AMENDED AND RESTATED

IVY MATERIAL UTILIZATION CENTER PROGRAMS AGREEMENT

BETWEEN

THE COUNTY OF ALBEMARLE

AND

THE RIVANNA SOLID WASTE AUTHORITY

This **Amended and Restated Ivy Material Utilization Center Programs Agreement** (this "Agreement") is made this 4th day of May, 2016 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 own and operate the Ivy Landfill (the "Landfill") and to provide all waste disposal services, including both landfilling and recycling programs for waste collected within the City and County as determined by a Board of Directors appointed by the City and County;

WHEREAS, the Landfill operated continuously from 1968 until it ceased to accept municipal solid waste in 1998, and then continued to operate Cell 2-Unlined accepting construction and demolition debris until final closure of the Landfill in 2001;

WHEREAS, the Authority continues to provide more limited waste management services to the City and County and has continuing obligations with respect to the closure, remediation and monitoring of the closed Landfill;

WHEREAS, the Authority constructed a transfer station at the Landfill site (the "Existing Ivy Transfer Station") pursuant to a decision by its Board of Directors in 1997 as an outdoor facility;

WHEREAS, the Authority operates the Existing Transfer Station and provides other waste and recycling services at the Landfill site, all such operations collectively referred to as the "Ivy Material Utilization Center" (the "Ivy MUC"), which excludes the areas of the Landfill that have been closed and are subject to remediation and monitoring;

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 (as may be amended from time to time, the "Environmental Expenses MOU");

WHEREAS, the closure of the Landfill, together with the absence of City and County ordinances requiring that all waste generated within each of their jurisdictions be delivered to the Authority pursuant to Section 6.1 of the Organizational Agreement, reduced substantially the Authority's revenues and operating capital and has required the Authority to have local government financial support to continue to deliver services requested by County and City;

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 City and County financial support to the extent reasonably managed expenses exceeded revenues ("Financial Support") in order to allow the continued operation of the McIntire Recycling Center and Paper Sort Facility (collectively the "Recycling Services") as well as the Existing Ivy Transfer Station at the Ivy MUC, which agreement expired on December 31, 2010;

WHEREAS, the City elected effective July 1, 2011 to no longer participate in the provision of Financial Support for the services offered by the Authority at the Ivy MUC;

WHEREAS, the County elected for the Authority to continue the provision of services and operation of the Ivy MUC;

WHEREAS, the County and the Authority entered into an Ivy Material Utilization Center Programs Agreement dated August 23, 2011, and effective July 1, 2011, to continue the services and operation of the Ivy MUC for the County, and the County agreed to provide all required Financial Support for the Ivy MUC;

WHEREAS, the Ivy Material Utilization Center Programs Agreement has been extended for the continuation of the services and operation of the Ivy MUC by the Authority for the County by Amendment No.1 dated June 7, 2013, Amendment No.2 dated October 23, 2013, Amendment No.3 dated April 16, 2014, and Amendment No.4 dated July 1, 2015;

WHEREAS, in 2014 the Virginia Department of Environmental Quality ("VDEQ") notified the Authority that the Existing Ivy Transfer Station's outdoor facility would not comply with VDEQ requirements for separation of waste leachate from stormwater and required the Authority to submit plans including a milestone schedule by March 31, 2015 to upgrade, replace, or close the Existing Ivy Transfer Station (the "Correction Plan");

WHEREAS, the City did not wish to participate in the improvements needed to comply with VDEQ requirements and the County accepted the responsibility for evaluating

options and selecting its preferred means for VDEQ compliance, and at the request of the County the Authority sought and received from VDEQ an extension until December 31, 2015 to submit the Correction Plan;

WHEREAS, on November 4, 2015 the County Board of Supervisors approved the making of a request to the Authority that the Authority oversee the design and construction of a new top load transfer station (the "Facility") at the Authority's Ivy site as well as operate it after its construction;

WHEREAS, the Authority presently establishes the tipping fees for the Existing Ivy Transfer Station as well as fees and charges for other services within the Ivy MUC, and the County has requested that the Authority set tipping fees for the Facility when it becomes operational subject to terms in this Agreement; and

WHEREAS, the County and the Authority have agreed to enter into this Amended and Restated Ivy Materials Utilization Center Agreement pursuant to which the Authority will provide for the design, construction, and operation of the Facility 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 to the services provided by the Authority at the Ivy MUC as defined herein and in the Authority's adopted budget.

