

AGREEMENT FOR WATER MANAGEMENT

AGREEMENT made this 15th day of November, 1982, by and between REFUSE FUELS ASSOCIATES, a Massachusetts Limited Partnership, the general partner of which is Refuse Fuels, Inc., a Massachusetts corporation (hereinafter called "RFA"), having its principal place of business in Haverhill, Massachusetts, the Town of Salem, New Hampshire, a political subdivision of the State of New Hampshire (hereinafter called the "Town") and Spicket River Corporation, a Massachusetts corporation having its principal place of business in Lawrence, Massachusetts (hereinafter called "SRC").

WITNESSETH

WHEREAS, RFA operates a cogenerating powerhouse located in the Arlington Mills Complex in Lawrence and Methuen, Massachusetts (the "Powerhouse"); and

WHEREAS, RFA, in connection with such operation, uses substantial quantities of water from the Spicket River which is located, in part, in the Town (hereinafter called the "River"); and

WHEREAS, SRC is transferring on this date certain dams and water rights located within the Town to the Town; and

WHEREAS, SRC has requested, as a condition of such transfer that the Town maintain the dams and manage the flow of water in the River and appurtenant bodies of water located in the Town in a manner that recognizes the water needs at the Arlington Mills Complex in Lawrence and Methuen, Massachusetts and the Town is agreeable to maintaining the dams and managing such flow of water.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, RFA, SRC and the Town agree as follows:

1.0 Repairs to Existing Dam Structures: The Town covenants and agrees to repair, at its sole cost and expense, Taylor Dam, Wheeler Dam, and Millville Dam. Such repairs shall be approved by applicable state agencies and shall be sufficient in nature so that such structures may be operated safely and in full compliance with all local, state and Federal laws. RFA shall be given reasonable time (not less than 7 days) prior to commencement of such repairs to review and comment on such repair work. The approval of RFA is, however, not required for such work to commence.

2.0 Management of Arlington Mill Reservoir: The Town will make modifications to the control structure on Arlington Mill Reservoir in order to safely retain water in the reservoir to

elevation 162.5 MSL, and will retain water at that level for the period immediately prior to June 1 of each year, subject to the following terms and conditions. During the period from June 1 to September 15 ("Summer Months") of each year the Town agrees that it will discharge a minimum of 28,300,000 cubic feet of water plus inflow into Arlington Mill Reservoir during said period at the following minimum and maximum rates:

a. Minimum discharge during Summer Months: The minimum discharge during the Summer Months shall be 4.5 cubic feet per second (CFS) measured on a weekly basis which shall be discharged into the River. To insure such discharge, the control structure shall be calibrated so that a setting may be determined which will discharge 4.5 CFS measured on a weekly basis. The control structure shall be locked, and access made available to RFA by means of keys, combinations or other devices which will allow RFA only to monitor such control at the 4.5 CFS setting. A control weir shall be maintained downstream of such control structures which may be periodically checked to verify accuracy of discharge as well as to determine flow values from time to time. A constant flow recording device shall be located at the control weir to monitor flows. Such recordings shall be certified by the Town to RFA and will be made available from time to time to RFA upon request.

b. Maximum discharge during Summer Months: The maximum discharge during the Summer Months shall be 4.5 cubic feet CFS measured on a weekly basis plus inflow into the Arlington Mill Reservoir as measured on a control weir upstream of the Arlington Mill Reservoir. The control weir shall be instrumented with a constant flow recording device which will monitor flows. Such recordings shall be certified by the Town to RFA and will be made available from time to time to RFA upon request. If at any time during the Summer Months the Town discharges more than the 4.5 CFS plus inflow, and, as a result thereof, the Town cannot thereafter meet its obligations hereunder, the Town will be obligated to discharge an additional amount of water as required by RFA, which is equal to the amount which was over-discharged (i.e. in excess of 4.5 CFS plus inflow). The Town reserves the right to discharge any amount of water it deems necessary, at its sole discretion, after consultation with RFA seeking a mutually acceptable resolution, in the event of a life threatening occurrence or other emergency which was reasonably anticipated by the Town. This right will not in any way reduce the requirement of the Town to release the minimum flows as set forth above following such events.

