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**SERVICE CONTRACT**

by and between

**Northeast Maryland Waste Disposal Authority**

and

**CONTRACTOR**

to provide for the

**KANE STREET SANITATION YARD  
SAFETY AND HEALTH ASSESSMENT AND RENOVATION DESIGN**

On behalf of,  
**BALTIMORE CITY, MARYLAND**

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## TABLE OF CONTENTS

Article I.	DEFINITIONS.....	1
Article II.	SCOPE OF WORK AND RESPONSIBILITIES .....	1
Section 2.01	Contract .....	1
Section 2.02	Scope of Work.....	2
Section 2.03	Responsibilities of the Authority .....	6
Section 2.04	Responsibilities of the Contractor .....	7
Article III.	TERM, NOTICE TO PROCEED .....	7
Section 3.01	Effective Date.....	7
Section 3.02	Term .....	7
Section 3.03	Notice to Proceed Conditions .....	7
Article IV.	Kane Street Sanitation Yard LOCATION .....	8
Section 4.01	Kane Street Sanitation Yard .....	8
Section 4.02	Coordination with work at Kane Street Sanitation Yard .....	8
Section 4.03	Kane Street Sanitation Yard Access .....	8
Article V.	RESERVED.....	8
Article VI.	SPECIFICATIONS AND TECHNICAL REQUIREMENTS.....	8
Section 6.01	Standard of Workmanship.....	8
Section 6.02	Warranty of Inspection and Acceptance of Kane Street Sanitation Yard .....	9
Section 6.03	Work Specifications .....	9
Section 6.04	Drawings .....	10
Article VII.	Work investigations .....	10
Section 7.01	Coordination of Work .....	10
Section 7.02	Authority Project Manager .....	10
Section 7.03	Reserved.....	11
Section 7.04	Risk of Loss.....	11
Section 7.05	Storage of Materials.....	11
Section 7.06	Schedule.....	11
Section 7.07	Warranties .....	11
Section 7.08	Substantial Completion; Punch Lists; Acceptance Tests.....	12
Section 7.09	Final Completion .....	13

Section 7.10	Time and Material Contract with a Not to Exceed. ....	13
Article VIII.	RESERVED.....	14
Article IX.	COMPENSATION .....	14
Section 9.01	Payment for Work.....	14
Section 9.02	Invoicing.....	15
Section 9.03	Offset.....	15
Section 9.04	Payment Is No Waiver of Rights .....	15
Article X.	CHANGES TO WORK.....	16
Section 10.01	Changes.....	16
Section 10.02	Suspension of Work .....	18
Section 10.03	Authority to make changes in Work. ....	18
Article XI.	GENERAL PROVISIONS .....	18
Section 11.01	Authority Representative.....	18
Section 11.02	Effect of Authority Approvals .....	18
Section 11.03	Reserved.....	19
Section 11.04	Insurance Requirements.....	19
Section 11.05	Notice/contact information .....	19
Section 11.06	Indemnification .....	19
Section 11.07	Change in Law .....	20
Section 11.08	Uncontrollable Circumstances.....	20
Section 11.09	Events of Default.....	21
Section 11.10	Termination for Default .....	23
Section 11.11	Termination for Convenience .....	25
Section 11.12	Dispute Resolution Procedures, Governing Law, and Venue .....	25
Section 11.13	Reserved.....	26
Section 11.14	Records Retention and Access.....	26
Section 11.15	Subcontracting.....	26
Section 11.16	Living Wage and Minority Participation Requirements.....	27
Section 11.17	Assignment.....	27
Section 11.18	Representations and Warranties.....	27
Section 11.19	Compliance with Election Law Requirement.....	29
Section 11.20	Compliance with Applicable Law .....	29

Section 11.21	Relationship of Parties .....	29
Section 11.22	Amendment of Contract .....	29
Section 11.23	Severability of provisions .....	30
Section 11.24	Headings.....	30
Section 11.25	Entire Contract.....	30
Section 11.26	Counterparts .....	30
Section 11.27	Intellectual Property .....	30
Section 11.28	Liens .....	31
Section 11.29	Limitation on Authority Obligations .....	31
APPENDIX 1	DEFINITIONS .....	34
APPENDIX 2	TERMS OF PAYMENT .....	41
APPENDIX 3	PAYMENT REQUEST .....	41
APPENDIX 4	PAYMENT AND WORK PROGRESS .....	42
APPENDIX 5	WORK REQUIREMENTS.....	44
APPENDIX 6	PROJECT SCHEDULE .....	45
APPENDIX 7	STAFFING PLAN.....	46
APPENDIX 8	REQUIRED INSURANCE .....	47

**SERVICE CONTRACT FOR THE  
KANE STREET SANITATION YARD  
SAFETY AND HEALTH ASSESSMENT AND RENOVATION DESIGN  
On behalf of,  
BALTIMORE CITY, MARYLAND**

This Service Contract for the Safety and Health Assessment and Renovation Design at the Kane Street Sanitation Yard (“Contract”) is made by and between the Northeast Maryland Waste Disposal Authority, an instrumentality of the State of Maryland (“Authority”) and CONTRACTOR, organized and existing under the laws of the State of XXXXX and authorized to do business in the State of Maryland (“Contractor”).

**RECITALS**

1. At the request of Baltimore City, Maryland, (the “City”), the Authority issued a Request for Proposals for the Safety and Health Assessment and Renovation Design at the Kane Street Sanitation Yard, located at 111 Kane St, Baltimore, MD 21224.

2. This procurement includes three phases of work. In Phase 1 the Contractor will identify needed repairs and renovations and develop a Safety and Health Compliance Master Plan for the Facility. Phase 2 includes construction management and inspection services of minor repairs identified in the Phase 1 Master Plan. Phase 3 includes the design of major renovations and improvements recommended in the Phase 1 Master Plan.

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) Contract, including the Appendices and Exhibits;
  - (ii) Request for Proposals dated XXXXXXXX (“**RFP**”) and Addenda published on the following dates:

- (iii) Contractor's Proposal dated <DATE>, the letter of clarification dated <DATE> [and the Best and Final Offer letter dated <DATE>];
  - (iv) Detailed plans, specifications and other materials approved by or on behalf of Authority during prosecution of the Work; provided, however, that in no event shall a conflict be deemed to exist if the provisions of the Appendices and Exhibits or materials approved by or on behalf of Authority during the prosecution of the Work are more specific or stringent or require more activity or Work than the terms of the main body of this Contract.
- (b) Contractor represents and warrants that it has identified any and all conflicts between the provisions of this Contract on the one hand and the Appendices and Exhibits hereto on the other, and such conflicts have been resolved to Contractor's satisfaction prior to the execution of this Contract. In the event of a conflict (provided that the absence of a provision or clause shall not be construed as a conflict) in the provisions of this Contract, the priority of documents in Section 2.01(a) shall control the resolution of such conflict.

Section 2.02 Scope of Work

The Contractor will determine the most cost-effective approach to meet the requirements of the three Phases of work outlined below.

PHASE 1

Many of the Bureau's facilities are older and in need of improvements or renovations to come into compliance with local ordinances and OSHA standards for the continued use by Bureau staff. The objective of Phase 1 of this project is for the Contractor to provide a thorough assessment of the FACILITY and to provide recommendations for repairs and renovations in the form of a Master Plan. The recommendations shall be categorized as either minor repairs (generally defined as not requiring a design or permit), or renovations (generally defined as requiring engineered drawings and/or permits).

PHASE 2:

The Contractor will be responsible for oversight, inspection, and documentation of the performance of minor repairs identified in the Phase 1 Master Plan. The performance of minor repairs will be completed by others.

PHASE 3:

The objective of Phase 3 is to produce engineered drawings and specifications of the major renovations recommended in the Phase 1 Master Plan. Construction of major renovations designed in Phase 3 will be performed by others in a later, separate procurement.

