



COUNTY OF PRINCE WILLIAM

1 County Complex Court, (MC 460) Prince William, Virginia 22192-9201
(703) 792-6770 Metro 631-1703 Ext. 6770 Fax: (703) 792-4611

FINANCE
DEPARTMENT
Purchasing

DATE: June 20, 2012

REQUEST FOR PROPOSAL: RFP120032

SUBJECT: REQUEST FOR PROPOSALS (“RFP”) FOR THE PROVISION OF A MUNICIPAL SOLID WASTE CONVERSION DEMONSTRATION PROJECT FOR PRINCE WILLIAM COUNTY

PRE-PROPOSAL CONFERENCE

DATE: JULY 11, 2012

TIME: 1:00 P.M. LOCAL TIME

LOCATION: BOARD OF SUPERVISORS’ CHAMBERS
PRINCE WILLIAM COUNTY GOVERNMENT COMPLEX
1 COUNTY COMPLEX COURT, PRINCE WILLIAM, VA 22192

PROPOSALS DUE

DATE: SEPTEMBER 27, 2012

TIME: 3:00 P.M. LOCAL TIME

SUBMIT TO: PURCHASING MANAGER
PRINCE WILLIAM COUNTY
1 COUNTY COMPLEX COURT (MC460)
PRINCE WILLIAM, VA 22192-9201

PLEASE DIRECT CONTRACTUAL QUESTIONS CONCERNING RFP TO:

Bill Cleis
(703) 792-6776
wecleis@pwcgov.org

PROJECT BACKGROUND AND SUPPORTING DOCUMENTS CAN BE FOUND ON THE PROJECT WEBSITE AT:

www.gbbinc.com/princewilliam

An Equal Opportunity Employer

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SECTION I INTRODUCTION

Prince William County (County) has identified its existing landfill as an underused resource with the potential for creating a renewable energy base for the County, contributing to a decrease in overall dependence on fossil fuels and the generation of greenhouse gases. Toward those ends, the County is in the process of creating the Prince William Renewable Energy Park (PWREP) at the landfill to take advantage of emerging renewable energy technologies, such as solar, wind, landfill gas recovery and solid waste conversion.

I.1 Purpose of the Request

To further the PWREP concept, the County is seeking to host a demonstration project of an innovative municipal solid waste (MSW) conversion technology on the landfill site or, as an alternative, at the County's existing Balls Ford Road yard waste composting facility. The two sites are identified on the County locator map in Attachment A. The purpose of this Request for Proposals (RFP) is to identify qualified technology companies (Offerors) that desire to design, build, finance, own and operate the demonstration plant, and to select the one with the best Proposal to provide and operate such a facility.

Offerors shall submit separately-sealed Technical Proposals and Financial Proposals. In the Technical Proposal, Offerors are being asked to provide the County with information about their technology, proposed project, experience, organization and development process (see Section II). Offerors of innovative technologies that meet the minimum Offeror technical requirements (see Section III.4) will be scored and ranked using the evaluation criteria set forth in Section III.4. Offerors must also submit Financial Proposals in a separate envelope with cost information, revenue projections, project pro formas, a financing plan, and contractual conditions (see Section II). Offerors that meet the minimum Offeror financial requirements (see Section III.4) will be scored and ranked using the evaluation criteria set forth in Section III.4. The scores of the two Proposals will then be combined, with the technical evaluation score equal to 65% of the final score and the financial evaluation score equal to 35% of the final score.

The County is looking for technologies that are on the verge of commercialization and that need to be proven at throughputs of 50 to 200 tons per day (TPD) on a continuous basis. Eligible technologies include pyrolysis, gasification, anaerobic digestion, plasma torch or other conversion method producing a fuel or energy product, such as electricity, syngas, synfuel, steam, useable heat and/or other commercial energy outputs. In the evaluation process, the County will give preference to technologies whose primary output is not electricity. The County will not consider traditional incineration with waste heat recovery technologies, of either MSW or refuse-derived fuel, such as stoker-fired, waterwall, fluidized bed or modular incineration (even two-stage starved-air incineration). The County will also not consider mixed-waste composting technologies that use open-air curing processes. The County will be the sole arbiter of whether a technology qualifies as an eligible technology as contemplated in this RFP.

This solicitation provides technology firms with a unique opportunity to gain invaluable technical and operating experience at pre-commercial/commercial levels. This demonstration project will have unparalleled exposure, with the County being less than 30 miles from the nation's capital and the eyes of federal decision-makers, granting agencies and energy experts. The County is eager to support the demonstration and will cooperate with the selected Offeror to maximize the probability of its success.

This RFP, plus the resulting Proposal content and ensuing contract, shall be consistent with and governed by the Prince William County Purchasing Regulations, which can be found at: <http://www.pwcgov.org/government/dept/finance/Documents/008526.pdf>. In the event of an inconsistency between the solicitation and selection requirements set forth in this RFP, versus those set forth in the Purchasing Regulations, the inconsistency shall be resolved by giving precedence to the solicitation and selection requirements of the Purchasing Regulations.

This Section I of the RFP sets forth the general information to all potential Offerors to facilitate preparation of suitable responses to the RFP. The Technical Proposal and Financial Proposal submission requirements are addressed in Section II of this RFP, while the County's process for evaluating Offerors is summarized in Section III. The requirements and process set forth therein shall be binding on all Offerors.

I.2 Background Information

1. The Prince William County Landfill

The County landfill is located at 14811 Dumfries, Rd., in Manassas VA, and currently encompasses approximately 200 acres to the north of State Route 234, just east of its intersection with State Route 619. A landfill site map is contained in Attachment B to the RFP, and a more detailed version of the site plan can be found on the Project Website: www.gbbinc.com/princewilliam. In addition, information about the operations of the landfill, such as the definition of acceptable waste, hours of operation, waste quantities deposited, waste composition, etc. can also be found on the Project Website. A list of documents posted on the Project Website can be found in Attachment C to the RFP.

The landfill footprint, as indicated in Attachment B, is divided into four general areas – the originally-permitted area (known as the existing landfill), and those areas for Phases I, II, and III. The landfill footprint generally runs in an east-west direction and is about 3,200 feet long. The width runs in a north-south direction and ranges from about 1,200 to 1,600 feet. The originally permitted and subsequently closed area covers about 57 acres and is located in the central portion of the site. Phase I of the landfill is currently being capped with final cap construction scheduled for completions in 2013. Operations are currently located on the west side of the original landfill in the Phase II area. Future landfill areas include Phase III and, to the north of the creek, Phase IV, giving a total expected lifespan of the landfill until 2060. Surrounding the landfill cells to the north and west are generally disturbed and undisturbed buffer areas. Across the northern portion of the site flows Powell's Run which empties into Powell's Creek to the east. On the east, in addition to buffer areas, is the Fortistar energy recovery facility, which converts collected landfill gas into electricity for sale to the Northern Virginia Electric Cooperative (NOVEC), the local distribution utility. The landfill disposal area is surrounded by buffer areas to the north and west. Storm water management basins and leachate lagoons are located around the perimeter of the landfill. Along the southern edge of the site, between the landfill and State Highway 234, from east to west are the Prince William County administrative buildings, landfill-related and recycling facilities, and the citizens' convenience center, owned and operated by the Public Works Department.

2. Surrounding Facilities

To the south of the landfill are the County juvenile detention center, the Environmental Services Building, the Mosquito Control Building, the Prince William County Board of Education maintenance facility and bus parking lot, a private salvage yard, athletic fields, and the site of a future church. On a site adjacent to the western edge of the landfill, the County plans to complete

a new high school, which will be similar in size to the existing Patriot High School. Across Route 234 to the south are County animal shelter and the administrative offices of the Prince William County Schools. The electrical usage patterns of those buildings can be found on the Project Website.

3. The Demonstration Site

As noted on the site plan in Attachment B, the site for the demonstration project is located at the eastern edge of the landfill site, and is approximately 5 to 8 acres in size. The site is generally level, and is currently being used as a construction and demolition (C&D) waste processing site. Information on site soils is available on the Project Website. The site is adjacent to the circumferential access road, and has direct access to electricity, sanitary sewerage (10" PVC/DIP pipe) and domestic water supply (12" ductile iron pipe). If allowed under the landfill permit, the site will have access to the nearby leachate lagoons for site storm drainage. The site is also accessible to the LFG pipeline that parallels the access road, and services the space heaters in the Public Works fleet and heavy equipment shop, and the animal crematorium across Route 234 from the landfill. The pipeline is a 6" diameter HDPE line (SDR 17") operating at a pressure of 8-10". The pipeline is fed from the County-owned LFG treatment skid (300 scfm capacity) that provides treated LFG with a dew point of 40°F. Some areas to the north and east of the site may be available for expansion or use by ancillary facilities, such as greenhouses.

The landfill's scale facilities are also located on the circumferential access road close to the landfill entrance, and will be used for selecting, monitoring and weighing the tonnages that will be directed to the demonstration facility. The access road will also provide the ability to remove rejected loads, bypass waste and process residue for disposal on the landfill.

There is an electrical interconnection near the Fortistar LFG energy recovery facility, but that interconnect is at capacity. Fortistar is currently negotiating with NOVEC for a 4.5 megawatt expansion of the existing interconnection to accommodate three additional LFG-fired engines. If the interconnection is expanded for the additional Fortistar engines, there may be no more interconnection expansion capability at the landfill site. If Fortistar and NOVEC do not reach an agreement, the expansion capacity may be available for the demonstration project. NOVEC is investigating the feasibility of off-site interconnection options for use by proposed PWREP electricity-producing facilities at other points on the NOVEC system. When that feasibility study is complete, the results will be made available to Offerors under this procurement. Dominion Resources has two parallel transmission lines crossing the southeast corner of the landfill site, one at 500 kV and one at 115 kV.

4. Alternative Balls Ford Road Site

As an alternative to the landfill site, Offerors can propose to locate their facility at the County's Balls Ford Road yard waste composting site, located at 13000 Balls Ford Road, Manassas. Attachment D contains a site map of the Balls Ford Road site. This site is 28.7 in total acreage, with about 5 to 10 acres in the western portion of the site to be made available for use by this project. This site is currently used to compost yard waste, and as citizen convenience center for residents to drop off MSW and recyclables. If the MSW conversion facility is located at this site, the composting operation may be moved elsewhere. The property has a single truck scale. Water, sewerage and electricity are available adjacent to the site. Two electrical substations are located adjacent to the property, making it a more practical alternative to the landfill site for technologies producing electricity as their primary output. Additional information about the site can be found on the Project Web Site.

If the Balls Ford Road site is selected, the County will divert sufficient numbers of MSW collection vehicles to supply the required tonnage for the demonstration project. Transportation of process residue from the plant to the landfill will be the responsibility of the Offeror at its own expense.

I.3 Scope of Work

1. Offeror Undertakings

The successful Offeror will have complete responsibility for the design, financing, construction, ownership, operation and maintenance of the demonstration facility. The Offeror will also be responsible for applying for and securing all required permits, approvals and permissions. The construction and operation of the demonstration facility must not in any way interfere with the operations of the landfill. The demonstration site must also be secured and kept clean by the Offeror. A site restoration bond must be posted by the Offeror for the removal of the facility at the end of the demonstration and the restoration of the site.

The Offeror is solely responsible for the financial arrangements of the demonstration, including the sale of all of the offtake products. If the Offeror is proposing the sale of electricity to the grid, it will be required to complete all arrangements with the utility, including the interconnection. The County will consider being an offtake user for electricity, subject to the Commonwealth of Virginia's limitations on self-generation (see the Project Website for information on the sale of electricity by independent producers in Virginia). The County will also consider being the customer for syngas for use in its adjacent facilities and/or synfuel for County fleet vehicles (see Project Website for information on fleet size and fuel usage). It is left to the Offeror in its Financial Proposal to propose sale arrangements of any of its energy products to the County. Similarly, the County and the Offeror will negotiate the arrangements for the sale of any recycled materials produced by the demonstration technology, as well as any renewable energy or carbon credits, based upon the Offeror's Financial Proposal.

2. County Undertakings

The County is prepared to provide the following in support of the demonstration project:

- a. The 5-8 acre landfill site (or the 5-10 acre Balls Ford Road site) at a nominal rent and site access to the Offeror;
- b. 50-200 TPD of "as-received MSW" as requested by the Offeror. The County will consider paying the Offeror its "avoided cost" of disposal for the MSW diverted to the demonstration plant. The County estimates its savings for not landfilling a ton of waste to be in the range of \$15/ton to \$20/ton;
- c. Easements for the export of the demonstration facility's energy products at no cost to the Offeror;
- d. Disposal of process residue, non-hazardous bypass waste and unacceptable waste at no cost to the Offeror (not including transportation cost to be borne by Offeror)
- e. Use of the County's scale facilities at no cost to the Offeror;
- f. Cooperation in obtaining permits, approvals and permissions; and
- g. Assistance with grant applications or financial incentive programs.

