

Control No. _____

CONSTRUCTION CONTRACT

by and between

Northeast Maryland Waste Disposal Authority

and

Frederick County, Maryland

to provide for the

**TRANSFER STATION RETROFIT CONSTRUCTION
SERVICES**

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CONSTRUCTION SERVICE CONTRACT FOR TRANSFER STATION CONSTRUCTION SERVICES

This Construction Contract for the Frederick County Transfer Station Retrofit (“Contract”) is made by and between the Northeast Maryland Waste Disposal Authority, an instrumentality of the State of Maryland (“Authority”) and Frederick County, Maryland (“County”).

RECITALS

1. At the request of Frederick County, Maryland, (the “County”), the Authority issued a Request for Proposals (RFP) for retrofit construction services of the Frederick County Transfer Station and Processing Facility, located at 9031 Reichs Ford Road, Frederick, Maryland.
2. The Authority contracted with Geosyntec Consultants (Design Engineer) for the retrofit, design, construction support, permitting, and construction quality assurance and quality control.
3. Contractor, _____ company located in _____, based on its proposal is awarded the contract under the Authority’s RFP.
4. The County has secured the Services from Authority pursuant to a County Purchase Order.

NOW, THEREFORE, in consideration of the mutual promises and covenants of each to the other contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties to this Service Contract agree as follows:

ARTICLE I. DEFINITIONS

Unless defined within the text, all capitalized terms have the meaning found in Appendix 1 attached hereto.

ARTICLE II. SCOPE OF WORK AND RESPONSIBILITIES

Section 2.01 Contract

- (a) The documents that comprise this Contract (“**Contract**”), in order of precedence, are:
- (i) This Contract (Construction Service Agreement)
 - (ii) (Construction Service Agreement between the Authority and _____, dated as of _____ (the “Construction Service Agreement.”
 - (iii) Authority’s Request for Proposals dated March __, 2025 (“**RFP**”) and Addenda published on the following dates:
 - (iv) Technical Specification and Drawings prepared by Design Engineer
 - (v) Contractor’s Proposal dated <DATE>

Section 2.02 Authority Scope of Work

The construction services shall be done in a professional manner and in compliance with the approved plans and all applicable laws, ordinances, and permits. Exhibit (1-3) to RFP includes the detailed scope of work - Technical Specifications and Drawings prepared by the Authority’s Design Engineer (Geosyntec Consultants).

Work will be comprised of the following:

- 1. installing new metal rod cross-bracing and support system, including concrete piers;
- 2. removing existing metal rod cross-bracing;
- 3. demolish portions of the existing push wall, metal siding, and metal screen at the western side of the facility;
- 4. installing new roll-up door systems at the push wall;
- 5. install bump guards at the remaining push wall;
- 6. constructing bollards;
- 7. import, place, and compact structural fill and subbase aggregate to the lines and grades shown on the Drawings;
- 8. remove, regrade, and pave portions of the asphalt access road as shown on the Drawings;
- 9. installing a new exterior lighting system; and
- 10. topsoil, seed, and stabilize disturbed areas not designed for asphalt pavement; and
- 11. performing all other Work that is not specifically defined in this Section, but shown on the Drawings and described in these Technical Specifications.

The Authority, through its Design Engineer, will be responsible for managing all permitting requirements, as applicable, on behalf of the County.. The Authority will be

responsible for coordinating with the Design Engineer and meeting the requirements of all permits required to complete the work.

The Authority will arrange for the Contractor to work between the hours of 7:00 am and 5:00 pm, Monday through Friday. If needed, the Authority may request an extension of such operating hours from the County. Such request for extension of operating hours will be approved, in writing, if warranted. No Saturday or Sunday operations will be allowed, unless approved, in writing, by the County.

The Transfer Station will be fully operational throughout the construction period. Authority shall cooperate with County to minimize conflict with operations on site. The majority of the construction will be conducted from the exterior of the transfer station, with the Authority only entering the transfer station when necessary. When work will be conducted within the transfer station, the Authority shall cooperate with the County to ensure the construction area will be clearly separated from the operating area, allowing no waste to enter the construction area. Authority may have access to restrooms and the breakroom onsite, upon approval from County. Temporary toilet accommodations and first aid supplies are required of Contractor per Technical Specifications.

Section 2.03 Responsibilities of the County

The County shall, in accordance with the provisions of this Contract:

- (a) provide access to the Frederick County Transfer Station and Processing Facility (“the Transfer Station”)
- (b) provide access to County files and data needed for the Work.
- (c) pay for documented and approved work.
- (d) provide for the coordination of work at the Transfer Station such that there is no unreasonable interference with the Authority’s or Contractor’s Work by the County, or their representatives or agents. The County agrees that any actions on the part of the County, or their representatives that has a material adverse impact on the activities of the Authority performing Work will be deemed unreasonable interference by the County and may result in a default under this Contract.

Section 2.04 Responsibilities of the Authority

Authority, must, in accordance with the provisions of this Contract cause the Contractor to:

- (a) Furnish all labor, fuel, equipment, and materials necessary to provide the Work in accordance with the Scope of Work;
- (b) Provide the maintenance and repair of its own equipment and the availability, presence and supervision of its employees,

- (c) Ensure that the Work is performed in a safe and effective manner and in accordance with all Applicable Laws, without hindering the operations of the Transfer Station.
- (d) Have a competent and experienced supervisor/foreman on duty at all times when Work is being performed under the agreement.
- (e) Have no subcontractors fulfill any items or conditions of the agreement without the prior written consent of the County, unless those subcontractors are identified in the Contractor's accepted proposal.
- (f) Ensure all equipment and personnel move in the same direction as traffic at all times during all cleaning operations, unless otherwise directed by Authority Representative
- (g) Obey all traffic signals/signs (e.g., speed limit, restricted loads, safety) on the site and as directed by County landfill and Transfer Station management and personnel.
- (h) Be responsible for any all damage in connection with the Work that is not caused by ordinary wear and tear. "Ordinary wear and tear" means only the normal deterioration of the site, property or equipment caused by ordinary, reasonable and proper use of equipment. Any damage resulting from the Authority's/Contractor's Work that is not ordinary wear and tear will be corrected to the satisfaction of the County, at the sole cost and expense of the Authority.

