

LANDFILL LEASE AGREEMENT

This Landfill Lease Agreement (“Agreement”) is entered into as of _____, 2026 (“Effective Date”), by and between the City of Hampton, Virginia, a municipal corporation (“City”), and USA Waste of Virginia Landfills, Inc., a Delaware corporation authorized to do business in Virginia (“WM”).

1. PURPOSE

The City owns certain property as more particularly described herein and commonly referred to as the Bethel Landfill. WM is the successor in interest to Williams Corporation of Virginia, the original lessee under a lease dated, May 1, 1986 and modified by an Amendment dated, March 29, 1994 (“Existing Lease”), pursuant to which WM operates the Bethel Landfill. According to its terms, the Existing Lease commenced on May 29, 1986, and, therefore, in accordance with Virginia Code § 15.2-2100, the Existing Lease will terminate by operation of law on May 29, 2026. This Agreement is expressly intended as a short-term operating lease, preserving continuity of landfill operations while the parties evaluate and negotiate potential long-term options for the landfill property. Nothing in this Agreement shall be construed as:

- (a) an extension of the original lease beyond its statutory term;
- (b) a waiver of either party’s rights regarding long-term disposition; or
- (c) a commitment to any future agreement, including but not limited to lease, host community agreement, conveyance, or redevelopment plan.

2. TERM AND RENEWAL

2.1 Initial Term. The initial term of this Agreement commences on May 30, 2026 and expires on May 29, 2027 (the “Initial Term”). The Initial Term shall constitute the first “Term Year” for purposes of this Agreement.

2.2 Automatic Renewals. The Agreement shall automatically renew for up to four (4) additional one-year terms, for a maximum total duration of five (5) years, unless either party provides written notice of non-renewal at least one hundred eighty (180) days prior to the expiration of the then-current Term Year. The Initial Term and each Term Year thereafter shall be collectively referred to herein as the “Term”.

2.3 No Presumption of Renewal. Each renewal shall be deemed discretionary and shall not create any expectancy or vested right beyond the applicable Term Year.

2.4 Termination by Mutual Consent. Notwithstanding any other provision of this Agreement, the City and WM may terminate this Agreement at any time by mutual written consent, effective on such date as the parties may agree.

3. PREMISES AND PERMITTED USE

3.1 Premises. The leased premises consist of the real property commonly known as the Bethel Landfill (“Landfill”), as more particularly described in Exhibit 1 attached hereto and incorporated herein by reference, together with all existing landfill cells, access roads, storm debris staging areas, scales, buildings, utilities, buffers, and related infrastructure and improvements located thereon (collectively, the “Premises”).

Nothing in this Agreement shall be construed as conveying any ownership interest in the Premises or any reversionary, easement, or development rights beyond the limited leasehold expressly granted herein.

3.2 Permitted Use. WM and its affiliates may use the Premises solely and exclusively for the continued operation of an existing municipal solid waste landfill and its various equipment and systems, including:

- (a) receipt, handling, disposal, and management of waste types expressly permitted under applicable permits in effect as of the Effective Date;
- (b) closure, post-closure preparation, and related environmental compliance activities required by law or permit;
- (c) storm debris staging and emergency response activities authorized by the City; and
- (d) ancillary activities customarily and reasonably incidental to landfill operation, including but not limited to the collection and destruction or management of landfill gas, leachate, and other liquid wastes in all cases strictly in accordance with:
 - (i) this Agreement;
 - (ii) all applicable federal, state, and local laws and regulations; and
 - (iii) all permits and approvals in effect as of the Effective Date.

Any use not expressly authorized by this Section shall be deemed prohibited. WM is responsible for compliance with all applicable terms of this Agreement by WM and its affiliates, and their respective employees and agents, to the extent such persons are performing obligations under this Agreement.

3.3 Service Area and Waste Origin Limitations.

- (a) **Service Area Preserved.** WM shall accept waste only from the geographic service area authorized under the existing permits and approvals in effect as of the Effective Date, as

depicted on Exhibit 2 (“Permissible Service Area”). No modification, expansion, or reinterpretation of the Permissible Service Area shall occur without the City’s prior written consent.

- (b) **No Implied Expansion.** Acceptance of waste from within the Permissible Service Area shall not be construed as approval to increase total inbound tonnage, alter waste composition, or intensify operations beyond historical levels.
- (c) **Commercial Haulers.** WM shall use commercially reasonable efforts to ensure that all haulers delivering waste to the Premises comply with the service area restrictions and waste-origin requirements of this Agreement (i.e., the Permissible Service Area). WM shall be permitted to rely upon the representations about waste origin made in vehicle load manifests or otherwise made by third-party haulers delivering waste to the Landfill, but WM will remain responsible to correct violations by third-party haulers if representations are proven to be false or in error.
- (d) **City Waste Priority.** Notwithstanding any other provision of this Agreement, waste generated by or on behalf of the City shall receive priority acceptance over all other waste streams, particularly during periods of capacity constraint, operational limitation, or regulatory restriction.