3. Contractual Arrangements

The relationship between the County and the selected Offeror will be embodied in a Service Agreement. A draft of the Service Agreement is supplied in Attachment F of the RFP. The County anticipates a contract term of 5 years of operation following the completion of construction and start-up of the facility. If the demonstration project is successful, the term can be extended for additional 10-year terms by mutual agreement. The County will not require a take-or-pay commitment on the part of the Offeror. The Offeror must abide by any rules of operation the County has in force for users of the landfill.

The legal operation, safety and environmental compliance of the demonstration facility will be the sole responsibility of the Offeror, and it will hold the County harmless from any claims made in that respect. The County will be responsible for any pre-existing environmental conditions on the site, but the Offeror will be responsible for any environmental impairment of the site due to its activities.

The County will have the option to have a portion of the County's transaction costs financed through the project. If the County were to execute this option, such costs in an amount up to \$300,000 would be paid to the County by the successful Offeror at the start of construction. The final amount of the transaction costs to be paid to the County will be negotiated with the selected Offeror.

The County will cooperate in framing the contractual documents to the extent allowed by law to assist the successful Offeror secure its financing arrangements. Any requirements the Offeror may have in that regard should be stated in its Financial Proposal (see RFP II.5.6).

I.4 Requirement for Vendor Registration

In order to submit a response to this solicitation, a Offeror must be a registered Prince William County vendor. Vendors are encouraged to register themselves over the internet at:

www.pwcgov.org/eServices/eProcurement

If internet access is not available or problems are experienced during registration, contact the Purchasing Office shown on the front page of the solicitation.

I.5 RFP Questions and Contacts

Address all questions concerning any matters associated with this RFP to the County Contact Person:

Name: Bill Cleis
Address: Prince William County
Purchasing Division
1 County Complex Court
Prince William, VA 22192
Telephone: (703) 792-6776
Facsimile: (703) 792-4611
Email: wecleis@pwcgov.org

Additionally, questions concerning the technical requirements of this RFP should also be sent to the representative of the County's procurement advisor, Gershman, Brickner & Bratton, Inc.:

Name: Tom Reardon, Vice President, Gershman, Brickner & Bratton, Inc.

Address: 8550 Arlington Boulevard, Suite 304
Fairfax, VA 22031-4620
Telephone: 703-573-5800
Fax: 703-698-2093
Email: TReardon@gbbinc.com

The Offeror is required to submit the question(s) in writing. Written responses, including the questions, will be provided to all Offerors on the County's website at www.pwcgov.org/eservices/eprocurement. Nothing stated or discussed orally during any Q&A, telephone conversation, interview or other session will alter, modify, or change the requirements of the RFP. Only those interpretations, explanations, or clarifications that are incorporated into a written amendment to this RFP and issued by the County should be considered by Offerors.

Other than with the written consent of the County Contact Person, or as specifically directed by the County Contact Person, all Offerors, including any persons affiliated with or in any way related to an Offeror, are strictly prohibited from contacting County employees, elected officials or advisors on any matter having to do in any respect with this RFP other than as contemplated herein. Failure by any Offeror to adhere to this prohibition may, at the sole discretion of the County, result in disqualification and rejection of any Proposal.

I.6 Pre-Proposal Conference and Site Visits

A pre-proposal conference will be held on July 11 at 1:00 p.m. local time.

The location of the pre-proposal conference is:

The Board of Supervisors' Chambers
Prince William County Government Complex
1 County Complex Court
Prince William, VA 22192

Those Vendors interested in attending should contact:

Name: Bill Cleis
Telephone: (703) 792-6776

Attendance at the pre-proposal conference is not mandatory, but is highly recommended. Immediately following the pre-submittal conference there will be a tour of the sites for the demonstration project. Offerors interested in arranging for additional site visits should contact:

Name: Bernard Osilka
Telephone: 703-792-7966
Email: bosilka@pwcgov.org

I.7 Posting of Award

Notice of Contract award(s) made as a result of this solicitation will be posted on the Prince William County Web Page at www.pwcgov.org/eServices/eProcurement.

SECTION II PROPOSAL REQUIREMENTS

All information requested and the requirements of this RFP must be supplied in writing in order for the County to consider the Technical Proposal and Financial Proposal complete.

II.1 Effect of Proposal Submission

Submission of a Proposal shall constitute agreement to include the provisions contained in this RFP and/or in the Offeror's Technical Proposal and Financial Proposal in any contract negotiated between the parties unless an exception or clarification to any such provision is clearly indicated in the Financial Proposal labeled "Clarifications and Exceptions" in the Contractual Relationship Section of the RFP (See Section II.5.6) and each exception or clarification specifically refers to the applicable objective or specification included in the Scope of Work in Section I.3.

By submitting a Proposal, the Offeror also agrees that it is satisfied from its own investigation of the conditions and requirements to be met, that it fully understands its obligation, and that it will not make any claim for or have the right to cancellation of or relief from the contract because of any misunderstanding or lack of information.

II.2 Due Date and Copies Returned

Responses are due no later than August 15, 2012 at 3:00 P.M. local time. The County shall not accept Proposals after that date and time.

All firms are to submit the required copies of their Proposals in two separately sealed envelopes as follows:

<u>Description</u>	<u>Copies</u>
Technical Proposal	One (1) original and eight (8) copies
Financial Proposal	One (1) original and eight (8) copies

In addition each Offeror must submit an electronic version of the entire Proposal on a CD/DVD or jump drive.

Proposals received in the Purchasing Office after the date and time prescribed shall not be considered for evaluation, and shall be returned unopened to the Offeror.

The separately-packaged Technical Proposal and Financial Proposal must be placed in a clearly labeled package marked as follows: "RFP No. RFP120032".

Deliver the sealed Proposal to:

Adam Manne, Purchasing Manager
Finance Department - Purchasing Office
Prince William County
1 County Complex Court (MC460)
Prince William, Virginia 22192-9201

II.3 Confidentiality

The County shall not discuss or disclose Proposals received during the selection process, or otherwise disclose them to the public except as may be required under the Federal and State Freedom of Information Acts and other relevant law (i.e. Virginia Public Procurement Act). Proprietary information that is submitted must be clearly identified as such at the time of submission, and shall not be disclosed to the public or competing Offerors at any point in time.

No responsibility shall be attached to the Purchasing Manager or purchasing representatives for the premature opening or disclosure of a Proposal not properly addressed and identified.

II.4 Technical Proposal Format Instructions

The County will follow the evaluation process described in Section III of this RFP. In order to enhance this process and provide each Offeror an equal opportunity for consideration, adherence to a standardized Technical Proposal format is required. The format of each Technical Proposal must contain the following elements in the order listed below, organized into separate sections/chapters:

1. Cover/Title Page
2. Cover Letter
3. RFP Submission Form
4. Description of Proposed Technology
5. Project Development Plan
6. Offeror Experience and Qualifications
7. Project Team Personnel Qualifications and Experience
8. References
9. Supporting Material

These elements parallel the basis for the County's evaluation of the Offeror and its technology. As such, the Technical Proposal should contain sufficient information for the County to evaluate the Offeror's ability to meet the minimum technical requirements and criteria outlined in Section III. The County is not responsible for failure to locate, consider and evaluate qualification factors presented outside of this format. Failure to follow the prescribed format may lead the County to disqualify the Offeror.

The following nine numbered paragraphs provide guidelines to each Offeror for information to provide in its Technical Proposal:

1. Cover/Title Page

The cover/title page must contain the name/purpose of this RFP, which is for "Provision of a Municipal Solid Waste Conversion Demonstration Project for Prince William County." The Cover/Title Page should state that it is the Technical Proposal, and identify the Offeror and each Offeror Team Member organization by company name and main business location.

2. Cover Letter

The cover letter must be signed by an Offeror representative empowered to enter into contracts with the County on the Offeror's behalf. It must contain at least the following information:

- a. Full name of the Offeror, that is, the entity proposed to enter into an agreement

with the County;

- b. Identification of each Offeror Team Member organization and a discussion of the planned role for each firm;
- c. An unqualified statement confirming that the Offeror meets the minimum technical requirement described in Section III.4.a of this RFP;
- d. A statement that, subject to any conditions included in Offeror's Proposal, Offeror is interested in participating in the procurement of the services outlined in the RFP;
- e. A summary of the proposed technology, briefly describing its status, the locations at which the technology has been used, any outstanding features of the technology and its applicability as a Prince William County demonstration project; and
- f. A summary of the project proposed for the Prince William site, including its size, major equipment, energy products and related information.

The cover letter will serve, in effect, as an executive summary of the Technical Proposal and should be no longer than four (4) pages single spaced. The cover letter should not contain any photographs or illustrations.

3. RFP Submission Form (see Attachment E)

Each Offeror submitting a Technical Proposal must complete and include the RFP Submission Form regarding company identification and ownership disclosures, conflict of interests, and collusion. The certification on this form must bear an original signature. Failure by the Offeror to include this RFP Submission Form with its Technical Proposal may be cause for rejection of the Technical Proposal. A brief explanation of the certifications on the form follows:

- **Conflict of Interests**

This solicitation is subject to the provisions of Section 2.2-3100 et seq., VA Code Ann., "State and Local Government Conflict of Interests Act". No member of the Board of County Supervisors, or any advisory or judicial body of Prince William County, or any other officer or employee of Prince William County, or any member or employee of any agency, commission, board, or corporation, or the spouse or any other relative who resides in the same household as any of the foregoing, may be a contractor or subcontractor in connection with any bid, or have a personal interest therein as defined by Section 2.2-3101 VA Code Ann.

- **Collusion**

All Technical Proposals submitted must be made without prior understanding, agreement, or connection with any corporation, partnership, firm, or person submitting an Technical Proposal for the same requirements, without collusion or fraud. Collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards.

- **Ownership**

The County requires all firms submitting Technical Proposals to indicate their form of organization and current principal place of business. In addition, Technical Proposals must list the names and addresses of any ownership interest of 5% or more in the firm(s) responding to this RFP.

4. Description of Proposed Technology

This section of the Technical Proposal allows the Offeror to present fully the system and facility being offered as the MSW conversion demonstration project. It should completely describe the type of waste conversion technology being proposed, including the methodology, size, throughput, inputs and outputs. The description should include, at a minimum, a process flow diagram, general equipment arrangement, mass and energy balances, system performance data, and an indicative generalized site plan. If applicable, plans for interconnecting with the electrical utility should be included. Any unique or outstanding feature of the technology should be presented, along with a description of the energy products produced, the air emissions and waste products generated and how they will be managed, any pre-processing of MSW required prior to its introduction to the technology, and the nature and amount of process residue produced.

At a minimum, the Offeror must present enough material to allow the County to determine whether the Offeror's technology is eligible for the demonstration project as described in Section I.1. The material presented should be descriptive only – any calculations, formulae, academic papers, articles, test results, press releases or other supporting material should be referenced and included in the Supporting Material section at the end of the Technical Proposal.

5. Project Development Plan

This section of the Technical Proposal should describe in detail the actual facility that the Offeror intends to develop, design, build, finance, own, operate and maintain at the landfill. The description should include a discussion of the technical development and implementation of the proposed project, and provide sufficient detail to demonstrate the Offeror's understanding of the issues and constraints associated with the project's development and implementation. At a minimum, the project development plan shall include the following information:

- a. **Technical Information:** the equipment, systems and processes that the Offeror intends to use, including a description of the technologies being employed, the nature and amounts of the products to be produced, description of all functional equipment units and capacities, a process flow diagram and mass and energy balances.
- b. **Site and Structures of the Facility:** a site plan showing how the site will be utilized and the amount of land required (including expansion, if desired), description of the structures proposed for the site and a floor plan with the proposed layout for the primary pieces of equipment, preliminary elevations and sections of the buildings and stacks (if any).

- c. **Environmental Impacts:** a description of the environmental impacts associated with the facility, including airborne emissions, the source and quantity of water needed for facility operations, and the disposal of any stormwater, wastewater or solid wastes. Included should be a description of the methods to be used to avoid, minimize or mitigate those impacts, including potential impacts on surrounding areas as a result of noise, odor, dust, and other factors.
- d. **Required Permits:** identification of all permits or permit modifications that will be required for the demonstration facility and any associated structures or activities, including the corresponding permitting agency and the estimated time frame for obtaining each permit.
- e. **Schedule:** a high-level milestone schedule projecting the schedule of events and activities required for undertaking the entire project from contract execution through permitting, facility startup and operation, using available scheduling software. The schedule should identify all assumptions being made about start dates and third-party activities and review periods.