ARTICLE III. TERM, NOTICE TO PROCEED

Section 3.01 Effective Date

This Contract shall be effective on the date that the Contract is fully executed by the Parties ("Effective Date").

Section 3.02 Term

- (a) The Effective Date shall constitute the first day of the Work.
- (b) The Contract is valid from the Effective Date until June 30, 2026, unless earlier terminated by a Party in accordance with the provisions of this Contract. The date for Substantial Completion of the Work items identified in Technical Specifications (Part 1.01.A) shall be 180 days calendar days after issuance of Notice to Proceed.

Section 3.03 Notice to Proceed Conditions

- (a) The Authority shall not begin work under this Contract until the County has issued a purchase order to the Authority.

**ARTICLE IV.
TRANSFER STATION LOCATION**

Section 4.01 Frederick County Transfer Station and Processing Facility

The Transfer Station is located at the Reichs Ford Landfill Site, with an address at 9031 Reichs Ford Rd, Frederick, Maryland 21704.

Section 4.02 Coordination with work at Transfer Station

Authority's Work must be coordinated with, and may not interfere with, the ongoing operations at the Transfer Station. The Transfer Station will be fully operational through the construction period. Authority shall cooperate with County to minimize conflict with County operations at the Transfer Station and Landfill Site.

Section 4.03 Use of Site and Premises

Except as otherwise set forth in this Contract, Authority's access to Transfer Station and Landfill Site is limited to the project area and includes: (1) The western portion of the existing transfer station; (2) the paved area immediately in front of the future waste transfer loading bays; (3) site access roads; and (4) interior Transfer Station, as approved by County, when disposing of the project's demolition waste.

**ARTICLE V.
RESERVED**

**ARTICLE VI.
SPECIFICATIONS AND TECHNICAL REQUIREMENTS**

Section 6.01 Standard of Workmanship

The Authority (through its Contractor) is responsible for performing the Work in accordance with the highest standards of skill and workmanship, using its best skill and attention. The Authority (through its Design Engineer) shall arrange for the construction quality control field and laboratory testing as required by the Drawings and the Technical Specifications. If the Authority is unable to self-perform these tasks, the Authority shall retain a CQC Consultant to complete the required CQC field and laboratory testing.

Section 6.02 Warranty of Inspection and Acceptance of Transfer Station

The Authority will arrange for the Design Engineer to monitor the Contractor's work performance on a daily basis. All work must be performed to the highest professional and industry standards and pursuant to the approved plan set (Drawings) and all permits related to the work.

Section 6.03 Technical Specifications

Exhibit 2 of RFP includes the Technical Specifications. The Work must conform to the standards presented herein.

Section 6.04 Drawings

- (a) Exhibit 3 of RFP includes the Drawings.

**ARTICLE VII.
WORK INVESTIGATIONS**

Section 7.01 Coordination of Work

The Authority must coordinate its Work with activities of the County, their respective agents and representatives. The Authority specifically acknowledges that its Contractor's Work must be coordinated with the day-to-day activities of the Transfer Station and Landfill and will not unreasonably interfere with the County's ability to perform its operations at the Transfer Station and Landfill.

Section 7.02 Reserved

Section 7.03 Reserved

Section 7.04 Reserved

Section 7.05 Storage of Materials

To the extent permitted by the County, portions of surrounding areas of the Transfer Station may be used for storage purposes and for the placing of the Authority's or Contractor's equipment.

Section 7.06 Schedule

- (a) The Authority must arrange for the Contractor to submit to the County a progress schedule within fourteen (14) days prior to the preconstruction meeting per the Technical Specifications.
- (b) The Authority is responsible for submitting Schedule updates to the County showing the progress of the Work as specified in this Contract and Technical Specifications.

- (c) Work shall not proceed without the written approval by the County indicating the acceptance of the Contractor's work plan/schedule.

Section 7.07 Warranties

The Authority will cause the Contractor to provide warranties for the Work as set forth in the Construction Service Agreement.

Section 7.08 Substantial Completion; Punch Lists; Acceptance Tests

When the Authority considers the entire Work ready for its intended use, the Authority shall notify the County that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Design Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, the County shall inspect the Work to determine the status of completion. Work not in compliance with any part of the Contract Documents will be rejected, and Authority must furnish acceptable replacement Work. If Design Engineer considers the Work substantially complete, Design Engineer will prepare and deliver to Authority and County a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected in order to reach Final Completion (e.g., a "Punch List"). Acceptance of the Work as Substantially Complete, or Final Acceptance, shall not excuse or waive any failure of the Authority to complete the Work as required by the Contract Documents. The Work will be considered Substantially Complete based on Design Engineer's review of the Work to establish that all components necessary to operate the repaired Transfer Station have been completed and are operational. The 28-day cure time for concrete, including concrete cylinder testing indication satisfactory compressive strengths have been reached, must be complete prior to substantial completion.

Section 7.09 Final Completion

- (a) The following are conditions of Final Completion:
 - (i) all CQC testing for soils, asphalt, steel, and concrete required for the Project have been completed and acceptable results have been obtained; and
 - (ii) Design Engineer has completed final inspection of the Work and Authority has completed all noted deficiencies from the Punch List to the satisfaction of County and Design Engineer; and
 - (iii) The Authority has caused the Contractor to submit red-line drawings indicating deviations between design and as-build conditions for the Work.
- (b) The Authority shall arrange for the Contractor to submit shop drawings, record documents, working drawings, supplier's certificates of compliance, manufacturer's warranties, and manufacturer's operations and maintenance information, in accordance with the relevant Section of the Technical Specifications.

**ARTICLE VIII.
RESERVED**

**ARTICLE IX.
COMPENSATION**

Section 9.01 Payment for Work

For each Billing Period, the Authority will render a statement (a “Billing Statement”) to the County within twenty-one (21) days of the date that the Authority receives the Contractor Invoice. The Billing Statement must set forth an itemization of the amount due under this Contract. The County must pay the amount due to the Authority within fourteen (14) days of the date that the County receives the Billing Statement, provided that if the last day of such 14-day period is not a Business Day, payment must be made on the next succeeding Business Day.

Estimates and Adjustments. If an item in the Billing Statement is mutually agreed by the County Representative and the Authority Representative to be in error, the Billing Statement may be corrected prior to the payment due date for such Billing Statement. If an item is mutually agreed by the County Representative and the Authority Representative to be in error after such time, an adjustment shall be made on the Billing Statement for the Billing Period immediately after the item is accurately determined.