3.4 Permitted Disposal Volume and Steam Plant Diversion

- (a) During the Term, WM shall not accept for disposal at the Premises total annual waste volumes in excess of the Landfill’s approved permit limitations as of the Effective Date.
- (b) Waste diversion to the Hampton/NASA Steam Plant (the “Steam Plant”).
 - (i.) WM shall deliver to the Steam Plant for processing not less than one hundred (100) tons per day of municipal solid waste, averaged over each calendar month, during days on which the Steam Plant is open and accepting waste from WM (the “Minimum Delivery Requirement”).
 - (ii.) For purposes of calculating compliance with the Minimum Delivery Requirement, the monthly average shall be calculated based solely on Operational Days, meaning days during the applicable month on which the Steam Plant was accepting waste and did not close, curtail operations, or otherwise refuse to accept conforming waste delivered by WM. Any day on which the Steam Plant was closed, not accepting waste, or refused or turned away conforming waste delivered by WM shall be excluded from both the numerator and denominator of the monthly average calculation.
 - (iii.) Waste delivered by WM pursuant to this subsection shall consist of municipal solid waste reasonably suitable for processing at the Steam Plant and conforming to the Steam Plant’s written acceptance criteria, as provided by the City to WM from time to time. WM shall not satisfy the Minimum Delivery Requirement by tendering waste that is materially contaminated, unprocessable, or otherwise nonconforming with such criteria.

- (iv.) WM shall coordinate deliveries with the City's designated Steam Plant representative and shall provide a weekly delivery schedule identifying the estimated daily tonnage and anticipated delivery times for the following week. The City may establish reasonable delivery windows and operating procedures for receipt of such waste, provided that such requirements do not materially impair WM's ability to satisfy the Minimum Delivery Requirement.
- (v.) Each load delivered to the Steam Plant shall be documented by a load ticket or equivalent record identifying, at a minimum, the date of delivery, net tonnage, hauler identity, and whether the load was accepted, partially rejected, or rejected. Tonnage shall count toward the Minimum Delivery Requirement only to the extent actually accepted by the Steam Plant, except that any conforming load refused by the Steam Plant shall be treated as an excused shortfall under subsection (vii).
- (vi.) If WM fails in any calendar month to satisfy the Minimum Delivery Requirement, WM shall make up the shortfall during the next succeeding calendar month, in addition to the Minimum Delivery Requirement otherwise applicable to that month, unless the shortfall resulted from an excused condition under subsection (vii) or the City waives the make-up requirement in writing.
- (vii.) WM shall be excused from performance under this subsection only to the extent and for the duration directly caused by:
 - a. the Steam Plant's closure, outage, curtailment, or refusal to accept conforming waste;
 - b. force majeure;
 - c. a change in applicable law or regulatory order that renders such delivery unlawful; or
 - d. a written City directive suspending or reducing deliveries.Increased cost alone, customer contractual obligations, or WM's routing preferences shall not excuse performance.
- (viii.) The monthly report required pursuant to Section 5.2 of this Agreement, shall include the following information pertaining to tonnage delivered to the Steam Plant for the preceding month: total tons delivered each day, total tons accepted and rejected, the number of Operational Days, the monthly average tons delivered per Operational Day, any claimed excused shortfalls, and any make-up tonnage due or completed. All such records and reports shall be subject to the reporting, recordkeeping, and audit provisions of Article 5.
- (ix.) Failure by WM to satisfy the Minimum Delivery Requirement for two (2) months in any rolling six (6) month period, excluding periods of excused nonperformance under subsection (vii), shall constitute a material breach of this Agreement.

3.5 No Expansion of Use Rights. Without the City's prior written consent, WM shall not:

- (a) Seek DEQ approval to expand the landfill footprint, vertical height, or disposal capacity;
- (b) seek DEQ approval to accept any waste types not already allowed by permit;
- (c) modify operating hours in a manner that materially increases traffic or other impacts;
- (d) seek other permit amendments inconsistent with this Agreement; or

- (e) undertake any activity reasonably likely to significantly increase environmental, traffic, or community impacts beyond existing conditions.

3.6 Verification of Use Compliance. WM shall comply with the reporting, recordkeeping, and audit requirements set forth in Article 5, which are intended, in part, to enable the City to verify compliance with the permitted use, Permissible Service Area, and operational limitations of this Agreement.

3.7 No Waiver of City Authority. Nothing in this Agreement shall be construed to limit or waive the City's police powers, regulatory authority, or enforcement rights under applicable law. The City retains all authority to enforce ordinances, respond to public health or safety concerns, and cooperate with state or federal regulators.

4. FEES AND PRICING PROTECTIONS

4.1 City Disposal Rate.

- (a) **Base Rate.** The City shall pay WM a per-ton disposal rate for City-generated waste (the "City Disposal Rate"). As of the Effective Date, the City Disposal Rate is \$36.49 per ton. As of July 1, 2026, the City Disposal Rate shall increase to \$37.27 per ton. Thereafter, the City Disposal Rate shall increase in accordance with Section 4.3 of this Agreement.
- (b) **Scope of Rate.** The City Disposal Rate shall be all-inclusive and shall apply to the receipt, handling, disposal, and management of City-generated waste delivered to the Premises.
- (c) **No Unilateral Modification.** WM shall not modify, surcharge, reclassify, or otherwise adjust the City Disposal Rate except as expressly provided in this Agreement.
- (d) **Lowest Disposal Rate Guaranteed.** Notwithstanding the provisions of Sections 4.1(a) and 4.3, the City Disposal Rate shall at all times be the lowest per-ton disposal rate charged by WM at the Premises to any customer, whether such rate is fixed, tiered, bundled, discounted, or otherwise structured. No volume commitment, contract term, delivery method, service level, rebate, credit, incentive, or pricing structure offered to any other customer shall result in an effective per-ton disposal rate lower than the City Disposal Rate. In determining compliance with this subsection, the City Disposal Rate shall be evaluated without regard to any Host Fees, impact payments, revenue-sharing arrangements, credits, or other amounts paid or payable by WM to the City under this Agreement or any other agreement or applicable legal authority, and WM shall not use any such payment or consideration to justify a higher disposal rate charged to the City. This subsection 4.1(d) shall not apply to rates charged by WM for the acceptance of "Beneficial Use Material," as defined in Section 4.2 (g) and (h).

