

CONSTRUCTION SERVICE CONTRACT

by and between

Northeast Maryland Waste Disposal Authority

and

Contractor

to provide for the

**TRANSFER STATION RETROFIT CONSTRUCTION
SERVICES**

On behalf of,

FREDERICK COUNTY, MARYLAND

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**CONSTRUCTION SERVICE CONTRACT FOR
TRANSFER STATION CONSTRUCTION SERVICES
On behalf of,
FREDERICK COUNTY, MARYLAND**

This Construction Service Contract for the Frederick County Transfer Station Retrofit (“Contract”) is made by and between the Northeast Maryland Waste Disposal Authority, an instrumentality of the State of Maryland (“Authority”) and 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 Frederick County, Maryland, (the “County”), the Authority issued a Request for Proposals for retrofit construction services of the Frederick County Transfer Station and Processing Facility, located at 9031 Reichs Ford Road, Frederick, Maryland.

2. The Authority contracted with Geosyntec Consultants (Design Engineer) for the retrofit, design, construction support, permitting, and construction quality assurance and quality control.

3. Contractor, _____ company located in _____, based on its proposal is awarded the contract.

4. The Authority has secured the Services from Contractor, on behalf of the County, pursuant to a County Purchase Order.

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

**ARTICLE I.
DEFINITIONS**

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

ARTICLE II.
SCOPE OF WORK AND RESPONSIBILITIES

Section 2.01 Contract

- (a) The documents that comprise this Contract (“**Contract**”), in order of precedence, are:
- (i) Contract (Construction Service Agreement)
 - (ii) Request for Proposals dated March __, 2025 (“**RFP**”) and Addenda published on the following dates:
 - (iii) Technical Specification and Drawings prepared by Design Engineer
 - (iv) Contractor’s Proposal dated <DATE>
- (b) Contractor represents and warrants that it has identified any and all conflicts within the Contract Documents 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 construction services shall be done in a professional manner and in compliance with the approved plans and all applicable laws, ordinances, and permits. Exhibit (1-3) to RFP includes the detailed scope of work - Technical Specifications and Drawings prepared by the Authority’s Design Engineer (Geosyntec Consultants).

Work will be comprised of the following:

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

The Design Engineer will be responsible for managing all permitting requirements, as applicable, on behalf of the County and Contractor. The Contractor will be responsible for coordinating with the Design Engineer and meeting the requirements of all permits required to complete the work.

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

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

Section 2.03 Responsibilities of the Authority

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

- (a) provide access to the Frederick County Transfer Station and Processing Facility (“the Transfer Station”)
- (b) provide access to County files and data needed for the Work.
- (c) pay for documented and approved work.
- (d) provide for the coordination of work at the Transfer Station such that there is no unreasonable interference with the Contractor’s Work by the Authority, Design Engineer, the County, or their representatives or agents. The Authority agrees that any actions on the part of the Authority, Design Engineer, the County, or their representatives that has a material adverse impact on the activities of the Company 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, fuel, equipment, and materials necessary to provide the Work in accordance with the Scope of Work;

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

**ARTICLE III.
TERM, NOTICE TO PROCEED**

Section 3.01 Effective Date

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

Section 3.02 Term

- (a) The Effective Date shall constitute the first day of the Work.
- (b) The Contract is valid from the Effective Date until June 30, 2026, unless earlier terminated by a Party in accordance with the provisions of this Contract. The date for Substantial Completion of the Work items identified in Technical Specifications (Part 1.01.A) shall be 90 days calendar days after issuance of Notice to Proceed.

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 Transfer Station; (b) seeks to enjoin or restrict the use of the Transfer Station 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 Transfer Station.
 - 2) County issuance of Purchase Order to the Authority.
 - 3) Contractor shall schedule a preconstruction meeting (and provide agenda and preconstruction submittals prior to meeting) at the Site or other convenient location prior to commencement of construction activities per Technical Specifications.