Section 9.02 Invoicing

- (a) Invoices shall be sent to the County at the following address:

Frederick County
[address]

- (b) Any amounts payable by the County that are not paid when due shall bear interest at the Late Payment Rate.
- (c) If the County disputes any amount owed as the Price or other amounts due under the Contract or deductions therefrom, the disputed portion of the adjustment is not effective until resolution of the dispute, and the Authority will not be paid such disputed amount until resolution of the dispute. Pending resolution of any dispute, the Authority must continue to perform its obligations under the Contract.

Section 9.03 Offset

Whenever the County is obligated to pay the Authority any amount under this Contract, the Authority may deduct from that amount, before payment, any amount that the Authority owes to the County. The failure of the Authority to offset such liability against amounts due to it shall in no way limit or restrict the right of the Authority to recover such amounts due to it from the County.

Section 9.04 Payment Is No Waiver of Rights

No payment made to the Authority shall constitute an acceptance by the County of any Work not in accordance with the Contract. The County may withhold or recover the whole or part of any Authority payment, to such extent as may be necessary, to reimburse or protect the County from loss on account of defective Work not remedied, failure of the Authority to make payments properly to third parties, Liquidated Damages, or other damages for which the Authority may reasonably be liable.

ARTICLE X. CHANGES TO WORK

Section 10.01 Changes

- (a) Changes in Scope of the Work must be in writing and agreed upon by both parties.
- (b) If any Change-in-Work causes an increase or decrease in the Authority's cost of, or the time required for, the performance of any part of the Work under this Contract, an adjustment will be made for Authority's Demonstrated Costs (as defined below) to be incurred or saved and the Contract modified in writing accordingly; provided, however, that no claim for any change above will be allowed for any costs incurred more than 10 days before the Authority gives written notice as therein required.
- (c) No claim by the Authority for an adjustment under this Contract will be allowed if asserted after Final Completion under this Contract.

Section 10.02 Suspension of Work

- (a) The County may unilaterally order the Authority in writing to suspend, delay, or interrupt all or any part of the Work for a period of time it deems appropriate for the convenience of the County.
- (b) However, no adjustment will be made for any suspension, delay, or interruption to the extent (i) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Authority-Related Entities, or (ii) for which an equitable adjustment is provided for or excluded by any other provision of this Contract.
- (c) No claim will be allowed for a suspension, delay, or interruption ordered by the Authority (i) for any costs incurred more than 10 days before Authority shall have notified the County in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the Contract.

Section 10.03 County to make changes in Work.

Only the County Representative has the authority to make Changes in the Work, or to accept Work.

Section 10.04 Limitation of Authority Payment Obligations

The liability of the Authority for any monetary payments with respect to, or as a result of, this Contract are not payable from the general funds of the Authority and the incurrence or nonperformance of such obligations or payments shall not constitute or create a legal or equitable pledge of, or lien or encumbrance upon or claim against, any of the assets or property of the Authority or of its income, receipts or revenues, except for the Project and Project Revenues.

**ARTICLE XI.
GENERAL PROVISIONS**

Section 11.01 County Representative

The County Representative shall be the _____ or another individual designated by _____, in writing to the Authority, as the County Representative.

Section 11.02 Effect of County Approvals

No review, comment, or approval by the County, or failure by the County to review, comment or give approval, under this Contract:

- (a) relieves the Authority of any of its obligations under this Contract or imposes any liability on the County; or
- (b) affects the rights, remedies, powers, or privileges of the County in connection with (i) Governmental Approvals pursuant to Applicable Law, (ii) the enactment interpretation or enforcement of any Applicable Law, (iii) any of its other governmental functions, or (iv) matters not related to this Contract.

Section 11.03 Reserved

Section 11.04 Insurance Requirements

- (a) Authority must arrange for Contractor to obtain and maintain, in full force and effect for the duration of the Contract, insurance necessary to cover claims arising from Contractor's operations under this Contract. The insurance coverage required of the Contractor for the Work and the Procurement Support Period are described in Appendix 4 ("**Required Insurance**") of the Construction Service Contract. Within 10 business days of Effective Date, and at any time thereafter as required by the County, the Authority must deliver to the County copies of all certificates of insurance for Required Insurance.

Section 11.05 Notice/contact information.

All notices, designations, consent, approvals, and other communications required, permitted or otherwise delivered under this Contract shall be in writing and may be delivered by email or by hand, or mailed by first class registered or certified mail, return receipt request, postage prepaid, addressed as follows:

To the Authority:

Andrew Kays - Executive Director
Northeast Maryland Waste Disposal Authority
Tower II, Suite 402, 100 S. Charles Street
Baltimore, Maryland 21201
authority@nmwda.org

To the Contractor:

<Contractor name and address>

To the County:

Section 11.06 Indemnification

- (a) To the fullest extent permitted by law, Authority shall cause the Contractor to defend, indemnify, and hold harmless the Authority, the State, and Frederick County and their respective officers, employees, elected officials, agents, contractors, consultants, engineers, officers, directors, elected representatives, officials, and other representatives (collectively, “**Authority Indemnified Parties**”), from and against all liability, suits, judgments, and claims by third parties, damages, losses, and expenses, including the costs of defense, settlement, and reasonable attorneys’ fees (collectively, “**Losses**”), which they may individually or collectively, may incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent caused, in whole or in part, by a breach of any term, provision, representation or warranty of this Contract or any negligent act or omission or willful misconduct of the Contractor, or its directors, officers, employees or agents. This indemnification is not to be deemed as a waiver of any immunity, which may exist in any action against the County.

Section 11.07 Change in Law

The County shall not be liable for any additional costs incurred by the Authority due to or to comply with a change of Applicable Law.

