

MOTION:

**October 16, 2012
Regular Meeting
Res. No. 12-**

SECOND:

RE: APPROVE ADDENDUM AND AMENDMENT NO. 3 TO THE GAS USE AGREEMENT WITH NEO PRINCE WILLIAM, LLC AND INTERCONNECTION PROJECT FUNDING AGREEMENT WITH PRINCE WILLIAM ENERGY, LLC, AND TRANSFER, BUDGET AND APPROPRIATE \$1,640,000 TO PROVIDE THE ELECTRICAL INTERCONNECT, AND EXPAND THE LANDFILL GAS TO ENERGY RECOVERY FACILITY AT THE PRINCE WILLIAM COUNTY LANDFILL – COLES MAGISTERIAL DISTRICT

ACTION:

WHEREAS, on December 17, 1996, by Resolution No. 96-1179, the Prince William Board of County Supervisors (Board) approved a Gas Use and License Agreement with NEO Prince William, LLC (NEO Prince William) to collect and treat landfill gas (LFG) to meet regulatory requirements and to generate power utilizing landfill gas; and

WHEREAS, this Agreement provides gas rights for all landfill gas generated at the Prince William County Landfill (PWC Landfill) to NEO Prince William; and

WHEREAS, NEO Prince William installed a LFG collection system, flare, and energy recovery facility consisting of two LFG fired engines generating 1.9 Megawatts (MW) of power and is responsible for the operation and maintenance of the entire system; and

WHEREAS, as more waste was disposed at the Landfill, the amount of LFG generated has increased and only 25% of the LFG collected is currently used for energy recovery and the remaining amount is flared; and

WHEREAS, the County and Fortistar Methane Group, LLC (Fortistar) the parent company of NEO Prince William, desire to increase the production of energy from the increased amount of LFG collected; and

WHEREAS, Fortistar has developed plans to immediately install three additional engines, producing an additional total of 4.8 MW of power, with one additional engine to be installed in the future when LFG flow increases as additional waste is disposed; and

WHEREAS, as requested by Fortistar, by Resolution No. 09-588 on July 14, 2009, the Board approved Amendment 2 to the Gas Use Agreement between the County and NEO Prince William, and a Consent and Agreement in order for the newly-formed company, Prince William Energy, LLC (PWE) to obtain financing approval for the additional engines; and

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WHEREAS, due to the relatively high cost estimate from the Northern Virginia Electric Cooperative of \$1,640,000 for the electrical interconnect, Fortistar has requested that the County consider funding the interconnect cost through a “loan” from the Solid Waste Fund; and

WHEREAS, the Solid Waste Fund has periodically transferred funds to the General Fund to establish a reserve account for future capital needs. The General Fund Solid Waste Restricted Reserve account balance is \$7,297,717; and

WHEREAS, working with Fortistar, the Department of Finance and the County Attorney’s office, staff has prepared an Addendum and Amendment No. 3 of the Gas Use and License Agreement with NEO Prince William, and an Interconnect Project Funding Agreement with PWE; and

WHEREAS, approval of the Addendum and Amendment No. 3 of the Gas Use and License Agreement with NEO Prince William and Interconnect Project Funding Agreement will allow PWC Landfill services to continue to be provided in an environmentally friendly manner utilizing LFG to produce “green” power, reducing the need to burn fossil fuels, thereby, reducing air emissions; and

WHEREAS, PWE will provide an additional 7% of the electric revenues (\$180,000 per year) to the County to pay back the \$1,640,000 loan with 3% interest. Based upon estimates of energy generation, it is anticipated that this loan will be paid back in 11 years; and

WHEREAS, the County’s General Fund will receive an estimated \$30,000 in additional personal property tax revenue from the equipment installed for the first year of operation, and the County’s Solid Waste Fund will receive an estimated \$130,000 per year in revenue sharing once the first phase of the expanded facility is operational; and

WHEREAS, County staff recommends and requests Board action to approve Addendum and Amendment No. 3 to the Gas Use Agreement with NEO Prince William, LLC and Interconnection Project Funding Agreement with Prince William Energy, LLC, and Transfer, Budget and Appropriate \$1,640,000 to provide the electrical interconnect, and expand the Landfill Gas to Energy Recovery Facility at the Prince William County Landfill;

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NOW, THEREFORE, BE IT RESOLVED that the Prince William Board of County Supervisors does hereby approve the attached Addendum and Amendment No. 3 to the Gas Use Agreement with NEO Prince William, LLC, and Interconnection Project Funding Agreement with Prince William Energy, LLC in a final form to be approved by the County Attorney, in order to expand the Landfill Gas to Energy Facility;

BE IT FURTHER RESOLVED that the Prince William Board of County Supervisors does hereby authorize the Chairman of the Board to sign this Addendum and Amendment 3, and Interconnection Project Funding Agreement on behalf of the Board;

BE IT FURTHER RESOLVED that the Prince William Board of County Supervisors does hereby transfer, budget and appropriate \$1,640,000 for the costs of the interconnect as follows:

