

Contract # _____

Control # _____

**ANNE ARUNDEL COUNTY
LANDFILL GAS TO ENERGY PROJECT**

**OPERATIONS AND MAINTENANCE
SERVICE AGREEMENT**

BETWEEN

**NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY**

AND

[COMPANY]

DATED AS OF

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OPERATION AND MAINTENANCE AGREEMENT

THIS OPERATION AND MAINTENANCE SERVICE AGREEMENT (this “**Agreement**”) is made and entered into as of this ___ day of _____, _____, by and between **the Northeast Maryland Waste Disposal Authority**, a body politic and corporate organized and existing under the laws of the State of Maryland (the “**Authority**”), and [COMPANY], a limited liability company existing under the laws of the State of [STATE] (“**Contractor**”).

WITNESSETH:

WHEREAS, Anne Arundel County, Maryland (the “**County**”) owns the Millersville Landfill and Resource Recovery Facility (the “**MLFRRF**”) (as such terms are defined hereinafter);

WHEREAS, the Authority has been granted a license by the County to use the MLFRRF in accordance with the County Agreement (as such term is defined hereinafter);

WHEREAS, the Authority has obtained the County’s consent under the County Agreement for the Project;

WHEREAS, Contractor desires to operate and maintain the Project for the Authority; and

WHEREAS, the Authority has selected Contractor in reliance upon Contractor’s skill, expertise and experience to operate and maintain the Project in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereto agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the capitalized words and phrases used in this Agreement (including the Exhibits hereto) will have the following meanings:

Administrative Fee: Has the meaning given in **Section 16.1.3.**

Affected Party: Has the meaning given in **Section 22.1.**

Affiliate: With respect to any person, means any other person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person, whether through the ownership of voting securities or by contract or otherwise.

Agreement: This Operation and Maintenance Agreement between the Authority and Contractor, including any subsequent written amendments, modifications and Changes In Work made in accordance with this Agreement.

Authority: Northeast Maryland Waste Disposal Authority, together with its successors and assigns permitted under this Agreement.

Authority Indemnified Parties: Has the meaning given in **Section 25.1.1**.

Authority Rules: Has the meaning given in **Exhibit K**.

Authorized Representative: means the person who has executed this Agreement. The Authorized Person may delegate his or her authority in writing to a representative from that same party.

Availability Percentage: Has the meaning given in **Section 14.1.2**.

BGE: will mean Baltimore Gas & Electric Company, and its permitted successors and assigns.

Business Day: A calendar day excluding Saturdays, Sundays and any other day that national banks located in the State of Maryland are not open for business. In the event that a payment obligation to be performed under this Agreement falls due on a Saturday, Sunday or a day on which national banks located in the State of Maryland are not open for business, the obligation will be deemed due on the next Business Day thereafter.

Change In Law: Any Change in Law after the date of this Agreement affecting or related to the obligations to be performed by the Parties hereunder, (including, without limitation, the imposition of any new or additional permit requirements, provided that such new or additional permit requirements require Contractor to incur additional costs or delays in excess of the costs or delays required to be incurred by Contractor to comply with the requirements of the Project Permits set forth in **Exhibit C**), which Change in Law occurs after the date hereof, provided that any such Change in Law that has been enacted prior to the date of this Agreement but that does not take effect until after the date hereof will be deemed to be a requirement of existing Law, and not a Change In Law, for the purposes of this Agreement, and provided further, that a Change in Law affecting Taxes will not be a Change In Law for the purposes of this Agreement. Change of Law does not include any federal or state regulation that has been added, interpreted, and/or enforced to offset any misinterpretation of the law.

Change In Work: Any modification, alteration, addition or deletion of the Work authorized in writing by the Authority pursuant to **Article 16** and performed in accordance with this Agreement.

Change In Work Form: Has the meaning given in **Section 16.1.2**.

Claimant: Has the meaning given in **Section 23.6.1**.

Collection and Recovery System: The Millersville Landfill Gas Collection and Recovery System.

Commencement Date: June 22, 2022

Confidential Information: Has the meaning given in **Section 27.1**.

Contract Year: means June 22, 2022 through June 30, 2023 and each twelve (12) month period thereafter, as applicable.

Contractor: [COMPANY], together with its successors and assigns permitted under this Agreement.

County: Anne Arundel County, Maryland.

County Agreement: The Millersville Landfill Gas to Electricity Project Services Agreement, dated as of _____, _____, between the Authority and the County.

Day or day: A calendar day, unless otherwise specified.

Detailed Plans: Has the meaning given in **Exhibit J**.

Dispute: Any claim, controversy, disagreement or other matter in question between the Parties that arises out of or relates to the terms and conditions of this Agreement or with respect to the performance by the Parties of their respective obligations under this Agreement, including any claim for breach or repudiation thereof.

Dollars: Dollar amounts in U.S. dollars.

Event of Default: Has the meaning given in **Article 19.1**.

First Arbitrator: Has the meaning given in **Section 33.3**.

Force Majeure: Has the meaning given in **Article 22.2**.

Good Faith: Dealing with the other Party in a reasonable, honest and cooperative fashion. Good Faith will include, without limitation, acting reasonably, acting diligently and timely, making commercially reasonable efforts and not withholding or delaying consents unreasonably.

Governmental Approvals: Any and all permits, clearances, licenses, authorizations, consents, filings, exemptions or approvals from or required by any Government Authority that are necessary for the performance of the Work.

Government Authority: Any and all national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof. Such Government Authority includes but is not limited to, Maryland Department of the Environment or other such federal, state or local entity having authority over the air permits and emission testing.

Guaranteed Availability: Has the meaning given in **Section 14.1.1**.

Hazardous Materials: Any element, compound, mixture, solution, particle or substance:

(i) which is or may become dangerous, harmful or potentially dangerous or harmful to the health and welfare of life or the physical environment, such as, but not limited to, explosives, petroleum products, radioactive materials, hazardous wastes, toxic substances and related materials, and including, without limitation (A) any substance or material included within the definitions of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “toxic substances”, “hazardous pollutants” or “toxic pollutants” in all applicable Laws of the United States or the State of Maryland and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 *et seq.*, the (“**CERCLA**”), Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901 *et seq.* (“**RCRA**”), the Toxic Substances Control Act (“**TSCA**”), 15 U.S.C. Sections 2601 to 2671, the Clean Air Act (“**CAA**”), 42 U.S.C. Sections 7401 *et seq.*, and/or the Federal Water Pollution Control Act (“**WPCA**”), 33 U.S.C. Sections 1251 to 1387, as the foregoing may be amended from time to time (collectively, “**Environmental Laws**”) (B) any Polychlorinated Biphenyls “PCBs” or “PCB items” as defined in 40 CFR Section 761.3; and (C) any “asbestos”, as defined in 40 CFR Section 763.63;

(ii) the presence of which requires investigation or remediation under any federal, state or local Law, policy or common law;

(iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated as a “Hazardous Waste” or “Hazardous Material” by any Government Authority of the United States or the State of Maryland; or

(iv) the presence of which on a Project Site causes or threatens to cause a nuisance upon the Project Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Project Site or on or about the adjacent properties.

Interconnection and Operating Agreements: (a) the Interconnection Service Agreement entered into by the Authority, PJM and BGE, which is attached hereto as **Exhibit N**; and (b) any agreements related thereto or otherwise entered into with PJM or BGE with respect to the interconnection and/or operation of the Projects.

Landfill: an area in which refuse is buried at the Millersville Landfill and Resource Recovery Facility (MLFRRF).

Landfill Gas (LFG): Any and all gases resulting from the decomposition of refuse materials within the Landfill.

Late Payment Rate: The prime rate of interest (sometimes referred to as the base rate) for corporate loans published by The Wall Street Journal, in the money rates section (or if The Wall Street Journal ceases publication of such a rate, an equivalent rate) as such rate may be in effect from time to time during the period the delinquent amount remains outstanding, plus one percent (1.0%).

Law(s): All federal, state and local constitutions, charters, acts, statutes, laws (including Environmental Laws, as defined in the “Hazardous Materials” definition), ordinances, codes, rules, regulations, orders and Governmental Approvals (including, without limitation, the Project Permits), or other legislative or administrative action of any agency, department, authority, political subdivision or other instrumentality, or final decrees, judgments or orders of a court, and the requirements set forth in the codes in each case applicable to Contractor, the Authority, the Work, the Landfills, or the operation or maintenance of the Projects.

Local Time: Eastern Standard Time Zone

Major Overhaul: Has the meaning given in **Exhibit H**.

MDE: means Maryland Department of the Environment or other such local governmental entity having authority over the air permit and emissions testing.

Millersville Landfill and Resource Recovery Facility or Millersville Landfill (MLFRRF): The property owned by the County and located at 389 Burns Crossing Road, Severn, Maryland, as shown in **Exhibit B**. The MLFRRF includes the landfill, convenience center and all appurtenant infrastructure owned by the County.

Millersville Landfill Gas Collection and Recovery System: The Millersville Landfill gas extraction, collection and recovery system located at the MLFRRF, as shown in **Exhibit B**, which the County will continue to own, operate and maintain.

Minimum Performance Guarantees: Has the meaning given in **Exhibit E**.

Notice: A written communication between the Parties that is required or permitted by this Agreement and conforms to the requirements of **Article 34**.

O&M Staffing Plan: The staffing requirements set forth in **Exhibit D** pursuant to which Contractor will operate, maintain and repair the Project.

Operation and Maintenance Manual: A manual consisting of all plans, specifications, manuals, schedules, drawings and other documents (including, without limitation, copies of all warranties relating to equipment and all software access codes) required to be delivered hereunder and the materials described in **Exhibit I** that are necessary or customarily maintained for the ownership, operation and maintenance of the Project and the Collection and Recovery System.

Party: Either the Authority or Contractor; **Parties** means both the Authority and Contractor.

Performance Guarantees: Has the meaning given in Part 1 of **Exhibit E**.

PJM: PJM Interconnection, L.L.C and any successor thereto.

Power Purchase Agreement: Any agreement entered into by the Authority or the County that provides for the purchase and sale of electricity, renewable energy credits and any other renewable energy benefits or attributes generated by the Project.

Project: The Millersville Landfill Gas to Electricity Project, located at MLFRRF and as detailed in **Exhibit A**.

Project Director: Has the meaning given in **Section 3.14**.

Project Manager: Has the meaning given in **Section 2.2**.

Project Permits: All Governmental Approvals necessary for Contractor to perform the Work in accordance with applicable Laws, including, without limitation, those permits listed in **Exhibit C**.

Project Requirements: (A) Laws applicable to the performance of the Work, (B) this Agreement, (C) the Project Permits, (D) the O&M Staffing Plan, (E) written recommendations and requirements of Contractor's Subcontractors with respect to the installation of such Subcontractor's equipment incorporated into the Work, unless exceptions are consistent with the prevailing standards and practices of the industry under existing conditions, (F) all operating manuals required under this Agreement or the components thereof, (G) Prudent Industry Practices.

Project Site: The location at which the Project Work is to be performed, as shown in **Exhibit B**.

Proposed Settlement: Has the meaning given in **Section 33.2.2.2**.

Prudent Industry Practices: The practices described in **Section 3.2**.

Rejecting Party: Has the meaning given in **Section 33.2.2.2**.

Scope of Work: Has the meaning given in **Exhibit A**.

Second Arbitrator: Has the meaning given in **Section 33.3**.

Service Fee: The amount set forth in **Section 6.1** to be paid by the Authority to Contractor as full compensation for the operation, maintenance, repair and replacement of the Project, as may be adjusted in accordance with this Agreement.

Spare Parts: Has the meaning given in **Section 5.1**.

Specifications: The technical specifications relating to the Projects set forth in **Exhibit A**, together with any additional specifications and drawings prepared by Contractor and submitted to the Authority for review and comment with respect to the Work, including, without limitation, all drawings, sketches, writings and calculations that define or describe the Work or the Project.

Subcontractors: Contractor's suppliers, vendors and subcontractors, of any tier, that perform the Work or otherwise assist Contractor in the performance of its obligations under this Agreement.

Tax or Taxes: 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,

finances and additions to tax, now or hereafter imposed by any Government Authority or other taxing authority.

Third Arbitrator: Has the meaning given in **Section 33.3**.

Work: All work, activities and other obligations to be performed by Contractor under this Agreement, including, without limitation, the operation, maintenance, repair, and replacement of the Project.

2. RESPONSIBILITIES OF THE AUTHORITY

2.1 Access to Project Site.

Upon the Commencement Date, as applicable, the Authority will (A) grant Contractor a license to use the Project Site for the exclusive purpose of performing the Work and (B) permit Contractor and its Subcontractors unrestricted ingress and egress to and from the Project Site for the purpose of performance of the Work; provided, however, that such rights will be consistent in all respects with the rights granted to the Authority under the County Agreement. Contractor will not have exclusive use of the Project Site or the Landfill and will not use or allow the Project Site or the Landfill (or any part thereof) to be used for any illegal, unlawful or improper purpose. Contractor will be responsible for the maintenance and improvement of all means of ingress and egress to and from the Project Site and the Landfill for the purpose of performing the Work.

2.2 Project Manager.

The Authority will designate a person (the “**Project Manager**”) authorized by the Authority to act as a single point of contact for Contractor with respect to the prosecution of the Work. The Project Manager will have full authority to act on behalf of the Authority in connection with this Agreement (but not to modify or amend it) except as otherwise expressly stated herein or otherwise provided in a Notice from the Authority’s Authorized Representative to Contractor. The Authority may from time to time replace its Project Manager upon Notice thereof to Contractor. The Project Manager or the Authority may, by Notice to Contractor, appoint one (1) or more persons to act as the Project Manager’s representative and may from time to time by further Notice change such appointment.

2.3 Payments.

The Authority will make, or cause to be made, payments to Contractor in respect of the Service Fee in accordance with applicable provisions of this Agreement.

2.4 Actions by the Authority.

The Authority may cause any of its rights or obligations under this Agreement to be exercised or performed by one (1) or more designees or appointees specified in a Notice to Contractor, which Notice will identify the specific designee or appointee, designate the scope of such person’s or entity’s authority and the matters concerning which such person will have authority to act on behalf

of the Authority. The Authority may amend, supplement or terminate any such appointment or designation, or the scope and authority thereof by Notice to Contractor.

