

MEMORANDUM

TO: Beverly R. Cameron, City Manager
FROM: Mark Whitley, Assistant City Manager
RE: Approval of a Lease for Waste-to-Energy Facility at Rappahannock Regional Waste Management Board
DATE: June 28, 2013

ISSUE

The City Council is asked to approve, after a public hearing and solicitation of competing bids, a Lease for land for a waste-to-energy facility between the Rappahannock Regional Waste Management Board and Energy Extraction Partners, LLC.

RECOMMENDATION

Staff recommends receiving public testimony at the public hearing and soliciting any competing offers, in accordance with state law. After the public hearing and testimony, staff recommends adoption of the attached ordinance on first reading granting the City Manager authority to execute the Lease.

If the Lease is approved on first reading, Second reading and final approval of the Lease would be scheduled for the August 13, 2013 Council meeting.

BACKGROUND

General Background

The City and Stafford County jointly own a regional landfill at 489 Eskimo Road, in central Stafford County. The Rappahannock Regional Waste Management Board, also known as the "R-Board," is a joint exercise of powers entity between the City and Stafford County that manages the operations of the landfill.

The R-Board solicited proposals from interested firms in constructing a waste-to-energy facility on site at the landfill. Three firms responded, and after an evaluation process the R-Board selected the firm of Energy Extraction Partners, LLC. On April 22, 2013, the R-Board entered into an Agreement with Energy Extraction Partners (EEP) for the construction and operation of a waste-to-energy facility at the landfill. Both the City and Stafford County are required to approve a Lease for the use of the land, based upon that Agreement.

The Stafford County Board of Supervisors held their required public hearing and authorized the approval of the Lease with Energy Extraction Partners at their June 4, 2013 meeting.

Basic Description of the Project

Energy Extraction Partners proposes to construct a \$73 million waste-to-energy facility on approximately 11 acres of existing R-Board landfill property off Eskimo Hill Road in Stafford County. The municipal solid waste currently buried in the landfill by the R-Board would be sorted and gasified¹ by EEP at the facility, generating at least 15 megawatts of electricity. The electricity would then be sold to Dominion Virginia Power and delivered via electrical transmission lines already on site. EEP is responsible for financing, constructing, and operating the facility.

Basic Terms of the Lease Arrangement

EEP has agreed to pay the R-Board a special payment of \$1,000,000 as a pre-condition to the project. In addition, EEP will pay the R-Board rent, beginning in May 2014, of \$100,000 per year for the life of the agreement. EEP will pay an additional \$1,000,000 to the R-Board if and only if federal energy tax credits are received for the Project.

The R-Board also, as part of the arrangement, retains the rights to all of the tipping fee revenue for the municipal solid waste coming to the facility.

The term of the lease is until December 31, 2034 – providing for approximately twenty years for the life of the project.

Should EEP not be able to obtain a certificate of occupancy within twenty-four months of the date of the agreement, or if operations after opening cease for six consecutive months, then the R-Board will have the right to terminate the agreement, subject to the provisions of a \$1,000,000 performance bond included as part of the Operating Agreement.

Pre-Conditions on the Lease

Several conditions included in the Lease must be met by EEP, or EEP will be in default. On or before June 26, 2013, EEP must provide to the R-Board two items: 1) the \$1,000,000 pre-condition payment and 2) proof of financing availability for the project. (The R-Board has agreed to extend this deadline to July 26, 2013). The lease is also conditioned on approval by the City and Stafford County.

Other Notes on the Lease and Operating Agreement

Council may wish to note the following additional terms on the proposed waste-to-energy facility and the Lease and the referenced Operating Agreement:

- Recyclables are not affected by this agreement– they will continue to be processed by the R-Board as before.
- The R-Board will continue to landfill non-suitable streams of municipal solid waste. This includes the processed ash that is the end result of the waste-to-energy process. However, if EEP can sell the ash on a secondary market, they are able to do so.

¹ “Waste gasification” is an emerging energy generation process different than waste-to-energy through incineration of waste to generate steam to drive turbines.