### **Task 1.1 – Background Information –**

1.1.1 Review documents that control and govern current facility structures and operations, including:

- Regulations, permits and governing code and ordinances
- As-built drawings (as available)
- Operations plans
- 10-Year Solid Waste Management Plan
- Less Waste Better Baltimore Plan
- Compliance inspection reports and notices of violation
- Zoning requirements
- Art requirements for Capital Projects pursuant to ART. 5, § 21-16 of the Baltimore City Code

**Task 1.2 - Site Observations** - Visit the FACILITY and investigate the current conditions; photo-document the same.

- 1.2.1 Interview two (2) Supervisory level staff. The interview will provide the Contractor with a thorough understanding of the function of the Facility and its limitations and failures.
- 1.2.2 Document the condition of existing facility including photos and narrative description.
- 1.2.3 Produce a side-by-side comparison of applicable regulations / standards / permits and the existing conditions.

## **PHASE 2**

### **Task 2.1 – Oversight of Minor Repairs (Based on the Phase 1 Master Plan)**

Based upon the Minor Repair list approved in the Master Plan provide on-site inspection and oversight for the implementation of certain minor repairs and improvements as agreed to by the Authority. Implementation is to proceed as quickly as possible once the notice to proceed is issued. The actual performance of minor repair work will be completed by others under the Contractor's supervision.

### **Task 2.2 - Documentation**

- 2.2.1 Daily work completion reports for the installation of the improvements and repairs, submittal of all maintenance manuals and permit reports (e.g., permits, inspections, and final inspections) as each improvement and repair is made.
- 2.2.2 Produce a summary report documenting all Minor Repairs completed in Phase 2.

## **PHASE 3**

### **Task 3.1 – Renovation Design – Civil/Site Development, Structural/Architectural, Mechanical, Electrical, and Plumbing Drawings**

- 3.1.1 Prepare 15% Concept Design for layout, location, and scope of major renovations
- 3.1.2 Prepare 30% Renovation Designs & Cost Estimate
- 3.1.3 Prepare 60% Design & Cost Estimate
- 3.1.4 Prepare 90% Design, Cost Estimate, Technical Specifications, Bid Documents, and obtain all permits
- 3.1.5 100% Design, Final Bid Estimate, Technical Specifications, and Bid Documents conforming to City of Baltimore Purchasing Requirements
- 3.1.6 Bid Review and Tabulation, and Recommendation for Award

## **OTHER REQUIREMENTS**

### **1. Deliverables Format**

- 1.1. Draft submittals of reports, drawings, and budget estimates shall be electronic, unless otherwise noted.
  - 1.1.1. Plan on 2 rounds of consolidated comments on all submittals except for monthly reports (one round). For example, the 30% design drawings will receive two rounds of review. Gross grammar correction, math correction or reference correction notes provided to the Contractor for addressing are not counted under the task effort and cannot be charged to the project.
- 1.2. Printed documentation shall be provided in double sided format when practicable. Reports shall be bound. Unless otherwise noted, one copy of final submittals shall be provided.
- 1.3. Engineered Drawings shall be provided on ANSI D (22-inch by 34-inch) format.
- 1.4. Text, spreadsheets, databases, and schedules shall be provided in electronic version compatible with Microsoft Office (Word, Excel, Access, and Project), and unlocked. Drawings shall be provided in Bentley MicroStation V8 format. All final documents shall also be provided in Adobe PDF format. The Contractor shall ensure that all work from sub-contractors is seamlessly integrated into the final submittal package and that any required PE stamps are completed by a currently licensed PE in the appropriate discipline.



## 2. Project Management

- 2.1. Kick-off meeting with the City and Authority to identify data needs and project goals. Kick-off meeting notes to be submitted within 5 business days of the meeting, for one round of review.
- 2.2. Provide detailed schedule of planned activities to complete the work
  - 2.2.1. All activities shall be scheduled and monitored by use of a Critical Path Method (CPM) progress schedule
  - 2.2.2. Update monthly and submit with progress reports
- 2.3. Provide weekly update emails, under the Title: "CITY OF BALTIMORE KANE STREET SANITATION YARD SAFETY AND HEALTH ASSESSMENT AND RENOVATION DESIGN", Weekly Email no later than 1 PM local time (Baltimore) each Friday, starting the Friday after the kick-off meeting.
  - 2.3.1. Summary will address work performed in the period, planned work for the succeeding week, status of permits/approvals, invoicing, issues encountered in the field, and staff involved in the work; and may be a bulleted list.
- 2.4. Provide written monthly progress reports of completed actions, planned work, and schedule compliance
  - 2.4.1. Describe the actions that have been taken in fulfilling scope requirements.
  - 2.4.2. Identify all deliverables that have been submitted
  - 2.4.3. Describe all actions scheduled for the next 6 weeks and prepare progress schedule
  - 2.4.4. Include information regarding percentage completion, unresolved delays encountered or anticipated that may affect the future schedule and a description of efforts made to mitigate those delays or anticipated delays. Assume three (3) meetings to be conducted in Baltimore City
  - 2.4.5. Submit by the 10<sup>th</sup> of each month
- 2.5. Every other week conference calls to discuss progress, completed actions, data collected, and concepts formulated toward completed planning effort
- 2.6. Progress and review meetings at the conclusion of each task
- 2.7. All meetings will be held in City offices in Baltimore, Maryland, onsite at FACILITY or remotely via teleconference\* or online conference\*<sup>1</sup> as appropriate
- 2.8. Invoicing. Invoices for this project are to be formatted and delivered per the terms of the Authority's contract. The contents of the invoice shall include (at a minimum):

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<sup>1</sup> There is to be no separate technology charge for teleconference or online conference meetings. The Authority reserves the right to offer these services.

- 2.8.1. A summary narrative of the work invoiced and a look ahead to the next billing period
- 2.8.2. Per Task hourly breakdowns for the various rate classes
- 2.8.3. A description of the work performed by each charged rate class, by date
- 2.8.4. Copies of all tickets, receipts, invoices etc. relating to expenses charged to the project
- 2.8.5. A summary table of charges per Task, showing amounts billed to date, remaining balances and amounts received, including payments to all subcontractors.

2.9. Deliverables for Task 2: Provide electronic files of project schedule, meeting minutes, progress reports and presentation materials

(B) Project Assumptions across all tasks:

1. The Contractor shall prepare all project documents and perform all project work in accordance with all applicable federal, state, and local laws and regulations, general industry standards, and any Quality Assurance Plans for the project.
2. The Contractor is responsible for coordinating the work between tasks to ensure complete and accurate submissions to the Authority and other affiliated parties related to the project work.
3. The Contractor shall maintain the responsibility to verify existing records and existing on-site field conditions.
4. The Contractor shall coordinate with the Authority and the City regarding site access, planned work activities, and potential coordination with on-site operations and contractors, etc. prior to performing any on-site work.
5. The Contractor shall maintain the responsibility to verify existing records and existing on-site field conditions before submitting a proposal. Failure to identify discrepancies between the scope of work and existing site conditions, and bring any such discrepancies to the Authority's attention, constitutes acceptance of those conditions.
6. The Contractor shall incorporate up to two (2) rounds of comments from the Authority on each draft document.

Section 2.03 Responsibilities of the Authority

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

- (a) provide access to the Kane Steet Sanitation Yard through a Task Order with Baltimore City, Maryland ("City");
- (b) provide access to City files and data needed for the Work.
- (c) pay for documented and approved work.

- (d) provide for the coordination of work at the Kane Street Sanitation Yard and the Kane Steet Sanitation Yard such that there is no unreasonable interference with the Contractor's Work by the Authority, the City, or their representatives or agents, including the operator of the Kane Steet Sanitation Yard (see Section 7.01 below). The Authority agrees that any actions on the part of the Authority, the City, or their representatives that has a material adverse impact on the activities of the Offeror performing Work will be deemed unreasonable interference by the Authority and may result in a default under this Contract.

Section 2.04 Responsibilities of the Contractor

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

- (a) Furnish all labor, equipment, and materials necessary to provide the Service in accordance with the Scope of Work;
- (b) Ensure that the Contractor obtain all Governmental and local utility approvals necessary to prosecute the plans, and perform all of its obligations under this Contract; and,
- (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 Kane Steet Sanitation Yard.