2.5 Prudent Industry Practices

In the exercise of its rights hereunder, the Authority will exercise its discretion and otherwise act in accordance with Prudent Industry Practices. Subject to Contractor's fulfillment of its obligations hereunder, unless otherwise specifically set forth herein, all Authority approvals and responses required hereunder that materially impact the maintenance schedule precedence relationship, as identified in Contractor's submission or request to Authority, will be performed within fourteen (14) calendar days of the date of Contractor's submission or request with respect thereto.

3. **RESPONSIBILITIES OF CONTRACTOR**

3.1 Scope of Work; Applicable Standards.

3.1.1 Contractor will perform and prosecute all Work and perform its obligations hereunder and exercise its rights hereunder, in Good Faith and in accordance with the Scope of Work, the Specifications and the other terms and provisions of this Agreement and in compliance with all Project Requirements, using methods and equipment that are accepted as Prudent Industry Practices. Contractor will operate, monitor, and maintain the Project lawfully and safely, in each case, using qualified, competent and, where necessary, licensed personnel. Notwithstanding any other provision of this Agreement to the contrary, Contractor has reviewed and for all purposes adopted the information contained in the Scope of Work, Specifications and all other provisions of this Agreement as its own and will not be entitled to any relief or recovery as a result of (A) any information contained therein having been provided by the Authority or (B) any material, facilities, suppliers or other materials or actions being required by the Authority as provided in the Scope of Work, Specifications and other provisions of this Agreement. Contractor will provide directly or through Subcontractors all services, labor, tools, supplies, materials, testing, supervision, and equipment required for the performance of the Work.

3.1.2 Contractor has included within the Service Fee the cost to complete the entire Scope of Work. Items need not be specifically listed in this Agreement or the Exhibits in order to be deemed to be items within the Scope of Work. Any item indicated in this Agreement or the Exhibits, reasonably inferable therefrom or incidental thereto or required in accordance with the Project Requirements is to be considered as part of the Scope of Work. In addition, the Scope of Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in order to achieve the Performance Guarantees. As a result, Contractor hereby waives any and all claims for an increase in the Service Fee, based, in whole or in part, upon an assertion that any certain license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation or management is beyond the Scope of Work when such license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation or management is indicated in this Agreement or the Exhibits or other instruments of service prepared in connection with this Agreement or the Exhibits, reasonably inferable therefrom or incidental thereto or required in accordance with the Project Requirements.

3.2 Project Requirements.

Contractor will perform the Work so that it satisfies all Project Requirements, including applicable Laws and applicable operation, maintenance and other standards of “**Prudent Industry Practices,**” which are defined as those practices, methods and equipment, in effect from time to time for performance of the Work that are commonly used to operate and maintain electric generation facilities lawfully and with safety, dependability, efficiency and economy (provided that the requirements of dependability, efficiency and economy as described above are not intended to expand the Scope of Work). The Authority makes no acknowledgement that the operation and maintenance details specifically set forth in the Scope of Work satisfy Prudent Industry Practices or that the details set forth in the Scope of Work constitute all or sufficient details necessary to satisfy Prudent Industry Practices.

3.3 Project Permits.

3.3.1 Contractor will prepare and process applications and renewal applications for all Project Permits and will use reasonable efforts to maintain all Project Permits to the satisfaction of the Authority

3.3.2 [RESERVED]

3.3.3 Prior to the submission of any Project Permit application to a Government Authority, Contractor will submit such application to the Authority for review and comment by the Authority and the County, and the applications detailed below will be signed by an authorized representative of the Authority and County, not less than 21 days prior to the submission date of the Project Permit. The Maryland Department of the Environment Air Permit to Construct, the Maryland Department of the Environment Air Permit to Operate and any other Project Permits, as determined by the Authority and for which Notice of such determination is provided to Contractor, will be applied for and issued in the names of the Authority and the County.

3.3.4 Contractor will be responsible for all actions necessary to (a) obtain or prepare and process applications for Project Permits, as set forth in **Sections 3.3.3** above and (b) maintain the Project Permits, but not limited to, all testing and reporting required by the Maryland Department of the Environment, and the terms of the permit(s) to support and maintain the permits. Contractor will submit all test reports to the Authority for review not less than 21 days prior to the submission date of the report.

3.3.5 Contractor will be responsible for all damages, fines, and penalties that may arise (including, but not limited to, those that the Authority or the County pays or becomes liable to pay) because of (a) Contractor’s failure to (i) obtain any Governmental Approval or Project Permit (other than those listed in **Exhibit C-Section 2**) or (ii) promptly prepare and process applications for Project Permits listed in **Exhibit C-Section 2** or (b) the noncompliance by Contractor with any Governmental Approval or Project Permit applicable to the Work, irrespective of the party that is required to obtain such Governmental Approval or Project Permit. The Work includes all Contractor activities necessary to operate and maintain the Project in accordance with the Project Permits and, except as may otherwise specifically be provided for herein, the Service Fee will not be adjusted in respect of the requirements of such Project Permits.

3.3.6 Contractor will notify the Authority within one (1) Business Day of any notice of violation or similar communication (any written or verbal communications related thereto) regarding the Project received from any Government Authority. Contractor will provide the Authority with prompt notice of any site visits by representatives of any Government Authority (other than the County) by written communication.

3.3.7 In connection with the expiration or termination of this Agreement, Contractor shall cooperate with the Authority and the County, at Contractor's cost and expense, in effectuating the transfer or assignment of the Project Permits, as the Authority may request in a Notice to Contractor.

3.3.8 Contractor will prepare and process all Project Permits in accordance with Prudent Industry Practices and the Maintenance Schedule.

3.4 Hazardous Materials.

Contractor will provide Notice to the Authority immediately upon encountering any Hazardous Materials in performing the Work. When hazardous materials are located on site, contractor will be required to keep posted all required signs and placards as required to ensure the proper identification and hazard classification of materials located on site. Contractor will contain and remove all Hazardous Materials that were introduced to the Project Site by Contractor or its Subcontractors or as a result of the negligence, willful misconduct or failure of Contractor to perform its obligations hereunder and dispose of such Hazardous Materials in accordance with applicable Laws. All costs associated with the containment, removal, storage and disposal of such Hazardous Materials will be paid by Contractor without reimbursement from the Authority or the County.

3.5 Utility Services and Operating Consumables.

Contractor will provide and pay the costs for all utility services (including, without limitation, water and electricity usage) and all operating consumables necessary to perform the Work. The Contractor is responsible for the direct payment of all BGE and telecommunication costs as it relates to the operation and maintenance of the Project. Contractor will be responsible for the maintenance of the communication lines and circuits (including telecommunication equipment) for the Project.

3.6 Sanitary Conditions.

Contractor will maintain the Project Site free of waste material and rubbish. Contractor will return any areas of the Project Site disturbed by Contractor or its Subcontractors to a condition that is the same or better than the area's condition prior to such disturbance.

3.7 Protection of Work.

Contractor will provide all necessary safeguards for the protection and maintenance of the Work, the Project, and the Project Site and of all persons and other property related thereto.

3.8 Handling and Storage of Materials and Equipment.

Contractor will arrange for complete and safe handling and storage of all materials, equipment and construction equipment required to accomplish the Work, including, but not limited to, inspection, expediting, shipping, unloading, receiving, customs clearance and claims.

3.9 Contract Commencement Inspection and Contract Close-out Inspection

Contractor will meet with representatives of the Authority and the County prior to issuance of the notice to proceed and inspect all facilities for any pre-existing damage or maintenance needs to the extent that these needs can be visibly assessed. Similarly, at the end of the Agreement, a closeout inspection will be performed, and the Contractor must leave the facilities in good working condition and repair any damage to property or equipment.

3.10 Compliance with Authority Rules.

Contractor and its Subcontractors and their respective employees, agents and representatives will comply with the Authority Rules at all times regarding activities on the Project Site (including restrictions to ingress and egress) and coordinate its activities with any person performing work or undertaking activities at the Project Site, including, without limitation, contractors or subcontractors performing work for or on behalf of the Authority or the County.

3.11 Assistance with Government Authorities.

Contractor will provide such reasonable assistance as is required by the Authority in dealing with the County and any other Government Authority in any and all matters relating to this Agreement, the Project, the Collection and Recovery System, the Project Site or the performance by Contractor of the Work.

3.12 Cooperation with Engineer and Consultants.

Contractor will cooperate with any engineer or consultant retained by the Authority or the County to review design materials, information regarding costs, perform inspections or tests of the Work, witness tests and review test results, to perform any of the Authority's obligations hereunder, as the Authority may determine in its sole discretion, and any other matters hereunder relating to the Work.

3.13 Public Announcements.

Contractor will obtain the Authority's prior written approval of the text of any announcement, publication, photograph or other type of communication concerning the Work prior to the dissemination or release of same by Contractor or its Subcontractors; provided, however, that the Authority's prior written approval will not be required for any communication regarding the Work that is required to be made by Contractor pursuant to applicable Law and Contractor shall notify the Authority of such communication as soon as practicable.

3.14 Contractor Staff.

Subject to the Authority's approval, which approval will not be unreasonably withheld, conditioned or delayed, Contractor will designate an individual (the "**Project Director**") who will have overall responsibility for the prosecution of the Work and will be authorized to act on behalf of Contractor. The Project Director will act as a single point of contact in all matters on behalf of Contractor and will oversee the operation and maintenance of the Project. The Project Director will have full authority to act on behalf of Contractor in connection with this Agreement (but not to modify or amend it). The Project Director must provide written notice to the Authority when a change in the Project Manager and /or Construction Manager are made and must provide resumes of personnel change to the Authority. Contractor may from time to time replace its Project Director upon Notice thereof to the Authority.

3.15 Progress Reports and Meetings

Upon the Project Manager's request, Contractor will attend periodic progress meetings with the Project Manager and others designated by the Authority and respond to inquiries at such meetings regarding progress of the Work. Contractor will arrange for Subcontractors to attend such progress meetings, if requested by the Project Manager. Contractor will provide additional information and reports concerning the Work as may be reasonably requested by the Authority.

3.16 Security.

Contractor will maintain reasonable and customary security for such Project Site to ensure that the Project Site is secure and to prevent vandalism, theft and damage to the Project, the Project Site or material, equipment and personnel located on the Project Site.

3.17 Operation and Maintenance Manual.

The Authority or County will provide an Operation and Maintenance Manual to be kept at the Project Site upon commencement of the Work. Contractor will maintain and update the Operation and Maintenance Manual to reflect its experience in operating and maintaining the Projects. Within 7 days following the request of the Authority, Contractor will provide the Authority and/or the County with updated copies of the Operation and Maintenance Manual.

3.18 Notification of Potential Delays or Adverse Effects.

Contractor will promptly provide advanced Notice to the Authority within two (2) Business Days of any occurrence that Contractor has reason to believe will adversely affect the operation or maintenance of the Project. Contractor will specify in such Notice the corrective action planned by Contractor to overcome the adverse effect(s). Should a situation occur where advanced notice to the Authority is not possible, Contractor will notify the Authority immediately of any delay or adverse effect; however, in no case will such notice exceed 24-hours or one Business Day after the occurrence.

3.19 Site Safety Program.

The safety of Contractor, Subcontractors and their employees, agents, representatives and invitees and any other person who enters the Project Site for any purpose relating to Contractor's carrying out its obligations under this Agreement will be Contractor's responsibility. Contractor will initiate and maintain safety precautions and programs to conform with applicable Laws to protect against and prevent injury to persons or damage to property on, about or adjacent to the Project Site and will incorporate all such safety precautions and programs in a written safety program manual, which safety program manual will be provided to the Authority for its review and comment within thirty (30) days after the date hereof and all reasonable comments by or on behalf of the Authority will be incorporated in Contractor's safety program manual. The Authority's approval of Contractor's safety program manual will not be unreasonably withheld, conditioned or delayed. Neither review, comment upon, approval or rejection of, nor the failure of the Authority to review, comment upon, approve, or reject all or any part of Contractor's safety program manual will (A) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (B) impose any liability on the Authority under this Agreement or (C) result in any adjustment of the Service Fee. Contractor will exercise reasonable commercial efforts to eliminate or abate all reasonably foreseeable safety hazards created by or otherwise resulting from performance of the Work.

3.20 Compliance with Applicable Laws.

Contractor will ensure that it, its employees, agents and invitees and its Subcontractors and their employees, agents and invitees, during performance of any of the Work, comply with all applicable Laws in effect from time to time.

3.21 Insurance.

Contractor will obtain and maintain insurance in accordance with **Article 23**.

3.22 Equal Employment Opportunity.

The Contractor assures the Authority that it will not discriminate against any person in any of its activities with regard to membership policies, employment practices, or in the provision of services on the basis of gender, identity, race, color, national origin, religion, ancestry, sex, age, or disability. The Contractor will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U. S. Department of Labor Regulations 41CFR Part 60. The Contractor must bind its subcontractors to the provisions of this section.

3.23 Hiring Employees of the Authority or the County.

It is unlawful for any person transacting business with the County, to employ a public employee for employment contemporaneous with his or her public employment. Contractor hereby agrees not to hire any employee of the Authority or the County, whose duties include matters relating to or affecting this Agreement, while such employee is employed by the Authority or the County.

3.24 Operation and Maintenance of the Project.

Contractor will operate, maintain, repair and replace the Project in accordance with **Section 11.4.**

**4. CONTRACTOR REPRESENTATIONS CONCERNING THE WORK;
PROJECT SITE**

4.1 Skills, Expertise and Capacity.

Contractor represents and agrees that it has the required skills, expertise and capacity to perform, and will diligently perform, the Work in a timely and professional manner utilizing sound engineering principles, project management procedures and supervisory procedures in accordance with this Agreement and all applicable Project Requirements.