- EEP may not bring in additional streams of municipal solid waste to the facility without the prior approval of the R-Board.
- EEP intends to bring in waste tires, which is not considered municipal solid waste. Waste tires generate high levels of energy, and provides assurance that sufficient electricity will be generated to support their agreement with Dominion Virginia Power.
- EEP will be responsible for the proper disposal of hazardous waste in compliance with all environmental laws and regulations.
- EEP is also responsible, under the Operating Agreement, for obtaining the necessary environmental permits from the appropriate regulatory agencies.

The Operating Agreement between the R-Board and Energy Extraction Partners is attached for your information. The Ordinance before City Council authorizes the City Manager to execute the Lease, also attached, in substantially the form submitted, and provides for proper recordation with Stafford County.

Information Only - Additional Agreement Between the City and Stafford County

In addition to the Lease between the R-Board and Energy Extraction Partners, representatives of the City and County on the R-Board have discussed two changes to the operating agreement for the landfill.

First, City representatives requested an extension of the current agreement for an additional thirty years – until December 31, 2054, unless amended by both the City and Stafford County. The extension of the agreement would be of great benefit to the City, and provides for the solid waste disposal needs of the City for the foreseeable future.

Second, Stafford County representatives requested that the \$1,000,000 up-front payment from Energy Extraction Partners to the R-Board be kept by Stafford and dedicated to improvements to Eskimo Hill Road. The amendment provides that if a contract for improvements to the road is not awarded within 10 years from the date of the amendments, then the funds will either be retained by the R-Board for the use of the landfill or transferred to the City and County on a pro-rata basis. Eskimo Hill Road is the main access road to the landfill, and the road needs to be improved to handle the traffic generated by the landfill.

The additional agreement, titled “***Second Amendment to the Amended and Restated Operational Agreement for the Rappahannock Regional Solid Waste Management Board***,” is not before City Council as an action item, but is included in the attachments for your information. The Stafford County Board of Supervisors has not yet approved the amendment to the operating agreement. Staff will bring the amendment to the operating agreement before Council at a future meeting – likely August 13, 2013 – for action.

FISCAL IMPACT

The opening of a waste-to-energy facility would substantially benefit the R-Board, as outlined above, and through it indirectly the City. Should the deal fall through, the R-Board would continue to operate as they do today, and would continue to seek other opportunities to use

emerging waste-to-energy technologies to capture latent energy value in the municipal solid waste stream.

The City would also benefit by the fact that the waste-to-energy facility would extend the life of the existing landfill into the foreseeable future. Future savings from not opening another landfill in the area or transporting municipal waste over long distances to another facility are hard to meaningfully quantify because options would vary considerably, but the future savings would be substantial.

There is no direct impact to the City budget, in the short term, of the Lease agreement.

Attachments: Ordinance Approving the Lease (for action – first reading)
 Lease to Energy Extraction Partners
 Site Map & Survey
 Operating Agreement between R-Board and EEP Lease (information only)
 Second Amendment – R-Board Operating Agreement (information only)



MOTION:

**July 9, 2013
Regular Meeting
Ordinance No. 13-__**

SECOND:

RE: GRANTING ENERGY EXTRACTION PARTNERS, LLC A TWENTY YEAR LEASE FOR ELEVEN ACRES OF LAND AT THE R-BOARD LANDFILL SITE IN STAFFORD COUNTY FOR USE AS A WASTE-TO-ENERGY PRODUCTION AND DISTRIBUTION FACILITY

ACTION: APPROVED: Ayes:0; Nays: 0

FIRST READ: _____ SECOND READ: _____

IT IS HEREBY ORDAINED by the City Council of the City of Fredericksburg, Virginia, as follows:

SEC. I. Introduction.

The City of Fredericksburg and the County of Stafford own the regional landfill (the "Landfill") located at 489 Eskimo Hill Road, Stafford, Virginia, located within Stafford County. The Rappahannock Regional Waste Management Board (the "R-Board"), a joint powers entity created by the City and County, manages and operates the Landfill. The R-Board issued a Request for Proposals for interested firms to submit proposals to operate a waste-to-energy facility at the Landfill, which it has awarded to Energy Extraction Partners, LLC (EEP). EEP must enter into a lease with the City and County, as the Landfill's owners, as well as an operational agreement with the R-Board.