**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, 2025, unless earlier terminated by a Party in accordance with the provisions of this Contract.

Section 3.03 Notice to Proceed Conditions

- (a) The Contractor shall not begin work under this Contract until the Authority has issued a Notice to Proceed. The Authority does not expect to issue a Notice to Proceed until the following conditions (the "**Notice to Proceed Conditions**") are satisfied (or waived, in writing, by the Authority in the exercise of its sole discretion):

- 1) Legal Proceedings. There shall be no Legal Proceeding, at law or in equity, before or by a Governmental Authority, pending or threatened, which: (a) challenges, or might challenge, directly or indirectly, (i) the authorization, execution, delivery, validity, or enforceability of the Contract, or (ii) the interests of the Authority in the Kane Street Sanitation Yard; (b) seeks to enjoin or restrict the use of the Kane Street Sanitation Yard for the purposes contemplated by this Contract; or (c) seeks damages, fines, remediation or any other remedy in connection with the environmental condition or any other factor pertaining to the Kane Street Sanitation Yard.
- 2) The Task Order has been executed by the Authority and the City and all preconditions to the Notice to Proceed have been satisfied or waived, in writing, by the City.

**ARTICLE IV.  
KANE STREET SANITATION YARD LOCATION**

Section 4.01 Kane Street Sanitation Yard

The Kane Street Sanitation Yard is located at the Baltimore City Kane Steet Sanitation Yard located at 111 Kane St, Baltimore, MD 21224.

Section 4.02 Coordination with work at Kane Street Sanitation Yard

Contractor's Work must be coordinated with, and may not interfere with, the ongoing operations at the Kane Steet Sanitation Yard.

Section 4.03 Kane Street Sanitation Yard Access

The Authority will make the Kane Street Sanitation Yard available to the Contractor through a Task Order between the Authority and the City. Contractor must comply with and perform all of the Authority's obligations under the Task Order as set forth in the Scope of Work of this Contract

**ARTICLE V.  
RESERVED**

**ARTICLE VI.  
SPECIFICATIONS AND TECHNICAL REQUIREMENTS**

Section 6.01 Standard of Workmanship

Contractor is responsible for performing the Work in accordance with the highest standards of skill and workmanship, using its best skill and attention. The Contractor is responsible for providing management and technical oversight as well as quality assurance and

quality control reviews of all staff performance aspects and all Work performed under this Contract to ensure the Work is free of errors and omissions.

Section 6.02 Warranty of Inspection and Acceptance of Kane Steet Sanitation Yard

- (a) Contractor represents and agrees that (i) it has inspected the Kane Steet Sanitation Yard and (ii) it has reviewed all information provided by Authority relating to the Kane Steet Sanitation Yard and surrounding locations.
- (b) Contractor acknowledges that it satisfied itself as to the conditions affecting the Work, including but not limited to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, physical conditions at the Kane Street Sanitation Yard of the Work, the conformation and conditions of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the Work. Any failure of Contractor to acquaint itself with the Kane Street Sanitation Yard characteristics or conditions, or with all information reasonably available to or obtainable by it, does not relieve Contractor from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The Authority assumes no responsibility for any conclusions or interpretations made by Contractor on the basis of the information made available by the Authority or City.
- (c) In the event Contractor encounters unknown conditions at the Kane Steet Sanitation Yard (including, but not limited to, man-made obstructions, geotechnical conditions, Hazardous Materials and archeological remains) ("**Unknown Kane Street Sanitation Yard Conditions**"), Contractor must give immediate Notice of the nature and extent of such differing conditions to Authority. Contractor must promptly investigate the conditions and provide Authority with a proposed plan on how to proceed to address such conditions. An Uncontrollable Circumstance shall not occur, because of Unknown Kane Street Sanitation Yard Conditions, including (A) the presence of Hazardous Materials at the Kane Steet Sanitation Yard which were introduced to the Kane Steet Sanitation Yard by Contractor or its Sub-Contractors, (B) any operations condition, or (C) any Contractor Related Entity disrupts or releases any Hazardous Materials encountered on the Kane Steet Sanitation Yard.

Section 6.03 Work Specifications

The Work must conform to the standards presented herein. Contractor agrees to review and understand all necessary detailed designs, plans, drawings, and specifications and to furnish the services, without additional compensation of any kind, to ensure that all Work is in conformity with the Scope of Work.

Section 6.04 Drawings

- (a) Contractor must maintain a record set of the final approved drawings at the Kane Street Sanitation Yard and make them available for inspection at any time.
- (b) The Contractor is not relieved of its obligation to comply with the requirements of the Contract Documents, or for defective Work by: (i) approval by the Authority of any drawing, submittal; (ii) the activity, responsibility, or administration of the Contract by the Authority's personnel, or (iii) inspections, tests, or approvals required or performed by Persons other than Contractor.

**ARTICLE VII.  
WORK INVESTIGATIONS**

Section 7.01 Coordination of Work

Contractor must coordinate its Work with activities of the Authority, the City, their respective agents, representatives and contractors, or others currently conducting work being performed at the Kane Steet Sanitation Yard. The Contractor specifically acknowledges that its Work must be coordinated with the day-to-day activities of the operator of the Kane Steet Sanitation Yard, and will not unreasonably interfere with the City's ability to perform its operations at the Kane Steet Sanitation Yard. The Contractor agrees that any actions on the part of the Contractor that has a material adverse impact on the activities of the Authority, the City, or others performing work at the Kane Steet Sanitation Yard will be deemed unreasonable interference by the Contractor and may result in a default under this Contract.

Section 7.02 Authority Project Manager

The Authority shall designate an Authority Project Manager for the Work to be performed. The Authority Project Manager and/or the City shall be authorized to inspect all Work done and all material furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication, or manufacture of the materials to be used. The Authority Project Manager and City are not authorized to revoke, alter, or waive any requirements of the Contract, nor to approve or accept any portion of the Work. The Authority Project Manager or inspector is authorized to call to the attention of Contractor any failure of the Work or materials to conform to the Contract, and to reject materials or suspend the Work until any questions at issue can be referred to the Authority's Representative.

Section 7.03 Reserved

Section 7.04 Risk of Loss

Contractor must retain care, custody, and control of all Work and bear all risk of loss of or damage to the Work until Final Acceptance, regardless of the extent to which the loss was insured or the availability of insurance proceeds.

Section 7.05 Storage of Materials

Contractor must store materials so as to assure the preservation of their quality and acceptability for the Work. To the extent permitted by the Task Order, portions of the Kane Street Sanitation Yard may be used for storage purposes and for the placing of Contractor's equipment.

Section 7.06 Schedule

- (a) The Contractor must submit to the Authority a file Schedule for the Work within 14 days of the Effective Date.
- (b) The Contractor is responsible for submitting Schedule updates to the Authority's Project Manager showing the progress of the Work as specified in this Contract.

Section 7.07 Warranties

- (a) The equipment must carry a multiyear warranty (2 - 5 years) as appropriate
- (b) The Contractor's Work shall not void the standard manufacturer's warranty for any installed improvements.
- (c) The Contractor warrants the Work as follows:
  - (i) The Work must substantially conform to the final drawings and specifications and all equipment incorporated into the Work shall perform substantially in accordance with the Scope of Work and Specifications.
  - (ii) The Work must be free from material defects in installation and interconnection.
  - (iii) Warranty on workmanship of 12-24-months after project closeout including subsurface equipment and wiring.
- (d) The Authority's rights with respect to Warranties shall extend from the Effective Date until the later of: (i) 60 months from Final Acceptance Date or (ii) 24 months following corrective action on the Work (the "**Warranty Period**").
- (e) In the event of any breach of a Warranty, Contractor shall thereupon, and at its own cost and expense (including, without limitation, the payment of costs of accessing the

defective Work and restoring the Kane Street Sanitation Yard to the condition that existed prior to such access (“**In and Out Costs**”), transportation costs, logistics costs, and applicable taxes (including import duties, value added taxes and any other Taxes imposed within and outside Maryland)), reperform any necessary oversight of Work and provide (at no expense to Authority) such equipment, material, labor, shipping and management and inspection services necessary to cause the Work to conform to said Warranties. The Contractor Warranty Period shall for any rework of design, engineering, materials, construction or workmanship shall commence upon the completion of such rework. No such rework, however, shall extend Contractor Warranty beyond the Warranty Period.