NOW, THEREFORE, the Parties agree as follows:

1. **County Request for Continued Operation of the Ivy MUC with Replacement of Existing Transfer Station with the Facility**

The County has determined the need for the continued operation of, and provision of services at, the Ivy MUC, to include replacement of the Existing Transfer Station with the Facility and the County, pursuant to Section 4.3 of the Organizational Agreement, hereby directs the Authority, and the Authority hereby agrees, to continue such operation and provide such services, subject to the terms and conditions set forth herein.

2. **County's Financial Support of Expected Expenses Over Revenues**

Based upon cost estimates and advice provided by an engineering firm selected and retained by the County ("County's Engineer"), it is the expectation of the County that funding for the operating and administrative expenses of the Ivy MUC from the tipping fees charged for use of the Facility 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) will be insufficient to cover such expenses. The Authority shall prepare and adopt a budget, with revenues based upon the tipping fees set pursuant to Paragraph 3 below, and expenses based upon the Authority using all reasonable efforts to effectively and efficiently operate the Facility and including reasonable reserves, balanced by using revenue to be contributed by the County. The Ivy MUC expenses shall

be the sum total of Ivy Operations and MSW-Ivy Transfer as well as a reasonably allocated percentage of the total Administration Services expenses of the Authority, such percentage to be determined based upon reasonable estimates of the portion of Administration Services expected to be devoted to the permitting, design, construction and operation of the Facility, all 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, 2015 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 assumes that an additional portion of the Authority's total Administration Services expenses will be allocated under the Local Government Support Agreement for Recycling Programs among the City, the County and the Authority (as may be amended from time to time, 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 8 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, 2015 for the Authority's fiscal year ending June 30, 2016 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 any changes to tipping fees and other charges for use of the Ivy MUC for adoption by the Authority's Board of Directors as requested by majority vote of the County's Board of Supervisors. The Ivy MUC expenses have included and the Authority is authorized to continue to include equipment depreciation expenses which are reserved for future capital equipment repair and replacement. The Authority has maintained records of the depreciation charges for the Existing Ivy Transfer Station since 2003 as well as capital equipment and repair expenses against such charges, though these records are not established as a separate reserve fund. Furthermore, the revenues funding much of the depreciation expenses were obtained from tipping fees charged for waste delivered to the Existing Ivy Transfer Station for which the Authority is unable to determine whether such waste originated in the County or City. To the extent that the Authority's records show an excess of budgeted depreciation charges for the Existing Ivy Transfer Station over capital equipment and repair expenses at the time when the Facility begins operation and the Existing Ivy Transfer Station permanently ceases to operate and closure is complete as approved by VDEQ, the Authority agrees that such excess would no longer be required to be held and could be released as a one-time only payment to the County and City. Provided that the County and City reach a written agreement, separate from this

Agreement, on how the two localities will split these excess funds, the Authority agrees to distribute such excess in accordance with such agreement. Notwithstanding the terms of such agreement, the Authority may charge depreciation expenses provided in its annual budget for the Facility during the time in which the Authority operates such Facility, and use such expenses for capital equipment and repair of the Facility, and requirements for operating the Facility. Furthermore, the Authority has charged separate depreciation expenses to other Ivy MUC programs, Ivy landfill remediation, and recycling programs, and such funds are not subject to the provisions of this Paragraph.

4. **Quarterly Payments**

To the extent that 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 Ivy Material Utilization Center Financial Support**

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 an independent audit 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 audited actual Ivy MUC expenses (including depreciation expenses, payments to escrow, and allocations of administrative expenses) and/or reductions or increases in actual revenues from those anticipated by the adopted budget. 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 8 below, the Authority may carry such excess over to the next fiscal year giving the County credit during such year for such excess. Furthermore, in the event the amount of County's payments is less than the amount of revenues needed by the Authority pursuant to Paragraph 2 above, the County shall remit such excess to the Authority.

