

3774

GRANT OF LEASE

THIS LEASE, made and granted, this 6th day of April, 1989, by the Delaware Solid Waste Authority, a body politic and instrumentality of the State of Delaware, hereinafter referred to as "Lessor", unto the United States of America, acting by and through the Secretary of the Army, hereinafter referred to as "Government":

W I T N E S S E T H:

WHEREAS, the Lessor is the fee simple title holder of certain lands situate on Cherry Island, City of Wilmington, Delaware, and being more particularly described herein; and

WHEREAS, the Lessor desires to grant unto the Government the necessary leasehold rights to use said lands for the purpose of depositing dredge spoil materials from the Delaware and Christiana Rivers thereon.

NOW, THEREFORE, the Lessor, in consideration of the mutual benefits, and other good and valuable consideration, does hereby grant, assign and convey to the Government the following leasehold interest for the term set forth herein:

1. The Lessor hereby leases to the Government the following described premises, viz: as more particularly described on the attached Exhibit "A" and by this reference made a part hereof, for the use and purpose of depositing all material excavated, dug, or dredged from the Delaware and Christiana Rivers, together with the right of ingress and egress at all

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times, the right to deposit and leave thereon muck, rocks, dirt, gravel and dredged material, to excavate, borrow, dredge ditches, build, implace and replace retaining embankments or walls, sluiceways and spillways and every right, privilege and authority necessary, incidental, or in any way appertaining to the complete enjoyment of the privilege herein granted, upon, over, under, through the above described premises, to be used for the following purpose: dredged material disposal and maintenance as described above.

2. TO HAVE AND TO HOLD the said premises for the term that began November 19, 1985, through November 18, 1986, provided that unless and until the Government shall give notice of termination in accordance with provision 4 hereof, this lease shall remain in force thereafter from year to year without further notice; and provided further that this lease shall in no event extend beyond November 18, 2035, unless extended by mutual agreement subject however, to the rights of Lessor to require relinquishment of the Government's use of the Authority project area for dredged material disposal under the provisions of paragraph 9.

3. The terms and conditions of the land exchange agreement made between the Government and the Lessor on November 14, 1984 will be considered the full and just rental compensation for this lease and any subsequent renewal agreed to by the parties hereto.

4. The Government may terminate this lease at any time by giving thirty (30) days notice in writing to the Lessor.

5. Any notice under the terms of this lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Government shall be addressed to the Lessor at General Manager, Delaware Solid Waste Authority, P.O. Box 455, Dover, Delaware 19903 and if given by the Lessor shall be addressed to The United States of America, Department of the Army, Baltimore District, Corps of Engineers, P.O. Box 1715, APTN: CENAB-RE, Baltimore, Maryland 21203-1715.

6. The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

7. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

8. (a) The Government may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary

of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such lease; provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Lessor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

9. Upon two (2) years notice provided by Lessor to the Government, the Lessor after consultation with Government and

submission of justification, can require the Government to relinquish, sequentially and incrementally, phase area by phase area, the Government's use of the Authority project area for dredged material disposal provided that before the Government is required to relinquish said use in any phase area, the Lessor is about to or has substantially filled the preceding phase area and can establish a need to expand its activities into the next phase area. Consideration will be given to concurrent relinquishment of the Phase III and IV areas if Government disposal plans permit. Upon relinquishment of a phase area by the Government, the parties agree to execute a lease amendment or other suitable document to reflect the decrease in area subject to this lease. The provisions of this paragraph are subject to satisfaction of the conditions pertaining to commencement of construction and/or availability of the Wilmington South Disposal Area as set forth in paragraph 8 of the Memorandum of Agreement Concerning Use of Cherry Island between Lessor, the State of Delaware and the Government dated March 26, 1984. The "Authority project area" and "Phase III and IV" may be determined also by reference to said Memorandum of Understanding.

IN WITNESS WHEREOF, the Lessor hereto has hereunto subscribed its name as of the date first above written.

In The Presence Of:

DELAWARE SOLID WASTE AUTHORITY

\_\_\_\_\_

BY: [Signature]  
Chairman

[Signature]  
(As to Both)

ATTEST: [Signature]  
General Manager

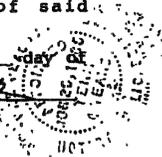


STATE OF DELAWARE )  
COUNTY OF KENT ) SS.:

BE IT REMEMBERED, That on this 6th day of April, A.D. 1989, personally came before me, the subscriber, a Notary Public for the State of Delaware, E. F. Jennings, Jr., Vice Chairman of Delaware Solid Waste Authority, an instrumentality of the State of Delaware, party to this Grant of Lease, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act and deed of said instrumentality, that the signature of its Chairman thereto is in his own proper handwriting and the seal affixed is the common and corporate seal of said instrumentality, and that this act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the Board of Directors of said instrumentality.