- (f) Except in cases of emergency requiring immediate curative action by Contractor or Authority, within five days of receipt by Contractor of a Notice from Authority under specifying a breach of Contractor’s Warranties or warranties or guarantees that Contractor is responsible to enforce, Contractor and Authority shall mutually agree when and how Contractor shall remedy said breach; provided, however, that in cases of emergency, Contractor and Authority shall so agree on such remedy immediately upon Notice by Authority of such emergency. If Contractor does not begin and diligently proceed to complete said remedy within the time agreed to, or should Contractor unreasonably fail to reach such an agreement with Authority within such five-day period (or immediately, in the case of emergency conditions, in which case Contractor’s right to institute dispute resolution proceedings pursuant to this Contract shall be preserved), Authority, after Notice to Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the reasonable and documented costs thereof shall be borne by Contractor.

Section 7.08      Substantial Completion; Punch Lists; Acceptance Tests

When Work is Substantially Complete, Contractor must notify the Authority that the Work will be ready for final inspection and test on a definite date. Sufficient notice must be given to permit the Authority to schedule the final inspection. The Authority may inspect the Kane Street Sanitation Yard for materials, workmanship, dimensions, performance, and general compliance with the requirements of the Contract Documents. Work not in compliance with any part of the Contract Documents will be rejected, and Contractor must furnish acceptable replacement Work within three scheduled working days after notification of rejections. On the basis of the inspection, if the Authority determines that Substantial Completion has been achieved, the Authority will establish the date of Substantial Completion and fix the time (not longer than 30 days) within which the Contractor must complete any remaining items of the Work, which will be indicated on a Final Punch List prepared by the Authority. If the Contractor fails to complete the items on the Final Punch List within the 30 days, or make an adjustment acceptable to the Authority, the Authority shall have the right to complete the Procurement Support Work at the Contractor’s expense and deduct the cost incurred from any monies retained under the Contract. Acceptance of the Work as Substantially Complete, or Final Acceptance, shall not excuse or waive any failure of the Contractor to complete the Work as required by the Contract Documents.



#### Section 7.09 Final Completion

- (a) The following are conditions of Final Completion:
- (i) The Final Acceptance Date has occurred;
  - (ii) All Work described in the Punch list is completed; and
  - (iii) The local utility has approved the installation (if required);
  - (iv) All conditions under Governmental Approvals were met.
  - (v) All permits are issued and testings are completed satisfactorily
    - These permits and testing records shall be included in the warranty package.
- (b) Within 5 calendar days of Final Acceptance of the Work, three copies of as-built drawings signed and sealed by a Maryland licensed Professional Engineer must be delivered to the Authority, plus CAD, and PDF files of the as-built drawings on thumb drive.

#### Section 7.10 Time and Material Contract with a Not to Exceed.

- (a) Subject to the remedies provided for in this Contract, the Contractor must perform the Work in a manner that is: (i) sufficient, complete, and adequate in all respects necessary for the Work to successfully be procured, permitted, and constructed, respectively; (ii) in conformance with Prudent Industry Practices and with professional standards, skill, expertise, and diligence of professionals regularly involved in projects of similar size and nature to the Work; and (iii) in compliance with the terms of the Contract, and all Applicable Laws and Governmental Approvals.
- (b) In light of the foregoing, Contractor has included within the Price the cost to complete all Work. Items need not be specifically listed in order to be deemed as items within the Work. It is understood that the Contractor is better qualified to list exclusions than the Authority is to list inclusions. Therefore, any item indicated herein, reasonably inferable from and incidental to the Contract or required in accordance with any Applicable Law, is to be considered as part of the Work. The Contractor waives any and all claims for an increase in the Price, in whole or in part, upon an assertion that any certain license, technical assistance, service, labor, material, equipment, operation, or management is beyond the scope of the Work when such license, technical assistance, service, labor, material, equipment, operation, or management is indicated in the Contract or other instruments of service prepared in connection with the Contract, reasonably inferable from and incidental to the Contract, required in accordance with any Applicable Law, Governmental Approvals, or otherwise necessary in order to complete the Work in accordance with and subject to the requirements of the Contract.

- (c) The Work must meet professional standards utilized by professionals regularly involved in projects similar to the Work.
- (d) Contractor acknowledges that this Contract constitutes a not to exceed price obligation to complete the Work within the time and for the purpose designated in the Contract. The Contractor is obligated to: supply all of the equipment and management and inspection services, install all of the equipment and supply all labor, and supply and perform all of the Work, in each case as may reasonably be required, necessary, incidental, or appropriate (whether or not specifically set forth in this Contract) to complete the Work such that the Work satisfies the applicable terms, conditions, and Contractor’s obligations for the Price.
- (e) The total approved not to exceed Price is \$XXXXXXX.

Table 7.1 (Base Proposal Prices [from the Best and Final Offer])

Task	Price
1	\$
2	\$
3	\$
Other	\$
Total	\$

**ARTICLE VIII.  
RESERVED**

**ARTICLE IX.  
COMPENSATION**

Section 9.01 Payment for Work

- (a) The Authority will pay the Contractor in accordance with this Section 9, Appendix 3, and Appendix 4. The form of this submission will be as agreed upon by the Contractor and the Authority and must be supported by such evidence as to its correctness as the Authority may direct (e.g., per task hourly breakdown for staff, narrative of the work accomplished in the period, work to be performed in the next period, and receipts for out-of-pocket expenses). The Project Manager must be responsible for determining that the schedule of values accurately reflects the Work completed or materials on Kane Street Sanitation Yard each month.
- (b) Contractor may invoice the Authority, in accordance with Appendix 3. Invoices must be sent to the Authority and the City. Payment will be made within 45 days of receipt of an approved Invoice from Contractor.
- (c) No payment made to the Contractor shall constitute an acceptance by the Authority of any Work not in accordance with the Contract. The Authority may withhold or recover

the whole or part of any Contractor payment to such extent as may be necessary to reimburse or protect the Authority from loss on account of defective or damaged Work not remedied, failure of the Contractor to make payments properly to Sub-Contractors for material or labor, a reasonable doubt by the Authority that the Work can be completed by the end of the Term, or for the balance of the Price, or other damage caused by the Contractor for which the Authority may reasonably be liable. Payment of the entire Price will not be made until all Work is completed to the satisfaction of the Authority and Final Acceptance has occurred.

- (d) If the Authority or Contractor disputes any amount invoiced, or payment made, the disputed portion of the invoice or payment is not effective until resolution of the dispute. Pending resolution of any dispute, the Contractor must continue to perform of all of its obligations under the Contract.

Section 9.02 Invoicing

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

Northeast Maryland Waste Disposal Authority  
Accounts Payable  
Tower II, Suite 402  
100 South Charles Street  
Baltimore, MD 21201  
410.333.2730 or [tbaker@nmwda.org](mailto:tbaker@nmwda.org)

- (b) Any amounts payable by the Authority that are not paid when due shall bear interest at the Late Payment Rate.
- (c) If the Authority 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 Contractor will not be paid until resolution of the dispute. Pending resolution of any dispute, Contractor must continue to perform its obligations under the Contract.

Section 9.03 Offset

Whenever the Authority is obligated to pay the Contractor any amount under this Contract, the Authority may deduct from that amount, before payment, any amount that the Contractor owes to the Authority. 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 Contractor. Application of Liquidated Damages shall follow Appendix 2.

Section 9.04 Payment Is No Waiver of Rights

No payment made to the Contractor shall constitute an acceptance by the Authority of any Work not in accordance with the Contract. The Authority may withhold or recover the whole

or part of any Contractor payment, to such extent as may be necessary, to reimburse or protect the Authority from loss on account of defective Work not remedied, failure of the Contractor to make payments properly to third parties, Liquidated Damages, or other damages for which the Contractor may reasonably be liable.