6. Offeror Experience and Qualifications

The purpose of this section is to provide the County with an overview description of the Offeror's organization and the Offeror's current and prior experience in applying its technology to MSW conversion. The Offeror should:

- a. Summarize the organizational/legal structure of the company plus its date of organization, a brief business history, predecessors (if any), current principal place of business, size, number and types of employees, and any other relevant organizational information. If the Offeror Team includes other organizations (e.g., major technology providers, joint venture partners, guarantors, etc.), such information must be provided for each Offeror Team organization.
- b. Present the Offeror's experience record in applying the technology, including the location, size (ton/day, ton/year, etc.), feedstock, operating history and performance characteristics of each installation. For each cited installation, Offeror should describe:
 - i. the nature of its involvement with the installation,
 - ii. the name of the owner and/or host of the facility, if not the Offeror, and contact information for each of those entities,
 - iii. the length of time that the facility has been in operation, including the start date and end date (if no longer in operation),
 - iv. the nature and amount of all of the products produced by the technology, including the off-take customers and sales history of the installation,
 - v. the compliance with regulatory and environmental requirements, and
 - vi. the reason for any cessation of operations.

If an installation cited is not the Offeror's, then the Offeror should identify the entity that developed that installation and the relationship of that entity to the Offeror.

In presenting its experience record, Offerors should be mindful of the minimum technical requirements presented in Section III for establishing eligibility for further consideration, and make sure that the information presented allows the County to make that eligibility determination.

Offerors may cite installations that did not use MSW as their feedstock, but such installations will not be considered when evaluating the Offeror's compliance with the minimum technical requirements of Section III.4.a.

7. Project Team Personnel Qualifications and Experience

This section must include the qualifications of the key management and technical staff of the Offeror, especially those involved with the development of the technology being offered. For each individual, identify his/her title, general responsibilities, proposed role in the execution of the demonstration project and qualifications, including a complete resume or description of his/her education, professional experience and length of time with the Offeror or other Offeror Team organization.

8. References

In this section, Offerors should provide the County with at least four (4) references that the County can use to attest to the information provided in the Technical Proposal. Such references must include:

- a. At least one reference from a key individual not affiliated with the Offeror for the installation that the Offeror is citing to meet the minimum technical requirements;
- b. One (two when possible) references of bank or institutional lenders that currently or within the past two years has/have extended credit to the Offeror; and
- c. At least one reference of a major, independent supplier or customer of the Offeror.

For each reference, the Offeror should provide its name, current address, telephone number and email address. Failure to provide references and required information regarding previous experience will be sufficient grounds for rejection of a Technical Proposal.

9. Supporting Materials

In this section, Offerors can include material that details or amplifies the description of its technology, project and experience. Offerors can subdivide this section in any way that conveniently organizes its supporting material.

II.5 Financial Proposal Format Instructions

As with the Technical Proposal, the County will follow the evaluation process described in Section III of this RFP for the Financial Proposal. In order to enhance this process and provide each Offeror an equal opportunity for consideration, adherence to a standardized Financial Proposal format is required. The format of each Financial Proposal must contain the following elements in the order listed below, organized into separate sections/chapters:

1. Cover/Title Page
2. Cover Letter
3. Pricing Proposal

4. Offeror Financial Capabilities
5. Project Financing Plan
6. Contractual Relationship
7. Supporting Material

These elements parallel the basis for the County's evaluation of the Offeror's Financial Proposal. As such, the Financial Proposal should contain sufficient information for the County to evaluate the Offeror's ability to meet the minimum financial requirements and criteria outlined in Section III. The County is not responsible for failure to locate, consider and evaluate qualification factors presented outside of this format. Failure to follow the prescribed format may lead the County to disqualify the Offeror.

The following seven numbered paragraphs provide guidelines to each Offeror for information to provide in its Financial Proposal:

1. Cover/Title Page

The cover/title page must contain the name/purpose of this RFP, which is for "Provision of a Municipal Solid Waste Conversion Demonstration Project for Prince William County." The Cover/Title Page should state that it is the Financial Proposal, and identify the Offeror and each Offeror Team Member organization by company name and main business location.

2. Cover Letter

The cover letter must be signed by an Offeror representative empowered to enter into contracts with the County on the Offeror's behalf. It must contain at least the following information:

- a. Full name of the Offeror, that is, the entity proposed to enter into an agreement with the County;
- b. An unqualified statement confirming that the Offeror meets the minimum financial requirements described in Section III.4.b of this RFP; and
- c. A summary of the Offeror's financial capability, or if appropriate, the identity of the Offeror's guarantor and the guarantor's financial capabilities.

3. Pricing Proposal

This section of the Financial Proposal should present the Offeror's proposal for any financial relationships between it and the County for the demonstration project. This may include proposed tipping fees (including any escalation thereof) for waste processed at the facility, pricing and contracting for any energy or other products produced by the facility, disposition of revenues from recycled materials and/or allocation of carbon/renewable energy credits.

If the Offeror intends to sell any products on the open market, this section should include a description of the products, the quantities to be sold, the anticipated markets and the means of delivering the products to market.

If the Offeror anticipates generating and selling electricity to a utility, the Financial Proposal should include a discussion here of the proposed means of exporting the energy, the identification of the buyer and the anticipated pricing of the output.

The Financial Proposal should include a description of the Offeror's experience in marketing the end use products of the Offeror's technology (e.g., electricity, steam, biofuel, syngas, etc.). Success in negotiating contracts for selling end use products on previous projects shall be identified and described.

4. Offeror Financial Capabilities

In this section, the Offeror should provide financial information that the County can use to determine the Offeror's financial capabilities and its ability to comply with the minimum financial requirements of Section III. Such information includes, as available:

- a. Documentation and discussion of the financial condition and capacity of the firm and its financial resources;
- b. Annual reports and audited financial statements, including income statements, balance sheets, and changes in financial position, for the past three (3) years;
- c. The most recent Form 10-Q filed with the SEC or, if not regulated by the SEC, the latest quarterly financial report and a description of any material changes in financial position since the last annual report;
- d. The prospectus or offering statement for the firm's latest securities offering;
- e. The firm's most recent Dun & Bradstreet and/or Value Line reports; and
- f. Current rating of the firm's senior and subordinate debt, if any, and any rating agency reports issued during the last five years.

All financial documents should be referenced and included in the "Supporting Materials" section at the end of the Financial Proposal. If an Offeror is proposing to use a parent company or financial guarantor in order to meet the minimum financial requirements, then such financial information must be provided for the guaranteeing organization. It is the sole responsibility of the Offeror to provide sufficient financial information to the County so that the County can make a determination as to whether the Offeror or its guarantor meets the minimum financial requirements for this demonstration project.

Offerors should provide any and all other information that they deem appropriate to reflect the Offeror Team's financial capability. Should the Offeror or its guarantor consist of an international entity or entities, the Financial Proposal should include financial statements in English that (i) meet the submittal format requirements, (ii) are comparable to those required above and (iii) should include a discussion as to how the County will be able to enforce performance of a Guaranty from such foreign entity.

5. Financing Plan

The Offeror must provide information that demonstrates its ability to obtain financing for the demonstration project of the size and type being offered in its Financial Proposal to the County. A generalized financing plan should be presented identifying sources of debt and equity financing, together with letters of support or other documentation attesting to the availability of such financing. The financing plan should also include any grant or other financial incentive programs that the Offeror intends to pursue to help finance its project.

6. Contractual Relationship

Prince William County expects to enter into a Service Agreement in a form substantially as attached hereto as Attachment F. All clauses in Attachment F, Article XII are mandatory. The Contractor's review and acceptance of these terms shall be required as a condition of proposal acceptance. Failure to accept these terms shall disqualify the Offeror from further consideration.

The County will consider modifications proposed by Offerors, other than material modification or deletion of clauses in Attachment F, Article XII. Proposed modifications to the draft Service Agreement in Attachment F are to be highlighted and submitted in this section of the Offeror's Financial Proposal. The County's review and acceptance of the proposed terms shall be part of the evaluation of the Offeror's Financial Proposal.

Offerors are reminded that the Proposal will form the basis of the contract negotiations phase between the County and the selected Offeror. Accordingly, the Proposal should be written in a concise, forthright manner, and respond in the manner described in this Section II of the RFP. The County reserves the right to incorporate all statements and claims made in the Proposal (including any attachments) in the final Service Agreement.

7. Supporting Material

In this section, Offerors can include material that details or amplifies the description of its financial information. Offerors can subdivide this section in any way that conveniently organizes its supporting material.

II.6 Non-Discrimination Against Faith-Based Organizations

The Prince William County Government does not discriminate against faith-based organizations in procuring supplies and services.

II.7 Immigration Reform and Control Act of 1986

The Contractor certifies that it does not and will not during the performance of this contract violate the provisions of the Federal Immigration Reform and Control Act of 1986 which prohibits employment of illegal aliens. The Contractor agrees that its employment of any person without legal status may subject it to termination of this contract for default and agrees to include a similar provision in any subcontract.

SECTION III SELECTION OF CONTRACTOR

This Section of the RFP outlines the County's process for evaluating Offerors.

III.1 Approving Authority

The Approving Authority for this RFP is the Director of Public Works, and the authority to approve the demonstration project is contingent upon appropriation of funds for the total amount of the Contract within each fiscal year.

III.2 Selection Committee

For this RFP, the County will appoint a Selection Committee to review and evaluate all Proposals received. In turn, the Selection Committee will make its recommendation for selection of a firm to the Approving Authority.

III.3 Basis for Selection

The Selection Committee will base its recommendation on the Evaluation Criteria set forth below in Section III.5. The Committee shall conduct an evaluation based on information set forth in the Offeror's Proposal, past performance, and references of each firm. The County will evaluate only Offerors who meet or exceed the minimum technical and financial requirements listed below in Section III.4.

After scoring each qualified Offeror on its Technical and Financial Proposals, the County will combine the scores into a final evaluation score by weighting the Technical Proposal score by 65% and the Financial Proposal score by 35%. By doing so, the County will generate a ranking of Proposals from highest to lowest.

Based on the results of the preliminary evaluation, the highest rated firm(s) may be invited by the County Purchasing Manager to make oral presentations to the Selection Committee. Such presentations may include, but are not necessarily limited to, explanations of the proposed approach, work plan, and qualifications of the firm. This Selection Committee will then conduct a final evaluation of the firms.

The award will be made to the responsible Offeror whose offer conforms to the solicitation and is most advantageous to the County, cost or price and other factors considered. After review and evaluation, and based on its sole discretion, the County reserves the right to reject any or all Proposals received in response to this request or to cancel the solicitation. The County will not compensate Offerors for the cost of Proposal preparation whether or not an award is consummated.

III.4 RFP Minimum Requirements

The evaluation of Proposals will be conducted in phases. First, all Offerors will be evaluated as to whether they meet the Minimum Technical Requirements and Minimum Financial Requirements. Second, those Offerors that meet those standards will then be ranked according to the Evaluation Criteria listed below in Section III.5.

The County will be the sole arbiter of whether the Offeror has met the minimum technical and financial requirements. The County retains the right to request additional information from Offerors or parent organizations, guarantors, investors or financing institutions whose bona fides have been provided by the Offeror to assist it in its evaluation. Should proposals require additional clarification and/or supplementary information, firms should be prepared to submit such additional clarification and/or supplementary information, in a timely manner, when so requested.

The County Purchasing Manager may arrange for discussion with firms submitting Proposals, if required, for the purpose of obtaining additional information or clarification.

a. Minimum Technical Requirement:

The Offeror must have at least one facility using its proposed technology that has processed MSW at a throughput rate of at least five (5) TPD for at least 6 consecutive months at an availability of 75% or greater. In the Offeror Qualifications and Experience Section of its Technical Proposal (or with Supporting Materials), the Offeror must present sufficient data to enable the County to make the determination of whether it has met this minimum technical requirement.

b. Minimum Financial Requirements:

(1) As a working capital requirement, the Offeror must have a net worth of at least four million dollars (\$4 million), or must be able to demonstrate that it can reach that net worth if it is selected for this demonstration project. In lieu of the net worth requirement, the Offeror can have its obligations under the Service Agreement guaranteed by a parent or other organization that itself meets this net worth requirement. Should the Offeror opt to provide the County with such guarantee, the Offeror must submit in its Financial Proposal documentation attesting to the existence of the guarantee in sufficient detail to satisfy the County of its adequacy.

(2) In addition, the Offeror must demonstrate its ability to obtain financing for its demonstration project, with potential equity of the lesser of (a) ten million dollars (\$10 million) or (b) 50% of the projected capital cost of the demonstration facility. The County will depend solely on material supplied by the Offeror in the Financing Plan Section of its Financial Proposal (and Supporting Material) to evaluate the Offeror's compliance with the minimum financial requirements.