4.2 Host Community Fee.

(a) **Host Fee Obligation.** WM shall pay to the City a host community fee (the “Host Fee”) for all waste delivered to the Landfill, subject to the exclusions and criteria set forth herein. No exclusions from the Host Fee shall apply except those expressly prescribed herein. For purposes of Host Fees, tonnage shall be calculated on a fiscal year basis (July 1 to June 30).

(b) **Tier Structure and Applicable Rates.** As of the Effective Date, the Host Fee rates are as follows:

(i) **Tier I:** \$0.1876 per ton for the first 250,000 tons of all waste received at the Landfill during each year. For purposes of calculating Tier I tonnage, all Beneficial Use Material shall be excluded and shall not count toward the 250,000-ton threshold. No Tier 1 Host Fees shall be paid on solid waste generated by the City, Newport News, or the Virginia Peninsulas Public Service Authority (“VPPSA”); however, all waste generated by the City, Newport News, and VPPSA does count toward the 250,000-ton threshold.

(ii) **Tier II:** \$3.27 per ton for the all waste received at the Landfill in excess of 250,000 tons during each year. Once the 250,000-ton threshold has been reached, all additional waste received at the Landfill, other than Beneficial Use Material, shall be included in Tier II tonnage and subject to the Tier II Host Fee, including waste generated by the City, Newport News, and VPPSA.

WM shall pay Host fees semi-annually. The first payment based on tonnage received from July 1 through December 31 shall be paid to the City by January 31 each year. The second payment based on tonnage received from January 1 through June 30 shall be paid to the City by July 31 each year.

(c) **Rate Adjustment.** Effective as of July 1, 2026, the Host Fee rates shall be as follows:

(i) **Tier I:** \$0.2331 per ton for the first 250,000 tons received during each year, as further described in Section 4.2(b)(i); and

(ii) **Tier II:** \$4.0632 per ton for all tons received above 250,000 tons during each year, as further described in Section 4.2(b)(ii).

Thereafter, Host fee rates shall increase annually as prescribed in Section 4.3.

(d) **Independent Obligation.** The Host Fee is a separate and independent payment obligation owed by WM to the City and shall not be construed as a component of, credit against, or adjustment to any disposal rate or other charge payable by the City to WM.

- (e) **Measurement, Reporting, and Payment of Host Fee.**
- (i.) **Basis of Tons.** Host Fees shall be calculated based on certified scale weights recorded at the Premises.
 - (ii.) **Reporting and Audit.** Host Fee calculations shall be subject to the reporting and audit provisions of this Agreement.
- (f) **No Offset or Netting.** Under no circumstances shall WM offset Host Fees against disposal charges, tipping fees, or any other amounts owed by the City.
- (g) **Definition.** "Beneficial Use Material" is defined as follows:
- (i.) soil, alternative daily cover, or other cover material placed for operational or regulatory cover purposes;
 - (ii.) materials generated from landfill operations and redeposited on site, including litter, screening residuals, or similar operational byproducts;
 - (iii.) materials placed in connection with closure, post-closure, corrective action, remediation, or other activities required by applicable law or regulatory authority, including cap construction and grading materials; and
 - (iv.) leachate treatment residuals or similar materials returned to the landfill as part of permitted landfill operations, to the extent historically excluded under the existing lease.
- (h) **Additional Criteria.** In addition to the foregoing, Beneficial Use Material must satisfy the following criteria:
- (i) **Quantitative Limits.** The total volume used for each category does not exceed the amount reasonably required for its intended engineering purpose.
 - (ii) **Documentation.** WM maintains contemporaneous records identifying the source, type, weight, and specific use of the material, and ties each load to a defined project or operational need.
 - (iii) **Regulatory Compliance.** The use complies with all permit conditions and applicable regulations, and any required approvals have been obtained.

4.3 Escalation of Rates and Fees.

- (a) **Annual Adjustment.** The increased City Disposal Rate and Host Fee effective July 1, 2026, are set forth in Sections 4.1(a) and 4.2(c), respectively. On July 1 each year thereafter, and subject to the applicable provisions of this Article 4, the City Disposal Rate and Host Fee shall be adjusted annually based on the percentage change, if any, in

the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items (1982–84 = 100), as published by the U.S. Bureau of Labor Statistics. WM shall provide written notice of the adjusted City Disposal Rate and Host Fee to the City by no later than December 31 each year in accordance with Section 4.3(f).

