

EFFECTIVE DATE: May 11, 2020

**FAIRFAX COUNTY
RIGHT OF ENTRY AGREEMENT**

RE: I-95 Landfill Complex, Lorton

THIS RIGHT OF ENTRY AGREEMENT (“Agreement”) by and between **THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA** (the “County”) and **ALPINE-X LLC** (the “Developer”).

RECITALS

WHEREAS, the County owns that certain parcel of real property having Fairfax County Tax Map Parcel Number 113-1 ((1)), Parcel 14 (“Parcel 14”); and

WHEREAS, Developer desires to enter that portion of Parcel 14 contained within the golden boundary line on graphic on the attached Exhibit A (such portion, the “Property”) for the purpose of performing certain Feasibility Studies (as defined below) in anticipation of negotiating an agreement with the County for the development of the Property pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, Chapter 22.1 of Title 56 of the Virginia Code (“PPEA”).

NOW, THEREFORE, in consideration of the Recitals, which are incorporated into this Agreement by reference, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Right of Entry. Subject to the terms and conditions of this Agreement, starting on the Effective Date and continuing until the Expiration Date, the County grants the Developer and its employees, agents, contractors, and invitees (collectively, “Agents”) the right to enter the Property at any time during daylight hours Monday through Saturday for performing the tasks described on Exhibit B to this Agreement (the “Feasibility Studies”). For clarity, the Property includes only those portions of Parcel 14 within the golden boundary line on the graphic on Exhibit A; it does not include other areas within Parcel 14 that are outside the golden line on Exhibit A. Other than the Feasibility Studies, Developer shall make no other use of the Property and shall perform no other activities on the Property without the County’s prior written approval.

2. Expiration; Termination. This Agreement will automatically expire (without further action by the County) at 11:59 p.m. on December 31, 2020 (the “Expiration Date”). The County and the Developer may mutually agree in writing to extend the Expiration Date, but neither party is under any obligation to do so. Notwithstanding the foregoing, the County may revoke this Agreement

at any time by notice delivered to Developer at the address set forth in Section 11 of this Agreement.

3. Prerequisites to Entry. Before entering the Property for each component of the Feasibility Studies (whether conducted individually or collectively), Developer must:

a. Provide proof of insurance as required in Section 10 of this Agreement; and

b. Provide advance notice (via email to each of John Kellas (john.kellas@fairfaxcounty.gov), Eric Forbes (eric.forbes@fairfaxcounty.gov), and Robert Glenn (robert.glenn@fairfaxcounty.gov)) and receive the County's approval (by email from one of the three named recipients) to proceed, such approval not to be unreasonably withheld or delayed.

4. Performance of Feasibility Studies.

a. During initial clearing and grubbing, Developer and its Agents will identify all County monitoring wells, whether active or abandoned, that are located within the areas of actual work or investigation pursuant to the Feasibility Studies and surround them with orange construction fencing to prevent disturbance.

b. If, as a result of Developer's Feasibility Studies, subsurface trash or waste is disturbed or exposed, Developer will document, photograph, and locate via GPS each area of exposed trash, including the depth discovered and the surface area of the waste. The Developer will remove at its cost any such exposed or disturbed trash to an active portion of the landfill, if any, the adjacent resource recovery facility, or to another facility appropriate to receive the material(s). Developer and its Agents will use its best efforts to cap areas of exposed waste by the end of each working day with clay or synthetic material to seal the waste areas. The cap will comply with the Property's closure plan and applicable permits. When daily cap repair is not practically achievable, the Developer will provide a temporary cover of either 6" of dirt, a tarp or other approved material to minimize infiltration and prevent surface litter, provided that such temporary measure is replaced with a permanent cap within three (3) days. No stock piling of waste is authorized. Developer and its Agents must notify the County at the close of business of each working day of the discovery of any subsurface waste or trash disturbed or exposed by Developer or its Agents.