## **ARTICLE X. CHANGES TO WORK**

### Section 10.01 Changes

- (a) The Authority unilaterally may, at any time, by written order designated or indicated to be a change order, make any change in the Work within the general scope of the Contract, including but not limited to, changes: (i) in the specifications (including drawings and designs); (ii) in the method or manner of performance of the Work; (iii) in the Authority, equipment, materials, or services; or (iv) in directing the acceleration or deceleration in the performance of the Work (“**Change-In-Work**”).
- (b) Unless the Authority issues a Change-In-Work, no order, statement, or conduct of the Authority shall be treated as a Change-In-Work under this Section or entitle the Contractor to a price adjustment under the Contract.
- (c) If any Change-in-Work causes an increase or decrease in the Contractor’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 Contractor’s Demonstrated Costs (as defined below) to be incurred or saved and the Contract modified in writing accordingly.
- (d) No claim by the Contractor for an adjustment under this Contract will be allowed if asserted after Final Completion under this Contract.
- (e) The Demonstrated Costs of Change-In-Work will be developed on an open book approach and will be priced based on actual, incremental, internal costs plus actual, incremental, third-party direct costs plus a fixed fee basis with Contractor’s fixed fee set at 3% (which includes overhead, profit, and risk) of the sum of the estimated costs of the Change-In-Work. The Contractor must provide the Authority with a detailed estimate of the cost for any requested Change-In- Work, which must include capital costs for equipment and materials, field labor, expenses, and engineering costs.
- (f) The Authority will advise the Contractor of any proposed Change-In-Work and the Authority and Contractor will then consult with each other concerning the cost and impact, if any, on the Schedule of implementing the proposed change. Following the consultation, the Authority may request and Contractor must promptly prepare, at its own cost and expense, a detailed estimate relating to the contemplated change (a “**Change-In-Work Form**”), which must include (A) any projected increase or decrease of the Price occasioned by the change, (B) the projected effect on the Schedule, and (C) the

potential effect on Contractor's ability to comply with any of its obligations under this Contract.

- (g) Within five (5) Business Days after execution of a Change-In-Work Form by Contractor and Authority or a resolution of any matters in dispute regarding the Change-in-Work, the Parties, in accordance with such Change-In-Work Form and the resolution of the dispute, if applicable, will adjust the Price as provided in this Section 10.01 and the progress payment Schedule, the Approved Schedule and any other schedules requiring adjustment to reflect the change agreed upon.
- (h) If the Authority and the Contractor cannot reach an agreement within 10 Business Days on the matters listed in the Change-In-Work Form, or cannot agree that the matters under discussion constitute a Change-in-Work, the Authority may, at its sole discretion, require the Contractor in writing to promptly proceed to complete the Change-In-Work in accordance with Authority's interpretation of the matter under dispute and Authority will pay the Contractor for the undisputed Demonstrated Costs of such Change-In-Work provided for in 10.01(e) as incurred. If the Authority and the Contractor cannot reach an agreement on the estimated cost, the Contractor must perform the Change-in-Work.
- (i) In no event shall the Contractor undertake a Change-In-Work until (A) a Change-In-Work Form has been approved and signed by the Parties, and (B) if a disagreement exists as described in Section 10.01, the Contractor has received Notice from the Authority to proceed under protest. In no event shall changes to the Work necessary for Contractor's design and Detailed Plans to comply with this Contract constitute a Change-In-Work unless such changes are approved by the Authority at its sole discretion.
- (j) After the Effective Date, Contractor may propose any addition, deletion, modification, or amplification to this Contract which in Contractor's opinion does constitute a Change-In-Work by giving the Authority prior Notice thereof. The Authority will promptly review Contractor's proposed addition, deletion, modification, or amplification and accept or reject same. The Authority may, at its sole discretion and verification by the Authority Engineer, determine that the proposed addition, deletion, modification, or amplification be deemed a Change-In-Work, to be handled accordingly.
- (k) The Contractor will be entitled to a Change-in-Work on account of: (1) additions, modifications, deletions, or enhancements to the Work proposed by Authority; or (2) if the Authority requires Contractor to take action to remedy conditions caused by Contractor Uncontrollable Circumstance; provided, however, that Contractor must provide Authority with Notice of a change in the Work. Contractor's failure to propose a change in the Work within the 25 days of determining the need for a change in the Work, will be deemed a waiver by Contractor of its right to a change in the Work; provided, however, the waiver will not relieve the Contractor of any of its obligations under this Contract. Contractor must not make any Change to Work (including changes that have no net cost effect on the Price) without a Change-In-Work Form signed by the Parties or the Contractor has received Notice from the Authority to proceed under protest. Neither

the Price nor any component thereof will be increased with respect to any Change-In-Work proposed by Contractor unless the change requires a modification or change in Contractor's cost of performing the Work as so modified.

Section 10.02 Suspension of Work

- (a) The Authority may unilaterally order the Contractor 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 Authority or the City.
- (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 Contractor-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 Contractor shall have notified the Authority 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 Authority to make changes in Work.

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

**ARTICLE XI.  
GENERAL PROVISIONS**

Section 11.01 Authority Representative

The Authority Representative shall be the Executive Director of the Authority or another individual designated by the Executive Director, in writing to the Contractor, as the Authority Representative.

Section 11.02 Effect of Authority Approvals

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

- (a) relieves the Contractor of any of its obligations under this Contract or imposes any liability on the Authority; or

- (b) affects the rights, remedies, powers, or privileges of the Authority 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) Contractor must 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 8 ("**Required Insurance**"). Within 10 business days of Effective Date, and at any time thereafter as required by the Authority, the Contractor must deliver to the Authority 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](mailto:authority@nmwda.org)

**To the Contractor:**

<Contractor name and address>

**To the City:**

Section 11.06 Indemnification

- (a) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the Authority, the State, and Baltimore City 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 Authority.

#### Section 11.07 Change in Law

The Authority shall not be liable for any additional costs incurred by Contractor 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. Contractor 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, Contractor shall give the Authority Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to Contractor), and a description of the conditions preventing the performance of Contractor's obligations. The Contractor must answer any inquiries of the Authority 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 Contractor to suspend or delay performance of the Work, Contractor 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 Authority may, in its sole discretion and after Notice to Contractor, at Contractor's expense, initiate commercially reasonable measures to overcome or cure the Uncontrollable Circumstance occurrence or its direct or indirect effects on the performance of Contractor's obligations hereunder and thereafter require Contractor to resume full or partial performance of the Work (unless it is commercially unreasonable for Contractor to do so); provided, however, that no such action of Authority shall relieve Contractor of its obligations under this Contract.



- (d) Notwithstanding the provisions of this Section 11.08, Contractor 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 Kane Steet Sanitation Yard.
- (e) If an Uncontrollable Circumstance prevents Contractor from performing a material portion of its obligations under this Contract for more than 30 continuous days, then Authority, after providing the Contractor at least 10 Business Days' prior Notice, may, but shall not be obligated to, terminate this Contract without additional liability to Contractor and 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 Contractor:
  - (i) the failure or refusal by Contractor to fulfill any of its material obligations to the Authority 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 Contractor or of a major part of its property is appointed, or if, by decree of such a court, the Contractor is adjudicated insolvent, or a major part of its property is sequestered, or if a petition to reorganize the Contractor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Contractor, as now or hereinafter in effect, is filed against the Contractor, or if the Contractor 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 Contractor under any such law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Contractor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Contractor, as now or hereafter in effect; or
  - (iii) if the Contractor 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 Contractor or of a major part of its property; or

