

RESOLUTION NO. 11913-09

A RESOLUTION AUTHORIZING AND DIRECTING THE ACTING CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN AMENDMENT TO THE DISPOSAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND USA WASTE LANDFILLS OF VIRGINIA, INC. (FORMERLY SANIFILL OF VIRGINIA, INC.) DATED THE 1ST DAY OF SEPTEMBER, 2009.

BE IT RESOLVED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the Acting City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Amendment to the Disposal Services Agreement by and between the City of Newport News, Virginia, and USA Waste Landfills of Virginia, Inc. (formerly Sanifill of Virginia, Inc.) dated the 1st day of September, 2009.
2. That a copy of the said Amendment is attached hereto and made a part hereof.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON OCTOBER 13, 2009

Mabel Washington Jenkins, CMC
City Clerk

Joe S. Frank
Mayor

A true copy, teste:

City Clerk

AMENDMENT TO DISPOSAL SERVICES AGREEMENT

This Amendment to Disposal Services Agreement (hereinafter "the Amendment") is dated this 1st day of September, 2009, by and between the CITY OF NEWPORT NEWS, VIRGINIA (hereinafter called "the City") and USA WASTE OF VIRGINIA LANDFILLS, INC., a Delaware Corporation (hereinafter referred to as "Waste Management") (collectively the "Parties"), regarding use of the Bethel Sanitary Landfill located at 100 North Park Lane, Hampton, Virginia.

WHEREAS the City and SANIFILL OF VIRGINIA, INC., executed the Disposal Services Agreement on or about July 1, 1996 (the "Agreement"); and

WHEREAS, the Agreement was amended by the City and USA WASTE OF VIRGINIA LANDFILLS, INC., successor-in-interest to SANIFILL OF VIRGINIA, INC., in a document Entitled "Amendment To Disposal Services Agreement", dated January 26, 1999 (hereinafter "the 1999 Amendment"); and

WHEREAS, USA WASTE OF VIRGINIA LANDFILLS, INC. is now a subsidiary of Waste Management of Virginia, Inc.; and

WHEREAS, the Parties recognize a need to amend the Agreement to include provisions as to the expeditious disposal of vegetative waste resulting from storm events occurring in the City;

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. Paragraph 4 of the Agreement, entitled "Disposal Obligations and Rights" will be amended to include an additional sub-paragraph (j), which will read as follows:

(j). Disposal of Bulk Vegetative Waste Resulting from Storm Events. In order to provide for the expeditious disposal of bulk vegetative waste resulting from significant storm events, the parties agree as follows:

- (i.) "Vegetative Waste" means any bulk amounts of waste from trees, shrubs, or otherwise of vegetative origin, resulting from a significant storm event, whether the damage which generated such waste is caused by wind, precipitation of any sort, flood waters, or any other natural agency.
- (ii.) Vegetative Waste does not include any waste that may be in part vegetative, but is adulterated with waste of other types. Such adulterated waste for the purpose of this Amendment shall be referred to a "Mixed Waste".

- (iii.) Within seventy-two (72) hours after the end of a significant storm event, or as promptly thereafter as conditions permit, a Temporary Debris Reduction and Storage Site ("TDRSS") shall be set up in proximity to the Scale House at Bethel in a location of Waste Management's choosing and at Waste Management's expense. The TDRSS will be utilized by the Parties only on an as-needed basis as determined by agreement of the Parties.
- (iv.) After significant storm events in which bulk Vegetative Waste as been created, City-owned or City-contracted trucks loaded with Vegetative Waste will drop their loads at the TDRSS. The TDRSS shall not be required to accept loads from private individuals or commercial establishments.
- (v.) Vegetative Waste will be received by Waste Management at the then-current disposal rate in effect under the Agreement. If the volume of Vegetative Waste or other conditions preclude the ability to weigh truckloads of debris as they arrive at the TDRSS, the Vegetative Waste will be billed at the rate of five hundred pounds per cubic yard [four (4) cubic yards per ton]. The decision whether to grind or burn the Vegetative Waste shall be made by Waste Management in its sole discretion.
- (vi.) Waste Management will reduce the loads delivered to the TDRSS with no additional fee or surcharge to the City.
- (vii.) Mixed Waste shall be received as all other waste is processed pursuant to the Agreement.
- (viii.) In the interest of facilitating any reimbursement by the Federal Emergency Management Agency (FEMA), it will be necessary that the City station debris monitors at Bethel in order to keep an independent accounting of the materials transported to Bethel for disposal. This will require either City employees or City contractors to be available at the TDRSS and at the scale house at Bethel to verify all information required to perfect a claim for reimbursement by FEMA, including the number of cubic yards delivered, which will be equated with the tonnage as determined by the scale operator. Waste Management shall cooperate with City in this effort, and in providing any additional information in Waste Management's possession to facilitate reimbursement.

(ix.) The City, upon delivery of Vegetative Waste as defined herein to the TDRSS, relinquishes all title or legal claim to said Vegetative Waste.

2. Paragraph 5 of the Agreement shall be amended by adding a subparagraph (d).

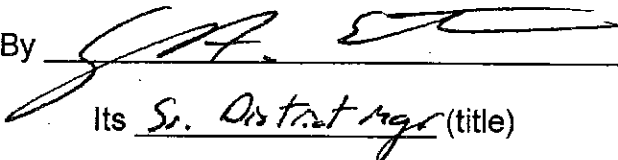
(d). Disposal fees for Vegetative Waste. The fees for disposal of Vegetative Waste are as set forth in Paragraph 4(j)(v).

3. All other terms and conditions of the Agreement and the 1999 Amendment shall remain in full force and effect except as modified herein, and are hereby ratified and confirmed.

In witness whereof, the parties have executed this Amendment to the Disposal Service Agreement on the date first written above.

USA WASTE LANDFILLS OF VIRGINIA, INC.

Date: 9/1/09

By 
Its Sr. District Mgr (title)

CITY OF NEWPORT NEWS, VIRGINIA

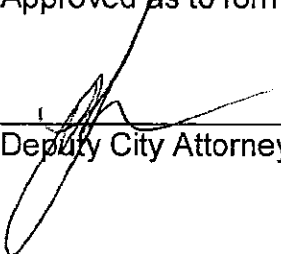
Date: _____

By _____
Acting City Manager

Attest:

City Clerk

Approved as to form:


Deputy City Attorney