c. The Developer and its Agents will coordinate with the County to allow the County to arrange for site inspection during all work associated with the Feasibility Studies. The Developer and its Agents will, upon request, (i) allow the County and its designated consultant(s) (as identified by the County to the Developer) such access to the Feasibility Study work areas as the County or its consultant may deem necessary from time to time to monitor the work of the Feasibility Studies and (ii) provide the County's consultant with such information regarding the work of the Feasibility Studies as the consultant may reasonably require.

d. Developer and its Agents will coordinate with the County for any temporary modifications to the existing drainage systems if impacted by the Feasibility Studies. Developer

and/or its Agents will modify and connect any underground pipes that become exposed to daylight by new slopes to new project drainage features that meet County and DEQ requirements.

e. Encountering methane should be expected. When conducting the Feasibility Studies, Developer and its Agents will employ appropriate methane detection and mitigation measures at all times in accordance with industry standards for comparable studies or investigative work.

f. The County will provide Developer with a copy of the I-95 safety plan. Developer and its Agents must immediately stop work upon notification from County staff that work is being conducted in an unsafe manner and, in the view of the County, poses a risk to the Property and/or the surrounding area. In such event, Developer and its Agents may not resume work until County staff and the Developer agree upon modifications or measures intended to address the alleged deficiencies.

g. Developer and its Agents will comply with all applicable laws, ordinances and OSHA safety protocols related to construction-related activities while conducting the Feasibility Studies on the Property. Developer and its Agents will provide and adequately maintain any barricades, fences, signs, lanterns and other suitable devices as deemed necessary by OSHA guidelines for employee and public safety with respect to the Feasibility Studies performed under this Agreement.

h. During periods of actual work related to the Feasibility Studies, Developer and its Agents will maintain the security of each of its work sites on the Property to the reasonable satisfaction of the County for the purpose of limiting access to the Feasibility Study work areas to only Developer and its Agents. Developer and its Agents will each maintain all its work areas on the Property in a clean and presentable manner.

i. The County and the Developer may add to the scope of the Feasibility Studies by amending this Agreement (including Exhibits A and B) in writing, neither party being under any obligation to do so.

j. Notwithstanding anything in this Agreement to the contrary, Developer and its Agents will not dig or drill to, or otherwise disturb, existing subgrade or landfill base. If the depth of the subgrade and/or landfill base cannot be determined at given location, Developer and its Agents will not dig or drill in or otherwise disturb such location without the County's prior written approval.

5. Restoration. Except as provided in Section 4 above regarding the potential installation of new caps, Developer, at its own expense, will promptly restore, as near as reasonably possible, those portions of the Property disturbed by Developer and/or its Agents to their original condition(s) in accordance with the Property's closure plan and applicable permits. Developer and its Agents will coordinate with the County before commencing any such restoration work.

6. Hazardous Materials.

a. Developer acknowledges that the Property is the site of a closed landfill and may contain Hazardous Materials (as defined below). If Developer or its Agents discovers any Hazardous Materials on the Property that would not otherwise reasonably be expected to be discovered when conducting the Feasibility Studies on a closed landfill, such as evidence of potential chemical contamination or leak, it or they will immediately notify the County.

b. "Hazardous Materials" means (a) asbestos and any asbestos containing material and any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law (as defined below) or any other applicable law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (b) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (c) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Property or hazardous to health or the environment.

i. "Environmental Law" means any present and future law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities applicable to the Property and relating to the environment and environmental conditions or to any Hazardous Material (including, without limitation, CERCLA, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 1101 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; and any so-called "Super Fund" or "Super Lien" law, any law requiring the filing of reports and notices relating to hazardous substances, environmental laws administered by the Environmental Protection Agency and any similar state and local Laws, all amendments thereto and all regulations, orders, decisions and decrees now or hereafter promulgated thereunder concerning the environment, industrial hygiene or public health or safety

7. Election Not to Proceed; Reports. In the event either the County or the Developer notifies the other of its intent not to proceed with execution of a Interim Agreement pursuant to the PPEA process, Developer must, promptly following such notice, deliver to the County or destroy all materials or reports in Developer's possession prepared or obtained through the Feasibility Studies and must deliver to the County a certified statement that all work that could give rise to a lien against the Property has been paid in full. Before any such notice, the County may request information and/or reports prepared or obtained through the Feasibility Studies as part of PPEA negotiations.

