

IVY CONVENIENCE CENTER AGREEMENT

BETWEEN

THE COUNTY OF ALBEMARLE

AND

THE RIVANNA SOLID WASTE AUTHORITY

This **Ivy Convenience Center Agreement** (this “Agreement”) is made this ____ day of _____, 2019 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 funded by the County and completed in 2018 at the Landfill site (the “Ivy Transfer Station”) currently operated by the Authority and constructed at the request of the County pursuant to the Ivy Material Utilization Center Programs Agreement dated August 23, 2011 between the County and the Authority (the “Ivy MUC Programs Agreement”);

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 County, the City and the Authority entered into a separate Local Government Support Agreement for Recycling Programs dated August 23, 2011, as amended by eight amendments thereto, pursuant to which the Authority operates a recycling

center on McIntire Road in the City as well as a paper sort facility in the City (the “Recycling Programs LGSA”).

WHEREAS, the County has appropriated \$350,000 in Capital Improvement funds for the Authority to manage the design and construction of a new recycling convenience center facility (the “Convenience Center”) at the Authority’s Ivy site as well as operate the Convenience Center after its construction; and

WHEREAS, the County and the Authority have agreed to enter into this Ivy Convenience Center Agreement pursuant to which the Authority will provide for the management of design and construction of the Convenience Center and the operation by the Authority of the Convenience Center on behalf of the County and the County will continue to provide for financial support to the Authority to include the necessary capital, administration and operating expenses allocated by the Authority to the management of the design and construction and subsequent operation of the Convenience Center as defined above and in the Authority’s adopted budget over and above the revenues, if any, received under, and the costs covered by, the Ivy MUC Programs Agreement, the Environmental Expenses MOU and the Recycling Programs LGSA, and other revenues received by the Authority.

NOW, THEREFORE, the Parties agree as follows:

1. **County Request for Convenience Center**

Pursuant to Section 4.3 of the Organizational Agreement, the County has determined the need for the Convenience Center to offer expanded recycling services at the Ivy Material Utilization and generally providing similar services as the Authority’s McIntire Recycling Center and hereby requests the Authority, and the Authority hereby agrees, to manage the design and construction of, and thereafter operate, the Convenience Center and provide such services, subject to the terms and conditions set forth herein.

2. **County’s Financial Support of Authority’s Projected Annual Convenience Center Operation’s Deficit**

Based upon cost estimates and recommendations provided by an engineering firm selected and retained by the Authority (“Engineer”), it is the expectation of the County and the Authority that operating and administrative expenses of the Convenience Center will exceed revenues from any fees charged for use of the Convenience Center and other revenues will be insufficient to cover such expenses. The Authority shall prepare and adopt a budget based upon the Authority using all reasonable efforts to effectively and efficiently operate the Convenience Center and 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 County agrees to fund that portion of the operating, annual depreciation, and administrative expenses related to operating the Convenience Center that exceeds revenues.

3. **Quarterly Payments**

If the Authority's proposed annual budget for the Convenience Center 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.