c. Call Down Provisions: Notwithstanding anything herein to the contrary, RFA shall have the right to call an additional 11,325,000 cubic feet in increments not larger than 28,300,000 cubic feet after the initial 28,300,000 cubic feet plus inflow have been released. RFA shall furnish proof that

at the time of the additional call down it had already purchased from the City of Lawrence for use at the Powerhouse, an amount of water equal to or greater than the amount requested in such call down.

d. Subsequent Discharge During Summer Months: From and after the time the Town has released water in accordance with paragraphs 2a and 2c of this Agreement, the Town's obligations during the Summer Months shall be to release all inflow into the Arlington Pond up to 4.5 CFS, measured on a weekly basis.

e. Discharge during non-summer months: The minimum discharge to be released from Arlington Mill Reservoir during the non-summer months (i.e. September 16 to May 31) shall be 4.5 CFS measured on a weekly basis, except as provided below. The Town may discharge greater amounts as necessary, however, it will maintain an adequate amount of water to provide the 4.5 CFS minimum throughout the remainder of the year. RFA will maintain the right to enter the control structure and to monitor the discharge control to a setting equivalent to a 4.5 CFS discharge and to make adjustments where appropriate. In the event that (i) the Town has performed in accordance with its obligations hereunder, and (ii) the level of water on the Wheeler Dam at Arlington Pond is less than 155', thereafter, until such level is greater than 155', the Town is obligated only to discharge all inflow into the Arlington Pond up to 4.5 CFS, measured on a weekly basis.

3.0 Management of Millville Reservoir: The Town shall maintain Millville Dam in such a way as to impound water to an elevation of 137.5 MSL on June 1 of each year. RFA shall have the right to call water from Millville Reservoir at any time down to elevation 136 MSL.

WATER MANAGEMENT FEES

4.0 The following water management fees shall be paid to the Town by RFA:

a. Base Fees: \$25,000 per year (the "Base Fee") commencing on the first day of the month following the date on which the repairs to the dams referred to in paragraph 1.0 hereof are completed and the water in Arlington Pond has attained an elevation of 160' MSL, but in no event before 1983 (the "Commencement Date"). Until such water level has been attained, the Town will discharge all inflow up to 4.5 CFS.

b. Adjustment in Base Fees: (i) The Base Fee shall be adjusted once annually from the Commencement Date through the period ending with the 1992 calendar year by the percentage increase or decrease in the "Consumer Price Index for urban wage earners and Clerical workers (Revised Series)" (CPI-w), for the Boston Metropolitan Area as determined and reported

by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"). In determining the percentage change, the base period shall, at all times be the Index for November, 1982. The comparison shall be made to the Index once annually, on November 30, or the earliest working day thereafter. Notification of the new fee shall be sent to RFA in writing by December 15 of that year. The new rates shall apply beginning January 1 of the following year. In the event that such Consumer Price Index is not then available, the parties shall use a comparable index; (ii) The Base Fee shall be adjusted once annually for the period commencing in 1993 and ending in 1997 by 65% of the amount determined in accordance with paragraph b(i) hereinabove; and (iii) The Base Fee shall be adjusted once annually for the period commencing in 1998 and ending in 2002 by 35% of the amount determined in accordance with paragraph b(i) hereinabove. Such fees shall be payable in equal monthly installments on the first day of each month in advance. It is understood that the aggregate monthly payments for 1983 may be less than \$25,000.00, depending on when the payments commence.

5.0 Exclusive Rights: The Town may use Arlington Pond as a supplementary source of water for its water supply system provided that (i) such use does not affect the Town's ability to meet its obligations hereunder, and (ii) the Town has given RFA not less than sixty (60) days prior written notice of such proposed use.

6.0 Maintenance: All piping, valves, dams and apparatus transferred to and repaired by the Town shall be kept in proper condition by and at the expense of the Town. All services shall be maintained or caused to be maintained by the Town.

7.0 Miscellaneous: (a) The benefits and obligations of this Agreement shall commence on the date hereof and shall inure to and be binding upon the successors and assigns of the parties hereto, respectively, for the full term of this Agreement.