Section 11.08 Uncontrollable Circumstances

- (a) A Party will not be in default under this Contract or liable to the other Party for its failure to perform its obligations under this Contract, but only to the extent that, and for so long as, the Uncontrollable Circumstances prevents the affected Party from performing its obligations in accordance with this Contract. The Authority shall work diligently to overcome or remove such Uncontrollable Circumstance as soon as possible.
- (b) As soon as possible after an Uncontrollable Circumstance occurring on or after the Effective Date, the Authority shall give the County Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to the Authority), and a description of the conditions preventing the performance of Authority's obligations. The Authority must answer any inquiries of the County Representative regarding the conditions caused by the Uncontrollable Circumstance and must provide them with the information as they reasonably request.
- (c) If, within 5 days after a Uncontrollable Circumstance occurrence (or if required due to the nature of the event, a shorter period of time) that has caused the Authority to suspend or delay performance of the Work, the Authority has failed to take commercially reasonable action to overcome or cure the Uncontrollable Circumstance occurrence or its direct or indirect effects on the performance of its obligations under this Contract, the County may, in its sole discretion and after Notice to the Authority, at Authority's expense, initiate commercially reasonable measures to overcome or cure the Uncontrollable Circumstance occurrence or its direct or indirect effects on the performance of Authority's obligations hereunder and thereafter require Authority to resume full or partial performance of the Work (unless it is commercially unreasonable for Authority to do so); provided, however, that no such action of County shall relieve Authority of its obligations under this Contract.
- (d) Notwithstanding the provisions of this Section 11.08, the Authority assumes full responsibility for completion of the Work without adjustment to the Term, the Price Service Fees or the Schedule regardless of weather conditions, unless weather severity is substantially in excess of the data accepted for the norm established and substantiated for the Transfer Station.
- (e) If an Uncontrollable Circumstance prevents the Authority from performing a material portion of its obligations under this Contract for more than 30 continuous days, then the County, after providing the Authority at least 10 Business Days' prior Notice, may, but shall not be obligated to, terminate this Contract without additional liability to the Authority and (except as provided in the last sentence of this Section 11.08(e)) to the Contractor as result of such termination. The Contractor shall be entitled to receive payment of the proportion of the Price for Work actually performed plus reasonable demobilization, contract cancellation costs and close out costs.
- (f) In the event that two delay events occur concurrently, the first event to occur will control until such event is overcome and then any remaining delay attributed to the second delay event will control.

Section 11.09 Events of Default

(a) Each of the following constitutes an Event of Default on the part of Authority:

- (i) the failure or refusal by the Authority to fulfill any of its material obligations to the County in accordance with the Contract, unless such failure or refusal is excused pursuant to this Contract; or
- (ii) if, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of the Authority or of a major part of its property is appointed, or if, by decree of such a court, the Authority is adjudicated insolvent, or a major part of its property is sequestered, or if a petition to reorganize the Authority pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Authority, as now or hereinafter in effect, is filed against the Authority, or if the Authority is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against the Authority under any such law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Authority pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Authority, as now or hereinafter in effect; or
- (iii) if the Authority makes an assignment for the benefit of creditors, or admits, in writing, an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of either the Authority or of a major part of its property; or
- (iv) if the Authority assigns its rights or obligations under this Contract or any part thereof to any Person, except as otherwise permitted under this Contract; or
- (v) if any representation or warranty made by the Authority herein or in any payment invoice or related documentation submitted hereunder is false or misleading in any material respect when made; or
- (vi) if the Authority fails to provide and maintain (or fails to require the Contractor to provide and maintain) in full force and effect any Required Insurance in accordance with this Contract; or
- (vii) if the Authority provides or has provided materially false or misleading information to the County; or
- (viii) the failure of the Authority or its Contractor, and their respective agents, licensees, invitees, and successors to comply with Applicable Law in any material respect; or
- (ix) Authority fails to pay any undisputed amount that Authority is required to pay to the County under this Contract within thirty (30) days after receipt by Authority of written demand from County accompanied by a Notice stating that unless the delinquent amount is paid within thirty (30) days after this demand the failure will constitute an Event of Default; or

- (x) Authority abandons or suspends support of the Work for thirty (30) days due to any reason other than Uncontrollable Circumstance or direction of the County; or
 - (xi) a guarantor or other surety is in default (after the expiration of all applicable cure periods) under any warranty bond or under any Performance Security provided to the County and, except for a failure to pay, it is not replaced or otherwise cured in accordance with this Contract; or
 - (xii) a Authority Change in Control occurs.
- (b) No failure or refusal on the part of the Authority as described in this Section (except for clause (ii), (iii), (iv), (v), (vii), (ix), or (xiv)) shall constitute an Event of Default unless and until: (A) the County has given notice to the Authority specifying with particularity the existence of such default; and (B) the Authority has failed to cure such default within 30 days after receipt of such notice.
- (c) Each of the following constitutes an Event of Default on the part of the County, provided that none of the following shall constitute an Event of Default to the extent caused by the failure of the Authority to perform its obligations under this Contract:
- (i) The failure by the County to pay any undisputed amount in excess of \$10,000, that the County is required to pay to the Authority under this Contract within 60 days after receipt by the County of written demand from the Authority accompanied by notice stating that unless such amount is paid within 60 days after such demand the failure shall constitute an Event of Default; or
 - (ii) The failure or refusal by the County to substantially fulfill any of its material obligations to the Authority in accordance with this Contract, other than as provided in subparagraph (i) above, unless such failure or refusal is excused or justified pursuant to the provisions of this Contract, provided that no such failure or refusal constitutes an Event of Default unless and until:
 - a) the Authority gave prior written notice to the County and the County Representative stating that in their opinion a particular default or defaults (described in reasonable detail in such notice) exists and unless corrected, constitute a material breach of this Contract on the part of the County and gives the Authority a right to terminate this Contract for default unless such default is corrected within a reasonable period of time; and
 - b) the County has not corrected the default nor initiated steps to correct it within a reasonable period of time (a reasonable period of time for purposes of this paragraph shall in any event not be less than thirty (30) days from the date of the notice given, provided that if the County has commenced to take reasonable steps to correct the default within such reasonable period of time, it shall not constitute an Event of Default for as long as the County is continuing to take reasonable steps to correct it; and

- c) there is no reasonable expectation that the Authority can obtain sufficient relief for the default, other than by termination of this Contract, to compensate it for any loss incurred as a result of the County default.