4.2 Project Site.

4.2.1 Contractor represents and agrees that it has inspected the Project Site, the Landfill and surrounding locations and has reviewed information provided by the Authority relating to the Project Site, the Landfill and surrounding locations, and is familiar with the conditions thereof and accepts the existing conditions of, the Project Site, the Landfill and surrounding locations for the performance of the Work. Except as provided for in **Section 4.2.4**, Contractor accepts the Project Site and all structures, facilities, improvements or fixtures located thereon on an “as is” basis and acknowledges that ongoing settlement and compaction of such areas is an inherent characteristic of such areas.

4.2.2 Contractor agrees to maintain the Project Site and all structures, facilities, improvements or fixtures located thereon in a condition and state of repair equal to or better than that, as of the date hereof. Contractor will be responsible for any damage to the Project Site and all structures, facilities, improvements or fixtures located thereon due to the acts or omissions of Contractor, any Subcontractor or their assigns, employees, agents, officers and directors or anyone else acting for or on behalf of Contractor, any Subcontractor or their Affiliates, successors or assigns. In the event of such damage, Contractor will, at its sole cost and expense, make the necessary repairs or replacement to the satisfaction of the Authority. Contractor acknowledges and agrees that upon the expiration or termination of this Agreement, the Project Site and all structures, facilities, improvements, or fixtures located thereon will be returned to the County in the same condition as they were as of the date hereof, with reasonable wear and tear excepted.

4.2.3 In the event Contractor encounters unknown surface, subsurface or latent physical conditions at the Project Site (including, but not limited to, man-made obstructions, geotechnical conditions, Hazardous Materials and archeological remains), Contractor will give immediate Notice of the nature and extent of such conditions to the Authority. The Authority will promptly investigate the conditions and direct Contractor as to how it will proceed.

4.2.4 Contractor is not entitled to an adjustment of the Service Fee, nor will a Force Majeure occur (except in the circumstances described in this **Section 4.2.4**) because of (A) settlement or compaction of the Landfill or the Project Site, (B) the presence of Hazardous Materials at the Project Site which were introduced to the Project Site by Contractor or its Subcontractors or as a

result of the negligence, willful misconduct or failure of Contractor to perform its obligations hereunder, nor (C) if any adverse surface condition at the Project Site or any adverse subsurface condition of or at the Project Site is discovered (which subsurface condition was reasonably foreseeable or identified by Contractor or its Subcontractors after inspection of the Project Site and surrounding locations and review of information provided by the Authority relating to the Project Site or does not have a material and adverse effect on Contractor's cost or time for performance of the Work). The discovery of any adverse subsurface geotechnical conditions at the Project Site (including, but not limited to, Hazardous Materials, which were not introduced to the Project Site by Contractor or its Subcontractors or as a result of the negligence, willful misconduct or failure of Contractor to perform its obligations hereunder, and archeological remains) that (1) were not reasonably foreseeable or identified by Contractor or its Subcontractors in accordance with the foregoing sentence and (2) have a demonstrated material and adverse effect on Contractor's cost or time for performance of the Work will constitute an event of Force Majeure in accordance with the provisions of **Article 22**.

4.2.5 In the event that all or any part of the Project Site is taken by any governmental or quasi-governmental authority pursuant to its power of eminent domain or sold under threat thereof, Contractor will not be entitled to (A) any condemnation award to the County as owner of the Project Site and (B) recover from the County or the Authority any capital expenditures for improvements or betterments made by Contractor, except payment owed for Work performed hereunder.

5. SPARE PARTS

5.1 Primary Spare Parts.

Within the first thirty (30) days upon commencement of the Work, Contractor will provide the Authority with a revised recommended list of spare parts for operation and maintenance of the Project, based in part upon equipment manufacturer recommendations and the review of the current spare parts inventory (Exhibit G). Within thirty (30) days following receipt of the complete revised proposed spare parts list, the Authority will provide comments thereto to Contractor, which comments will be reflected in the final list of spare parts for the Project. Contractor will purchase any additional Spare Parts designated by the Authority on the best available terms for delivery within thirty (30) days. The Authority will reimburse Contractor for the actual purchase price of the additional Spare Parts (including all rebates and discounts). Contractor will not be entitled to any commission, markup, adder or other payment in connection with the purchase of Spare Parts pursuant to this **Section 5.1**.

5.1.2 Inventory of Spare Parts

Contractor may use any Spare Parts item in performing its obligations hereunder but will replace each such item, at its sole cost and expense and without reimbursement from the Authority or the County, as soon as reasonably practicable under the circumstances.

6. SERVICE FEE

6.1 Service Fee.

As full compensation for the operation, maintenance, repair and replacement of the Project, the Authority will pay, or cause to be paid, to Contractor the Service Fee.

The monthly Service Fee through June 30, 2023 is [Insert Dollar Amount]. Beginning on July 1, 2023, and every July 1 thereafter, the Service Fee will be adjusted according to the appropriate annual inflation adjuster. All adjustments will be made using the Bureau of Labor Statistics Consumer Price Index (CPI) for all Urban Consumers for Baltimore-Columbia-Towson, MD - All Items (1982-84=100). The adjustment for July 1, 2023, will compare the most recently reported CPI as of July 1, 2023 (the April 2023 reference month) to the April 2022 CPI reference month. Thereafter the most recent CPI reported as of July 1st of current year (April CPI reference month) will be compared to the CPI used from previous year (April CPI reference month).

The maximum annual inflation adjuster for each one-year period, shall not be less than 0.96 or exceed 1.04.

Examples of inflation adjuster calculation:

July 1, 2023 Inflation Adjustor:

CPI for July 1, 2023 (reference month April 2023): 252.185

CPI for July 1, 2022: (reference month April 2022): 247.688

Index Point Change: $252.185 - 247.688 = 4.497$

Inflation Adjustor: $4.497 / 247.688 + 1 = 1.02$ (rounded to second decimal place)

July 1, 2024 Inflation Adjustor:

CPI for July 1, 2024: (reference month April 2024): assume 249.301

CPI for July 1, 2023: (reference month April 2023): 252.185 (CPI used from previous year)

Index Point Change: $249.301 - 252.185 = -2.884$

Inflation Adjustor: $-2.884 / 252.185 + 1 = 0.99$ (rounded to second decimal place)

The Service Fee may be adjusted by a fully executed Change In Work Form or final arbiter's decision, in each case, in accordance with **Article 16**. The Service Fee set forth in this **Section 6.1**, as adjusted by any fully executed Change In Work Forms or final arbiter decisions, in each case, in accordance with **Article 16**, constitutes the total compensation to Contractor for the operation, maintenance, repair and replacement of the Project. Subject to the provisions of this Agreement, Contractor's actual cost to perform such Work in accordance with this Agreement will be at the risk of Contractor, who hereby acknowledges that it has obtained all information reasonably available and taken account of all circumstances reasonably foreseeable which may affect such cost before agreeing to the Service Fee. The component of the Service Fee set forth in

clauses (a) and (b) above will be pro-rated for any partial months for which the Service Fee is owed to Contractor hereunder.

Contractor acknowledges and agrees that a significant portion of the Service Fee serves as compensation for the Major Overhauls of the engine/generator sets to be performed in accordance with **Exhibit H**. As a result, the Authority will retain ten percent (10%) of each monthly Service Fee payment owed to Contractor hereunder (“Retainage Amount”), without accounting for any deductions or offsets permitted under this Agreement. The funds retained monthly by the Authority may only be applied towards payment of Contractor’s costs directly associated with Top End and Major Overhauls of the engine/generator sets in accordance with **Exhibit H**. The Parties acknowledge and agree that any retainage funds not applied for Top End and Major Overhauls following the expiration or termination of this Agreement will be solely for the Authority’s account. When Contractor performs a Top End or Major Overhaul, Contractor will be entitled to apply the retainage funds as follows: (i) Top End Overhaul not to exceed \$34,000 per engine; (ii) Major Overhaul not to exceed \$90,000 per engine. These figures will be escalated per the escalation provisions listed above.

Contractor’s actual costs to perform such work in accordance with this Agreement will be at the risk of Contractor.

6.2 Taxes.

6.2.1 The Service Fee reflects the payment by Contractor of all Taxes incurred in connection with the Work. Notwithstanding anything herein to the contrary, the Service Fee will not be adjusted for a Change in Law affecting Taxes or for any Taxes imposed with respect to any design, equipment, testing, materials, labor or services that are part of the Work.

6.2.2 Contractor will take all actions reasonably requested by the Authority to avail itself of and maximize any exemptions or discounts which are available with respect to any Taxes incurred in connection with the Work, the Project, or the Landfill, including, without limitation, completing required documentation and providing information related to the Work or the Service Fee.

7. **TERMS OF PAYMENT**

7.1 Service Fee Invoices.

On or before the first Business Day of each month, the Contractor will submit an invoice to the Authority, with a copy to the County, for the Service Fee for the preceding month. Each such invoice will include (a) an account statement showing deposits, withdrawals and the current Authority retainage in accordance with **Section 6.1**, (b) the calculation of the Availability Percentage with supporting documentation) for the Project, and (c) any other documentation reasonably requested by the Authority.

7.2 Payment of Invoices.

The Authority will, within fifteen (15) Business Days after receipt of an invoice from Contractor determine whether the invoiced amount reflects the payment due Contractor. If the Authority determines that the invoiced amount does not reflect the payment due Contractor, the Authority will provide Notice to Contractor of such determination within fifteen (15) Business Days after receipt of such invoice from Contractor. The Authority will not have any obligation hereunder to pay, or cause to be paid, such Disputed portions of any invoice unless and until the Parties reach a mutual agreement regarding such Disputed portions or, in absence thereof, an arbitration award in accordance with **Article 33** is made in Contractor's favor. Notwithstanding the foregoing, in no event will the Authority's determination described in this **Section 7.2** or payment of any amount hereunder constitute or be deemed a waiver of any provision of this Agreement, and the Authority will have the right to enforce this Agreement against Contractor notwithstanding any such determination or payment if the Authority subsequently determines for any reason that any determination or payment of an invoice under this **Section 7.2** was erroneous. Subject to such determination, and except for Disputed portions of any Service Fee invoice, the Authority will pay, or cause to be paid, to Contractor, within forty-five (45) days after receipt by the Authority of Contractor's invoice, one hundred percent (100%) of the invoiced amount minus the Retainage Amount minus any Disputed portion of such invoice and minus any amounts that the Authority is entitled to withhold hereunder minus any amounts due from Contractor to the Authority that are outstanding hereunder. Late payments of the invoiced amounts due and owing after the deductions in this **Section 7.2** will accrue interest at the Late Payment Rate from the date due until paid provided, however, that if the Authority withholds funds and it is later determined that such withholding was improper, then interest will accrue at the Late Payment Rate on the amount so improperly withheld from the date such funds should have been paid until actual payment is received by Contractor. If Contractor disputes any amounts owed, the Parties in Good Faith may attempt to resolve any Dispute pursuant to **Article 33** of this Agreement.

7.3 Notice of Delayed Payment.

The Authority will use reasonable efforts to advise Contractor in writing within fifteen (15) Business Days after receipt of Contractor's invoice of any evidence leading to a possible delayed payment of any portion of an invoice. Upon receipt of such Notice, Contractor will promptly take any and all steps available to remedy any condition identified by the Authority leading to such claims. Subject to a mutually agreed upon resolution of the Authority's claims or, in the absence thereof, of an arbitration award as provided in **Article 33**, payment of the Disputed portion of Contractor's invoice will be made by the Authority within ten (10) Business Days following the date of such agreement or award.

7.4 Authority's Right of Offset.

The Authority may offset any amount due and owing to the Authority by Contractor under this Agreement against any amount due or to become due from the Authority to Contractor under this Agreement; provided that the failure of the Authority to offset such liability against amounts due to it will in no way limit or restrict the right of the Authority to recover such amounts due to it from Contractor.

7.5 No Effect on Service Fee.

Subject to **Section 19.4**, unless specifically agreed to in writing by Contractor and the Authority, no action taken (or failed to be taken) by Contractor or the Authority pursuant to this **Article 7** will result in any adjustment of the Service Fee.

8. COMMENCEMENT OF THE WORK

8.1 Commencement Date.

Prior to the Commencement Date, Contractor will (A) obtain the insurance policies required pursuant to **Article 23** and provide the Authority with insurance certificates thereof and (B) provide the Authority with any documents or agreements reasonably requested by the Authority pursuant to this Agreement.

8.2 Priority of Work.

Contractor will commence and diligently pursue the operation, maintenance, replacement and repair of the Project assigning a priority that will permit such Work to be completed in accordance with **Section 3.1.1**. Contractor understands and agrees that time is of the essence with respect to execution of the Work.

9. SUBCONTRACTORS AND LABOR RELATIONS

9.1 Subcontractors.

Subject to the terms hereof, Contractor will have the right to have any portion of the Work performed by a Subcontractor qualified to perform such Work pursuant to written subcontracts or written purchase orders, provided that Contractor will not be relieved from any liability or obligation under this Agreement as a result of entering into such subcontracts or purchase orders. Contractor will require that all Work performed, and all equipment provided by Subcontractors is received, inspected and otherwise furnished in accordance with this Agreement, and Contractor will be solely liable for all acts, omissions, liabilities and Work (including defects therein) of such Subcontractors. The Authority will not have any obligation or liability to any Subcontractor. Each contract, subcontract and purchase order with a Subcontractor must provide that the rights thereunder are assignable to the Authority or its designee at any time. No Subcontractor is intended to be or will be deemed a third-party beneficiary of this Agreement. If any Subcontractor is specifically identified in a Project Permit or the application therefor, then Contractor will not use any other Subcontractor without the prior written approval of the Authority.

9.2 Purchase Orders and Subcontracts.

9.2.1 Prior to issuing any purchase order to any manufacturer or vendor for major equipment (i.e., additional engine/generator set), Contractor will provide a copy of each purchase order to the Authority for its review and comment. The Authority will have the right to review and comment on such purchase orders within ten (10) Business Days following receipt thereof and Contractor will use commercially reasonable efforts to incorporate all reasonable comments submitted by or

on behalf of the Authority into the final purchase orders issued by contractor. For the avoidance of doubt, unless the parties mutually agree otherwise, the extent of the Authority's involvement in securing the purchase orders for the major equipment will be the Authority's right to review and comment on the purchase orders, as set forth in this **Section 9.2.1**.