8. Equipment.

a. Developer and its Agents may store equipment on the Property during the term of this Agreement; provided, however, that Developer and its Agents shall be solely responsible for securing such equipment on the Property, and the County will not be liable for any theft or damage to any equipment stored by Developer on the Property.

b. At the expiration or termination of this Agreement, the Developer will remove all tools, equipment, and other personal property from the Property at its sole cost. This provision survives the expiration or earlier termination of this Agreement.

9. Indemnification. Developer will indemnify and hold harmless the County and its officials, officers, employees, and agents:

a. From and against any and all claims, demands, damages, suits, actions, proceedings, judgments, decrees, orders, fines, costs, and expenses (including reasonable attorney's fees) due to any damage to property, injury or death of any person, or otherwise as a result of the entry upon or activities within the Property by the Developer, its employees, Agents, or independent contractors occurring in connection with, or arising out of the performance of the work permitted by this Agreement; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of the County;

b. From all liabilities, remedial costs, environmental claims, fees, or other expenses directly related to, arising from, or attributable to (i) any Hazardous Materials introduced by the Developer on the Property or (ii) Developer's activities involving Hazardous Materials on the Property, to the extent that Developer is either negligent in such activities or in breach of the terms of this Agreement (e.g., failure to appropriately install a cap). The foregoing indemnity excludes any claims or liabilities caused by the gross negligence or willful misconduct of the County; and

c. From any claims by contractors or subcontractors who perform any activity on the Property; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of the County. This Agreement must not be construed as granting the Developer or any contractor of the Developer the right to place any lien, mechanic's lien, or any charge on the Property.

10. Insurance.

a. Developer and/or its Agents will obtain and maintain throughout the term of this Agreement the following types of insurance:

i. Statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$1,000,000 to protect from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.

ii. Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Developer, its Agents, and the interest of the County, its officers and employees 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.

iii. Owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Developer or its Agents. In addition, all mobile equipment used by the Developer or its Agents in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy.

b. The County and its officials, officers, employees, and agents will be named as “additional insured” on the General Liability and automobile policies.

c. Each of the insurance policies required by this Section 10 must be issued by companies licensed and authorized to do business in the Commonwealth of Virginia and having a Best’s Key Rating of at least A:VII.

d. For so long as this Agreement remains effective, Developer may not cancel, terminate or modify (except to increase the amount of coverage) the required insurance policies without providing thirty (30) days’ prior written notice from Developer to the County. If the required insurance policies should be canceled, terminated, or modified, so that the insurance is not in full force and effect, then the County may terminate this Agreement immediately, without prior notice or right to cure by the Developer

e. Evidence of the requisite insurance policies in the form of certificates of insurance must be submitted to the County before entry by Developer or its Agents onto the Property and from time to time at the County’s request. The insurance certificates must state that the coverage “is primary to all other coverage the County may possess.”

11. Notice.

a. Except as set forth in Paragraph 3 above, all notices, demands or other communications sent under this Agreement (“Notice”) must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally recognized, next-day courier service, addressed as follows:

If to the County:

Fairfax County Department of Public Works & Environmental Services
12000 Government Center Parkway, Suite 548
Fairfax, VA 22035
Attention: John Kellas, Director of Solid Waste & Recycling
john.kellas@fairfaxcounty.gov

With a copy to:

Fairfax County Facilities Management Department
12000 Government Center Parkway, Suite 424
Fairfax, VA 22035
Attention: Michael Lambert, Assistant Director
michael.lambert@fairfaxcounty.gov

and

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035
Attention: County Attorney
ryan.wolf@fairfaxcounty.gov

