

**IVY MATERIAL UTILIZATION CENTER PROGRAMS AGREEMENT**

**BETWEEN**

**THE COUNTY OF ALBEMARLE**

**AND**

**THE RIVANNA SOLID WASTE AUTHORITY**

This **Ivy Material Utilization Center Programs Agreement** (this “Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2011 by and between the **County of Albemarle, Virginia** (the “County”) and the **Rivanna Solid Waste Authority** (the “Authority”, individually a “Party”, and together referred to as the “Parties”).

WHEREAS, on November 20, 1990, the City of Charlottesville (the “City”) and the County entered into a certain Solid Waste Organizational Agreement (the “Organizational Agreement”) for the purpose of forming the Authority to operate the Ivy Landfill (the “Landfill”) and provide other waste management services for the City and County;

WHEREAS, the Landfill operated continuously from 1968 until the closure of Cell 2 in 2001; however the Authority continues to provide waste management services to the City and County and has continuing obligations with respect to the closure, remediation and monitoring of the Landfill;

WHEREAS, the Authority owns a transfer station at the Landfill site (the “Ivy Transfer Station”) currently operated by the Authority, with transportation and disposal of the compacted waste provided by Waste Management, Inc. (formerly Atlantic Waste Disposal, Inc.) pursuant to a contract with the Authority (the “Waste Management Contract”);

WHEREAS, in addition to the Ivy Transfer Station, the Authority provides other waste and recycling services at the Landfill site, commonly referred to as the “Ivy Material Utilization Center” (the “Ivy MUC”).

WHEREAS, the City, the County, the Authority and the University of Virginia entered into a Memorandum of Understanding dated January 10, 2005 with respect to the sharing of costs related to the closure, remediation and monitoring of the Landfill (the “Environmental Expenses MOU”);

WHEREAS, the City, the County and the Authority entered into a Local Government Support Agreement dated December 17, 2007, as amended by First Amendment to Local Government Support Agreement dated July 1, 2010, providing for the

participation of the City and County in the costs of maintaining the operation of the McIntire Recycling Center and Paper Sort Facility (collectively the “Recycling Services”) as well as the Ivy Transfer Station and Ivy MUC, which agreement expired on December 31, 2010;

WHEREAS, the City no longer desires to use or support the services offered by the Authority at the Ivy MUC;

WHEREAS, the County desires that the Authority continue the provision of services and operation of the Ivy MUC;

WHEREAS, the County and the Authority desire to enter into a new agreement to continue to provide for local government contributions to the Authority by the County to allow the Authority to cover the Authority’s administration and operating expenses allocated to the services provided by the Authority at the Ivy MUC as defined herein and in the Authority’s adopted budget over and above the revenues received under, and the costs covered by, the Environmental Expenses MOU, the Local Government Support Agreement for Recycling Services, and other revenues received by the Authority; and,

WHEREAS, the County, the City and the Authority are entering into a separate Local Government Support Agreement for Recycling Programs pursuant to which a separate portion of the Authority’s Administration Services expenses (more particularly described in Paragraph 2 below) will be allocated (the “Recycling Programs LGSA”).

NOW, THEREFORE, the Parties agree as follows:

1. **County Request for Continued Operation of the Ivy MUC**

Pursuant to Section 4.3 of Organizational Agreement, the County has determined the need for the continued operation of, and provision of services at, the Ivy MUC, and hereby directs the Authority to continue such operation and provide such services, subject to the terms and conditions set forth herein.

2. **County’s Proportional Funding of Authority’s Projected Annual Ivy MUC Operations Deficit**

If the Authority determines that despite all reasonable efforts to fund the operating and administrative expenses of the Ivy MUC from the tipping fees charged for use of the Ivy Transfer Station and other revenues projected (designated as the sum of Ivy Tipping Fees, Ivy MSW Tipping, Material Sales-Ivy, and Other Revenues in the Authority’s operating budget) that an operating deficit will exist, it shall prepare and adopt a budget, including reasonable reserves, balanced by using revenue to be contributed by the County, notwithstanding anything contained in Section 4.3 of the Organizational Agreement to the

contrary. The Ivy MUC expenses shall be the sum total of Ivy Operations and MSW-Ivy Transfer as well as fifty percent (50%) of the total Administration Services expenses of the Authority as shown in the operating budget of the Authority. The County agrees to fund that portion of the budget balanced by revenues to be contributed by the County as provided below. An example of the calculations required by this paragraph is set forth in Exhibit 1 attached hereto (which are based upon the tipping fees adopted by the Authority effective July 1, 2011 as set forth in Exhibit 2), and such calculations shall be made by the Authority in a manner consistent with the example in Exhibit 1. The percentage of Administration Services expenses set forth above assumes that an additional portion of the Authority's total Administration Services expenses will be allocated under the Recycling Programs LGSA, and therefore the parties hereto agree that this Agreement and the Authority's continuation of the Ivy Material Utilization Center programs with the level of the County's funding determined by such percentage is contingent upon entry by the County and the City into the Recycling Programs LGSA, and in the event of any extension of the term of this Agreement pursuant to Paragraph 6 below, upon an extension for the same period of the term of the Recycling Programs LGSA.