III.5 Evaluation Criteria

a. Technical Proposal

The Selection Committee will base the evaluation of Technical Proposals that have met the minimum requirement on the following criteria, giving each Technical Proposal a score of up to 100 points:

<u>Maximum Points</u>	<u>Criterion</u>
30	Technology Applicability and Maturity (see Section II.4.4)
30	Project Development Plan (see Section II.4.5)
25	Offeror Experience and Qualifications (see Section II.4.6)
15	Project Team Personnel Qualifications (see Section II.4.7)
100	

The Selection Committee may make such reasonable investigations as it deems proper and necessary to determine the ability of the firm to perform the work. The Selection Committee and/or its representative(s) reserve the right to inspect the firm's installations to satisfy questions regarding the firm's capabilities.

b. Financial Proposal

The Selection Committee will base the evaluation of Financial Proposals that have met the minimum requirements on the following criteria, giving each Financial Proposal a score of up to 100 points:

<u>Maximum Points</u>	<u>Criterion</u>
30	Price Proposal (see Section II.5.3)
30	Offeror Financial Capabilities (see Section II.5.4)
25	Project Financing Plan (see Section II.5.5)
<u>15</u>	Contractual Relationship (see Section II.5.6)
100	

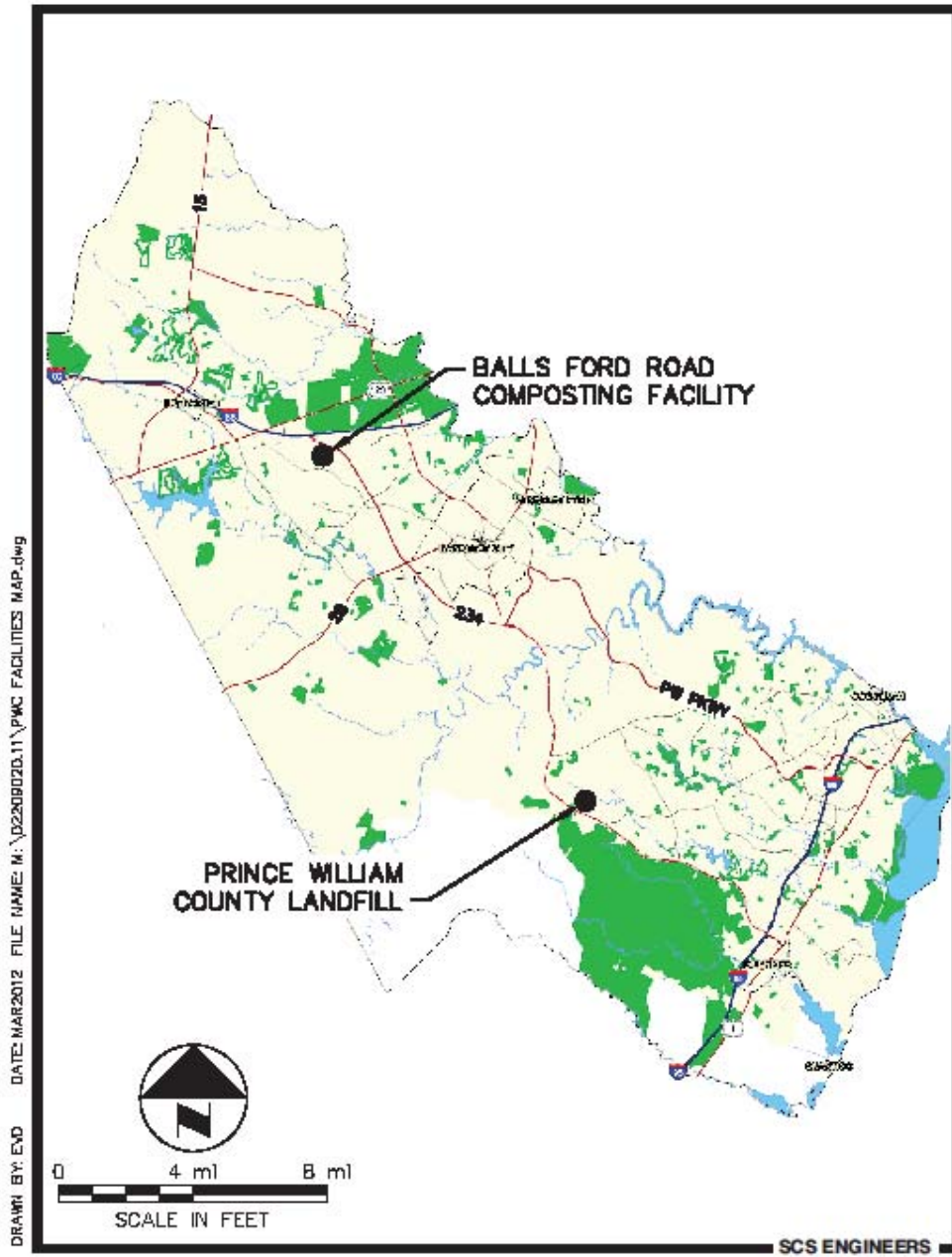
III.6 Contract Development

Once an Offeror is tentatively selected based on the Evaluation Criteria, the County reserves the right to negotiate further with the selected firm. As a result of this contract discussion and negotiation, the County may propose a contract which amends the scope of the RFP or the firm's proposal prior to signing the contract. At the same time, this RFP and the firm's proposal may be incorporated by reference directly into the final Service Agreement.

The Service Agreement, this RFP, and the Offeror's proposal submission in response thereto shall constitute the whole agreement between the parties.

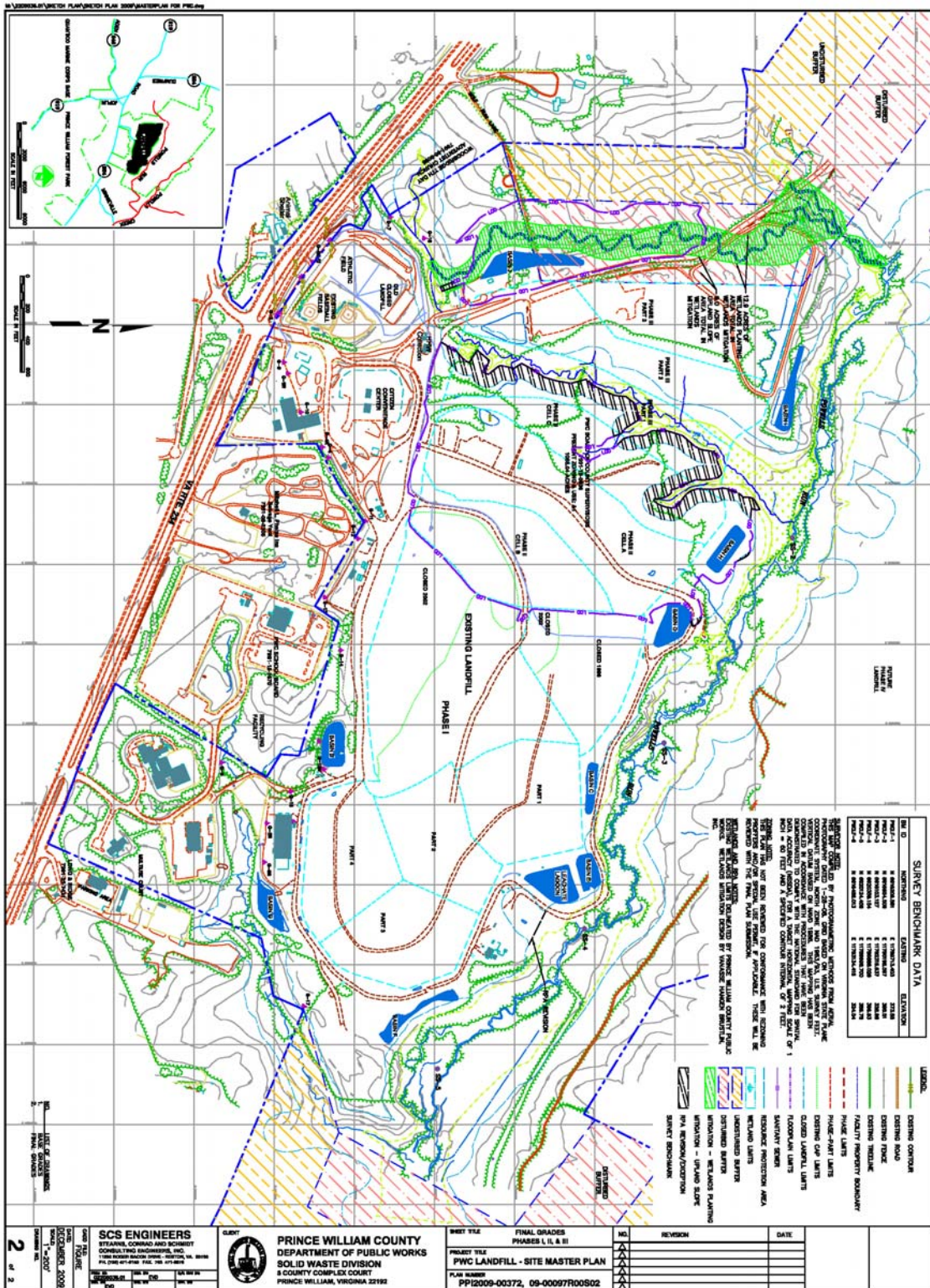
If a satisfactory contract cannot be negotiated with the highest ranked firm, negotiations will be formally terminated. Negotiations shall then be undertaken with the second ranked Offeror and so on. The Selection Committee will make appropriate recommendations to the Approving Authority prior to actual award of the contract.