If to the Developer:

Niels ten Berge
1308 Vincent Place
McLean, VA22101
Niels@alpine-X.com

and:

Brad Ryan
1308 Vincent Place
McLean, VA22101
Brad@alpine-X.com

With a copy to:

Cooley LLP
11951 Freedom Drive, Suite 1400
Reston, VA 20190
Attention: Mark C. Looney
mlooney@cooley.com

b. A Notice given in accordance with this Agreement will be effective upon receipt or refusal by the party to which it is given.

c. For convenience, Notices may be sent via email; however, such email Notice will not be considered effective until the original Notice is received by the party to which it is given pursuant to one of the delivery methods described in Section 11(a) above.

d. Either party may change its Notice address from time to time by informing the other party in writing of such new address.

12. Miscellaneous.

a. Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia without regard to its conflict of laws statutes.

b. Survival. The obligations of Sections 4(b), 5, 8(b), and 9 will survive the expiration or other termination of this Agreement.

c. Waiver, Modification. Failure by either party to insist upon or enforce any of its rights hereto shall not constitute a waiver thereof, except where non-action is expressly described herein as such a waiver. This Agreement shall not be modified, amended, or altered except by a written agreement signed by the County and the Developer.

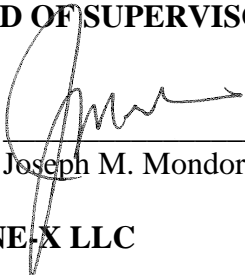
d. No Right, Title, or Interest. Nothing contained in this Agreement and no action or inaction by the County shall be deemed or construed to mean that the County has granted the Developer any right, power, or permission to do any act or make any agreement that may create, give rise to, or be the foundation for any right, title, interest, lien, or charge to the Property, including, but not limited to, the grant of an easement in the Property.

e. Time. With respect to all time periods contained in this Agreement, it is expressly understood that time is of the essence.

f. Appropriations. To the extent this Agreement is construed to impose any financial obligations upon the County, any such financial obligations shall be binding to the extent of appropriations by the Fairfax County Board of Supervisors.

g. Counterparts; Electronic Signature. This Agreement may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: 

Joseph M. Mondoro, Chief Financial Officer

ALPINE-X LLC

By: _____
Niels ten Berge, Chief Executive Officer

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BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: _____
Joseph M. Mondoro, Chief Financial Officer

ALPINE-X LLC

By: 
Niels ten Berge, Chief Executive Officer

EXHIBIT A

DESCRIPTION OF PROPERTY

Please see attached graphic.