(b) **Measurement Period.** The CPI adjustment shall be calculated based on the change in the CPI-U index between December of the calendar year preceding the adjustment effective date and December of the immediately prior calendar year. For example, WM shall notify the City of the adjustments that will be effective on July 1, 2027 by no later than December 31, 2026. The adjustment shall be calculated based on the change in the CPI-U index between December 2025 and December 2026.

(c) **Cap and Floor.** Notwithstanding subsection (a):

- (i) no annual increase shall exceed four percent (4%), and
- (ii) no annual adjustment shall result in a decrease.

The CPI-based adjustment shall be calculated first, and the cap and floor shall apply solely to limit the annual adjustment resulting from that calculation

(d) **No Compounding Outside CPI.** Adjustments shall be applied only once annually and shall not be compounded or supplemented by any other inflationary factor except as expressly provided in this Agreement.

(e) **Tax Reimbursement.** If during the term of this Agreement, WM is required to pay any increased taxes, assessments, or other governmental charges, or fees for bonds, that (i) are imposed by the City after the Effective Date, (ii) apply specifically and uniquely to the Landfill or its operations, and (iii) are not of general application, then the City shall reimburse WM for the incremental amounts of such charges actually paid by WM. WM may include such amounts in the bill sent to the City pursuant to Section 4.1 for the month immediately following the month in which any such amounts are paid.

This provision applies only to taxes, fees, assessments, or other charges newly created or imposed by the City that are directed specifically at the Landfill or its operations. This provision does not apply to

- (i) any taxes of general application, including, but not limited to, real property, personal property, BPOL, income, sales, use or excises taxes;
- (ii) any increase in taxes resulting from changes in assessed value, classification, or generally applicable tax rates;

(iii) any taxes, fees, assessments or other charges imposed or mandated by the Commonwealth of Virginia, the United States, or any other governmental authority other than the City; or

(iv) any costs, fees, or financial obligations arising from WM's financing arrangements, capital structure, or private debt or bond issuances.

WM shall provide reasonable documentation supporting any amounts claimed under this Section, including identification of the applicable ordinance or legal authority creating the charge and a calculation of the incremental amount. No reimbursement shall be due unless such documentation is provided.

(f) **Certification.** WM shall provide written notice of the CPI-based adjustment required by Section 4.3(a), including the applicable index values and calculations, by December 31 of each year. The written notice shall include a certification by WM, under penalty of perjury, that the rates comply with this Section. Failure to provide such notice shall not waive, defer, or otherwise affect either Party's right to receive any Host Fees, disposal fees or other amounts owed under this Agreement, nor shall it excuse WM from applying the correct adjustment.

4.4 Reserved.

4.5 Rate Adjustment Remedy.

(a) **Adjustment.** If it is determined that the City has been charged a disposal rate that does not comply with this Article, including but not limited to Section 4.1(d) and 4.3(a), the City Disposal Rate shall be adjusted to the compliant rate. If it is determined that the City has been paid a Host Fee that does not comply with this Article, including Sections 4.2 and 4.3, the Host Fee shall be adjusted to the compliant rate. Before any such adjustment takes effect, the Parties shall meet and confer in good faith within ten (10) business days after such determination to review the underlying calculations, exchange relevant supporting data, and attempt to resolve any dispute regarding the calculation or application of the compliant rate.

(b) **Retroactive Relief.** Subject to the applicable statute of limitations under Virginia law, adjustment under 4.5(a) shall be retroactive to the date of the first incorrect charge, regardless of when discovered.

(c) **Refund or Credit.** Following any adjustment under 4.5(a) and except as otherwise mutually agreed by the parties during their good faith negotiation in accordance with that section, the Party that benefited from the fee miscalculation shall, at its sole

election, either (i) pay the amount due to the other Party or (ii) apply a credit against future invoices in the amount of such adjustment.

- (d) **No Waiver.** Failure by either party to identify or challenge a pricing violation at any time shall not constitute a waiver of its rights under this Article.

5. COMMERCIAL HAULERS, REPORTING, AND AUDIT RIGHTS

5.1 Hauler Classification Transparency. WM shall establish, maintain, and continuously update complete and accurate records for each load of waste delivered to the Premises, whether delivered by the City, a governmental entity, or a private or commercial hauler. Such records shall be maintained in electronic form and shall identify, at a minimum:

- (a) the originating jurisdiction of the waste, based on the point of generation and not merely the hauler's place of business;
- (b) the identity of the hauler, including company name and any affiliate or subcontractor relationship;
- (c) the waste type and classification, including residential, commercial, construction and demolition, beneficial use material, or other applicable category;
- (d) the gross, tare, and net tonnage for each load; and
- (e) the billing classification applied, including whether the load is billed to the City, billed to a third party, exempt, discounted, or otherwise treated differently for pricing or fee purposes.

WM shall use commercially reasonable efforts to ensure that hauler-provided information is accurate but shall be allowed to rely upon written waste manifests and hauler self-reporting. WM shall remain responsible to correct inaccurate origin information from third-party haulers if representations are proven to be false or in error. During an audit conducted pursuant to Section 5.4 or 5.5, the City may request to review transaction-level data maintained by WM in accordance with this section. WM may require that such transaction-level data must be reviewed at WM's offices located at the Premises and that the City may not copy or retain copies of such records.