(b) RFA shall have the right to assign its rights under this Agreement at any time to the owner, operator, mortgagee, or lessee of the Powerhouse, for security purposes or otherwise, in its sole and absolute discretion. In the event that RFA assigns its rights under this Agreement, RFA shall make it a condition of any such assignment that the assignee shall assume, by written agreement between RFA, the Town and such assignee, the obligations of RFA hereunder whereupon and thereafter RFA shall be under no further obligations to the Town. The Town may not assign this Agreement or sell the dams or water rights granted under the Deed of even date from SRC to the Town.

(c) Notices required or permitted under this Agreement shall be in writing and sent by certified mail, return receipt requested or delivered by hand:

To RFA or SRC: c/o Refuse Fuels, Inc.
P.O. Box 187
Bradford, MA 01830
Attn: President

and SBR Associates
450 Mamaroneck Avenue
Harrison, New York 10528
Attn: Mr. Donald J. Kittredge

With a copy to: Richard J. Kaitz, Esq.
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
One Center Plaza
Boston, MA 02108

To the Town: Town of Salem
Municipal Office Building
Geremonty Drive
Salem, NH 03079
Attn: Town Manager

(d) This Agreement and all provisions hereof shall be governed by and construed in accordance with the laws of the State of New Hampshire.

(e) If any terms or provisions of this Agreement, or portion thereof, or the application thereof shall to any extent be invalid or unenforceable, the remainder of such provision or this Agreement shall not be affected thereby.

(f) The term "inflow", as used in this Agreement, shall mean inflow as measured in accordance with paragraph 2b hereof.

8.0 Term: The term of this Agreement shall commence on the Commencement Date and shall terminate twenty (20) years from the Commencement Date, unless extended as provided herein.

9.0 Extension: RFA or its successors and assigns shall have the right, exercisable by written notice given to the Town not less than six (6) months prior to the expiration of the term of this Agreement to extend the term of this Agreement for one additional term of twenty (20) years upon the same terms and conditions contained herein, except the annual maintenance fee shall be adjusted as follows. In the event RFA exercises its option to extend, RFA shall reimburse the Town for one-half of all costs incurred by the Town during such twenty (20) year period for the normal maintenance, repair and preservation of the Wheeler Dam, its controls and appurtenances provided that (i) in no event shall the portion of such costs paid by RFA exceed, on an annual basis, the fee paid by RFA during the last year of the initial term of this Agreement as provided in paragraph 4 hereof, and (ii) the Town will provide RFA with detailed written evidence of such costs, as and when such costs are incurred. RFA will be

billed annually for its share of such costs and will make payment to the Town within thirty (30) days of receipt of bills therefor.

10.0 Default by RFA: In the event RFA shall fail to make any payments required hereunder and such failure shall continue for sixty (60) days after written notice from the Town to RFA specifying the nature of the failure, the Town may terminate this Agreement.

11.0 Force Majeure: (a) Notwithstanding anything herein to the contrary, in the event of substantial destruction to or damage to Wheeler Dam, or appurtenances thereto maintained by the Town in connection with the control of water, due to acts of God, fire, or other events beyond the reasonable control of the Town, the Town shall have no obligation to rebuild such dam. During the period when such dam is unsuitable for use in accordance with the terms hereof, the Town shall provide RFA with all inflow into Arlington Pond up to the minimum amount for discharges set forth in paragraph 2 of this Agreement. If the Town elects to rebuild Wheeler Dam at any time during the term hereof (including the extension term, if applicable), from and after the date such dam is rebuilt and Arlington Pond is filled to the level of 162.5 feet, the provisions of paragraph 2 of this Agreement shall apply to the management and discharge of water.

(b) In the event of any orders or other governmental action by any state or federal agency having jurisdiction over environmental matters which affect the Town's management and/or discharge of water as provided in paragraph 2 of this Agreement, the Town's obligations hereunder shall be suspended during the pendency of such order provided that (i) the Town shall use its best efforts to contest any such orders or actions, and (ii) the Town shall use its best efforts to release all inflow into the Arlington Pond during such period.