SEC. II. Grant of Lease.

The City Manager is authorized to execute, deliver, and carry out the terms of a the Lease of approximately 11 acres of land at the Landfill, to Energy Extraction Partners, LLC for use as a waste-to-energy production and distribution facility, on behalf of the City of Fredericksburg, in substantially the form submitted for approval.

SEC. III. Effective Date.

This ordinance shall be effective immediately. The City Attorney shall record a certified copy of this ordinance with the Deed of Lease in the records of the Clerk of the Circuit Court of the Stafford County.

Approved as to form:

Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 13-__ duly adopted at a meeting of the City Council held July 9, 2013, at which a quorum was present and voted.

Tonya B. Lacey, CMC
Clerk of Council

LEASE

THIS LEASE (“this Lease”), made as of _____, 2013 (the “Effective Date”), by and between **ENERGY EXTRACTION PARTNERS LLC**, a Wyoming Limited Liability Company authorized to do business in the Commonwealth of Virginia (hereinafter called “EEP”), **THE CITY OF FREDERICKSBURG, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia, (the “City”), and **THE COUNTY OF STAFFORD, VIRGINIA, A POLITICAL SUBDIVISION OF THE Commonwealth of Virginia** (the “County”).

RECITALS:

WHEREAS, the City and County own the regional landfill (the “Landfill”) located at 489 Eskimo Hill Road, Stafford, Virginia located within Stafford County; and

WHEREAS, the Rappahannock Regional Waste Management Board (the “R-Board”), a joint powers entity created by the City and County, manages and operates the Landfill; and

WHEREAS, the R-Board issued a Request for Proposals for interested firms to submit proposals to operate a waste-to-energy facility at the Landfill, which it has awarded to EEP; and

WHEREAS, EEP must enter into a lease with the City and County, as the Landfill’s owners, as well as an operational agreement with the R-Board.

WITNESSETH:

NOW THEREFORE, for and in consideration of the rent reserved as hereinafter set forth, the mutual agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree and covenant as follows:

1. **THE LEASED PREMISES.** The City and County own certain land in the County of Stafford, Virginia, which is currently being used for the Landfill and identified as a portion of Tax Map Parcel 39-261D consisting of approximately 11 acres and further described in the plat, dated _____, entitled “_____” attached as _____. Said land is hereinafter called “the Leased Premises.”

Subject to and in accordance with the provisions of this Lease, the City and County hereby lease the Leased Premises to EEP, and EEP hereby leases the Leased Premises from the City and County.

2. **CONDITION OF THE LEASED PREMISES.** EEP acknowledges that it has inspected the Leased Premises and accepts it and its current condition and state of repair, without any representations or warranties by the City, County or the R-Board, by anyone on behalf of the City, County or the R-Board, or by anyone else, about such condition and state of repair.

3. **TERM.** The Term of this Lease is 20 years, beginning on the date the City Council or the Board approve this Lease, whichever is later, and ending without notice on December 31, 2034, unless sooner terminated pursuant to the provisions of this Lease. The Lease is null and void if EEP does not show proof of funds as required under the Agreement executed between EEP and the R-Board, dated April 22, 2013. In addition, EEP shall not start any work on the waste-to-energy facility until proof of funds is shown to the satisfaction of _____.

4. **RENT.** EEP shall pay to the City and County, through payments directly to the R-Board, rent for the Leased Premises. The rent shall consist of an initial non-refundable lump sum payment of One Million Dollars (\$1,000,000) payable upon EEP showing proof of funds within 45 days of execution of the Agreement executed between EEP and the R-Board, dated April 22, 2013. EEP shall pay the R-Board rent of One hundred Thousand Dollars (\$100,000) per year,

which shall be paid in monthly installments paid in advance on the first day of each month beginning on May 1, 2014. Additional rent shall be paid by EEP to the R-Board by checks payable to the R-Board and mailed to such address as the R-Board shall designate by notice to EEP. EEP shall pay the R-Board a late charge of 10% of any rent not paid within 15 days after it is due. EEP shall also pay the R-Board an additional late charge of 10% of any rent not paid within 30 days after it is due. In addition to the rent described above, EEP shall pay additional rent to the R-Board in the amount of One Million Dollars (\$1,000,000) if EEP is eligible to receive federal tax credits/benefits in connection with the waste-to-energy production facility.