9.2.2 In addition, Contractor will submit to the Authority a copy of each unpriced purchase order and subcontract entered into with a Subcontractor for major equipment. Each such purchase order and subcontract will show, where applicable, the Subcontractor's name, manufacturer's name, materials type, model number, size, quantity and lists of the equipment ordered, and will be submitted to the Authority when issued for purchase. Each subcontract and purchase order will require each Subcontractor to assume toward Contractor those terms and conditions of contracting which Contractor customarily includes in its subcontracts. At a minimum, all subcontracts will require the Subcontractors to comply with applicable Laws and the Project Permits, will provide that the Authority has the right of inspection as provided hereunder and require such Subcontractors to (A) be subject to the safety and security provisions of this Agreement, (B) provide guarantees and warranties with respect to its portion of the Work and the equipment, (C) provide certificates of insurance as set forth herein, and (D) be subject to the Dispute procedures as set forth herein. All subcontracts will preserve and protect the rights of the Authority, will not prejudice such rights and will require each Subcontractor to enter into similar agreements with its subcontractors. In addition to the foregoing requirements, Contractor cannot guarantee that all vendors will accept the terms outlined herein, however Contractor will make a good-faith effort with its subcontractors and vendors to include in each subcontract and purchase order the following language to make the Authority an express third-party beneficiary of such subcontract or purchase order:

“The parties hereto agree and acknowledge that the services/work/equipment to be provided hereunder by [Subcontractor] will be incorporated into the project being developed by the Northeast Maryland Waste Disposal Authority. As such, the parties expressly agree that the Northeast Maryland Waste Disposal Authority is a third-party beneficiary of this [agreement/purchase order] entitled, in its own name or in the name of [Contractor], to enforce this [agreement/purchase order] against [Subcontractor]

9.3 Labor Disputes.

Contractor will advise the Authority promptly, in writing, of any actual, anticipated or threatened labor dispute that might affect the performance of the Work by Contractor or by any of its Subcontractors. Contractor will promptly undertake all commercially reasonable efforts to prevent or resolve any strikes or other labor disputes among its employees or the employees of its Subcontractors, and to minimize any resulting disruption of the progress of the Work. As provided in **Article 22**, a labor strike or work stoppage will not constitute a Force Majeure if such labor strike or work stoppage is lawful and results from Contractor's or its Subcontractor's breach of a valid collective bargaining agreement or violation of applicable labor Laws.

10. PROJECT RECORDKEEPING

10.1 Maintenance of Detailed Plans and Documents.

Contractor will maintain at the Project Site for information purposes and for the Authority and County a copy of all Detailed Plans in good order and regularly updated to show changes made during performance of the Work. All maintenance records, testing, and monitoring records, and permit related documents will also be kept current and available.

10.2 Changes to Specifications or Scope of Work.

10.2.1. Contractor acknowledges the material interest of the Authority in the Scope of Work and the Specifications, and notwithstanding Contractor's obligation to satisfy the Project Requirements and associated damages for failing to perform this obligation, Contractor agrees that no material change to the Specifications or the Scope of Work will be made without the prior written approval of the Authority. In addition, Contractor, after consulting with the Authority and subject to the approval of the Authority, will make any change in the Specifications and the Scope of Work necessary to comply with applicable Laws. Contractor will provide written copies of any material proposed changes to the Specifications or the Scope of Work to the Authority for approval, and upon such approval, Contractor will implement such changes as part of the Work and provide written copies of the final material changes to the Authority as soon as the written changes are available. In no event will the Authority's disapproval of a proposed change to the Specifications or Scope of Work (A) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (B) impose any liability on the Authority under this Agreement or (C) result in any adjustment of the Service Fee.

10.2.2 The Scope of Work and Specifications set out in **Exhibit A** and the Detailed Plans represent the Authority's basic requirements and the Authority reserves the right to reasonably request to review any additional specific drawing or technical data generated for a Project, subject to the provisions of **Article 27**.

10.3 Inspection.

10.3.1 The Authority, the County and their designees will have the right to reasonably inspect any item of equipment, material, service or workmanship to be provided hereunder, and Contractor will reasonably attempt to arrange such inspection, at the point of fabrication, or elsewhere at the request of the Authority. The Authority will have the right to reject, at any time, any portion of the Work, including, but not limited to, materials, equipment, installation, tools or supplies, that do not conform to the Project Requirements. Upon such rejection, Contractor will promptly remedy at its sole cost and expense any condition identified by the Authority as giving rise to such rejection.

10.3.3 If the Authority is of the opinion that any Work already performed by Contractor does not meet the Project Requirements, then the Authority may direct Contractor to inspect or test any Work that has been performed by Contractor. If that portion of the Work is found to be defective or not in accordance with the Project Requirements, Contractor will remedy such defective Work in accordance with the Project Requirements and such remedy will not constitute

a Change In Work for which Contractor is entitled to payment. If such portion of the Work is in accordance with the Project Requirements, then the Authority will pay Contractor the cost of the inspection or test, as applicable, pursuant to an executed Change In Work Form.

10.3.4 In no event will the exercise by the Authority of its right to inspect or reject Work or other materials pursuant to this **Section 10.3** (A) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (B) impose any liability on the Authority under this Agreement, (C) result in any adjustment of the Service Fee, except as provided in the last sentence of **Section 10.3.3**.

10.4 Access to Work.

The Authority, the County and their designees will have the right, from time to time, to observe, inspect and/or independently test the Work, the Project, and Project Site and to observe all tests of the Work, Project, or Project Site. Contractor will provide the Authority, the County and their designees with prior Notice of all tests of the Work, Project, and Project Site. Contractor will provide the Authority, the County and their designees reasonable access to the Work, the Project, the Project Site, and the records and documents outlined in **Section 10.6**, as reasonably requested by the Authority or the County. Notwithstanding any other provision of this Agreement to the contrary, the County will not have the authority to direct or order any Change In Work nor will the County be considered or deemed the agent or representative of the Authority in connection with any activity undertaken thereby with respect to the Work or in connection with this Agreement.

10.5 Effect of Inspection of Work.

The inspection, review, and/or comment by the Authority of any drawing, document, or any other Work or services performed by Contractor or any Subcontractor are for monitoring purposes and will not (A) be used to change the Scope of Work design of a Project, unless actual errors are identified that must be corrected for the safety or proper execution of the Work, (B) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (C) impose any liability on the Authority under this Agreement or (D) result in any adjustment of the Service Fee.

10.6 Record Drawings.

The Detailed Plans will be regularly updated and maintained to reasonably reflect the record conditions for the Work. Existing “as-built” drawings must be updated with any changes resulting from the Project repairs or modifications in a timely manner. All Detailed Plans furnished by Contractor under this Article 10 will be in English and any undefined terms therein will have their usual and customary meaning in the United States. All drawings submitted as part of the Detailed Plans will be identified with the following data:

- The Authority’s Name;
- Project designation;
- Agreement number;
- Specification or Drawing number, if applicable;
- Contractor’s name;

- Contractor's drawing number; and
- Revision Number and Date.

10.7 Other Project Records.

Submittal of all permit compliance data and maintenance records generated during the term of this Agreement will be a requirement of Contractor prior to the end of the Contract Term.

11. LANDFILL GAS; SALES OF ELECTRICITY; CONTRACTOR OPERATION AND MAINTENANCE RESPONSIBILITIES

11.1 Supply of Landfill Gas.

11.1.1 The Authority will make available to Contractor (at no cost) all of the Landfill Gas for extraction, collection and recovery by the County. The Parties acknowledge and agree that (A) the quality, quantity and consistency of supply of Landfill Gas are uncertain and (B) the Authority makes no representations, warranties or guarantees hereunder regarding any specific quantity, quality, pressure, consistency of supply, or other characteristics of Landfill Gas.

11.1.2 The Parties acknowledge and agree that the Authority retains the right, in its sole discretion, to remove at any time any part of the Project (including, without limitation, any generating engine(s) incorporated in the Project) as a result of reduced available Landfill Gas supply or any other Project operating issues. The Authority may make changes in the Scope of Work under this Agreement as a result of changes in the available landfill gas supply.

11.2 RESERVED

11.3 Sales of Electricity.

11.3.1 The Parties acknowledge and agree that (A) as between the Authority and Contractor, the Authority will have all right, title and interest in the electricity, renewable energy credits and any other renewable energy benefits or attributes (including, without limitation, any carbon credits or offsets) generated by the Project and (B) the Authority will be entitled to sell such electricity, credits, benefits and attributes to any third party at any price, as determined by the Authority in its sole discretion, free of any claims by Contractor, other than Contractor's right to receive payment of a portion of revenues from the sale of electricity generated by the Project as part of the Service Fee in accordance with **Section 6.1**.

11.3.2 The operation of the Project and the associated generation and transmission of electricity, renewable energy credits and any other renewable energy benefits or attributes will be subject in all respects to (A) the terms and conditions of the Power Purchase Agreement(s) for such Project, (B) the terms and conditions of the Interconnection and Operating Agreements for such Project, (C) applicable transmission and distribution system operator, regional transmission organization or similar entity (including PJM and BGE) directions, rules, requirements, regulations, procedures or practices and (D) any direction that the Authority may, in its sole discretion, provide to Contractor from time-to-time and (E) the PJM reporting requirements found in **Exhibit M**.

11.4 Operation, Maintenance and Repair of the Project.

11.4.1 Contractor will perform the Work in a manner that allows for the continuous operation and management of the Collection and Recovery System and Landfill in accordance with applicable Law. Contractor will submit at least thirty (30) Days in advance of each Contract Year a proposed planned outage schedule for each Project for such Contract Year. The Authority and contractor will mutually agree upon the planned outage schedule for the Project and will cooperate in Good Faith to minimize planned outages during peak price periods, as reasonably identified by the Authority.

11.4.2 Subject to the provisions of Section 3.1.3, Contractor will operate, maintain, repair and replace the Project, including without limitation, performing those activities listed in **Exhibit H**, (A) in compliance with all Project Requirements and using methods and equipment that are accepted as Prudent Industry Practices, (B) as required to maintain Subcontractor warranties, any proprietary license agreements and insurance required hereunder, (C) in an effort to maximize the amount of electricity generated by the Project and (D) in a manner that enables the Authority to satisfy its obligations under the Power Purchase Agreement(s) and the Interconnection and Operating Agreements. Contractor will provide the Authority, the County and their designees reasonable access to the records and documents associated with such operation, maintenance and repair, as reasonably requested by the Authority or the County. Contractor will be entitled to a Change in Work to the extent that any requirements set forth in clauses (C) and (D) above reasonably cause a material increase in the contractor's cost of performing its obligations hereunder. In such case, Contractor, at its sole cost and expense, will prepare and submit to the Authority, a Change in Work Form setting forth a detailed estimate relating to the contemplated change.

11.4.3 Contractor will employ, train, supervise, maintain and provide qualified personnel in order to perform its obligations hereunder in accordance with the O&M Staffing Plan. Contractor will administer all matters relating to labor relations, salaries, benefits, working conditions, payroll taxes, contributions, work hours, safety and all other matters relating to its personnel.

11.4.4 Contractor will pay for all labor, parts, materials, equipment, supplies, consumables and other items necessary to operate, maintain, repair and replace the Project in accordance with Prudent Industry Practices.

11.4.5 If Contractor fails to timely perform its obligations hereunder to maintain, repair and replace the Project, the Authority, in addition to any of its other rights and remedies hereunder and after Notice to Contractor, will have the right to perform or have performed by third parties the necessary maintenance, repair and replacement activities and the costs thereof will be borne by Contractor in accordance with the provisions of this **Section 11.4**. Any such action by the Authority or any third party will not alter, amend, waive or relieve any obligation of Contractor under this Agreement.

11.5 Alterations of the Project and Collection and Recovery System.

Contractor will not undertake any material alterations, changes or modifications to the Project or Collection and Recovery System without the prior written consent of the Authority.

11.6 O&M Reports.

Contractor will prepare and submit to the Authority with each Service Fee invoice a monthly report describing routine operating and maintenance activities performed during the prior month, a description of each preventive maintenance activity completed during the prior month and a detailed listing of any backlogged maintenance activities that exist as of the end of the prior month and the Contractor's plans for addressing any such backlogged activities, in a format acceptable to the Project Manager. Contractor will also prepare and submit to the Authority special reports relating to any unexpected or unscheduled operating or maintenance events, in a format acceptable to the Project Manager.

Upon the Project Manager's request, Contractor will attend periodic meetings with the Project Manager and others designated by the Authority and respond to inquiries at such meetings regarding progress of the Work. Contractor will arrange for Subcontractors to attend such progress meetings, if requested by the Project Manager.

11.7 Cooperation with Authority, County and other Contractors.

Contractor will cooperate with the Authority, the County and their respective contractors in order to minimize interference with any work or activities occurring on or with respect to the Project, the Collection and Recovery System, the Project Site or the Landfill.

11.8 Meters.

11.8.1 Contractor will maintain the Landfill Gas flow measurement device(s) in good condition and repair and will have such meters periodically inspected, tested and calibrated by Contractor but no less frequently than once each year. Contractor will provide the Authority with three (3) copies of all reports and data produced as a result of such meter inspection and testing. In addition, the Authority retains the right, upon reasonable prior Notice to Contractor and at the Authority's cost and expense, to have the Landfill Gas flow measurement device(s) inspected and tested by an independent and reputable third party selected by the Authority.

11.8.2 If, for any reason, a Landfill Gas flow measurement device(s) or utility electricity meter is out of service or out of repair such that the amount of Landfill Gas provided to the Project or electricity generated by the Project cannot be reliably determined, then the quantity of Landfill Gas provided to the Project or electricity generated by the Project for the period of time during which a measurement device or meter was out of service or out of repair will be calculated in accordance with a procedure reasonably determined by the Authority and, as necessary, prior Service Fee invoices will be adjusted accordingly, with interest accrued at the Late Payment Rate.

11.8.3 With each monthly Service Fee invoice, Contractor will submit to the Authority meter readings for the Landfill Gas flow measurement device(s) and electricity meter(s) for the preceding month.

11.9 Reporting to PJM

11.9.1 Contractor will submit all required documentation and reporting to PJM to participate in the applicable energy and capacity markets.

