
**SERVICE CONTRACT FOR THE
CONSTRUCTION MANAGEMENT, CONSTRUCTION INSPECTION, AND SUPPORT
SERVICES
FOR THE GUDE LANDFILL REMEDIATION PROJECT
FOR MONTGOMERY COUNTY**

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**SERVICE CONTRACT FOR THE
CONSTRUCTION MANAGEMENT, CONSTRUCTION INSPECTION, AND SUPPORT
SERVICES
FOR THE GUDE LANDFILL REMEDIATION PROJECT
FOR MONTGOMERY COUNTY**

This Service Contract for the Construction Management, Construction Inspection, and Support Services for the Gude Landfill Remediation Project (“Contract”) is made by and between the Northeast Maryland Waste Disposal Authority, an instrumentality of the State of Maryland (“Authority”) and CONTRACTOR, organized and existing under the laws of the State of XXXXX and authorized to do business in the State of Maryland (“Construction Management Engineer”).

RECITALS

1. On behalf of Montgomery County, Maryland, (the “County”), the Authority issued a Request for Proposals for the Construction Management, Construction Inspection, and Support Services related to the remediation of a certain portion or portions of the Gude Landfill (“Landfill”), located at 600 East Gude Drive, Rockville, Maryland 20850.

2. The Landfill, now closed, was previously permitted and is currently owned by the County and maintained by the County’s, Department of Environmental Protection (“DEP”).

3. The Construction Management Engineer shall ensure that the required Construction Management, Construction Inspection, and Support Services for the remediation of the Landfill will be completed no later than the Guaranteed Final Acceptance Date, pursuant to the terms of this Contract.

4. The Work shall result in the procurement of a qualified construction firm that will implement the designed Corrective Measures.

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

**ARTICLE I.
DEFINITIONS**

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

**ARTICLE II.
SCOPE OF WORK AND RESPONSIBILITIES OF EACH PARTY**

Section 2.01 Contract Documents

(a) The documents that comprise this Contract (“**Contract Documents**”), in order of precedence, are:

- (i) Contract, including the Schedules and Appendices;
 - (ii) Request for Proposals dated August 12, 2019 (“**RFP**”) [and Addenda published on the following dates:];
 - (iii) Construction Management Engineer’s Proposal dated <DATE>[, the letter of clarification dated <DATE> and the Best and Final Offer letter dated <DATE>];
 - (iv) Construction Documents (Construction Design Drawings and Project Manual) as prepared by Design Engineer and approved by the Authority;
 - (v) Detailed plans, specifications and other materials approved by or on behalf of Authority during prosecution of the Work; provided, however, that in no event shall a conflict be deemed to exist if the provisions of the Schedules, Appendices, Exhibits or materials approved by or on behalf of Authority during the prosecution of the Work are more specific or stringent or require more activity or Work than the terms of the main body of this Contract.
- (b) Construction Management Engineer represents and warrants that it has identified any and all conflicts between the provisions of this Contract on the one hand and the Schedules, Appendices, Exhibits hereto on the other, and such conflicts have been resolved to Construction Management Engineer’s satisfaction prior to the execution of this Contract. In the event of a conflict (provided that the absence of a provision or clause shall not be construed as a conflict) in the provisions of this Contract, the priority of documents in Section 2.01(a) shall control the resolution of such conflict.

Section 2.02 Scope of Work

This Contract consists of the requirements for the construction management, construction inspection, and support services (for the Construction Management Engineer) necessary during the duration of the construction of the MDE-approved Corrective Measures at the Gude Landfill. The Construction Management Engineer services required include, but are not limited to: constructability and cost estimate reviews of design documents and the Construction Documents, contract document review, construction management and full-time on-site construction inspection, processing/logging all project correspondence, performing construction quality testing, conducting bi-weekly progress meetings, weekly email status updates, providing meeting minutes for all project meetings, and other tasks required for the successful completion of the project. Construction will be accomplished under phased construction contracts that will overlap and be executed in sequence based upon the design and fiscal year budgeting constraints. This Scope of Work specifically includes the requirements in the RFP [, as amended]. Generally, the Construction Management Engineer will be responsible for the tasks more fully described in Schedule II):

Section 2.03 Responsibilities of the Authority

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

- (a) provide access to the Landfill through a Task Order with Montgomery County, Maryland (“**County**”);
- (b) provide access to County files and data needed for the Work.
- (c) pay for documented and approved work.

Section 2.04 Responsibilities of the Construction Management Engineer

Construction Management Engineer, must, in accordance with the provisions of this Contract:

- (a) furnish all labor, equipment, and materials necessary to provide the engineering, permitting, construction management and inspection services to enforce the Construction Documents with respect to the requirements set forth in the Contract Documents;
- (b) ensure that the Design Engineer and Construction Contractor obtain all Governmental Approvals necessary to prosecute the Construction Documents and perform all of its obligations under this Contract; and,
- (c) perform all necessary site work to investigate, design, provide Procurement support, and construction inspection services.

ARTICLE III.

**TERM OF CONTRACT, CONSTRUCTION MANAGEMENT RESPONSIBILITIES,
NOTICE TO PROCEED DATE CONDITIONS, END OF TERM TRANSITION**

Section 3.01 Effective Date

This Contract shall be effective on the date that it is fully executed (“**Effective Date**”). The Authority shall execute the Contract after the Construction Management Engineer executes the Contract. The Authority shall not execute the Contract until formal written approval is provided by the County.

Section 3.02 Term

- (a) The Contract shall become effective on the Effective Date, and shall continue until the seventh anniversary of the Effective Date (“**Initial Term**”) or, if renewed, as provided in Section 3.02(d), until the last day of the Renewal Term, unless earlier terminated by a Party in accordance with the provisions of this Contract.
- (b) The Effective Date shall constitute the first day of the Construction Management.
- (c) The acceptance of the design drawings produced by the Design Engineer by the Authority, in writing, shall constitute the first day of the Procurement Support Period.
- (d) The Authority shall have the option, in its sole discretion, to renew this Contract for up to two additional 1-year periods after the Initial Term (each a “**Renewal Term**”) on the same

conditions as are applicable during the Initial Term. The Authority shall give Construction Management Engineer written notice of its election to renew this Contract on or before the 90th day preceding the last day of the Initial Term or the then effective Renewal Term.

Section 3.03 Responsibilities

(a) Authority Construction Management Responsibilities. Construction Management the Authority, at its own cost and expense, shall use good faith efforts to undertake and complete the following Authority responsibilities:

- 1) Assistance with Environmental and Governmental Approvals. The Authority shall provide the Construction Management Engineer reasonable assistance with the Construction Management Engineer's obligation to cause the Design Engineer and Construction Contractor to obtain all applicable Governmental Approvals in accordance with the requirements of this Contract.
- 2) Landfill Access and Easements and/or Right of Way Agreements. The Authority shall negotiate and execute a Task Order, which shall include the access to the Landfill and access to pertinent data and easements, or other interests in real property relating to the Landfill.
- 3) The Authority shall provide reasonable administrative, non-financial, support for all work performed by the Construction Management Engineer, which shall include reviewing documents submitted for Authority approval in a timely fashion, provided, however, that Construction Management Engineer shall remain liable for all Work to be performed.
- 4) The Authority shall manage the procurement process for the construction services related to the Corrective Measures.

(b) Construction Management Engineer Responsibilities.

The Construction Management Engineer shall prosecute the Work within the parameters set forth within this Contract, specifically under Section 2.04 and Appendix 2.

(c) Payment for Construction Management Engineer Work. The Construction Management Engineer shall be paid reimbursable costs within 45 days after the submission of a satisfactory Invoice and required supporting documentation therefor establishing the achievement of the applicable precondition to payment, if any. Payment shall be subject to the requirements of Appendix 8.

Section 3.04 Notice to Proceed Conditions

(a) The Authority does not expect to issue a Notice to Proceed until the following conditions (the "**Notice to Proceed Conditions**") are satisfied (or waived, in writing, by the Authority in the exercise of its sole discretion):

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

**ARTICLE IV.
SITE LOCATION**

Section 4.01 Site

The site is located at the Gude Landfill (on the Site as described in the Task Order and Appendix 12).

Section 4.02 Coordination with work at Site

Construction Management Engineer's Work must be coordinated with and may not interfere with the ongoing operations at the Landfill.

Section 4.03 Site Access

The Authority will make the Site available to the Construction Management Engineer through a Task Order between the Authority and the County. Construction Management Engineer must comply with and perform all of the Authority's obligations under the Task Order (other than Article II and Article III, Sections 3.1 (a) and (b) of the Task Order) and shall not cause, directly or indirectly, breach or violation of the Task Order.

**ARTICLE V.
DEVELOPMENT OF CORRECTIVE MEASURES**

Section 5.01 Implementation of Corrective Measures and Beneficial Uses

Construction Management Engineer is responsible for the overseeing the prosecution of the Corrective Measures and Beneficial Uses in accordance with the provisions of this Contract, including the technical specifications and requirements set forth in Article VI and Schedule II, and meeting the provisions, obligations and requirements set forth in Appendix 3 (Quality Management Plan). The Authority will provide information within its control that is reasonably necessary for the implementation of the design, and has the right to review and approve the Work for conformance to the requirements of the Contract.

Section 5.02 Permits for the Remediation Work

- (a) The Authority will provide to the Construction Management Engineer technical and other information reasonably necessary for the review of the required applications and submissions, and, as set forth in Appendix 4, will have the right to review and approve all such applications and submissions, which must be made in a form and substance reasonably satisfactory to the Authority.
- (b) Construction Contractor is responsible for paying any fine, fees, costs, or penalties assessed or imposed for violations of or other failure to conform to the requirements of any necessary Governmental Approval to the extent that such fines, fees, costs, or penalties are not the result of data, information or direction received from the Authority. Construction Management Engineer is responsible for the preparation of all reports necessary to conform to the requirements of Governmental Approvals. The Construction Management Engineer must provide reasonable review time to the Authority for all reports and, where required by Applicable Law, the Authority will sign the necessary reports in an expeditious manner so as to avoid any potential non-compliance.

(d) Construction Management Engineer is responsible for overseeing the permits needed for the construction of the Corrective Measures.

Section 5.03 Corrective Measure Financing

The Construction Management Engineer will not be required to prepare documents necessary for a public offering of bonds to the County, its underwriters, their counsel, bond counsel, the rating agencies, Authority Engineer, or other consultant, credit facility providers and other financing institutions or parties involved in any financing process and the issuance of any bonds, including financial information concerning Construction Management Engineer, its affiliates, Major Sub-Construction Management Engineers, and Guarantor. The Construction Manager will be required to cooperate in sharing information, as applicable, with the Authority Engineer preparing such documents.

Section 5.04 Corrective Measure Construction

Construction Management Engineer shall be required to perform inspection services during the construction of the Corrective Measures and Beneficial Uses.

Section 5.05 No Guarantee of Work

The Authority may (but is not obligated to) issue a Notice to Proceed (“**Notice to Proceed**”) when all Notice to Proceed Conditions have been satisfied or waived by the Authority, in its sole discretion. Construction Management Engineer agrees to enforce the Final Acceptance Date. The Construction Management Engineer shall exercise the requisite management and technical oversight with respect to the Work under the Contract (including, but not limited to work performed by the Construction Contractor) such that the schedule deadlines are satisfied and the Work is completed by the Guaranteed Final Acceptance Date.

Section 5.06 Final Acceptance Delay Liquidated Damages

- (a) The Construction Management Engineer acknowledges that the Authority and County will suffer actual damages from its failure to timely complete all Work under this Contract by the Guaranteed Final Acceptance Date, including damage to the public interest, and these damages are difficult to ascertain on the date the Parties entered this Contract. Therefore, the Parties agree that, if the Final Acceptance Date has not occurred on or before the Guaranteed Final Acceptance Date, the Construction Management Engineer shall pay liquidated damages of \$1,000 per day for each day after the Guaranteed Final Acceptance Date until the Final Acceptance Date has occurred (“Final Acceptance Delay Liquidated Damages”). These damages reflect the additional burden borne by the Authority and the County for damage to the public interest and administrative costs. These liquidated damages are a reasonable estimate of damage that will be incurred by the County and Authority for delay in completion of Work under this Contract beyond the Guaranteed Final Acceptance Date.
- (b) Authority may require Construction Management Engineer to pay Final Acceptance Delay Liquidated Damages accrued as they accrue by delivery of a Notice specifying the amount of such damages, and Construction Management Engineer must pay the amount so specified within 5 days of such Notice. Late payments of such amounts will bear interest at Late Payment Rate. To the extent that Authority is holding retainage owed to Construction Management Engineer, Authority may permanently retain such retainage for any Delay Liquidated Damages accrued as they accrue, and such Final Acceptance Delay Liquidated Damages owed by Construction Management Engineer to Authority (up to the full amount of such retainage or the total amount of the Retainage).

ARTICLE VI.
SPECIFICATIONS AND TECHNICAL REQUIREMENTS

Section 6.01 Standard of Workmanship

Construction Management Engineer is responsible for performing the Work in accordance with the highest standards of skill and workmanship, using its best skill and attention. The Construction Management Engineer is responsible for providing management and technical oversight as well as quality assurance and quality control reviews of all staff performance aspects and all Work performed under this Contract to ensure the Work is free of errors and omissions.

Section 6.02 Warranty of Inspection and Acceptance of Site

- (a) Construction Management Engineer represents and agrees that (i) it has inspected the Landfill and (ii) it has reviewed all information provided by Authority relating to the Landfill and surrounding locations including information related to both surface and subsurface geotechnical conditions.
- (b) Construction Management Engineer acknowledges that it satisfied itself as to the conditions affecting the Work, including but not limited to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, physical conditions at the site of the

Work, the conformation and conditions of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the Work. Construction Management Engineer further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from the Site Inspection, as well as from information presented by the drawings and specifications made a part of this Contract or information available to or obtainable by Construction Management Engineer, for the Site, including those subsurface geotechnical conditions and non-geotechnical subsurface conditions disclosed in, or reasonably inferable or predictable by an experienced and diligent Construction Management Engineer from the Site Inspection, for the performance of the Work. Any failure of Construction Management Engineer to acquaint itself with the site characteristics or conditions, or with all information reasonably available to or obtainable by it, does not relieve Construction Management Engineer from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The Authority assumes no responsibility for any conclusions or interpretations made by Construction Management Engineer on the basis of the information made available by the Authority or County.