- (iv) if the Contractor 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 Contractor 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 Contractor fails to provide and maintain in full force and effect any Required Insurance in accordance with this Contract; or
  - (vii) if the Contractor provides or has provided materially false or misleading information to the Authority; or
  - (viii) the failure of the Contractor or its Sub-Contractor, and their respective agents, licensees, invitees, and successors to comply with Applicable Law in any material respect; or
  - (ix) Contractor fails to pay any undisputed amount that Contractor is required to pay to the Authority under this Contract within thirty (30) days after receipt by Contractor of written demand from Authority 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) Contractor abandons or suspends support of the Work for thirty (30) days due to any reason other than Uncontrollable Circumstance or direction of Authority; 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 Authority and, except for a failure to pay, it is not replaced or otherwise cured in accordance with this Contract; or
  - (xii) a Contractor Change in Control occurs.
- (b) No failure or refusal on the part of the Contractor 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 Authority has given notice to the Contractor specifying with particularity the existence of such default; and (B) the Contractor 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 Authority, provided that none of the following shall constitute an Event of Default to the extent caused by the failure of the Contractor to perform its obligations under this Contract:
- (i) The failure by the Authority to pay any undisputed amount in excess of \$10,000, that the Authority is required to pay to the Contractor under this Contract within 60 days after receipt by the Authority of written demand from the Contractor

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 Authority to substantially fulfill any of its material obligations to the Contractor 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 Contractor gave prior written notice to the Authority and the Authority 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 Authority and gives the Contractor a right to terminate this Contract for default unless such default is corrected within a reasonable period of time; and
  - b) the Authority 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 Authority 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 Authority is continuing to take reasonable steps to correct it; and
  - c) there is no reasonable expectation that the Contractor 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 Authority 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 Contractor, the Authority shall have the following rights and remedies, in addition to those rights and remedies that may be available to Authority at law or in equity and Contractor shall have the following obligations:

- (i) The Authority, without prejudice to any of its other rights or remedies, may upon fifteen (15) Business Days' Notice to Contractor (A) suspend disputed payment and/or (B) unless Contractor 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 Contractor.
- (ii) If the Authority terminates this Contract in accordance with this Section 11.10 and determines in its sole discretion, to complete the Work under this Contract, the Contractor must, if requested by the Authority (A) withdraw from the Kane Steet Sanitation Yard, and as requested by Authority, (B) assign one or more of its contracts, subcontracts, purchase orders or other Contracts to Authority or any designee of Authority; provided, however, that such assignee assumes the obligations of Contractor thereunder and (C) shall turn over to Authority complete possession of any or all designs, materials, equipment, tools, purchase orders, inquiries, letters, computers, servers, software, schedules, and drawings of Contractor that Authority deems necessary to completion of the Work. Authority 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 Authority may deem expedient. In addition, Contractor shall not remove any equipment, materials or tools that the removal of which could damage the Kane Steet Sanitation Yard or any portion thereof then constructed or otherwise materially adversely affect or delay the construction, use or maintenance of the Kane Steet Sanitation Yard. After the termination of this Contract, Authority shall be responsible for the care, custody, and control of all equipment, materials, tools and other items used in completion of the Work. Authority, without incurring any liability to Contractor, shall have the right to have the Work finished by the Replacement Contractor.
- (c) If this Contract is terminated by the Authority for cause as a result of an Event of Default by Contractor with respect to Work, the Contractor will be entitled to payment of that portion of the Price related to the Work performed until the date of termination; provided, however, Contractor will not be entitled to any recovery of profit or unabsorbed overhead in connection with Work not actually performed or future Work. The Contractor must reimburse the Authority for any costs in excess of the Price, as adjusted, incurred by Authority, or any Person acting on the Authority's behalf in completing the Work or having the Work completed. The Authority will be entitled to withhold payments the Contractor determines are due to it prior to the date of termination until Final Acceptance and determination by Authority that Contractor is entitled to such payments. Upon completion of the Work by Authority or third parties, the total cost of the Work shall be determined, and the Authority will notify Contractor in writing of the amount, if any, that Contractor shall pay Authority or Authority shall pay Contractor. If at any time the total expense incurred by Authority in completing the Work exceeds the portion of the Price not paid to the Contractor as of the date of termination, then Contractor shall pay the amount of any such excess from time to time existing within thirty (30) days of written

demand therefor by Authority. Any amounts not paid hereunder when due shall bear interest at the Late Payment Rate. The Authority may, in its sole discretion, employ any other Person, as a Replacement Contractor to finish the Work by whatever method or means as the Authority deems expeditious.

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

#### Section 11.11 Termination for Convenience

In addition to the Authority's other termination rights under this Contract, the performance of Work required by this Contract may be terminated by the Authority in whole or in part, whenever the Authority determines that termination is in the best interests of the Authority or the City. Any termination will be effected by delivery of a Notice of Termination to the Contractor 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 Authority will pay all reasonable costs associated with this Contract that the Contractor incurred up to the date of termination and all reasonable costs associated with termination of the Contract. The 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 Authority and the Contractor 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 Authority and Contractor 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 Baltimore City, 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 Contractor is obligated to continue performance of the Contract.

Section 11.13 Reserved

Section 11.14 Records Retention and Access

The Contractor must maintain all books, records, and accounts necessary to record all matters affecting the Price, applicable damages or other amounts payable by or to the Authority or Contractor 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 Contractor must maintain all books, records and accounts in accordance with generally accepted accounting principles and shall contain sufficient data to enable the Contractor's dealings and transactions to be audited in accordance with generally accepted auditing standards.

The Contractor 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 Authority and City at all reasonable times.

Section 11.15 Subcontracting

- (a) Except as otherwise expressly provided in the Contract, the Contractor is solely responsible for engaging, managing, supervising, and paying all Sub-Contractors. The Contractor must require all Work performed by Sub-Contractors to be performed, inspected, and otherwise furnished, in accordance with the Contract. Contractor is solely liable for all acts, omissions, liabilities and Work (including defects therein) of such Sub-Contractors. The Authority will not have any obligation or liability to any Sub-Contractor. Nothing in any contract, subcontract or purchase order with any Sub-Contractor shall in any way diminish or relieve Contractor from any duties and obligations under the Contract. No Sub-Contractor is intended to be or shall be deemed a third-party beneficiary of the Contract. Nothing contained in this Contract or in any subcontract or purchase order shall create or constitute a contractual relationship between Authority and any Sub-Contractor.
- (b) Each Subcontract and purchase order entered into by Contractor in connection with the Work must require such the Sub-Contractor to assume toward Contractor those terms and conditions of contracting which Contractor customarily includes in its subcontracts. At a minimum, all such Subcontracts and purchase orders must (i) require the Sub-Contractors to comply with Applicable Laws and Governmental Approvals, (ii) require the Sub-Contractors to provide certificates of insurance evidencing required insurance coverage maintained by such Sub-Contractor, and (iii) provide that the Authority has the right of inspection as provided under this Contract.

Section 11.16 Living Wage and Minority Participation Requirements

Contractor must, at all times, meet all requirements of federal, state and local regulations and laws, including but not limited to those relating to workplace safety. For clarity, The Contractor must use of the City's Wage Requirements Law as found at [Commission | Office of Equity and Civil Rights \(baltimorecity.gov\)](#) (last accessed 01/24/2022). Furthermore, the Contactor must certify that it is in compliance with the City's MWBOO Program and provide evidence of the value of the Proposal that is to be performed by a certified Minority, Female, and Disabled-Owned Business. Details on the City's program can be found here: [The Minority and Women's Business Opportunity Office | Baltimore City Law Department](#) (last accessed 01/24/2022).

Section 11.17 Assignment

The Contractor may not assign this Contract without the prior written consent of the Authority. The Authority may assign this Contract to Baltimore City without the consent of the Contractor.

Section 11.18 Representations and Warranties

- (a) Contractor hereby makes the following representations and warranties to and for the benefit of the Authority:
- (i) Contractor is duly organized and validly existing as a corporation under the laws of the State of XXXXXXXX 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) Contractor 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) Contractor shall comply with all federal, state, and local laws, regulations and ordinances applicable to its activities and obligations under this Contract;
  - (iv) Contractor shall obtain, its own expense, all licenses, insurance, and Government Approvals necessary to the performance of its obligations under this Contract;
  - (v) Contractor has duly authorized the execution and delivery of this Contract and this Contract has been duly executed and delivered by Contractor and constitutes a legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms.
  - (vi) Neither the execution or delivery by Contractor of this Contract, nor the performance by Contractor of its obligations in connection with the transactions

contemplated hereby, or the fulfillment by Contractor 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 Contractor is a party or by which Contractor 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 Contractor.