ATTACHMENT A – SITE LOCATIONS MAP



PRINCE WILLIAM COUNTY SOLID WASTE FACILITY LOCATIONS

ATTACHMENT B – LANDFILL SITE MAP

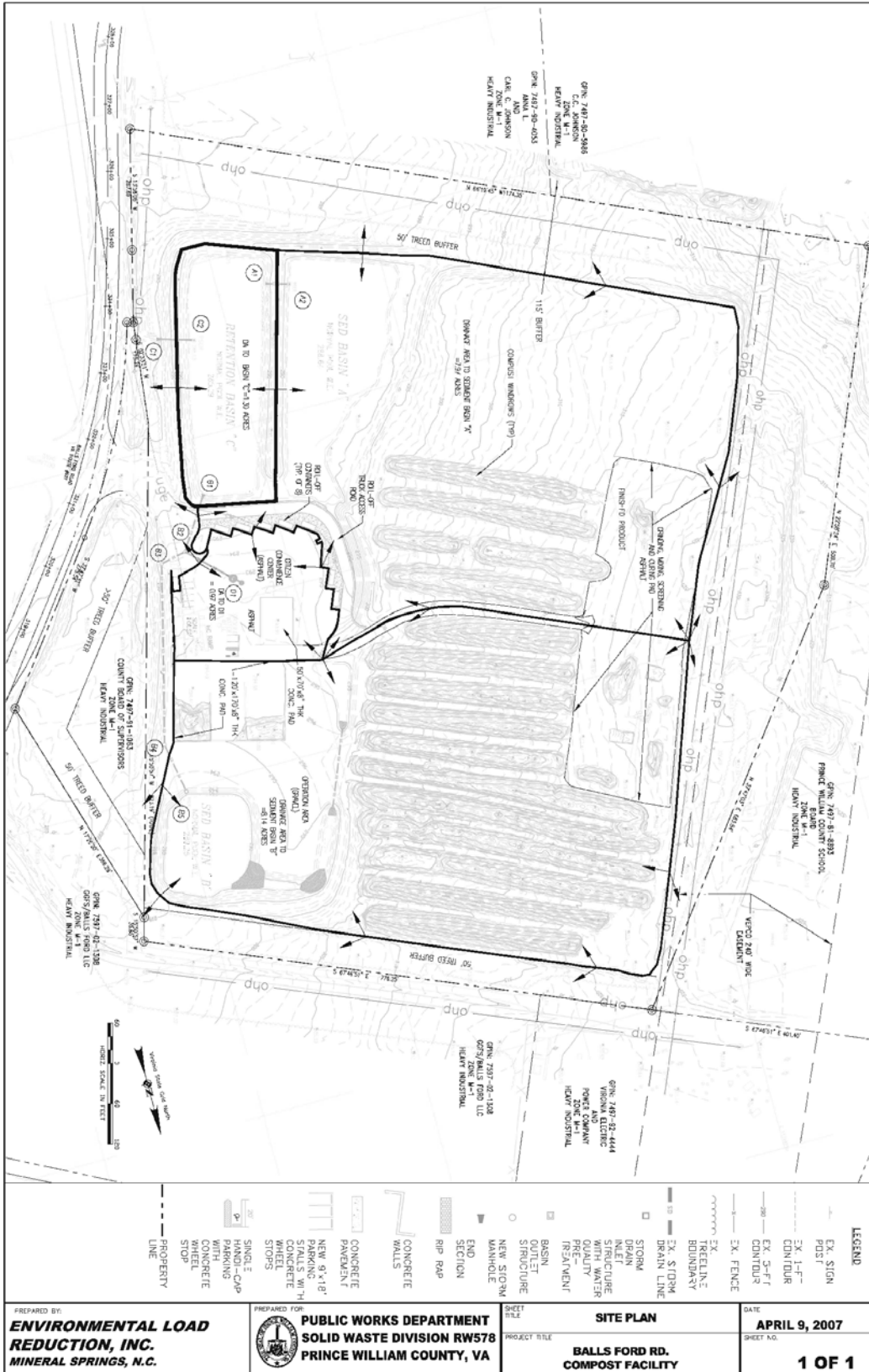


ATTACHMENT C – DOCUMENTS ON THE PROJECT WEBSITE
As of June 15, 2012

Document Title

Balls Ford Permit Site Plan
Balls Ford Plan 2
Cannon Industrial Park Lots A and B
EPA letter to Prince William County
GBB Draft Report - Prince William Renewable Energy Park -_Phase II - 6-2-11
GBB Final Report - Prince William Renewable Energy Park
Landfill Master Plan (11x17)
Landfill Master Plan (30x42)
Landfill Master Plan Vision Areas (11x17)
Montgomery County, Maryland - Waste Composition Sampling and Analysis Study - 2008-09
Prince William County - Admin Security Electrical
Prince William County - Calendar Year 2011 Diesel Fuel usage
Prince William County - Facilities Map
Prince William County - Fleet Management Electrical
Prince William County - FY11 Fuel Report Summary - Final
Prince William County - Juvenile Detention Center. Electrical
Prince William County - Landfill Admin Building Electrical
Prince William County - Landfill Weather Data - Jan 11 - Dec 11
Prince William County - Landfill Weather Data - March 09 - April 10
Prince William County - Landfill Weather Data - March 09 -Dec 10
Prince William County - Leachate Pump Electrical
Prince William County - LF Potential Solar Panel Areas
Prince William County - Operations Facility Electrical
Prince William County - Operations Facility Electrical 2011- partial
Prince William County - Solid Waste - B&G Storage Electrical
Prince William County Landfill - FINAL GRADES
Prince William County Sanitary Landfill Monthly Operations Report - CY09
Prince William County Sanitary Landfill Monthly Operations Report - CY10
Prince William County Sanitary Landfill Monthly Operations Report - CY11

ATTACHMENT D – BALLS FORD ROAD SITE MAP



PREPARED BY:
**ENVIRONMENTAL LOAD
 REDUCTION, INC.**
 MINERAL SPRINGS, N.C.

PREPARED FOR:
**PUBLIC WORKS DEPARTMENT
 SOLID WASTE DIVISION RW578
 PRINCE WILLIAM COUNTY, VA**

SHEET
 TITLE
SITE PLAN
 PROJECT TITLE
**BALLS FORD RD.
 COMPOST FACILITY**

DATE
APRIL 9, 2007
 SHEET NO.
1 OF 1

ATTACHMENT E - RFP SUBMISSION FORM

Name of RFP: **REQUEST FOR PROPOSALS – PART I FOR THE PROVISION OF A MUNICIPAL SOLID WASTE CONVERSION DEMONSTRATION PROJECT FOR PRINCE WILLIAM COUNTY**

RFP Number: RFP120032

SECTION I - COMPANY IDENTIFICATION AND OWNERSHIP DISCLOSURE

Company:	_____	Contact Person:	_____
Address:	_____	Title:	_____
	_____	Telephone No:	_____
Remittance	_____	FAX No:	_____
Address:	_____	Email:	_____

Indicate Which: Corporation Partnership Sole Prop.
Minority Owned/Controlled Bus. Yes No Small Bus. Yes No

Organized under the laws of the State of _____
Principal place of business at _____

Following are the names and address of all persons having an ownership interest of 5% or more in the Company: (Attach more sheets if necessary)

Name	Address
_____	_____
_____	_____

SECTION II - CONFLICT OF INTERESTS

This solicitation is subject to the provisions of Section 2.2-3100 et. seq., Virginia Code Annotated, the State and Local Government Conflict of Interests Act.

The Offeror is is not aware of any information bearing on the existence of any potential organizational conflict of interest.

SECTION III - COLLUSION

I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same services, materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of the State and Federal law and may result in fines, prison sentences, and civil damage awards.

I hereby certify that the responses to the above representations, certifications, and other statements are accurate and complete. I agree to abide by all conditions of this Request for Qualifications/Expressions of Interest and certify that I am authorized to sign for the Offeror.

Signature _____ Date _____

Name (Printed) _____ Title _____

OFFEROR MUST RETURN THIS FORM WITH Technical Proposal SUBMISSION

ATTACHMENT F - DRAFT SERVICE AGREEMENT

**SERVICE AGREEMENT;
AND LICENSE TO USE REAL PROPERTY LOCATED AT THE PRINCE WILLIAM COUNTY SANITARY
LANDFILL**

This Service Agreement and License to Use Real Property Located at the Prince William County Sanitary Landfill (“Service Agreement”) is entered into by the Board of County Supervisors of Prince William County, Virginia (“the Board”), a political subdivision of the Commonwealth of Virginia, and _____, a _____ (“Company”). This Service Agreement is dated as of the date of the last signature of the parties to this Service Agreement (the “Commencement Date”)

PRELIMINARY STATEMENT

The Board owns and operates the Prince William Sanitary Landfill, with the main entrance located at 14811 Dumfries Road, Independence Hill, Virginia, which is located in the Coles Magisterial District of Prince William County (the “Landfill”). The Board desires to grant to the Company (i) the right to use a portion of the municipal solid waste (“MSW”) delivered to the Landfill, process that MSW and convert it to produce and sell [form of product] (the “Output”), and dispose of the process residue and the non-processible fraction of that MSW at the Landfill; and (ii) all rights necessary to enter upon the Landfill to design, construct, own, operate and maintain a facility to produce the Output (the “Facility”), all pursuant to the terms of this Service Agreement. The Company desires to design, construct, finance, own, operate and maintain the Facility for the purpose of producing the Output for the duration of the Term of the Service Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Board and the Company agree as follows:

I. Definitions

- 1.1 Board Documents: is as defined in Section 11.1(a) herein.
- 1.2 Commencement Date: is defined as the date of the last signature of the parties to the Service Agreement.
- 1.3 Company Documents: are as defined in Section 11.2(a) herein.
- 1.4 Construction Start Date: is defined as the date on which all required permits and approvals have been obtained by the Company and construction of the Facility has commenced.
- 1.5 Design Processing Throughput: is defined as the Processing Throughput cited in Attachment A as the Processing Throughput for which the Facility has be designed.
- 1.6 Development Costs: are as defined in Section 7.3.
- 1.7 Facility: [to be determined], as further described in Attachment A.
- 1.8 Hazardous Materials: means any oil or other petroleum products, pollutants, contaminants, toxic or hazardous substances or materials (including, without limitation, asbestos and PCBs), and any hazardous wastes or other materials from time to time regulated under any applicable statutes, regulations, or ordinances governing pollution or the protection of the environment including, but not

limited to, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act of 1976, and Virginia law, all as may be amended from time to time.

- 1.9 Landfill: is defined as the Prince William Sanitary Landfill, with the main entrance located at 14811 Dumfries Road, Independence Hill, Virginia, which is located in the Coles Magisterial District of Prince William County, Virginia.
- 1.10 Lender: means any person or entity providing at any time debt or equity financing capital to the Company or the Company's partners, members, corporate affiliates, subsidiaries, successors and assigns for any business purpose, and identified from time to time in writing by the Company to the Board, with each such writing including all Lenders as of the date thereof, along with applicable addresses for the purposes of notice hereunder.
- 1.11 Licenses: is as defined in Section 3.1.
- 1.12 MSW: [to be supplied by the County]
- 1.13 Non-Processible Material: [to be determined]
- 1.14 Operation and Maintenance Plan: is as defined in Section 4.1(a)
- 1.15 Operation Start Date: is as defined in Section 4.1(a)
- 1.16 Output: [to be determined]
- 1.17 Processing Throughput: is defined as the Tons of MSW processed by the Facility during a particular month, equal to: (1) the Tons of MSW delivered to the Facility, less (2) the sum of the Tons of: (a) Non-processible Material, (b) Residual Material, and (c) the recycled material removed from the waste stream at the Facility.
- 1.18 Residual Material: [to be determined]
- 1.19 Site: is as defined in Section 3.1 and further described in Attachment B
- 1.20 Term: is as defined in Article V herein.
- 1.21 Ton: means US short ton equal to two thousand (2000) pounds.

II. Development and Construction of the Facility

- 2.1 Facility Development and Construction. The Company agrees to provide for all aspects of the development and construction of the Facility at its own expense. All aspects of development and construction of the Facility include, but are not limited to: (i) compiling and submitting necessary studies and reports to federal, state, and local agencies; (ii) securing necessary authorizations and permits relative to the Facility and coordinating with the Board with respect to any related permitting requirements of the Facility and the Landfill; and (iii) obtaining the necessary funds to develop and construct the Facility. The Facility shall be developed, designed and constructed in substantial accordance with the proposal submitted by the Company in response to the Board's RFP 120032, which is hereby incorporated by

reference into this Service Agreement, as well as the description of the Facility contained in Attachment A to this Service Agreement.

- 2.2 Board Review. The design and plan of incorporation of the Facility into the Landfill, including construction procedures, operational and maintenance procedures, permit applications, and any material supplements or amendments to such plans, procedures, applications, authorizations, or agreements, shall be subject to prior review and written approval by the Board strictly for the purpose of ensuring consistency with any agreements, authorizations, or plans entered into, or required of, the Board, including this Service Agreement and the Board's Landfill operations and governmental authorizations. Any such review shall be conducted promptly, within 30 days of receipt of the written submission by the Company. If the review period exceeds 30 days, then for each day after the 30th day on which the review is not completed, the Company will receive a day's deferral of its obligation to complete the Facility pursuant to Section 2.1.
- 2.3 Coordination with Landfill Operations. The Company shall take all reasonable actions to assist and coordinate with the Board regarding any governmental authorization applicable to the Landfill, to the extent the existence, operation, or design of the Facility is or may be relevant to that authorization. Such governmental authorizations shall include the development and finalization of any operating permit and final closure plan for the Landfill. The Company shall not interfere with the ongoing operations of the Landfill.

III. Grant Of Rights And Licenses

- 3.1 Grant of Licenses. The Board grants to the Company, together with its designated agents and contractors necessary for the construction, operation, maintenance, and repair of the Facility, non-exclusive licenses within and upon the Landfill to: (i) access and enter upon the Landfill; (ii) construct, operate and maintain the Facility, and to take actions required under this Service Agreement or any permit or governmental authorization issued with respect to the Facility, including those permits and authorizations governing the operation of the Facility. The extent of the real property over which the Licenses granted under this Section 3.1 apply (the "Site") is more specifically identified in Attachment B hereto. The licenses granted in this Section 3.1 are referred to collectively herein as the "Licenses."
- 3.2 Quiet Enjoyment. The Board agrees that the Company and its designated agents and contractors shall and may peacefully enjoy the Licenses for the duration of the Term against all claims by, through, or under the Board, provided that the Company complies with all its obligations under this Service Agreement and performs, or causes to be performed, all of its covenants under this Service Agreement. Further, the Board agrees that it will make no use, nor permit others

3.3 Facility Ownership. For the Term, the Company shall hold legal and equitable title to the Facility. Such ownership shall be regardless of the manner of installation or affixation of Facility equipment or fixtures in or to the Landfill.

3.4 As-Is Condition/Warranty of Title. The Company acknowledges that it has inspected the Site, and understands that the Board makes no representations or warranties of any kind as to the condition or suitability of the Site. The Board warrants that it is lawfully seized in fee simple of the Landfill, including the Site, and that the Board and its successors will warrant and defend the Licenses granted herein to the Company and its successors and assigns against all claims of ownership, and conflicting claims to the areas covered by Licenses, made by any person. The Board shall not enter into any future agreement with respect to the operation of the Landfill which impairs the Company's ability to perform its obligations under this Service Agreement, or which imposes any additional material costs on the Company.

IV. Use of Licenses; Operations and Maintenance

Use of the Licenses by the Company shall be specifically subject to the terms and conditions of this Article IV.

4.1 Operation and Maintenance of the Facility

(a) Operation and Maintenance. The Company shall commence its operation of the Facility as of the date of its (1) completion, shakedown, start-up and testing; (2) satisfaction of any and all of the requirements of its applicable permits and authorizations; and (3) ability to accept the delivery of MSW, as described in Section 4.1(b) (the Operation Start Date"), all as certified to the Board by the Company. The Operation Start Date shall be no later than ____ months following the Commencement Date.