- (c) In the event Construction Management Engineer encounters unknown surface, subsurface or latent physical conditions at the Landfill (including, but not limited to, man-made obstructions, geotechnical conditions, Hazardous Materials and archeological remains) (“**Unknown Site Conditions**”), Construction Management Engineer must give immediate Notice of the nature and extent of such differing conditions to Authority. Construction Management Engineer must promptly investigate the conditions and provide Authority with a proposed plan on how to proceed to address such conditions. An Uncontrollable Circumstance shall not occur, because of Unknown Site Conditions, including (A) the presence of Hazardous Materials at the Landfill which were introduced to the Landfill by Construction Management Engineer or its Sub-Construction Management Engineers, (B) any surface condition, (C) any subsurface condition of or at the Landfill that is disclosed in, or reasonably inferable or predictable from, Construction Management Engineer’s Site Inspection (which includes, without limitation, the Landfill background information set forth in Appendix 12), or (D) any Construction Management Engineer Related Entity disrupts or Releases any Hazardous Materials encountered on the Landfill.
- (d) Construction Management Engineer must promptly, and before Unknown Site Conditions are disturbed, notify the Authority in writing of newly discovered unknown physical conditions at the Site of an unusual nature, different materially from those ordinarily encountered and generally recognized as inhering in Work. The Authority shall promptly investigate the conditions, and make a determination as to whether such conditions do materially so differ and cause an increase or decrease in the Construction Management Engineer’s cost of, or the time required for, performance of any part of the Work under this Contract. No claim of the Construction Management Engineer for any increased costs shall be allowed unless the Construction Management Engineer has given the notice required in this Section.
- (e) The Construction Management Engineer must employ a technical firm(s) or personnel who have the certified ability to plan, oversee, and evaluate the results of all subsurface

investigations and to determine requirements for the design, including under seismic conditions, of foundations, superstructures and dewatering systems, with regard to existing soil conditions, and to provide recommendations for construction requirements as to protecting the proposed work and existing structures and utilities, conduct compaction verification and soils suitability testing, materials testing and certification typical for the construction, closure or remediation of a landfill.

Section 6.03 Design Specifications

The Work must conform to the Contract Standards, including all Design Requirements. The Design Requirements are intended to include the basic design principles, concepts, and requirements for the Landfill but do not include the final detailed designs, plans or specifications or indicate or describe each and every item required for full performance of the Corrective Measures and Beneficial Uses. Construction Management Engineer agrees to review and understand all necessary detailed designs, plans, drawings, and specifications and to furnish inspection and construction management services, without additional compensation of any kind, to ensure that all Work is in conformity with the Final Designs, plans, drawings and specifications and all other requirements of the Contract Documents.

Section 6.04 Drawings

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

**ARTICLE VII.
INVESTIGATIONS**

Section 7.01 Coordination of Work

Construction Management Engineer must coordinate its Work with activities of the County or others currently performing work on Site or at the Gude Landfill.

Section 7.02 Authority Project Manager

The Authority shall designate an Authority Project Manager for the Work to be performed. The Authority Project Manager and/or the County shall be authorized to inspect all Work done and all material furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication, or manufacture of the materials to be used. The Authority Project Manager and County are not authorized to revoke, alter, or waive any requirements of the Contract Documents, nor to approve or accept any portion of the Work. The Authority Project Manager or inspector is authorized to call to the attention of Construction Management Engineer any failure

of the Work or materials to conform to the Contract, and to reject materials or suspend the Work until any questions at issue can be referred to the Authority's Representative.

Section 7.03 Reserved

Section 7.04 Risk of Loss

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

Section 7.05 Storage of Materials

Construction Management Engineer must store materials so as to assure the preservation of their quality and acceptability for the Work. To the extent permitted by the Task Order, portions of the Site may be used for storage purposes and for the placing of Construction Management Engineer's equipment. At Final Acceptance, all storage areas must be restored to their original condition by Construction Management Engineer, at its sole cost and expense.

Section 7.06 CPM Schedule

- (a) The Construction Management Engineer must submit to the Authority comments on the Construction Contractor's CPM Schedule for the Work within 14 days of receipt.
- (b) The Construction Management Engineer is responsible for submitting monthly Approved CPM Schedule updates to the Authority's Project Manager showing the progress of the Work.

Section 7.07 Warranties

- (a) The Construction Management Engineer shall ensure that the Construction Contractor's Work does not void the standard manufacturer's warranty for any installed improvements to the Landfill.
- (b) The Authority's rights with respect to Warranties shall extend from the Effective Date until the later of: (i) 12 months from Final Acceptance Date or (ii) 6 months following corrective action on the Work (the "**Warranty Period**").
- (c) The Construction Management Engineer warrants the Work as follows:
- (d) The Work must substantially conform to the final drawings and specifications and all equipment incorporated into the Work shall perform substantially in accordance with the Scope of Work and Specifications.
- (e) The Work must be free from material defects in construction.
- (f) In the event of any breach of a Warranty, Construction Management Engineer shall thereupon, and at its own cost and expense (including, without limitation, the payment of

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

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

Section 7.08 Substantial Completion; Punch Lists; Acceptance Tests

When the Remediation Work is Substantially Complete, Construction Management Engineer must notify the Authority that the Work will be ready for final inspection and test on a definite date. Construction Management Engineer must provide to the Authority sufficient notice of at least [seven (7) days] to permit the scheduling of the final inspection. The Authority may inspect the Site for materials, workmanship, dimensions, performance, and general compliance with the requirements of the Contract Documents. Work not in compliance with any part of the Contract Documents will be rejected, and Construction Management Engineer must furnish acceptable replacement Work within three scheduled working days after notification of rejections. On the basis of the inspection, if the Authority determines that Substantial Completion has been achieved, the Authority will establish the date of Substantial Completion and fix the time (not longer than 30 days) within which the Construction Management Engineer must complete any remaining items of the Procurement Support Work, which will be indicated on a Final Punch List prepared by the Authority. If the Construction Management Engineer fails to complete the items on the Final Punch List within the 30 days, or make an adjustment acceptable to the Authority, the Authority shall have the right to complete the Procurement Support Work at the Construction Management

Engineer's expense and deduct the cost incurred from any monies retained under the Contract. Acceptance of the Work as Substantially Complete, or Final Acceptance, shall not excuse or waive any failure of the Construction Management Engineer to complete the Procurement Support Work as required by the Contract Documents.

Section 7.09 Final Completion

- (a) The following are conditions of Final Completion:
 - (i) The Final Acceptance Date has occurred;
 - (ii) All Work described in the Punch list is completed; and
 - (iii) All conditions under Governmental Approvals were satisfied.
- (b) Within 5 calendar days of Final Acceptance of the Work, three copies of as-built drawings signed and sealed by a Maryland licensed Professional Engineer must be delivered to the Authority, plus CADD, and PDF files of the as-built drawings on CD or thumb drive, if applicable.

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

- (a) Subject to the remedies provided for in this Contract, the Construction Management Engineer must perform the Work and turn the review documents, and construction management and inspection documents, over to Authority in a manner that is: (i) sufficient, complete, and adequate in all respects necessary for the Corrective Measures to successfully be procured, permitted, and constructed, respectively; (ii) in conformance with Prudent Industry Practices and with professional standards, skill, expertise, and diligence of design and construction professionals regularly involved in projects of similar size and nature to the Corrective Measures; and (iii) in compliance with the terms of the Contract Documents, and all Applicable Laws and Governmental Approvals.
- (b) In light of the foregoing, Construction Management Engineer has included within the Price the cost to complete all Work. Items need not be specifically listed in the Contract Documents in order to be deemed as items within the Work. It is understood that the Construction Management Engineer is better qualified to list exclusions than the Authority is to list inclusions. Therefore, any item indicated in the Contract Documents, reasonably inferable from and incidental to the Contract Documents or required in accordance with any Applicable Law, is to be considered as part of the Work. The objective of this Contract is to relieve the Authority of the necessity of engaging or supplying any labor, service, or material to complete the review of the design work, Procurement support, and inspection services unless expressly stated in the Contract as being furnished by the Authority. As a result, unless otherwise permitted in this Contract, the Construction Management Engineer waives any and all claims for an increase in the Price, in whole or in part, upon an assertion that any certain license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation, or management is beyond the scope of the Work when such license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation, or management is indicated in the Contract

Documents, the Drawings, or other instruments of service prepared in connection with the Contract Documents, reasonably inferable from and incidental to the Contract Documents, required in accordance with any Applicable Law, Governmental Approvals, or otherwise necessary in order to complete the Work in accordance with and subject to the requirements of the Contract Documents.

- (c) The Work must meet professional standards utilized by design and construction professionals regularly involved in projects similar to the Corrective Measures. The Corrective Measures must be installed to operate in accordance with the Contract Documents, all Applicable Laws, and Governmental Approvals. The Construction Management Engineer must notify the Authority of any standards of the above listed organizations that are inconsistent with each other and advise the Authority of the manner in which it intends to resolve such inconsistency in accordance with the standard referenced above.
- (d) Construction Management Engineer acknowledges that this Contract constitutes a not to exceed price obligation to provide design review, Procurement support services, and construction management and inspection services of the Corrective Measures within the time and for the purpose designated in the Contract. The Construction Management Engineer is obligated to: supply all of the equipment and management and inspection services, install all of the equipment and supply all labor, and supply and perform all of the Work, in each case as may reasonably be required, necessary, incidental, or appropriate (whether or not specifically set forth in this Contract) to complete the Work such that the Work satisfies the applicable terms, conditions, and Construction Management Engineer’s obligations concerning the Performance Guarantees and other guarantees and requirements set forth in the Contract Documents, all for the Price.
- (e) The total approved not to exceed Price is \$XXXXXXXXXXXXX (including the pricing for the option terms which may be exercised at the sole discretion of the Authority).

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

Task	Price
1	\$
2	\$
3	\$
4	\$
5	\$
Total	\$

**ARTICLE VIII.
RESERVED**

**ARTICLE IX.
COMPENSATION**

Section 9.01 Payment for Work

- (a) The Authority will pay the Construction Management Engineer the Price in accordance with this Section 9 and Schedule IV and Appendix 8. The form of this submission will be as agreed upon by the Construction Management Engineer and the Authority and must be supported by such evidence as to its correctness as the Authority may direct (e.g., per task hourly breakdown for staff, narrative of the work accomplished in the period, work to be performed in the next period, and receipts for out of pocket expenses). In accordance with Appendix 8, this schedule will be used as the basis for progress payments unless, at a later date, found by the Authority to be in error. The Project Manager must be responsible for determining that the schedule of values accurately reflects the Work completed or materials on Site each month. Payment for optional items will only be considered if the Authority provided pre-approval in writing for the optional items.
- (b) Construction Management Engineer may invoice the Authority, in accordance with Appendix 8, for each progress payment after notice from the Authority that the Work represented by the progress payment was inspected and approved. Invoices must be sent to the Authority and the County. Payment will be made within 45 days of receipt of an approved Invoice from Construction Management Engineer. Any amounts payable by the Authority that are not paid when due shall bear interest at the Late Payment Rate.
- (c) No payment made to the Construction Management Engineer shall constitute an acceptance by the Authority of any Work not in accordance with the Contract Documents. The Authority may withhold or recover the whole or part of any Construction Management Engineer payment to such extent as may be necessary to reimburse or protect the Authority from loss on account of defective or damaged Work not remedied, failure of the Construction Management Engineer to make payments properly to Sub-Construction Management Engineers for material or labor, a reasonable doubt by the Authority that the Work can be completed by the Guaranteed Final Acceptance Date or for the balance of the Price, or other damage caused by the Construction Management Engineer for which the Authority may reasonably be liable. Payment of the entire Price will not be made until all Work is completed to the satisfaction of the Authority and Final Acceptance has occurred.
- (d) If the Authority or Construction Management Engineer disputes any amount invoiced, or payment made, the disputed portion of the invoice or payment is not effective until resolution of the dispute. Pending resolution of any dispute, the Construction Management Engineer must continue to perform of all of its obligations under the Contract. Any undisputed amounts shall be paid in accordance with this Article IX.

Section 9.02 Invoicing

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

ATTN: Accounts Payable
Northeast Maryland Waste Disposal Authority
Tower II, Suite 402
100 South Charles Street
Baltimore, MD 21201
410.333.2730 or authority@nmwda.org

- (b) Any amounts payable by the Authority that are not paid when due shall bear interest at the Late Payment Rate.

Section 9.03 Offset

Whenever the Authority is obligated to pay the Construction Management Engineer any amount under this Contract, the Authority may deduct from that amount, before payment, any amount that the Construction Management Engineer owes to the Authority. The failure of the Authority to offset such liability against amounts due to it shall in no way limit or restrict the right of the Authority to recover such amounts due to it from Construction Management Engineer. Application of Liquidated Damages shall follow Schedule III and Appendix 14.

Section 9.04 Payment Is No Waiver of Rights

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

**ARTICLE X.
CHANGES TO WORK**

Section 10.01 Changes

- (a) The Authority unilaterally may, at any time, without notice to the Sureties or other providers of Performance Security, by written order designated or indicated to be a change order, make any change in the Work within the general scope of the Contract, including but not limited to, changes: (i) in the specifications (including drawings and designs); (ii) in the method or manner of performance of the Work; (iii) in the Authority, equipment, materials, services, or site; or (iv) in directing the acceleration or deceleration in the performance of the Work (“**Change-In-Work**”).
- (b) Unless the Authority issues a Change-In-Work, no order, statement, or conduct of the Authority shall be treated as a Change-In-Work under this Section or entitle the Construction Management Engineer to a price adjustment under the Contract.
- (c) If any Change-in-Work causes an increase or decrease in the Construction Management Engineer’s cost of, or the time required for, the performance of any part of the Work under

this Contract, an adjustment will be made for Construction Management Engineer's Demonstrated Costs (as defined below) to be incurred or saved and the Contract modified in writing accordingly; provided, however, that no claim for any change above will be allowed for any costs incurred more than 10 days before the Construction Management Engineer gives written notice as therein required.

- (d) No claim by the Construction Management Engineer for an adjustment under this Contract will be allowed if asserted after Final Completion under this Contract.
- (e) The Demonstrated Costs of Change-In-Work will be developed on an open book approach and will be priced based on actual, incremental, internal costs plus actual, incremental, third party direct costs plus a fixed fee basis with Construction Management Engineer's fixed fee set at 3% (which includes overhead, profit, and risk) of the sum of the estimated costs of the Change-In-Work. The Construction Management Engineer must provide the Authority with a detailed estimate of the cost for any requested Change-In- Work, which must include capital costs for equipment and materials, field labor, expenses, and engineering costs.
- (f) The Authority will advise the Construction Management Engineer of any proposed Change-In-Work and the Authority and Construction Management Engineer will then promptly consult with each other concerning the cost and impact, if any, on the CPM Schedule of implementing the proposed change. Following the consultation, the Authority may request and Construction Management Engineer must promptly prepare, at its own cost and expense, a detailed estimate relating to the contemplated change (a "**Change-In-Work Form**"), which must include (A) any projected increase or decrease of the Price occasioned by the change, (B) the projected effect on the CPM Schedule or any other schedule, and (C) the potential effect on Construction Management Engineer's ability to comply with any of its obligations under this Contract.
- (g) Within five (5) Business Days after execution of a Change-In-Work Form by Construction Management Engineer and Authority or a resolution of any matters in dispute regarding the Change-in-Work, the Parties, in accordance with such Change-In-Work Form and the resolution of the dispute, if applicable, will adjust the Price as provided in this Section 10.01 and the progress payment Schedule, the Approved CPM Schedule and any other schedules requiring adjustment to reflect the change agreed upon.
- (h) If the Authority and the Construction Management Engineer cannot reach an agreement within 10 Business Days on the matters listed in the Change-In-Work Form, or cannot agree that the matters under discussion constitute a Change-in-Work, the Authority may, at its sole discretion, require the Construction Management Engineer in writing to promptly proceed to complete the Change-In-Work in accordance with Authority's interpretation of the matter under dispute and Authority will pay the Construction Management Engineer for the undisputed Demonstrated Costs of such Change-In-Work provided for in 10.01(e) as incurred. If the Authority and the Construction Management Engineer cannot reach an agreement on the estimated cost, the Construction Management Engineer must perform the Change-in-Work and may avail itself of Dispute Resolution as set forth in Section 11.12.