5.2 Monthly Reporting. WM shall provide the City with monthly written reports, delivered no later than twenty (20) days after the close of each calendar month, summarizing waste received at the Premises during the reporting period. Each report shall be provided in both (1) PDF and (2) a machine-readable electronic format, meaning a structured electronic file that permits sorting, filtering, and independent analysis of the underlying data (such as Excel or CSV), and shall include, at a minimum:

- (a) total inbound tonnage, stated in aggregate and by day;

- (b) tonnage by jurisdiction of origin, clearly distinguishing City-generated waste from non-City waste;
- (c) commercial hauler deliveries, including identification of hauler categories and the tonnage attributable to each;
- (d) exempt, discounted, or non-compensable tonnage, together with the basis for each exemption or classification;
- (e) all storm debris received from the City of Newport News in accordance with Section 8.6;
- (f) identification of the rate or pricing category applied to each load or category of loads, sufficient to verify compliance with Section 4.1(d);
- (g) for any Beneficial Use Material, identification of the category of use, the project or operational purpose, and the quantity used during the reporting period; and
- (h) a certification by an authorized representative of WM that the report is true, correct, and complete in all material respects and consistent with the books and records of WM.

Monthly reports shall be sufficiently detailed to permit verification of compliance with the requirements of this Agreement.

5.3 Billing Classification; Allocation of Risk.

For purposes of billing, reporting, and fee assessment under this Agreement, WM's determination of waste origin and classification shall control the billing treatment applied to each load, including whether such load is billed to the City, billed to a third party, or subject to exemption or special classification.

Any misclassification of waste origin or billing status that results in under-collection by the City or over-billing to commercial haulers shall be presumed attributable to WM, unless WM demonstrates that such misclassification was caused by a misrepresentation, material error or omission by the City or a third party. WM shall be responsible for correcting the classification and for any resulting financial reconciliation.

5.4 Audit Rights.

- (a) **Annual Audit.** The City shall have the right no more than once per calendar year, to conduct or cause to be conducted a financial and compliance audit limited to WM's records reasonably necessary to verify compliance with this Agreement.
- (b) **Additional Audits.** In addition to the annual audit, the City may conduct one additional audit per calendar year upon at least thirty (30) days' written notice, supported by a written explanation of the specific issue prompting the audit. Such audits must be narrowly tailored to the stated concern and may be conducted only if the City has a good-faith, reasonable basis to believe that a material discrepancy exists.

- (c) **Scope of Audit.** Audits shall be limited to reviewing documentation necessary to verify compliance with this Agreement and may include, without limitation, inspection of
 - (i) scale and weight records;
 - (ii) billing invoices and payment records;
 - (iii) hauler certifications, tickets, and load documentation; and
 - (iv) any electronic systems or databases solely to the extent access is reasonably necessary to verify compliance with this Agreement.
- (d) **Timing and Access.** Audits may be conducted during normal business hours in a manner that does not unreasonably interfere with WM's operations, and may cover any period within the prior three (3) years, or such longer period as required by law. The City shall use commercially reasonable efforts to minimize disruption, and all audit activities shall comply with WM's safety and security protocols.
- (e) **Audit Cooperation and Remedies.** WM shall cooperate fully with any audit conducted under this Section and shall provide reasonable access to personnel, records, and systems identified in subsection (c).

Failure to maintain or produce sufficient records to permit verification shall constitute a material breach of this Agreement, subject to the notice and cure provisions set forth in Article 10. In the event of such failure, the City may require WM to cure the deficiency to the City's reasonable satisfaction. Nothing herein shall limit the City's right to seek appropriate contractual or equitable remedies for repeated or uncured failures.

5.5 Third-Party Audits. Audits may be conducted by the City or its designated third-party auditor, provided that any such third-party auditor is bound by the confidentiality obligations set forth in the Non-Disclosure and Confidentiality Agreement attached hereto as Exhibit 3. WM shall provide reasonable access to records as prescribed in Section 5.4.

6. COMPLIANCE AND REGULATORY RESPONSIBILITY

6.1 WM Responsibility. WM shall be solely and exclusively responsible, at its cost, for full compliance with all applicable federal, state, and local laws, statutes, rules, regulations, ordinances, and orders governing the ownership, operation, closure, and post-closure care of the Premises, including without limitation the Virginia Waste Management Act, all regulations promulgated thereunder, and all requirements of the Virginia Department of Environmental Quality ("DEQ").

WM shall maintain in full force and effect, without lapse, all permits, approvals, certifications, financial assurances, and authorizations required for lawful operation of the landfill during the

Term, including all DEQ solid-waste permits and any associated operational plans, amendments, or conditions.

6.2 Permit Status, Notice, and Cooperation.

- (a) **No Lapse or Material Violation.** WM shall not take or omit any action that would result in the suspension, revocation, expiration, or material non-compliance of any required permit or approval.
- (b) **Notice to City.** WM shall promptly notify the City in writing of:
 - 1. any notice of violation, consent order, enforcement action, or notice of material non-compliance issued by DEQ or any other regulatory authority;
 - 2. any threatened or actual permit suspension, modification, or revocation; or
 - 3. any proposed permit amendment or modification that could reasonably be expected to materially affect landfill operations, capacity, service area, or waste acceptance.
- (c) **City Cooperation Reserved.** Nothing in this Agreement shall obligate the City to support, certify, or consent to any permit amendment or regulatory action, and any such support or certification shall remain subject to the City's independent discretion and applicable law.