11.9.2 Contractor will provide either PJM (through the applicable PJM Day-Ahead Market tool (i.e., Markets Gateway) or the Authority with the day ahead hourly schedule daily prior to 9:30 am Local Time to allow the power to be scheduled into the market. The option of having the Contractor report directly to PJM or provide a day ahead schedule to the Authority will be at the Authority's sole discretion.

11.9.3 Contractor will provide to the Authority a monthly scheduled maintenance forecast prior to the first of the month. Contractor will be also be required to report all Project deratings and outages in real time and monthly as required of PJM and NERC through the applicable PJM dispatcher application tool (i.e., eDART) and the generator availability data system (i.e., eGADS). The Authority will arrange for the Contractors access to eDART and eGADS, as needed.

12. [RESERVED]

13. [RESERVED]

14. SATISFACTION OF ANNUAL PERFORMANCE GUARANTEES

14.1 Satisfaction of Availability Guarantees.

14.1.1 Contractor guarantees that the Project will achieve an Availability Percentage of ninety-five percent (95%) (the "**Guaranteed Availability**") during each Contract month applicable to such Project. In the event that the Availability Percentage for a Project is greater than the Guaranteed Availability during a Contract month, Contractor will receive a bonus as set forth in Part II of **Exhibit E** (the "**Availability Bonus/Penalty**") to the Authority. In the event that the Availability Percentage for a Project is less than the Guaranteed Availability during a Contract month, Contractor will provide a credit as set forth in Part II of **Exhibit E** (the "**Availability Bonus/Penalty**") to the Authority. The Authority will have the right to offset any liability of Contractor under this **Section 14.1** in accordance with **Section 7.4**. The Availability Bonus and Penalty payable pursuant to this **Section 14.1** are subject to the cap provisions set forth in **Exhibit E**.

14.1.2 The term “**Availability Percentage**” means, with respect to a Project, an amount calculated in accordance with the following formula:

$$\text{Availability Percentage} = 100 \times \frac{\text{total Operating Hours}}{\text{total Base Hours}}$$

where:

“Operating Hours” means, for the Project, the total number of hours in the month that the Project is (1) operating and generating electricity or (2) available and physically capable of generating electricity;

“Base Hours” means, for the Project, the total number of hours in the month minus (a) any hours during the Contract month that the Project is not operational as a result of an event of Force Majeure, and minus (b) any hours during the Contract month that the Project is not operational as a result of a Top End or Major Overhaul, utility outage or interruption in the normal quantity and/or quality landfill gas supply such that the either of the generating units is prevented from generating electricity;

As an example, assume that:

(a) the total Operating Hours during the Contract month for the Millersville Project was 1458 hours;

(b) the total Base Hours during the Contract month for the Millersville Project was 1488 hours;

then the Availability Percentage for the Millersville Project for the Contract month would be as follows:

$$\begin{aligned} \text{Availability Percentage} &= 100 \times \frac{1,458}{1,488} \\ &= 100 \times (.9798) \\ &= 97.98\% \end{aligned}$$

15. [RESERVED]

16. CHANGES IN WORK

16.1 Changes in Work Directed by the Authority.

16.1.1 The Authority will have the right to make any Change In Work, whether such Change In Work is a modification, alteration, addition or deletion. Prices for Changes In Work will be developed on an “open book” approach and will be priced based on (i) fully burdened direct

labor costs for Contractor's employees to be incurred by Contractor; (ii) equipment and material costs to be incurred by Contractor; (iii) third party direct costs to be directly incurred by Contractor; and (iv) an Administrative Fee calculated in accordance with **Section 16.1.3** based upon the sum of subparagraphs (i), (ii) and (iii) hereof. Contractor will provide the Authority with a detailed estimate of such costs. The estimate will include capital costs for equipment and materials, field labor, expenses and engineering.

16.1.2 The Authority will advise Contractor of any proposed Change In Work and the Authority and Contractor will then promptly consult with each other concerning the cost and impact, if any, of implementing the proposed change. Following such consultation, the Authority may request and Contractor will promptly prepare, at its own cost and expense, a detailed estimate relating to the contemplated change (a "**Change In Work Form**"), which will include (A) any projected increase or decrease of the Service Fee and (B) the potential effect on Contractor's ability to comply with any of its obligations hereunder, including warranties and the Performance Guarantees. In the event of an urgent need to protect health, safety, property or prevent an environmental permit violation, the Authority may direct the Contractor to immediately commence whatever urgent work must be accomplished on a time and material basis, following the price guidance in **16.1.1** and charging no more than standard industry rates for outside subcontractors or equipment purchases, and provide a Change in Work Form as soon as feasible thereafter.

16.1.3 The "Administrative Fee" associated with a Change in Work will be calculated as shown in the table below with upper limits based upon the price of the Work associated with the Change in Work. The Administrative Fee should reflect the administrative hours worked to implement a Change in Work, regardless of the price of the Work, except for the limits previously noted.

Price of Work	Administrative Fee
Less than \$50,000	To be mutually agreed upon by the Parties, but in no event more than \$5,000
\$50,000 - \$100,000	To be mutually agreed upon by the Parties, but in no event more than \$10,000
\$100,001 - \$500,000	To be mutually agreed upon by the Parties, but in no event more than \$50,000
\$501,000 - \$1,000,000	To be mutually agreed upon by the Parties, but in no event more than \$100,000
More than \$1,000,000	To be mutually agreed upon by the Parties, but in no event more than 10% of the Price of Work

16.2 Change in Work Form.

16.2.1 Upon agreement and execution of a Change In Work Form by Contractor and the Authority, the Authority will promptly adjust (in consultation with Contractor), as necessary, the Service Fee to reflect the agreed upon changes.

16.2.2 If the Authority and Contractor cannot promptly reach agreement 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, order Contractor in writing to promptly proceed to complete the Change In Work in accordance with the Authority's interpretation of the matter under Dispute and the Authority will pay Contractor for the undisputed costs of such Change In Work. In the event the Authority and Contractor cannot reach agreement on the schedule change or estimated cost of the Change In Work within fifteen (15) Business Days after Contractor is ordered to proceed under protest, either Party may submit the matter for Dispute resolution as contemplated in **Article 33**.

16.2.3 In no event will Contractor undertake a Change In Work until (A) a Change In Work Form has been approved and signed by the Authority, and (B) if a disagreement exists as described in **Section 16.2.2**, Contractor has received Notice from the Authority to proceed under protest.

16.3 Suspension Due to Change in Work.

The Authority may notify Contractor in writing to suspend Work, for a maximum of fifteen (15) Business Days, on that portion of the Work affected by a contemplated Change In Work, (whether or not such change will require a modification to the Work), pending the Authority's decision on such Change in Work.

16.4 Change in Law.

If after the date of this Agreement there is any Change In Law, Contractor will promptly submit a Change In Work Form to the Authority reflecting any changes required by the Change In Law. Contractor will not be responsible for compliance with any such Change In Law unless and until a Change In Work Form is approved and signed by the Authority or Contractor is ordered by the Authority to proceed under protest.

16.5 Contractor Proposals.

After execution of this Agreement, Contractor may propose any addition, deletion, modification or amplification to this Agreement that in Contractor's opinion does not constitute a Change In Work by giving the Authority prior Notice thereof. The Authority will promptly review and approve or reject Contractor's proposed addition, deletion, modification or amplification and accept or reject same. The Authority may, at its sole discretion, determine that the proposed addition, deletion, modification or amplification be deemed a Change In Work, to be handled accordingly.

16.6 Contractor Proposed Change in Work.

Contractor may propose a Change In Work to the Authority on account of (A) additions, modifications, deletions or enhancements to the Project, (B) changes to the cost of the Work caused by the negligent acts or omissions of the Authority or anyone under the Authority's control (excluding Contractor and any person or entity performing Work on its behalf), (C) changes to the time of performance of the Work caused by the negligent acts or omissions of the Authority or anyone under the Authority's control (excluding Contractor and any person or entity performing Work on its behalf) or (D) Force Majeure events. However, Contractor will not make any Change In Work (including changes that have no net cost effect on the Service Fee) without a Change In Work Form signed by the Authority and Contractor or a decision of the arbitrators pursuant to the provisions of **Article 33**; provided, however, that if there is a Dispute between the Authority and Contractor as to the occurrence or existence of a Force Majeure, Contractor may unilaterally execute and submit a Change In Work Form in response to such Force Majeure and commence performance of the activities described therein prior to resolution of such Dispute in accordance with **Article 33** and, if the arbiter determines that the activities described in such Change In Work were not required as a result of such Force Majeure, then Contractor will have undertaken such activities at its sole cost and will not be entitled to any reimbursement or adjustment to the Service Fee for such activities undertaken pursuant to the unilateral Change In Work Form or if such Change In Work was required as a result of Force Majeure, then Contractor will be entitled to a Change In Work for the scope of the Work reflected in the arbiter's decision and, (b) solely with respect to a Force Majeure occurrence described in **Section 22.2(C)** (Change In Law) or **Section 22.2(D)** (adverse subsurface geotechnical conditions), an adjustment to the Service Fee in accordance with the arbiter's decision. The Service Fee or any component thereof will not be increased with respect to any Change In Work proposed by Contractor unless the requirements set forth in this **Section 16.6** are satisfied.

16.7 Minor Changes.

The Authority will have the right to issue clarifications and order minor changes in the Work, effected by written order, which do not involve an adjustment to the Service Fee, provided that such clarifications and changes are consistent with the intent of this Agreement. Such clarifications and changes will be binding upon the Parties and Contractor will receive no additional compensation therefore, nor will there be any change to this Agreement.

16.8 Field Orders.

The Authority will have the right to direct the Contractor to make a change in the field for issues that require immediate attention in order to prevent delays in the Work, protect property, assure safety of personnel or address other issues where failure to take immediate action could cause increased costs, property damage or pose environmental or safety hazards.

17. **[RESERVED]**

18. TITLE; RISK OF LOSS

18.1 Title.

18.1.1 Contractor warrants good title to all materials, equipment, tools and supplies furnished by it or its Subcontractors that become part of the Project or that are purchased for the Authority. Title to all or a portion of said materials, equipment, tools and supplies will pass to the Authority, in the case of a Project, upon the date Contractor receives payment for said material, equipment, tools and supplies, provided that for all such items title will pass to the Authority or the County upon payment to Contractor only if title has been passed to Contractor, otherwise, title will pass to the Authority or the County at such time as Contractor has acquired title to such item. In no event will Contractor acquire title to said materials, equipment, tools and supplies later than the delivery of any such item to the Project Site. Contractor will retain care, custody and control of said materials, equipment, tools and supplies and exercise due care with respect thereto until the termination or expiration of this Agreement. Said transfer of title will in no way affect the Authority's rights as set forth in other provisions of this Agreement.

18.1.2 For the purpose of protecting the interest of the Authority in all materials, equipment, tools and supplies with respect to which title has passed to the Authority but which remain in the possession of Contractor or another party, Contractor will take or cause to be taken all commercially reasonable steps necessary under the Laws of the appropriate jurisdiction(s) to protect the Authority's title to those items identified in Subsection **18.1.1** and to protect the Authority against claims by other parties with respect thereto. In the event of any such claim, Contractor will defend and hold harmless the Authority and the County if such claims are instituted against the Authority and/or the County.

18.1.3 All drawings and other documents (including specifications) furnished or to be furnished by Contractor in performing the Work will be the property of the Authority. Contractor hereby grants to the Authority and its successors as owner or lessor of a Project an irrevocable, perpetual and royalty free license to use any documents furnished hereunder in connection with the ownership, operation and maintenance of the Project.

18.2 Risk of Loss.

Contractor will assume care, custody and control of the Project. Contractor assumes the risk of loss of materials, equipment, tools, and supplies to which Contractor holds title, except to the extent the loss is caused by the Authority's acts or omissions.

19. DEFAULT AND TERMINATION UPON DEFAULT

19.1 Contractor Events of Default.

Each of the following constitutes an "**Event of Default**" on the part of Contractor, provided that none of the following will constitute an Event of Default to the extent caused by the failure of the Authority to perform its obligations hereunder:

19.1.1 If Contractor (or any guarantor of Contractor's obligation hereunder) 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 Contractor (or any guarantor of Contractor's obligation hereunder) or of a major part of its property; or

19.1.2 If, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of Contractor (or any guarantor of Contractor's obligation hereunder) or of a major part of its property is appointed and is not discharged within sixty (60) days, or if, by decree of such a court, Contractor (or any guarantor of Contractor's obligation hereunder) is adjudicated insolvent, or a major part of its property is sequestered, and such decree has continued undischarged and unstayed for sixty (60) days after the entry of such decree, or if a petition to reorganize Contractor (or any guarantor of Contractor's obligation hereunder) pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to Contractor (or any guarantor of Contractor's obligation hereunder), as now or hereinafter in effect, is filed against Contractor (or any guarantor of Contractor's obligation hereunder) and is not dismissed within sixty (60) days after such filing, or if Contractor (or any guarantor of Contractor's obligation hereunder) 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 Contractor (or any guarantor of Contractor's obligation hereunder) under any such Law, or (without limitation of the generality of the foregoing) files a petition to reorganize Contractor (or any guarantor of Contractor's obligation hereunder) pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to Contractor (or any guarantor of Contractor's obligation hereunder), as now or hereafter in effect; or

19.1.3 Contractor assigns its rights or obligations under this Agreement or any part thereof to any person, company, partnership, corporation or other entity except as otherwise permitted hereunder; or

19.1.4 Contractor disregards Laws or the lawful requirements of any competent authority or the instructions of the Authority consistent with this Agreement except to the extent such failure results from default by the Authority in its obligations to make payment under **Article 7**; or

19.1.5 Contractor fails or refuses to (A) test, operate, maintain, repair or replace the Project in accordance with this Agreement or (B) to substantially fulfill any of its material obligations to the Authority in accordance with this Agreement, notwithstanding the payment by Contractor of any damages or other amounts provided for under this Agreement, unless such failure or refusal is excused or justified pursuant to this Agreement, provided that failure of a Project to perform at or above the Performance Guarantees will not constitute an Event of Default so long as no other Event of Default described in this **Section 19.1** will have occurred, the Project continues to perform at or above the Minimum Performance Guarantees; or

19.1.6 Any representation or warranty made by Contractor herein or in any payment invoice or related documentation submitted hereunder is false or misleading in any material respect when made; or

19.1.7 Contractor fails to pay any amount that Contractor is required to pay to the Authority under this Agreement within fifteen (15) Business Days after receipt by Contractor of written demand from the Authority, unless the Authority or Contractor has requested that arbitration be commenced pursuant to **Article 33** with respect to such failure to pay; or

19.1.8 Contractor abandons or suspends progress of the Work for five (5) Business Days due to any reason other than a Force Majeure, an Authority Event of Default or weather conditions that prevent the performance of certain elements of Work, which must be performed above certain temperatures or in dry conditions in order to meet design strength, warranty or other manufacturer requirements;

19.1.9 Contractor fails to provide and maintain in full force and effect the letter of credit or bonds, as applicable, as required pursuant to **Article 36**;

19.1.10 Contractor fails to provide and maintain in full force and effect the insurance policies required pursuant to **Section 23.1**;

19.1.11 [RESERVED]

19.1.12 [RESERVED]

19.1.13 Contractor fails to perform any obligation under this Agreement other than as specified above in this **Section 19.1**.

