - C. Without terminating this Lease, relet the Leased Premises with the same being deemed an acceptance of a surrender of this Lease nor waiver of Landlord's rights or remedies and Landlord shall be entitled to indemnity payments, as heretofore defined, from Tenant. Any reletting by Landlord may be for a period equal to or less than, or extending beyond the remainder of the original term, or for the whole or any part of the Leased Premises, separately or with other Premises or for any sum, or to any lessee or for any use Landlord deems appropriate.
- II. Upon the occurrence of any of the following:
 - A. The filing of a voluntary petition in bankruptcy by Tenant;
 - B. The filing of a petition or answer by Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or other relief of the same of different kind under any provision of the Bankruptcy Act;
 - C. An adjudication of Tenant as bankrupt or insolvent; and
 - D. The appointment of a trustee, receiver, guardian, conservator or liquidator of Tenant with respect to all or substantially all of its property

this Lease shall terminate ipso facto as of such occurrence and the Leased Premises shall be surrendered as required by Section 2. Tenant's liability for damages shall survive such termination and Landlord shall be entitled to recover an amount equal to liquidated damages as defined above or an amount equal to the maximum allowed by any statute or rule of law in effect at the time when and governing the proceedings in which such amount is sought.

B. Tenant's Right to Terminate.

Tenant, with one hundred twenty (120) days prior written notice to Landlord, may terminate this Lease without cause at anytime hereunder. In addition, in the event an issue arises with regard to whether the Leased Premises meets any code requirements for purposes of compliance with the American with Disabilities Act, Tenant, with one hundred twenty (120) days prior written notice to Landlord, may terminate this Lease.

7. ACCESS BY LANDLORD TO LEASED PREMISES

Landlord, Landlord's agents, and Landlord's prospective lessee, purchasers or mortgagees shall have full access to the Leased Premises for the examination thereof and as a means of access to other land of the Landlord. Landlord shall have the right to make any repairs to the Leased Premises which Landlord may deem necessary, but this provision shall not be construed to require Landlord to make repairs except as it is otherwise required hereby.

8. TO BE PROVIDED BY LANDLORD

During the Lease term, Landlord shall provide snow removal, and all exterior Maintenance including yard maintenance and shall keep interior equipment and fixtures in good repair, including but not limited to, changing furnace filters regularly, plumbing repair, electrical repair, interior fixture repair, less and except those due to malfeasance, wrongful or malicious damage caused by Tenant. Landlord will also have responsibility for maintenance of the HVAC system, providing pest control services, and fire extinguisher maintenance for the Leased Premises.

9. TO BE PROVIDED BY TENANT

During the Lease term, Tenant shall pay all monthly utility bills directly attributable to the Leased Premises.

10. INSURANCE AND DESTRUCTION

Tenant shall, during the entire term hereof, keep in full force and effect a policy of public liability insurance with respect to the Leased Premises, and the business operated by each in which the confirmed limits of public liability shall not be less than one million dollars (\$1,000,000.00) per occurrence.

The policy shall name Landlord, any persons firms or corporations designated by Landlord and having an insurable interest therein, and Tenant as insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the Landlord ten (10) days prior written notice. The insurance shall be issued by insurers of recognized responsibility which are licensed to do business in the State of Indiana and a copy of the policy or certificate of insurance of each party shall be delivered to the other. (Said insurance may be in a blanket policy covering other Premises in addition to the Leased Premises, provided that such blanket policy insurance affords not less than the coverage set forth in this paragraph.)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on this day of _____, 2012, and if this Lease is executed in counterparts, each shall be deemed an original.

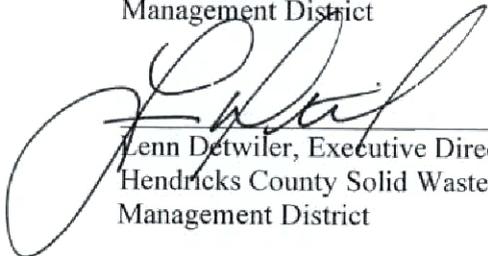
LANDLORD

TENANT

Dwayne Sawyer, Council President
Town of Brownsburg

Beverley Austin, Board President
Hendricks County Solid Waste
Management District

Grant Kleinhenz, Town Manager
Town of Brownsburg



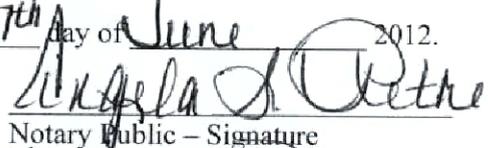
Jenn Detwiler, Executive Director
Hendricks County Solid Waste
Management District

STATE OF INDIANA)
) SS:
COUNTY OF HENDRICKS)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the Director of the Hendricks County Solid Waste Management District, who acknowledged the execution of the above and foregoing Lease.

WITNESSETH my hand and Notarial Seal this 7th day of June, 2012.

My Commission Expires: May 19, 2016



Notary Public - Signature

Hendricks

Resident of Hendricks County, IN

Angela S Petre

Notary Public - Printed Name

 ANGELA S PETRE
NOTARY PUBLIC, STATE OF INDIANA
COUNTY OF RESIDENCE, HENDRICKS
COMMISSION EXP MAY 19, 2016

STATE OF INDIANA)
) SS:
COUNTY OF HENDRICKS)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the Town Manager of the Town of Brownsburg, who acknowledged the execution of the above and foregoing Lease.

