

SUPPLEMENTAL MEMORANDUM TO
AGREEMENT FOR USE AND SUPPORT OF
A SOLID WASTE DISPOSAL SYSTEM

THIS SUPPLEMENTAL MEMORANDUM is dated the 4th day of January, 1989, and is made by the SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA, hereinafter referred to as the "Authority."

WHEREAS, the Authority and the CITY OF VIRGINIA BEACH, VIRGINIA, hereinafter referred to as the "City" entered into an Agreement for Use and Support of a Solid Waste Disposal System dated the 8th day of August, 1984 (the "Agreement") which provides in Article III thereof for a term ending thirty (30) years from the Start-Up Date of the Authority's Phase II RDF processing plant.

WHEREAS, Article III of the Agreement provides that the Start-Up Date of the Phase II RDF processing plant and the term of the Agreement shall be evidenced by a supplemental written memorandum from the Authority to the City; and

WHEREAS, the Authority intends by this instrument to provide such supplemental memorandum to City in accordance with the terms of the Agreement.

NOW, THEREFORE, the Authority hereby declares:

1. The Start-Up Date of the Phase II RDF processing plant was January 25, 1988.

2. The term of the Agreement shall be and extend from January 25, 1988 until January 24, 2018, that date being thirty (30) years from the Start-Up Date of the processing plant.

IN WITNESS WHEREOF, the Authority has caused this memorandum to be executed on its behalf by its duly authorized official as of the day and year first above written, and the City has caused this instrument to be executed on its behalf by its duly authorized official in acknowledgment of its receipt of this memorandum.

SOUTHEASTERN PUBLIC SERVICE
AUTHORITY OF VIRGINIA

By: *Quentin D. Keeling*
Its: Executive Director

CITY OF VIRGINIA BEACH, VIRGINIA

By: *Anthony W. [Signature]*
Its: City Manager

AGREEMENT FOR USE AND SUPPORT OF A
SOLID WASTE DISPOSAL SYSTEM

This AGREEMENT, dated this Eight day of August, 1984, by and between the SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA, hereinafter referred to as the "Authority" and the CITY OF VIRGINIA BEACH, VIRGINIA, hereinafter referred to as the "City".

ARTICLE I - BASIC INTENT AND PURPOSE

1. This Agreement is entered into pursuant to the authorization and mandate of the Virginia Water and Sewer Authorities Act.
2. The Authority, subject to the terms, provisions and conditions hereinafter set out and in accordance with the procedures and provisions hereinafter made and declared, desires to maintain a safe, sanitary, and environmentally sound solid waste disposal system and for and by such system accept and dispose of the disposable solid waste of the City subsequent to the start-up of said system.
3. The City, subject to the terms, provisions and conditions hereinafter set out and in accordance with the procedures and provisions hereinafter made and declared, desires to use and support the Authority's solid waste disposal system by providing for the disposal by means of the Authority disposal system of the disposable solid waste generated within, collected by, or otherwise under the control of the City.

ARTICLE II - DEFINITIONS

1. Disposable Solid Waste (hereinafter DSW) - any Solid Waste other than Hazardous Waste, including especially material

having energy value but currently being discarded without recovery of such energy value.

2. Disposal System - all those plants and facilities of Authority designed to collect, manage and dispose of Solid Waste and those designed to recover and use the energy from Processable Solid Waste and the land, structures, vehicles and equipment for use in connection therewith.

3. Hazardous Waste - Solid Waste which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (b) pose a substantial present or potential hazard to human health, the Disposal System, or the environment when treated, stored, transported, disposed of or otherwise managed.

4. Plan of Operation - a plan adopted by the Authority setting forth the types of material acceptable to the Authority for disposal, times and places where material will be received by the Authority, methods of collecting fees charged by the Authority for disposal service, and such other information as will describe operating procedures, control use of the Disposal System and provide instruction and guidelines to users of the System. The Plan of Operation in effect on the date hereof is attached hereto, but such Plan may be amended by the Authority from time to time; provided, however, that any amendments to such Plan affecting only the City shall be approved by the City prior to their adoption.

5. Solid Waste - all material customarily referred to as garbage and refuse and also sludge from a waste treatment

plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but not including solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 STAT. 880) or source, special nuclear, or by product material as defined by the Atomic Energy Act of 1954, as amended (68 STAT. 923).