Beginning on the Operation Start Date, the Company shall operate and maintain the Facility at all times in accordance with:

- a. the terms and conditions of this Service Agreement,
- b. the final design and operation documents for the Facility,
- c. sound engineering, construction and operation practices,

- d. industry standards applicable to Company and its performance of its obligations hereunder, and
- e. all applicable federal, state and local laws, rules, regulations, orders and permits, including, but not limited to, any successor or additional federal, state and local laws, rules or regulations that may be promulgated by any governmental authority having jurisdiction over the Landfill or Facility.

The Company agrees to keep and maintain the Site in a clean, secure and safe condition. The Company agrees to operate and maintain the Facility, including the Site, as provided in an Operations and Maintenance Plan, such plan to be submitted to the Board within 90 days of the Commencement Date. All repairs to and modifications of the Facility of every sort and nature, and associated costs and expenses shall be the sole responsibility and obligation of the Company.

- (b) MSW Delivery. Beginning on the Operation Start Date and for the duration of the Term, the Board shall make available to the Company up to _____ Tons per day of MSW it receives for disposal at the Landfill for use in the Company's Facility. Deliveries of the MSW to the Facility shall be governed by a protocol and schedule to be mutually agreed upon by the parties within 90 days of the Commencement Date. Deliveries of MSW to the Facility shall be with trucks weighed at the Landfill's scale house and directed to the Facility. The Board shall keep records of the tonnage of MSW so diverted and shall make those records available to the Company on a daily basis. The Board shall not charge a fee to the Company for MSW delivered to the Facility. Upon acceptance of the MSW at the Facility, title to the MSW shall pass to the Company. No MSW shall be delivered to the Facility if the Facility is unable to process it because of scheduled or unscheduled, partial or complete Facility shutdown. The Board does not guarantee that incidental quantities of MSW unacceptable to the Company's process will be excluded from deliveries to the Facility and, therefore, the Company shall provide means to separate any of those items at Company expense.
- (c) Pre-Operations MSW Deliveries. Prior to the Operation Start Date, the Board shall make available at no charge to the Company sufficient quantities of MSW, not to exceed _____ Tons per day, requested by the Company for the purposes of testing and start-up of the Facility. The Company shall give the Board twenty four (24) hours notice of any quantities of MSW it needs for such purposes. The Company shall not charge the Board for the processing of any MSW delivered during this period.
- (d) Residual/Non-Processible Disposal. Any Residual Material resulting from the processing of MSW by the Facility, or any material in the MSW delivered to the Facility in accordance with Section 4.1(b) deemed Non-processible

Material by the Company shall be disposed of at the Landfill at no disposal cost to the Company. The Company shall bear the responsibility and cost of transporting any such Non-processible or Residual Material to the scale house for weighing, and then to the working face of the Landfill. The Company agrees to abide by all the rules and regulations in effect at the Landfill for the disposal of its Residual and Non-processible Material. The Company shall also bear the responsibility and cost of transporting and removing from the Landfill any material separated for recycling by the Facility from the delivered MSW.

- (e) Site Utilities. At its own expense, the Company shall be allowed to connect to the water supply, sanitary sewer and electrical services serving the Landfill for use by the Facility. Water and electricity use shall be metered, using meters supplied and maintained by the local utility or the Company, as applicable, and charged to the Company by the Board pari passu with the charges the Board pays for such services. The use of the sanitary sewer system serving the Landfill shall be subject to the rules and regulations in effect for the use of that system, including any pre-treatment requirements or permit limitations then in effect. The Company shall be charged for the use of the sanitary sewer system on a pro rata basis with the charges paid by the Board for such service. If the permits governing the Landfill allow it, the Company, at its own expense, shall be able to use the existing leachate or stormwater retention ponds at the Landfill for the disposal of stormwater runoff from the Site. Otherwise, the Company shall make its own arrangements for the disposal of stormwater generated at the Site.

- 4.2 Facility Compliance. After the installation of all elements of the Facility, for the Term of this Service Agreement, the Company shall enforce the terms of, take all actions required under, and ensure the Facility's continued compliance with, Facility-specific permits, licenses, authorizations, and agreements. The Company shall submit to the Board for its prior review and written approval (which review shall be conducted as described in the manner and for the specific purposes described in the above Section 2.2) any material amendment or modification of any Facility permit, license, authorization, or agreement proposed by the Company at least thirty (30) days prior to the scheduled submission of such proposed amendment or modification to the relevant agency or party. Any amendment or modification that does not materially affect Landfill operations shall not be subject to the prior written approval of the Board; provided that the Company shall notify the Board at least seven (7) days prior to the submission of any such nonmaterial amendment or modification to any Facility permit, license, authorization, or agreement.

- 4.3 Maintenance of Company's Rights. The Board shall: (i) employ all reasonable legal means in order to transfer to and maintain in the Company the Licenses, and any

ancillary property rights that may be reasonably required to develop, construct, and operate the Facility, and carry out the Company's obligations under this Service Agreement; (ii) use all reasonable efforts to avoid taking any action that would result in a violation of any license, permit, approval or order required for the development, financing, construction, operation or maintenance of the Facility; and (iii) use reasonable efforts to assist the Company in obtaining any additional governmental authorizations as may be required to develop and operate the Facility.

- 4.4 Documentation. During the Term of this Service Agreement, each party shall promptly furnish the other with any document, record or plan (including correspondence with, or notices from, any governmental agency) made, developed, or received with respect to, or in any way relevant to, the Facility. Upon execution of this Service Agreement, the Board and the Company also shall establish an ad hoc procedure designed to keep each other informed of developments related to the Facility on a timely basis, such procedure to include reporting by the Company of the results of operations of the Facility. The Board shall keep confidential and shall not disclose to the public information provided to it by the Company, except as may be required under the Federal and State Freedom of Information Acts or other relevant laws.
- 4.5 Company as Sole Obligor. The Company, its successors, assigns and guarantors shall be the sole obligors under any loan or credit document made in connection with Facility financing. The Board agrees to execute documents reasonably required for Facility construction or term financing, provided that such documents do not look beyond the interests of the Board in the Facility, Facility documents, agreements, and permits for the satisfaction of any claim or obligation with respect to Facility financing.
- 4.6 Mutual Obligation. The parties understand and agree that each party shall provide reasonable assistance and cooperation to the other as may be required in order to develop, construct, install, repair, maintain, and operate the Facility and preserve all authorizations applicable to the Facility and the Landfill in the most cost-effective manner and consistent with applicable law and the Board's responsibilities in owning and operating the Landfill, including modifications to this Service Agreement reasonably made necessary by applicable law that are designed to carry out the parties' intents and purposes in entering into this Service Agreement. Each party shall use good faith efforts to avoid interfering with the other party's operations and performance of its obligations at the Landfill, including the reasonable modification of operations or procedures to the extent practicable to avoid the imposition of additional substantive costs on the other party in the performance of its obligations at the Landfill. Neither the Board nor the Company has the authority to undertake obligations on behalf of the other.

4.7 Right of Entry. The Board, its contractors, officers, employees, agents and invitees, shall have the right at any time to inspect the equipment and improvements at the Facility. The Board shall make reasonable efforts to arrange inspection during normal business hours or at such other times as mutually agreed upon by parties hereto, pursuant to the Company's reasonable terms and conditions so as to ensure the safety of entering personnel and to avoid unreasonable interference with the operation of the Facility. Whenever practical, any such entry shall be upon not less than twenty-four (24) hours prior notice from the Board to the Company, except in the case of an emergency, in which case no prior notice shall be required.

V. Initial Term; Renewal Terms

5.1 Initial Term. The Initial Term of this Service Agreement shall commence upon the Commencement Date, and shall continue until the earlier of: (i) five (5) years subsequent to the Operation Start Date, or (ii) the giving of written notice by the Company to the Board that it wishes to terminate the Service Agreement.

5.2 Renewals. The Initial Term is renewable for two (2) additional ten (10) year periods (the "Renewal Terms") upon the mutual agreement of the parties, reached at least one year prior to the expiration of the initial Term and the extended Term, as applicable.

5.3 Company Obligation at End of Term. Upon expiration or termination of the Service Agreement, the Company shall have no continuing obligation under this Service Agreement, except that the Company shall fulfill any obligations that accrued under the Service Agreement while the Service Agreement was in effect. The Company (or any successor or Lender in possession) shall, within twelve (12) months of the expiration of the Term or termination of this Service Agreement, remove the Facility and all of its equipment, and shall peaceably and quietly leave the Landfill. The Company shall leave the Site in similar condition to that which the Company found it to be on the Commencement Date.

VI. Termination and Breach

6.1 Termination for Default. The Board will have the unilateral right to terminate this Service Agreement and/or otherwise seek appropriate damages or other legal remedies under the following circumstances, each constituting an "Event of Default:"

(a) Abandonment. The permanent abandonment by the Company of the Facility. The Company shall be deemed to have abandoned the Facility upon a failure of the Company to operate the Facility, or prosecute with reasonable

diligence the repair of the Facility or the resolution of circumstances that result in a cessation of Facility operations, for a continuous period of twelve (12) months.

- (b) Imposition of Charges. The actual imposition of any assessments, fees, or charges on the Board imposed as a direct result of Facility installation or operation, which assessments are not paid in full by the Company within thirty (30) days of written notice from the Board to the Company and all Lender(s) indicating that a final, unappealable action imposing such assessments, fees or charges has been made.
- (c) Failure to Operate at Minimum Performance Level. The failure of the Company to operate the Facility with a Processing Throughput equal to at least 75% of the Design Processing Throughput for a continuous period of 12 months constitutes a breach of this Service Agreement.
- (d) Failure to Operate or Maintain Consistent with Law. The failure of the Company to operate or maintain the Facility in a manner materially consistent with any governmental authorization or permits specific to the Facility for a period of thirty (30) days after notification to the Company that such an inconsistency exists and must be cured constitutes a breach of this Service Agreement, or such additional time as may be reasonable under the circumstances, given the actions required to overcome such failure.

6.2 Breach of Service Agreement. Except as otherwise provided in Sections 6.1 herein, in the event the Company fails to carry out its obligations under this Service Agreement after reasonable written notice from the Board, the Board's remedy shall be to terminate the Service Agreement.

6.3 Early Termination. The Company may terminate this Service Agreement at any time by written notice to the Board, with no further liability of either party. If the Company terminates the Service Agreement after the commencement of construction of the Facility, the Company shall remove the Facility and restore the Site in accordance with Section 5.3.

VII. Payments; Disposition of Revenues

7.1 Payment Structure

- (a) MSW Processing Payments. Beginning on the Operation Start Date, the Board shall pay the Company the amount of \$_____ per ton of Net MSW Processed by the Company. [escalation to be determined] Net MSW Processed is defined as the amount of MSW both delivered and processed by the Facility, less the amount of Non-processible and Residual Material returned to the Board for disposal. Payments due the Company for MSW disposal shall be

invoiced monthly and paid by the Board within 30 days of receipt of the invoice. Any failure of the Board to make a payment when due hereunder will be deemed a breach of this Service Agreement; provided that the Board may cure any such breach by making such payment within an additional time period of thirty (30) days. Each invoice for payment shall be accompanied by a statement specifying the tonnages delivered and processed during the month and specifying the amounts due for such tonnages.

- (b) Property Tax Accounting. Any payment otherwise due the Company under this Service Agreement will be increased dollar for dollar by the amount of any personal and/or real property taxes imposed on the Facility by the Board. Payments under this Section 7.1(b) shall be made part of the monthly invoicing process described in Section 7.1(a) above.
- (c) Purchase of Facility Output. [to be determined]
- (d) Payments for Recyclables. [to be determined]
- (e) Disposition of Energy and/or Carbon Credits. [to be determined]
- (f) Payment of Amounts. All payments due and payable to the Company under this Service Agreement shall be paid to the Company at the address set forth in Section 12.5 or as otherwise may be designated by the Company.
- (g) Disputed Amounts. Any material dispute between the parties regarding any payments owed by one party to the other shall be subject to the dispute resolution provisions of Section 12.16.
- (h) Overdue Interest. If the payments due the Company are not paid by the due date, such overdue payment shall bear interest at the prime lending rate announced from time to time by a bank agreed to by the parties.

7.2 Taxes, Assessments, Liens and Encumbrances. Subject to Section 7.1 (b) above, all property taxes, assessments, charges and expenses related or allocable to the Facility or with respect to the operation or use of the Facility, together with all interest and penalties thereon, shall be paid as and when due by the Company. The Company shall, at its sole cost and expense, have the right at any time to contest any taxes or assessments that are to be paid by the Company, or to challenge the propriety of any liens or encumbrances imposed on the Facility, as such challenges or contests may be provided for under applicable law.