- (i) In no event shall the Construction Management Engineer undertake a Change-In-Work until (A) a Change-In-Work Form has been approved and signed by the Parties, and (B) if a disagreement exists as described in Section 10.01, the Construction Management Engineer has received Notice from the Authority to proceed under protest. In no event shall changes to the Work necessary for Construction Management Engineer's design and Detailed Plans to comply with this Contract constitute a Change-In-Work unless such changes are approved by the Authority at its sole discretion.
- (j) After the Effective Date, Construction Management Engineer may propose any addition, deletion, modification, or amplification to this Contract which in Construction Management Engineer's opinion does constitute a Change-In-Work by giving the Authority and the Authority Engineer prior Notice thereof. The Authority will promptly review Construction Management Engineer's proposed addition, deletion, modification, or amplification and accept or reject same. The Authority may, at its sole discretion and verification by the Authority Engineer, determine that the proposed addition, deletion, modification, or amplification be deemed a Change-In-Work, to be handled accordingly.
- (k) The Construction Management Engineer will be entitled to a Change-in-Work on account of: (1) additions, modifications, deletions, or enhancements to the Site proposed by Authority; or (2) if the Authority requires Construction Management Engineer to take action to remedy conditions caused by Construction Management Engineer Uncontrollable Circumstance; provided, however, that Construction Management Engineer must provide Authority with Notice of a change in the Work. Construction Management Engineer's failure to propose a change in the Work within the 25 days of determining the need for a change in the Work, will be deemed a waiver by Construction Management Engineer of its right to a change in the Work; provided, however, the waiver will not relieve the Construction Management Engineer of any of its obligations under this Contract. Construction Management Engineer must not make any Change to Work (including changes that have no net cost effect on the Price) without a Change-In-Work Form signed by the Parties or the Construction Management Engineer has received Notice from the Authority to proceed under protest. Neither the Price nor any component thereof will be increased with respect to any Change-In-Work proposed by Construction Management Engineer unless the change requires a modification or change in Construction Management Engineer's cost of performing the Work as so modified.

Section 10.02 Suspension of Work

- (a) The Authority may unilaterally order the Construction Management Engineer in writing to suspend, delay, or interrupt all or any part of the Work for a period of time it deems appropriate for the convenience of the Authority or the County.
- (b) However, no adjustment will be made under Section 10.01(k) for any suspension, delay, or interruption to the extent (i) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Construction Management Engineer-Related Entities, or (ii) for which an equitable adjustment is provided for or excluded by any other provision of this Contract.

- (c) No claim under Section 10.01(k) will be allowed for a suspension, delay, or interruption ordered by the Authority (i) for any costs incurred more than 10 days before Construction Management Engineer shall have notified the Authority in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the Contract.

Section 10.03 Authority to make changes in Work.

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

**ARTICLE XI.
GENERAL PROVISIONS**

Section 11.01 Authority Representative

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

Section 11.02 Effect of Authority Approvals

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

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

Section 11.03 Performance and Payment Security; Parent Guaranty

The Construction Management Engineer must provide and maintain in effect a Performance Bond from a Qualified Surety licensed to do business in Maryland and acceptable to the Authority, covering the Construction Management Engineer's performance obligations under this Contract, in the amount of \$3,000,000, and in the form set forth in Appendix 13. The Performance Bond must be in effect during the entire Term and thereafter until the resolution of all claims by the Authority with respect to the work during the Term . In the alternative, the Construction Management Engineer may provide a Letter of Credit in the amount of \$3,000,000, in effect for the entire Term from a Qualified Financial Institution and substantially in the form set forth in Appendix 13. Failure to provide and maintain the required performance security shall be considered an Event of Default under the Contract.

Section 11.04 Insurance Requirements

- (a) Construction Management Engineer must obtain and maintain in full force and effect for the duration of the Contract insurance necessary to cover claims arising from Construction Management Engineer's operations under this Contract. The insurance coverage required of the Construction Management Engineer for the Term are described in Appendix 11 (“**Required Insurance**”). Within 10 business days of Effective Date, and at any time thereafter as required by the Authority, the Construction Management Engineer must deliver to the Authority copies of all certificates of insurance for Required Insurance.

Section 11.05 Notice/contact information

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

To the Authority:

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

To the Construction Management Engineer:

To the County:

Guillermo Wainer
Chief, Division of Solid Waste Services
Department of Environmental Protection
Montgomery County Government
6th Floor, EOB
101 Monroe Street, 6th Floor
Rockville, Maryland 20850-2589
willie.wainer@montgomerycountymd.gov

Section 11.06 Indemnification

- (a) To the fullest extent permitted by law, Construction Management Engineer shall defend, indemnify, and hold harmless the Authority, the State, and Montgomery County and their respective officers, employees, elected officials, agents, contractors, consultants, engineers, officers, directors, elected representatives, officials, and other representatives (collectively, “**Authority Indemnified Parties**”), from and against all liability, suits,

judgments, and claims by third parties, damages, losses, and expenses, including the costs of defense, settlement, and reasonable attorneys' fees (collectively, "**Losses**"), which may arise as a result of the performance of this Contract by Construction Management Engineer or any of its officers, employees, agents or Sub-Construction Management Engineers (the "**Construction Management Engineer-Related Entities**") including (without limitation) the following:

- (i) Any act, omission, or misconduct by any Construction Management Engineer-Related Entity in the manner or method of executing said Work satisfactorily or due to the failure to perform the Work, including but not limited to (1) any neglect in safeguarding the Work, (2) use of unacceptable materials in performance of the Work or other Defect in the Work, (3) faulty, inadequate, or improper temporary drainage during inspection during the Term, (4) the use, misuse, storage, or handling of explosives in performance of the Work, or (5) other breach, alleged breach or violation of Construction Management Engineer's obligations under the Contract Documents or any contract;
- (ii) The failure or alleged failure by any Construction Management Engineer-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws (including Laws regarding Hazardous Materials Management) relating to the performance of the Work;
- (iii) Any Construction Management Engineer-Related Entity's performance of, or failure to perform, the obligations under the Task Order;
- (iv) Any Construction Management Engineer-Related Entity's breach of or failure to perform an obligation that Construction Management Engineer or Authority owes to a third party, including Governmental Authorities, under Law or under any contract between Construction Management Engineer or Authority and a third party, where performance of the obligation is delegated to Construction Management Engineer under the Contract Documents, or the acts or omissions of any Construction Management Engineer-Related Entity which render Construction Management Engineer or Authority unable to perform or abide by an obligation that Construction Management Engineer or Authority owes to a third party, including Governmental Authorities, under any contract between Construction Management Engineer or Authority and a third party, provided the contract was previously disclosed or known to Construction Management Engineer;
- (v) Any alleged infringement or other allegedly improper appropriation or use of intellectual property in performance of the Work, or arising out of, relating to or resulting from any use in connection with the Project of methods, processes, designs, information or other items furnished or communicated to Construction Management Engineer or Authority or another Authority Indemnified Party under the Contract Documents; *provided*, that this indemnity shall not apply to any infringement resulting from Authority's failure to comply with specific written instructions regarding use provided to Authority by Construction Management Engineer that are consistent with Construction Management Engineer's obligations

to convey and license Construction Management Engineer intellectual property under this Contract;

- (vi) Any Release of Hazardous Materials arising from acts or omissions of any Construction Management Engineer-Related Entity and any liabilities resulting therefrom;
- (vii) Any fines or penalties imposed on Construction Management Engineer or Authority by any authority having jurisdiction arising out of, relating to or resulting from Construction Management Engineer's breach of or failure to comply with applicable requirements of the Contract Documents;
- (viii) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Construction Management Engineer-Related Entity with respect to any payment for the Work made to or earned by such Construction Management Engineer-Related Entity under the Contract Documents;
- (ix) Trespass, nuisance, or similar taking of or harm to real property by reason of (i) the failure of any Construction Management Engineer-Related Entity to comply with Good Industry Practice, requirements of the Contract Documents, or Governmental Approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the Work, (ii) the intentional misconduct or negligence of any Construction Management Engineer-Related Entity in connection with the performance of the Work, or (iii) unauthorized physical entry onto or encroachment upon another's property by any Construction Management Engineer-Related Entity in connection with the performance of the Work; and
- (x) any breach of Warranty.

This indemnification obligation shall survive the termination of this Contract. This indemnification is not to be deemed as a waiver of any immunity that may exist in any action against the Authority or the County.

- (b) Environmental Claims. The Construction Management Engineer shall also indemnify, defend, and hold harmless and hereby waives any claim for contribution against the Authority Indemnified Parties for any losses from any Environmental Claim to the extent arising from the performance of a Construction Management Engineer-Related Entity, under this Contract, irrespective of whether such performance is negligent or willful or breaches any term or provision of this Contract.
- (c) Intellectual Property. The Construction Management Engineer shall defend, indemnify and hold harmless the Authority Indemnified Parties against all Losses arising from any claim or legal action for unauthorized disclosure or use of intellectual property, including any trade secrets or of patent, copyright, license or trademark infringement arising from acts or omissions of any Construction Management Engineer-Related Person and/or asserted

against any Authority Indemnified Party that either: (i) concerns any equipment, materials, supplies, or other items provided by Construction Management Engineer or any of its Sub-Construction Management Engineers under this Contract; (ii) is based upon the performance of the Work by Construction Management Engineer or any of its Sub-Construction Management Engineers, including the use of any tools, implements or construction by Construction Management Engineer Related Entity; or (iii) is based upon the design or construction of any item or unit specified by Construction Management Engineer under this Contract or the operation of any item or unit according to directions embodied in Construction Management Engineer's final process design, or any revision thereof, prepared or approved by Construction Management Engineer; provided, however, that the indemnification shall exclude any claim based upon uses by the Authority in violation of this Contract.

- (d) Design Defects. Construction Management Engineer shall indemnify and hold harmless the Authority Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Design Documents, regardless of whether such errors, omissions, inconsistencies or other defects were also included in the Contract Drawings or Reference Documents. Construction Management Engineer agrees that, because the Contract Drawings and Reference Documents are subject to review and modification by Construction Management Engineer, it is appropriate for Construction Management Engineer to assume liability for errors, omissions, inconsistencies and other defects in the completed Project even though they may be related to errors, omissions, inconsistencies and other defects in the Contract Drawings and Reference Documents.
- (e) Authority's acceptance of Construction Management Engineer's engineering designs and/or proposed or supplied materials and equipment shall not be construed to relieve Construction Management Engineer of any obligation under this Section 11.06.
- (f) Claims by Employees. In claims by an employee of the Construction Management Engineer or a Sub-Construction Management Engineer, anyone directly or indirectly employed by Construction Management Engineer or a Sub-Construction Management Engineer or anyone for whose acts Construction Management Engineer or Sub-Construction Management Engineer may be liable, the indemnification obligation under this Section 11.06 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Construction Management Engineer or a Construction Management Engineer under workmen's compensation, disability benefit or other employee benefits laws; *provided*, that this provision shall not be construed as a waiver in favor of any employee by Construction Management Engineer or any Sub-Construction Management Engineer of any limitation of liability afforded by such laws.
- (g) Construction Management Engineer shall ensure that each Subcontract includes indemnity provisions appropriate to the scope of the Work to be performed by the Sub-Construction Management Engineer, naming the Authority Indemnified Parties as indemnitees.

- (h) In the event of any injury to persons, damage to property, or other occurrence covered by the indemnities in Section 11.06, the Construction Management Engineer must promptly notify the Authority and, unless subject to evidentiary privilege, promptly furnish to Authority copies of all factual reports and factual portions of any other reports given to Construction Management Engineer's insurance carrier or carriers.

Section 11.07 Change in Law

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

Section 11.08 Uncontrollable Circumstances

- (a) A Party shall not be in default under this Contract or liable to the other Party for its failure to perform its obligations under this Contract, but only to the extent that, and for so long as, the Uncontrollable Circumstances prevents the affected Party from performing its obligations in accordance with this Contract. Construction Management Engineer shall work diligently to overcome or remove such Uncontrollable Circumstance as soon as possible.
- (b) As soon as possible after an Uncontrollable Circumstance occurring on or after the Effective Date, Construction Management Engineer shall give the Authority Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to Construction Management Engineer), and a description of the conditions preventing the performance of Construction Management Engineer's obligations. The Construction Management Engineer must answer any inquiries of the Authority Representative regarding the conditions caused by the Uncontrollable Circumstance and must provide them with the information as they reasonably request. Upon the request of the Authority Representative, the Authority Engineer, at the Authority's expense, may review the alleged causes of an Uncontrollable Circumstance and the Construction Management Engineer's estimate of the time for remedying the Uncontrollable Circumstance.
- (c) If, within 5 days after a Uncontrollable Circumstance occurrence (or if required due to the nature of the event, a shorter period of time) that has caused Construction Management Engineer to suspend or delay performance of the Work, Construction Management Engineer has failed to take commercially reasonable action to overcome or cure the Uncontrollable Circumstance occurrence or its direct or indirect effects on the performance of its obligations under this Contract, the Authority may, in its sole discretion and after Notice to Construction Management Engineer, at Construction Management Engineer's expense, initiate commercially reasonable measures to overcome or cure the Uncontrollable Circumstance occurrence or its direct or indirect effects on the performance of Construction Management Engineer's obligations hereunder and thereafter require Construction Management Engineer to resume full or partial performance of the Work (unless it is commercially unreasonable for Construction Management Engineer to do so); provided, however, that no such action of Authority shall relieve Construction Management Engineer of its obligations under this Contract.

- (d) If a delay results from an occurrence which constitutes an Uncontrollable Circumstance, the Guaranteed Final Acceptance Date shall be extended pursuant to a Change-In-Work only to the extent Construction Management Engineer demonstrates to the reasonable satisfaction of Authority and Authority Engineer that such delay is shown on the Approved CPM Schedule to affect said date in accordance with Section 11.08. This analysis shall be based on the most current Approved CPM Schedule in effect at the start of the Uncontrollable Circumstance occurrence and take into account the Work's Approved CPM Schedule and any material associated extra time built into the CPM Schedule ("Float") available for the activity affected by the Uncontrollable Circumstance occurrence in accordance with Section 11.08. The Approved CPM Schedule and any other schedule affected by such delay shall be adjusted, if appropriate, to reflect the new Guaranteed Final Acceptance Dates. Adjustment pursuant to a Change-In-Work in accordance with Section 11.08, the Guaranteed Final Acceptance Dates and adjustment of the Approved CPM Schedule and other affected schedules shall be Construction Management Engineer's sole remedies in the event of a delay covered by this Article 11.
- (e) Notwithstanding the provisions of this Section 11.08, Construction Management Engineer assumes full responsibility for completion of the Work without adjustment to the Guaranteed Final Acceptance Dates, the Price Service Fees or the CPM Schedule regardless of weather conditions, unless weather severity is substantially in excess of the data accepted for the norm established and substantiated for the Landfill.
- (f) If an Uncontrollable Circumstance prevents Construction Management Engineer from performing a material portion of its obligations under this Contract for more than 30 continuous days, then Authority, after providing the Construction Management Engineer at least 10 Business Days' prior Notice, may, but shall not be obligated to, terminate this Contract without additional liability to Construction Management Engineer and (except as provided in the last sentence of this Section 11.08(f)) to Authority as a result of such termination. Construction Management Engineer shall be entitled to receive payment of the proportion of the Price for Work actually performed plus reasonable and documented demobilization, contract cancellation costs and close out costs.
- (g) In the event that two delay events occur concurrently, the first event to occur shall control until such event is overcome and then any remaining delay attributed to the second delay event shall control.