6.3 Regulatory Liability and Risk Allocation. WM shall remain the sole operator and permittee of record for purposes of all regulatory compliance and enforcement. WM shall bear all responsibility for environmental conditions, violations, corrective actions, penalties, fines, and remedial obligations arising from landfill operations during the Term.

6.4 No Regulatory Risk Transfer. Nothing in this Agreement shifts regulatory or closure liability to the City or obligates the City to assume or fund any corrective action, monitoring, or closure-related activity.

7. OPERATIONAL STANDARDS, NUISANCE MITIGATION, AND SAFETY

7.1 Compliance with Permits and Industry Standards. WM shall operate the Premises in compliance with all applicable permits and regulatory requirements and in a manner consistent with generally accepted industry practices for the operation of a municipal solid waste landfill of similar size and capacity.

Nothing in this Agreement shall be construed to require WM to exceed permit requirements except as expressly provided herein.

7.2 Odor, Litter, and Nuisance Management.

- (a) **Reasonable Control Measures.** WM shall implement and maintain reasonable operational measures to minimize off-site impacts, including odor migration, litter, dust, noise, and vectors, consistent with permit conditions and industry practice.
- (b) **Recurring Conditions.** In the event of recurring or sustained nuisance conditions reasonably documented by the City or confirmed by a regulatory authority, WM shall promptly evaluate operational practices and implement reasonable corrective actions.
- (c) **Notification and Response.** Upon notice from the City of a significant odor or nuisance complaint, WM shall promptly investigate and provide the City with a written summary of findings and any corrective steps taken.

7.3 Traffic Management. WM shall take reasonable steps to manage truck traffic in a manner that minimizes impacts on surrounding roadways, including coordination with the City regarding routing, queuing, and peak-hour congestion where practicable.

Nothing in this Section shall require the City to approve routine operational decisions or to modify the consent requirements set forth in Section 3.5.

7.4 Safety and Emergency Conditions. WM shall maintain reasonable safety procedures addressing fires, slope stability, gas management events, and other operational hazards. WM shall promptly notify the City of any material safety incident that could reasonably affect public health or safety.

7.5 Escalation of Operational Issues. If the City reasonably determines that an operational issue has become systemic or recurring, the parties shall meet promptly and in good faith to discuss operational adjustments or mitigation.

Nothing in this Section shall limit the City's right to contact regulatory authorities or exercise its police powers in the event of an emergency or confirmed violation.

7.6 No Expansion of Operational Rights. Nothing in Article 7 shall be construed to authorize any expansion or modification of landfill operations except as expressly permitted under Article 3.

8. STORM DEBRIS AND EMERGENCY USE

8.1 Emergency and Disaster Response Use. During declared emergencies, natural disasters, or other extraordinary events affecting the City, WM shall make the Premises available for the temporary staging, storage, and disposal of storm debris and emergency waste generated by or on behalf of the City, subject to applicable law and permit requirements.

8.2 Priority Access. Waste generated by or on behalf of the City during emergency or disaster response efforts shall receive priority acceptance over non-City waste streams to the extent

necessary to support timely recovery operations, unless such acceptance would create an imminent environmental or safety hazard.

8.3 Location and Configuration. Temporary storm-debris staging or storage areas shall be located within areas historically used for such purposes or other locations mutually agreed upon by the City and WM. Such areas shall not be relocated or materially reduced without the City's consent.

8.4 City-Generated Storm Debris. WM shall accept for disposal or handling all storm debris generated by or on behalf of the City and delivered to the Premises during the Term. Acceptance of City-generated storm debris shall not be subject to advance approval, special conditions, or discretionary limitations, and shall be governed by the disposal rate provisions of this Agreement.

8.5 Environmental Safeguards. WM may decline to accept specific debris loads only where acceptance would violate applicable law or permit conditions or pose a demonstrable environmental or safety risk. Any such refusal shall be promptly communicated to the City with a written explanation.

8.6 Non-City Storm Debris; Approval Required. WM shall be permitted to accept storm debris from the City of Newport News according to the terms of, and until the expiration or termination of, WM's July 1, 1996 Disposal Services Agreement with Newport News, as amended on October 15, 2009. WM shall not extend the Disposal Services Agreement with Newport News beyond its current term. Storm debris received from Newport News shall be segregated and shall not be co-mingled with storm debris from the City so that each municipality can maintain accurate record of the volumes of storm debris delivered to the Landfill.

Except with respect to the City of Newport News as described in the preceding paragraph, WM shall not accept storm debris generated outside the City of Hampton in excess of normal operating levels without the City's prior written approval. Approval shall be in the City's sole discretion.

8.7 No Precedent. Emergency use of the Premises under this Section shall not establish precedent for routine operations, expanded waste acceptance, or future obligations beyond the Term of this Agreement.