7.3 Reimbursement of Development Costs. The Parties acknowledge that the Board has incurred costs related to the development of the project, the procurement of the Company to implement the Facility, and the negotiation

of this Service Agreement (the "Development Costs"). At the option of the Board, the Company agrees to reimburse the Board for its Development Costs in an amount not to exceed three hundred thousand dollars (\$300,000.00). The Company shall reimburse the Board for its Development Costs from the proceeds of the financing for the Facility upon the closing of the financing, but in no case later than the Construction Start Date. At least thirty (30) days prior to the scheduled Construction Start Date, the Board shall deliver to the Company a list of its Development Costs incurred to such date. Should the Facility not get financed; or if for any reason the Construction Start Date does not occur, the Company shall not be required to reimburse the Board for its Development Costs.

VIII. Encumbrance Of Facility Property

8.1 Consent of the Board. The Company may encumber, mortgage rights, or hypothecate to any person or entity providing equity or debt financing ("Lender") by deed of trust or mortgage or other security instrument all or any part of the Company's interest in the Facility, Facility equipment, or appurtenant facilities, property rights, and interests of the Company under this Service Agreement. The Company may also assign, pledge, and set over to any Lender all rights the Company in this Service Agreement, any other agreement with the Board regarding the Facility, and any governmental authorization, permit, or license regarding the Facility. No such assignments or hypothecations shall relieve any obligation of the Company under this Service Agreement.

8.2 Lender Rights

(a) Lender Rights. In addition to any other right provided to any Lender by other provisions of this Service Agreement, any Lender shall have the right at any time during the term of this Service Agreement to: (i) do or cause to be done any act or thing required of the Company under this Service Agreement or any other agreement between the Company and the Board, and any such act or thing performed or caused to be performed by such Lender shall have the effect of having been done by the Company itself; (ii) realize on the security afforded such Lender by taking possession of all or any portion of the Facility and/or exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by security documents assigned to or entered into by the Lender; and (iii) subject to the restrictions noted in paragraph (b) of this Section, transfer, convey, or assign the interests of the Company under this Service Agreement, and any other agreement between the Board and the Company regarding the Facility (together, the "the Board/Company Service Agreements") to any purchaser at any foreclosure or secured party sale, whether such sale be conducted pursuant to court order, a power of sale contained in the Lender mortgage or applicable law, and to acquire and succeed to the interest of the

Company under the Board/ Company Service Agreements by virtue of any foreclosure or secured party sale, whether such sale be conducted pursuant to a court order, a power of sale contained in the Lender mortgage, or applicable law, or by virtue of a deed and/or bill of sale and assignment in lieu thereof. The Board shall grant any Lender or its authorized designee immediate access to the Landfill and the Facility to the extent necessary to remedy any breach or default of the Company under this Service Agreement or in exercise of the Lender's remedies under any security document. If Lender(s) are prohibited by any bankruptcy, insolvency, or other judicial proceeding from commencing foreclosure proceedings or other actions to preserve their secured interest(s) in the Facility and the Board/Company Service Agreements, any right of the Board to terminate the Service Agreement for default shall be suspended for so long as the Lender(s) diligently pursues such proceedings and cures any default.

- (b) **Successor Obligations.** If any Lender or other third party acquires the Company's interests under the Board/Company Service Agreements as aforesaid in paragraph (a), such Lender or other third party shall accept in writing, and shall without further action be subject to, the same terms and conditions set forth in the Board/Company Service Agreements, and shall be required to cure all defaults or breaches of the Company under this Service Agreement capable of cure.
- (c) **Copies of Notices.** The Board shall provide any Lender, of whose existence it has received written notice from the Company, with copies of all notices required to be given to the Company under this Service Agreement simultaneously with the forwarding of such notice to the Company. No such notice shall be deemed effective absent the providing of a simultaneous copy to Lender. The Company shall designate in writing the Lender(s) and shall provide to the Board in writing the name and address of such Lender(s).

IX. Indemnification and Insurance

9.1 **General Indemnification.** To the extent permitted by law, each party agrees to indemnify, defend, and hold harmless the other party, its agents, officials, officers, and employees, from any and all losses, costs, expenses, claims, liabilities, actions, or damages, including liability for injuries to persons or damage to property of third persons, arising out of or in any way connected with the acts or omissions of the indemnifying party or its employees, officials, agents, contractors, and subcontractors in constructing and operating the Facility or the Landfill. Such indemnification shall not apply to claims, liabilities, actions, or other damages to the extent caused by any negligent or deliberate act or omission on the part of the other party or its employees, officials, agents, contractors or subcontractors.

9.2 **Environmental Indemnities**

- (a) The Company. The Company agrees that it will not, and that it will not permit any of its agents, contractors, or employees to store, use, release, discharge, or deposit on any portion of the Landfill any Hazardous Materials except in accordance with the Board's rules and regulations pertaining to the Landfill, and applicable law. The Company shall defend, indemnify and hold harmless the Board and the Board's officials, employees, agents, and contractors from and against any claims, losses, liability, damages, penalties, fines, costs, and expenses based on any failure of the Company or its agents, contractors, subcontractors, or employees to adhere to the terms of this paragraph (a), after consultation with the Board, and shall undertake all measures necessary and appropriate to remedy any such failure. The indemnity of the Company set forth in this paragraph (a) shall survive the termination or expiration of this Service Agreement.
- (b) The Board. The parties understand and agree that solely by virtue of its entry upon the Landfill and the taking of actions authorized by or consistent with this Service Agreement, neither the Company nor any of its Lenders, agents, contractors, employees, directors, or officers shall have, or shall be deemed to have, in any way participated in the operation of the Landfill or assumed any liability or obligation associated with materials of any type or description (including Hazardous Materials) deposited, stored, or received on or within the Landfill by any entity other than the Company, including the Board. The Company shall at no time have any control over or responsibility for the disposal of any wastes or materials at the Landfill. To the extent permitted by law, the Board hereby agrees to defend, indemnify, and hold harmless the Company and its officers, directors, employees, agents, contractors, and any Lender(s), from and against any claims, losses, liability, damages, penalties, fines, costs, and expenses to the extent based on (i) the presence of any Hazardous Materials in, on, or within the Landfill except to the extent that the presence of such Hazardous Materials is attributable to the Company or its employees, officers, directors, agents, subcontractors or contractors; (ii) the failure of the Landfill or the Board to comply with any Federal, State, or local law or regulation regarding the regulation of the environment, disposition of materials, or operation and maintenance of the Landfill. The indemnity set forth in this paragraph (b) shall survive the termination or expiration of this Service Agreement.
- 9.3 Removal Bond: Within ten (10) days prior to the commencement of construction or installation of the Facility, the Company agrees to obtain and maintain throughout the Term a removal bond, from a surety satisfactory to the Board, or post a letter of credit, to remain in effect until eighteen (18) months after the end of the Term, to secure the Company's obligation to remove the Facility as required by this Service Agreement, and is intended to cover the costs of removal of the Facility by the Board should the Company default in this obligation. The initial amount of the bond or letter of credit shall be one million dollars (\$1,000,000). The Board may require increases to the Removal Bond or letter of

credit, no more frequently than once every year, and the amount of any increase is limited to the equivalent of three percent (3%) per year.

9.4 Insurance

- (a) **Liability.** The Company covenants and agrees to maintain necessary and appropriate commercial general liability insurance in an amount not less than \$1,000,000 combined single limit, with an excess liability policy of at least \$2,000,000, which excess coverage insurance may be umbrella coverage, covering injury to property or persons which may arise as a result of activities at the Facility, and naming the Board as an additional insured. Said sum shall not be construed as the limit of the Company's liability. The Company shall provide the Board with evidence of such insurance prior to the commencement of Facility construction, and the policies shall contain an endorsement to the effect that any cancellation or material change affecting the interest of the Board shall not be effective until 30 calendar days after notice to the Board or in accordance with Virginia law, whichever period is longer. The Company shall carry such insurance with one or more good and solvent companies licensed to do business in the Commonwealth of Virginia, selected by the Company and otherwise reasonably satisfactory to the Board.
- (b) **Casualty.** The Company shall carry insurance (which during construction of the Facility may be builder's risk completed value form or other comparable coverage) against all risks of physical damage, including loss by fire, flood, storm, earthquake, vandalism, theft, and such other risks as may be included in the standard all-risk form of coverage from time to time available, in an amount which is not less than the book value of the Facility, and which coverage shall be exclusive to the Facility, and naming the Board as an additional insured.
- (c) **Employees.** The Company shall carry and maintain for its employees workers' compensation and employer's liability insurance as is required by Virginia or federal law, and shall maintain and shall require all contractors performing work at the Facility or the Landfill to obtain and maintain such required insurance.
- (d) **Automobiles.** The Company shall carry automobile insurance for owned, non-owned and hired vehicles. The minimum limit of liability carried on such insurance shall be \$1,000,000 each accident, combined single limit for bodily injury and property damage.
- (e) **Deductibles.** Any insurance required to be provided by the Company pursuant to this Service Agreement may contain deductibles of not greater than (i) \$75,000 for commercial general liability insurance; (ii) \$100,000 for property damage insurance on machinery, fire and extended coverage; and (iii) \$100,000 property damage insurance on earthquake and flood, and may be provided by blanket,

umbrella, or excess coverage insurance covering the Facility and other locations. The Company will be responsible for the payment of all deductibles. To the extent any insurance required hereunder is not obtainable on commercially reasonable terms, the Company shall so notify the Board, and the parties together with any Lender shall determine alternative insurance requirements. Any dispute regarding such requirements shall be resolved under the disputes resolution provisions of Section 12.16.

- (f) Copies. The Company shall furnish the Board with a duplicate original or agent-certified copy of or certificate evidencing any and all current policies maintained by the Company to satisfy the provisions of this Section 9.4. The Company shall provide the Board with copies of certificates of renewal of any insurance required hereunder prior to the expiration of any required policy. All policies required of the Company hereunder are subject to Lender approval.

X. Transfer and Condemnation

- 10.1 Condemnation of Facility. Should title or possession of the whole of the Facility be taken by a duly constituted authority in condemnation proceedings or should a partial taking in the reasonable opinion of the Company render the remaining portion of the Facility unfit for its intended use, then the Company may at its election terminate this Service Agreement by notice to the Board given within sixty (60) days from the date of such taking; provided, that the Company may remove such Facility equipment.
- 10.2 Awards and Damages. All damages for condemnation of all or part of the Facility shall be allocated first to the retirement of any financing secured by Facility revenues, and thereafter to the Company. The Company shall be entitled to bring a separate claim against the condemning entity for reasonable removal and relocation costs of any removable property that the Company has the right to remove.
- 10.3 No Transfer. The Board covenants not to institute, advocate, or pursue any alteration, transfer, termination, or condemnation of the Facility for the Term of this Service Agreement, except to the extent specifically agreed to by the Company.

XI. Representations, Warranties and Covenants

- 11.1 Representations, Warranties and Covenants of the Board. The Board hereby represents, warrants, and covenants to and with the Company that as of the date of execution of this Service Agreement and thereafter:

- (a) Existence. The Board is a body corporate and politic duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia. The Board has the power and lawful authority to enter into and perform its obligations under this Service Agreement and any other documents required by this Service Agreement to be delivered by the Board (collectively the "Board Documents").
 - (b) Authorization. The execution, delivery, and performance by the Board of and under the Board Documents have been duly authorized by all necessary action and do not and will not violate any provision of law or violate any provision of its charter or result in a material breach or default under any agreement, indenture, or instrument of which it is a party or by which its properties may be bound or affected.
 - (c) Validity of Documents. The Board Documents, when duly executed and delivered, will constitute valid and legally binding obligations of the Board enforceable in accordance with their terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally or (ii) application of general principles of equity including availability of specific performance as a remedy.
 - (d) Litigation. There are no actions, suits, or proceedings pending or, to the best of the Board's knowledge, threatened against the Board or any of the Board's properties before any court or governmental department, commission, board, bureau, agency, or instrumentality that, if determined adversely to the Board, would have a material adverse effect on the transactions contemplated by the Board Documents.
 - (e) Prior Service Agreements. The Board has represented to the Company that any and all agreements made by the Board and addressing substantially the same subject matter of this Service Agreement have been rightfully terminated prior to the date hereof.
- 11.2 Representations, Warranties and Covenants of the Company. The Company hereby represents, warrants, and covenants to and with the Board as of the date of execution of this Service Agreement and thereafter:
- (a) Existence. The Company is a limited liability corporation duly organized, validly existing, and in good standing under the laws of the State of _____ and is or prior to the commencement of operations will be licensed to do business in the Commonwealth of Virginia. The Company has the corporate power and lawful authority to enter into and perform its obligations under this Service Agreement and any other documents

required by this Service Agreement to be delivered by the Company (collectively the "Company Documents").