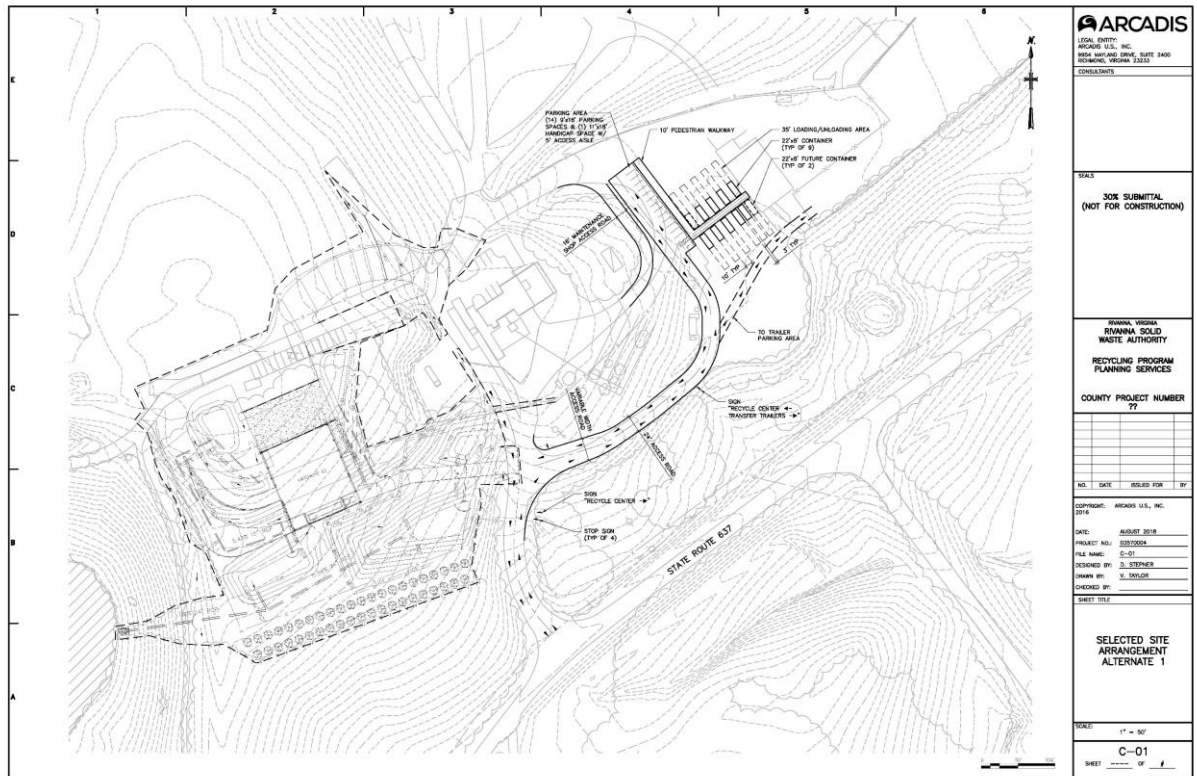
4. **Increase or Decrease in the Convenience Center Deficit**

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 the Convenience Center 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 Convenience Center 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.

5. **Construction of Convenience Center and Operating Reserve**

A. The Authority will construct and operate the Convenience Center consistent with the conceptual plan and site plan prepared by the Engineer (the "Conceptual Plan"), approved by the Authority's Board of Directors (Figure 1). The Convenience Center shall be designed and constructed at the sole cost of the County with the design and construction cost to be initially budgeted at the preliminary estimate of \$350,000, including equipment and project administration costs. The County appropriated \$350,000 in July 2018 toward design and other costs related to the Convenience Center.

Figure 1 – Conceptual Plan



- B. The Authority will be responsible for the permitting, design and construction of the Convenience Center. The Convenience Center shall be constructed in a timely manner to the extent of the Authority's reasonable control. Reasonable efforts will be made to expedite construction where practicable and within the reasonable control of the Authority.
- C. The Authority will provide professional project management services throughout the design, bidding and construction of the Convenience Center. Such services include establishing and appropriately updating costs estimates for construction, engineering, and management services at appropriate intervals as determined by the Authority and updating project schedules. The Parties agree that the overall project costs for design and construction of the Convenience Center will depend upon numerous factors, many of which are beyond the direct control of the Authority including, but not limited to, market changes in commodity prices, bid competitiveness within the construction industry, competency and performance of the construction contractor which must be selected within the limitations of the Virginia Public Procurement Act, and subsurface conditions later identified but not fully known at the beginning of design. The Authority may make adjustments to the project scope during design, bidding and construction based upon its reasonable updated projections of cost and time, in order to maintain a high probability that the project will be completed within the County's budget; provided, however, that to the extent such project scope adjustments may materially affect the Authority's Conceptual Plan as further developed by the