- (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 Contractor, except such as have been duly obtained or made.
- (viii) Except as disclosed to the Authority, 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 Contractor's knowledge, threatened, against Contractor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by Contractor 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 Authority in connection with the transactions contemplated hereby.
- (ix) Contractor warrants good title to all materials, equipment, tools, and supplies furnished by it, and its Sub-Contractors pursuant to this Contract. Title to all or a portion of said materials, equipment, tools and supplies shall pass to Authority upon the date Contractor receives payment for said material, equipment, tools and supplies, as applicable.
- (x) For the purpose of protecting the interest of Authority in all materials, equipment, tools, and supplies with respect to which title has passed to Authority but which remain in the possession of Contractor or another Person, Contractor shall take or cause to be taken all reasonable steps known to Contractor under the Applicable Laws of the appropriate jurisdiction(s) to protect Authority's title and to protect Authority against claims by other parties with respect thereto. In the event of any such claim, Contractor must defend and hold harmless Authority if such claims are instituted against Authority.
- (xi) All reports, presentations, spreadsheets and other documents furnished or to be furnished by Contractor in performing the Work will become the property of Authority to be used by Authority as it may desire and for any other purposes permitted by Applicable Law.



- (b) The Authority 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 Contractor.
- (i) The Authority 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 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.
  - (iii) Neither the execution or delivery by the Authority of this Contract, nor the performance of the Authority's obligations in connection with the transactions contemplated hereby nor the Authority'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 Authority is a party or by which the Authority 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 Authority of this Contract except those that have been duly obtained or made.

Section 11.19 Compliance with Election Law Requirement

Contractor shall comply with the Maryland Code, Election Law Article, Section 14-101-14-108 regarding disclosure of political contributions.

Section 11.20 Compliance with Applicable Law

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

Section 11.21 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 11.22 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 11.23 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 11.24 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 11.25 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 11.26 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 11.27 Intellectual Property

Contractor agrees that Authority, the City and their respective successors, assigns and Sub-Contractors shall at all times have the right to use, either by license or otherwise, any and all patented or proprietary information that is included in the Work, whether now existing or hereinafter developed or otherwise acquired. Contractor agrees to grant and hereby grants to Authority an irrevocable, royalty-free, non-exclusive perpetual license to use all patents, licenses or other intellectual property now or hereafter owned or controlled by Contractor or its Sub-Contractors, vendors or suppliers, for any part of the Work, to the extent necessary for the operation, maintenance or repair of the Work or any unit or component thereof designed, specified or constructed by Contractor under this Contract.

Contractor shall obtain the same rights and/or licenses with respect to inventions and/or patents from any of its Sub-Contractors from whom Authority requires these rights and/or licenses. Authority shall advise Contractor of such requirements in writing.

The provisions of this Section shall survive termination of this Contract.

#### Section 11.28 Liens

Contractor must indemnify and hold harmless Authority and defend it from any and all Liens filed in connection with the Work, including all expenses and attorneys' fees incurred in discharging any Liens or similar encumbrances provided that such Liens result from Contractor's or Sub-Contractor's acts or omissions. If Contractor shall default in discharging such Lien(s) or claims(s) upon the City to the extent such Liens or claims are filed in connection with the performance of the Work hereunder or upon any materials, equipment or structures encompassed therein, or upon the premises upon which they are located, Authority shall promptly notify Contractor in writing and Contractor shall then satisfy or defend any such Lien(s) or claims(s). If Contractor either does not promptly satisfy such Lien(s) or claim(s) or does not post a bond against, such Lien(s) and claim(s), then Authority, after prior Notice to the Contractor, shall have the right to satisfy such Lien(s) and claim(s) or post a bond against such Lien(s) and claim(s), and Contractor shall, within five days of request by Authority, reimburse Authority for all costs incurred by Authority to discharge or bond such Lien(s) or claim(s) including administrative costs, attorneys' fees and other expenses.

#### Section 11.29 Limitation on Authority Obligations

- (a) Notwithstanding any other provision of this Contract to the contrary, the liability and obligation of the Authority 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 Task Order Revenues as and to the extent such Task Order Revenues are received and available to pay such amounts under Applicable Law. The liability of the Authority for any monetary payments to the Contractor with respect to, or as a result of, this Contract are not payable from the general funds of the Authority or any amounts received by the Authority in respect of the Authority Administrative Cost as defined in the Task Order 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 Authority or of its income, receipts or revenues, except Task Order Revenues available to pay such amounts under Applicable Law and the Task Order. The Contractor shall have no recourse for the payment of any amounts due by the Authority 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 Authority or for any claim hereon or thereon shall be had by the Contractor, except from such Task Order Revenues.
- (b) The execution and delivery of this Contract by the Authority does not impose any personal liability on the members, directors, officers, employees or agents of the Authority or any Baltimore City Indemnitee. The Contractor shall have no recourse for any claims based on this Contract against any member, director, officer, employee or other agent of the Authority in his or her individual capacity, all such liability, if any, being expressly waived by the Contractor by the execution of this Contract.

- (c) No recourse shall be had to the general funds or general credit of the Authority for the payment of any amount due the Contractor 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 Contractor for all such amounts shall be to the funds available for such payment under of the terms of this Contract and the Task Order.

[SIGNATURES APPEAR ON THE NEXT PAGE]

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

NORTHEAST MARYLAND WASTE  
DISPOSAL AUTHORITY

Attest:

By: \_\_\_\_\_

Name: Andrew Kays

By: \_\_\_\_\_

Title: Executive Director

CONTRACTOR

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.

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

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

**“Contract”** means this Service Contract for the services related to the Power Infrastructure Replacement as dated above including the appendices and exhibits, and hereto of the documents referenced in Section 2.01.

**“Contract Representative”** means, in the case of the Contractor, the individual specified in writing by the Contractor as the representative of the Contractor 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 Contractor 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, City, 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 Contractor for the Work. The HASP shall be developed in consultation with the Authority and City 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 Contractor 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 Authority for the Contractor’s failure to meet the one or more requirements of the Contract. The Liquidated Damages may be applied as a credit by the Authority against amounts due to Contractor in a monthly invoice.

**“MDE”** means the Maryland Department of the Environment.

**“Member Jurisdiction”** means Baltimore City and Anne Arundel, Baltimore, Carroll, Frederick, Harford, Howard and Montgomery Counties.

**“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 Contractor.

**“Parties”** means collectively the Authority and the Contractor.

**“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 **XXXXXXXXXX**, including addenda thereto issued.

**“Kane Street Sanitation Yard”** means the property located at 111 Kane St, Baltimore, MD 21224.

**“State”** means the State of Maryland.

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

**“Sub-Contractor”** means Suppliers, vendors, consultants, Sub-Contractors and other Persons engaged as independent contractors by Contractor that perform any part of the Work on behalf of Contractor or otherwise assist Contractor in the performance of its obligations under this Contract or other applicable Contracts.

**“Task Order”** means the Task Order between the Authority of the City under which the City grants access to its Kane Steet Sanitation Yard for the Work at the Kane Steet Sanitation Yard.

**“Task Order Revenues”** means those funds made available by the City to the Authority under the specific terms and conditions of the Task Order.

**“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 Contractor’s written plan to address delays in the schedule due to occurrences under its control.

**“Site”** means Baltimore City’s Kane Steet Sanitation Yard located at 111 Kane St, Baltimore, MD 21224.

**“Uncontrollable Circumstance”** means an event or condition listed in this definition, whether affecting the Authority, the City or the Contractor, that has, or may reasonably be expected to have, a material adverse effect on the operation of the Kane Steet Sanitation Yard, 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 Contractor or its affiliates, or the Contractor's Sub-Contractors of any tier;
- (b) the failure of the City or the appropriate federal or state agencies or public utilities having operational jurisdiction over the Kane Steet Sanitation Yard to provide and maintain all utilities services (excluding sewerage and water lines) to the Kane Steet Sanitation Yard.
- (c) A non-Contractor 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 Contractor 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 Kane Steet Sanitation Yard; 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 (including a Sub-Contractor) to any Contract with Contractor to perform its obligations under such Contract or undertaking unless the failure of such Party to perform is caused by a Uncontrollable Circumstance affecting such Party; or
- (D) with respect to Contractor 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 Contractor or its Sub-Contractors (or the affiliates of either);
- (F) any insolvency or bankruptcy of a Sub-Contractor of any tier;
- (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 Contractor under this Contract.