3. **Tipping Fees and Other Charges for Ivy MUC**

Tipping fees and other charges for the Ivy MUC adopted by the Authority effective July 1, 2011 for the Authority's fiscal year ending June 30, 2012 are attached hereto as Exhibit 2. The Authority shall consult with the County prior to proposing any change to the tipping fees or other charges for the Ivy MUC and shall, to the extent permitted by law and subject to the requirements of Virginia Code Section 15.2-5136, propose tipping fees and other charges for use of the Ivy MUC for adoption by the Authority's Board of Directors as requested by the County. The Ivy MUC expenses include equipment depreciation expenses which are allocated to a capital equipment repair and replacement reserve. The obligation of the County to pay for any capital expenditures for repair or replacement of equipment exceeding such reserves shall require the prior written approval of the County.

4. **Quarterly Payments**

If the Authority's proposed annual budget for the Ivy MUC is balanced by revenues to be contributed by the County, the County agrees to provide such revenues by payments to the Authority made quarterly on the first day of July, October, January, and April of such fiscal year of the Authority.

5. **Increase or Decrease in the Ivy Material Utilization Center Deficit**

Payments by the County to the Authority for any particular fiscal quarter shall be increased or decreased, as appropriate to take into account any extraordinary increases or reductions in Ivy MUC expenses and/or reductions or increases in revenue not anticipated by the adopted budget for such year upon the Authority's submission to the County of an amended budget approved by the Authority's Board of Directors at least 30 days prior to the due date of the next payment. Upon completion of the audited financial statements of

the Authority for the prior fiscal year, the County's payments to the Authority shall be increased or decreased, as appropriate, to take into account increases or decreases in actual Ivy MUC expenses and/or reductions or increases in actual revenues from those anticipated by the adopted budget as shown by such financial statement; provided, however, that any such increase or decrease shall take into account any increase or decrease in payments for such year pursuant to the most recently adopted amended budget of the Authority for such year, if any. In the event the amount of the County's payments exceed the amount of revenues needed by the Authority pursuant to paragraph 2 above, the Authority shall remit such excess to the County, or in the event that the County extends this Agreement as provided in paragraph 6 below, the Authority may carry such excess over to the next fiscal year giving the County credit during such year for such excess.

6. **Term of Agreement**

This Agreement shall be effective upon execution and the County's financial participation requirements shall be retroactive to July 1, 2011 and shall continue for the Authority's fiscal year ending June 30, 2012. Subject to Paragraph 2 above, the term of this Agreement shall be extended for up to two (2) additional one (1) year terms upon the Authority's receipt of a written request by the County, not later than ~~May~~January 1, 2012 for the first extended term, and not later than January 1, 2013 for the second extended term.~~-of the current term or any extended term.~~

7. **Solid Waste Organizational Agreement**

The Parties enter this Agreement notwithstanding any provisions in the Organizational Agreement conflicting with this Agreement, and agree that in the event of any such conflicting provisions, this Agreement shall control.

8. **Amendment**

Any amendment to this Agreement must be made in writing and signed by the Authority and the County.

9. **Governing Law**

This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia.

10. **Notices**

Any notice, invoice, statement, instructions, or direction required or permitted by this Agreement shall be addressed as follows:

- a. To the County: Office of the County Executive  
401 McIntire Road  
Charlottesville, VA 22902
- b. To the Authority: Office of the Executive Director  
Rivanna Solid Waste Authority  
P.O. Box 979  
Charlottesville, Virginia 22902-0979

or to such other address or addresses as shall at any time or from time to time be specified by any Party by written notice to the other Party.

11. **Integration Clause**

This Agreement, and any amendment or modification that may hereafter be agreed to in accordance with the provisions herein, constitutes the entire understanding between the Parties with respect to the matters addressed, and supersedes any and all prior understandings and agreements, oral or written, relating hereto, except for the Environmental Expenses MOU.

12. **Execution**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

WHEREAS these terms are agreeable to the County of Albemarle and the Rivanna Solid Waste Authority, and each Party offers its signature as of the date below.

THE COUNTY OF ALBEMARLE:

\_\_\_\_\_  
Thomas Foley  
County Executive

\_\_\_\_\_  
Date

RIVANNA SOLID WASTE AUTHORITY:

\_\_\_\_\_  
Thomas L. Frederick, Jr.  
Executive Director

\_\_\_\_\_  
Date