Section 11.10 Termination for Default

- (a) The right of termination for cause may be exercised only by a Notice of Termination given to the Party in default. The proper exercise of the right of termination is in addition to and not in substitution for, any other remedies, whether damages or otherwise, of the Party exercising the right of termination.
- (b) In the case of one or more Events of Default on the part of the Authority, the County shall have the following rights and remedies, in addition to those rights and remedies that may be available to County at law or in equity and Authority shall have the following obligations:
 - (i) The County, without prejudice to any of its other rights or remedies, may upon fifteen (15) Business Days' Notice to Authority (A) suspend disputed payment and/or (B) unless Authority has cured such default therein thirty (30) days after receipt of such Notice, terminate this Contract on the date specified in a written or electronic mail notice of termination to Authority.
 - (ii) If the County terminates this Contract in accordance with this Section 11.10 and determines in its sole discretion, to complete the Work under this Contract, the Authority must, if requested by the County (A) withdraw from Transfer Station, and as requested by the County, (B) assign one or more of its contracts, subcontracts, purchase orders or other Contracts to the County or any designee of the County; provided, however, that such assignee assumes the obligations of Authority (and the Contractor) thereunder and (C) shall turn over to County complete possession of any or all designs, materials, equipment, tools, purchase orders, inquiries, letters, computers, servers, software, schedules, and drawings of Authority (and/or the Contractor) that the County deems necessary to completion of the Work. The County may employ any other person, firm or corporation (hereinafter, a "**Replacement Contractor**") to finish the Work in accordance with the terms of this Contract by whatever method that the County may deem expedient. In addition, Authority shall not remove any equipment, materials or tools that the removal of which could damage the Site or any portion thereof then constructed or otherwise materially adversely affect or delay the construction, use or maintenance of the Site. After the termination of this Contract, the County shall be responsible for the care, custody, and control of all equipment, materials, tools and other items used in completion of the Work. The County, without incurring any liability to the Authority, shall have the right to have the Work finished by the Replacement Contractor.
- (c) If this Contract is terminated by the County for cause as a result of an Event of Default by Authority's Contractor with respect to Work, the Authority's Contractor will be

entitled to payment of that portion of the Price related to the Work performed until the date of termination; provided, however, Authority's Contractor will not be entitled to any recovery of profit or unabsorbed overhead in connection with Work not actually performed or future Work. The Authority must reimburse the County for any costs in excess of the Price, as adjusted, incurred by the County, or any Person acting on the County's behalf in completing the Work or having the Work completed. The County will be entitled to withhold payments the Authority determines are due to it prior to the date of termination until Final Acceptance and determination by the County that the Authority is entitled to such payments. Upon completion of the Work by the County or third parties, the total cost of the Work shall be determined, and the County will notify the Authority in writing of the amount, if any, that the Authority shall pay the County or the County shall pay the Authority. If at any time the total expense incurred by the County in completing the Work exceeds the portion of the Price not paid to the Authority as of the date of termination, then Authority shall pay the amount of any such excess from time to time existing within thirty (30) days of written demand therefor by the County. Any amounts not paid hereunder when due shall bear interest at the Late Payment Rate. The County may, in its sole discretion, employ any other Person, as a Replacement Contractor to finish the Work by whatever method or means as the County deems expeditious.

- (d) In the event that any termination of this Contract by the County is due to an Authority Event of Default pursuant to this Section 11.10 **and** is later adjudicated to have been improper, then Authority will be entitled to recover the amounts the Authority is entitled to in accordance with Section 11.11, Termination for Convenience.

Section 11.11 Termination for Convenience

In addition to the County's other termination rights under this Contract, the performance of Work required by this Contract may be terminated by the County in whole or in part, whenever the County determines that termination is in the best interests of the County. Any termination will be affected by delivery of a Notice of Termination to the Authority specifying the extent to which performance of Work under this Contract is terminated, and the date upon which the termination becomes effective. In the event of a termination for convenience, the County will pay all reasonable costs associated with this Contract that the Authority incurred up to the date of termination and all reasonable costs associated with termination of the Contract. The Authority ("Authority's Contractor") will not be entitled to payment for any anticipatory profits that have not been earned up to the date of termination. Termination under this Contract, including the determination of the rights and obligations of the Parties, will be governed by the provisions of COMAR 21.07.02.09(2)-(6).

Section 11.12 Dispute Resolution Procedures, Governing Law, and Venue

- (a) The County and the Authority shall in good faith attempt to resolve any dispute or matter in controversy under this Contract. As a condition to seeking judicial resolution of a dispute, the County and the Authority agree to pursue an administrative dispute resolution procedure. Under this procedure either Party may initiate dispute resolution by giving notice of its claim to the other Party. If a claim for additional compensation

is being made under this Section 11.12, the notice of claim must be made within thirty (30) days. Within thirty (30) days of receiving such a claim, the Party receiving the claim shall investigate the merits of the claim, and the Parties shall meet to attempt resolution. If after this process, a resolution of the claim is not successful, either Party may seek judicial resolution.

- (b) All disputes under this Contract, if not resolved by the Parties, shall be resolved by a Maryland State court of competent jurisdiction, venue is Frederick County, and in accordance with the laws of the State of Maryland, without regard to its conflict of laws provisions. Pending resolution of any claim or dispute the Authority is obligated to continue performance of the Contract.

Section 11.13 Reserved

Section 11.14 Records Retention and Access

The Authority must maintain (or cause to be maintained) all books, records, and accounts necessary to record all matters affecting the Price, applicable damages or other amounts payable by or to the County or the Authority under this Contract or other contracts, including but not limited to, policies for required insurance and all insurance-related documents, as well as all documents required by or relating to any Governmental Approvals necessary for the performance of the Contract and in accordance with the requirements of Applicable Law. The Authority must maintain (or cause to be maintained) all books, records and accounts in accordance with generally accepted accounting principles and shall contain sufficient data to enable the Authority's dealings and transactions to be audited in accordance with generally accepted auditing standards.

The Authority must retain and maintain all records and documents relating to this Contract for three years after Work is completed or any applicable statute of limitations, whichever is longer, and must make them available for inspection and audit by authorized representatives of the County at all reasonable times.

Section 11.15 Subcontracting

- (a) Except as otherwise expressly provided in the Contract, the Authority shall cause its Contractor to be solely responsible for engaging, managing, supervising, and paying all Sub-Contractors. The Authority must require all Work performed by -Contractors to be performed, inspected, and otherwise furnished, in accordance with the Contract. Nothing contained in this Contract or in any subcontract or purchase order shall create or constitute a contractual relationship between County and any Sub-Contractor.

Section 11.16 Assignment

The Authority may not assign this Contract without the prior written consent of the County.