<u>Transfer From:</u>	<u>Fund/Subfund</u>	<u>OCA</u>	<u>OL3</u>	<u>Amount</u>
General Fund Solid Waste Reserves	10/100	680017	9003	\$1,640,000
<u>Transfer To:</u>	<u>Fund/Subfund</u>	<u>OCA</u>	<u>OL3</u>	<u>Amount</u>
Landfill Enterprise Gas Utilization	530/102	400748	1901	\$1,640,000

ATTACHMENTS: Addendum and Amendment No. 3 to the Gas Use Agreement with NEO Prince William, LLC
Interconnection Project Funding Agreement with Prince William Energy, LLC

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

County Attorney
Finance Director
Public Works Director
Solid Waste Division Chief

ATTEST: _____

Clerk to the Board

ADDENDUM AND AMENDMENT NO. 3 TO GAS USE AGREEMENT;
AND LICENSE TO USE REAL PROPERTY LOCATED AT THE
PRINCE WILLIAM COUNTY SANITARY LANDFILL

This Addendum and Amendment No. 3 to Gas Use Agreement; and License to Use Real Property Located at the Prince William County Sanitary Landfill (the "Third Addendum") is made and dated as of October 2, 2012, between the Board of County Supervisors of Prince William County, Virginia, a political subdivision of the Commonwealth of Virginia (the "Board"), and NEO Prince William, LLC, a Delaware limited liability company ("NEO Prince William").

RECITALS

A. The Board owns and operates the Prince William County Sanitary Landfill located in Prince William County, Virginia (the "Landfill").

B. The Board granted NEO Prince William the exclusive right to develop a landfill gas-to-energy facility fueled by landfill gas ("LFG") produced from the Landfill under that certain Gas Use Agreement; and License to Use Real Property Located at the Prince William County Sanitary Landfill dated December 30, 1996, as amended by that certain Addendum No. 1 to Gas Use Agreement; and License to Use Real Property Located at the Prince William County Sanitary Landfill dated January 25, 1999, as further amended by that certain Addendum No. 2 to and Renewal of Gas Use Agreement dated August 4, 2009 (collectively, the "Use Agreement").

C. Pursuant to Section 12.3 of the Use Agreement, NEO Prince William subgranted a portion of its rights to MM Prince William Energy LLC, a Delaware limited liability company ("MM Prince William"), which, in turn, sub-subgranted a portion of its rights to Prince William Energy LLC, a Delaware limited liability company ("PWE"), as consented to by the Board pursuant to that certain Consent and Agreement between PWE and the Board dated as of August 4, 2009 (the "Consent Agreement"), in order that PWE might develop a new LFG-fired electrical generation project at the Landfill of approximately 4800 kilowatts gross generating capacity to provide electric energy to Northern Virginia Electric Cooperative ("NOVEC"), an investor owned utility company, or another third party buyer (the "PWE Energy Recovery Facility").

D. In exchange for the Board's consent and continued support of the PWE Energy Recovery Facility, PWE agreed to make an annual Subgrant Payment, as defined in the Consent Agreement, to the Board, along with periodic Subgrantee Payments as required under Section 7.1(a) of the Use Agreement.

E. In connection with the development of the PWE Energy Recovery Facility, PWE intends to contract with NOVEC for the design, construction and commissioning of new electrical interconnection infrastructure to interconnect the PWE Energy Recovery Facility with the NOVEC distribution system at an estimated cost of One Million Six Hundred Forty Thousand Dollars (\$1,640,000.00) (the "Interconnection Costs") for which the Board has agreed to provide the financing which shall be repaid to the Board pursuant to a seven percent (7%) royalty on all gross electricity sale revenues received by PWE which the parties agreed to establish for the sole purpose of such repayment pursuant to that certain Interconnection Project

Funding Agreement dated as of October 2,, 2012, between the Board and PWE (the "Interconnection Agreement") to be executed concurrently with this Third Addendum.

F. The Board and NEO Prince William have agreed to amend the Use Agreement in connection with the PWE Energy Recovery Facility and the funding of the Interconnection Costs, including to extend the Term, as defined in the Use Agreement, and provide consideration to the Board.

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 NEO Prince William hereby agree as follows:

1. Defined Terms. All capitalized terms not specifically defined herein shall have the meanings set forth in the Use Agreement.
2. Solid Waste Flow. The following is hereby added at the end of the last sentence of Section 3.8 of the Use Agreement:

Notwithstanding the foregoing, the Board acknowledges that the minimum gas quantity of Two Thousand Five Hundred Sixty standard cubic feet per minute (2,560 scfm) of LFG with a 50 percent methane content by volume ("Minimum Levels") is required for the operation of the Energy Recovery Facilities with a combined electrical generating capacity of 6,700 kilowatts. The Board will not take overt action to reduce the quantities of putrescible waste disposed at the Landfill which would be a direct cause for the quantity or quality of LFG to decrease below the Minimum Levels required.

3. Term Extension. Paragraph 1 of Article V of the Use Agreement is hereby replaced with the following:

The Term of this Contract shall commence upon the Commencement Date, and shall continue until the earlier of (i) November 17, 2038, or (ii) the giving of written notice by NEO Prince William to the Board that in the opinion of NEO Prince William, the Landfill cannot produce commercially usable quantities of LFG to warrant the continuation of the Project as a viable, stand-alone commercial enterprise.

4. Renewal Terms. Paragraph 2 of Article V of the Use Agreement is hereby deleted.

5. Consideration for Term Extension. The following proviso is hereby added at the end of the first sentence of Section 7.1(a):

; provided, however, commencing November 18, 2028, the Subgrantee Payments shall be equal to ten percent (10%) of such gross electricity and/or thermal energy sales from the Energy Recovery Facility.
6. County Flare. NEO Prince William acknowledges the request of the Board, pursuant to Section 4.1(e) of the Use Agreement, for NEO Prince William to modify the LFGMS and Flare. The parties hereby agree that such modifications shall be included and operated as part of the LFGMS and Flare, including pursuant to Section 4.1(a); however, the additional cost to cover NEO Prince William's internal costs and overhead shall be reduced from 15% to 10% for this major modification.
7. Effectiveness of Third Addendum. The Parties hereby agree that this Third Addendum shall only be effective upon the concurrent execution by the Board and NEO Prince William of the Interconnection Agreement.
8. Effect of Amendment. Except as provided herein, all terms and conditions of the Use Agreement remain in full force and effect, without waiver or modification. This Third Addendum and the Use Agreement shall be read together as one document.
9. Memorandum. This Third Addendum, or a memorandum of this Third Addendum, may be recorded by either party.
10. Counterparts. This Third Addendum may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute a single instrument.

[SIGNATURE BLOCK TO FOLLOW]

IN WITNESS WHEREOF, the Board and NEO Prince William have caused this Third Addendum to be executed and delivered in triplicate by their duly represented officers or representatives as of the date first above written.

BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, VIRGINIA

NEO PRINCE WILLIAM ENERGY, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

By: _____
Name: _____
Title: _____
Date: _____

I HEREBY APPROVE the form and legality of the foregoing Third Addendum on this _____ day of _____, 2012.

_____, County Counsel

By: _____
Assistant County Attorney

INTERCONNECTION PROJECT FUNDING AGREEMENT

This Interconnection Project Funding Agreement (the "Agreement") is made and dated as of October 2, 2012 (the "Effective Date"), among the Board of County Supervisors of Prince William County, Virginia, a political subdivision of the Commonwealth of Virginia (the "Board"), and Prince William Energy LLC, a Delaware limited liability company ("PWE"), collectively referred to as the "Parties."

RECITALS

A. The Board owns and operates the Prince William County Sanitary Landfill located in Prince William County, Virginia (the "Landfill").

B. The Board granted NEO Prince William, LLC, a Delaware limited liability company ("NEO Prince William"), the right to develop a landfill gas-to-energy facility fueled by landfill gas ("LFG") produced from the Landfill under that certain Gas Use Agreement; and License to Use Real Property Located at the Prince William County Sanitary Landfill dated December 30, 1996, as amended by that certain Addendum No. 1 to Gas Use Agreement; and License to Use Real Property Located at the Prince William County Sanitary Landfill dated January 25, 1999, as further amended by that certain Addendum No. 2 to and Renewal of Gas Use Agreement dated August 4, 2009 (collectively, the "Use Agreement").

C. Pursuant to Section 12.3 of the Use Agreement, NEO Prince William subgranted a portion of its rights to MM Prince William Energy LLC, a Delaware limited liability company ("MM Prince William"), which, in turn, sub-subgranted a portion of its rights to PWE, as consented to by the Board pursuant to that certain Consent and Agreement between PWE and the Board dated as of August 4, 2009 (the "Consent Agreement"), in order that PWE might develop a LFG-fired electrical generation project at the Landfill of approximately 4800 kilowatts gross generating capacity to provide electric energy to Northern Virginia Electric Cooperative ("NOVEC"), an investor owned utility company, or another third party buyer (the "PWE Energy Recovery Facility").

D. In exchange for the Board's consent and continued support of the PWE Energy Recovery Facility, PWE agreed to make an annual Subgrant Payment, as defined in the Consent Agreement, to the Board, along with periodic Subgrantee Payments as required under Section 7.1(a) of the Use Agreement.

E. In connection with the development of the PWE Energy Recovery Facility, PWE intends to contract with NOVEC for the design, construction and commissioning of new electrical interconnection infrastructure to interconnect the PWE Energy Recovery Facility with the NOVEC distribution system (the "Interconnect") at an estimated cost of One Million Six Hundred Forty Thousand Dollars (\$1,640,000.00) (the "Interconnection Costs") for which the Board has agreed to provide the financing which shall be repaid to the Board pursuant to a seven percent (7%) royalty on all gross electricity sale revenues received by PWE which the Parties agree to establish for the sole purpose of such repayment.

F. Subject to the terms of this Agreement, the Board believes it to be in the best interest of the Board to fund the Interconnection Costs in exchange for the consideration set forth herein.

G. The Parties have agreed to execute that certain Addendum and Amendment No. 3 to the Use Agreement between the Board and NEO Prince William dated effective as of October 2, 2012 (the "Third Addendum"), concurrently with this 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 PWE hereby agree as follows:

1. Defined Terms. All capitalized terms not specifically defined herein shall have the meanings set forth in the Use Agreement.

2. Funding. The Board, on behalf of PWE, hereby agrees to pay to NOVEC upon NOVEC's presentation of invoices to PWE the Interconnection Costs in an amount not to exceed One Million Six Hundred Forty Thousand Dollars (the "Funding Ceiling"). Any Interconnection Costs in excess of the Funding Ceiling shall be paid by PWE.

3. Interest Rate. Subject to provisions of Section 2 above, the Board agrees to finance the Interconnection Costs at an interest rate equal to three percent (3%) per annum payable over a term of approximately eleven (11) years from the commercial operation date of the PWE Energy Recovery Facility until repaid in full. Interest on the Interconnection Costs financed by the Board shall accrue from the earlier of a) the date of the Board's first payment of Interconnection Costs to NOVEC, or b) the deposit by the Board's funds into an escrow account established for the purpose of payment of the Interconnection Costs. Any amounts financed by the Board shall be evidenced in a written promissory note that includes the amount financed and the interest rate therefore (any, a "Promissory Note"). The Board hereby agrees that its source of repayment of the Promissory Note shall be a seven percent (7%) royalty on all gross electricity sale revenues received by PWE (the "Royalty") which the Parties hereby agree to establish for the sole purpose of such repayment. The Royalty shall be in addition to the Subgrantee Payments, as defined in the Use Agreement, and shall continue in effect until the Promissory Note is paid in full. The Royalty payments shall be paid quarterly. All Royalty payments shall first be applied to any interest due, and then principal. PWE shall have the right to prepay any amounts financed, as evidenced by the Promissory Note, at any time in whole or in part without prepayment or other penalty. The Board shall, for the term of any Promissory Note, submit annual accounting relating to such financing, including annual beginning and ending balances of principal and interest payments due from PWE and the application of the Royalty to such balances.

4. Project Expectations. It is anticipated that the PWE Energy Recovery Facility will become operational in calendar year 2013. PWE shall begin payments to the Board no later than December 31, 2013 or 90 days after the Interconnect construction is completed, whichever date is later. For illustrative purposes only, a proposed Capital Funding and Interest schedule is included in Attachment 1; provided, however, the Parties acknowledge that the amounts paid under the Promissory Note will vary from this schedule depending upon the amount of electricity sold each year.

5. Effectiveness of Agreement. The Parties hereby agree that this Agreement shall only be effective upon the concurrent execution by the Board and NEO Prince William of the Third Addendum.

6. Amendment. This Agreement may only be modified, amended or supplemented by an instrument in writing executed by the Parties.

7. No Waiver. No delay or omission to exercise any right or power shall be construed to be a waiver of any default or acquiescence therein or a waiver of any right or power, and every such right and power may be exercised from time to time and as often as may be deemed expedient. Either Party's acceptance of any performance due hereunder that does not comply strictly with the terms hereof shall not be deemed to be waiver of any right of such Party to strict performance by the other Party. Acceptance of past due amounts or partial payments shall not constitute a waiver of full and timely payment of any sums due hereunder.

8. Severability. If any term or provision of this Agreement should be held invalid or unenforceable, the Parties to this Agreement shall endeavor to replace such invalid terms or provisions by valid terms and provisions that correspond to the best of their original economic and general intentions. The invalidity or unenforceability of any term or provision hereof shall not be deemed to render the other terms or provisions hereof invalid or unenforceable.

9. Entire Agreement. This Agreement is expressly acknowledged to constitute the entire agreement between the Parties relating to the subject matter hereof and to supersede all prior written and oral agreements and understandings and all contemporaneous oral representations or warranties in connection therewith.

10. Successors and Assigns. This Agreement and all of the terms, conditions and limitations contained herein shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

11. Construction and Survival. The terms and provisions 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 Agreement create obligations that extend beyond the termination or expiration of this Agreement, the applicable provisions of this 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 Agreement.

12. Further Acts. The Parties shall 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 Agreement.

13. No Joint Venture. Nothing contained in this 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.

14. No Third Party Beneficiary. This Agreement is intended to be solely for the benefit of the Parties hereto and their 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.

15. Claims/Disputes. In accordance with §11-69, VA Code Ann., this provision shall be followed for consideration and handling of all claims by PWE under this Agreement. This paragraph is intended to afford PWE 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 PWE 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, VA Code Ann. This section does not set up an administrative appeals procedure. Section 11-71, VA Code Ann., is not applicable to this 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 forth the basis 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 Agreement be filed more than ten (10) days after the expiration of the Term.

Claims by PWE with respect to this 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 PWE. If PWE 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) days of receipt of the Claim.

If PWE is not satisfied with the County Executive's decision, it may submit its Claim to the Board of County Supervisors within thirty (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, VA 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, PWE will proceed diligently with the performance of its obligations under this 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 PWE against the Board arising out of this Agreement.

16. Consequential Damages. Neither party hereunder shall be liable to the other party for any special, indirect, loss of use, lost profits, incidental or consequential damages arising under or out of this Agreement or the transactions contemplated herein.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute a single instrument.

[SIGNATURE BLOCK TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered in triplicate by their duly represented officers or representatives as of the date first above written.

BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, VIRGINIA **PRINCE WILLIAM ENERGY LLC,**
a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

By: _____
Name: _____
Title: _____
Date: _____

I HEREBY APPROVE the form and legality of the foregoing Agreement on this _____ day of _____, 2012.

_____, County Counsel

By: _____
Assistant County Attorney

Attachment

Attachment 1
Capital Funding and Interest Schedule

Amount Provided by Prince William County:

\$1,640,000

Interest Rate on Loan:

3.0%

Terms of Loan:

No Penalties for Late Payment

Interest Paid First with Partial Payments*

(For Illustrative Purposes Only)

*Amortization Schedule Subject to Change

Due Date	Principal	Interest	Total Due
12/31/2013	123,183.08	59,816.92	183,000
12/31/2014	120,676.03	55,323.97	176,000
12/31/2015	130,077.53	50,922.47	181,000
12/31/2016	134,821.95	46,178.05	181,000
12/31/2017	144,739.41	41,260.59	186,000
12/31/2018	149,018.59	35,981.41	185,000
12/31/2019	158,453.86	30,546.14	189,000
12/31/2020	169,233.26	24,766.74	194,000
12/31/2021	176,405.83	18,594.17	195,000
12/31/2022	187,840.01	12,159.99	200,000
12/31/2023	141,691.23	5,308.77	147,000
12/31/2024	3,859.22	140.78	4,000
	\$ 1,640,000	\$ 381,000	\$ 2,021,000



Melissa S. Peacor
County Executive

COUNTY OF PRINCE WILLIAM

OFFICE OF EXECUTIVE MANAGEMENT


1 County Complex Court, Prince William, Virginia 22192-9201
(703) 792-6600 Metro 631-1703 FAX: (703) 792-7484

BOARD OF COUNTY SUPERVISORS

Corey A. Stewart, Chairman
Martin E. Nohe, Vice Chairman
Maureen S. Caddigan
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W. S. Wally Covington, III
John D. Jenkins
Michael C. May
Frank J. Principi

September 14, 2012

TO: Board of County Supervisors

FROM: Thomas Bruun 
Director of Public Works

THRU: Melissa S. Peacor
County Executive

RE: Approve Addendum and Amendment No. 3 to the Gas Use Agreement with NEO Prince William, LLC and Interconnection Project Funding Agreement with Prince William Energy, LLC and Transfer, Budget and Appropriate \$1,640,000 to Provide the Electrical Interconnect and Expand the Landfill Gas to Energy Recovery Facility at the Prince William County Landfill – **Coles Magisterial District**

I. Background in chronological order is as follows:

- A. Formation of Landfill Gas – When refuse is buried at a landfill, anaerobic conditions develop and landfill gas (LFG) is formed from the decomposition of organic matter. This LFG contains approximately 50% methane, which can be combusted as a fuel source to produce heat and energy.
- B. Regulatory Requirements – Title V of the Federal Clean Air Act, the Environmental Protection Agency New Source Performance Standards, and the Virginia Department of Environmental Quality (VDEQ) Rule 4-43 all require the collection and treatment of LFG from large landfills such as the Prince William County Landfill (PWC Landfill).
- C. Private Sector Services – To meet these regulatory requirements and provide potential opportunities for energy recovery from LFG, Prince William County (the County) issued a Request for Proposals in September 1996 to seek qualified LFG developer companies to provide the County with a gas collection, treatment and utilization facility.

- D. Gas Use Agreement with NEO Prince William – A selection committee recommended NEO Prince William, LLC (NEO Prince William) as the most qualified firm and the Board of County Supervisors (Board) approved a Gas Use and License Agreement (Gas Use Agreement) with NEO Prince William on December 17, 1996 (Resolution No. 96-1179). Addendum No. 1 to this Agreement, further clarifying the description of the PWC Landfill property, was approved by the Board on February 2, 1999 (Resolution No. 99-85). This Agreement provides gas rights for all LFG generated at the PWC Landfill to NEO Prince William.
- E. Recovery and Utilization System Installed – NEO Prince William installed a LFG collection system, flare and energy recovery facility consisting of two LFG fired engines generating 1.9 megawatts (MW) of power. The system became fully operational in November 1998. NEO Prince William is responsible for the operation and maintenance of the entire system.
- F. Revenue Sharing – The Gas Use Agreement with NEO Prince William provides the County's Solid Waste Fund \$12,000 per year and five percent (5%) of the gross electricity sales revenue, less any personal property taxes paid. The County's solid waste fund is currently receiving approximately \$50,000 per year in revenue.
- G. NEO Prince William Purchased by Fortistar – After a time of uncertainty regarding the parent company of NEO Prince William and its subguarantee, MM Prince William LLC, (MM Prince William), Fortistar Methane Group (Fortistar) purchased all the assets and liabilities of NEO Prince William and MM Prince William and is the current owner and operator of the system.
- H. Amount of LFG Increasing – As more waste is disposed at the County landfill, the amount of LFG has and will likely continue to increase. In 1999 approximately 1600 standard cubic feet per minute (scfm) of LFG was produced. This amount has increased to approximately 2500 scfm. Approximately 25% of the LFG is currently used for energy recovery. Approximately 75% is currently combusted in two flares without any energy recovery.
- I. Desire to Increase Energy Production – The County and Fortistar desire to increase the production of energy from the increased amount of LFG generated.

- J. Plans to Increase Energy Production – Fortistar has developed plans to phase in the installation of four (4) additional LFG fired engines to increase energy production from 1.9 MW to a total of 8.3 MW. Three (3) additional engines, producing an additional total of 4.8 MW, can be installed now based upon the current LFG flow. The other engine may be installed in the future when LFG flow increases as additional waste is disposed.
- K. Previous Board Approvals Granted – As requested by Fortistar, by Resolution No. 09-588 on July 14, 2009 the Board approved Amendment 2 to the Gas Use Agreement between the County and NEO Prince William and a Consent and Agreement in order for the newly formed company, Prince William Energy, LLC (PWE) to obtain financing approval for the additional engines.
- L. VDEQ Air Permits – The County, in conjunction with Fortistar, submitted and received approval from VDEQ for an air permit amendment for the additional engines. An extension of the construction start date stated in the permit is under review by VDEQ.
- M. Energy Sales Agreement – Fortistar has completed negotiations and obtained approval from the Northern Virginia Electric Cooperative (NOVEC) on the power sales agreement to sell the power generated from the additional engines.
- N. Interconnect Costs and Funding – Due to the relative high cost estimate from NOVEC of \$1,640,000 for the electrical interconnect, Fortistar has requested that the County consider funding the interconnect cost through a “loan” from the Solid Waste Fund.
- O. General Fund Restricted Solid Waste Reserves – The Solid Waste Fund has periodically transferred funds to the General Fund to establish a reserve account for future capital needs. The General Fund Solid Waste Restricted Reserve account balance is \$7,297,717.

II. Current Situation is as follows:

- A. Proposed Financing – The County and Fortistar have developed a proposal for the County to fund the interconnect cost to be paid back by Fortistar by an increased revenue share to the County of the electric revenues generated. Fortistar has also requested an extension of the terms of the Gas Use Agreement to obtain financing and financial viability of the project expansion.

- B. Documents Prepared – Working with Fortistar, the County’s Department of Finance and the County Attorney’s office, staff has prepared an Addendum and Amendment No. 3 (Addendum No. 3) of the Gas Use and License Agreement with NEO Prince William, and an Interconnect Project Funding Agreement (Interconnect Agreement) with PWE.
1. Addendum and Amendment No.3 to Gas Use Agreement – Addendum No. 3 to the Gas Use Agreement extends the term for ten (10) additional years through November 17, 2038. During this 10 year extension period, NEO Prince William and PWE will pay the County an additional five percent (5%) share of electric revenues, bringing the total during this extension period to a 10% share. Addendum No. 3 also clarifies and acknowledges the waste flow requirements into the landfill needed to provide the quantity and quality of gas to run the additional engines, and acknowledges the cooperative effort needed for the County to expand the blower and flare of the gas collection system.
 2. Interconnect Project Funding Agreement – The Interconnect Agreement provides funds to NOVEC for the interconnect upgrade to be paid back by PWE under the following terms.
 - a) Interconnect Funding – The County’s Solid Waste Fund will pay NOVEC, on behalf of PWE, up to \$1,640,000 for the interconnect upgrade to receive potentially up to 10 MW of electricity from the landfill. PWE, and not the County, will be responsible for any costs above this amount.
 - b) Repayment of Interconnect Costs – The County will charge PWE a three percent (3%) annual interest rate for this loan. PWE will provide an additional seven percent (7%) of the electric revenues to the County to pay back the loan.
- C. PowerPoint Presentation – The attached PowerPoint presentation summarizes the details of this project, the Addendum and Amendment No. 3 of the Gas Use and License Agreement with NEO Prince William, and the Interconnect Project Funding Agreement with PWE.

- D. Board Action Requested – Staff recommends and requests Board action to approve Addendum and Amendment No. 3 to the Gas Use Agreement with NEO Prince William, LLC and Interconnection Project Funding Agreement with Prince William Energy, LLC and Transfer, Budget and Appropriate \$1,640,000 to provide the electrical interconnect and expand the Landfill Gas to Energy Recovery Facility at the Prince William County Landfill.

III. Issues in order of importance are:

- A. Fiscal Impact – What are the impacts on the County’s General Fund and Solid Waste Fund? What are the financial benefits to the County?
- B. Service Level/Policy Impact – What is the impact on landfill services? What is the impact to the County’s existing permits? What are the environmental impacts?
- C. Legal – What are the legal impacts?
- D. Timing – When is approval required?

IV. Alternatives in order of feasibility are:

- A. Approve Addendum and Amendment No. 3 to the Gas Use Agreement with NEO Prince William, LLC and Interconnection Project Funding Agreement with Prince William Energy, LLC and Transfer, Budget and Appropriate \$1,640,000 to provide the electrical interconnect and expand the Landfill Gas to Energy Recovery Facility at the Prince William County Landfill.
 - 1. Fiscal Impact – The County’s General Fund and Solid Waste Fund will receive additional revenue from the expansion of the LFG to energy recovery facility from this private investment. Funds are available in the General Fund Solid Waste Restricted Reserves to provide funding for the electric interconnect. The loan payment for the interconnect costs will be paid back in approximately 11 years.
 - a) Personal Property Tax Revenues to General Fund – The County’s General Fund will receive additional personal property tax revenue from the equipment installed. Based upon previous tax revenue records for this facility, it is estimate that an additional \$30,000 of tax revenue will be generated the first year. This amount will vary each year depending upon the depreciation of the equipment.

- b) General Fund Restricted Reserve Transfer – The \$1,640,000 for the electric interconnect is available for transfer in the Restricted General Fund Solid Waste Reserve account. This transfer will not impact the unrestricted General Fund balance, and with the proposed payback, sufficient funds will be available for future landfill capital improvements.

- c) Revenue Sharing to Solid Waste Fund – The County’s Solid Waste Fund will continue to receive revenue from this project.
 - i. Base Revenue- Five percent (5%) of the electric revenue from the facility, plus up to an additional \$12,000 per year for gas rights. These amounts are reduced each year by the amount of property tax paid. It is estimated that an additional \$130,000 per year will be realized by the solid waste fund once the first phase of the expanded facility is fully operational.

 - ii. Loan Interconnect Payback – Payment for the interconnect loan will be an additional seven percent (7%) of the electric revenue, estimated to be approximately \$180,000 per year. At a three percent (3%) interest rate, this loan will be paid back in approximately 11 years. Once the loan payment is completed, this additional seven percent (7%) revenue sharing payment will cease.

 - iii. Future Revenues – During the 10-year agreement extension period beginning in 2028, the County’s Solid Waste Fund will receive an additional five percent (5%) from all electric revenues, or approximately an additional \$160,000 per year, bring the total annual revenue share for this project to \$290,000 per year

- d) Financially Sound Proposal – The County’s Department of Finance has reviewed these Agreements and financial impacts and concur that the proposal is economically sound and makes good business sense to invest in the interconnect and project expansion through this partnership with Fortistar.

2. Service Level/Policy – Approval of Addendum and Amendment No. 3 to the Gas Use Agreement and the Interconnection Project Funding Agreement will allow County Landfill services to continue to be provided in an environmentally friendly manner. All solid waste and air permit regulations will be met. LFG is a biofuel source. Using LFG for electricity generation is “green” power. The expanded facility will reduce the need to burn fossil fuels for electricity production, reducing air emissions. The facility will also destroy methane and reduce carbon emissions.
3. Legal – The Addendum and Amendment No. 3 to the Gas Use Agreement and the Interconnection Project Funding has been reviewed by the County Attorney’s office. The Addendum No. 3 will extend the gas rights to NEO Prince William for all LFG generated at the County landfill until November 17, 2038.
4. Timing – Fortistar has requested that the Addendum No. 3 to the Gas Use Agreement and the Interconnect Agreement be approved in October 2012 in order to initiate the interconnection construction, complete designs and permitting, and begin construction of the expanded facility by December 31, 2012.

B. Take No Action

1. Fiscal Impact – No additional revenues will be received in the County’s general fund and solid waste fund.
2. Service Level/Policy Issues – The landfill will continue to operate and excess LFG will continue to be flared without energy recovery. The County will continue to meet all permit conditions. There will be no expansion of the LFG to provide energy to recovery facilities and no additional “green” power will be produced. There will be no reduction in the use of fossil fuels and air emissions will not be reduced.
3. Legal – The existing Gas Use Agreement, as amended, will remain as is. Without the extensions, this Agreement expires on November 17, 2028.
4. Timing – The County will need to advise Fortistar as soon as possible to ensure that all engineering and permitting work to expand the facility is stopped.

Approve Interconnect Agreement and Amendment 3 to Gas Use Agreement

September 14, 2012

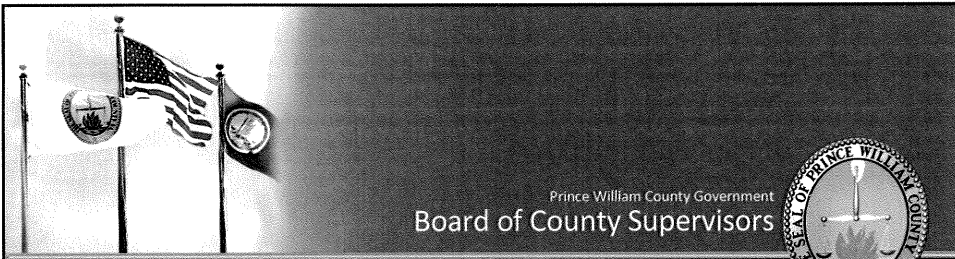
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- V. **Recommendation** is that the Board of County Supervisors concur with Alternative A and approve the attached Resolution.

ATTACHMENT: PowerPoint Presentation

Staff Contact: Thomas Smith, x6252

Approve NEO Addendum 3 SR.doc



Prince William County Government
Board of County Supervisors

Landfill Gas to Energy Recovery Facility Expansion

*Department of Public Works
October 16, 2012*

Background

- Formation of landfill gas
 - ◆ The County landfill has operated for 40 years.
 - ◆ Over 5 million tons of trash is buried at the landfill.
 - ◆ Anaerobic decomposition of the organic matter in waste produces landfill gas.
 - ◆ Methane and carbon dioxide are the two gases formed from the decomposition of waste.
 - ◆ Methane can be used as a fuel source.

Background

■ Regulatory Requirements

- ◆ Landfill gas and methane are a source of air pollution and a contributor to global warming.
- ◆ Federal and State regulations require the collection and treatment of landfill gas from larger landfills.

■ Partnership with Private Sector

- ◆ The County issued an RFP in September 1996 to seek private developers to provide landfill gas collection, treatment and energy recovery.
- ◆ County selected NEO Prince William and the Board approved an agreement with NEO in December 1996.
- ◆ The agreement provides gas rights to NEO Prince William for all landfill gas generated.

Background

■ Existing Energy Recovery Facility

- ◆ NEO Prince William installed a landfill gas collection facility and a 1.9 MW energy recovery facility became operational in November 1998.
- ◆ NEO Prince William has been purchased by Fortistar

■ Landfill Gas Generation

- ◆ The amount of landfill gas generated has increased from 1600 standard cubic feet per minute (scfm) in 1999, to the current amount of 2500 scfm.
- ◆ Only 25% (600 scfm) of the landfill gas is used for energy recovery.
- ◆ Fortistar and the County desire to increase the production of energy.

Background

■ Expansion of Energy Recovery Facility

- ◆ Fortistar desires to increase capacity of energy recovery facility and install four (4) additional engines increasing the total capacity to 8.3 MW.
- ◆ Three (3) engines can be installed now producing an additional 4.8 MW.
- ◆ Board approved Amendment 2 to Gas Use Agreement and a Consent and Agreement in July 2009 to allow project financing of the additional engines by a newly formed company, Prince William Energy (PWE).

Current Situation

■ Expansion of Energy Recovery Facility

- ◆ Fortistar has requested the County to consider financing the NOVEC interconnect cost of \$1,640,000 at an interest rate of 3%.
- ◆ PWE will provide an additional 7% of the electric revenues to pay back the County for the cost of the interconnect.
- ◆ Fortistar has requested an extension to the Gas Use Agreement to obtain financing and financial viability of the project.

Project Impacts

- Use of additional landfill gas for energy production is considered “green” power and will offset use of fossil fuels.
- General Fund Revenues
 - ◆ Additional personal property tax revenue to General Fund (\$30,000 in first year).
- Interconnect Financing
 - ◆ Funds available in the General Fund solid waste restricted reserve to fund the \$1,640,000 interconnect.
 - ◆ PWE to pay 7% electric revenue (\$180,000 per year) to pay back loan in approximately 11 years.

Project Impacts

- Solid Waste Fund
 - ◆ Additional \$130,000 in revenue to Solid Waste Fund.
 - Up to an additional fixed revenue of \$12,000 per year.
 - 5% of total energy sales of \$118,000 per year.
 - ◆ Extension of Agreement with NEO Prince William until November 17, 2038.
 - Additional 5% of total energy sales from all engines of \$160,000 per year beginning November 2028.

Board Actions

- **Approve Addendum and Amendment 3 to Gas Use Agreement with NEO Prince William**
 - ◆ Exercise extension options for 10 years until 2038 and increases electric revenue share to total of 10% during this 10 year extension period.
 - ◆ Clarifies and acknowledges requirements to produce quantity and quality of gas while maintaining County's right to divert waste from landfilling to alternative technologies.
 - ◆ Cooperation in County upgrade of blower and flare system of gas collection system.

Board Actions

- **Approve Interconnection Project Funding Agreement with Prince William Energy**
 - ◆ County to provide up to \$1,640,000 to NOVEC for interconnect costs.
 - ◆ PWE to pay an additional 7% of energy revenues to pay back loan at 3% interest rate. Pay back expected in 11 years.
- **Transfer, Budget and Appropriate \$1,640,000 from General Fund solid waste reserve.**

Eco-Park and Renewable Energy

- Use of alternative disposal technologies to convert waste to energy (RFP Issued).
- Piping of landfill gas for heating to other on-site facilities and adjacent properties (e.g. new high school).
- Wind power placed on top of the landfill.
- Flexible solar panels as part of landfill cap installation.
- Conversion of landfill gas to vehicle fuel.

Questions?