No failure or refusal on the part of Contractor described in **Sections 19.1.4, 19.1.6 or 19.1.7** will constitute an “**Event of Default**” unless and until: (A) the Authority has given Notice to Contractor specifying with particularity the existence of such default; and (B) Contractor has failed to cure such default within thirty (30) days after receipt of such Notice, or in the case of a default which cannot be cured within thirty (30) days, has within thirty (30) days initiated actions reasonably likely to cure such default and is thereafter diligently pursuing such cure; provided, however, such period will not extend beyond ninety (90) days after the Authority’s initial Notice to Contractor concerning such default, unless approved by the Authority in writing (which approval will not be unreasonably withheld by the Authority).

19.2 Authority Remedies.

In the case of one (1) or more Events of Default on the part of Contractor pursuant to **Section 19.1**, the Authority will have the following rights and remedies, in addition to those rights and remedies that may be available to the Authority at law or in equity, and Contractor will have the following obligations:

19.2.1 The Authority, without prejudice to any of its other rights or remedies, may upon five (5) Business Days’ Notice to Contractor (A) suspend payment and/or (B) terminate this Agreement on the date specified in a written Notice of termination to Contractor.

19.2.2 Upon termination of this Agreement by the Authority for cause in accordance with **Section 19.2.1** or for convenience in accordance with **Section 20.2**, Contractor will reasonably cooperate with the Authority, the County and their designees to effect an orderly transition of the Work and will, if requested by the Authority (A) withdraw from the Project Site, (B) provide the Authority with detailed information regarding the current status of the Work, including, without limitation, the status of subcontracts, purchase orders, Project Permits and other agreements related to the Work, (C) assign to the Authority or any designee of the Authority those subcontracts, purchase orders, Project Permits and other agreements related to the Work, as requested by the Authority, (D) enter into no further subcontracts, purchase orders or other agreements related to the Work other than as requested, in writing, by the Authority and (E) turn over to the Authority complete possession of any or all designs, materials, equipment, tools, purchase orders, inquiries, letters, magnetic media, schedules, drawings or other items that the Authority deems necessary for completion of the Work. In addition, Contractor will not remove any equipment, materials or tools that (1) have been fabricated especially for or are unique to the Project, (2) are incorporated in or are attached to, or are intended to be incorporated in or attached to, the Project, (3) constitute temporary or permanent scaffolding or supporting elements for the construction of the Project or (4) the removal of which could damage the Project or any portion thereof or otherwise materially adversely affect or delay the construction, use or maintenance of the Project.

19.3 Authority Events of Default.

Each of the following constitutes an “**Event of Default**” on the part of the Authority, provided that none of the following will constitute an Event of Default to the extent caused by the failure of Contractor or its Subcontractors to perform its obligations hereunder:

19.3.1 If the Authority makes an assignment for the benefit of creditors, or admits in writing an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of either the Authority or of a major part of its property; or

19.3.2 If, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of the Authority or of a major part of its property is appointed and is not discharged within sixty (60) days, or if, by decree of such a court, the Authority is adjudicated insolvent, or a major part of its property is sequestered, and such decree has continued undischarged and unstayed for sixty (60) days after the entry of such decree, or if a petition to reorganize the Authority pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the Authority, as now or hereinafter in effect, is filed against the Authority and is not dismissed within sixty (60) days after such filing, or if the Authority is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy Law or consents to the filing of any bankruptcy or reorganization petition against the Authority under any such Law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Authority pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the Authority, as now or hereafter in effect; or

19.3.3 The Authority fails to pay any amount that the Authority is required to pay to Contractor under this Agreement within thirty (30) days after receipt by the Authority of written demand from the Contractor, unless the Authority or Contractor has requested that arbitration be commenced pursuant to **Article 33** hereof with respect to such failure to pay.

19.3.4 Authority fails to substantially fulfill any of its material obligations to the contractor in accordance with this Agreement,

No failure or refusal on the part of the Authority described in **Sections 19.3.1, 19.3.2 or 19.3.3 or 19.4** will constitute an “**Event of Default**” unless and until: (A) Contractor has given Notice to the Authority specifying with particularity the existence of such default; and (B) the Authority has neither corrected such default nor initiated actions reasonably likely to cure such default within thirty (30) days after receipt of such Notice.

19.4 Contractor Remedies.

Contractor may elect to suspend the performance of the Work or to terminate this Agreement for cause as a result of an Event of Default by the Authority under **Section 19.3**, upon delivery of a Notice of such suspension or termination to the Authority.

19.4.1 [RESERVED]

19.4.2 If Contractor terminates this Agreement pursuant to this **Section 19.4**, then Contractor will have the right to compensation set forth in **Section 20.3** which right to such compensation will constitute Contractor’s sole remedy for such Event of Default by the Authority.

20. TERM; TERMINATION FOR CONVENIENCE; TERMINATION PAYMENT

20.1 Term.

The initial term of this Agreement will commence on June 22, 2022 and end June 30, 2023. At the sole option of the Authority, the Agreement may be renewed for up to nine (9) additional one-year terms.

20.2 Authority’s Termination for Convenience.

Upon at least thirty (30) Business Days prior Notice to Contractor, the Authority will have the right to terminate this Agreement for its convenience, at any time and without cause.

20.3 Termination Payment.

If this Agreement is terminated (A) by the Authority without cause, for convenience, and Contractor has complied with all of the Authority’s termination instructions or (B) by Contractor for cause in accordance with **Section 19.4**, then Contractor will be entitled to receive payment for Work actually performed up to the date of termination of this Agreement.

21. SUSPENSION

21.1 Suspension by the Authority.

The Authority may at any time and for any reason, in its sole discretion, suspend performance of the Work or portion thereof by giving Notice to Contractor. Such suspension will continue for the period specified in the suspension Notice. At any time after the effective date of the suspension, the Authority may require Contractor to resume performance of the Work or portion thereof. On or before the end of the specified suspension period, the Authority will advise Contractor in writing that (A) the suspension period will be extended, (B) Work will resume, or (C) this Agreement will be terminated (for convenience or for cause) on a specific date. If no such Notice is received from the Authority prior to expiration of the suspension period, Contractor will give Notice to the Authority stating that, unless such Notice is given within thirty (30) days, this Agreement will be deemed terminated for convenience as of the commencement date of the suspension period, and the Authority will pay Contractor pursuant to the provisions of **Article 20**. In addition, and in either case, the Authority will compensate Contractor as a Change In Work for those costs of Contractor incurred during or as a result of the suspension period that are documented by Contractor to the reasonable satisfaction of the Authority, attributable solely to the suspension, and are:

21.1.1 for the purpose of safeguarding and/or protecting from deterioration the Work and the materials and equipment in the course of manufacturing, in transit and at the Project Site; and

21.1.2 for personnel, Subcontractors or rented equipment the payment of which, with the Authority's prior written concurrence, is continued during the suspension period and/or for demobilization or remobilization of personnel, Subcontractors or equipment, demobilization, penalties for cancellation of contracts, or other costs incurred due to the suspension and for additional costs due to Contractor having to complete the Work under less favorable conditions.

21.2 Contractor Obligations During Suspension.

Upon receiving a Notice of a suspension from the Authority in accordance with **Section 21.1**, except to the extent that the Notice requires otherwise, Contractor will (A) immediately discontinue the Work as of the date and to the extent specified in the Notice, (B) enter into no additional purchase orders or subcontracts, except those that may be specified in the Notice, (C) make reasonable efforts to obtain suspension of all purchase orders and subcontracts to the extent that they relate to the performance of the suspended Work, (D) continue to protect and maintain the Work and the materials and equipment in the course of manufacturing, in transit, at the Project Site and (E) take any other reasonable steps to minimize the costs and expenses associated with such suspension.

21.3 Contractor Claims for Compensation.

All claims by Contractor for compensation under this **Article 21** must be made within forty-five (45) days after the suspension period has ended or such claim will be deemed to have been waived by Contractor.

22. FORCE MAJEURE

22.1 Notice of Force Majeure.

A Party to this Agreement will not be in default hereunder or liable to the other Party for its failure to perform its obligations under this Agreement, to the extent such failure results from a Force Majeure. A Party claiming the benefit of this **Section 22.1** (the “**Affected Party**”) will undertake normal and customary commercially reasonable steps to diligently overcome or remove such Force Majeure. The Affected Party will give Notice of such claim to the other Party within five (5) Business Days of becoming aware of the occurrence of the Force Majeure and the Affected Party will provide the other Party with information concerning the nature and duration of the Force Majeure, its effect on the Work and the Affected Party’s efforts to overcome or remove the Force Majeure. If the Affected Party fails to provide the Notice described in the preceding sentence to the other Party within twenty (20) Business Days of the inception of the event of a Force Majeure, the Affected Party will be deemed to have waived its rights to the benefits of this **Article 22** or any other relief described in this Agreement with respect to such Force Majeure. A Notice satisfying the requirements of this **Section 22.1** must be clearly titled “NOTICE OF FORCE MAJEURE EVENT” and any writing not so titled will not constitute the Force Majeure Notice required by this **Section 22.1**. The Affected Party will provide periodic updates to the other Party during the continuation of the Force Majeure describing the duration of the Force Majeure, its effect on the Work and the Affected Party’s efforts to overcome or remove the Force Majeure. When the Affected Party is able to resume the performance of its obligations hereunder, it will promptly provide a Notice to the other Party and resume such performance.

22.2 Definition of Force Majeure.

“**Force Majeure**” means any event or condition, whether affecting the Project, the Collection and Recovery System, the Project Site, Contractor, the Authority or the County that occurs after the date of this Agreement and that has, or may reasonably be deemed to have, a material adverse effect on the Project, the Collection and Recovery System, the Project Site, the Work or on the ability of Contractor or the Authority to perform any of their respective obligations under this Agreement or for delay in such performance or compliance, in each case if such event or condition is beyond the reasonable control, could not reasonably have been foreseen and protected against using customary and normal commercial means, and is not the result of willful or negligent action of the Affected Party or its agents or Subcontractors relying thereon as justification for not performing any obligation or complying with any condition required of such Party hereunder. Force Majeure events may include, without limitation, the following:

(A) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Project Site), landslide, lightning, tornado, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, terrorism, war, blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, pandemics, or sabotage;

(B) the order or judgment of any Government Authority if it is not also the result of willful or negligent action or a lack of reasonable diligence of the non-performing Party, provided that the diligent contest in Good Faith of any such order or judgment will not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of such non-performing Party;

(C) Change in Law, which does not include any federal or state regulation that has been added, interpreted and/or enforced to offset any misinterpretation of the law;

(D) an adverse subsurface geotechnical condition satisfying the conditions set forth in **Section 4.2.4**;

(E) failure of a Government Authority to timely issue a Project Permit or other required Governmental Approval by the late finish date for such Project Permit or Governmental Approval, provided that such failure is not the result of delayed, willful or negligent action or a lack of reasonable diligence or responsiveness of the Contractor in (1) applying for or following through on such Project Permit or Governmental Approval or (2) otherwise performing its obligations hereunder;

(F) the discovery of Hazardous Materials (unless such Hazardous Materials were introduced to the Project Site by Contractor or its Subcontractors or as a result of the negligence, willful misconduct or failure of Contractor to perform its obligations hereunder) at, on or beneath the Project Site.

“Force Majeure” will not include the following:

(1) reasonably anticipated weather conditions for the geographic area of the Project Site;

(2) the imposition of any new condition in or other change to a Project Permit;

(3) the failure of a Subcontractor or any party to an agreement with Contractor to perform its obligations under such agreement or undertaking unless the failure of such person to perform is caused by a Force Majeure affecting such person;

(4) with respect to Contractor only, any error or defect in the design or construction or equipping of the Project or the performance of the Work;

(5) any lawful labor strike or work stoppages that are the result of Contractor’s or its Subcontractor’s breach of a valid collective bargaining agreement or violation of applicable Laws;
or

(6) general economic or industry conditions or increased costs of equipment, material, labor or other components of the Work.

22.3 Removal of Force Majeure.

22.3.1 The Affected Party will continue to perform its obligations under this Agreement to the extent possible after the occurrence of the Force Majeure and must use all commercially reasonable efforts to overcome, mitigate and remedy its inability to perform its obligations and the delays, damages and effects of the Force Majeure.

22.3.2 If, within five (5) Business Days after a Force Majeure occurrence that has caused Contractor to suspend or delay performance of all or a portion of the Work, Contractor has failed to take commercially reasonable efforts to overcome or cure the Force Majeure occurrence or its direct or indirect effects on the performance of its obligations hereunder, the Authority may, in its sole discretion and after Notice to Contractor, at Contractor's expense, initiate commercially reasonable measures to overcome or cure such Force Majeure 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; provided, however, that no such action of the Authority will (A) otherwise alter, amend, waive or relieve any obligation of Contractor under this Agreement, (B) impose any liability on the Authority under this Agreement or (C) result in any adjustment of the Service Fee.