Section 11.09 Events of Default

- (a) Each of the following constitutes an Event of Default on the part of Construction Management Engineer:
 - (i) the failure or refusal by Construction Management Engineer to fulfill any of its material obligations to the Authority in accordance with the Contract Documents, unless such failure or refusal is excused pursuant to this Contract; or
 - (ii) if, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of the Construction Management Engineer or of a major part of its

property is appointed, or if, by decree of such a court, the Construction Management Engineer is adjudicated insolvent, or a major part of its property is sequestered, or if a petition to reorganize the Construction Management Engineer pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Construction Management Engineer, as now or hereinafter in effect, is filed against the Construction Management Engineer, or if the Construction Management Engineer 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 Construction Management Engineer under any such law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Construction Management Engineer pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Construction Management Engineer, as now or hereafter in effect; or

- (iii) If the Construction Management Engineer 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 Construction Management Engineer or of a major part of its property; or
- (iv) If the Construction Management Engineer assigns its rights or obligations under this Contract or any part thereof to any Person, except as otherwise permitted under this Contract; or
- (v) If any representation or warranty made by the Construction Management Engineer herein or in any payment invoice or related documentation submitted hereunder is false or misleading in any material respect when made; or
- (vi) If the Construction Management Engineer fails to provide and maintain in full force and effect the Performance Security; or
- (vii) If the Construction Management Engineer fails to provide and maintain in full force and effect any Required Insurance in accordance with this Contract; or
- (viii) If the Construction Management Engineer provides or has provided materially false or misleading information to the Authority; or
- (ix) The failure of the Construction Management Engineer or its Sub-Construction Management Engineer, and their respective agents, licensees, invitees, and successors to comply with Applicable Law in any material respect; or
- (x) Construction Management Engineer fails to pay any undisputed amount that Construction Management Engineer is required to pay to the Authority under this Contract within thirty (30) days after receipt by Construction Management Engineer of written demand from Authority accompanied by a Notice stating that unless the delinquent amount is paid within thirty (30) days after this demand the failure will constitute an Event of Default; or

- (xi) Construction Management Engineer abandons or suspends support of the Work for thirty (30) days due to any reason other than Uncontrollable Circumstance or direction of Authority; or
 - (xii) A guarantor or other surety is in default (after the expiration of all applicable cure periods) under any warranty bond or under any Performance Security provided to Authority and, except for a failure to pay, it is not replaced or otherwise cured in accordance with this Contract;
 - (xiii) If the Construction Management Engineer refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as shall ensure that the Final Acceptance Date occurs on or before the 90th day after the Guaranteed Final Acceptance Date.
 - (xiv) If the Final Acceptance Date does not occur on or before the Guaranteed Final Acceptance Date; or
 - (xv) A Construction Management Engineer Change in Control occurs;
- (b) No failure or refusal on the part of the Construction Management Engineer as described in this Section (except for clause (ii), (iii), (ii), (iv), (vii), (ix), or (xiv)) shall constitute an Event of Default unless and until: (A) the Authority has given notice to the Construction Management Engineer specifying with particularity the existence of such default; and (B) the Construction Management Engineer has failed to cure such default within 30 days after receipt of such notice.
- (c) Each of the following constitutes an Event of Default on the part of the Authority, provided that none of the following shall constitute an Event of Default to the extent caused by the failure of the Construction Management Engineer to perform its obligations under this Contract:
- (i) The failure by the Authority to pay any undisputed amount in excess of \$50,000, that the Authority is required to pay to the Construction Management Engineer under this Contract within 60 days after receipt by the Authority of written demand from the Construction Management Engineer accompanied by notice stating that unless such amount is paid within 60 days after such demand the failure shall constitute an Event of Default; or
 - (ii) The failure or refusal by the Authority to substantially fulfill any of its material obligations to the Construction Management Engineer in accordance with this Contract, other than as provided in subparagraph (i) above, unless such failure or refusal is excused or justified pursuant to the provisions of this Contract, provided that no such failure or refusal constitutes an Event of Default unless and until:
 - a) the Construction Management Engineer gave prior written notice to the Authority and the Authority Representative stated that in their opinion a particular default or defaults (described in reasonable detail in such notice) exists and unless corrected,

constitute a material breach of this Contract on the part of the Authority and gives the Construction Management Engineer a right to terminate this Contract for default unless such default is corrected within a reasonable period of time; and

- b) the Authority has not corrected the default nor initiated steps to correct it within a reasonable period of time (a reasonable period of time for purposes of this paragraph shall in any event not be less than thirty (30) days from the date of the notice given, provided that if the Authority has commenced to take reasonable steps to correct the default within such reasonable period of time, it shall not constitute an Event of Default for as long as the Authority is continuing to take reasonable steps to correct it; and
- c) There is no reasonable expectation that the Construction Management Engineer can obtain sufficient relief for the default, other than by termination of this Contract, to compensate it for any loss incurred as a result of the Authority default.

Section 11.10 Termination for Default

- (a) The right of termination for cause may be exercised only by a Notice of Termination given to the Party in default. The proper exercise of the right of termination is in addition to and not in substitution for, any other remedies, whether damages or otherwise, of the Party exercising the right of termination.
- (b) In the case of one or more Events of Default on the part of the Construction Management Engineer, the Authority shall have the following rights and remedies, in addition to those rights and remedies that may be available to Authority at law or in equity and Construction Management Engineer shall have the following obligations:
 - (i) The Authority, without prejudice to any of its other rights or remedies, may upon fifteen (15) Business Days' Notice to Construction Management Engineer (A) suspend disputed payment and/or (B) unless Construction Management Engineer has cured such default therein thirty (30) days after receipt of such Notice, terminate this Contract on the date specified in a written or electronic mail notice of termination to Construction Management Engineer.
 - (ii) If the Authority terminates this Contract in accordance with this Section 11.10 and determines in its sole discretion, to complete the Work under this Contract, the Construction Management Engineer must, if requested by the Authority (A) promptly withdraw from the Landfill, and as requested by Authority, (B) assign one or more of its contracts, subcontracts, purchase orders or other Contracts to Authority or any designee of Authority; provided, however, that such assignee assumes the obligations of Construction Management Engineer thereunder and (C) shall turn over to Authority complete possession of any or all designs, materials, equipment, tools, purchase orders, inquiries, letters, computers, servers, software,

schedules, and drawings of Construction Management Engineer that Authority deems necessary to completion of the Work. Authority may employ any other person, firm or corporation (hereinafter, a “**Replacement Construction Management Engineer**”) to finish the Work in accordance with the terms of this Contract by whatever method that Authority may deem expedient. In addition, Construction Management Engineer shall not remove any equipment, materials or tools that the removal of which could damage the Landfill or any portion thereof then constructed or otherwise materially adversely affect or delay the construction, use or maintenance of the Landfill. After the termination of this Contract, Authority shall be responsible for the care, custody, and control of all equipment, materials, tools and other items used in completion of the Work. Authority, without incurring any liability to Construction Management Engineer, shall have the right to have the Work finished by the Replacement Construction Management Engineer.

- (c) If the Authority terminates the Contract for default during the Term, all finished or unfinished Work provided by Construction Management Engineer will, at the Authority’s option, become the Authority’s property, and the Authority may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the Work the materials, appliances, and plant as may be on site and necessary therefor. Whether or not Construction Management Engineer’s right to proceed with the Work is terminated, the Construction Management Engineer and its Sureties will be liable for any damage to the Authority or Montgomery County resulting from Construction Management Engineer’s refusal or failure to complete the Work within the specified time.
- (d) If this Contract is terminated by the Authority for cause as a result of an Event of Default by Construction Management Engineer with respect to Work, the Construction Management Engineer shall be entitled to payment of that portion of the Price related to the Work performed until the date of termination; provided, however, Construction Management Engineer shall not be entitled to any recovery of profit or unabsorbed overhead in connection with Work not actually performed or future Work. The Construction Management Engineer must reimburse the Authority for any costs in excess of the Price, as adjusted, incurred by Authority, or any Person acting on the Authority’s behalf in completing the Work or having the Work completed. The Authority will be entitled to withhold payments the Construction Management Engineer determines are due to it prior to the date of termination until Final Acceptance and determination by Authority that Construction Management Engineer is entitled to such payments. Upon completion of the Work by Authority or third parties, the total cost of the Work shall be determined, and the Authority will notify Construction Management Engineer in writing of the amount, if any, that Construction Management Engineer shall pay Authority or Authority shall pay Construction Management Engineer. If at any time the total expense incurred by Authority in completing the Work exceeds the portion of the Price not paid to the Construction Management Engineer as of the date of termination, then Construction Management Engineer shall pay the amount of any such excess from time to time existing within thirty (30) days of written demand therefor by Authority. Any amounts not paid hereunder when due shall bear interest at the Late Payment Rate. The Authority may, in its sole discretion,

employ any other Person, as a Replacement Construction Management Engineer to finish the Work by whatever method or means as the Authority deems expeditious.

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

Section 11.11 Termination for Convenience

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

Section 11.12 Dispute Resolution Procedures, Governing Law, and Venue

- (a) The Authority and the Construction Management Engineer shall in good faith attempt to resolve any dispute or matter in controversy under this Contract. As a condition to seeking judicial resolution of a dispute, the Authority and Construction Management Engineer agree to pursue an administrative dispute resolution procedure. Under this procedure either Party may initiate dispute resolution by giving notice of its claim to the other Party. If a claim for additional compensation is being made under this Section 11.12, the notice of claim must be made within thirty (30) days. Within thirty (30) days of receiving such a claim, the Party receiving the claim shall investigate the merits of the claim, and the Parties shall meet to attempt resolution. If after this process, a resolution of the claim is not successful, either Party may seek judicial resolution.
- (b) All disputes under this Contract, if not resolved by the Parties, shall be resolved by a Maryland State court of competent jurisdiction and in accordance with the laws of the State of Maryland. Pending resolution of any claim or dispute the Construction Management Engineer is obligated to continue performance of the Contract.

Section 11.13 Governing Law

This Contract shall be interpreted under Maryland law, without regard to its conflict of laws provisions. Any action or proceeding in connection with the enforcement of this Contract shall be brought in a state or federal court located in the State of Maryland, Montgomery County.

Section 11.14 Records Retention and Access

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

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

Section 11.15 Subcontracting

- (a) Except as otherwise expressly provided in the Contract Documents, the Construction Management Engineer is solely responsible for engaging, managing, supervising, and paying all Sub-Construction Management Engineers. The Construction Management Engineer must require all Work performed by Sub-Construction Management Engineers to be performed, inspected, and otherwise furnished, in accordance with the Contract Documents. Construction Management Engineer is solely liable for all acts, omissions, liabilities and Work (including defects therein) of such Sub-Construction Management Engineers. The Authority will not have any obligation or liability to any Sub-Construction Management Engineer. Nothing in any contract, subcontract or purchase order with any Sub-Construction Management Engineer shall in any way diminish or relieve Construction Management Engineer from any duties and obligations under the Contract Documents. No Sub-Construction Management Engineer is intended to be or shall be deemed a third-party beneficiary of the Contract Documents. Nothing contained in this Contract or in any subcontract or purchase order shall create or constitute a contractual relationship between Authority and any Sub-Construction Management Engineer.
- (b) A list of approved Major Sub-Construction Management Engineers as of the date hereof is attached to this Contract as a sub-set of the Staff Plan in Appendix 10. The Construction Management Engineer may retain those Major Sub-Construction Management Engineers which are set forth on Appendix 10 without further notice to or approval of the Authority. The Authority will have the right to approve, in advance in writing, each additional Sub-Construction Management Engineer to be engaged by Construction Management Engineer if selected for the transportation and disposal services, in accordance with the terms hereof. Prior to retaining any additional Major Sub-Construction Management Engineers, Construction Management Engineer must notify Authority in writing and provide it with such information as necessary to enable Authority to evaluate each such proposed Major Sub-Construction Management Engineer for the portion of the Work proposed to be

performed by it. Within 10 Business Days after receipt of such information, Authority will advise Construction Management Engineer if any proposed Major Sub-Construction Management Engineer is unacceptable. If Authority objects on a reasonable basis in writing within 10 Business Day period to such proposed Major Sub-Construction Management Engineer, Construction Management Engineer must not retain the proposed Major Sub-Construction Management Engineer in connection with the performance of the Work under this Contract. Approval of any Major Sub-Construction Management Engineer under this Section 11.3(b) shall only be for the portion of the Work so approved. Construction Management Engineer hereby acknowledges and agrees that the review and/or acceptance of any subcontract by Authority and the acceptance of the approved Major Sub-Construction Management Engineers shall not: (i) modify, in any way, the obligations of Construction Management Engineer pursuant to the Contract Documents; or (ii) be raised as a claim or as a defense or counterclaim to any claim in connection with the Contract Documents. Any addition, successor or replacement of any Major Sub-Construction Management Engineer shall be subject to Authority's prior written approval, which shall not be unreasonably delayed or withheld.

- (c) Each Subcontract and purchase order entered into by Construction Management Engineer in connection with the Work must require such the Sub-Construction Management Engineer to assume toward Construction Management Engineer those terms and conditions of contracting which Construction Management Engineer customarily includes in its subcontracts. At a minimum, all such Subcontracts and purchase orders must (i) require the Sub-Construction Management Engineers to comply with Applicable Laws and Governmental Approvals, (ii) require the Sub-Construction Management Engineers to provide certificates of insurance evidencing required insurance coverage maintained by such Sub-Construction Management Engineer, and (iii) provide that the Authority has the right of inspection as provided under this Contract. The Construction Management Engineer must require each Sub-Construction Management Engineer that performs Work at the Site whose contract(s) and purchase order(s) with Construction Management Engineer require payments by Construction Management Engineer in the aggregate totaling \$25,000 or more, to provide waivers of Liens in the form to be agreed to.
- (d) The Construction Management Engineer shall use commercially reasonable efforts to enter into Subcontracts and purchase orders, or amend existing Subcontracts and purchase orders, with its Sub-Construction Management Engineers that require each Sub-Construction Management Engineer to: (i) provide warranty coverage with respect to its portion of the equipment or Work that is substantially similar in scope and duration to the warranty provided by Construction Management Engineer under this Contract, (ii) provide waivers of Liens in the form of the exhibit to be agreed to in connection with its request for payment, and (iii) allow assignment of the relevant subcontract or purchase order to the Authority, without further consent from the Sub-Construction Management Engineer. With respect to any Major Sub-Construction Management Engineer, Construction Management Engineer must inform Authority if Construction Management Engineer will be unable to impose the requirements in the preceding sentence on such Major Sub-Construction Management Engineer and if Authority so directs Construction Management Engineer, Construction Management Engineer must not retain the proposed Major Sub-

Construction Management Engineer in connection with the performance of the Work under this Contract.