9. INSURANCE AND FINANCIAL ASSURANCE

9.1 Required Insurance Coverages. Throughout the Term, WM shall procure and maintain, at its sole cost and expense, insurance policies issued by insurers with an A.M. Best rate minimum (e.g., A-VII) authorized or eligible (admitted or non-admitted) to do business in the

Commonwealth of Virginia and reasonably acceptable to the City, with limits not less than those set forth below:

- (a) Workers' Compensation Insurance, as required by Virginia law, and Employer's Liability Insurance with limits of not less than \$500,000 per accident, \$500,000 per employee, and \$1,000,000 per policy;
- (b) Commercial General Liability Insurance, written on a per occurrence basis, including coverage for bodily injury, property damage, personal and advertising injury, contractual liability, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate;
- (c) Automobile Liability Insurance, covering owned, non-owned, and hired vehicles, with a combined single limit of not less than \$1,000,000 per occurrence;
- (d) Pollution Legal Liability/Environmental Liability Insurance, covering on-site and off-site pollution conditions, including sudden and gradual releases, accidental spills, cleanup costs, third-party bodily injury and property damage, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and
- (e) Umbrella or Excess Liability Insurance, providing additional limits of not less than \$10,000,000 per occurrence, which may be used to satisfy the required limits above.

9.2 Additional Insured; Waiver of Subrogation; Primary Coverage. All liability policies required under this Article shall:

- (a) name the City of Hampton, Virginia, its elected officials, officers, employees, and agents as additional insureds with respect to claims arising out of or related to WM's operations at the Premises; and
- (b) provide that such insurance shall be primary and non-contributory with respect to any insurance carried by the City.
- (c) include a waiver of subrogation endorsement in favor of the City of Hampton, Virginia, its elected officials, officers, employees, and agents, applicable to General Liability and Workers' Compensation/Employer's Liability insurance and all excess or umbrella policies.

9.3 Evidence of Insurance; Notice of Cancellation.

- (a) **Certificates and Endorsements.** WM shall provide the City with certificates of insurance and copies of required endorsements evidencing compliance with this Article prior to the Effective Date and annually thereafter.

- (b) **No Cancellation Without Notice.** Each policy shall provide that it may not be cancelled, materially modified, or allowed to lapse without at least thirty (30) days' prior written notice to the City (ten (10) days for nonpayment of premium).

Failure to maintain required insurance shall constitute a material breach of this Agreement.

9.4 Financial Assurance; Regulatory Bonds. WM shall maintain, in full force and effect, all financial assurance mechanisms required by applicable law or permit, including without limitation closure, post-closure care, corrective action, and environmental remediation financial assurance required by the Virginia Department of Environmental Quality or any successor agency.

Nothing in this Agreement shall be construed to require the City to provide, guarantee, backstop, or otherwise assume any financial assurance obligation.

9.5 No Limitation of Liability. The insurance requirements set forth in this Article are minimum requirements only and shall not be construed to limit WM's liability or obligations under this Agreement or applicable law.

9.6 No Vested Rights. Nothing in this Agreement, nor any course of performance, billing practice, or accommodation under it, shall be construed to:

- (a) create any expectancy, vested right, or entitlement to renewal, extension, or continuation of landfill operations beyond the applicable Term Year;
- (b) establish fair market value, customary host fees, acceptable waste volumes, or long-term operational standards;
- (c) limit or prejudice the City's discretion with respect to future agreements, regulatory actions, or policy determinations; or
- (d) modify, supplement, or waive any provision of this Agreement except by a written amendment executed by both parties.

The City's decision to enter into or perform under this Agreement shall not be cited as precedent in any future negotiation, proceeding, or agreement between the parties.

10. TERMINATION

10.1 For Cause; Survival Obligations. Either party may terminate this Agreement for a material breach by the other party, subject to the notice and reasonable cure provisions set forth below.

For purposes of this Agreement, a material breach includes, without limitation:

- (a) a material violation of this Agreement, including provisions governing permitted use, service area, waste acceptance, reporting, audit access, pricing, or throughput controls;
- (b) failure to provide required reports, certifications, or records, or provision of materially inaccurate, misleading, or incomplete information relating to waste origin, tonnage, billing, or pricing;
- (c) failure to comply with applicable federal, state, or local laws, regulations, permits, or regulatory orders governing landfill operations, where such failure materially affects the City's interests or exposes the City to risk;
- (d) repeated violations of this Agreement or applicable law that, taken together, demonstrate a pattern of non-compliance;
- (e) failure to timely cure any default as required herein;
- (f) insolvency, bankruptcy, or similar proceedings that materially impair WM's ability to perform its obligations; or
- (g) failure to timely pay any undisputed amount owed under this Agreement.

10.2 Notice and Opportunity to Cure. Except as provided in Section 10.3, the non-breaching party shall provide written notice specifying the nature of the breach. The breaching party shall have thirty (30) days from receipt of such notice to cure the breach, or such longer period as may be reasonably necessary to cure a non-monetary breach, provided the breaching party promptly commences cure and diligently pursues completion.

10.3 Suspension by City. The City may suspend this Agreement immediately upon written notice, without opportunity to cure, if:

- (a) WM's acts or omissions under this Agreement pose an immediate threat to public health, safety, or the environment;
- (b) WM knowingly or intentionally makes material misrepresentations relating to waste origin, tonnage, billing, or pricing;
- (c) WM's conduct results in the City being placed in material regulatory jeopardy or violation through no fault of the City and WM does not take prompt steps to resolve such regulatory violations;
- (d) continued performance of this Agreement would violate applicable law or a binding order or directive of a regulatory authority;

- (e) WM fails to maintain or provide access to records, data, or systems necessary for the City to verify compliance with this Agreement, where such failure materially impairs the City's ability to monitor operations in real time; or
- (f) WM engages in repeated or systemic violations of this Agreement or applicable law that, taken together, demonstrate a breakdown in operational control or compliance and present a material risk to the City.