5. **USE OF THE LEASED PREMISES.** The City and County grant EEP the right to use the Leased Premises solely as a waste-to-energy production and distribution facility in accordance with the Agreement entered into between EEP and the R-Board, dated April 22, 2013, which Agreement is incorporated into this Lease by reference.

6. **SURRENDER OF THE LEASED PREMISES.** EEP shall surrender the Leased Premises, including any improvements, to the City and County at the end, or upon the earlier termination, of this Lease. This does not include any equipment assets (turbines, pyrolysis units, etc, material that EEP has brought on the facility to operate the waste-to-energy facility.

7. **ASSIGNMENT OR SUBLEASE.** EEP may not assign this Lease or sublet the Leased Premises, or any portion thereof, without the prior written consent of the City and County.

8. **DEFAULT BY THE CITY AND COUNTY.** The City and County will be in default under this Lease if the City and County fail to perform any obligation of the City and County under this Lease within 30 calendar days after receiving written notice from EEP that the City and County have failed to perform such obligation. Upon any such default, EEP may, at its

option, terminate this Lease by notice to the City and County, and/or resort to any other remedies provided by law or equity.

9. **EEP DEFAULT.** EEP shall be in default under this Lease if EEP fails to perform any obligation of EEP under this Lease within 30 days after receiving notice from the City and County that EEP has failed to perform such obligation under the Agreement it has entered into with the R-Board dated April 22, 2013, or the R-Board terminates the Agreement with EEP pursuant to the provisions of that Agreement. Upon any such default, the City and County may at their option terminate this Lease by notice to EEP, in which event (A) subject to the duty to mitigate damages, EEP shall remain obligated to pay all rent, late charges, and any other amounts EEP is required to pay pursuant to this Lease, (B) the City and County will have the right to enter the Leased Premises and take possession thereof, and (C) the City and County will have the right to resort to any other remedies provided by law or equity. EEP agrees to pay all reasonable costs, including, without limitation, reasonable attorney's fees, incurred by the City and County as a result of such default.

10. **NOTICES.** Each notice given under this Lease must be given in writing by certified mail, return receipt requested. If to the City or County, it must be addressed to City Manager, _____ . If to EEP, it must be addressed to Energy Extraction Partners LLC, c/o Joe Yavorski, 8520 Spruce Mountain Road, Suite 104, Larkspur, CO 80118. Either the City and County, or EEP may change its address by notice to the other. Each notice given as provided in this paragraph shall deem to have been given on the date of mailing.

11. **NO AGENCY.** Nothing in this Lease will be construed to constitute the City or county or EEP as an agent of the other or to constitute the City or County and EEP as partners or joint venturers.

12. **NO ENCUMBRANCES.** EEP shall not place any deed of trust, any lien or other encumbrance on the Leased Premises during the period of the Lease, or to use the Leased Premises as collateral for any loan.

13. **GENERAL PROVISIONS.** This Lease contains the entire Agreement between the City, County, and EEP and cannot be modified except by a subsequent writing signed by or behalf of the party or parties to be bound. No waiver by the City, County, or EEP or any breach of any provision of this Lease will be considered a waiver of such provision or any subsequent breach thereof. The invalidity of any provision of this Lease will not affect the validity of the other provisions, which will remain in full force and effect. This Lease will bind and benefit the City, County, and EEP and their respective successors in interest. The titles to the paragraphs of this Lease re for convenience only and will not be construed to restrict or alter the meaning of the paragraphs themselves.

This Lease shall be governed by and construed according to the Constitution and laws of the Commonwealth of Virginia.

14. The exclusive venue for any action arising out of or relating to this Lease shall be the courts of Stafford County or the City of Fredericksburg.