- (e) The Construction Management Engineer must not enter into or maintain any contract or subcontract with any Person for Work related to Major Subcontracts or to perform any of Construction Management Engineer's obligations under the Contract Documents, without the prior written consent of the Authority.

Section 11.16 Montgomery County Living Wage and Minority Participation Requirements

Construction Management Engineer must, at all times, meet all requirements of federal, state and local regulations and laws, including but not limited to those relating to workplace safety. For clarity, the Proposal must reflect the use of the County's living wage as found at <http://www.montgomerycountymd.gov/pro/DBRC/WRL.html> (last accessed 08.08.19). Furthermore, the Contactor must certify that it is in compliance with the County's MFD Program and provide a minimum 17% of the value of the Proposal is performed by a certified Minority, Female, and Disabled-Owned Business. Details on the County's program can be found here: <http://www.montgomerycountymd.gov/pro/DBRC/MFD.html> (last accessed 08.08.19). Compliance with the Program can be achieved through direct and indirect services. Direct services relate to the firm providing the Service to the Authority and may include design work and field investigations. Indirect services include those support services, such as but not limited to equipment repair, that are required for the Service to be performed. The selected Construction Management Engineer is expected to reach out to Alvin Boss at the County's MFD Program at alvin.boss@montgomerycountymd.gov or 240 777-9912 for clarification and ongoing compliance.

Section 11.17 Assignment

The Construction Management Engineer may not assign this Contract without the prior written consent of the Authority. The Authority may assign this Contract to Montgomery County without the consent of the Construction Management Engineer.

Section 11.18 Representations and Warranties

- (a) Construction Management Engineer hereby makes the following representations and warranties to and for the benefit of the Authority:
 - (i) Construction Management Engineer is duly organized and validly existing as a corporation under the laws of the State of XXXXXXXX with full legal right, power and authority to enter into and perform its obligations under this Contract, and is duly qualified to do business in the State of Maryland and will take such action as may be necessary to remain so qualified;
 - (ii) Construction Management Engineer is not in arrears with respect to the payment of any monies due and owing to the State of Maryland, and shall not become so during the term of this Contract;

- (iii) Construction Management Engineer shall comply with all federal, state, and local laws, regulations and ordinances applicable to its activities and obligations under this Contract;
- (iv) Construction Management Engineer shall obtain, its own expense, all licenses, insurance, and Government Approvals necessary to the performance of its obligations under this Contract;
- (v) Construction Management Engineer has duly authorized the execution and delivery of this Contract and this Contract has been duly executed and delivered by Construction Management Engineer and constitutes a legal, valid and binding obligation of Construction Management Engineer, enforceable against Construction Management Engineer in accordance with its terms.
- (vi) Neither the execution or delivery by Construction Management Engineer of this Contract, nor the performance by Construction Management Engineer of its obligations in connection with the transactions contemplated hereby, or the fulfillment by Construction Management Engineer of the terms or conditions of this Contract (a) conflicts with, violates or results in a breach of any Applicable Law, or (b) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any Contract or instrument, to which Construction Management Engineer is a party or by which Construction Management Engineer or any of its properties or assets are bound, or constitutes a default thereunder or (c) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Construction Management Engineer.
- (vii) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery of this Contract by Construction Management Engineer, except such as have been duly obtained or made.
- (viii) Except as disclosed to the Authority, in writing, there is no action, suit, or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of Construction Management Engineer's knowledge, threatened, against Construction Management Engineer, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by Construction Management Engineer of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Contract, or any other Contract or instrument entered into by the Authority in connection with the transactions contemplated hereby.
- (ix) In addition to any warranties required by the Contract Documents, Construction Management Engineer warrants that the work contains no faulty or imperfect material or equipment or any imperfect, careless or unskilled workmanship, that the structures, improvements and material incorporated into the Work will be new, of

good quality, free from faults and defects, suitable for its intended purpose, and in conformity with the Contract Documents.

- (x) Construction Management Engineer warrants good title to all materials, equipment, tools, and supplies furnished by it, and its Sub-Construction Management Engineers pursuant to this Contract. Title to all or a portion of said materials, equipment, tools and supplies shall pass to Authority upon the date Construction Management Engineer receives payment for said material, equipment, tools and supplies.
 - (xi) For the purpose of protecting the interest of Authority in all materials, equipment, tools, and supplies with respect to which title has passed to Authority but which remain in the possession of Construction Management Engineer or another Person, Construction Management Engineer shall take or cause to be taken all reasonable steps known to Construction Management Engineer under the Applicable Laws of the appropriate jurisdiction(s) to protect Authority's title and to protect Authority against claims by other parties with respect thereto. In the event of any such claim, Construction Management Engineer must defend and hold harmless Authority if such claims are instituted against Authority.
 - (xii) All drawings, engineering and other documents (including reviews and as-builts) furnished or to be furnished by Construction Management Engineer in performing the Work will become the property of Authority to be used by Authority as it may desire for purposes of operation, maintenance, repair or alteration of the CMA and, with the prior written consent from Construction Management Engineer (such consent not to be unreasonably withheld), for any other purposes permitted by Applicable Law.
- (b) The Authority hereby makes the following respective representations and warranties, as of the date of execution and delivery of this Contract, to and for the benefit of Construction Management Engineer.
- (i) The Authority is a body politic and corporate validly existing under the Constitution and laws of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Contract.
 - (ii) The Authority has duly authorized the execution and delivery of this Contract and this Contract has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms.
 - (iii) Neither the execution or delivery by the Authority of this Contract, nor the performance of the Authority's obligations in connection with the transactions contemplated hereby nor the Authority's fulfillment of the terms or conditions of this Contract (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any contract or instrument, to which the Authority is a party

or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.

- (iv) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery by the Authority of this Contract except those that have been duly obtained or made.

Section 11.19 Compliance with Election Law Requirement

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

Section 11.20 Compliance with Applicable Law

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

Section 11.21 Relationship of Parties

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

Section 11.22 Amendment of Contract

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

Section 11.23 Severability of provisions

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

Section 11.24 Headings

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

Section 11.25 Entire Contract

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

Section 11.26 Counterparts

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

Section 11.27 Intellectual Property

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

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

The provisions of this Section 11.27 shall survive termination of this Contract.

Section 11.28 Liens

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

Section 11.29 Limitation on Authority Obligations

- (a) Notwithstanding any other provision of this Contract to the contrary, the liability and obligation of the Authority for all monetary payments with respect to or arising as a result

of this Contract (including payments in respect of the Price and damage payments for breach of or default under this Contract) are limited obligations payable solely from Task Order Revenues as and to the extent such Task Order Revenues are received and available to pay such amounts under Applicable Law. The liability of the Authority for any monetary payments to the Construction Management Engineer with respect to, or as a result of, this Contract are not payable from the general funds of the Authority or any amounts received by the Authority in respect of the Authority Administrative Cost as defined in the Task Order and the incurrence or nonperformance of such obligations or payments will not constitute or create a legal or equitable pledge of, or lien or encumbrance upon, or claim against, any of the assets or property of the Authority or of its income, receipts or revenues, except Task Order Revenues available to pay such amounts under Applicable Law and the Task Order. The Construction Management Engineer shall have no recourse for the payment of any amounts due by the Authority under this Contract or upon any representation, warranty, covenant, contract or obligation contained in this Contract or in any document, certificate or instrument that this Contract requires to be executed and delivered by the Authority or for any claim hereon or thereon shall be had by the Construction Management Engineer, except from such Task Order Revenues.

- (b) The execution and delivery of this Contract by the Authority does not impose any personal liability on the members, officers, employees or agents of the Authority or any Montgomery County Indemnitee. The Construction Management Engineer shall have no recourse for any claims based on this Contract 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 the Construction Management Engineer by the execution of this Contract.
- (c) No recourse shall be had to the general funds or general credit of the Authority for the payment of any amount due the Construction Management Engineer hereunder, whether on account of the Price or for any loss or expense of any nature arising from the performance or non-performance of the Authority's obligations hereunder. The sole recourse of the Construction Management Engineer for all such amounts shall be to the funds available for such payment under of the terms of this Contract and the Task Order.

Section 11.30 County as Third-Party Beneficiary

The County is a third-party beneficiary of all of the obligations of Construction Management Engineer under this Contract. The County has the right, but not the obligation, to enforce rights, remedies, powers, and privileges of the Authority under this Contract if the County provides 10 days' prior written notice to the Authority and Construction Management Engineer. Unless such prior notice is given by the County, it is understood that the Authority Representative shall have the authority to direct Construction Management Engineer with respect to this Contract and Construction Management Engineer shall have the right to rely on such direction.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, each of the Authority and the Construction Management Engineer has caused this Service Contract to be executed and sealed as of the date as set forth below.

NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY

Attest: By: _____ [SEAL]

Name: Christopher W. Skaggs

By: _____ [SEAL] Title: Executive Director

Date:

CONTRACTOR

Attest: By: _____ [SEAL]

By: _____ [SEAL] Name:

Title:

Date:

SCHEDULE I DEFINITIONS

“Appendix” means any of the Appendices attached to this Contract, as the same may be amended or modified from time to time in accordance with the terms hereof.

“Applicable Law” means any law, regulation, requirement or order of any Governmental Authority, and all by either Party of its Governmental Approvals, applicable to: 1) the acquisition, design, construction, equipping, testing, financing, ownership, possession or operation of the CMA used to meet Construction Management Engineer’s obligations under the Contract, 2) the Contract; or 3) the performance of obligations under the Contract or any other Contract entered into in connection with the Contract.

“Approved CPM Schedule” means the Construction Contractor’s CPM Schedule as finally approved by the Authority.

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

“Authority Engineer” means a nationally-recognized qualified consulting engineer or firm of consulting engineers, under contract with the Authority, having experience with respect to permitting, design, construction, testing, operation, maintenance, repair, replacement and management of solid waste processing and recycling facilities, and designated as the Authority Engineer from time to time in writing by the Authority.

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

“BAFO Date” means XXXXXXXXXXXX.

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

“Best Management Practices” means those proven, established and measurable practices and policies used by successful materials management facilities to ensure safety, efficiency and high-quality outputs.

“Beneficial Uses” means those uses, installations or improvements to the Site that are not part of the Corrective Measures but are deemed beneficial to the County or surrounding

communities. These uses may include renewable energy generation, yard waste processing areas and low impact recreational uses.

“Billing Period” means each calendar month. The first Billing Period shall begin on the Acceptance Date and shall continue to the last day of the month in which the Acceptance Date occurs and the last Billing Period shall end on the last day of the Term of this Contract. Any computation made on the basis of a Billing Period that is less than a full calendar month shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

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

“Change Order” means a written order to the Construction Management Engineer issued and signed by the Authority Representative.

“Constructability Review 60%” The Contractor shall perform a constructability review of the project plans and specifications and submit to the County a written report outlining the results of this review within 30 days of the Notice to Proceed for the 60% drawings. This review shall concentrate in general on major areas of construction identifying as a minimum conflicts between plans and specification, conflicts between trades, non-workable construction conditions, scheduling problems, unsatisfactory space and access situations, clearances, non-compatibility of materials, significant cost saving changes, etc.

The report shall be thorough, with corrective changes outlined, justification for the change and the appropriate cost or savings indicated. The consultant shall attend meetings as necessary to present and discuss this report.

“Constructability Review 90%” The Contractor shall perform a constructability review of the project plans and specifications and submit to the County a written report outlining the results of this review within 30 days of receiving the 90% drawings. This review shall concentrate in general on major areas of construction identifying as a minimum conflicts between plans and specification, conflicts between trades, non-workable construction conditions, scheduling problems, unsatisfactory space and access situations, clearances, non-compatibility of materials, significant cost saving changes, etc.

The report shall be thorough, with corrective changes outlined, justification for the change and the appropriate cost or savings indicated. The consultant shall attend meetings as necessary to present and discuss this report.

“Constructability Review 100%” The Contractor shall perform a review of the project plans and specifications and submit to the County a written report outlining the results of this review within 30 days of receiving the 100% drawings. This review shall concentrate in general on the changes noted during comment on the 90% drawings, as well as a summary review of the Design Engineer’s BOD report.

The report shall be thorough. The consultant shall attend meetings as necessary to present and discuss this report.

“Construction Contractor” means the firm, or team of firms, selected through a public procurement for the construction of the designed CMA.

“Construction Documents” means the documents described in Section 2.01 of the Contract.

“Construction Design Drawings” means the drawings identified and described in Section 6.05 of the Contract.

“Construction Management Engineer” means CONTRACTOR, a public benefit corporation, organized and existing under the laws of XXXXXX, and its permitted successors and assigns.

“Construction Management Engineer’s Proposal” means the proposal submitted by the Construction Management Engineer dated XXXXXXX, the letter of clarification dated XXXXXXX and the Best and Final Offer letter dated XXXXXXXX.

“Construction Management Engineer-Related Entity” has the meaning set forth in Section 11.06(a).

“Contract” means this Service Contract for the construction management, construction inspection, and support services for the Gude Landfill Remediation Project as dated above including the exhibits, schedules and appendices hereto of the documents referenced in Section 2.01.

“Contract to Complete” means an Contract among a Sub-Construction Management Engineer, the Authority, and the Construction Management Engineer in form and substance, to be agreed to as a condition of notice to proceed, wherever the Sub-Construction Management Engineer consents to the contingent assignment of the Subcontract to the Authority and agrees that if the Authority elects to assume the Subcontract the Sub-Construction Management Engineer will honor its obligations to the Authority.

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

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by: (1) Applicable Law; (2) the Design Requirements; (3) the Performance Guarantees; (4) Good Engineering and Construction Practice; (5) Good Industry Practice; (6) the Quality Management Plan; (7) the Operation and Maintenance Manual; (8) applicable equipment manufacturers’ specifications; (9) applicable Insurance Requirements; and (10) any other standard, term, condition or requirement specifically provided in this Contract to be observed by the Construction Management Engineer. All professional and technical standards, codes and specifications forming part of the Contract Standards are to be the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Effective Date.

Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications shall apply as if incorporated in the Design Requirements and (2) if any material revision occurs, to the Construction Management Engineer's knowledge, after the Contract Date, and prior to completion of the Work, the Construction Management Engineer shall notify the Authority. If so directed by the Authority, the Construction Management Engineer shall perform the Work in accordance with the revised professional and technical standard, code, or specification as long as the Construction Management Engineer is compensated, subject to cost substantiation, for any additional cost or expense attributable to any such revision and is provided schedule relief for any delays attributable to any such revision.

“Contract Year” means the Authority's fiscal year commencing on July 1 in any year and ending on June 30 of such year; provided, however, that with respect to operations of the Facility, the first Contract Year shall commence on the Acceptance Date and shall end on the following June 30, and the last Contract Year shall commence on July 1 prior to the date this Contract expires or is terminated, whichever is appropriate, and shall end on the last day of the Term of this Contract or the effective date of any termination, whichever is appropriate. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

“Corrective Measures” means the MDE approved toupee cap and additional landfill gas collection described in the Revised Assessment of Corrective Measures dated April 2016 and accepted by MDE on July 8, 2016.