6. **Construction of Facility, Operating Reserve and Existing Facility Closure Costs**

A. The Authority will construct and operate the Facility consistent with the conceptual floor plan and site plan prepared by the County's Engineer (the "Conceptual Plan"), approved by the County, and submitted by the Authority on the County's behalf to VDEQ in its response dated December 16, 2015 ("Response Letter") to the VDEQ Letter of Agreement dated March 19, 2015, except as provided in Paragraph 6.E below. The Facility 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 developed by the County's Engineer of $2,587,000, including equipment. The County appropriated $1,200,000 in June, 2015 toward design and other costs related to the Facility. Prior to the Authority executing a construction contract for the Facility pursuant to subparagraph E. below, the County shall appropriate, subject to Paragraph 11 below, (i) additional funds in the amount of $1,387,000, which together with the previously appropriated amount equals the County Engineer's preliminary estimate of $2,587,000, plus (ii) any additional funds which the County has agreed to appropriate in order to increase the project budget pursuant to subparagraph E. below. The Facility will be operated by the Authority under an amendment of the VDEQ permit by rule designated as Permit 132, subject to approval by VDEQ.

B. Following completion of the preliminary design based upon the Conceptual Plan and before proceeding with the detailed design phase, the Authority will present the preliminary design to the County's Board of Supervisors reflecting any modifications or additions to the Conceptual Plan. The Authority will provide the County's Director of Facilities and Environmental Services or his designee with a copy of the completed preliminary design one week in advance of presentation of the same to the Board of Supervisors. The Authority will present progress drawings of the detailed design based upon the preliminary design at 50% completion and again at completion of detailed design. The Authority will provide the County's Director of Facilities and Environmental Services or his designee with a copy of such progress drawings one week in advance of presentation of the same to the Board of Supervisors. The Authority will incorporate all reasonable requests for changes to the preliminary design and detailed design from the Board of Supervisors consistent with the Authority's responsibilities under this Agreement. The County agrees to schedule presentations of the preliminary design and detailed designs to the Board of Supervisors as needed to allow the Authority to meet the time constraints imposed by this Agreement. Except as otherwise provided above, the Authority may make interpretations regarding further details in design and construction consistent with the Conceptual Plan without further direction from the County subject to decisions made by vote of the Authority's Board of Directors, or delegated by the Authority's Board of Directors to its Executive Director.

C. The Authority will be responsible for the permitting, design and construction of the Facility. The Facility shall be constructed on a timeline consistent with or in advance of the proposed milestone schedule attached to the Response Letter, or any approved extensions thereof, 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.

D. The design engineer for the Facility shall be chosen by the Authority after consultation with the County's Director of Facilities and Environmental Services, or his designee. The design engineer's contract shall be subject to approval by the Authority's Board of Directors.

E. The Authority will provide professional project management services throughout the design, bidding and construction of the Facility. Such services include establishing and appropriately revising monetary allotments within the overall project budget to project phases or work breakdown, 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 Facility 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 County'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 contract contingency previously authorized by the Board of Directors. The construction contract for the Facility 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 Facility as may be requested by the County.

F. The County will pay the Authority the amounts approved by the Authority for payment pursuant to the design and construction contracts for the Facility 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.

G. Before operation of the completed Facility begins, the Authority may require the County to fund an operating reserve of up to $200,000 for unbudgeted operating costs of the Facility incurred by the Authority. 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 Ivy MUC that exceeds the applicable coverage limits.

H. The Authority shall be responsible for the closure of the existing transfer station facility. All closure costs shall be paid by the Authority, to the extent of available reserves, and any closure costs in excess of reserves shall be paid by the County.

7. **Legal Challenges and Escrow Fund**

A. The County shall be responsible for any Authority legal fees, costs, and any judgment awarded not covered by applicable insurance coverage arising from any challenge to the amendment of Permit 132 or the legal authority to operate the Facility, whether based on nuisance or other legal theory.

B. The County shall establish an escrow fund with the Authority to cover legal costs incurred by the Authority arising from the operation of the IVY MUC in the amount of $50,000 upon the execution of this Agreement. The Authority may use the escrow fund to pay any such unbudgeted expense if the County fails to pay the amount of the unbudgeted expense to the Authority within thirty days of a written request by the Authority to the County to do so. Should the County fail to pay the Authority's legal costs, the Authority may attempt to settle the lawsuit in a way to minimize the Authority's further legal expenses.