6. Tipping Fee - the charge made by the Authority for the disposal of DSW.

ARTICLE III - TERM OF AGREEMENT

1. This Agreement shall become effective and operations hereunder shall commence on the date fixed under the contract between the Authority and the United States Government as the Start-Up date of the refuse derived fuel (RDF) processing plant of the Authority. The Authority shall give the City maximum practical advance notice of the date on which operations hereunder and the acceptance and handling of DSW are to commence. This Agreement shall continue for a term ending thirty (30) years from the Start-Up Date of the RDF processing plant, and at such time as the Start-Up date of the RDF processing plant is determined, that date and the term of this Agreement herein provided for shall be evidenced by a supplemental written memorandum from the Authority to the City.

ARTICLE IV - DELIVERY CONDITIONS

1. The City hereby agrees to deliver or cause to be

delivered to the Disposal System in accordance with the Plan of Operation, substantially all (at least ninety-five percent per year) the DSW which is generated or collected by or within or under the control of the City. Subject to the terms and conditions of this Agreement and the Plan of Operation attached hereto and made a part hereof as it may be modified from time to time by the Authority, the Authority hereby agrees to receive and accept all DSW delivered to the Disposal System by the City during the term of this Agreement and further agrees to properly dispose of it.

2. The City hereby agrees that all DSW to be delivered to the Authority pursuant to this Agreement shall be delivered in accordance with the terms and conditions set forth in the Plan of Operation, which plan may be modified from time to time by the Authority.

ARTICLE V - DELIVERY POINTS

1. The Authority shall provide two or more points of delivery to the City for the disposal of DSW. The location of all delivery points shall be specified in the Plan of Operation but shall include at a minimum, two points of delivery within the City for the disposal of DSW which does not require special methods of handling or disposal. The Authority shall have the right to designate a separate point or points of delivery for any grades or categories of DSW which in its opinion require special handling or methods of disposal. The site of all delivery points within the City shall be designated by the City, and the Authority shall not establish more than two delivery points within the City without the City's prior consent.

2. The Authority shall have the right, but not the obligation, to establish additional points of delivery from time to time within or without the corporate limits of the City, subject to consent of the local governing body wherein any such delivery point is to be established.

3. In the event that the Authority establishes other points of delivery, the City shall have the right to dispose of or cause the disposal of DSW at any or all delivery points, subject to the right of the Authority as provided above to designate separate points of delivery for special categories of DSW.

ARTICLE VI - TIPPING FEES

1. The City agrees to pay to the Authority Tipping Fees as established under fee schedules adopted by the Authority in accordance with the Virginia Water and Sewer Authorities Act, for the disposal of DSW delivered to the Disposal System by the City. The Authority may establish individual fee schedules for various types of users and grades or categories of DSW which require special handling or methods of disposal, but the Tipping Fee schedules so established by the Authority shall in no event be based upon, or distinguish between users on the basis of, the point of delivery used or the distance of any user from a delivery point established by the Authority. No Tipping Fee will be charged to any users who deliver household DSW to the Authority for disposal in a privately owned automobile or a low-side pickup truck. For purposes of this classification, "household DSW" shall mean Solid Waste which, in the judgment of the Authority, is normally produced by a single family residential household, and the Authority reserves the

right, in its sole discretion, to classify any user who delivers non-household DSW by means of a privately owned automobile or low-side pickup truck as a user subject to the payment of Tipping Fees. The Authority shall invoice the City for the Tipping Fees on a monthly basis, within ten (10) days after the end of the month. Said invoices will show the total tonnage received by the Authority from the City during the billing period for each category of DSW for which separate Tipping Fees are established and such other information as the Authority deems appropriate. Such invoices shall be due and payable on the last day of the month following the month covered by the invoice.

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ON INVOICE ?

2. DSW delivered to any delivery point will be weighed or otherwise measured for the purpose of determining actual amount received. Fractions of tons actually received shall be invoiced on an accumulated basis each month. In the event of inoperation of the Authority's weighing scales or other measuring device for purposes of maintenance, repair, or replacement, an estimate of DSW actually received will be computed based on the average amount received per vehicle, when dumping records for such vehicle for the twelve (12) full months immediately preceding are available, or, when such records are not available, will be computed based on the average amount received per vehicle of like size and/or compaction ratio.

3. Nothing in this article shall exempt the Authority from requirements of general law with respect to setting of fees and rates for services offered. Nothing in this article shall require the City to pay disposal fees for DSW delivered

to the Disposal System by anyone other than the City except collectors under contract with the City.