“CPI” or “Consumer Price Index” means the Bureau of Labor Statistics Consumer Price Index (CPI) for all Urban Consumers for Baltimore-Columbia-Towson, MD - All Items (1982-84=100) , published by the United States Department of Labor, or, if such Index is no longer published or its method of computation is substantially modified, a substitute Index published by the United States government or by a reputable publisher of financial or economic statistics that will fairly and reasonably reflect the same or substantially the same information as the discontinued or modified Index.

“CPM Schedule” means the critical path method schedule required by Section 7.06 of the Contract.

“Design Requirements” means the design requirements for the CMA set forth in Appendices 2, 3, 4 and 5 as the same may be changed or modified in accordance herewith.

“Gude Landfill” means Montgomery County's landfill located at 600 East Gude Drive, Rockville, Maryland 20850.

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

“Engineer of Record or Design Engineer” means EA Engineering, or its permitted successors.

“Environmental Claim” means any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim against the Construction Management Engineer to the extent arising (a) pursuant to, or in

connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Waste or actual or alleged Hazardous Waste Activity, (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Waste, Environmental Law or other order of a Governmental Authority or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

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

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

“Good Engineering and Construction Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices for the design, construction and improvement of capital assets in the municipal solid waste industry in the United States.

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

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

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

“Guarantor” means PARENT COMPANY, a corporation organized and existing under the laws of STATE, and its successors and assigns permitted under the Guaranty.

“Guaranty Contract” or “Guaranty” means the Guaranty Contract entered into concurrently with this Contract from the Guarantor to the Authority in the form set forth in the Transaction Forms, as the same may be amended from time to time in accordance therewith.

“Gude Landfill Concerned Citizens or GLCC” means the communities surrounding the Gude Landfill, specifically: Derwood Station HOA No. 2, Hollybrooke DSS HOA and Derwood Station HOA.

“Hazardous Waste” means:

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

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

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

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

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

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

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

“Letter of Credit” means one or more irrevocable non-transferable letters of credit, in the form attached hereto as Appendix 11, issued by a Qualified Financial Institution, which (a) has a stated expiration date that is not earlier than 12 months after the date of its issuance, (b) is drawable if it is not renewed or replaced in accordance with Construction Management Engineer’s obligations under this Contract at least 15 days prior to its scheduled expiration date, (c) is drawable if the issuer fails to meet the requirements of a Qualified Financial Institution and the Letter of Credit is not replaced with a replacement Letter of Credit issued by a Qualified Financial Institution within 15 Business Days after such event, and (d) is otherwise drawable if and to the extent Construction Management Engineer fails to pay or perform its obligations as required under this Contract.

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

“Major Sub-Construction Management Engineers” means each party to a Major Subcontract other than the Construction Management Engineer.

“MDE” means the Maryland Department of the Environment.

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

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

“Party” means the Authority or the Construction Management Engineer.

“Parties” means collectively the Authority and the Construction Management Engineer.

“Performance Bond” means the security required by Section 11.03 of the Contract.

“Performance Guarantees” means the guarantees of performance relating to the Annual Recovery Rate Guarantee, and the Annual Throughput Guarantee made by the Construction Management Engineer specifically set forth in Appendix I.

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

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

“Price Adjustment Factor” has the meaning specified in Appendix 9, subsection 9.2.

“Quality Management Plan” means the quality assurance and quality control requirements set forth in Appendix 3.

“Qualified Financial Institution” means a financial institution with a United States office having at the applicable time a Credit Rating of (a) A- (A minus) or better from Standard & Poor’s, or (b) A3 or better from Moody’s, or (c) if such financial institution has a Credit Rating at such time from both Standard & Poor’s and Moody’s, A- (A minus) or better from Standard & Poor’s and A3 or better from Moody’s.

“Qualified Surety” means a bonding company licensed to do business in Maryland and having a rating of at least “A” in the latest revision of the A.M. Best Company’s Insurance Report and listed in the United States Treasury Department’s Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies.”

“RCRA” or “Resource Conservation and Recovery Act” means the Resource Conservation and Recovery Act, 42 U.S.C.A. §6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“Reference Document” means any of the documents appended to this Service Contract or incorporated by reference.

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

“Remediation Work” means the efforts by the Construction Contractor to complete the installation of the Corrective Measures and Beneficial Land Uses in the Construction Documents and generally relates to Tasks 3, 4 and 5, herein.

“Renewal Term” means one or both of two one-year periods after the Initial Term, if elected by the Authority.

“Required Insurance” means the minimum insurance coverages required by Appendix 11 of the Contract.

“Residue” means the previously landfilled waste that may have been unearthed during the Remediation Work. Residue is to be disposed of at the Montgomery County Transfer Station. There will be no charge for the disposal of this material.

“RFP” means the request for proposals issued August 9, 2019, including any addenda thereto issued.

“S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Shop Drawings” means the drawings identified and described in Section 6.04 of the Contract.

“Site” means the parcels of real property identified in Exhibit A to the Task Order Contract and Appendix 12 on which the CMA is to be constructed.

“Site Inspection” has the meaning set forth in Section 6.02.

“Task Order” means the Task Order between the Authority of the County under which the County grants access to its Landfill for the design and construction of certain Corrective Measures at the Landfill.

“Site-Related Information” means all site-related information provided to the Construction Management Engineer prior to the Effective Date including, but not limited to, the Reference Documents.

“State” means the State of Maryland.

“Subcontract” means a contract or purchase order by the Construction Management Engineer, or a Sub-Construction Management Engineer to the Construction Management Engineer, as applicable.

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

“Surety” means the issuer of the Performance Bonds and Payment Bond required by the Contract.

“Tax” or **“Taxes”** means all fees, taxes (including sales taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible)), levies, assessments, withholdings and other charges and impositions of any nature,

plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any federal, state, local or foreign government or other taxing authority.

“Technical Specifications” means the technical specifications set forth or referenced in Schedule II, which comprise the Design Requirements.

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

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

“Ton” means a short ton of 2,000 lbs.

“Transaction Form” means any of the Transaction Forms appended to this Contract.

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

- (a) an act of God, hurricane, landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, war, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage committed at a facility by a person other than an employee or agent of, or visitor invited by, the Construction Management Engineer or its affiliates, or the Construction Management Engineer’s Sub-Construction Management Engineers of any tier;
- (b) the failure of the County or the appropriate federal or state agencies or public utilities having operational jurisdiction over the Landfill to provide and maintain all utilities services (excluding sewerage and water lines) to the Landfill.
- (c) A non-Construction Management Engineer or non-Sub-Construction Management Engineer Labor Action.

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

In no event will Sub-Construction Management Engineer Default or a Construction Management Engineer Labor Action constitute an Uncontrollable Circumstance.

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

“Uncontrollable Circumstance” shall not include the following:

(A) reasonably predictable weather conditions for the geographic area of the Landfill;
or

(B) the imposition of any new condition in or other change to a Governmental Approval on or before the Notice to Proceed Date; or

(C) the failure of a Party (including a Sub-Construction Management Engineer) to any Contract with Construction Management Engineer to perform its obligations under such Contract or undertaking unless the failure of such Party to perform is caused by a Uncontrollable Circumstance affecting such Party; or

(D) with respect to Construction Management Engineer only, any error or defect in the design or construction or equipping of the Corrective Measures; or

(E) any labor strike or work stoppages solely caused by or solely directed at Construction Management Engineer or its Sub-Construction Management Engineers (or the affiliates of either);

(F) any insolvency or bankruptcy of a Sub-Construction Management Engineer of any tier;

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

“Utilities” means any and all utility services and installations whatsoever (including gas, water, electricity, telephone, internet, cable and any other telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“Warranties” means the warranties of Construction Management Engineer under **Articles VII and XI** of this Contract.

“Warranty Period” has the meaning given in Section **7.07**.

“Work” means all work and activities to be performed by Construction Management Engineer under this Contract, including, without limitation, Appendix 2, Task 1 through and including Task 5, in accordance with this Contract.

SCHEDULE II
RFP Exhibit II Documents

**SCHEDULE III
TERMS OF PAYMENT**

Fee Paid to the Construction Management Engineer by the Authority:

Price for work completed in the Period– Liquidated Damages

Where:

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

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

SCHEDULE IV

CONTENTS OF REPORT AND PAYMENT REQUEST

Title Block: Date, Name of Project, Name of Construction Management Engineer employee creating form, Signature of Construction Management Engineer Representative

Summary of Payments to date

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

Requested payment amount

% of work remaining, % of money remaining

Summary of CPM schedule to date

Summary of work to be undertaken in next period

Reference Attached Invoice for formatting.

*meals must conform to the GSA daily reimbursement guidelines for the District of Columbia and cannot include charges for alcohol. https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems_report&state=MD&fiscal_year=2019&zip=&city= (last accessed 08.08.19)

APPENDIX 2

WORK REQUIREMENTS

2.1 GENERAL

This Appendix identifies and establishes requirements for the Work, including verification of site conditions, demolition, safety and environmental controls and restoration of disturbed areas. *The overall purpose of the Contract is to described the requirements for technical assistance for the construction management, construction inspection, and support services for the Construction Management Engineer (“CME”) necessary during the duration of the construction of the MDE-approved Corrective Measures at the Gude Landfill.*

2.1.1 PROJECT DESCRIPTION

The Construction Management, Construction Inspection, and Support Services for the Construction Management Engineer for the Gude Landfill Remediation Project will involve the construction of: a geosynthetic closure cap, an asphalt-paved closure cap section for emergency debris management, improvements to the landfill gas and stormwater management systems, and other ancillary support infrastructure. More specifically, the remediation project construction work will include the following general elements:

- Installing erosion and sediment controls.
- Clearing, grubbing, and stripping vegetation from the existing site (~100 acres).
- Onsite waste excavation and relocation of waste material within the landfill with leachate management (~300,000 cubic yards).
- Demolishing existing storm drains and drainage structures.
- Placement of soil cover over the regraded waste (~120,000 cubic yards).
- Construction of a geosynthetic closure cap (~95 acres).
- Construction of surface drainage features.
- Phased demolition and reconstruction of the active landfill gas collection and management system including headers, lateral piping, and extraction wells (~100 extraction wells). The landfill gas collection and management system requires continuous operation for regulatory compliance.
- Tie-in to the Landfill Gas Blower / Flare Station and associated systems.
- Construction of an asphalt-paved emergency debris management area (~3 acres).
- Construction of access roads (~18,000 feet).
- Stormwater management controls and improvements.
- Site stabilization.
- Other ancillary support infrastructure.

The remediation project description above is not intended to be all encompassing and may change during the remainder of the design/permitting phase. The Construction Documents (the construction project manual, specifications, drawings, and other applicable contract

documents) for the remediation construction project will contain the full requirements that the Construction Management Engineer will need to enforce during construction.

The estimated project construction duration for all phases is 2,400 calendar days with projected timeframes as follows: 1 year for pre-construction and procurement support services; 4.5 years for construction management and inspection services; and 1 year for performance/warranty support services. The award of construction is anticipated to be in August 2020 (Fiscal Year 2021).

The remediation project construction work will be performed using a phased approach and will conform to the 20-acre grading unit restriction imposed by the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.

The remediation project construction work will be governed under the requirements of the Maryland Department of the Environment, or (“MDE”), the Montgomery County Department of Permitting Services (“DPS”), the Maryland-National Capital Park and Planning Commission (“M-NCPPC”), and other utility entities that are located in proximity to the Landfill site.

2.1.2 PROJECT SEQUENCE OF CONSTRUCTION DESCRIPTION

Refer to **Schedule II** for a comprehensive sequence of construction for the remediation project. Updates to the Construction Documents will supersede Schedule II. A key element of the remediation construction project will be the phased work of the landfill gas system improvements. The existing landfill gas collection headers and lateral piping are installed above grade on the surface of the Landfill. The new landfill gas collection and management system will be installed below the closure capping grades. Therefore, it is expected that the existing landfill gas collection and management system will remain operational during the remediation project construction, with only brief interruptions for decommissioning existing infrastructure and connecting new infrastructure. Temporary landfill gas collection and conveyance piping may be necessary within the limits of capping while construction is in progress.

The aspects of the remediation sequence of construction referenced above and included in **Schedule II** are not intended to be all encompassing and may change during the remainder of the design/permitting phase. The Construction Documents (the construction project manual, specifications, drawings, and other applicable contract documents) for the remediation construction project will contain the full requirements that CME will need to enforce during construction.

2.1.3 SERVICES TO BE PROVIDED BY CME

- 1) the CME will ensure that the project is constructed and managed:
 - a) In accordance with the project Construction Documents with a minimum of change orders; the goal being less than 3% of the bid price or less;

- b) To provide a complete facility that is safe, easy, and economical to maintain and operate and operates as intended; and,
 - c) So that any installed equipment performs efficiently and effectively for its expected service life.
- 2) The construction management, construction inspection, and support services for the remediation project provided by the CME shall be performed with proper coordination, due diligence, and documentation:
- a) The CME will maintain the responsibility to verify existing records and existing on-site field conditions at the closed Gude Landfill before submitting a proposal. Failure to identify discrepancies between the scope of work and existing site conditions to the Authority's attention constitutes acceptance of those conditions.
 - b) The CME will prepare all project documents and perform all project work in accordance with all applicable federal, state, and local laws and regulations, general industry standards, and any Construction Quality Assurance and Quality Control ("QA/QC") Manuals for the project.
 - c) The CME is responsible for coordinating the work between tasks to ensure complete and accurate submissions to the Authority, applicable permitting agencies (as necessary) and other affiliated parties related to the project work. The CME shall also coordinate, review, and be responsible for the work of their teaming partners, subconsultants, and subcontractors, etc.
 - d) The CME shall provide additional information upon request by the Authority/Montgomery County to support the remediation design and construction project and associated meetings on frequencies specified by the Authority/Montgomery County.
 - e) The CME shall be responsible to ensure that all work is accomplished in accordance with the project Construction Documents (the construction project manual, specifications, drawings, and other applicable contract documents) as well as with issued permits for the projects and applicable Federal, federal, state, and local regulatory, in a manner that meets the objectives described above. However, only the Authority Representative has the authority to make changes in the Work, or to accept Work. The Authority/Montgomery County reserve the right to limit the number of CME personnel attending meetings throughout the project.
 - f) The Construction Contractor is responsible for all safety on the job site. However, if, during the course of their construction inspection, the CME observes a condition or act, which they believe to be unsafe, they shall immediately notify the Construction Contractor, the Authority, and Montgomery County. Furthermore, if, during the course of their inspection, the CME observes a condition or act, which

the CME believes, is hazardous, or unsafe and requires immediate emergency action, the CME shall have the authority to stop the work in order to prevent injury to persons or damage to property. The Authority/Montgomery County shall be notified immediately and shall be responsible for determining the corrective action.

- g) The CME shall thoroughly document in writing any work stoppage, stating the nature of the hazardous condition, the reason for stopping the work, the times that work was stopped and resumed, and the corrective action taken by the Construction Contractor and approved by the Authority/Montgomery County to eliminate the hazardous condition. This information shall be consolidated into a report by the CME, which shall be delivered to the Authority/Montgomery County project manager with copies going to the Construction Contractor and the Design Engineer.
- h) A general list of anticipated permitting and right-of-entry activities to be performed by the Design Engineer as applicable, is provided below. The CME will be responsible to enforcing compliance with the following, which is not intended to be an all-inclusive list:
 - i. MDE permitting documents for the landfill capping system, landfill gas collection enhancements, new groundwater monitoring well installations, erosion and sediment control, stormwater management, and associated construction activities;
 - ii. DPS approvals for erosion and sediment control, stormwater management, and new groundwater wells;
 - iii. M-NCPPC mandatory referral review, reforestation and forest conservation plans, and construction access permits;
 - iv. Washington Suburban Sanitary Commission (“WSSC”) right-of-entry agreement;
 - v. Transcontinental (“Williams Gas”) and Columbia Gas natural gas pipeline right-of-way, right-of-entry agreements;
 - vi. Industrial and Commercial entity right-of-entry agreements and other off-site locations, as necessary; and
 - vii. Right of entry agreements with members of the Derwood Community to conduct view shed impact analysis as part of the design process.

Task 1 – Pre-Construction Support Services

The CME shall integrate the various phases of work and the associated services prior to construction, during construction, and after construction.

- CME Project Kick-off Meeting – The CME shall schedule, hold, and facilitate a Project Kick-off Meeting within two (2) weeks of the Notice to Proceed. The CME shall issue the agenda seven (7) days prior to the Kick-off Meeting for review, comment, and acceptance. The format for the Kick-off Meeting shall be approved by the Authority/Montgomery County and the agenda shall include, but is not limited to:

- Designation of primary points-of-contact, roles, and receipt of contact information;
- Coordination between parties and chain-of-command communication;
- Coordination for site access and work on-site by the Construction Management Engineer;
- Coordination for on-going operations at the Landfill;
- Emergency telephone numbers and contacts list;
- Procedures for information requests and initial requests;
- Review of the Scope of Work;
- Procedures for Deliverables and Review Timelines;
- Monthly Conference Calls and Monthly Project Meetings;
- Weekly Email Reports and Monthly Progress Reports;
- Project Communication Plan (inclusive of support for the Authority/County during Design Engineer and Community meetings, as requested);
- Project Health and Safety Plan;
- Project Schedule;
- Project Budget;
- Processing and Schedule of Payments; and
- Other business; and the next meeting date.

The CME shall prepare and distribute meeting minutes for review, comment, and acceptance within seven (7) days of the meeting or phone call occurrence.

- Weekly Progress Emails during Pre-Construction Support Services – The CME shall prepare Weekly Project Progress Emails (entitled “Gude Remediation – CME ” – ‘topic and date’) that summarize work activities during the reporting week (i.e., the current week) and forecasted activities for the next week or weeks, as necessary. The format of the Weekly Project Progress Emails shall be approved by the Authority. The Weekly Project Progress Emails shall be provided by 12:00 PM, Local Time, every Friday for the entire duration of the project.
- Monthly Progress Reports during Pre-Construction Support Services – The CME shall prepare Monthly Project Progress Reports for the entire duration of the project. The format of the Monthly Project Progress Reports shall be approved by the Authority/Montgomery County (please see the preferred format in Schedule II to this Contract). The Monthly Project Progress Reports shall be provided by the 7th of every month and shall include, but are not limited to:
 - a) A summary of work activities, as open/closed action items, during the reporting month;
 - b) A summary of forecasted work activities for the next month or months as necessary;
 - c) A rolling listing of major submittals (e.g., deliverables) issued during the reporting month and their status;
 - d) A rolling listing of major submittals (e.g., deliverables) scheduled for issuance during the following month or months;

- e) A description of any outstanding concerns or issues regarding the project work that require resolution, and the CME's approach to promptly address the issue;
 - f) Updated Project Communication Plan (as necessary), Project Schedule, and Deliverables Schedule;
 - g) A budget and percent complete update per task and/or per work activity;
 - h) The CME's plan for accelerating project activities if progress-to-date indicates the work is behind schedule;
 - i) A listing of health and safety statistics for relevant project-related activities;
 - j) A listing of any violations of Governmental Approvals or Applicable Law and actions taken or to be taken to eliminate any subsequent violations; and
 - k) The CME's verification that the design and permitting documents are being followed in accordance with the requirements of this contract.
- Project Communication Plan. The CME will prepare a Project Communication Plan that considers and accounts for various project aspects including, but not limited to, day-to-day chain-of-command communication and correspondence between points-of-contact, deliverables and deliverable reviews, conference calls, meetings and presentations, and project schedule, etc. throughout all tasks of the project work. The CME shall maintain and update the Project Communication Plan for the entire duration of the project. The Project Communication Plan shall be provided for review, comment, and acceptance within fourteen (14) days following the CME Kick-off Meeting.

This deliverable is intended for communication between the CME and their subconsultants, as well as from the CME to the Authority/Montgomery County, and other stakeholders (including the general Construction Contractor). The CME will revise this plan following the award of the construction contract.

- Constructability Review and Summary Report. The CME will perform a constructability review of the 60% design project plans and specifications as well as a technical review of any regulatory comments received on these plans and specifications. The CME shall submit to the Authority/Montgomery County a detailed written report outlining the results of this 60% review within 30 days of the Notice to Proceed. The review shall concentrate on the overall constructability of the project including: the proposed design, proposed materials, phasing and sequencing of work, material estimates, settlement calculations, contingencies, schedule, and adequacy of the construction cost estimate. The review shall also evaluate the major areas of construction: permit compliance, proposed conflicts between plans and specification, conflicts between trades, non-workable construction conditions, scheduling problems, unsatisfactory space and access situations, clearances, non-compatibility of materials, significant cost saving changes, coordination conflicts with on-going operational and continuation of environmental monitoring activities at the site.

The summary report shall be thorough, specific references to the documents reviewed and the origination of comments, scans or markups of documents, corrective changes outlined, justification for the change, and the appropriate cost or savings indicated. Aside from the narrative description of the constructability review in the summary report, the CME shall also prepare a running of the information above for each review

comment in a tabular format (M.S. Excel). The CME shall prepare the constructability report for the 60%, 90%, and 100% design documents.

- Pre-Construction Project Schedule and Deliverables Schedule. The CME will prepare a detailed Pre-Construction Project Schedule that encompasses the current and remaining design activities, CME work activities under Tasks 1-5 and all deliverables, procurement of the Construction Contractor, pre-construction meetings, start of construction, major construction milestones, construction progress meetings, construction certifications and meetings with MDE, County DPS, M-NCPPC, and other regulating entities and stakeholders, construction completion with closeout, and as-built records, and the project performance and warranty period. The CME must also include a separate standalone Deliverables Schedule to accompany the detailed Pre-Construction Project Schedule.

The CME will be responsible for updating the detailed Pre-Construction Project Schedule and the Deliverables Schedule for the entire duration of the project work (prior to construction being initiated), as necessary for project-related activities and meetings, and per requests by the Authority/Montgomery County. Both schedules are to be prepared and distributed in Microsoft Project and PDF formats.

- Construction Quality Assurance / Quality Control (QA/QC) Manual. The CME will prepare their Construction QA/QC Manual with the procedures and methods that will be implemented to ensure that construction is completed in accordance with the construction plans, specifications, permits, approvals, and applicable standards. The Manual will explain in detail how the CME intends to deliver all the services outlined in this RFP and the Contract.

The CME will customize this Manual to the Gude Landfill remediation construction project, and at minimum, the Construction QA/QC Manual should contain the following information:

- a) Cover Page that is signed and sealed by a Professional Engineer in Maryland;
- b) Document Review Acknowledgement Form with typed name, title, signatures, and dates for all CME staff whom have reviewed the Manual including Construction Management and Construction Inspection personnel and subconsultants;
- c) QA/QC program overview and organizational chart;
- d) Project Team Directory with roles and responsibility;
- e) Lines of authority and chain-of-command. Include procedures and work flow diagrams;
- f) Procedures for Meetings and Minutes (including scheduling, sign-in sheet, agenda, and minutes);
- g) Procedures for secure information sharing and storage;
- h) Construction Contractor submittal requirements including requests for information (RFIs) and the construction schedule;
- i) Construction QA/QC Procedures and Specialized Inspections;
- j) Construction Contractor personnel requirements for geosynthetic work;

- k) Construction QA/QC personnel requirements for inspection for the CME including daily inspection, soils, geosynthetics, etc.;
- l) List of inspections and observations with scope and frequency for the CME;
- m) Inspection forms for the CME;
- n) List of sampling requirements for the Construction Contractor and CME;
- o) List of testing or monitoring requirements including settlement for the Construction Contractor and CME;
- p) Site safety and applicable standards for Construction Contractor and CME.
- q) Emergency Procedures;
- r) Procedures to track construction inspection and verification activities for the contract, construction acceptance criteria, and construction audits;
- s) Procedures for regulatory certification at specified completion stages;
- t) Procedures to track construction deficiencies and field changes from identification through acceptable corrective action;
- u) Non-Compliance or Non-Conformance Report;
- v) Deficiency Lists / Reports;
- w) Change Orders and Estimates by the CME;
- x) Cash Flow Analysis & Projections; and Construction Contractor Pay Requests;
- y) Claims Mitigation & Risk Avoidance;
- z) Record Keeping and documentation requirements (hard-copy and electronic) for the Construction Contractor and CME;
- aa) As-Builts requirements (development, maintenance, and issuance); and
- bb) Project Close-out, and Performance and/or Warranty Period procedures.

The draft and final Construction QA/QC Manual will be provided to the Authority/County, and the Design Engineer for review and comment, and for conformance to the design plans and specifications. The CME will prepare the final Construction QA/QC Manual based on the 100% plans and specifications (the Construction Documents).

Task-Specific Assumptions

- 1) The CME will provide draft and final versions of all deliverables in Task 1.
- 2) The CME will attend up to six (6) meetings to present the deliverables in Task 1 or other meetings as requested.
- 3) The CME will incorporate up to two (2) rounds of comments from the Authority/Montgomery County on each of the draft deliverables in Task 1.
- 4) The CME will provide five (5) hard-copies of all draft and final documents to the Authority. The CME shall provide two (2) electronic PDF format copies along with all editable electronic copies in Microsoft Word, Microsoft Excel, Microsoft PowerPoint, or documents in other editable formats on USB.

Deliverables

- 1) Draft and Final agendas, sign-in sheets, and minutes from the CME Kick-off Meeting and other project meetings in Task 1.

- 2) Weekly Progress Emails and Monthly Progress Reports.
- 3) Draft and Final Project Communications Plan.
- 4) Draft and Final Constructability Review Summary Reports: 60%, 90%, 100% designs.
- 5) Draft and Final Pre-Construction Project Schedules.
- 6) Draft and Final Construction QA/QC Manuals.

Task 2 – Procurement Support Services

The CME shall integrate the various phases of work and the associated services prior to construction, during construction, and after construction.

The CME will assist the Authority/Montgomery County with Procurement Support Services for the remediation construction project including, but not limited to:

- Attendance at one (1) pre-Procurement conference and site visit, and review minutes of the meeting.
- Provide technical assistance to answer and/or respond to applicable questions raised by the prospective Proposers.
- Review addenda to clarify interpretations of the Procurement Documents, including, but not limited to, revised procurement template documents, specifications, drawings, and Procurement forms, etc.
- Review procurement documents and procurement tabulations to ensure all applicable forms, signatures, etc. are attached and completed in accordance with the Procurement Documents. The Design Engineer will be responsible for formal procurement evaluation and procurement tabulations of their respective projects.
- Assist with conducting one (1) pre-Award Conference with the prospective Construction Contractor, if necessary, prior to issuance of the Notice to Proceed to verify the Construction Contractor understands the scope of work, sequence of construction, and schedule requirements, etc.
- Weekly Progress Emails during Procurement Support Services – The CME shall prepare Weekly Project Progress Emails (entitled “Gude Remediation – CME ” – ‘topic and date’) that summarize work activities during the reporting week (i.e., the current week) and forecasted activities for the next week or weeks, as necessary. The format of the Weekly Project Progress Emails shall be approved by the Authority. The Weekly Project Progress Emails shall be provided by 12:00 PM, Local Time, every Friday for the entire duration of the project.
- Monthly Progress Reports during Procurement Support Services – The Construction Management Engineer shall prepare Monthly Project Progress Reports for the entire duration of the project. The format of the Monthly Project Progress Reports shall be approved by the Authority/Montgomery County (please see the preferred format in

Exhibit 2). The Monthly Project Progress Reports shall be provided by the 7th of every month and shall include, but are not limited to:

- a) A summary of work activities, as open/closed action items, during the reporting month;
- b) A summary of forecasted work activities for the next month or months as necessary;
- c) A rolling listing of major submittals (e.g., deliverables) issued during the reporting month and their status;
- d) A rolling listing of major submittals (e.g., deliverables) scheduled for issuance during the following month or months;
- e) A description of any outstanding concerns or issues regarding the project work that require resolution and the Construction Management Engineer's approach to promptly address the issue;
- f) Updated Project Communication Plan (as necessary), Project Schedule and Deliverables Schedule;
- g) A budget and percent complete update per task and/or per work activity.
- h) The CME's plan for accelerating project activities if progress-to-date indicates the work is behind schedule;
- i) A listing of health and safety statistics for relevant project-related activities.
- j) A listing of any violations of Governmental Approvals or Applicable Law and actions taken or to be taken to eliminate any subsequent violations; and
- k) The CME's verification that the design and permitting documents are being followed in accordance with the requirements of this contract.

Task-specific Assumptions

- 1) The CME will attend up to two (2) meetings to support Task 2.
- 2) The CME will incorporate up to two (2) rounds of comments from the Authority/Montgomery County on each of the draft deliverable in Task 2.
- 3) The CME will provide five (5) hard-copies of all draft and final documents to the Authority. The CME shall provide two (2) electronic PDF format copies along with all editable electronic copies in Microsoft Word, Microsoft Excel, Microsoft PowerPoint, or documents in other editable formats on USB.

Deliverables

- 1) Meeting Minutes from the pre-Procurement and pre-Award conferences, and other meetings as applicable.
- 2) Weekly Progress Emails and Monthly Progress Reports.
- 3) Review the Procurement Documents (including the Authority's procurement files at 100% design stage as well as prospective proposer documents, questions, addenda, tabulations, and prospective award documents. The CME will provide the necessary written documentation to support the Authority/Montgomery County with the successful completion of Task 2 including but not limited to the Construction HASP).

Task 3 – Construction Management Services

The CME shall integrate the various phases of work and the associated services prior to construction, during construction, and after construction.