23. INSURANCE

23.1 Contractor Provided Insurance.

Prior to commencement of any Work under this Agreement and throughout the Term (including any renewal terms), Contractor will obtain and maintain, at its sole expense, and will require each Subcontractor to obtain and maintain (either individually or as an additional insured under Contractor's policies), the insurance policies set forth in **Exhibit L**. All such insurance policies will be subject to the following provisions:

23.1.1 The deductible for claims made against any insurance obtained pursuant to this **Section 23.1** will be borne by Contractor

23.1.2 Only "occurrence" type coverages with no "sunset clause" ("claims made" coverages are not acceptable except with respect to professional liability insurance);

23.1.3 Coverages must be with Best's "A-" rated carriers that are licensed and qualified to do business in the State of Maryland;

23.1.4 The Authority and the County will be named as additional insureds on the Commercial General Liability and Environmental Impairment policies;

23.1.5 All losses will be adjusted to the Authority's and the County's satisfaction;

23.1.6 Deductibles in excess of twenty-five thousand Dollars (\$25,000) will require the Authority's prior written approval; and

23.1.7 All claims made will provide a minimum of a three (3) year discovery period.

23.2 Certificates of Insurance.

23.2.1 All certificates of insurance for the insurance described in **Section 23.1** will expressly provide that no less than thirty (30) days prior Notice by certified mail will be given to the Authority and the County in the event of (A) the exhaustion of any aggregate limit under any insurance policy or (B) cancellation or non-renewal of the coverage evidenced by such certificate. The Authority will not be obligated to make payment of any portion of the Service Fee to Contractor unless Contractor's current certificates of insurance are on file and acceptable to the Authority. Contractor will provide no less than thirty (30) days prior Notice to the Authority and the County in the event of any material change or alteration with respect to the required insurance policies.

23.2.2 In no event will any failure of the Authority to receive Contractor's certificates of insurance required hereunder or to demand receipt of such certificates of insurance be construed as a waiver of Contractor's obligations to obtain insurance pursuant to these insurance requirements. The obligation of Contractor to procure and maintain any insurance required by the provisions of **Section 23.1** is a separate responsibility of Contractor and independent of the duty to furnish a certificate of insurance of any such insurance policies.

23.2.3 Neither Party will amend the insurance policies so as to reduce or limit coverages, increase deductibles or otherwise adversely affect the rights and coverages of the insured under such policies or allow the required insurance coverages to lapse without the other Party's prior written approval thereto.

23.3 Notice of Cancellation.

Should a notice of insurance cancellation be issued for nonpayment of premiums or any part thereof with respect to insurance to be provided by Contractor hereunder, or should Contractor fail to provide and maintain certificates for such insurance as set forth herein, the Authority will have the right, but will not be obligated, to pay for such coverage and to deduct all costs and expenses thereof from any sums that may be due or become due Contractor, or to seek reimbursement for said payments from Contractor, which sums will be due and payable immediately upon receipt by Contractor of an invoice therefor from the Authority.

23.4 Failure to Provide Insurance.

In the event of failure of Contractor to furnish and maintain the insurance required of it pursuant to **Section 23.1** and to furnish satisfactory evidence thereof, the Authority will have the right (but not the obligation) to secure and maintain such insurance on behalf of Contractor and Contractor agrees to furnish all necessary information to place the insurance coverage and to pay the costs and expenses thereof to the Authority immediately upon presentation of an invoice and reasonable cost substantiation therefor.

23.5 Cooperation.

Contractor agrees to cooperate fully with the Authority's insurance representatives and/or risk manager in providing any necessary insurance data and information as requested by the Authority

and to complete any associated documents furnished by the Authority or its insurance representatives.

23.6 Claims.

23.6.1 A Party entitled to or desiring recovery of insurance proceeds under any insurance policy (such Party hereinafter defined as the “**Claimant**”) will be solely responsible for initiating and pursuing such claim. A Claimant who is unsuccessful in obtaining insurance proceeds will not be entitled to relief from the other Party to this Agreement or to any adjustment, modification or relief of or from its obligations under this Agreement as a result of the denial of such claim. If both the Authority and Contractor initiate claims under an insurance policy and such claims exceed the total liability limit of such insurance policy, the Authority and Contractor will revise their respective claims by amounts proportionate to the relative amounts of their claims so that the total amount of their claims equals the total liability limit.

23.6.2 A Claimant is solely responsible for the payment or cost of any and all deductible amounts applicable under the insurance policy to which its claim relates. If both the Authority and Contractor initiate claims under an insurance policy, the Authority and Contractor will apportion the deductible amounts applicable under the insurance policy to which their claims relate in proportion to the relative amounts of their claims. Notwithstanding any provision in this Agreement to the contrary, the Service Fee will not be increased to cover Contractor’s obligation to pay any insurance deductible in connection with an insurance claim by Contractor, and Contractor will not be entitled to any adjustment, modification or relief of or from its obligations under this Agreement as a result of Contractor’s obligation to pay or bear the cost of any insurance deductible in connection with an insurance claim by Contractor.

24. LOSS OR DAMAGE

24.1 Project Repair and Replacement Responsibility.

Contractor assumes full responsibility, without reimbursement, for the cost of replacing the loss or repairing the damage to all materials, equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) which are purchased by Contractor for permanent installation in or for use during operation or maintenance of the Project regardless of whether the Authority has title thereto, except to the extent that the loss is caused by the Authority’s negligence or willful misconduct.

24.2 Responsibility for Safe Delivery of Materials, Equipment and Supplies.

As part of the performance of the Work, Contractor will be responsible for assuring safe delivery of all materials, equipment, supplies and other items to the Project Site and the safe storage thereof at such locations.

25. INDEMNIFICATION

25.1 Contractor Indemnification.

25.1.1 To fullest extent permitted by applicable Law, Contractor will defend, indemnify and hold harmless the Authority and the County and their respective, assigns, employees, agents, officers, directors, members and anyone else acting for or on behalf of them or their successors and assigns (the “**Authority Indemnified Parties**”) from and against all liability, suits, judgments and claims by third parties, damages, losses, and expenses (including, but not limited to, costs of response, removal of, remediation, any other clean-up costs, liabilities and/or penalties, court costs and reasonable attorneys’ fees) which may arise as a result of:

(A) any negligent act, error or omission of willful misconduct of Contractor, any Subcontractor or their assigns, employees, agents, officers and directors or anyone else acting for or on behalf of Contractor, any Subcontractor or their Affiliates, successors or assigns, in the performance of professional engineering and consulting services pursuant to this Agreement,

(B) Hazardous Materials that were introduced to the Project Site by Contractor or its Subcontractors or as a result of the negligence, willful misconduct or failure of Contractor to perform its obligations hereunder, or

(C) any breach or default by Contractor in performing its obligations under this Agreement.

25.1.2 Contractor will defend, indemnify and hold the Authority Indemnified Parties harmless from and against all claims by any Government Authority claiming Taxes based on net receipts or on income of Contractor or any of its Subcontractors or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor or any of its Subcontractors or any of their respective agents or employees under this Agreement.

25.1.3 Notwithstanding anything to the contrary herein, contractor’s obligations to defend, indemnify, protect and hold harmless Authority Indemnified Parties, as set forth in this **Section 25**, do not apply to the extent such liabilities, suits, judgments and claims by third parties, damages, losses and expenses (including, but not limited to, costs of response, removal of, remediation, any other clean-up costs, liabilities and/or penalties, court costs and reasonable attorneys’ fees) occur or arise out of any preexisting site conditions, including but not limited to landfill gas migration. However, it is expressly agreed that this provision is not intended to relieve Contractor of any obligations pursuant to this **Section 25** occurring or arising out of the exacerbation of any pre-existing site condition due to the negligence, gross negligence, willful misconduct or breach or default of the Contractor.

25.2 Indemnification Claims.

25.2.1 In any and all claims against an Authority Indemnified Party by Contractor or any Subcontractor or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Contractor’s indemnification obligation stated above will not be limited in any way in the amount or type of damages, compensation or benefits payable by or

for Contractor or the Subcontractor under the applicable workers' compensation act, disability acts, or other employee benefit acts.

25.2.2 [RESERVED]

25.2.3 [RESERVED]

25.2.4 The provisions of this **Article 25** will not deprive either Party of any other indemnity action, right or remedy otherwise available to such Party at common law.

25.2.5 [RESERVED]

25.3 Survival of Indemnification.

The provisions of this **Article 25** will survive completion of the Work and/or the termination or expiration of this Agreement.

26. [RESERVED]

27. TREATMENT OF CONFIDENTIAL INFORMATION

27.1 Confidential Information.

The rights and obligations of the parties set forth herein with respect to Confidential Information are subject to Applicable Law, including Title 10, Subtitle 6 of the State Government Article of the Annotated Code of Maryland, as amended, and the Maryland Public Information Act.

To the extent permitted by Applicable Law, the Authority will hold Confidential Information in strict confidence and take all reasonable precautions to prevent disclosure to third parties. The Authority will promptly notify the Contractor of the identity of any Person who requests a disclosure of Confidential Information. The Authority in its reasonable discretion will determine the response to any request for disclosure of Confidential Information and is not required to withhold disclosure of Confidential Information upon a lawful request for information. The Authority will consider any information or legal arguments presented by the Contractor before the disclosure of the requested information. The Authority will not be liable for any legal issue associated with the Contractor's position.

The company should specifically identify Confidential Information by marking the applicable pages "CONFIDENTIAL." However, the Contractor understands that the Authority in its reasonable discretion may determine that disclosure of some information is required under the public disclosure act, COMAR 21.06.01.02 (F), and the Contractor agrees to waive any claim against the Authority with respect to any such disclosure. The Authority will give notice to the Contractor of any requests for disclosure of information identified as confidential.

In addition, any information that is marked by the Contractor as confidential is not confidential if it (a) is now in or after the date hereof has entered the public domain through no fault of the Authority or its Board, (b) was known by the Authority prior to its disclosure and not obtained

through a confidential claim hereunder, (c) was obtained by a third party who is not known by the Authority to be prohibited from disclosing such information, and (d) is required to be disclosed by the Authority, County or the Authority's Board as a matter of law and or regulation.

27.2 Public Relation Matters.

Contractor agrees that all public relation matters arising out of or in connection with the Work will be the sole responsibility of the Authority. Therefore, Contractor will obtain the Authority's prior written approval of the text of any announcement, publications, photograph or other type of communication concerning the Work or a Project that Contractor or its Subcontractors wish to release for publication.

27.3 Survival.

The provisions of this **Article 27** will survive completion of the Work and/or the termination or expiration of this Agreement.

28. INVENTIONS AND LICENSES

28.1 Intellectual Property Rights.

28.1.1 Contractor agrees that the Authority, the County and any other owner, licensee or lessee of a Project and their respective successors, assigns and designees will at all times have the right to use, either by license or otherwise, any and all patented or proprietary information relative to a Project that is included in the Work, whether now existing or hereinafter developed or otherwise acquired, to the extent necessary in connection with the construction, ownership, operation or maintenance of a Project, and Contractor further agrees that it will, upon request, provide aforementioned persons and parties with such information in a timely fashion, without any limitations and subject only to the confidentiality restrictions provided in **Article 27**. Contractor hereby grants to the County, the Authority and their respective successors, assigns and designees an irrevocable, perpetual and royalty free license to use all patents, copyrights and other proprietary information now or hereafter owned or controlled by Contractor or its Subcontractors, that in any way relates to the use or enjoyment of all or any part of the Work or a Project, in each case, to the extent necessary for the construction, ownership, operation or maintenance of the Project or any unit or component thereof designed, specified by Contractor under this Agreement.

28.1.2 Contractor will obtain an assignment of the same rights and licenses, as stated in **Section 28.1.1**, with respect to all patents, copyrights and other proprietary information from each Subcontractor and such rights and licenses are hereby assigned by Contractor to the Authority.

28.2 Survival.

The provisions of this **Article 28** will survive completion of the Work and/or the termination or expiration of this Agreement.

29. ASSIGNMENT BY THE AUTHORITY

29.1 The Authority may, at any time and without the prior consent of Contractor, assign all or part of its rights, title, and interest in this Agreement. In addition, the Parties acknowledge and agree that the Authority may, at any time and without the prior consent of Contractor, sell, lease or otherwise transfer all or any portion of the Project to the County or any other party.

29.2 In the event that the Authority assigns, sells, leases or otherwise transfers all or any portion of the Project to a third party, other than the County, and such third party is, in the exercise of Contractor's reasonable discretion, determined to be a direct competitor of Contractor with respect to the construction, operation and maintenance of generating facilities similar to the Project, Contractor will have the right to provide the Authority with a written request that this Agreement be terminated for the convenience of the Authority and the Authority will so terminate this Agreement.

30. ASSIGNMENT BY CONTRACTOR

Contractor may, with the Authority's prior written consent (which consent may not be unreasonably withheld, delayed or conditioned), assign this Agreement to any successor to all of or substantially all of its business by merger or acquisition. Any other assignment by Contractor of this Agreement or any partial or total interest therein, without the Authority's prior written consent, will be null and void *ab initio*.

31. INDEPENDENT CONTRACTOR

Contractor is an independent contractor, and nothing contained herein will be construed as constituting any relationship with the Authority other than that of the Authority and independent contractor, nor will it be construed as creating any relationship whatsoever between the Authority and Contractor's employees. Neither Contractor, nor any of its employees, are or will be deemed to be employees of the Authority. Neither the Authority, nor any of its employees, are or will be deemed to be employees of Contractor. Subject to the provisions of this Agreement, Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees.

32. LIENS AND CLAIMS

Contractor will indemnify and hold harmless the Authority and the County and defend them 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 did not result from the Authority's wrongful action or wrongful failure to pay Contractor. If Contractor will default in discharging any lien(s) or claims(s) filed or asserted against or upon the Authority, the County, the Project, the Landfill or the Project Site 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, the Authority will provide Contractor with Notice thereof and Contractor will then satisfy or defend any such lien(s) or claims(s) or otherwise cause such lien to be released or discharged in accordance with applicable Law. If Contractor either does not satisfy such lien(s) or claim(s) or does not post a bond against such lien(s) and claim(s), in each case within fifteen (15) Business Days of Notice

from the Authority, then the Authority will have the right to satisfy such lien(s) and claim(s) or post a bond against such lien(s) and claim(s), and Contractor will, within five (5) Business Days of request by the Authority, reimburse the Authority for all costs incurred by the Authority to discharge or bond such lien(s) or claim(s) including administrative costs, attorneys' fees and other direct third party expenses. The Authority will have the right to offset any liability of Contractor under this **Section 32** in accordance with **Section 7.4**.