Section 11.17 Representations and Warranties

- (a) The Authority hereby makes the following representations and warranties to and for the benefit of the County:

- (i) The Authority is duly organized and validly existing as a corporation under the laws of the State of Maryland with full legal right, power and authority to enter into and perform its obligations under this Contract, and is duly qualified to do business in the State of Maryland and will take such action as may be necessary to remain so qualified;
- (ii) The Authority is not in arrears with respect to the payment of any monies due and owing to the State of Maryland, and shall not become so during the term of this Contract;
- (iii) The Authority shall comply with all federal, state, and local laws, regulations and ordinances applicable to its activities and obligations under this Contract;
- (iv) The Authority shall obtain, its own expense, all licenses, insurance, and Government Approvals necessary to the performance of its obligations under this Contract;
- (v) The Authority has duly authorized the execution and delivery of this Contract and this Contract has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms.
- (vi) Neither the execution or delivery by the Authority of this Contract, nor the performance by the Authority of its obligations in connection with the transactions contemplated hereby, or the fulfillment by the Authority of the terms or conditions of this Contract (a) conflicts with, violates or results in a breach of any Applicable Law, or (b) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any Contract or instrument, to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder or (c) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Authority.
- (vii) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery of this Contract by the Authority, except such as have been duly obtained or made.
- (viii) Except as disclosed to the County, in writing, there is no action, suit, or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Authority's knowledge, threatened, against Authority, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by Authority of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Contract, or any other Contract or instrument entered into by the County in connection with the transactions contemplated hereby.
- (ix) All reports, presentations, spreadsheets and other documents furnished or to be furnished by the Authority in performing the Work will become the property of

County to be used by County as it may desire and for any other purposes permitted by Applicable Law.

- (b) The County hereby makes the following respective representations and warranties, as of the date of execution and delivery of this Contract, to and for the benefit of Authority.
- (i) The County is a body politic and corporate validly existing under the Constitution and laws of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Contract.
 - (ii) The County has duly authorized the execution and delivery of this Contract, and this Contract has been duly executed and delivered by the County and constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms.
 - (iii) Neither the execution or delivery by the County of this Contract, nor the performance of the County's obligations in connection with the transactions contemplated hereby nor the County's fulfillment of the terms or conditions of this Contract (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any contract or instrument, to which the County is a party or by which the County or any of its properties or assets are bound, or constitutes a default thereunder.
 - (iv) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery by the County of this Contract except those that have been duly obtained or made.

Section 11.18 Compliance with Applicable Law

The Authority will perform its obligations under this Contract in accordance with all requirements of Applicable Law.

Section 11.19 Relationship of Parties

Nothing in this Contract constitutes one Party a partner, agent, joint venturer, or legal representative of the other, or creates any fiduciary relationship between the Parties.

Section 11.20 Amendment of Contract

Except as provided in Section 11.10 herein, this Contract may only be amended, or any provision of this Contract waived, by a written document signed by both Parties.

Section 11.21 Severability of provisions

If a court of competent jurisdiction determines that any provision of this Contract is, for any reason, invalid, illegal, or unenforceable in any respect, the Parties agree to negotiate in good faith and make such amendments, modifications or supplements of or to this Contract to implement

and give effect to the intentions of the Parties. All other provisions of this Contract, as so amended, modified or supplemented, or otherwise affected by this action, remain in full force and effect.

Section 11.22 Headings

The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Contract are solely for convenience of reference and shall not affect the meaning, construction or effect of any provision of the Contract.

Section 11.23 Entire Contract

This Contract contains the entire Contract between the Parties with respect to the transactions contemplated by this Contract. The Contract shall completely and fully supersede all other understandings and Contracts among the Parties with respect to such transactions. The Contract shall include all appendices and exhibits, as well as the documents specified in Section 2.01 and shall be interpreted in accordance with the provisions of Section 2.01.

Section 11.24 Counterparts

This Contract may be executed in counterparts, each of which is deemed an original, and all of which, when executed and delivered, together constitute one and the same instrument.

Section 11.25 Limitation on County Obligations

- (a) Notwithstanding any other provision of this Contract to the contrary, the liability and obligation of the County for all monetary payments with respect to or arising as a result of this Contract (including payments in respect of the Price and damage payments for breach of or default under this Contract) are limited obligations payable solely from Purchase Order Revenues as and to the extent such Purchase Order Revenues are received and available to pay such amounts under Applicable Law. The liability of the County for any monetary payments to the Authority (or the Authority's Contractor) with respect to, or as a result of, this Contract are not payable from the general funds of the County or any amounts received by the County in respect of any County administrative cost and the incurrence or nonperformance of such obligations or payments will not constitute or create a legal or equitable pledge of, or lien or encumbrance upon, or claim against, any of the assets or property of the County or of its income, receipts or revenues, except Purchase Order Revenues available to pay such amounts under Applicable Law. The Authority shall have no recourse for the payment of any amounts due by the County under this Contract or upon any representation, warranty, covenant, contract or obligation contained in this Contract or in any document, certificate or instrument that this Contract requires to be executed and delivered by the County or for any claim hereon or thereon shall be had by the Authority, except from such Purchase Order Revenues.
- (b) The execution and delivery of this Contract by the County does not impose any personal liability on the members, directors, officers, employees or agents of the County or any Frederick County Indemnitee. The Authority shall have no recourse for any claims based on this Contract against any member, director, officer, employee or other agent of the

County in his or her individual capacity, all such liability, if any, being expressly waived by the Authority by the execution of this Contract.

- (c) No recourse shall be had to the general funds or general credit of the County for the payment of any amount due to the Authority hereunder, whether on account of the Price or for any loss or expense of any nature arising from the performance or non-performance of the Authority's obligations hereunder. The sole recourse of the Authority for all such amounts shall be to the funds available for such payment under of the terms of this Contract and the (Purchase Order/Construction Service Contract).

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, each of the Authority and the County has caused this Construction Contract to be executed and sealed as of the date first written above and intends that this Construction Contract is a contract under seal and a specialty.

NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY

Attest:

By: _____

Name: Andrew Kays

By: _____

Title: Executive Director

FREDERICK COUNTY, MARYLAND

Attest:

By: _____

Name:

By: _____

Title:

APPENDIX 1 DEFINITIONS

“Applicable Law” means any law, regulation, requirement or order of any Governmental Authority, and all by either Party of its Governmental Approvals, applicable to the Scope of Work and the performance of obligations under the Contract.