(c) In the event of any court ^{order} affecting the Town's obligations hereunder (i) the Town shall use its best efforts to contest any such order, and (ii) the Town, notwithstanding such order, shall be obligated to release all inflow into the Arlington Pond during such period.

(d) In the event of the Town's failure to provide water in accordance with the provisions of paragraph 2 due to any event described in paragraph (a), (b) or (c) of this paragraph 11, or otherwise, RFA's obligation to make payments to the Town under paragraph 4 of this Agreement shall be proportionately abated. At such time as payments resume, if applicable, such initial payments shall be computed on the basis of the payments in effect for the period during which the last full payment was made (the "Interruption Date"). Thereafter, any change in payments shall be calculated from the Interruption Date, in accordance with paragraph 4 hereof.

(e) In the event the Town has performed in accordance with its obligations hereunder and the level of Arlington Pond is below 150 feet, mean sea level, during such period, the Town's obligation to discharge water hereunder shall be limited to releasing all inflow up to 4.5 CFS.

12.0 Limitation of Town's Damages: In the event of the Town's inability to meet its obligations hereunder, the damages recoverable by RFA shall be limited to the actual cost of receiving alternative water incurred by RFA during the period in which the Town is unable to meet its obligations hereunder. RFA agrees to use its best efforts to obtain water from alternative sources during such period. In the event water is unavailable from alternative sources and the Town cannot meet its obligations hereunder, the Town shall be liable for all damages suffered by RFA due to the failure of the Town to provide water in accordance with its obligations hereunder.

13.0 Mutual Cooperation: Each of the parties hereto agrees to reasonably cooperate with the other parties hereto in furtherance of the purposes of this Agreement. Without limiting the generality of the foregoing, the parties may, by mutual agreement, change the required discharge of water hereunder by written instruments signed by each of the parties hereto.

14.0 Arbitration: In the event of a dispute with respect to the rights and obligations of the parties hereto and the parties inability to resolve such dispute, unless any provision of this Agreement expressly provides to the contrary, the same shall be resolved by arbitration in the State of New Hampshire in accordance with the rules and regulations of the American Arbitration Association then prevailing.

IN WITNESS WHEREOF, RFA, SRC and the Town have executed this Agreement as of the date and year first above written.

REFUSE FUELS ASSOCIATES

It is agreed between the parties, that the Town of Salem will be responsible for the 1982 real estate taxes assessed against the property transferred this day from Spicket River Corporation to the Town of Salem.

BY: Refuse Fuels, Inc.,
General Partner

BY: James E. Ricci
James E. Ricci
Vice President

SPICKET RIVER CORPORATION

BY: James E. Ricci
James E. Ricci
Vice President

TOWN OF SALEM, NEW HAMPSHIRE

BY: William S. [Signature]

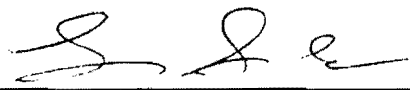
STATE OF NEW HAMPSHIRE

Rockingham, ss.

Nov 15 1982
William T. Knightly Chmn.

Board of Selectmen

Then personally appeared the above-named ~~Donald R. Jutten~~,
~~Town Manager~~ of Salem, New Hampshire and acknowledged the
foregoing instrument to be the free act and deed of said Town
before me,




Notary Public
My Commission Expires:

State of Massachusetts
COMMONWEALTH OF MASSACHUSETTS

Rockingham, ss.

Nov 15, 1982

Then personally appeared the above-named James E. Ricci,
Vice President of Refuse Fuels, Inc., and acknowledged the
foregoing instrument to be the free act and deed of said
corporation, as general partner of Refuse Fuels Associates,
before me,



Notary Public
My Commission Expires:

State of Massachusetts
COMMONWEALTH OF MASSACHUSETTS

Rockingham, ss.

Nov 15, 1982

Then personally appeared the above-named James E. Ricci,
Vice President of Spicket River Corporation and acknowledged the
foregoing instrument to be the free act and deed of said
corporation before me,



Notary Public
My Commission Expires: