

MEMORANDUM OF AGREEMENT WITH CONE DENIM LLC TO PROVIDE
METHANE GAS FROM PHASE III OF WHITE STREET LANDFILL FACILITY

WHEREAS, The City of Greensboro owns and operates the White Street Landfill Facility (herein after Facility), and

WHEREAS, the Facility's processing operations creates filtered, compressed and periodically tested effluent vapor stream including Liquid Hydrocarbons (herein after known as Gas), and

WHEREAS, the City is required by State and Federal regulatory agencies to appropriately dispose of the Gas, and

WHEREAS, Cone Denim LLC engages in operations that can utilize the Gas produced at the Facility, and

WHEREAS, Cone Denim LLC is currently developing its five year operational plan, and wishes to include the use of the Gas in that plan as a renewable source of energy, and

WHEREAS, the City is desirous of providing the Gas to Cone Denim LLC as a means of properly disposing of the Gas, encouraging sound environmental practice, and promoting economic sustainability.

NOW, THEREFORE, BE IT RESOLVED THAT The City of Greensboro will provide Gas from its White Street Landfill Facility to Cone Denim LLC under the following terms and conditions:

This Gas Sales Agreement is made and entered into as of the ____ day of _____, 2004 by and between Cone Denim LLC ("User"), and the City of Greensboro ("Provider"), Provider and User are sometimes referred to collectively as "Parties" or singularly as "Party."

I. Definitions

1.1 "Agreement" means the provisions of this Gas Supply Agreement.

1.2 "Commencement of Deliveries" means the first calendar day on which Provider delivers Gas in accordance with the terms of this Agreement.

1.3 "Contract Year" means the time period from the Commencement of Deliveries to December 31, 2004 for the first Contract Year, and thereafter each Contract Year shall mean the time period from January 1 to December 31 of each successive calendar year.

1.4 "Day" means that period of 24 consecutive hours beginning at 8:00 a.m. Eastern Time and ending at 8:00 a.m. Eastern Time on the following day.

1.5 "Delivery Point(s)" means the point, or points, selected by mutual agreement of the parties for delivery of Gas to User by Provider.

1.6 "Dth" means dekatherm.

1.7 "Duke Agreement" means the Gas Sales Agreement as of December 22, 1995 between Cone Mills Corporation, and assigned to its assignee, Cone Denim LLC, and Duke Engineering Services, Inc., and assigned to its assignee, Duke Royal, LLC ("Duke").

1.8 "Easement Agreement" means the agreement entered into between Duke and User granting Duke certain access rights to User's property.

1.9 "Facility" means the White Street Landfill Facility located in Greensboro, North Carolina.

1.10 "Gas" means the filtered, compressed and periodically tested effluent vapor stream (including Liquid Hydrocarbons) produced at the Facility and recovered through the Project.

1.11 "Month" means the period commencing at 8:00 a.m. Eastern Time on the first Day of a calendar month and ending at 8:00 a.m. Eastern Time on the first Day of the immediately following calendar month.

1.12 "Pipeline" means the pipeline constructed by Duke for delivery of gas that will connect the Project to User, title to which will transfer to Provider effective January 1, 2008 by separate contract between Provider and Duke ("Provider Duke Agreement"). The Pipeline will run from the Receipt Point to the Delivery Point.

1.13 "Phase III Gas" means the Gas produced by Provider at the Phase III portion of the facility and supplied to User under this agreement.

1.14 "Receipt Point" means the point at which the Gas leaves the compressor and enters the Pipeline.

II. Obligations of Provider

2.1 Subject to the Duke Agreement and the Provider Duke Agreement, Duke shall operate and maintain the Pipeline from the date of execution of this Agreement until December 31, 2007.

2.2 Upon execution of this Agreement, Provider shall deliver Phase III gas to User at the Receipt Point(s) as provided herein.

2.3 Provider makes no warranties of the quality of any Gas delivered to User pursuant to this Agreement.

2.4 Provider shall cooperate with User in the performance of the obligations imposed on User by this Agreement.

2.5 If at any time during the term of this agreement, the gas becomes unsuitable for User's purposes, User shall notify Provider. Thereafter, Provider shall have the option to:

- a) cease the provision of Gas to User, and/or
- b) cure the deficiencies causing the Gas to be unsuitable for User if such curative measures are economically feasible as determined by the Provider, and/or
- c) seek monetary contribution from User to implement curative measures to make the Gas suitable.

Provider shall implement one or more of the above listed options within 120 days of notification by User pursuant to this paragraph.

2.6 If, at any time during this agreement, new technology becomes available that makes Provider's output of Gas more efficient, or improves the quality of the Gas produced, Provider is under no obligation to implement this technology. Provider may seek monetary contribution from User in order to implement new technology. User shall have the option, if the technology contemplated by this paragraph is deemed cost prohibitive in its sole discretion, to terminate this agreement.

2.7 Provider shall provide User with Phase III gas at no cost.

III. Obligations of User

3.1 User shall receive the total output of Gas recovered and produced by the Project and made available for delivery by Provider during the term of this Agreement. Furthermore, User shall not be obligated to receive Gas at any time User's boiler is out of service subject to the limitation that User agrees that its boiler will not be out of service more than fifteen percent (15%) of the time during any calendar year. Notwithstanding User's commitment of a minimum boiler availability of eighty-five percent (85%) during each calendar year, User shall be excused for its failure to meet said minimum commitment to the extent such failure is due to an act of God, act of war, act of any governmental authority, civil unrest, fire, or explosion provided User uses its best efforts to return the boiler to service following such event and the event was not caused by an act of negligence of the User or User's agents.

3.2 User shall not sell the Gas, or the steam produced by the Gas in its boiler, to a third party.

3.3 Beginning January 1, 2008, Provider shall have all the same rights and privileges of Duke as set forth in the Easement Agreement, including but not limited to reasonable access over, under or across User's property for Provider to install, operate, and maintain the Pipeline, the Delivery Point(s), and any other facilities on User's property related to the sale and delivery of Gas or related performance of Provider's obligations under this Agreement.

3.4 User acknowledges that, at times, the Gas supply to User from Phase III may fluctuate or otherwise be reduced due to the unsuitability of the gas, or as a result of necessary regulatory compliance by Provider.

3.5 User shall cooperate with Provider in the performance of the obligations imposed on Provider by this Agreement.

IV. Responsibility and Indemnification

4.1 Provider warrants that it has all necessary regulatory approvals and authorizations for its production and delivery of Gas as specified hereunder.

4.2 Provider warrants title to all Gas supplied by it to User, that Provider has the right to supply the Gas and that such Gas is free from all liens and adverse claims. Provider agrees to indemnify and hold User harmless from, and with respect to, all suits, actions, debts, accounts, damages, costs, losses and expenses (including but not limited to reasonable attorneys' fees) arising from or out of any adverse claims of any and all persons related to title to such Gas.

4.3 A Party's rights under this Article shall survive termination of this Agreement.

V. Term

5.1 This Agreement shall become effective on the date first above written and shall remain in effect for a term ending on December 31, 2007 (the "Term") unless terminated as provided elsewhere in this Agreement. Following the Term, this Agreement shall continue in effect on a year-to-year basis unless either Party gives written notice to the other of its intention not to extend the Agreement, provided, however, such written notice must be given at least six (6) months prior to the expiration of the Term or any subsequent one-year extension.

5.2 If User permanently closes its White Oak Facility, User may terminate this Agreement for its convenience.

VI. Notice

6.1 Any notice, request, demand or statement which either Party may desire to give to the other, except lawful service of process, shall be in writing and may be mailed

by registered or certified mail, return receipt requested, to the post office address of the Parties shown below, or made by facsimile transmission followed by written confirmation by regular mail or overnight delivery service, unless otherwise provided in this Agreement:

PROVIDER: City of Greensboro
Attn: _____

Telephone: _____
Fax: _____

USER: Cone Denim LLC
Attn: Laddie Griffin
2420 Fairview Street
Greensboro, NC 27405
Telephone: (336) 230-7215
Fax: (336) _____

Notice shall be deemed received upon receipt if by registered or certified mail or upon sender's receipt of transmission confirmation if by facsimile transmission or electronic mail or on the following day if delivered by overnight delivery service.