**APPENDIX 2  
TERMS OF PAYMENT**

Fee Paid to the Contractor by the Authority:

Price for work completed in the Period– Liquidated Damages

Where:

Price for work completed in the Period is the recorded hours per staff member, as reported under each discreet task, completed and verified in the period times the appropriate hourly rate. Price also includes verifiable out of pocket expenses.

Liquidated Damages means the sum of any Liquidated Damages provided for in the Contract

**APPENDIX 3  
PAYMENT REQUEST**

Title Block: Date, Name of Project, Name of Contractor employee creating form, Signature of Contractor Representative

Summary of Payments to date

Summary of work completed since last payment, including daily time summaries by job class and personnel for each Task, and receipts for all out of pockets costs\* charged to the project

Requested payment amount

% of work remaining, % of money remaining

Summary of schedule to date

Summary of work to be undertaken in next period

\*meals must conform to the GSA daily reimbursement guidelines for the Baltimore and cannot include charges for alcohol. [Per Diem Rates Look-Up | GSA](#) (last accessed 01.25.2022)

**APPENDIX 4**  
**PAYMENT AND WORK PROGRESS**

Payment to Contractor shall be made as follows:

On or about the 8th day of each month, Contractor shall submit an invoice to Authority, with the information specified in Appendix 3.

Authority shall, within 15 days after receipt of invoice from Contractor, 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 Contractor as to whether Authority disputes any portion of the invoice. Notwithstanding the foregoing, in no event shall Authority's determination or payment of any amount hereunder constitute or be deemed a waiver of any provision of this Contract, and Authority shall have the right to enforce this Contract against Contractor notwithstanding any such determination or payment if Authority subsequently determines for any reason that any determination or payment of an invoice was erroneous. Subject to such determination by Authority, and except for disputed portions of any invoice, Authority shall pay Contractor within 45 days after receipt by Authority of Contractor's invoice.

Authority, based on its reasonable estimate, may withhold such portion of any payment to such extent as may be necessary to protect Authority from loss due to Contractor'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 City arising from Contractor's failure to perform in accordance with the terms of its subcontracts, other than claims for which Liens have been filed against the City 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 Authority;

(C) Failure of Contractor to make payments in respect of material or labor or other obligations incurred as a result of activities covered by this Contract, unless Contractor has, in good faith, reasonably disputed such payments and, if any Lien is filed with respect thereto, Contractor 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 Contractor to Authority under this Contract for which Authority has not been paid;

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

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

Authority shall advise Contractor in writing within 15 days after receipt of Contractor'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, Contractor shall promptly take any and all reasonable steps available to remedy any condition identified by Authority leading to such claims.

## **APPENDIX 5 WORK REQUIREMENTS**

This Appendix identifies and establishes requirements for the Work, including verification of Kane Street Sanitation Yard conditions, demolition, safety and environmental controls and restoration of disturbed areas.

Final Contract must include final version of Exhibit 1



**APPENDIX 6  
PROJECT SCHEDULE**

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

Final Contract must include Contractor supplied project schedule

## **APPENDIX 7 STAFFING PLAN**

The purpose of this Appendix is to set forth the Contractor's Work Staffing Plan, which shall include key management and supervisory personnel to be used by the Contractor in performing the Work. The Contractor will staff the Work with sufficient personnel to manage the subcontracted work. The subcontracted work will be managed with respect to safety, environmental compliance, quality, schedule and cost.

Exhibit 7-1

Contractor Project Organization Chart

## **APPENDIX 8 REQUIRED INSURANCE**

### **General Insurance Requirements**

A. Contractor shall not commence Work until Contractor has obtained, at Contractor's own expense, all of the insurance as required hereunder and such insurance has been approved by Authority. Approval of insurance required of Contractor will be granted only after submission to Authority of original certificates of insurance signed by authorized representatives of the insurers.

B. Contractor shall require its Sub-Contractors to maintain insurance, to the same extent required of Contractor.

C. All insurers underwriting Contractor's insurance must be allowed to do business in Maryland and acceptable to Authority. The insurers must have a financial strength rating of "A-" or better, and a financial size category of "Class VII" or higher in the latest evaluation by A. M. Best Contractor, unless Authority grants specific approval for an exception.

D. All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation or non-renewal until 30 days prior written notice has been given to Authority. Contractor is required to notify Authority of such cancellation or non-renewal.

E. Insurance provided to Authority and its directors, officers and employees by Contractor shall be primary, and any other insurance, coverage or indemnity available to Authority and its directors, officers and employees shall be excess of and non-contributory with insurance provided by Contractor.

F. If any liability insurance purchased by Contractor has been issued on a "claims made" basis, Contractor must comply with the following additional conditions.

Contractor must either:

1. Agree to provide certificates of insurance to Authority evidencing the coverages for a period of 2 years after the Contract terminates or expires, whichever is earlier. Such certificates shall evidence a retroactive date no later than the beginning of the services under this Contract, or

2. Purchase an extended (minimum 2 years) reporting period endorsement for each such "claims made" policy in force as of the date the Contract terminates or expires, whichever is earlier and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the services under this Contract.

## **Contractor's Liability Insurance**

Contractor shall purchase the following liability insurance coverages for not less than the limits specified below or required by law, whichever is greater:

1. Commercial general liability insurance that insures against claims for bodily injury, property damage, and personal and advertising injury arising out of or in connection with services under this Contract, whether such operations be by Contractor, its employees or Sub-Contractors or their employees. The minimum limits of liability for this insurance are as follows:

- \$1,000,000 combined single limit - each occurrence
- \$2,000,000 combined single limit- general aggregate
- \$2,000,000 combined single limit - products/completed operations aggregate

This insurance shall include coverage for all of the following:

- Any general aggregate limit shall apply per project;
- Liability arising from premises and operations;
- Liability arising from the actions of independent Contractors;
- Liability arising from products and completed operations;
- Contractual liability including protection for Offeror from bodily injury and property damage claims arising out of liability assumed under this Contract; and
- Liability arising from the explosion, collapse and underground (XCU) hazards.

This insurance shall name Authority and its directors, officers and employees, as well as Baltimore City, Maryland, as insureds with respect to liability arising out of or in connection with services under this Contract for both ongoing operations (including Authority's supervision) and completed operations, and the certificate of insurance must so state this.

2. Business auto liability insurance with a minimum combined single limit of \$1,000,000 per accident and including coverage for bodily injury and property damage claims arising out of:

- The maintenance, use or operation of any auto; and
- Contractual liability including protection for Offeror from bodily injury and property damage claims arising out of liability assumed under this Contract.

3. Workers compensation insurance with statutory benefits as required by any state or Federal law, including standard "other states" coverage and employers' liability insurance with minimum limits:

- \$100,000 each accident for bodily injury by accident;
- \$100,000 each employee for bodily injury by disease; and
- \$500,000 policy limit for bodily injury by disease.

4. Umbrella excess liability or excess liability insurance with minimum limits of:

- \$1,000,000 each occurrence;
- \$1,000,000 aggregate other than products/completed operations and auto liability; and

- \$1,000,000 products/completed operations aggregate, and including all of the following coverages on the applicable schedule of underlying insurance:
- commercial general liability;
- business auto liability; and
- employer's liability.

This insurance shall name Authority and its directors, officers and employees, as well Baltimore City, Maryland, as insureds with respect to liability arising out of or in connection with services under this Contract for both ongoing operations (including Authority's supervision) and completed operations, and the certificate of insurance must so state this.

5. Offeror's professional liability insurance for claims that arise from the performance of professional services. A minimum annual aggregate limit of at least \$2,000,000 is required. The insurance shall include contractual liability coverage. Certificates of insurance shall evidence a retroactive date no later than the beginning of Offeror's services under this Contract.