WITNESSETH my hand and Notarial Seal this ____ day of _____ 2012.

My Commission Expires:

Notary Public – Signature

Resident of Hendricks County, IN

Notary Public – Printed Name

Hendricks County Solid Waste Management District

May 22, 2012

The Hendricks County Solid Waste Management District met at 7:00 a.m. on May 22, 2012, in the Commissioners' Meeting Room at the Hendricks County Government Center.

President Beverley Austin opened the meeting and led the Pledge of Allegiance.

Roll call was taken and members in attendance were:

Beverley Austin	Ed Gaddie
Bob Gentry	Rob Kendall
Marcia Lynch	Phyllis Palmer
Eric Wathen	

Board members Myron Anderson and Nancy Johnson were not in attendance.

Others in attendance were:

Katie Archer	Lenn Detwiler
Patricia Knoll	Amy Siefertman
Greg Steuerwald	

Approval of Minutes

Mrs. Palmer moved to approve the minutes from the March 27, 2012, Board Meeting as corrected. Mrs. Lynch seconded the motion. The motion passed, 7-0-0.

Educator's Report

Outreach Coordinator

Mrs. Siefertman reported that the 365 Every Day Counts topic for June will be farmers' markets and the advantages to buying local products and produce.

She went on to say she and Mrs. Archer were working hard on preparing for Earthstock at Rib-Fest. The event will be held on June 30th from 5 p.m. to 10 p.m. in conjunction with the Avon Chamber of Commerce.

Youth Education Coordinator

Mrs. Archer shared with the Board the number of students visited during the past school year, 10,809, and said she was updating education brochures for the next school year. She said she was creating brochures for each grade level to help teachers better incorporate the District's programs into the curriculum for each grade.

Director's Report

Lease for Current Office Space

Mr. Detwiler reported that the Town of Brownsburg prepared a lease for the current office space being used by the District. It would be effective January 1st, 2012 with the District beginning to pay rent of \$750 a month beginning on January 1st, 2013. The District would continue paying all utilities. Either the Town or the District could terminate the lease with 120 day written notice.

Discussion was held during which Mr. Detwiler mentioned that with the consistently high participation rates for the District's Tox-Away Days, it might be time to explore a permanent household hazardous waste facility which could perhaps be combined with office space and storage.

Mrs. Lynch moved that the District accept the proposed lease, but research available properties for a possible permanent HHW facility/office/storage. Mr. Gaddie seconded the motion. The motion passed, 6-1-0, with Mrs. Palmer voting against the motion.

Stilesville Recycling Drop-Off Center

Mr. Detwiler then related to the Board that the current property owner where the Stilesville Recycling Drop-Off Center is located may have misunderstood the terms and was expecting to be compensated to have the Center on his property. He was also requesting a cement pad or gravel area be built where the bins are located.

After some discussion, it was the Board's consensus to have Mr. Detwiler contact the property owner, offer to compensate a Hendricks County non-profit organization on his behalf for his housing and maintenance of the recycling center. The Board also indicated that improvements could be made if he is willing to sign an agreement to allow the center to remain there for a few years.

2013 Budget

Mr. Detwiler then said he was beginning preliminary work on the 2013 budget and that he would be meeting with the Citizen's Advisory Committee in June to get their input. Mr. Detwiler said the timing of the publication of the 2013 budget may require the board approving the proposed budget numbers via email, if the group was comfortable doing that. He said he would know more about the budget schedule over the next few weeks and would see what could be worked out.

Recycling Guides

Mr. Detwiler then brought the Board's attention to the new Recycling Guides. He said they had been distributed through the Hendricks County Flyer the day before Earth Day, and that they would be handed out at events. He said the Guides were the main outreach to adults that the District provides.

Financial Report

Financial Facts Summary

Mr. Detwiler presented to the Board the Financial Facts Summaries for March and April.

Mr. Wathen asked about the professional expenses amount shown on the General Fund 1st Quarter Comparison. Mr. Detwiler explained it covered IT and legal expenses.

Income Chart

On the 2012 Income Chart, Mr. Detwiler said the totals for final disposal fee income were running about \$13,000 higher than last year.

Register of Claims—General Fund

Mr. Detwiler presented the Register of Claims dated April 24, 2012, in the amount of \$66,526.81. Mr. Wathen moved to approve the register, and Mr. Gentry seconded the motion. The motion passed, 7-0-0.

Mr. Detwiler then presented the Register of Claims dated May 22, 2012, in the amount of \$58,174.28. Mr. Wathen moved to approve the claims as presented, and Mr. Gentry seconded the motion. The motion passed, 7-0-0.

New Business

Mr. Wathen commented that he agreed it was time to look for a permanent HHW facility, because of the numbers of homeowners that were showing up for the Tox-Away Days.

Adjournment

Mr. Wathen moved to adjourn the meeting. Mr. Gentry seconded the motion. Mrs. Austin adjourned the meeting at 7:42 a.m.

Beverley Austin, President