6.2 Either of the Parties may from time to time designate a different address. Routine communications may be delivered by registered certified or ordinary mail, overnight delivery service, or by telephone, electronic mail or telecopy if the Parties agree.

VIII. Governmental Authorizations

7.1 This Agreement shall be subject to all present and future valid and applicable laws, rules, regulations or orders of any federal or state regulatory agency or governmental authority having jurisdiction, and the Parties shall be entitled to regard all applicable laws, rules and regulations (federal or state) as valid and may act in accordance therewith until such time as the same may be declared invalid by final judgment of a court of competent jurisdiction and such judgment is not subject to appeal. Nothing contained herein shall be construed as a waiver of any right to question or contest any such order, rule, or regulation, in any forum having jurisdiction or to contest the jurisdiction of any forum and acquiescence therein or compliance therewith for any period of time shall not be considered a waiver of such rights.

7.2 Upon execution of this Agreement, each of the Parties agrees to seek such government certificates, permits, licenses and authorizations which, in its sole discretion, it deems necessary to perform its obligations under this Agreement.

7.3 Upon execution of this Agreement, and from time to time throughout its term, each of the parties shall make all filings required by any regulatory bodies having jurisdiction over the activities covered by this Agreement and, upon request of the other Party, shall promptly provide copies of such to the other Party.

7.4 Neither Party will knowingly enter into agreements or undertake any activities or filings that would interfere with or frustrate the other Party's efforts to obtain the necessary regulatory approvals to fulfill its obligations under this Agreement.

IX. Assignments

8.1 Either party may pledge, mortgage or assign its rights hereunder as security for indebtedness. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns. Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

XI. Miscellaneous

9.1 No waiver by either Party of any one or more defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or of a different character.

9.2 THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES.

9.3 Except as otherwise stated herein, any article or provision declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the Parties or deemed unlawful because of a statutory change shall not otherwise affect the lawful obligations that arise under this Agreement.

9.4 Neither Party, nor any of its directors, officers, employees, or agents shall, in any circumstances, be liable to the other Party for any special, incidental, indirect, or consequential damages or costs.

9.5 This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, supersedes all prior agreements and understanding, whether oral or written, which the Parties may have had in connection herewith and may not be modified except by written agreement executed by authorized representatives of the Parties.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the first above written day and year:

CONE DENIM LLC

ATTEST: Cheryl L. Hollis

By: John L. Bahane
President & CEO

ATTEST:

CITY OF GREENSBORO

By: _____
City Clerk

By: _____
City Manager

"This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act".

APPROVED AS TO FORM:

Finance Director

City Attorney

RESOLUTION APPROVING AGREEMENT WITH CONE DENIM LLC TO PROVIDE METHANE GAS FROM PHASE III OF WHITE STREET LANDFILL FACILITY

WHEREAS, in accordance with the Clean Air Act, Phase III of the White Street landfill was developed with a means to control air emissions related to the decomposition of disposed waste;

WHEREAS, these emissions are currently collected in pipelines buried within each section of the landfill and then transmitted to a landfill gas flare;

WHEREAS, no energy recovery is currently in place for the management of the landfill gas and staff believes that utilization of this renewable energy source should be an alternative to burning the landfill gas;

WHEREAS, it is beneficial to the City of Greensboro to transmit the gas to Cone Denim, LLC rather than incurring costs for burning the fuel and also this process aids in controlling air emissions from decomposition and disposed waste;

WHEREAS, the transmission line does not extend to any other industry that could use the gas and no other industry is interested in building transmission lines for the gas;

WHEREAS, the City of Greensboro would like to transmit Phase III landfill gas to Cone Denim, LLC to be utilized as a boiler fuel as outlined in the Agreement presented herewith this day;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

That the Landfill Gas Transportation Agreement presented herewith this day between Cone Denim, LLC and the City of Greensboro for Phase III of the White Street Landfill gas transmission to Cone Denim, LLC at no cost to Cone Denim, LLC is to be utilized as boiler fuel in order to save the City the cost of flaring the gas is hereby approved.

The foregoing resolution was adopted by the City Council of the City of Greensboro, NC on

Nov 1, 2004
Juanita F. Cooper
City Clerk