“Authority” means Northeast Maryland Waste Disposal Authority established pursuant to the Northeast Maryland Waste Disposal Authority Act, codified as Subtitle 9, Title 3 of the Natural Resources Article of the Annotated Code of Maryland, as amended, supplemented, superseded and replaced from time to time.

“Authority Project Manager” means the project manager designated by the Authority whose responsibilities are described in Section 11.01 of the Contract.

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto. “Bankruptcy Code” shall also include (1) any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due, and (2) in the event the Guarantor is incorporated or otherwise organized under the laws of a jurisdiction other than the United States, any similar insolvency or bankruptcy code applicable under the laws of such jurisdiction.

“Billing Period” means each calendar month. The first Billing Period shall begin on the Acceptance Date and the last Billing Period shall end on the last day of the Term of this Contract.

“Change-in-Work” has the meaning set forth in Article X.

“Authority” means XXXXXX, organized and existing under the laws of XXXXXX, and its permitted successors and assigns. The Authority is the successful Offeror under the RFP.

“Contractor-Related Entity” means any parent company or subsidiary of the Authority’s Contractor, and any business, company, partnership, company or other entity holding an ownership interest (directly or indirectly) in the Authority’s Contractor.

“Contract” means this Construction Contract for the services related to the retrofit construction services of the Frederick County Transfer Station and Processing Facility, located at 9031 Reichs Ford Road, Frederick, Maryland, including the appendices and exhibits, and hereto of the documents referenced in Section 2.01.

“Contract Representative” means, in the case of the County, the individual specified in writing by the County as the representative of the County from time to time for all purposes of this Contract and, in the case of the Authority, the Executive Director or such other representative as shall be designated in writing by the Executive Director from time to time.

“CPI” or “Consumer Price Index” means the Bureau of Labor Statistics’ CPI for all urban consumers Baltimore-Columbia-Towson, MD Area, 1996 Base, published by the United

States Department of Labor, or, if such Index is no longer published or its method of computation is substantially modified, a substitute Index published by the United States government or by a reputable publisher of financial or economic statistics that will fairly and reasonably reflect the same or substantially the same information as the discontinued or modified Index.

“Effective Date” means the date the Contract is executed and delivered by both parties.

“Environmental Claim” means any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim against the Authority to the extent arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Waste or actual or alleged Hazardous Waste Activity, (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Waste, Environmental Law or other order of a Governmental Authority or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

“Environmental Law” means any current or future Applicable Law pertaining to (a) the protection of health, safety and the indoor or outdoor environment, (b) the conservation, management, or use of natural resources and wildlife, (c) the protection or use of surface water or groundwater, (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Waste or (e) pollution (including any release to air, land, surface water and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*, Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*, Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, *et seq.*, Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 *et seq.*, Hazardous Wastes Transportation Act, 49 U.S.C. App. §§ 1801 *et seq.*, Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 *et seq.*, Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.*, Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*, National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*, Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f) *et seq.*, any similar, implementing or successor law, including, without limitation, laws enacted by the State of Maryland or any other State, and any amendment, rule, regulation, order, or directive issued thereunder.

“Event of Default” means any of the events described in Section 11.09 of the Contract.

“Good Industry Practice” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices in the municipal solid waste processing and recycling industry in the United States.

“Governmental Approval” means any permit, license, variance, certificate, consent, letter, clearance, closure, exemption, decision or action or approval of a Governmental Authority.

“Governmental Authority” means any international, foreign, federal, state, regional, County, or local person or body having governmental or quasi-governmental authority or subdivision thereof.

“Hazardous Waste” means:

- A. Any waste or substance, the treatment, storage or disposal of which, because of the composition or characteristics of the waste or substance, is unlawful to treat, store or dispose of at the acceptance or disposal facility or other facilities to be used in providing the services in this Contract, and is considered hazardous waste under Applicable Law, including, without limitation, wastes that are:
 - 1. regulated as a toxic or Hazardous Waste as defined under either Subtitle C of the Solid Waste Disposal Act, 42 U.S.C. §§ 6921-6939a, or Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. § 2605(e), as replaced, amended, expanded or supplemented, and any rules or regulations promulgated thereunder, or under the Environment Article of the Annotated Code of Maryland, Title 7, Section 7-101 et seq., as replaced, amended, expanded, or supplemented, and any rules or regulations promulgated thereunder; or
 - 2. Low level nuclear wastes, special nuclear wastes or nuclear by-product wastes, all within the meaning of the Atomic Energy Act of 1954, as replaced, amended, expanded or supplemented, and any rules, regulations or policies promulgated thereunder.
- B. Any other waste which any Governmental Authority or unit having appropriate jurisdiction shall lawfully determine, from time to time, to be ineligible for disposal through facilities of the type being used to provide the service under this Contract because of the harmful, toxic, or dangerous composition or characteristics of the waste or substance.

“Hazardous Waste Activity” shall mean any activity, event, or occurrence involving a Hazardous Waste, including without limitation, the manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation, handling of or corrective or response action to any Hazardous Waste.

“Health and Safety Plan (HASP)” shall mean the specific plan prepared by the Authority for the Work. The HASP shall be developed in consultation with the Authority, Frederick County, and Design Engineer and shall reflect the requirements found in the applicable sections of 29 CFR 1910 and 1926.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurance Authority which has issued a policy of Required Procurement Support Period Insurance or Required Construction Inspection Insurance under this Contract, as in effect during the Term hereof, compliance with which is a condition to the effectiveness of such policy.

“Late Payment Rate” means the lesser of (i) the Prime Rate plus 2% per annum or (2) the maximum interest rate permitted by Applicable Law.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, investigation and other legal or equitable proceeding by or before any Governmental Authority having a bearing upon this Contract and all appeals therefrom.

“Lien” means one person’s interest in another person’s property that arises because of a debt.

“Liquidated Damages” means those agreed to values that represent a reasonable estimate of the actual harm to the County for the Authority’s failure to meet one or more requirements of the Contract. The Liquidated Damages may be applied as a credit by the County against amounts due to the Authority in a monthly invoice.

“MDE” means the Maryland Department of the Environment.

“OSHA” means the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 650 et seq., including the applicable regulations promulgated thereunder, each as amended or supplemented from time to time.

“Party” means the Authority or the County.

“Parties” means collectively the Authority and the County.