- (b) Authorization. The execution, delivery, and performance by the Company of and under the Company Documents have been duly authorized by all necessary corporate action, do not and will not violate any provision of law, and do not and will not violate any provision of its charter or bylaws or result in a material breach of or constitute a material default under any agreement, indenture, or instrument of which it is a party or by which it or its properties may be bound or affected.
- (c) Validity of Documents. The Company Documents, when duly executed and delivered, will constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally or (ii) application of general principles or equity including availability of specific performance as a remedy.
- (d) Litigation. There are no actions, suits, or proceedings pending or threatened against the Company or any of its properties before any court or governmental department, commission, board, bureau, agency, or instrumentality that, if determined adversely to it, would have a material adverse effect on the transactions contemplated by the Company Documents.

11.3 Representations and Warranties - General. Each party acknowledges that its representations and warranties as set forth above will be relied upon by the other in entering into and performing under this Service Agreement. The representations and warranties contained in this Article shall survive the termination of this Service Agreement. The Company and the Board each shall, to the extent permitted by law: (i) indemnify and hold the other harmless from any loss, damage, liability, and reasonable expense arising, or in any manner resulting, from any failure in connection with the representations and warranties made by one to the other; (ii) defend at its sole cost and expense, including but not limited to reasonable counsel fees, any suits or other proceedings brought on account thereof against the other or against any property assigned or transferred to the other hereunder; and (iii) satisfy all judgments that may in connection therewith be incurred by or rendered against the other or against any property assigned or transferred to the other hereunder provided, however, that indemnity shall not be required if the claim of indemnity is based on an action, omission, fault, or negligence of the party requesting indemnity.

XII. Miscellaneous Provisions

- 12.1 Effective Date. This Service Agreement shall become an effective, binding agreement as of the Commencement Date, upon the full execution of this Service Agreement by each party hereto.
- 12.2 Force Majeure. Should the performance of any act required by this Service Agreement to be performed by either the Board or the Company (inclusive of any deadline or milestone set forth in the development and construction schedule, but except for the obligation to make payments) be prevented or delayed by reason of any acts of God, strike, lock-out, labor problems, inability to secure materials, change in governmental laws or regulations, or any other cause beyond the reasonable control of the party required to perform the act, and if such prohibition or delay could not have been avoided by the exercise of reasonable foresight or overcome by the exercise of reasonable diligence, the time for performance of the act will be extended for a period equivalent to the period of delay, and thereafter for a reasonable time under the circumstances, and performance of the act during the period of delay will be excused. The party claiming force majeure should notify the other party in writing within ten (10) days of the occurrence of the event and shall use all reasonable efforts to resume performance as soon as possible.
- 12.3 Assignment and Sub-grant. Except as elsewhere provided in this Service Agreement, the Company may not, without first obtaining the prior written consent of the Board (which consent shall not be unreasonably withheld) sell, assign, transfer, or sub-grant any or all of its rights, title, interests, or obligations in, on, to, and under this Service Agreement and the Facility.
- 12.4 Actions by the Company. Whenever any action is required or permitted to be taken by the Company under the terms of this Service Agreement, such action may be taken and performed by any authorized officer, director, or other representative of the Company, a Lender, or authorized agent of the Company.
- 12.5 Notices. All notices or other communication required or permitted hereunder shall be deemed given when received and, unless otherwise provided herein, shall be in writing, shall be sent by nationally recognized overnight courier service or sent by registered or certified mail, return receipt requested, deposited in the United States mail, postage prepaid, addressed to the parties at the addresses set forth below, and shall be deemed received upon the sooner of (i) the date actually received; or (ii) the fifth business day following mailing by registered or certified mail.

To the Company: _____

With copy to: Lenders of Record of which the Board has received written notice.

To the Board: Department of Public Works, 4379 Ridgewood Center
Drive, Prince William, Virginia 20191
Attention: Solid Waste Division Chief

Notice of change of address shall be given by written notice in the manner detailed in this Section.

- 12.6 Successors and Assigns. All the terms and provisions of this Service Agreement shall be binding upon, inure to the benefit of, and be enforceable by the successors and permitted assigns of the parties hereto.
- 12.7 Further Assurances. The parties agree to perform all such acts (including without limitation executing and delivering instruments and documents) as reasonably may be necessary to fully effectuate the intent and each and all of the purposes of this Service Agreement, including consents to any assignments, transfers, sub-grants, or easements permitted hereunder. This Service Agreement, or a memorandum or notice of this Service Agreement, may be recorded by either party. The Company and the Board each further agree that it shall, at any time, and from time to time during the term of this Service Agreement, and upon not less than thirty (30) days' prior written request by the other party, execute, acknowledge, and deliver to the requesting party a statement in writing certifying that this Service Agreement is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications). This statement shall also state the dates on which any payments have been paid and that there are no defaults existing or that defaults exist and the nature of such defaults.
- 12.8 Construction of Service Agreement
- (a) Governing Law. The terms and provisions of this Service Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.
- (b) Interpretation. The parties agree that the terms and provisions of this Service Agreement embody their mutual intent, and that such terms and conditions are not to be construed more liberally in favor of, nor more strictly against, either party. To the extent the mutual covenants of the parties under this Service Agreement create obligations that extend beyond the termination or expiration of this Service Agreement, the applicable provisions of this Service Agreement shall be deemed to survive such termination or expiration for the limited purpose of enforcing such covenants and obligations in accordance with the terms of this Service Agreement.
- (c) Partial Invalidity. If any term or provision of this Service Agreement, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Service Agreement or the application of such term or provision to persons or circumstances other than those to which it is

held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Service Agreement shall be valid and enforceable to the fullest extent permitted by law.

- 12.9 Counterparts. This Service Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
- 12.10 Entire Service Agreement. The provisions of this Service Agreement and the attached Attachments constitute the entire understanding and agreement between the parties regarding the subject matter hereof, supersede entirely all prior understandings, agreements or representations regarding the subject matter hereof, whether written or oral, and may not be altered or amended except by an instrument in writing signed by the parties, and approved by any Lender(s). The parties each acknowledge and agree that no representation, warranty, or inducement has been made to it regarding the rights set forth in this Service Agreement which is not expressly set forth in this Service Agreement and the attached Attachments.
- 12.11 No Partnership. Nothing contained in this Service Agreement shall be construed to create any association, trust, partnership, or joint venture or impose a trust or partnership, duty, obligation, or liability or an agency relationship on, or with regard to, either party. Neither party hereto shall have the right to bind or obligate the other in any way or manner unless otherwise provided for herein.
- 12.12 Waiver. No failure or delay of any party to exercise any power or right under this Service Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power.
- 12.13 Confidential Information. To the extent permitted by law (including, but not limited to, the Virginia Freedom of Information Act, §2.1-340, et seq., VA Code Ann.), either party may designate any data, information, reports, or documents provided to the other as "Confidential Information." Except as required by applicable law, neither party shall, without the prior written consent of the other party, disclose any Confidential Information obtained from the other party to any third parties other than to any Lender and prospective Lender for the Facility, consultants, or to employees who have agreed to keep such information confidential as contemplated by this Service Agreement and who need the information to assist either party with the rights and obligations contemplated herein.
- 12.14 Third Party Beneficiaries. This Service Agreement is intended to be solely for the benefit of the parties hereto and their permitted successors and permitted

assignees and is not intended to and shall not confer any rights or benefits on any other third party not a signatory hereto; except as provided with respect to any Lender, which Lender(s) shall be deemed capable of enforcing the rights and interests granted Lender(s) herein.

- 12.15 Limitation on Remedy. Notwithstanding anything to the contrary provided in this Service Agreement, it is specifically agreed and understood between the parties hereto that there shall be absolutely no personal liability on the part of the officials and officers of the Board, or any successor in interest or designees thereof, with respect to any of the terms, covenants, and conditions of this Service Agreement, and the Company or any other party claiming by, through, or under the Company waives all rights of recovery against the officials and officers of the Board.
- 12.16 Claims/Disputes. In accordance with §11-69, VA Code Ann., this provision shall be followed for consideration and handling of all claims by the Company under this Service Agreement. This paragraph is intended to afford the Company a mechanism to receive a determination of the Board, rather than a lower-level official of Prince William County, on each claim, as provided by § 11-69, VA Code Ann. In the event that the Board makes a determination on a claim with which the Company does not agree, then a dispute will have arisen between the parties which is to be submitted to a court of competent jurisdiction for an impartial resolution, as provided by §11-70, V A Code Ann. This section does not set up an administrative appeals procedure. Section 11-71 , VA Code Ann., is not applicable to this Service Agreement, and under no circumstances is this paragraph to be construed as an administrative appeals procedure governed by §11-71, VA Code Ann.

Notice of intent to submit a claim setting for the bases for any claim shall be submitted in writing within ten (10) days after the occurrence of the event giving rise to the claim, or within ten (10) days of discovering the conditions giving rise to the claim, whichever is later. In no event shall any claim arising out of this Service Agreement be filed more than 10 days after the expiration of the Term.

Claims by the Company with respect to this Service Agreement shall be submitted in writing in the first instance for consideration by the Director of Public Works. The Public Works' Director's decision shall be made in writing within ten (10) days from the receipt of the Claim from the Company. If the Company is not satisfied with the decision or resolution of the Director of Public Works the Company may direct its Claim to the County Executive by directly delivering it to the County Executive, or by delivering it to the Purchasing Manager, with a request that the County Executive make a determination on the Claim. The County Executive will render a written decision within ten (10) of receipt of the Claim.

If the Company is not satisfied with the County Executive's decision, it may submit

its Claim to the Board of County Supervisors within 30 days of receiving the County Executive's decision. Claims are submitted to the Board by delivering a copy of the Claim to the Purchasing Manager, along with a request for Board determination of the Claim. The Board shall consider the Claim as provided by §15.1-550 et seq., VA Code Ann., and render a decision within forty (40) days of the receipt of the Claim.

If the Company is not satisfied with the decision of the Board on its Claim, then a dispute exists between the parties, which may be resolved by a court of competent jurisdiction pursuant to § 11-70, V A Code Ann.

Should any decision maker designated under this procedure fail to make a decision within the time period specified, then the Claim is deemed to have been denied or disallowed by that decision maker.

Pending a final determination of a Claim or dispute, the Company will proceed diligently with the performance of its obligations under this Service Agreement.

In accordance with the provisions of §11-69, VA Code Ann., full compliance with this procedure shall be a precondition to the filing of any lawsuit by the Company against the Board arising out of this Service Agreement.

12.17 Discrimination. During the performance of this Service Agreement, the Company agrees as follows:

- (a) It will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Company. The Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this antidiscrimination clause.
- (b) The Company, in all solicitations or advertisements for employees placed by or on behalf of the Company, will state that it is an equal opportunity employer.
- (c) Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The Company will include the provisions of the foregoing paragraphs a., b., and c. in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each such subcontractor vendor.

12.18 Drug-Free Workplace. During the performance of this Service Agreement, the Company agrees to (i) maintain the Facility as a drug-free workplace for the Company's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Company's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Company that the Company maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000.00, so that the provisions will be binding upon each subcontractor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Service Agreement awarded to a Company, the employees of who are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of this Service Agreement.

12.19 Examination of Records. The Company agrees that the Board, or any duly authorized representative, shall, until the expiration of five (5) years after end of the Term, as extended, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of the Company involving transactions related to this Service Agreement.

The Company further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Service Agreement, a provision to the effect that the subcontract or agrees that the Board or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of such subcontract or involved in transactions related to such subcontract, or this Service Agreement. The term "subcontract" as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. The period of access provided herein for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this Service Agreement or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

12.20 Ethics in Public Contracting. The Company hereby certifies that it has familiarized itself with Article 6 of Title 2.2 of the Virginia Public Procurement Act, Sections 2.2-4367 through 2.2-4377, VA Code Ann., and that all amounts received by it, pursuant to this Procurement, are proper and in accordance therewith.

12.21 Immigration Reform and Control Act of 1986. The Company certifies that it does not and will not during the performance of this Service Agreement violate the

provisions of the Federal Immigration Reform and Control Act of 1986 which prohibits employment of illegal aliens. The Company agrees that its employment of any person without legal status may subject it to termination of this Service Agreement for default and agrees to include a similar provision in any subcontract.

12.22 Integration. This Service Agreement shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Service Agreement shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Service Agreement as set forth below.

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA

By: _____

Dated: _____

ATTEST:

_____, Purchasing Manager

Date:

[The Company]

By: _____

Duly Authorized

Dated: _____

ATTEST:

ATTACHMENT A – FACILITY DESCRIPTION

(To be determined)

ATTACHMENT B – SITE DESCRIPTION

(To be determined)