Legend

- Phase 1 Area of Interest
- Projected Major Development



FEET

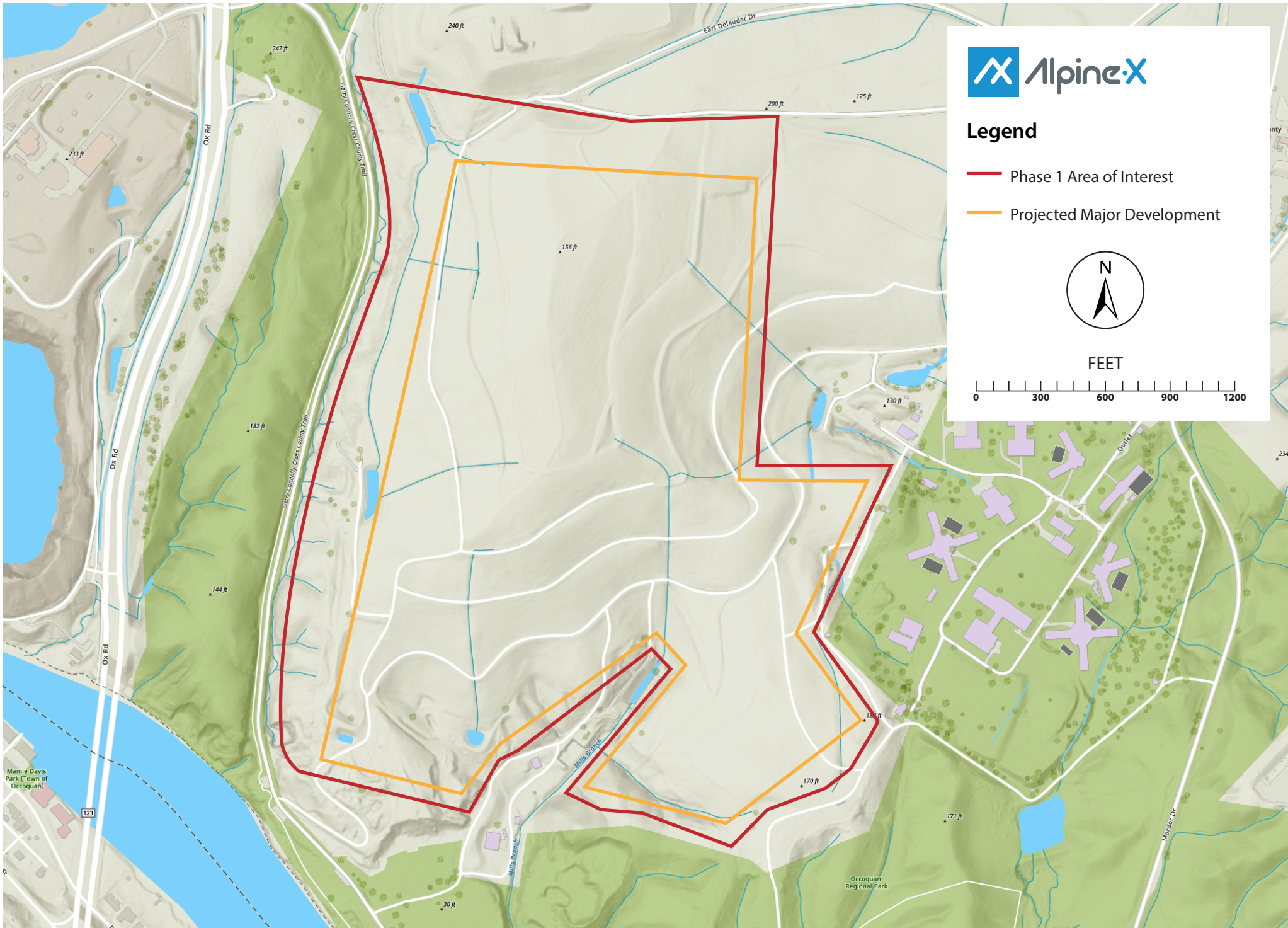
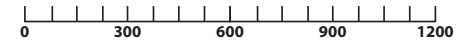


EXHIBIT B

SCOPE OF WORK

Please see attached document.



The current scope of the project is marked with the burgundy red line. The yellow area will be used for further exploration of the feasibility of building large construction on the landfill.

Expected Feasibility Surveys:

- ALTA (American Land Title Association) Survey
- UAV (unmanned aerial vehicle) topographical survey
- Ground Penetrating Radar (GPR) and Electrical Resistivity Testing
- Cone penetrometer test (CPT)
- Standard Penetration Testing
- Test pits (not expected)
- Geotechnical sampling of waste properties
- In-situ Permeability Testing and Evaluation (Pumping Tests)
- Soil/Groundwater/Surface Water/Leachate Sampling and Analysis
- Confirm access to utilities (grey water, water, heat, sewer, etc.)
- Groundwater and Seepage Analysis and Design
- Lateral Earth Pressure Estimates (Field Load Tests)
- Settlement Analyses and Monitoring
- Hydrologic Investigation and Analyses
- Erosion Inspections
- Hydraulic Analyses of Pipes, Channels, Ditches, etc.
- Phase 1 ESA (Environmental Site Assessments)