ARTICLE VII - TITLE TO SOLID WASTE

1. The City agrees that it will assign and transfer to Authority, all of its right, title and interest in and to all DSW delivered to and accepted by the Authority pursuant to this Agreement and such ownership shall vest in the Authority when recorded by the Authority's weighing scales or other measuring devices at a delivery point, except that title to Hazardous Waste shall not vest in the Authority even if recorded by the Authority's measuring devices. However, inoperation of the Authority's weighing scales or measuring devices shall not alter the transfer of title of DSW to the Authority, if it is otherwise accepted. City further agrees to join with Authority in defense of any adverse claim to ownership of DSW which is generated or collected by or within the City.

ARTICLE VIII - RIGHT TO CURE DEFAULTS

In the event of default under this Agreement, the nondefaulting party shall have the right, but not the obligation, to cure such default and to charge the defaulting party for the cost of curing said default, including the right to offset said costs of curing the default against any sums due or which become due to the defaulting party under this Agreement.

ARTICLE IX - NO PARTNERSHIP

Nothing herein shall be construed to constitute a joint venture between the Authority and the City or the formation of a partnership.

ARTICLE X - FORCE MAJEURE

1. "Force Majeure" shall mean any cause beyond the reasonable control of the party whose performance is affected, including but not limited to acts of God, war, riot, fire, explosion, wind storm, flood, labor disputes, inability to obtain or use fuel, power, or raw materials, shortage or failure of the usual means of transportation, injunction, governmental action, accident, or breakdown of machinery or equipment, whether or not any such occurrence is caused by the negligence, active or otherwise, of the affected party, its agents and employees. "Reasonable control" of a party shall specifically exclude that party's ability to reach agreement in a labor dispute and that party's ability to settle or compromise litigation.

2. Failure of either party to perform under this Agreement, including failure of the City to deliver or cause to be delivered DSW, and inability of the Authority to accept DSW at any or all delivery points, by reason of Force Majeure shall not constitute default or be cause for termination of this Agreement. However, the party so failing to perform shall immediately notify the other party of the failure, including reasons therefor, and shall make reasonable efforts to correct such failure to perform at the earliest possible date.

3. If, by reason of Force Majeure, the Authority cannot accept DSW at any or all delivery points assigned to the City, the Authority shall immediately provide for and notify the City of an alternate delivery point or alternate delivery points. Any additional direct current cash expense to the City incurred in using an alternate delivery point shall be borne by the

Authority. The City shall not be liable to the Authority for any additional costs incurred by the Authority due to the City's use of an alternate disposal point, except that Tipping Fees at an alternate delivery point owned by and/or operated by or for the Authority, shall be applicable and due the Authority as if the alternate delivery point was a regularly assigned delivery point for the City.

4. The City shall have the right, but not the obligation to dispose of or cause to be disposed of DSW at locations other than the alternate delivery point at any time during which Force Majeure is in effect. During such time, Tipping Fees shall not be due to the Authority for disposal of DSW at delivery points other than those designated as alternate delivery points or regularly assigned delivery points. Any additional costs incurred by the City as a result of using delivery points other than those assigned as regular or alternate delivery points shall be borne by the City.

ARTICLE XI - EXTENT OF AGREEMENT

This Agreement, together with the Plan of Operation, represents the entire and integrated agreement between the City and the Authority and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a writing signed by both the City and the Authority.

ARTICLE XII - ARBITRATION

All claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof shall be decided by arbitration in Portsmouth, Virginia, in

accordance with the (rules) of the American Arbitration Association then obtaining. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall a demand for arbitration be made after the applicable statute of limitations would bar institution of legal or equitable proceedings based on such claim, dispute or other matter in question.

The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

ARTICLE XIII - GENERAL

In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

Neither the City nor the Authority shall delegate its duties under this Agreement without the written consent of the other.

IN WITNESS WHEREOF, the Authority and the City have caused this agreement to be executed on their behalf and their seal to

be affixed and attested by officials thereunto duly authorized,
all as of the day and year first above written.

SOUTHEASTERN PUBLIC SERVICE
AUTHORITY OF VIRGINIA

By: Deanna D. Peeling

ATTEST:

Angela James

CITY OF VIRGINIA BEACH

By: Thomas H. McDaniel

ATTEST:

Burt Hodges Jones

APPROVED AS TO FORM

By: Mark E. Smyth
City Attorney

APPROVED AS TO CONTENTS

Patricia Phillips
SIGNATURE

Jones
DEPARTMENT

CERTIFIED AS TO AVAILABILITY OF FUNDS

Lillian L. Daulton
City of Virginia Beach, Va.-Assistant City
Manager for Administration

8-7-84
Date