8. **Term of Agreement**

A. 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, 2016. 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 (a) construct the Facility under Paragraph 6 of this Agreement, (b) fund any excess expenses over revenues projected in the operating budget for the Facility under Paragraph 2 of this Agreement, (c) fund any reserves or escrows required under Paragraphs 6 and 7 of this Agreement, or (d) fund any amounts in excess of existing

reserves necessary to close the Existing Ivy Transfer Station; (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 or the escrow fund 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 Facility, terminate any operation of the Facility and decommission the Facility (if construction has commenced). The County shall reimburse the Authority for all costs incurred by the Authority (including, but not limited to, any amounts owed under Paragraphs 6.F, 6.G, and 7.A above, design and consultants fees, legal fees and other "soft" costs and decommissioning costs for the Facility, if any) in connection with the design, construction and/or operation of the Facility (collectively, the "Authority Costs") and the Authority's obligations to design, construct and operate the Facility shall terminate.

9. **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.

10. **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 being provided by the Authority at the Ivy MUC, 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.

11. **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.

12. **Amendment**

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

13. **Governing Law**

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

14. **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.

15. **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.

16. **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:

Thomas C. Foley
County Executive

5/16/16
Date

RIVANNA SOLID WASTE AUTHORITY:

Lonzy E. Wood
Interim Executive Director

5-9-16
Date

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EXHIBIT 1

LOCAL GOVERNMENT SUPPORT AGREEMENT FOR IVY MATERIAL UTILIZATION CENTER PROGRAMS

EXAMPLE OF CALCULATION FOR DETERMINING COUNTY FUNDING

Example Budget

	Total Budget	Amount Applied per Agreement	Notes:
Revenues			
Ivy Tipping	$ 180,920	$ 180,920	Included 100%
Ivy MSW Tipping	468,400	468,400	Included 100%
Material Sales-Ivy	171,000	171,000	Included 100%
Recycling Revenues	171,700	-	Not Included
Other Revenues	70,000	70,000	Included 100%
Interest & Fees	7,920	-	Not included
	1,069,940	890,320	
Expenses			
Ivy Operations	$ 277,800	$ 277,800	Included 100%
MSW Transfer - Ivy	766,137	766,137	Included 100%
Recycling Operations	290,740	-	Not Included
Administration	403,421	201,711	Included 50%
Debt Service	-	-	Not Included
	1,738,098	1,245,648	
		$ (355,328)	
Payment by Albemarle County		$ 355,328	
Quarterly Amount		$ 88,832	25% of Total

EXHIBIT 2

LOCAL GOVERNMENT SUPPORT AGREEMENT FOR IVY MATERIAL UTILIZATION CENTER PROGRAMS
RSWA TIPPING FEES RATE SCHEDULE FOR FISCAL YEAR 2016

TIPPING FEES PER TON:

IVY MUC:

Clean Fill Material	$ 20.00*
Grindable Vegetative Material	$ 48.00
Non-Freon Appliances	$105.00
MSW & CDD – Ivy Transfer Station	$ 66.00

TIPPING FEES PER ITEM (IVY MUC):

Freon Appliances	$ 17.00	Truck Tire Off Rim	$ 17.00
Non-Freon Appliances	$ 9.00	Truck Tire With Rim	$ 33.00
Passenger Car Tire Off Rim	$ 6.00	Passenger Car Tire With Rim	$ 13.00

OTHER CHARGES FOR GOODS & SERVICES:

Mulch or Lumber Log	$ 30.00 per ton*	Trash Stickers	$ 24.00 for 12
Ticket request	$ 1.00 each	Minimum Charge	$ 6.00 per load
Service fee per ticket		Credit Application	$ 35.00 each
County	$ 1.00 each		
Other-Non County	$ 10.00 each		
General Hauling	$ 100.00 each		
Hauling Surcharges:			
Delivery Within 1st Area	$ 22.00 each		
Delivery Within 2nd Area	$ 32.00 each		
Delivery Over County Line	$ 42.00 each		

*Maximum charge