preliminary design and detailed design, the Authority will consult with the County before making such adjustments. To the extent the County may not desire project scope adjustments materially affecting the Conceptual Plan as further developed by the preliminary design and the detailed design that the Authority has concluded are necessary to manage the project within budget, the County may authorize an increase in the project budget and make any additional appropriation required therefor and/or modify the project schedule in such a manner that the Authority may confirm the project scope adjustments are no longer necessary, provided that the County acts within a timeframe permitting the Authority to meet the timeline obligations in subparagraph C as reasonably determined by the Authority. The Authority may authorize such change orders as it deems necessary and appropriate for the management of the construction contract and within timeframes necessary to avoid delay claims from the contractor and will consult with the County's Director of Facilities and Environmental Services, or his designee, prior to execution of any material change order. The Authority's Executive Director shall obtain the approval of the Authority's Board of Directors prior to executing any change order in an amount which would exceed the total amount budgeted for this project. The construction contract for the Convenience Center shall be subject to approval by the Authority's Board of Directors. The Authority will provide the County staff or its Board of Supervisors with periodic updates during construction of the Convenience Center as may be requested by the County.

- D. The County will pay the Authority the amounts approved by the Authority for payment pursuant to the design and construction contracts for the Convenience Center on a monthly basis, within thirty (30) days of the Authority's written request for such payment, which request shall include copies of the contractor's invoice.
- E. The Authority shall maintain a general liability insurance policy with a minimum of two million dollars of coverage and an excess liability policy with a minimum of ten million dollars of coverage. In addition, the Authority shall maintain an environmental policy with a minimum of one million dollars in coverage. The County will be responsible for any claims arising out of the operation of the Convenience Center that exceeds the applicable coverage limits.

6. **Term of Agreement**

- A. This Agreement shall be effective upon execution. Subject to Paragraph 2 above, the term of this Agreement shall be extended for additional one (1) year terms unless terminated by the County by written notice received by the Authority not later than January 1st prior to the then applicable expiration date of the Agreement.
- B. Notwithstanding the above, this Agreement may be terminated upon thirty days written notice by the Authority to the County if (i) the County fails to appropriate, within the timeframes required under this Agreement, the funds necessary to fund any excess expenses over revenues projected in the operating budget for the Convenience Center under Paragraph 2 of this Agreement, or fund any reserves required under Paragraph 3

of this Agreement; (ii) the County fails to pay when due any amounts owed to the Authority under the terms of this Agreement and the County fails to make such payment within thirty days of such written notice; or (iii) the County breaches any other term of this Agreement and fails to cure such breach within ninety days of such written notice. The Authority, upon termination of this Agreement, may recover its net expenses up to the date of termination from operating reserves without prejudice to any claim for remaining expenses, including costs of collection and legal fees. Upon any such termination, the Authority shall cease any further design and/or construction of the Convenience Center, terminate any operation of the Convenience Center and decommission the Convenience Center (if construction has commenced). The County shall reimburse the Authority for all costs incurred by the Authority, including, but not limited to, design and consultants fees, legal fees and other “soft” costs in connection with the design, construction and/or operation of the Convenience Center (collectively, the “Authority Costs”) and the Authority’s obligations to design, construct and operate the Convenience Center shall terminate.

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. **Voluntary County Funding**

Nothing in this Agreement shall be construed as creating a claim, cause of action, or right of recovery against either the County by the Authority or by any creditor or claimant of the Authority. The Authority acknowledges that the County is not under any legal or equitable obligation to provide funding to the Authority, but that it has voluntarily chosen to do so for the sole reason of insuring the continuation of a certain level of solid waste disposal and recycling services to be provided by the Authority at the Convenience Center, and the County acknowledges that in the event such funding is not made available to the Authority, the Authority will necessarily have to curtail those services.

9. **Non-Appropriation**

This Agreement is subject to the approval, ratification, and annual appropriations by the Albemarle County Board of Supervisors of the necessary money to fund this Agreement for this and any succeeding fiscal years. Should the County fail to appropriate the necessary funding, it shall give prompt written notice to the Authority of such non-appropriation and this Agreement shall automatically terminate without further notice by or to any Party.

10. **Amendment**

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

11. **Governing Law**

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

12. **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.

13. **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.

[SIGNATURES ON FOLLOWING PAGE]

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:

Jeff Richardson
County Executive

Date

RIVANNA SOLID WASTE AUTHORITY:

William I. Mawyer, Jr., P.E.
Executive Director

Date

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