15. **AUTHORITY.** The City Manager is authorized to execute this Lease by Resolution _____. The County Administrator is authorized to execute this Lease by Resolution R-13-_____adopted by the Board of Supervisors on _____, 2013. The individual executing this Lease on behalf of EEP is hereby authorized by EEP to do so

Witness the following signatures pursuant to due authority:

ENERGY EXTRACTION PARTNERS, LLC

By: _____
President

CITY OF FREDERICKSBURG

By: _____
City Manager

Approved as to Form:

City Attorney's Office

COUNTY OF STAFFORD

By: _____
County Administrator

Approved as to Form:

County Attorney's Office

DRAFT



Stafford A landfill

Eskimo Hill Rd

Southern View Dr

Pottery Run Rd

Image © 2013 Commonwealth of Virginia
© 2013 Google

38°23'02.17" N 77°24'44.74" W elev 235 ft

Google earth

Imagery Date: 12/31/2008

Eye alt 5508 ft

AGREEMENT

This Agreement is made and entered into this 22 day of April, 2013 by and between the **RAPPAHANNOCK REGIONAL SOLID WASTE MANAGEMENT BOARD** (the “R-Board”) a joint powers entity created by the City Council of the City of Fredericksburg, Virginia (the “City”) and the Board of Supervisors of Stafford County, Virginia (the “County”), and **ENERGY EXTRACTIONS PARTNERS, LLC**, a Wyoming Limited Liability Company authorized to do business in the State of Virginia (“EEP”).

WHEREAS, the R-Board operates the regional landfill (the “Landfill”) for the City and County at 489 Eskimo Hill Road in Stafford County under a joint powers agreement; and

WHEREAS, the R-Board issued a request for proposals inviting interested firms to submit proposals for a waste to energy facility to be built at the Landfill; and

WHEREAS, following the receipt of proposals, interviews of the proposers and negotiation, the R-Board determined that EEP had submitted the best proposal, and the R-Board desires to enter into a contract with EEP for the waste to energy project (the “Project”).

NOW THEREFORE, based upon good and valuable consideration, the parties agree as follows:

1. The Project.

EEP agrees to build a waste to energy facility (the “Facility”) on property owned by the City and County which has been part of the Landfill property, as further set forth in this Agreement (the “Property”) and the proposal submitted by EEP (the “Proposal”), which is incorporated into this Agreement by reference. It is estimated that the cost to construct the Facility will be \$73,000,000.

This Agreement is contingent on the following occurring:

- EEP showing proof of funds for the Facility in the form of a bank statement from Bank of the West or similar Letter from Bank of the West (EEP bank) to the R-Board within 45 days of the signing of this Agreement.
- A payment being made to the R-Board in the amount of \$1,000,000 at the time of EEP showing proof of funds.
- EEP and the City and County executing a lease for the Property, which lease shall include the provision that EEP will pay the R-Board a lease payment of \$100,000 per year starting on May 1, 2014, which payment shall be made by that date each year of the lease, and an additional \$1,000,000 in the event EEP receives federal energy tax credits for the Project, which payment shall be made upon the notification that such tax credits have been received.

2. Term of Agreement.

The term of this Agreement shall begin as of the date of the final approval of the lease by both the City Council and Board of Supervisors and shall terminate on December 31, 2034, unless terminated earlier pursuant to the terms of this Agreement.

3. Transfer of MSW from Landfill to Facility.

Once the Facility is constructed and ready for operation, and during the term of the Agreement, EEP agrees to accept all municipal solid waste ("MSW") from the R-Board upon the opening of the Facility and to convert the MSW to electricity through a process of gasification for sale to Virginia Electric and Power Company pursuant to a Power Purchase Agreement between EEP and Virginia Electric and Power Company. The MSW received from the R-Board may only be used for the project. The R-Board will be responsible for setting the tipping fees of all MSW received at the Landfill, and will weigh and record the amounts of waste. The R-Board shall retain all such tipping fees. The R-Board will then direct the trucks containing the MSW to the Facility for unloading under the direction of EEP personnel. The R-Board shall have no responsibility once the MSW leaves the R-Board scalehouse. EEP shall have no right to accept MSW or other materials at the Facility other than MSW or other materials which have been received into the Landfill. The R-Board shall retain control of all recyclable materials that come into the Landfill, and those shall not be a part of this Agreement.