33. DISPUTE RESOLUTION AND ARBITRATION

33.1 Dispute Resolution Procedure.

33.1.1 Initiation. Either Party may initiate the Dispute resolution by giving Notice of its claim to the other Party.

33.1.2 Level I. Within five (5) Business Days of the receipt of the Notice, the Project Manager and the Project Director will meet, confer, and attempt to resolve the Dispute within the next ten (10) Business Days.

33.1.3 Level II. If the Dispute is not resolved within two (2) Business Days of the close of the Level I meeting, a representative of the Authority and Contractor will meet, confer, and attempt to resolve the Dispute within the next ten (10) Business Days.

33.1.4 Resolution. The terms of the resolution of all Disputes concluded in Level I or Level II meetings will be memorialized in writing and signed by each Party.

33.1.5 Arbitration. No Dispute may be pursued through arbitration unless such Dispute has been raised and considered in the above Dispute resolution procedure, unless specified otherwise.

33.2 Arbitration.

33.2.1 Any Dispute not resolved by the procedures set forth in **Sections 33.1.2** and **33.1.3** will, upon the agreement of both Parties (and without regard to whether or not any provision of this Agreement expressly provides for arbitration), be submitted to and settled by arbitration in Anne Arundel County, Maryland, in conformance with Construction Industry Arbitration Rules of the American Arbitration Association then in effect (or at any other place or under any other form of arbitration mutually acceptable to the Parties). Any award and a judgment thereon may be entered in the highest court of a forum, state or Federal, having jurisdiction. Absent agreement of both Parties to arbitration, venue for the resolution of any Dispute will be in the Circuit Court for Anne Arundel County, Maryland.

33.2.2 The expenses of the arbitration will be borne by the losing Party (or apportioned if there is no clear winning or losing Party), as determined by the arbiters, provided that:

33.2.2.1 Each Party will pay for and bear the cost of its own experts, evidence and counsel; provided, however, if the arbiters determine that a Party's Dispute, controversy, or claim submitted to arbitration is frivolous or non-meritorious, such Party will pay all costs of experts, evidence and counsel incurred by the other Party; and

33.2.2.2 If during the arbitration process a Party proposes the financial settlement of a claim (the “**Proposed Settlement**”) that is the subject of the arbitration, which Proposed Settlement is subsequently rejected by the other Party (the “**Rejecting Party**”), and thereafter the arbiters award the proposing Party an amount more favorable than or equal to the Proposed Settlement amount or correspondingly require the proposing Party to pay an amount less than or equal to the Proposed Settlement (as the case may be), then the Rejecting Party will pay all costs of experts, evidence and counsel incurred by the Party that offered the Proposed Settlement.

33.3 Selection of Arbiters.

Contractor will nominate and appoint the first arbiter (the “**First Arbiter**”), and the Authority or its legal representative will nominate and appoint the second arbiter (the “**Second Arbiter**”). The First and Second Arbiters will agree upon the appointment of the third arbiter (the “**Third Arbiter**”), and if the First and Second Arbiters cannot agree on the appointment of the Third Arbiter, the Third Arbiter will be selected by the American Arbitration Association. The three (3) arbiters will resolve the Dispute, controversy, or claim and report that decision in writing to Contractor and the Authority. The Authority and Contractor agree to require that the three (3) arbiters meet to resolve the Dispute a minimum of ten (10) days per month until the written decision is issued and that a written decision be issued within 45 days of the conclusion of the arbitration.

33.4 Parties Rights During Arbitration.

In any arbitration under this **Article 33** both Parties will be entitled to:

33.4.1 Request the other Party to produce documents or things in accordance with the limitations and procedures set forth in Rule 34 of the Federal Rule of Civil Procedure; and

33.4.2 Serve upon the other Party written interrogatories to be answered by the Party served, in accordance with the limitations and procedures set forth in Rule 33 of the Federal Rules of Civil Procedure.

Upon timely objection or request by a Party, the arbitrator(s) will:

33.4.3 Determine the extent to which propounded interrogatories will be permitted and answered; and

33.4.4 Upon Notice and a showing of good cause therefor, order a Party to produce documents and things and to permit the inspection and copying or photographing of any designated documents or objects, provided such documents or objects have been specifically identified, are not privileged, their relevance and materiality to the issue(s) in arbitration have been explained and are reasonably calculated to lead to the discovery of admissible evidence. In the event the Parties cannot themselves agree thereon, the arbitrators may also specify just terms and conditions in making the inspection and taking the copies and photographs.

34. NOTICES AND COMMUNICATIONS

34.1 Notices.

Any Notice pursuant to the terms and conditions of this Agreement will be in writing and (A) delivered personally, (B) sent by registered or certified mail, return receipt requested or (C) sent by a recognized overnight mail or courier service, to the following addresses or such other address as any such person shall specify to the other such persons:

If to Contractor: [COMPANY ADDRESS]

If to the Authority:

Northeast Maryland Waste Disposal Authority
Tower II – Suite 402
100 South Charles Street
Baltimore, MD 21201
Attention: Executive Director

Notices will be deemed served when delivered.

35. REPRESENTATIONS AND WARRANTIES

35.1 Contractor Representations and Warranties.

Contractor represents and warrants to the Authority that:

35.1.1 Contractor is a [limited liability company or corporation], duly organized, validly existing, and in good standing under the Laws of [STATE] and is duly authorized and qualified to conduct business in the State of Maryland.

35.1.2 Contractor has duly authorized the execution and delivery of this Agreement and this Agreement 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.

35.1.3 Neither the execution or delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations in connection with the transactions contemplated by this Agreement, or the fulfillment by Contractor of the terms or conditions thereof (A) conflicts with, violates or results in a breach of any Law applicable to Contractor, or (B) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement 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.

35.1.4 No approval, authorization, order or consent of, or declaration, registration or filing with, any Government Authority is required for the valid execution and delivery of this Agreement by Contractor or performance hereunder by Contractor, other than the Project Permits which will be obtained in accordance with the terms hereof.

35.1.5 There is no action, suit or proceeding, at law or in equity, before or by any court or Government 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 under this Agreement or in connection with the transactions contemplated by each thereof, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby.

35.1.6 Contractor is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it will not become so in arrears during the Term.

35.1.7 Contractor has not employed or retained any person or entity, other than a bona fide employee or agent working for Contractor, to solicit or secure this Agreement and Contractor has not paid or agreed to pay any person or entity, other than a bona fide employee or agent working for Contractor, any fee or any other consideration contingent on the execution of this Agreement.

35.2 Authority Representations and Warranties.

The Authority represents and warrants to Contractor that:

35.2.1 The Authority is a body politic and corporate and a public instrumentality of the State of Maryland, duly organized and validly existing under the constitution and Laws of the State of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

35.2.2 The Authority has duly authorized the execution and delivery of this Agreement and this Agreement 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.

35.2.3 Neither the execution or delivery by the Authority of this Agreement, nor the performance by the Authority of its obligations in connection with the transactions contemplated by this Agreement, or the fulfillment by the Authority of the terms or conditions thereof (A) conflicts with, violates or results in a breach of any Law applicable to the Authority, or (B) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement 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.

35.2.4 No approval, authorization, order or consent of, or declaration, registration or filing with, any Government Authority is required for the valid execution and delivery of this Agreement or performance hereunder by the Authority, other than any approval of the County required under the terms of the County Agreement.

35.2.5 There is no action, suit or proceeding, at law or in equity, before or by any court or Government Authority, pending or, to the best of the Authority's knowledge, threatened, against the Authority, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Authority of its obligations under this Agreement or in connection with

the transactions contemplated by each thereof, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.

36. PERFORMANCE SECURITY

As of the date hereof, Contractor will deliver to the Authority a performance bond substantially in the form set forth in **Exhibit F**, executed by itself as principal and a surety that is acceptable to the Authority, in its sole discretion. The performance bond will be equal to the value of one year of services. In the event that the Authority desires to have additional persons named as payees on the letter of credit or obligees on the bonds, as applicable, the Authority may request an endorsement to the letter of credit or bonds in a form reasonably acceptable to the Authority and the letter of credit issuer or Contractor's surety, as applicable. The performance bond required under this **Article 36**, as applicable, will expire at the end of the Agreement term, including any renewal term.

37. MISCELLANEOUS PROVISIONS

37.1 Limit on Authority's Obligations.

Notwithstanding anything herein to the contrary, all obligations to be undertaken by the Authority pursuant to this Agreement will not constitute general obligations of the Authority and will not pledge the full faith and credit of the Authority, but will be limited obligations of the Authority only, payable solely from funds provided by the County pursuant to the County Agreement, which County funds are subject to appropriation. The Authority will be required to make payments and to perform such of its obligations under this Agreement as require the expenditure of funds only to the extent that there are funds available to the Authority from the County in accordance with the terms and conditions of the County Agreement.

37.2 No Personal Liability Against Agents of the Authority.

The execution and delivery of this Agreement by the Authority does not impose any personal liability on the members, officers, employees or agents of the Authority. No recourse can be had by Contractor for any claims based on this Agreement against any member, officer, employee or other agent of the Authority in his or her individual capacity, all such liability, if any, being expressly waived by Contractor by the execution of this Agreement.

37.3 Severability.

The invalidity or unenforceability of any portion or provision of this Agreement will in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision will be deemed severed from this Agreement and the balance of this Agreement will be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

37.4 Governing Law.

This Agreement will be governed by the Laws of the State of Maryland, regardless of the laws of conflicts of law.

37.5 Survival.

In order that the Parties may fully exercise their rights and perform their obligations hereunder arising from the performance of the Work under this Agreement, any provisions of this Agreement that are required to ensure such exercise or performance will survive the termination or expiration of this Agreement.

37.6 Entire Agreement.

This Agreement, as executed by authorized representatives of the Authority and Contractor, and all amendments and modifications thereto issued by the Authority, as each relates to the Work and all of which are incorporated herein by reference, constitute the entire agreement between the Parties with respect to the matters dealt with herein, and there are no oral or written understandings, representations or commitments of any kind, express or implied, which are not expressly set forth herein. Any representations, warranties, statements or inferences therefrom by either Party or its representatives, whether made orally or in writing, prior to the date of this Agreement will have no legal effect and will not be binding on either Party unless incorporated herein or in documents or agreements mutually agreeable to the Parties provided after the date of this Agreement.

37.7 Modifications.

No oral or written modification of this Agreement by any officer, agent or employee of Contractor or the Authority, either before or after execution of this Agreement, will be of any force or effect unless such modification is in writing and is signed by the Party to be bound thereby.

37.8 Waiver.

Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time will not in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding.

37.9 Records.

Contractor will retain and maintain all records and documents relating to this Agreement for four (4) years after termination or expiration of this Agreement and will make such records and documents available for inspection and audit by authorized representatives of the Authority and the County at all reasonable times.

37.10 Limitations of Liability.

37.10.1 With respect to the performance hereunder, a Party will not be liable to the other Party, whether arising out of contract, tort (including negligence) or strict liability, for loss of anticipated profits, cost of money, loss of use of capital, or consequential loss or damage of any other nature.

37.10.2 [RESERVED]

37.10.3 [RESERVED]

37.11 Priority of Documents.

In the event of a conflict in the provisions of this Agreement, the following priority of documents will control the resolution of such conflict:

1. The provisions of this Agreement (excluding the Exhibits to this Agreement);
2. **Exhibit E** – Performance Guarantees;
3. **Exhibit A** – Scope of Work and Specifications;
4. **Exhibit J** – Detailed Plans For Any Project Changes;
5. Other Exhibits to this Agreement;
6. Specifications and other materials approved by or on behalf of the Authority during prosecution of the Work; provided, however, that the general rule that specifics prevail over generalities will remain in effect in interpreting this Agreement; and
7. The Request for Proposals

37.12 Cooperation.

Each Party will take such further actions, execute such documents and furnish such information as may be reasonably requested by the other Party, and will reasonably cooperate with the other Party in order to carry out the purposes and intent of this Agreement and in order to enable them to perform their respective obligations hereunder. Such activity or cooperation will be provided by each Party at no additional cost to the other Party, unless otherwise provided herein. Contractor agrees to cooperate with the Authority in connection with any documents, agreements or amendments or additions to this Agreement reasonably required by the County.

37.13 County as Third-Party Beneficiary.

The County is a third-party beneficiary of all of the Contractor's obligations hereunder. The County has the right, but not the obligation, to enforce the rights, remedies, powers and privileges of the Authority under this Agreement in accordance with the County Agreement.

37.14 Rules of Interpretation.

The following rules will apply in interpreting this Agreement unless otherwise expressly provided herein or the context otherwise requires:

37.14.1 All reference in this Agreement to designated “Articles”, “Sections”, “Exhibits” and other subdivisions are to the designated Articles, Sections, Exhibits and other subdivisions of this Agreement.

37.14.2 Words of the masculine gender include correlative words of the feminine and neuter genders and words expressed in the singular will include the plural and the plural and singular.

37.14.3 The table of contents and the headings or captions used in this Agreement are for convenience of reference only and do not define, limit or describe any of the provisions hereof or the scope or intent hereof.

37.14.4 References to agreements or contracts include all amendments, modifications and supplements thereto.

37.14.5 All terms and phrases used in this Agreement will be interpreted in accordance with common usage and meaning in the United States. All documents, warranties, Notices, instructions and other written materials to be provided to the Parties hereunder will be provided in English.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Authorized Representative of the Parties hereto have caused this Agreement to be executed under seal as of the day and year first above written.

**NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY**

Attest:

By: _____
Name:
Title:

By: _____
Name:
Title:

[COMPANY]

Attest:

By: _____
Name:
Title:

By: _____
Name:
Title: