



COUNTY OF PRINCE WILLIAM

1 County Complex Court, (MC460) Prince William, Virginia 22192-9201
(703) 792-6770 Metro 631-1703, Ext. 6770 FAX: (703) 792-4611

FINANCE DEPARTMENT

Purchasing

CONTRACT: 5124NA5

SUBJECT: Composting and Mulching Facilities, Operation of

Between:

PRINCE WILLIAM COUNTY
1 COUNTY COMPLEX COURT (MC460)
PRINCE WILLIAM, VA 22192-9201

703-792-6770 METRO 631-1703 EXT 6770

and the Contractor:

Eastern Clearing, Inc.
6006 Bealeton Road
Bealeton, VA 22712
540-439-4163

This Contract is entered into this 1st day of July, 2005, by and between the Board of County Supervisors of Prince William County, Virginia, or its authorized agents, and the Contractor identified above for services identified herein, on the following terms and conditions. This Contract is prepared in accordance with the Purchasing Regulations of Prince William County, which are incorporated herein by reference.

An Equal Opportunity Employer

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SECTION I

SPECIAL PROVISIONS

I.1 Definitions

"County" shall mean the Board of County Supervisors of Prince William County, Virginia, or the using department identified below and authorized by the Purchasing Regulations or other law to enter into Contracts.

"Using Department" for the purpose of this Contract shall mean Department of Public Works, Solid Waste Division.

"Contract Administrators" assigned to administer this Contract for the County are Mr. Tom Smith, Solid Waste Division Chief and Mrs. Gail Harris, Recycling Program Manager.

"Contractor" shall mean:

Eastern Clearing, Inc.
6006 Bealeton Road
Bealeton, Virginia 22712
Ph. 540-439-4163
Fx. 540-439-4103

whose authorized representative is Ms. Karen H. Coleman, President, who is responsible for the performance obligation of Eastern Clearing, Inc. under this Contract.

I.2 Incorporation of Documents

There are no documents incorporated by reference into this Contract. This Contract has been prepared by including some provisions from Prince William County's RFP050005 dated November 08, 2004 and some provisions from Eastern Clearing, Inc. Proposal dated December 16, 2004. This Contract constitutes the entire Agreement between Prince William County and Eastern Clearing, Inc. for the Operation of the County's Composting and Mulching Facilities described in this Contract.

I.3 Contract Period

Base Contract Period = Five (5) years effective July 01, 2005.
Renewal Periods = Five (5) additional one year renewal periods.

The County shall have the sole discretion to renew the Contract contingent upon availability of funds for the purpose and the needs of the County. The County will provide reasonable written notice to the Contractor of the County's intent to renew or not to renew the Contract.

I.4 Provision of Services

The Contractor shall serve as the County's Agent to equip, operate, and maintain the County's Balls Ford Yard Waste Composting Facility hereafter called "Balls Ford" and the Landfill Mulching Facility hereafter called "Landfill" both located within Prince William County, for the purpose of producing and selling compost, mulch, and mulch products and to market these products (market-ready products).

I.5 Contract Amount

In return for the services described in this Contract, and subject to the "Non-Appropriation of Funds" clause herein, the County certifies that sufficient funds are budgeted and appropriated and shall compensate the Contractor in accordance with the Contract Pricing Structure I.9.3.i

A County Purchase Order will be issued shortly after Contract award which indicates sufficient funds are obligated and will serve as the Contractor's Notice to Proceed.

I.6 Monitoring of Contractor's Performance

Contractual Services shall be performed in accordance with all the Contract Provisions.

In the event any non-compliance with the provisions of this Contract is noted by the County's Contract Administrators, then a written discrepancy notice will be issued to the Contractor by a County Contract Administrator. The time allowed by the County for the Contractor to correct contractual discrepancies will depend on the severity/nature of the discrepancy as solely determined by the County. Non-crucial discrepancies shall be corrected within ten (10) business days after written notification.

Failure to comply with the discrepancy notice will be cause for the County's Purchasing Manager to issue the Contractor a written Cure Notice to cure discrepancies. In the event the Contractor does not cure discrepancies the Contractor may be found in breach of Contract and the Contract may be terminated for Default.

The County's Contract Administrators also have the authority to issue written "Stop Work Notices" or "Redirect Notices" to the Contractor in the event of crucial site conditions, unsafe site conditions, a change in site/material conditions, or when special attention is required of a particular contractual plan, process, or schedule as determined by the County's Contract Administrators.

I.7 Insurance

The Contractor is required to provide evidence of the minimum coverages described herein. No work shall commence until proof is provided that the County's insurance requirements are satisfied.

1. The Contractor shall be responsible for its work and every part

I.7 (Continued)

thereof, and for all materials, equipment, and property of any and all description used in connection therewith. The Contractor assumes all risks of direct and indirect damage or injury to any person or property wherever located, resulting from any action, omission, commission, or operation under the contract, or in connection in any way whatsoever with the contracted work.

2. The Contractor shall, during the continuance of all work under the contract provide and agree to maintain the following unless omitted from the attached "Insurance Checklist":

a. Workers' Compensation and Employers' Liability insurance under the Commonwealth of Virginia statutory requirements, to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.

b. General Liability insurance in the amount prescribed by the County, to protect the Contractor, its subcontractors, and the interest of the County, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form General Liability endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required. Completed Operations Liability coverage shall continue in force for one year after completion of work.

c. Automobile liability insurance, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work will be insured under either a standard Automobile Liability policy or a Commercial General Liability policy.

3. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

4. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.

5. The Contractor will provide an original, signed Certificate of Insurance, evidencing such insurance and such endorsements as prescribed herein, and shall have it filed with the County Purchasing Manager before a contract is executed and any work is started.

6. The Contractor will secure and maintain all insurance policies of its subcontractors which shall be made available to the County on demand.

I.7 (Continued)

7. The Contractor will provide, on demand, certified copies of all insurance coverage on behalf of the Contract within ten (10) days of demand by the County. These certified copies will be sent to the County from the Contractor's insurance agent or representative.

8. No change, cancellation, or non-renewal shall be made in any insurance coverage without a thirty (30) day written notice to the County Purchasing Manager. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished to the County Purchasing Manager.

9. Insurance coverage required shall be in force throughout the duration of the Contract. Should the Contractor fail to provide acceptable evidence of current insurance within five (5) days of written notice at any time during the Contract term, the County shall have the absolute right to terminate the Contract without any further obligation to the Contractor, and the Contractor shall be liable to the County for the entire additional cost of procuring the incomplete portion of the Contract at time of termination.

10. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities and obligations under this heading or under any other section or provisions of the Contract.

11. Contractual and other Liability insurance provided under the Contract shall not contain a supervision, inspection, or services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any person employed by the subcontractor.

12. Nothing contained herein shall be construed as creating any contractual relationship between any subcontractor and the County. The Contractor shall be as fully responsible to the County for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

13. Precaution shall be exercised at all times for the protection of persons (including employees) and property.

14. The Contractor and all subcontractors and sub-subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to the Contract.

15. If the Contractor does not meet the specifications of these insurance requirements, alternate insurance coverage, satisfactory to the Purchasing Manager, may be considered.

I.7 (Continued)

16. The County shall be named additional insured in the General Liability policies and stated so on the Certificate.

PRINCE WILLIAM COUNTY, VIRGINIA INSURANCE CHECKLIST

Items marked "X" are required to be provided.

COVERAGE REQUIRED		MINIMUM LIMITS
Yes	No	
x	1. Workers' Compensation and Employers' Liability;	1. Statutory Limits of VA
x	Admitted in Virginia	Yes
x	Employers' Liability	\$100,000
x	All States Endorsement	Statutory
	USL&H Endorsement	Statutory
	Voluntary Compensation	Statutory
x	2. Commercial General Liability Products	2. \$2,000,000 Combined Single Limit Bodily Injury and Property
x	Completed Operations	Damage Each Occ.
x	Contractual Liability	
x	Personal Injury	
x	Independent Contractors	
	XCU Prop. Damage Excl. Deleted	
x	3. Automobile Liability	3. \$1,000,000 Combined
x	Owned, Hired, & Non-Owned	Single Limit Bodily
	Motor Carrier Act End.	Injury and Property
		Damage Each Occ.
	4. Prof. Errors & Omissions	4. \$500,000 Limit Each
		Occ.
x	5. Fire Legal Liability	
	6. Other Insurance:	
x	7. County named as additional insured on Comm. General Liability Policies (This coverage is primary to all other coverages the County may possess)	
x	8. 30 day cancellation notice required.	
x	9. Best's Guide Rating - A:VI or Better, or Equiv.	
x	10. The Certificate must state IFB/RFP No. and Title	

I.8 Bonds - Performance Bond/Payment Bond

The Contractor shall furnish Performance and Payment Bonds, (forms attached), each in an amount of (\$650,000.00), to insure Contract compliance including site abandonment and the cost to restore the site.

Bonds provided shall cover the following periods:

- Initial bonds - shall be three (3) year bonds.
July 01, 2005 thru June 30, 2008.
Five business day allowance to receive initial bonds.
- Second issue bonds - shall be two (2) year bonds.
July 01, 2008 thru June 30, 2010.
- Third issue bonds - shall be one (1) year bonds effective July 01, 2010, renewable to cover the optional Contract renewal periods in the event the County exercises its option to renew the Contract. Proof of bonds and payment thereof must be provided to the County before any work under this Contract begins.

Bonds shall be properly issued and executed by a Surety licensed in the State of Virginia and acceptable to the County. Cost of bonds shall be the Contractor's responsibility. The performance bond shall remain in effect for one (1) year after final acceptance. The County reserves the right to reduce down the appropriate level as may be deemed necessary by the County. The Contractor shall deliver the Performance and Payment Bonds to the County within five (5) business days after receipt of the executed Contract. The Contractor shall use the Performance and Payment Bond Forms included in the Contract.

Performance and Payments Bonds shall not be altered without written permission from the County. Proof of valid bonds and payment thereof shall be provided within five (5) days of a request by the County.

The Contractor shall require the Attorney-in-Fact who executes the required bonds on behalf of the Surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.

I.9 SCOPE OF WORK (SOW)

I.9.1 SOW DEFINITIONS

County - shall mean Prince William County Government, Prince William Virginia.

Contractor - shall mean Eastern Clearing, Inc., 6006 Bealeton Road, Bealeton, VA 22712, acting as the County's Agent to perform services for the County.

Balls Ford - shall mean the Balls Ford Yard Waste Composting Facility located at 13000 Balls Ford Road, Manassas, VA 20109

Landfill - shall mean the Landfill Mulching Facility located at 14811 Dumfries Road, Manassas, VA 20112.

Compost - shall mean a mixture of decomposed organic material which is used as a soil additive.

Mulch/Mulch Products - shall mean ground-up brush which is used as a ground cover in landscaping applications, a fuel product, or for other purposes.

Windrows - shall mean a long piled row of organic material formed and maintained in compliance with VDEQ permits and regulations, for the purpose of organic materials to age/decompose, or for handling purposes, and/or to comply with safety/fire regulations.

Yard Waste/Organic Materials - shall mean incoming brush, grass, leaves, wooden pallets, and manure. Brush shall include tree limbs and stumps up to twenty-four inches (24") in diameter and four feet (4') in length. Incoming materials are received in plastic and paper bags and loose loads.

Market-ready products - shall mean compost, mulch, and mulch products which are 100% ready for sale to homeowners, businesses, landscape Contractors, and other interested parties.

Rejected Material - shall mean incoming non-processable/contaminated material which is not yard waste/organic material and which shall be removed by the Contractor prior to initiating any processes to produce market-ready products.

Residual Material - shall mean the residue from the grinding, debuggging, and screening processes which shall be removed by the Contractor in order to make a market-ready product. Residual material consists mainly of plastic and paper bags removed by the debuggging, grinding and/or screening process, and shall be disposed of thereafter.

I.9.2 SOW LEGAL AND REGULATORY REQUIREMENTS

The Contractor shall be required to meet all applicable Federal, State, and Local laws, rules, regulations, ordinances, and Occupational Safety & Health Administration (OSHA) and Virginia Occupational Safety & Health Administration (VOSHA) Standards as they apply to this Contract including County Sites' (Balls Ford & Landfill) operations and maintenance.

The Contractor shall maintain fire protection systems and fire breaks in accordance with National Fire Protection Association and local fire codes.

Both the Balls Ford and Landfill operate under specific Solid Waste and Virginia Pollution Discharge Elimination System (VPDES) permits issued by the Virginia Department of Environmental Quality (VDEQ). The Contractor shall be familiar and meet all permit conditions that are applicable to the County sites' operations and maintenance.

The Contractor shall become familiar and comply with the operating and maintenance plans of the Stormwater Pollution Prevention Plan (SWPPP), and the Spill Prevention Control and Countermeasure Plan (SPCC) for each site. The requirement of these plans include, but are not limited to, installation of double walled fuel tanks, spill containment of fuel loading and maintenance areas, and installation and maintenance of spill kits.

The Contractor's Operations Manager or designee(s) shall hold and maintain a current Virginia Waste Management Facility Operators Class I License issued by the Commonwealth of Virginia. Proof of the License shall be provided to the County within sixty(60) days of the Contract execution date. The license shall also be posted at Balls Ford.

The County is in the process of developing an Environmental Management System (EMS) application for the Balls Ford and Landfill County sites. The Contractor shall be required to meet all environmental requirements set forth in the EMS Plan. However, any additional resources required by the Contractor to implement the EMS Plan may be cause for the County to renegotiate the Contract.

The Contractor is only authorized to sell or remove the market-ready products from County sites during the Contract period. No yard waste/organic material shall be removed from the sites without written approval from the County.

The County maintains absolute ownership of all materials/products touched/untouched and market-ready products regardless of any services/material processes the Contractor has performed for the County under the Contract. Any/all non-market-ready materials/market-ready products located on County sites, and remaining on County sites at the end of the Contract Term, Non-Renewal of Contract, or upon Contract Termination are absolutely owned by the County.

Transfer of ownership will only apply to 100% market-ready products and only when the 100% market-ready products have been completely removed from County Property. Once Market-ready products are removed from County sites by the Contractor, the County no longer retains any ownership or rights to the market-ready products.

I.9.3 SOW DETAILED

a. GENERAL

The purpose of this Contract is for a Company to serve as the County's Agent to equip, operate, and maintain Balls Ford and the Landfill for the purpose of producing and selling compost, mulch/mulch products and to market these products (market-ready products).

The Contractor shall furnish adequate equipment and sufficient back-up equipment, machinery, trailers, appliances, storage tanks/fuel tanks, tools, analytical instruments, supplies, and labor to equip, operate and maintain both County sites in accordance with this Contract and all legal requirements.

The Contractor shall begin to mobilize equipment and personnel at the sites upon execution of the Contract and after the County's receipt and acceptance of proof of all Contract required Insurance & Bonds. The Contractor shall be fully operational with all equipment and staff within thirty (30) days of Contract award.

b. BALLS FORD (15 acre permitted site available)

The materials to be processed and composted at Balls Ford will include manure, leaves, grass, and brush received loose and received in plastic and paper bags. Market-ready products generated and marketed at Balls Ford shall be Compost and Mulch/Mulch Products.

1. Operation and Composting "Plan"

The County shall:

Receive and weigh all incoming yard waste/organic material and operate the Balls Ford scale house.

Provide roll-off boxes for "rejected" material removed by the Contractor during the inspection process, at no cost to the Contractor.

Remove roll-off boxes from the site at least once per week for delivery and disposal of rejected material in the County Landfill at no charge to the Contractor.

Shall be responsible for the removal of debris caused by any other parties not included in this Contract, or the removal and disposal of any asbestos, hazardous material or contaminated soils received at County sites and identified by the Contractor.

The Contractor shall:

Guarantee acceptance of all incoming deliveries of yard waste/organic material during scheduled receiving hours.

Process up to 50,000 tons per year of incoming yard waste/organic material at Balls Ford, and including up to 500 tons of manure. No minimum received amount of material is guaranteed.

Process a maximum of 500 tons per year of manure from local residents. All manure received at Balls Ford shall be pre-approved by the County and the Contractor. All manure shall be processed and placed in windrows by close of business on the same day manure is received on site.

Properly maintain all yard waste/organic materials received for processing in a neat and orderly fashion in accordance with the site permits and to minimize dust and storm water runoff and erosion.

Remove rejected material, contaminants, and other non-processables (estimated up to 5% by weight of all yard waste/organic material received) and place all rejected material in County provided roll-off boxes.

Remove residual material - plastic and other non-organic material generated by the debugging and/or screening operations. Residual material may not be accumulated at the site for more than seven (7) days. This residual material will be stockpiled, loaded into Contractor's trucks and delivered by the Contractor to the County Landfill on a weekly basis at Contractor's expense. County roll-off boxes are not provided for residual materials.

Perform and record temperature monitoring of mulch and compost piles /windrows on a weekly basis or more frequently as may be required. The reports shall be on file/posted at each trailer location and readily accessible to the County within 24 hours of the readings.

Receive and process material at the Balls Ford during the normal operating hours as follows:

Monday through Saturday:	7:30 am to 5:00 pm
Sunday:	9:00 am to 4:30 pm
Holidays (except as noted below):	7:30 am to 5:00 pm
Christmas Eve:	7:30 am to 2:00 pm
New Year's Day, Thanksgiving Day, and Christmas Day: Closed	

2. Operation and Composting "Process"

Stage 1 - Material Receiving, Transfer and Storage

The Contractor shall:

Receive yard waste/organic materials from County citizens, County refuse haulers, private solid waste collectors, Fairfax County transfer trailers, and other jurisdictions as may be authorized by the County.

Inspect the incoming loads daily to remove non-processable material and place this rejected material daily into the County provided roll-off boxes. Incoming yard waste/organic material shall be delivered to the bottom corner of the rear loading and unloading paved area to perform this process.

Stage 2 - Debugging and Grinding

The Contractor shall:

Feed the leaves and grass through a custom made debugging machine or other equivalent means to remove the plastic bags.

Grind leaves and grass using a grinder.

Grind the brush using a grinder into mulch and wood chips.

Stage 3 - Windrow and Composting

The Contractor shall:

Take the debugged ground leaves, grass, and manure and place the organic material into windrows. The windrows shall be formed using the loader and excavator in compliance with the most current VDEQ permits and operations plan. The appropriate amount of grass and leaves will be mixed into the windrows in the appropriate time frames. During this process the Contractor may experiment with different additives, such as, mulch from both sites and/or wood chips from the Landfill. There is no block composting allowed.

Turn the windrows at least once every two weeks using a track excavator to accelerate the decomposition process. Windrows must also be turned within twenty-four (24) hours when temperatures reach 150 degrees and when deemed necessary from moisture testing and/or odor problems.

Control odors by more frequent turning of the windrows and aerating of the windrows while keeping optimum material mixtures, temperatures, and moisture content.

Turn the ground mulch as needed to reduce heat and fire potential.

Place ground brush into piles or windrows for aging. The size of the brush piles must meet VDEQ permit and fire code requirements. The oldest ground brush in the single ground bin shall be windrowed, double ground, or removed from the site prior to the grinding of any new incoming brush. The purpose for this is to make sure the single ground mulch is continually rotated which reduces the possibility of a mulch pile fire.

Stage 4 Production of Market-ready Products

The Contractor shall:

Remove the leaves and grass from the windrowed area once the composting and decomposition process is complete and maintain the material in the upper left corner of the property.

Remove further contaminants or residual materials utilizing a screen, as necessary, to produce clean, market-ready compost. Stage 4 completes the production process.

Stage 5 - Sale or Removal of Market-ready Products

The Contractor shall:

Sell and/or remove for sale market-ready compost product to wholesalers, nurseries, golf courses, sod fields, farmers, homeowners, landscapers, or other interested parties.

Sell and/or remove for sale market-ready mulch/mulch products. Mulch shall be sold to distributors and/or sold for use as waste chips for boiler fuel. The mulch can be processed (reground) a second time and sold to residents, surrounding nurseries, landscapers, golf courses, or other interested parties.

Perform all loading operations to all customers.

All market-ready products shall be completely physically removed from the County site.

3. Operation and Composting "Schedule"

The Contractor shall:

Stage 1 - Complete within 24 hours of receipt of (brush, leaves, grass, & manure)

Stage 2 - Complete within 48 hours of receipt of 1000 accumulated cubic yards of (brush)

- Complete within 72 hours of receipt of (leaves & grass)

- Complete by close of business the same day of receipt of (manure)

Stage 3 & 4 - Complete within 8 months of receipt of (brush, leaves, grass, & manure)

Stage 5 - Complete within 9 months of receipt of (brush, leaves, grass, & manure)

c. LANDFILL (5 acre mulching site available)

The materials to be processed at the Landfill will only include brush and pallets received loose (not in plastic or paper bags). No composting shall be performed at the Landfill. Market-ready products generated and marketed at the Landfill shall be Mulch/Mulch Products.

1. Operation and Mulching "Plan"

The County shall:

Receive and weigh all incoming yard waste/organic material and operate the Landfill scale house.

Provide roll-off boxes for "rejected" material removed by the Contractor during the inspection process, at no cost to the Contractor.

Remove roll-off boxes from the Landfill mulching area at least once per week for disposal of rejected material in the County Landfill at no charge to the Contractor.

Shall be responsible for the removal of debris caused by any other parties not included in this Contract, or the removal and disposal of any asbestos, hazardous material or contaminated soils received at County sites and identified by the Contractor.

The Contractor shall:

Guarantee acceptance of all incoming deliveries of yard waste/organic material during scheduled receiving hours.

Process all incoming brush and pallets at the Landfill. No minimum/maximum quantity of material is guaranteed.

Properly maintain all yard waste/organic materials received for processing in a neat and orderly fashion in accordance with the site permits and to minimize dust and storm water runoff and erosion.

Remove rejected material, contaminates, and other non-processables (estimated up to 5% by weight of all yard waste/organic material received) and place all rejected material in County provided roll-off boxes.

Perform and record temperature monitoring of mulch piles/windrows on a weekly basis or more frequently as may be required. The reports shall be on file/posted at each trailer location and readily accessible to the County within 24 hours of the readings.

Receive and process material at the Landfill during the normal operating hours as follows:

Monday through Saturday:	6:00 am to 6:00 pm
Sunday:	9:00 am to 4:30 pm
Holidays (except as noted below):	6:00 am to 6:00 pm
Christmas Eve:	6:00 am to 2:00 pm
New Year's Day, Thanksgiving Day, and Christmas Day:	Closed

2. Operation and Mulching "Process"

Stage 1 - Material Receiving, Transfer and Storage

The Contractor shall:

Receive brush and pallets from County citizens, County roll-off trucks, private solid waste collectors and landscapers, and other jurisdictions as may be authorized by the County.

Inspect the incoming brush and pallets to remove non-processable material using a track excavator and a loader.

Stage 2 - Grinding

The Contractor shall:

Grind the brush and pallets into mulch and wood chips using a grinder.

Stage 3 - Production of Market-ready Products

The Contractor shall:

Place the ground brush and wood chips into piles or windrows. The size of the piles must meet VDEQ permit and local fire code requirements. Turn the ground mulch and wood chips as necessary to reduce heat and fire potential until it is shipped out or sold. Stage 3 completes the production process.

Stage 4 - Sale or Removal of Market-ready Products

The Contractor shall:

Sell and/or remove for sale market-ready mulch/mulch products. Mulch shall be sold to distributors and/or sold for use as waste chips for boiler fuel. The mulch can be processed (reground) a second time and sold to residents, surrounding nurseries, landscapers, golf courses, or other interested parties.

Perform all loading operations to all customers.

All market-ready products shall be completely physically removed from the County site.

3. Operation and Mulching "Schedule"

The Contractor shall:

Stage 1 - Complete within 24 hours of receipt of (brush & pallets)

Stage 2 - Complete within 48 hours of receipt of 1000 accumulated cubic yards of (brush & pallets)

Stage 3 - Complete within 5 months of receipt of (brush & pallets)

Stage 4 - Complete within 9 months of receipt of (brush & pallets)

d. MARKETING PLAN (Balls Ford & Landfill)

The County shall:

Assist the Contractor by processing and collecting payments for retail sales of market-ready products at Balls Ford only. The amount sold by the County shall be limited to pick-up loads and trailers. The County shall keep records of the revenue and amount of market-ready products sold.

The Contractor shall:

Implement a marketing plan and shall have sole responsibility for selling or removing from the sites all market-ready products during the term of the Contract. Marketing activities shall be directed towards establishing stable long-term markets. Systems for tracking and reporting data for the amount of product sales shall be maintained. Contractor's current customers include several nurseries including large scale franchise contracts as well as many of the large golf courses in the Northern Virginia area.

Provide sales in accordance with the described processes. Market-ready products may also be transported at the Contractor's expense, to be sold to customers from the Contractor's Bealeton Yard or other site pre-approved by the County. Materials will also be marketed to new home builders in a marketable radius. The Contractor may choose to bag market-ready products off site.

Implement advertising and increase the frequency of advertising as necessary. All mediums will be explored and utilized including registering on internet directories, newspaper or magazine ads, brochures and flyers. The Contractor may also contact area businesses and industries and meet them face to face with samples of the market-ready products. The creation of a target market shall allow the Contractor to also experiment with additives to the compost.

The Contractor agrees to participate in the County's annual America Recycles Day and the Earth Day Spring Fling, as a way to market products and work in partnership with the County.

The Contractor shall donate at no cost to the County market-ready products from both County sites, 1) a total of up to 10% of all combined market-ready products, and 2) a maximum of sixty (60) cubic yards of all combined market-ready products per month, which is included in the 10% requirement and shall be delivered by the Contractor to County designated locations within the County boundaries, for use by the County, other County agencies, and/or non-profit groups. The sixty (60) cubic yards are not cumulative from month to month.

Provide sufficient segregated areas for market-ready product sale.

Established retail sale prices with input and approval from the County.

At Balls Ford, provide full service sales of all market-ready products to include all loading operations for customers.

At the Landfill, provide full service sales of market-ready mulch and mulch products to include all loading operations for customers. Market-ready compost sales are optional.

e. SITE MAINTENANCE (Balls Ford & Landfill)

The County shall:

Provide, at its own discretion, any permanent improvements to the sites including installation of concrete pads or additional paving. The County shall also be responsible for dredging of sediment ponds and all water discharge testing, required by VDEQ/VPDES permits.

The Contractor shall:

Be responsible for the general maintenance of both County sites utilizing its laborers, operators, and equipment.

Maintain both County sites to control potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the sites. This includes periodic cleaning of the sites from blowing litter, dust control, and maintaining proper drainage at the sites to eliminate the ponding of water. Such maintenance also includes monitoring/upkeep of silt fences, controlling erosion and litter.

Provide constant maintenance of all safety devices at the sites. This will be accomplished through measures such as, but not limited to, keeping safety markers freshly painted, signage clean and visible at all times, daily equipment inspections, and controlled fueling and lubricating areas.

Provide maintenance of erosion control measures which shall be checked regularly and always after rainfall. Correct any problems such as necessary reseeding, positive drainage grading, or excavation of silt. Anything found deficient, whether operational or safety related, shall be repaired/corrected in a timely manner.

Implement dust control measures whenever necessary by means of Contractor's rented or owned water truck. In the event that excessive problems exist due to drought or excessive heat the Contractor shall provide a 4,000 gallon portable water tank. All asphalt areas at the sites will be swept clean on a regular basis with the broom attachment on the mini wheel loader or equivalent means.

Provide house-keeping of office trailers at both sites to ensure a clean, safe, working environment.

f. RECORDING KEEPING (Balls Ford & Landfill)

The County shall:

Collect/Record/Maintain "Scale Records" of incoming material weight records. Records shall be provided to the Contractor monthly within ten (10) calendar days after each monthly period.

Collect/Record/Maintain "Retail Sales" of product/quantity/revenue from retail sales of market-ready products at Balls Ford only. Records shall be provided to the Contractor monthly within ten (10) calendar days after each monthly period.

The Contractor shall:

Record/Maintain "Operations Records" of operations required by the permits and regulations including but not limited to, temperature and moisture readings of the windrows and piles, inspection reports, and all required safety training records. Records shall be provided to the County monthly within ten (10) calendar days after each monthly period with the exception of temperature and moisture readings which shall be provided to the County by close of business on the same day of the readings.

Record/Maintain "Sales Records" volume in cubic yards of material/products sold or removed. Records shall be provided to the County monthly within ten (10) calendar days after each monthly period.

Maintain at each site all contract required records.

Upon special/emergency request of the County, provide copies of all Contract related records within four (4) working hours after request.

Utilize current data software programs for record maintenance, user friendly to both the County and the Contractor.

g. EQUIPMENT AND PERSONNEL (Balls Ford & Landfill)

The County shall:

Provide weigh scales, scale house and personnel to weigh incoming yard waste/organic materials, and rejected and residual materials at both County sites.

Provide roll-off boxes, roll-off trucks, and truck drivers to remove rejected materials at both sites.

The Contractor shall:

Provide both sites with sufficient labor and all new equipment for efficiently receiving, handling, processing and loading yard waste/organic material and market-ready products for sale. Each employee will be trained on all of the equipment located at both County sites, making it easy to fill in gaps and meet the required stringent work schedule while utilizing an economically sound crew. Employees will work under a staggered schedule and most of the employee's days off shall not overlap.

Purchase cutting edge equipment with all fully enclosed cabs and climate control to ensure full operation in any type of weather.

Move equipment and personnel between sites to perform operations and to meet peak demands and/or any emergency conditions.

Provide the following specific equipment and full time personnel:

1. Shared Between Sites

- One (1) Diamond Z DZH 5000 Horizontal Grinder (radio operated) or equivalent
- One (1) Komatsu PC 270 Track Excavator with an oversized 60 inch bucket and thumb or equivalent.
- Adequate analytical instruments and equipment, necessary to carry out ongoing and routine measurements of moisture content and temperature.
- One (1) Operations Manager who will oversee the operations of both County sites. The Operations Manager will handle all receiving and sales tickets generated by Balls Ford scale office and from sales by the Contractor at both sites, unless otherwise noted. The Operations Manager will direct the operators and oversee the sites in regards to proper production and maintenance. The Operations Manager will also take an active role in sales, look for new clients, and monitor Contract compliance.

- One (1) Track Excavator Operator who will operate this equipment at the Landfill and Balls Ford. While at the Landfill this operator will sort through incoming material, feed and operate the grinder, and load out mulch. The track excavator operator will also turn the windrows and clean out sediment traps at Balls Ford.
- One (1) Extra Equipment Operator/Utility Man who will be utilized to fill in when other operators are on leave or to meet peak demands at either site.

2. Balls Ford

- One (1) Komatsu WA-320 wheel loaders or equivalent with oversized 6 yard buckets and ACS mulch grapple.
- One (1) Komatsu WA-80 mini wheel loader or equivalent with mulch grapple and broom attachments.
- One (1) Wildcat 626 Trommel Screen
- Two (2) Equipment Operators to operate the wheel loader and mini wheel loader. The wheel loader operator will direct trucks for unloading, push up received material, feed the debagger and the grinder as well as load out products. The mini wheel loader operator will keep the public area free of debris and remove trash and non-processable material before processing.

3. Landfill

- One (1) Komatsu WA-320 wheel loader or equivalent with oversized 6 yard buckets and ACS mulch grapples.
- One (1) Equipment Operator to operate the loader and direct trucks for unloading, push up received material, feed and operate the grinder and load out products. This employee will also test the windrows for moisture content and temperature and perform standard maintenance labor work.

4. As Needed / Back-up

- Sufficient as needed and back-up equipment and personnel shall be readily available in order to prevent any interruptions of services. In the event a piece of equipment breaks down, temporary replacement machines from the Contractor's fleet or equipment rented by the Contractor shall be provided by the Contractor to continue operations. Additional personnel shall be provided as necessary during peak periods to maintain the operation timelines and schedules of this Contract.

- One (1) Erin 300 Star Screen for screening products
- One (1) Low boy Tractor Trailer
- One (1) Morbark 1300 Tub Grinder
- One (1) Fuel Truck Operator
- Adequate Heavy Equipment Mechanics

h. UTILITIES (Balls Ford & Landfill)

The County shall:

Provide one (1) Office Trailer for Contractor's use at the Landfill.

The Contractor shall:

Rent/Purchase/Lease one (1) Office Trailer for Contractor's use at Balls Ford.

Be responsible for all utilities, including phone, electric, water, and sewer disposal, and the cost of such utilities at both sites.

- i. PAYMENTS & RELATED ITEMS (Balls Ford & Landfill)
(Payment Terms, Payment Structure, Revenue, Invoicing, Fuel Adjustment, CPI Adjustment, Landfill Disposal Fees, Contract Ends).

1. Payment Terms

To perform the services required under this Contract, the following payment terms shall apply based on County Scale House records.

Annual Tonnage shall mean tonnage received during the County Fiscal Year (July 1st - June 30th). The County's sole payment obligation to the Contractor for services provided under this Contract is payment of a per ton cost of incoming yard waste/organic materials tonnage received and processed at both sites.

- a) 1st Contract Year

The Contractor shall be paid monthly based upon the estimated annual tonnage of 48,000 tons (36,000 tons to the Balls Ford Road site and 12,000 to the Landfill site), or 4,000 tons per month. In accordance with the Payment Structure Provision I.3.9.i.2 below, at this annual amount, the Contractor is to be compensated at a rate of \$27.50 per ton for all materials. The Contractor shall be paid a monthly amount of \$110,000 based upon these rates (4,000 tons per month x \$27.50 per ton = \$110,000 per month).

Payment shall be reconciled by the County at least every six months to equal the actual incoming yard waste/organic material tonnage received and processed at both sites, in accordance with Reconciliation Provision I.3.9.i.1.c. below.

- b) Subsequent Years of the Contract

At the conclusion of each fiscal year, the subsequent year's monthly payment shall be established. The payment shall be based upon the actual average monthly tonnage received during the previous fiscal year at each site (the actual annual tonnage received during the fiscal year divided by 12). The maximum combined annual tonnage for both sites used for this computation shall be 60,000 tons. This figure shall be multiplied by the applicable rates in Provision I.3.9.i.2 to establish the monthly payment for the subsequent fiscal year.

Payment shall be reconciled by the County at least every six months to equal the actual incoming yard waste/organic material tonnage received and processed at both sites, in accordance with Provision I.3.9.i.1.c.

c) Reconciliation

At least every six (6) months or more frequently as determined necessary by the County, the County shall reconcile the amount paid to the Contractor with the actual amount owed to the Contractor. The actual amount shall be based upon the actual tonnage received at both sites as indicated in the County Scale House records.

After the reconciliation is completed, if it is determined that the Contractor is owed additional payment under the terms of this section, the Contractor shall include this amount in the next invoice provided to the County. If it is determined that the Contractor has been compensated for more than the actual tonnage received, the Contractor shall credit this amount to the County in the next invoice(s) provided to the County.

2. Payment Structure

a) Landfill

Payment to process all brush and pallets received at the Landfill shall be made to the Contractor at a firm rate of twenty-seven dollars and 50/100, (\$27.50) per ton of material received and processed at the Landfill regardless of the annual tonnage received at the Landfill.

No adjustments to the per ton rate for material delivered to the Landfill Site shall be made.

b) Balls Ford

Payment to process leaves, grass, brush, and manure at Balls Ford shall be made to the Contractor based on the following Tier Structure which shall be used solely for the purpose of determining the per ton rate to process incoming yard waste/organic materials:

Tier A: Incoming Yard Waste/Organic Materials
Range = 35,000 to 50,000 annual tonnage
Payment = Twenty Seven Dollars and 50/100 (\$27.50) per ton
for all material delivered from 1 to 50,000 tons.

Tier B: Incoming Yard Waste/Organic Materials
Range = 25,000 to 34,999 annual tonnage
Payment = Twenty Nine Dollars and 00/100 (\$29.00) per ton
for all material delivered from 1 to 34,999 tons.

Tier C: Incoming Yard Waste/Organic Materials
Range = Less than 25,000 annual tonnage
Payment = Thirty Three Dollars and 00/100 (33.00) per ton
for all material delivered from 1 to 24,999 tons.

Example 1: Annual tonnage received at Balls Ford = 23,000 tons
Adjusted Annual Payment for Balls Ford Tonnage = \$759,000
(\$33.00 per ton x 23,000 tons)

Example 2: Annual tonnage received at Balls Ford = 33,000 tons
Adjusted Annual Payment for Balls Ford Tonnage = \$957,000
(\$29.00 per ton x 33,000 tons)

Example 3: Annual tonnage received at Balls Ford = 40,000 tons
Adjusted Annual Payment for Balls Ford Tonnage = \$1,100,000
(\$27.50 per ton x 40,000 tons)

The per ton rate for tonnage received at Balls Ford shall only be adjusted at the end of each fiscal year.

3. Revenue

Revenue from market-ready product sales is not considered payment from the County to the Contractor for services performed under this Contract, rather as a revenue incentive to the Contractor to provide a good marketable product from recyclable materials. The Contractor acts solely as the agent of the County and at no time is any of the product or the materials the property of the Contractor while the material is on the County sites.

Sales Revenue from Landfill - Contractor keeps one-hundred percent (100%) of total revenue received from sales at the Landfill. The Contractor is responsible for cash collection at the Landfill.

Sales Revenue from Balls Ford - The Contractor keeps one-hundred percent (100%) of total revenue received at Balls Ford that was "collected by the Contractor". The Contractor keeps ninety percent (90%) of total revenue received at Balls Ford that was "collected by the County". The County keeps ten percent (10) of total revenue received at Balls Ford that was "collected by the County" to cover the County's cost for collection service and record keeping provided to assist the Contractor.

The County shall be responsible for cash collection at Balls Ford of retail sales of market-ready products up to a small trailer/pick-up load in size. The Contractor shall be responsible for all other sales at Balls Ford.

4. Invoicing

Beginning in August 2005, and on a monthly basis thereafter, the Contractor shall be responsible for preparing and submitting, in a form suitable to the County, an invoice indicating the amount due and payable to the Contractor based on the Contract pricing structure. The Contractor shall submit invoices by the 15th of each month.

Prior to payment, the County will review the invoice and Contractor's performance/Contract compliance at both the Landfill and Balls Ford sites. All received yard waste/organic material must have been processed in accordance with the Contract Scope of Work. The County reserves the right to withhold all or a portion of any monthly payment if the yard waste/organic materials have not been processed in accordance with the Contract Scope of Work-Operation and Composting "Process" & "Schedule" and Operation and Mulching "Process" and "Schedule".

Based on the Contract pricing structure, payment shall be made to the Contractor within thirty (30) days after receipt of an acceptable monthly invoice reflecting monthly payments and revenues.

5. Fuel Adjustment

<http://www.virginiadot.org/business/const/indices-prevprices.asp>

This payment amount and per ton charge is based on a diesel fuel index ceiling of \$2.25 per gallon as per the posted diesel fuel index by the Virginia Department of Transportation. In the event that the posted diesel fuel index increases to a point above \$2.25, the VDOT Special Provision for Adjustment for diesel fuel will be used to calculate the price adjustment based on diesel fuel index price using 2 gallons of fuel for every ton of yard waste/organic materials processed. The formula used for diesel fuel adjustments under this Contract shall be as follows:

$$A = G \times T (E - 2.25)$$

Where: A = Monetary adjustment for the month
G = 2 gallons
T = Number of tons received for the month
E = VDOT fuel index price for the month

Adjustments shall be requested on a month by month basis. The Contractor shall submit documentation with the monthly invoice supporting any VDOT diesel fuel adjustment request for that month only, otherwise no adjustment shall be authorized.

6. CPI Adjustment

www.bls.gov

Based on the "Posted" U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index (CPI)- All Urban Consumers, Washington-Baltimore Region (DC-MD-VA-WV), All Items.

Base Month/Year/Index for this Contract shall be (March 2005, Index of 122.7)

In the event the CPI rises above 5% "from the base year" during any year of the Contract term, the Contract Tonnage Fee may be adjusted annually effective July 1st of each year if requested by the Contractor in writing by May 15th of each year. If the Contractor fails to provide a written request by May 15th, no CPI increase will be considered by the County for that year.

Based on the CPI computation described in the CPI Escalation Section, first determine the index point change between the base index and the current index (March 2005 thru each March thereafter) then determine the percent change. The County shall always use March 2005 as the Base Index (not previous years index) and the base price of this Contract for every annual adjustment. See the following computation examples:

In the event of a CPI decrease after an increase has been applied to the Contract, the decrease will also be adjusted annually, however any CPI decreases shall not adjust the Contract tonnage fees below the original Contract tonnage fee.

Example 1 with a Base Index Period of March 2004 for this example only.

CPI for current period March 2005 =	122.7
Less CPI for previous period March 2004 =	118.1
Equals index point change of	4.60
Divided by previous period March 2004 =	118.1
Equals	.039
Results .039 multiplied by 100 equals percent change of	3.90%

Example 2 with County Contract "Base Index of March 2005"

CPI for current period _____ =	
Less CPI for base index _____ period of March 2005 =	122.7
Equals index point change of	
Divided by base index period of March 2005	122.7
Equals	
Results multiplied by 100 equals percent change of	

7. Landfill Disposal Fees

Rejected Material -

There will be no Landfill disposal fee charged to the Contractor for disposal of rejected material into the Landfill.

Residual Material -

Residual material from debugging or screening operations will be transferred from Balls Ford to the County Landfill by the Contractor utilizing Contractor's trucks. The Contractor shall be charged the following Landfill Disposal Fee.

Covered Period: July 01, 2005 - June 30, 2006

Under 37,500 tons annually = No Charge

Over 37,500 tons annually = \$20.00/Ton

Covered Period: After June 30, 2006

Under 7,500 tons annually = No Charge

Over 7,500 tons annually = \$20.00/Ton

The Contractor shall be invoiced monthly and payments are due to the County within thirty (30) calendar days after receipt.

8. Contract Ends

At the end of the Contract term, non-renewal of the Contract, or termination of the Contract, the Contractor shall vacate the site and the County shall take on the responsibility of finishing the processing of all materials at both sites. The sites shall be left in an orderly fashion, meeting all requirements of this Contract. All equipment provided by the Contractor shall be removed from the site within seven (7) days of the end of the Contract term.

The County shall make final payment to the Contractor based upon the actual tonnage of yard waste/organic material received at the County sites which has been processed thru Stage 2 as described under Provision "Operation and Composting Process" and in accordance with the performance requirements of this Contract. The County shall pay the Contractor any revenues for market-ready products sold at the Balls Ford Road site up through the end of the Contract term.

The Contractor will not be due any payments/revenues associated with any yard waste/organic materials or market-ready products remaining on County sites at the end of the Contract term.

Processing and sales of yard waste/organic materials or market-ready products remaining on County sites at the end of the Contract term shall be the responsibility of and retained by the County.

j. PRE-EXISTING MATERIALS, at Contract commencement
(Balls Ford & Landfill)

1. Pre-existing Material Scope of Work

The Contractor shall process existing yard waste/organic materials which are not market-ready products, which are located on both sites, available to the Contractor for processing upon Contract award. The Contractor shall perform the necessary processes to produce market-ready products, then to sell or haul off County sites the market-ready products that were produced.

Yard waste/organic material which has not been debagged or ground shall be debagged and/or ground, placed in windrows, composted, turned and made into a market-ready product and sold or hauled off-site.

Material which already exists in windrows shall be further processed by turning the windrows until the composting process is complete, screened to remove plastic and other contaminants, made into a market-ready product, and sold or hauled off-site.

Material which has been composted and placed in segregated areas, and is awaiting screening to remove plastic and other contaminants, (ramp material) shall be dried, screened to remove contaminants, made into a market-ready product, and if possible, sold or hauled off-site. If this material is not processable due to moisture or other characteristics, the Contractor shall inform the County in writing and the County, working with the Contractor, will develop alternative means to process and/or dispose of this material.

All processing of existing material on-site, including selling or removal of market-ready products, shall be completed within twelve (12) months of Contract commencement.

Revenue from market-ready product sales is not considered payment from the County to the Contractor for services performed, rather as a revenue incentive to the Contractor to provide a good marketable product from recyclable materials. No revenue is guaranteed.

All revenues from the sale of market-ready products shall be allocated based upon I.3 Revenue Section of the Contract.

An additional 30,000 tons of residual material from the processing of pre-existing material will be allowed to be delivered by the Contractor to the County Landfill at no charge, provided the material is delivered within one (1) year from the date of Contract execution.

2. Pre-Existing Material Payment Structure

a) Balls Ford

According to County surveys, 144,400 cubic yards of yard waste/organic material remains at the Balls Ford site which requires additional processing to make market-ready products. To complete the process of all materials on-site at Balls Ford, as described in Section J. Pre-existing Materials, the County shall pay the Contractor a flat lump sum amount of \$757,677.00, progress payments authorized.

Breakdown:

Ramp Material = 44,500 Cubic Yards (poor condition)

Balance of Site Material = 99,900 Cubic Yards (good condition)

In the event the ramp material cannot be processed adequately to produce a market-ready product, the County and the Contractor may renegotiate the portion of the lump sum amount related to the ramp material and negotiate an alternative solution to process and/or dispose of the ramp material.

b) Landfill

According to County surveys, 35,500 cubic yards of mulch and brush remains at the Landfill site which requires additional processing to make market-ready products. To complete the process of all materials on-site at the Landfill, as described in Section J. Pre-existing Materials, the County shall pay the Contractor a flat lump sum amount of \$161,213.00, progress payments authorized.

c) Invoicing/Payments-(Balls Ford and Landfill)

The Contractor shall invoice the County monthly, by the 15th of each month, based on the actual percentage of work completed as agreed upon by the County and the Contractor (cubic yards contractually processed).

Monthly progress payments shall be made to the Contractor within thirty (30) days after receipt of an acceptable invoice reflecting actual percentage of work completed.

SECTION II

GENERAL PROVISIONS

II.1 Assignability of Contract

Neither this Contract, nor any part hereof, may be assigned by the Contractor to any other party without the express written permission of the County.

II.2 Modifications or Changes to the Contract

All modifications and changes to the Contract shall be in writing.

The Head of the Using Department of this Contract, with the concurrence of the Purchasing Manager (except as otherwise provided by the Purchasing Regulations), shall, without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a "Change Order." Such orders shall be limited to reasonable changes in the services to be performed or the time of performance; provided that the Contractor shall not be excused from performance under the changed Contract by failure to agree to such changes, and it is the express purpose of this provision to permit unilateral changes in the Contract subject to the conditions and limitations herein.

The Contractor need not perform any work described in any change order unless it has received a certification from the County that there are funds budgeted and appropriated sufficient to cover the cost of such changes.

The Contractor shall make a demand for payment for completed changed work within 30 days of receipt of a change order, unless such time period is extended in writing, or unless the Purchasing Manager requires submission of a cost proposal prior to the initiation of any changed work or supplies. Later notification shall not bar the honoring of such claim or demand unless the County is prejudiced by such delay.

No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

II.3 Employment Discrimination for Contracts
Over \$10,000

1. During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal

II.3 (Continued)

operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

c. Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The Contractor will include the provisions of the foregoing paragraphs a, b, and c in every Subcontract or purchase order over \$10,000.00, so that the provisions will be binding upon each Subcontractor or Contractor.

II.4 Drug-free Workplace to be Maintained by Contractor
for Contracts over \$10,000.00

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

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

II.5 Claims/Disputes

In accordance with Section 2.2-4363, VA Code Ann., this provision shall be followed for consideration and handling of all claims by the Contractor under this contract. Section 2.2-4365, VA Code Ann., is not applicable to this Contract, and under no circumstances is this paragraph to be construed as an administrative appeals procedure governed by Section 2.2-4365, VA Code Ann.

Notice of the intent to submit a claim setting forth the basis for any claim shall be submitted in writing within ten (10) days after the

II.5 (Continued)

occurrence of the event giving rise to the claim, or within ten (10) days of discovering the condition giving rise to the claim, whichever is later. In no event, shall any claim arising out of this Contract be filed after the submission of the request for Final Payment by the Contractor.

Claims by the Contractor with respect to this Contract shall be submitted in writing in the first instance for consideration by the Contract Administrator. The decision of the Contract Administrator shall be rendered in writing within forty-five (45) days from the receipt of the claim from the Contractor. If the Contractor is not satisfied with the decision or resolution of the Contract Administrator, the Contractor may file a formal dispute with regards to the claim with the Prince William County Director of Finance, which claim shall be received within thirty (30) days of the date of decision of the Contract Administrator. The Director of Finance shall reduce his or her decision to writing and shall mail or otherwise furnish a copy of this decision to the Contractor within forty-five (45) days of the receipt of the claim from the Contractor. The decision of the Director of Finance shall be final on behalf of Prince William County unless the Contractor submits the claim to the County Executive within thirty (30) days of the Director of Finance's decision. The Contractor may submit the claim to the County Executive by mailing or otherwise furnishing the Purchasing Manager a copy of the claim and a request for the County Executive's determination.

The County Executive's decision on the claim shall be rendered in writing to the Contractor within forty-five (45) days of the Purchasing Manager's receipt of the request from the Contractor, and shall be final and binding on behalf of Prince William County, unless the Contractor submits the claim for determination by the Board of County Supervisors by mailing or otherwise furnishing the Purchasing Manager a copy of the claim, along with a request for determination by the Board within thirty (30) days of the County Executive's decision. The Board shall consider the claim and render a decision within forty-five (45) days of the date on which the Board hears the claim in open meeting. The Board's procedure in considering claims under this Contract shall be the same as that for other decisions of the Board on claims made under Section 15.2-1245 et seq., VA Code Ann. The decision of the Board shall be final.

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 by the decision-maker.

Pending a final determination of a claim, the Contractor shall proceed diligently with the performance of the Work under the Contract.

In accordance with the provisions of Section 2.2-4363, VA Code Ann., full compliance with this procedure set forth in the provision shall be a precondition to the filing of any lawsuit by the Contractor against the Board of County Supervisors of Prince William County arising out of this Contract.

II.6 Termination for Convenience of the County

The parties agree that the County may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or in part, whenever the County Executive of Prince William County shall determine that such termination is in the best interests of the County.

Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the County Executive or his designee, mailed or delivered to the Contractor, and specifically setting forth the effective date of termination.

Upon receipt of such Notice, the Contractor shall:

1. Cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;
2. Place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;
3. Terminate all subcontracts except those made with respect to Contract performance not subject to the Notice;
4. Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Purchasing Manager of Prince William County; and
5. Use its best efforts to mitigate any damages which may be sustained by it as a consequence of termination under this clause.

After complying with the foregoing provisions, the Contractor shall submit a termination claim, in no event later than six (6) months after the effective date of its termination, unless an extension is granted by the Purchasing Manager.

The Purchasing Manager, with the approval of the County's signatory to this Contract, shall pay from the using department's budget reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or completed. In no event shall this amount be greater than the original Contract price, reduced by any payments made prior to Notice of Termination and further reduced by the price of the supplies not delivered, or the services not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Purchasing Manager shall pay to the Contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause:

1. With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:

II.6 (Continued)

- a. Cost of work performed or supplies delivered;
 - b. The cost of settling and paying any reasonable claims as provided in subparagraph (4), above;
 - c. A sum as profit on (a) determined by the Purchasing Manager to be fair and reasonable.
2. The total sum to be paid under (a) above shall not exceed the Contract price, as reduced by the amount of payments otherwise made, and as further reduced by the Contract price of work or supplies not provided.

In the event that the Contractor is not satisfied with any payments which the Purchasing Manager shall determine to be due under this clause, the Contractor may appeal any claim to the Board of County Supervisors in accordance with the "Claims/Disputes" clause of this Contract.

The Contractor shall include similar provisions in any subcontract, and shall specifically include a requirement that subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from the County whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

II.7 Termination for Default

Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein.

II.8 Termination for Non-Appropriation of Funds

If funds are not appropriated for any succeeding fiscal year subsequent to the one in which this Contract is entered into, for the purposes of this Contract, then the County may terminate this Contract upon thirty (30) days prior written notice to the Contractor. Should termination be accomplished in accordance with this Section, the County shall be liable only for payments due through the date of termination.

II.9 Payments to Subcontractors

In the event that the Contractor utilizes a subcontractor for any portion of the work under this Contract, the Contractor hereby agrees to:

1. The Contractor shall take one (1) of the two (2) following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by a subcontractor under the Contract.

II.9 (Continued)

- a. Pay a subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by that subcontractor under the Contract; or
 - b. Notify the agency and any subcontractors, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. The Contractor shall be obligated to pay interest to a subcontractor on all monies owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the County for work performed by a subcontractor under the Contract, except for amounts withheld under Subsection 1 b. of this section. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the provisions of this section may not be construed to be an obligation by the County. A contract modification may not be made for the purpose of providing reimbursement for any such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.
 3. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.
 4. The Contractor is hereby required to include in each of its subcontracts a provision requiring each subcontractor to otherwise be subject to the same payment and interest requirements set forth in subsection 2. and 3. of this section with respect to each lower-tier subcontractor.

II.10 Examination of Records

The Contractor agrees that the County, or any duly authorized representative, shall, until the expiration of three (3) years after final payment hereunder, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this Contract.

The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the County or any duly authorized representative shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of such Contractor involved in transactions related to such subcontract, or this Contract. The term "subcontract" as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. The period of access provided herein for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this Contract or any subcontract shall continue until any appeals, arbitration,

II.10 (Continued)

litigation or claims shall have been finally disposed of.

II.11 Ethics in Public Contracting

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

II.12 Governing Law

This Contract and any disputes hereunder shall be governed by the laws of the Commonwealth of Virginia.

II.13 Integration

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

II.14 Non-Discrimination Against Faith-Based Organizations

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

II.15 Hold Harmless

The Contractor hereby agrees to indemnify and hold harmless Prince William County, Virginia, its officers, agents and all employees and volunteers, from any and all claims for property damage, bodily injuries and personal injuries to the public, including cost of investigation, all reasonable attorneys fees, and the cost of appeals arising out of any such claims or suits, because of any and all acts of omission or commission of the Contractor, including its agents, Subcontractors, employees and volunteers, in connection with Work under this Contract.

It is understood and agreed that the Contractor is at all times herein acting as an independent Contractor.

II.15 (Continued)

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA

Eastern Clearing, Inc.

County Representative

Contractor Representative

Title

Title

ATTEST:

Purchasing Manager

APPROVED AS TO FORM COUNTY ATTORNEY'S OFFICE

Date: _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: we, the undersigned:

Name of Contractor: _____

Address of Contractor: _____,

a (Corporation, Partnership or Individual), hereinafter called Principal, and (Name of Surety)

_____,

hereinafter called Surety, are held and firmly bound unto Prince William County Board of Supervisors, 1 County Complex Court, Prince William, Virginia 22192, hereinafter may also be referred to as Owner, in the sum of:

(100% of Contract Amount)

dollars, (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

Performance Bond No. _____

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain Contract with the Owner, which is incorporated herein by reference and made hereto, dated the ____ day of _____, 20____, Contract No. _____ for the Project entitled

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and

any extensions thereof which may be granted by the County of Prince William, with or without notice to the Surety and during one year guarantee period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the County of Prince William from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the County of Prince William all outlay and expense which the County of Prince William may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration

or addition to the terms of the contract or the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the ____ day of _____ 20____.

IMPORTANT: Surety companies executing bonds must licensed to do business in the Commonwealth of Virginia. The Surety Corporation providing the bond for this project shall obtain a written release from Prince William County prior to releasing bond before the expiration date. Surety must have AM Best Rating of A or better. Attach AM Best Rating Guide Card to Bond. Date of bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

PRINCIPAL

WITNESS TO PRINCIPAL

BY: _____ (L.S.) BY: _____
Principal Signature Witness Signature

Typed/Printed Name Typed/Printed Name

SURETY (Power of Attorney)

BY: _____
Power of Attorney Signature

(AFFIX SEAL)

Typed/Printed Name

SURETY (VIRGINIA RESIDENT AGENT)

BY: _____
Signature Agent Company Name

Typed/Printed Name Address

Phone Number City/State

LABOR AND MATERIALS PAYMENT BOND

BY KNOW ALL MEN THESE PRESENTS: we, the undersigned:

Name of Contractor: _____

Address of Contractor:

a (Corporation, Partnership or Individual), hereinafter called Principal, and (Name of Surety)

_____ ,

hereinafter called Surety, are held and firmly bound unto Prince William County Board of Supervisors, 1 County Complex Court, Prince William, Virginia 22192, hereinafter called Owner, in the sum of:

_____ (100% of Contract Amount)
dollars, (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents. Bond No. _____

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain Contract with the Owner, which is incorporated herein by reference and made a part hereto, dated the _____ day of _____, 2___, Contract No. _____ for the Project entitled:

NOW, THEREFORE, if the Principal shall promptly make payments to all persons, firms, subcontractors, and corporations furnishing materials for contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal, coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IMPORTANT: Surety companies executing bonds must licensed to do business in the Commonwealth of Virginia. The Surety Corporation providing the bond for this project shall obtain a written release from Prince William County prior to releasing bond before the expiration date. Surety must have AM Best Rating of A or better. Attach AM Best Rating Guide Card to Bond. Date of bond must not be

prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the ____ day of _____ 2 ____.

PRINCIPAL

WITNESS TO PRINCIPAL

BY: _____ (L.S.) BY:

Principal Signature

Witness Signature

Typed/Printed Name

Typed/Printed Name

SURETY (Power of Attorney)

BY: _____

Power of Attorney Signature

(AFFIX SEAL)

Typed/Printed Name

SURETY (VIRGINIA RESIDENT AGENT)

BY: _____

Signature

Agent Company Name

Typed/Printed Name

Address

Phone Number

City/State