A suspension under this section 10.3 shall remain in effect until WM has cured or resolved the condition giving rise to the suspension and the City has verified, in its reasonable discretion, that such condition has been fully addressed. If the condition is not cured within a reasonable period of time, the City may pursue termination or any other remedies available under this Agreement or as allowed by law.

10.4 Effect of Termination; Survival of Obligations. Upon termination of this Agreement:

- (a) WM shall take reasonable and lawful steps to transition landfill operations in accordance with applicable law and the City's direction, while continuing to fulfill all obligations applicable to WM as the permit holder of the landfill. Nothing herein shall be construed to require or authorize the suspension of landfill operations except as required by law or regulatory authority.
- (b) WM shall remain responsible for all regulatory, environmental, closure-related, post-closure, monitoring, reporting, and permit compliance obligations arising from its operations during the Term, including all obligations imposed by the Virginia Department of Environmental Quality or other regulatory authorities, whether such obligations arise before or after termination; and
- (c) termination shall be without prejudice to any other rights or remedies available to the City at law or in equity.

Termination shall not be construed to transfer, shift, or impose upon the City any regulatory, operational, or environmental responsibility associated with the Landfill.

11. NO WAIVER OF LONG-TERM POSITIONS

This Agreement shall not be cited, relied upon, or used as evidence of:

- (a) fair market value for landfill disposal or host compensation;
- (b) customary or prevailing host community fees; or
- (c) acceptable or appropriate waste volumes, throughput, or service levels.

Further, no prior or subsequent course of performance, billing practice, or historical accommodation shall be deemed to modify, supplement, or interpret this Agreement unless expressly set forth in a written amendment executed by both parties.

12. MISCELLANEOUS

12.1 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard to its conflicts-of-law principles. Any action arising out of or relating to this Agreement shall be brought exclusively in a court of competent jurisdiction located within the City of Hampton or in the United States District Court for the Eastern District of Virginia.

12.2 Assignment and Transfer. WM shall not assign, transfer, delegate, or otherwise convey this Agreement, in whole or in part, whether voluntarily, by operation of law, or otherwise, without the prior written consent of the City, which consent may be granted or withheld in the City's sole discretion.

Any attempted assignment or transfer without such consent shall be void and shall constitute a material breach of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

12.3 Independent Contractor. WM is and shall remain an independent contractor. Nothing in this Agreement shall be deemed or construed to create a partnership, joint venture, agency, or employment relationship between the City and WM.

12.4 No Third-Party Beneficiaries. This Agreement is entered into solely for the benefit of the City and WM. Nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy.

12.5 Entire Agreement; Integration.

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, whether written or oral.

12.6 Amendments; Waivers. This Agreement may be amended only by a written instrument executed by authorized representatives of both parties. No waiver of any provision shall be effective unless in writing, and any waiver shall be limited to the specific instance for which it is given and shall not be deemed a waiver of any subsequent breach.

12.7 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full

force and effect, and the invalid provision shall be reformed to the minimum extent necessary to render it enforceable.

12.8 Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed given when delivered by one of the following methods

- (a) Personal delivery;
- (b) nationally recognized overnight courier;
- (c) certified or registered mail, return receipt requested; or
- (d) electronic mail, provided that the sender does not receive an automated or other notice of delivery failure.

Notices shall be sent to the addresses set forth below (or to such other physical or electronic address as a party may designate by written notice in accordance with this Section):

If to the City:

City Manager
City of Hampton
22 Lincoln Street, 8th Floor
Hampton, VA 23669
Email: mbunting@hampton.gov

With a copy to:

City Attorney
City of Hampton
22 Lincoln Street, 8th Floor
Hampton, VA 23669
Email: courtney.sydnor@hampton.gov

If to WM:

Waste Management of Virginia, Inc.
[Insert WM address]
Email: [Insert WM email address]

Notices shall be deemed effective upon receipt; provided, however, that notices sent by email shall be deemed received upon successful transmission, as evidenced by the absence of a delivery failure notice. Notwithstanding the foregoing, any notice of default, termination, or other notice that triggers a cure period or legal consequence shall also be sent by one of the methods described in clauses (a) – (b) above.

12.9 Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument. Signatures transmitted electronically or by PDF shall be deemed valid and binding.

12.10 Interpretation. This Agreement shall be construed as having been jointly drafted by the parties, and no presumption or rule requiring construction against the drafter shall apply.

IN WITNESS WHEREOF, the parties have caused this Landfill Lease Agreement to be executed by their duly authorized representatives as of the dates set forth below.

CITY OF HAMPTON, VIRGINIA

a municipal corporation

By: _____

Mary B. Bunting, City Manager

Date: _____

APPROVED AS TO FORM:

By: _____

Courtney R Sydnor, City Attorney

Date: _____

USA WASTE OF VIRGINIA LANDFILLS, INC.

a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 1

LEGAL DESCRIPTION OF THE PREMISES

DRAFT

EXHIBIT 2

PERMISSIBLE SERVICE AREA

DRAFT

EXHIBIT 3

NON-DISCLOSURE & CONFIDENTIALITY AGREEMENT

DRAFT