**ARTICLE IV.
TRANSFER STATION LOCATION**

Section 4.01 Frederick County Transfer Station and Processing Facility

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

Section 4.02 Coordination with work at Transfer Station

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

Section 4.03 Use of Site and Premises

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

**ARTICLE V.
RESERVED**

**ARTICLE VI.
SPECIFICATIONS AND TECHNICAL REQUIREMENTS**

Section 6.01 Standard of Workmanship

Contractor is responsible for performing the Work in accordance with the highest standards of skill and workmanship, using its best skill and attention. Contractor shall maintain an appropriate frequency of contact with Design Engineer and County to ensure that Work quality is being maintained. Contractor shall perform construction quality control field and laboratory testing as required by the Drawings and the Technical Specifications. If Contractor is unable to self-perform these tasks, Contractor shall retain a CQC Consultant to complete the required CQC field and laboratory testing.

Section 6.02 Warranty of Inspection and Acceptance of Transfer Station

- (a) Contractor represents and agrees that (i) it has inspected the Transfer Station and (ii) it has reviewed all information provided by the Authority/County relating to the Transfer Station 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 Transfer Station of the Work, the conformation and conditions of the Transfer Station building and grounds, 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 Transfer Station (including surround area) 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, Design Engineer, or County.
- (c) The Design Engineer will monitor the Contractor's work performance on a daily basis. All work must be performed to the highest professional and industry standards and pursuant to the approved plan set (Drawings) and all permits related to the work. The Contractor is not relieved of its obligation to comply with the terms of the agreement, or for defective work, by (i) approval of any drawing, submittal, or other document prepared by the Contractor, (ii) the activity, responsibility or administration of the agreement by Authority personnel, or (iii) inspections or approvals required or performed by persons other than the Contractor.
- (d) Any deficiency in the Contractor's performance shall be reported to the Design Engineer within 1 day following reported completion of work, and such deficiencies shall be

corrected by the Contractor no later than one calendar week following receipt of such notice.

Section 6.03 Technical Specifications

Exhibit 2 of RFP includes the Technical 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) Exhibit 3 of RFP includes the Drawings
- (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, Design Engineer, the County, their respective agents, representatives and contractors, or others currently conducting work being performed at the Transfer Station. The Contractor specifically acknowledges that its Work must be coordinated with the day-to-day activities of the Transfer Station and Landfill, and will not unreasonably interfere with the County's ability to perform its operations at the Transfer Station and Landfill. 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 County, Design Engineer, or others performing work at the Transfer Station or Landfill Site 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, Design Engineer, and/or the County 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 County 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 Design Engineer 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 the County, portions of surrounding areas of Transfer Station 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 progress schedule within fourteen (14) days prior to the preconstruction meeting per the Technical Specifications.
- (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 and Technical Specifications.
- (c) The Contractor shall begin the work no later than five days after the Authority issues the Notice to Proceed, unless otherwise agreed to in writing. The Contractor shall leave the names and telephone numbers of two individuals who may be contacted at any time by the Authority, Authority Representative or Design Engineer.
- (d) Work shall not proceed without the written approval by the Authority indicating the acceptance of the Contractors work plan/schedule

Section 7.07 Warranties

- (a) The Contractor's Work shall not void the standard manufacturer's warranty for any installed improvements.
- (b) The Contractor warrants the Work as follows:
 - (i) The Work must substantially conform to the final Drawings and Technical Specifications.
 - (ii) The Work must be free from material defects in installation.
- (c) 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**").

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

Section 7.09 Final Completion

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

**ARTICLE VIII.
RESERVED**

**ARTICLE IX.
COMPENSATION**

Section 9.01 Payment for Work

- (a) The Authority will pay Contractor in accordance with Section 01270 (Measurement and Payment) of Technical Specifications. Payment of Work will be based on the Contractor's proposed unit prices and lump sum payment methods for various proposal items listed in Contractors' Price Proposal. Invoicing will be based on quantities approved by Design Engineer. If the estimated final quantity exceeds the quantity indicated on the Price Proposal schedule by more than 10%, then the Contractor shall notify the Authority of the discrepancy and shall not construct units beyond the quantity found on the Price Proposal schedule without prior approval from the Authority.
- (b) Invoices must be sent to the Authority and the County. Payment will be made within 45 days of receipt of an approved Invoice from Contractor. A retainage in the amount ten percent will be held on payments. Retainage will be released after punchlist is completed.