“Person” means an individual, partnership, corporation, limited liability company, company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, or other entity of whatever nature.

“Price” means the proposed price, not to exceed, for the Work.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the indoor or outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks or other receptacles containing or previously containing any Hazardous Waste.

“RFP” means the request for proposals issued [DATE], including addenda thereto issued.

“Transfer Station” means the Frederick County Transfer Station and Processing Facility located at the Reichs Ford Rd Landfill in Frederick, Maryland.

“State” means the State of Maryland.

“Subcontract” means a contract or purchase order by the Authority’s Contractor, or a Sub-Contractor to the Authority, as applicable.

“Sub-Contractor” means Suppliers, vendors, consultants, Sub-contractors and other Persons engaged as independent contractors by the Authority’s Contractor that perform any part

of the Work on behalf of the Contractor or otherwise assists the Authority in the performance of its obligations under this Contract or other applicable Contracts.

“Substantial Completion” means the date when Engineer gives its approval of substantial completion of the work as described as described in Technical Specifications (Section 01775).

“Tax” or “Taxes” means all fees, taxes (including sales taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible)), levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any federal, state, local or foreign government or other taxing authority.

“Term” has the meaning set forth in Article III.

“Termination Date” means the last day of the Term of this Contract.

“Recovery Plan” means the Authority’s written plan to address delays in the schedule due to occurrences under its control.

“Site” means Frederick County Reichs Ford Landfill and Transfer Station and Processing Facility located at 9031 Reichs Ford Road, Frederick, Maryland 21704

“Uncontrollable Circumstance” means an event or condition listed in this definition, whether affecting the Authority, the County or the Authority, that has, or may reasonably be expected to have, a material adverse effect on the operation of the Transfer Station or Landfill, if such event or condition is beyond the reasonable control, and not the result of willful or negligent action or a lack of due diligence, of the non-performing party relying thereon as justification for not performing any obligation or complying with any condition required of such party hereunder, for delaying such performance or compliance. The following events or conditions, and no others, shall constitute Uncontrollable Circumstances if they meet the requirements of the preceding sentence:

- (a) an act of God, hurricane, landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, war, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage committed at a facility by a person other than an employee or agent of, or visitor invited by, the Authority or its affiliates, or the Authority’s contractors of any tier;
- (b) A non-Contractor (of the Authority) or non-Sub-contractor Labor Action.

No other events or conditions of any kind shall be considered an Uncontrollable Circumstance for the purposes of this Contract.

In no event will Sub-Contractor Default or an Authority Contractor’s Labor Action constitute an Uncontrollable Circumstance.

The term “reasonable control” includes investigation or planning that is required by sound management or industry practices. No change in any Applicable Law imposing or increasing any Tax, shall constitute an Uncontrollable Circumstance.

“Uncontrollable Circumstance” shall not include the following:

- (A) reasonably predictable weather conditions for the geographic area of the Site; or
- (B) the imposition of any new condition in or other change to a Governmental Approval on or before the Notice to Proceed Date; or
- (C) the failure of a Party to any Contract with the Authority to perform its obligations under such Contract or undertaking unless the failure of such Party to perform is caused by an Uncontrollable Circumstance affecting such Party; or
- (D) with respect to the Authority only, any error or defect in the design or construction or equipping of the Corrective Measures; or
- (E) any labor strike or work stoppages solely caused by or solely directed at the Authority’s Contractor or its Sub-Contractor (or the affiliates of either);
- (F) any insolvency or bankruptcy of an Authority’s Contractor or Sub-Contractor of any tier; or
- (G) general economic or industry conditions or increased costs of equipment, material, labor, or other components of the Work

“Work” means all work and activities to be performed by the Authority under this Contract.

APPENDIX 2

PAYMENT AND WORK PROGRESS

Payment to Authority shall be made as follows:

On or about the 8th day of each month, Authority shall submit an invoice to County. Authority shall use the Application for Payment Forms provided in Section 01270 of Technical Specifications.

County shall, within 15 days after receipt of invoice from Authority, determine whether (A) the Work performed conforms with the requirements of this Contract; (B) the invoice and required backup information have been properly submitted; and (C) the invoiced amount reflects the work performed to-date and shall inform Authority as to whether County disputes any portion of the invoice. Notwithstanding the foregoing, in no event shall County's determination or payment of any amount hereunder constitute or be deemed a waiver of any provision of this Contract, and County shall have the right to enforce this Contract against Authority notwithstanding any such determination or payment if County subsequently determines for any reason that any determination or payment of an invoice was erroneous. Subject to such determination by County, and except for disputed portions of any invoice, County shall pay Authority within 45 days after receipt by County of Authority's invoice.

County, based on its reasonable estimate, may withhold such portion of any payment to such extent as may be necessary to protect County from loss due to Authority's failure to comply with items (A) through (F) below and in respect of the following:

(A) Work not performed in accordance with the requirements of this Contract whether payment for such Work is requested by invoice or previously made by Authority;

(B) Claims filed against Authority or the County arising from Authority's Contractor failure to perform in accordance with the terms of its subcontracts, other than claims for which Liens have been filed against the County that Contractor has bonded or has secured with any other kind of security permitted by applicable Law against such Lien which is reasonably acceptable to County;

(C) Failure of Authority to make payments in respect of material or labor or other obligations incurred as a result of activities covered by this Contract, unless Authority has, in good faith, reasonably disputed such payments and, if any Lien is filed with respect thereto, Authority has posted a bond or any other kind of reasonable security permitted by applicable Law against such Lien;

(D) Evidence that the invoice (together with previously invoiced amounts) exceeds the amount payable with respect to the Work achieved;

(E) Undisputed damages or any other amounts owed by Authority to County under this Contract for which County has not been paid;

(F) Contactor's failure to provide a Recovery Plan, or Authority fails to implement any approved Recovery Plan; and

(G) Persistent failure to carry out material obligations of the Work in accordance with this Contract

County shall advise Authority in writing within 15 days after receipt of Authority's invoice of any actual or reasonable evidence leading to a possible delayed payment of any portion of an invoice. Upon receipt of such Notice, Authority shall promptly take any and all reasonable steps available to remedy any condition identified by County leading to such claims.

APPENDIX 3

PROJECT SCHEDULE

The purpose of this Appendix is to define the Authority's implementation schedules for the Work.

Final Contract must include Contractor supplied project schedule.