

## 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:

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### **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.
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- 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.

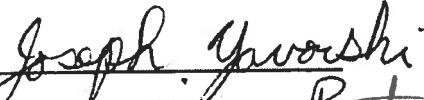
**RAPP HANNOCK REGIONAL SOLID WASTE MANAGEMENT BOARD**

By: 

Its: chairman

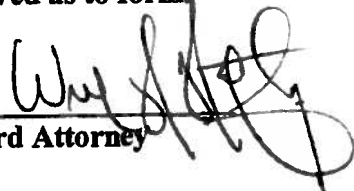
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**ENERGY EXTRACTION PARTNERS LLC**

By: 

Its: Managing Partner

**Approved as to form:**

By:   
R-Board Attorney