- (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 ssabrina@nmwda.org

- (b) 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.

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 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.
- (f) 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.
- (g) 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.

- (h) 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.
- (i) 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.
- (j) 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 County.
- (b) However, no adjustment will be made for any suspension, delay, or interruption to the extent (i) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of 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 4 ("**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

To the Contractor:

<Contractor name and address>

To the County:

Section 11.06 Indemnification

- (a) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the Authority, the State, and Frederick County and their respective officers, employees, elected officials, agents, contractors, consultants, engineers, officers, directors, elected representatives, officials, and other representatives (collectively, “**Authority Indemnified Parties**”), from and against all liability, suits, judgments, and claims by third parties, damages, losses, and expenses, including the costs of defense, settlement, and reasonable attorneys’ fees (collectively, “**Losses**”), which they may individually or collectively, may incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent caused, in whole or in part, by a breach of any term, provision, representation or warranty of this Contract or any negligent act or omission or willful misconduct of the Contractor, or its directors, officers, employees or agents. This indemnification is not to be deemed as a waiver of any immunity, which may exist in any action against the 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 Transfer Station.
- (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 Transfer Station, 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 Site or any portion thereof then constructed or otherwise materially adversely affect or delay the construction, use or maintenance of the Site. After the termination of this Contract, 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 County. 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 Frederick County, and in accordance with the laws of the State of Maryland, without regard to its conflict of laws provisions. Pending resolution of any claim or dispute the 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 County 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 Assignment

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

Section 11.17 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 [State] 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 11.18 Compliance with Applicable Law

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

Section 11.19 Relationship of Parties

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

Section 11.20 Amendment of Contract

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

Section 11.21 Severability of provisions

If a court of competent jurisdiction determines that any provision of this Contract is, for any reason, invalid, illegal, or unenforceable in any respect, the Parties agree to negotiate in good faith and make such amendments, modifications or supplements of or to this Contract to implement and give effect to the intentions of the Parties. All other provisions of this Contract, as so amended, modified or supplemented, or otherwise affected by this action, remain in full force and effect.

Section 11.22 Headings

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

Section 11.23 Entire Contract

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

Section 11.24 Counterparts

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

Section 11.25 Intellectual Property

Contractor agrees that Authority, the County 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 11.26 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 County 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 11.27 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 Purchase Order Revenues as and to the extent such Purchase Order Revenues are received and available to pay such amounts under Applicable Law. The liability of the 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 any Authority administrative cost and the incurrence or nonperformance of such obligations or payments will not constitute or create a legal or

equitable pledge of, or lien or encumbrance upon, or claim against, any of the assets or property of the Authority or of its income, receipts or revenues, except Purchase Order Revenues available to pay such amounts under Applicable Law. 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 Purchase 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 Frederick County 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 Purchase 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, County, or local person or body having governmental or quasi-governmental authority or subdivision thereof.

“Hazardous Waste” means:

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

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

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

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurance 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.

“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 [DATE], including addenda thereto issued.

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

“State” means the State of Maryland.

“Subcontract” means a contract or purchase order by the 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.

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

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

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

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

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

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

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

- (a) an act of God, hurricane, landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, war, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage committed at a facility by a person other than an employee or agent of, or visitor invited by, the Contractor or its affiliates, or the Contractor’s Sub-Contractors of any tier;
- (b) 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 Site; or
- (B) the imposition of any new condition in or other change to a Governmental Approval on or before the Notice to Proceed Date; or
- (C) the failure of a Party (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
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. Contractor shall use the Application for Payment Forms provided in Section 01270 of Technical Specifications.

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 County 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 County that Contractor has bonded or has secured with any other kind of security permitted by applicable Law against such Lien which is reasonably acceptable to 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 3
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 4 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 Frederick County, 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 Frederick County, 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.