4. Additional MSW.

In the event that the MSW accepted by the R-Board and transferred to EEP is not sufficient to meet the 15 MWe needs of EEP, the R-Board agrees to accept such additional waste as EEP is able to redirect to the Landfill, subject to approval by the R-Board. Any such MSW shall be subject to the regular tipping fees as set by the R-Board, which tipping fees shall be retained by the R-Board. The tipping fee shall not apply to outside tires brought directly to the Facility by EEP.

5. Return of MSW to Landfill.

EEP will have the right to return MSW items that have been sorted out during the process if those items are deemed unsuitable as fuel for the gasification process. This specifically includes animal waste, animal carcasses, concrete, dirt or agricultural products. In addition, EEP shall have the right to transfer processed ash to the Landfill at no cost. In the event that EEP determines that it can sell any such materials, it shall have the right to do so and keep the proceeds, but the R-Board shall have no liability for such items after they are delivered to EEP. EEP shall not have the right to return hazardous waste to the Landfill, and shall be responsible for disposal of such hazardous waste, regardless of the source of such waste, in compliance with all environmental laws and regulations.

6. Obligations of EEP.

In addition to the other obligations contained herein, EEP agrees to the following:

- a. EEP will make every effort to employ a local work force in the operation of the Facility.

- b. A representative from EEP shall attend all scheduled meetings, when requested, of the R-Board to hear and discuss concerns pertaining to MSW handling at the Facility.
- c. EEP will provide appropriate tracking measures to allow R-Board staff to assemble monthly MSW records outlining source information and tons of MSW collected, and will submit these reports monthly to the R-Board.
- d. EEP will have non-processed MSW in the Facility for no more than 24 hours. Processed MSW may be stored in the Facility for up to seven days.
- e. EEP will not store any processed or unprocessed materials outside of the Facility.
- f. EEP will be required to provide and maintain fencing and outside lighting as approved by the R-Board to ensure that the Facility is secure.
- g. EEP will be required to keep the portion of the Property outside of the Facility clean and neat, and to take such measures as are necessary to control nuisances such as rodents and insects.
- h. EEP will allow the R-Board to inspect the Property and Facility at any time.
- i. EEP will be responsible for securing all necessary permits to operate the Facility, including County permits, Department of Environmental Quality permits, and federal permits, and agrees to provide copies of such permits to the R-Board as well as copies of any notices received from any permitting authority as to violations at the Facility.
- j. EEP will comply with all federal, state and local rules and regulations regarding the handling, storage and processing of solid waste, including, but not limited to, rules and regulations pertaining to zoning, environmental, health, safety, building and litter control.
- k. EEP will be responsible for paying all applicable taxes on the project.

7. Insurance.

EEP shall secure and maintain such insurance from an insurance company authorized to write casualty insurance in the State of Virginia in a minimum amount of \$1,000,000 per occurrence. Such insurance policy shall name the R-Board, the City and the County as additional insured's. Such policy shall contain a clause providing that the policy will not be cancelled without 30 days' advance written notice to the R-Board of such cancellation. In addition, EEP shall provide workers' compensation and vehicle liability policy within statutory limits. Copies of such policies shall be provided to the R-Board.

8. Performance Bond.

EEP agrees to provide and maintain a performance bond payable to the R-Board, the County and the City, or other security instrument acceptable to the R-Board, in the amount of \$1,000,000 to ensure that in the event the Facility is constructed and then abandoned (which shall be defined as not using the building for the waste to energy project for a period of six months), the R-Board shall have sufficient funds to remove the building and equipment if it so desires. EEP shall have the right to remove the equipment if it desires. If the R-Board determines to retain the building, then the performance bond or other security instrument shall be allowed to terminate. If the building is abandoned, EEP agrees to transfer title to the building to the R-Board.

9. Assignability.

This Agreement shall not be assigned by either party without the written approval of the other party.

10. Early Termination.

In the event that the Facility has not received an occupancy permit from the County within a twenty-four month period from the date of this Agreement, or if following the opening of the Facility, operations cease for a period of six months, the R-Board shall have the right to notify EEP in writing that it is terminating the Agreement, subject to the provisions of Section 8. The R-Board may also terminate this Agreement, subject to the provisions of Section 8, if all applicable taxes are not paid to the County by the due date or EEP breaches any of the other obligations or terms of this Agreement

11. Indemnification

EEP agrees to indemnify and hold harmless the R-Board, the City and County, their officers, agents and employees, from any and all damages or claims of any nature that may arise due to the operation of the Facility.

12. Applicable Laws.

This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Virginia.

13. Venue.

The parties agree that any actions arising out of the performance of this Agreement shall be brought in the Circuit Court of Stafford County, Virginia.

14. Amendments.

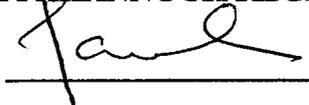
Any amendments to this Agreement shall be in writing.

15. Assignment.

This Agreement may not be assigned without the written consent of the other party.

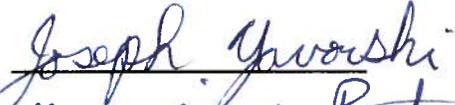
WHEREFORE, the parties sign this Agreement through their duly authorized representatives.

RAPPAHANNOCK REGIONAL SOLID WASTE MANAGEMENT BOARD

By: 

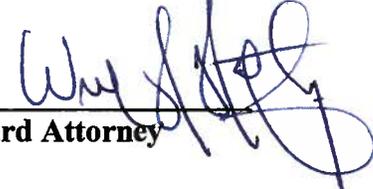
Its: chairman

ENERGY EXTRACTION PARTNERS LLC

By: 

Its: Managing Partner

Approved as to form:

By: 
R-Board Attorney

**SECOND AMENDMENT TO THE AMENDED AND RESTATED OPERATIONAL
AGREEMENT FOR THE RAPPAHANNOCK REGIONAL SOLID WASTE
MANAGEMENT BOARD**

This Second Amendment to the Amended and Restated Operational Agreement for the Rappahannock Regional Solid Waste Management Board is entered into by the City of Fredericksburg, Virginia (the “City”) and the County of Stafford, Virginia (the “County”) this _____ day of _____, 2013.

WHEREAS, the City and the County adopted the initial Operational Agreement for a regional landfill located in the County (the “Landfill”) on December 9, 1987, with a term that expired June 30, 2008; and

WHEREAS, the City and the County entered into the Amended and Restated Operational Agreement for the Stafford-Fredericksburg Regional Landfill pursuant to Section 15.2-1300 of the Code of Virginia (the “Agreement”) dated January 24, 2000, which extended the term of the Agreement until December 31, 2024; and

WHEREAS, the City and the County adopted the First Amendment to the Agreement dated September 9, 2008; and

WHEREAS, the City and the County have determined it is in the best interests of both localities to adopt a Second Amendment to the Agreement to extend the term of the Agreement by an additional 30 years and to authorize the use by the County of one time funds coming to the R-Board in relation to a waste to energy project to make improvements to Eskimo Hill Road which is the main access road into the Landfill.

NOW THEREFORE, IT IS AGREED by the parties as follows:

- 1. The term of the Agreement is extended for an additional thirty (30) years, and shall expire December 31, 2054, unless extended by the parties.**
- 2. In the event the Regional Solid Waste Management Board (R-Board) receives a payment from Energy Extraction Partners, LLC in the amount of \$1,000,000 for the right to use municipal solid waste delivered to the Landfill for a waste to energy project at the Landfill, the City and County agree that the R-Board shall transfer such funds to the County solely for the use by the County for improvements to Eskimo Hill Road leading to the Landfill. Such amount shall be transferred upon the award of a contract by the County for such construction. If the contract is not awarded within a 10 year period from the date of this Second Amendment, any such funds shall be either retained by the R-Board for landfill use or transferred to the City and County in the percentages stated in Section 5 of the Agreement.**

3. Other than these changes, the Agreement shall remain in place, as amended.

WHEREFORE, the parties evidence their intent to be bound by their duly authorized signatures below.

CITY OF FREDERICKSBURG, VIRGINIA

By: _____

Approved as to form:

City Attorney

COUNTY OF STAFFORD, VIRGINIA

By: _____

Approved as to form:

County Attorney