GIVEN under my Hand and Seal of Office, this \_\_\_\_\_ day of \_\_\_\_\_, 1989.

[Signature]  
Notary Public



PARCEL NO. 1 - A.T. that certain tract, piece or parcel of land situate on 4th Street Extended and Interstate 495, Cherry Island, New Castle County, Delaware and shown on a plan prepared by VanDemark & Lynch, Inc., Engineers, Planners and Surveyors, Wilmington, Delaware dated September 18, 1984 and revised through April 15, 1986, Drawing No. 22988-M, Revision 4.

NOTE: Delmarva Power & Light Company bearings are indicated in parenthesis.

BEGINNING at a point on the southwesterly side of 4th Street Extended (at 100 feet wide) said point being on the southeasterly right of way line of Interstate 495; thence from the said point of beginning and along the said southwesterly side of 4th Street, South 62 degrees 03 minutes 30 seconds East, (South 52°-54'-00" East), 1313.84 feet to a point; thence partially crossing said 4th Street Extended, North 41 degrees 48 minutes 30 seconds East, (North 50°-58'-00" East) 51.50 feet to a point; thence continuing crossing said 4th Street Extended and along the old centerline of Hay or Marsh Road (at 30 feet wide), North 41 degrees 52 minutes 30 seconds East, (North 51°-02'-00" East), 348.96 feet to a point, a corner for lands about to be conveyed to Delaware Solid Waste Authority; thence thereby South 48 degrees 27 minutes 30 seconds East, (South 39°-18'-00" East), 384.50 feet to a point; thence by a line recrossing said 4th Street Extended, South 40 degrees 10 minutes 39 seconds West, (South 49°-20'-09" West) 782.86 feet to a point in the line of lands now or formerly of the United States of America; thence along the northeasterly line of said lands now or formerly of the United States of America and the northeasterly line of lands now or formerly of the Mayor and Council of Wilmington, North 66 degrees 29 minutes 39 seconds West (North 57°-20'-09" West) 1809.61 feet to a point on the said southwesterly right of way for Interstate 495; thence thereby, North 45 degrees 00 minutes 00 seconds East (North 54°-05'-30" East), 634.68 feet to a point on the said southwesterly side of 4th Street Extended and the point and place of beginning; containing within said metes and bounds 24.634 acres of land, being the same, more or less.

PARCEL NO. 2 - ALL that certain tract, piece or parcel of land being a portion of Fourth Street Extended southeast of Interstate 495, City of Wilmington, New Castle County, Delaware and shown on a plat of survey prepared by VanDemark & Lynch, Inc., Engineers, Planners and Surveyors, Wilmington, Delaware, dated September 18, 1984 and revised through December 1, 1986, Drawing No. 22988-F, Revision 9 and described to-wit:

BEGINNING at the point of intersection of the northeasterly side of Fourth Street Extended and the southeasterly right of way line for Interstate 495; thence from the said point of beginning and along the said northeasterly side of Fourth Street Extended, South 62 degrees 03 minutes 30 seconds East, 1386.32 feet to a point on the old centerline of Hay or Marsh Road; thence crossing said East Fourth Street Extended, the two following described courses and distances: (1) South 41 degrees 52 minutes 30 seconds West, 51.51 feet to a point on the centerline of the said Fourth Street Extended; and (2) South 41 degrees 48 minutes 30 seconds West, 51.50 feet to a point on the southwesterly side of Fourth Street Extended; thence thereby, North 62 degrees 03 minutes 30 seconds West, 1313.84 feet to a point on the said southeasterly right of way line for Interstate 495; thence recrossing said Fourth Street Extended, North 02 degrees 25 minutes 15 seconds East, 110.80 feet to a point on the said northeasterly side of Fourth Street Extended and the point and place of beginning; containing within said metes and bounds, 3.099 acres of land being the same more or less.

EXHIBIT "A"

REC'D FOR RECORD - APR 14 1989 WILLIAM M. HONEY, Recorder