- 1) Construction Management. The CME will provide various forms of communication and correspondence during the project, which is incumbent upon the project work. This includes, but is not limited to:
 - a) The CME will perform all necessary research, investigations, permitting enforcement and support activities, management and inspection, document reviews and responses, and other preparation work required to complete the MDE-approved CMA at the closed Gude Landfill and as required during project activities;
 - b) The CME shall prepare and provide applicable documentation (such as updated site drawings, narratives, etc.) to the Authority/Montgomery County with updating existing County Plans based on the project work at the end of the project(s);
 - c) The CME shall maintain detailed written documentation and records for correspondence with all applicable federal, state, and local permitting agencies to inquire about potential permitting requirements and public notification requirements regarding the work of the MDE-approved CMA at the closed Gude Landfill. CME must transmit electronic copies of all correspondence to the Authority/Montgomery County within one (1) business day of either transmittal or receipt;
 - d) Telephone, email, letter, and other associated correspondence with the Authority, its member jurisdiction and designated agents, regulatory agencies, and other entities and individuals as required by the project work;
 - e) Conduct meetings as necessary to discuss observed problems and/or to resolve conflicts. An appropriate representative of the CME firm shall chair all meetings and submit prepared minutes of meetings to all attendees;
 - f) The CME shall be responsible for any required meetings with the regulating agencies and entities for the performance of work under Task 3;
 - g) Review the Final Construction QA/QC Manual with all CME Staff and provide the Document Review Acknowledgement Form with signature for all staff on the project. Provide the Authority/Montgomery County with the Final Construction QA/QC Manual and updates as required;
 - h) Meeting preparation, attendance, and documentation, which shall include advance agendas, meeting minutes, presentations, and other work items as required by the project work;
 - i) Evaluate the Construction Documents and identify potential construction problems, for example; coordination with ongoing landfill operations, interruptions or delays in service to citizens, scheduling, relocation difficulties, etc. Plan and execute all steps necessary to avoid these problems.

- j) Review, coordinate, enforce, and document all of the applicable requirements of the Construction Documents, Permits, and Rights-of-Entry/Access agreements;
- k) Coordinate all necessary plan and specification interpretations and clarifications;
- l) Provide specialized technical support to assist the inspector as needed or requested by the Authority/Montgomery County;
- m) Be alert to problems and take steps to resolve them before they become major issues;
- n) The Construction Contractor is responsible for all safety on the job site. However, if, during the course their inspection, the CME observes a condition or act, which they believe to be unsafe, they shall immediately notify the Construction Contractor and the Authority/County;
- o) Prepare draft change orders and field orders for approval by the Authority/Montgomery County. Following approval, administer same with the Construction Contractor;
- p) Prepare an independent engineer's estimate on proposed change orders.
- q) Maintain detailed records of all work performed on a force account or time and material basis;
- r) Require special inspection or testing of the Construction Contractor's work.
- s) Recommend the acceptability of the work;
- t) Witness and record the results of all performance tests;
- u) Conduct and develop punch lists for all formal inspections;
- v) Develop supplemental punch lists for the Construction Contractor in conjunction with the CME's readiness for the testing and inspections and recommend to the Authority/Montgomery County that the conditional acceptance or final acceptance inspections occur;
- w) Prepare routine letters, memorandum, reports, change orders and miscellaneous paperwork as directed by the Authority/Montgomery County for signature by the Authority/Montgomery County;
- x) Respond to public complaints, including contacting complainants, determining solutions; prepare letters, etc. in accordance with the Authority's/Montgomery County's policy and procedures, which requires timely action by the CME;
- y) Maintain a telephone recorder / voice mail system at the CME Field Office which is to be monitored daily;
- z) Manage and log all aspects of the materials testing and certification requirements per the Construction Documents and the Construction QA/QC Manual; and
- aa) The Construction Contractor will provide the CME will a Field Office with ingress and egress (i.e., office trailer) at the Gude Landfill site with connectivity, electricity, water, and sewer connections. The CME is responsible for all other equipment, furniture, supplies, and appurtenances for the project work.

- 2) From Task 1, provide the final Project Communication Plan and Construction QA/QC Manual (with the Document Review Acknowledgement with signatures), and continue to update these documents as needed during Tasks 3 and 4.
- 3) Prepare pre-construction, progress during construction, and post-construction records of the Gude Landfill and the remediation construction project. The pre-construction and post-construction work will include photographic cataloging and video recordings of the entire project site and all existing structures inside and outside before the Construction Contractor begins their mobilization and following conditional acceptance of the remediation construction project. Progress construction photographic cataloging and video recordings shall be obtained over the course of the monthly work and provided with the CME's Monthly Progress Report. The CME will properly label photographs and videos for identification. Drone usage is acceptable; however, the obtaining of approvals and permits if required, is the responsibility of the CME. A complete record shall be turned over by the CME along with all supporting information after conditional and final acceptance. The photos on subsurface construction should receive special attention since that work will not be visible for future reference. In addition, photograph areas where problems are encountered, non-conformance by the Construction Contractor, and in general critical areas in the construction work. Photos are to be annotated, dated, and maintained at the job site.
- 4) Remediation Construction Kick-off Meeting – The CME shall schedule, hold, and facilitate a Construction Kick-off Meeting within two (2) weeks of the receipt of all final permits. The CME shall issue the agenda seven (7) days prior to the Construction Kick-off Meeting for review, comment, and acceptance. The CME shall invite all applicable regulatory agencies to the meeting. The format for the Construction Kick-off Meeting shall be approved by the Authority/Montgomery County and the agenda shall include, but is not limited to:
 - a) Designation of primary points-of-contact, roles, and receipt of contact information;
 - b) Coordination between parties and chain-of-command communication;
 - c) Coordination for site access and work on-site by the CME;
 - d) Coordination for on-going operations at the Landfill;
 - e) Emergency telephone numbers and contacts list;
 - f) Procedures for information requests and initial requests;
 - g) Review of the Scope of Work;
 - h) Procedures for Deliverables and Review Timelines;
 - i) Monthly Conference Calls and Monthly Project Meetings;
 - j) Weekly Email Reports and Monthly Progress Reports;
 - k) Project Communication Plan;
 - l) Project Health and Safety Plan;
 - m) Stakeholder Engagement Plan;
 - n) Project Schedule;
 - o) Project Budget;
 - p) Processing and Schedule of Payments; and

q) Other business; and the next meeting date.

The CME shall prepare and distribute meeting minutes for review, comment, and acceptance within seven (7) days of the meeting or phone call occurrence.

- 5) Project Meetings and Presentations with Authority and Montgomery County Department/Division Head Meetings and Presentations – The CME shall budget for twenty-five (25) meetings and twenty-five (25) presentations with the Authority’s and Montgomery County’s County Department/Division Heads for the project. The CME will prepare meeting agendas, graphics, meeting minutes, and presentations for review, comment, and acceptance. The general schedule for these meetings will be quarterly.
- 6) Project Meetings and Presentations with MDE and other Regulating Agencies/Entities – The CME shall budget for four (4) meetings and one (1) presentation with MDE for the project. The CME will prepare meeting agendas, graphics, meeting minutes, and presentations for review, comment, and acceptance. A MDE meeting shall be designated by the Authority/County.
- 7) Project Support at Design Engineer Progress Meetings – At the request of the Authority/Montgomery County, the CME shall attend progress meetings held by the Design Engineer. The CME shall budget for four (4) of these meetings with their project manager being present.
- 8) Remediation Construction Project Schedule and Deliverables Schedule. The CME will prepare a detailed Remediation Construction Project Schedule that encompasses any remaining design or permitting activities, CME work activities under Tasks 1-5 and all deliverables, procurement of the Construction Contractor, pre-construction meetings, start of construction, major construction milestones, construction progress meetings, construction certifications and meetings with MDE, County DPS, M-NCPPC, and other regulating entities and stakeholders, construction completion with closeout, and as-built records, and the project performance and warranty period. The CME must also include a separate standalone Deliverables Schedule to accompany the detailed Remediation Construction Project Schedule.

The CME will be responsible for updating the detailed Remediation Construction Project Schedule and the Deliverables Schedule for the entire duration of the project work (during construction implementation), as necessary for project-related activities and meetings, and per requests by the Authority/Montgomery County. Both schedules are to be prepared and distributed in Microsoft Project and PDF formats.

- 9) Weekly Progress Emails during Construction Management and Inspection Services – The CME shall prepare Weekly Project Progress Emails (entitled “Gude Remediation – CME” – ‘topic and date’) that summarize work activities during the reporting week (i.e., the current week) and forecasted activities for the next week or weeks, as necessary. The format of the Weekly Project Progress Emails shall be approved by the

Authority. The Weekly Project Progress Emails shall be provided by 12:00 PM, Local Time, every Friday for the entire duration of the project.

10) Monthly Progress Reports during Construction Management and Inspection Services – The CME shall prepare Monthly Project Progress Reports for the entire duration of the project. The format of the Monthly Project Progress Reports shall be approved by the Authority/Montgomery County (please see the preferred format in Schedule II to this Contract). The Monthly Project Progress Reports shall be provided by the 7th of every month and shall include, but are not limited to:

- a) A summary of work activities, as open/closed action items, during the reporting month including copies of the Daily Inspection Reports;
- b) A summary of forecasted work activities for the next month or months as necessary;
- c) A rolling listing of major submittals (e.g., deliverables) issued during the reporting month and their status;
- d) A rolling listing of major submittals (e.g., deliverables) scheduled for issuance during the following month or months;
- e) A description of any outstanding concerns or issues regarding the project work that require resolution and the CME's approach to promptly address the issue;
- f) Updated Project Communication Plan (as necessary), Project Schedule and Deliverables Schedule;
- g) A budget and percent complete update per task and/or per work activity.
- h) The CME's plan for accelerating project activities if progress-to-date indicates the work is behind schedule;
- i) A listing of health and safety statistics for relevant project-related activities.
- j) A listing of any violations of Governmental Approvals or Applicable Law and actions taken or to be taken to eliminate any subsequent violations; and
- k) The CME's verification that the design and permitting documents are being followed in accordance with the requirements of this contract.

In addition to the standard monthly progress report content, the CME also will provide the following items in connection with Construction Management and Inspection Support Services: major construction conflicts and problems, meeting minutes, summary of change orders and claims, time delays, and work accomplished, cash flow projections, and shop drawing and RFI logs/status reports.

11) Remediation Construction Bi-Weekly Project Progress Meetings – The CME shall schedule, hold, and facilitate bi-weekly project progress meetings and at other times if requested by the Authority/Montgomery County or as the CME deems necessary to discuss and review project-related activities for the entire duration of the project. The format and schedule for the Bi-Weekly Project Progress Meetings shall be approved by the Authority. The estimated duration for the remediation construction project is 1,600 calendar days and the CME shall budget for 106 bi-weekly progress meetings through the duration of construction, which are part of the normal hours for the project.

The CME shall issue agendas four (4) days prior to the meeting for review, comment and acceptance. The Authority/Montgomery County reserves the right to include senior staff from either organization at the bi-weekly meeting in lieu of the Authority and the County Department/Division Head Meeting. At the bi-weekly progress meetings, discussions shall be held concerning all aspects of the project work including, but not limited to:

- a) Minutes or notes regarding the previous meeting;
- b) Progress since the last meeting across all work tasks;
- c) Status of deliverables and deliverable reviews;
- d) Planned progress for the next month or months, as necessary;
- e) Status of the project schedule;
- f) Coordination between parties;
- g) Problems, conflicts, and observations;
- h) Safety concerns;
- i) Status of budget;
- j) Status of current open and closed construction items for meetings. The Construction Management Engineer shall maintain a rolling list of formerly open and closed action items as a separate project record document; and
- k) Other business; and the next meeting date.

In addition to the standard bi-weekly discussion items, the CME also will provide the following items in connection with the Construction Management and Inspection Support Services: major construction conflicts and problems, meeting minutes, summary of change orders and claims, time delays, and work accomplished, cash flow projections, and shop drawing and RFI logs/status reports.

The Bi-Weekly Project Progress Meetings shall be primarily attended by the CME's Project Manager with principal discipline staff/subconsultants only attending for specific topics of interest. In other words, the CME should actively limit the number of its staff at the meetings. Other attendees may include representatives of the Authority, the County, the Construction Contractor, regulating agencies, and other subcontractors whose work affects or is affected by project activities at the Landfill, and others as deemed appropriate by these parties. The Monthly Project Progress Meetings shall be scheduled and held on a consistent date from month to month (e.g., the 4th Thursday of the Month at 1:00 PM) for the entire duration of the project. The Monthly Project Progress Meetings shall be held in the conference room at the Shady Grove Processing Facility and Transfer Station, 16101 Frederick Road, Derwood, MD or in the construction trailer at the site, as agreed to for each meeting. The CME shall prepare and distribute meeting minutes for review, comment, and acceptance within four (4) days of the meeting occurrence.

- 12) Administration of Submittals. The CME will administer the submittal review process for all required submittals by the Construction Contractor per the Construction Documents. This work shall include:

- a) Coordination with the Construction Contractor regarding submittal requirements including, but not limited to: shop drawings, samples, material testing, material placement testing, performance tests, O&M manuals, schedules, warranty bonds, installation certifications, inspections, and other items required by the Construction Documents;
 - b) Submittal receipt, log-in, general conformance review, issuance to the Design Engineer for formal review/comment/approval, receipt, log-in, and return to the Construction Contractor. Repeat process for all rejected submittals;
 - c) The CME will point out all discrepancies found in the submittals during CME conformance review when issued to the Design Engineer for review/comment/approval;
 - d) All submittals or submittal transmittal sheets received shall be logged in and the date of receipt recorded. Submittals received at the site requiring review by others shall be sent the same day as received to the appropriate reviewers following log-in;
 - e) The CME will keep the Construction Contractor advised before work commences of work requiring prior submittal approval; and
 - f) The CME does not have the authority to waive contract requirements or grant substitutions of the specified materials.
- 13) A complete set of approved submittals and the official Construction Contractor's shop drawing log will be maintained at the resident field inspector's field office.
- 14) The Construction Contractor is responsible for performing and providing documentation to demonstrate conformance with the material specifications and testing requirements within the Construction Documents. The CME is responsible for coordinating and monitoring these activities, performing the initial conformance review of shop drawing submittals and testing documentation, providing shop drawings and testing documentation to the Design Engineer, receiving responses from the Design Engineer and providing this information to the Construction Contractor, and ensuring overall compliance with the Construction Documents.
- 15) The CME shall perform pre-construction site inspection/testing of material sources, review submittals and material testing data submitted by the Construction Contractor at specified frequencies, perform daily visual observations and inspection of all materials brought on-site, and/or conduct all required materials testing requirements, per the Construction Documents and the CME prepared Construction QA/QC Manual. The CME will provide all labor, field testing equipment, supplies, laboratory conformance testing, and appurtenances to complete the project work for continuous inspection and materials testing. The CME will also establish critical points in the construction process related to materials testing and require check off before the Construction Contractor proceeds. CME to coordinate with the Design Engineer on all material testing and settlement monitoring requirements per the Construction Documents and the CME prepared Construction QA/QC Manual.

- 16) Upon the written request of the Authority, the CME shall perform additional independent material specification and material placement verification testing during the remediation construction project that may include, but is not limited to: soil, clay, aggregate, concrete, asphalt, and Geosynthetics, etc. The CME will provide all labor, field testing equipment, supplies, laboratory conformance testing, and appurtenances to complete the project work for continuous inspection and materials testing. The CME will also establish critical points in the construction process related to materials testing and require check off before the Construction Contractor proceeds. CME to coordinate with the Design Engineer on all material testing and settlement monitoring requirements per the Construction Documents and the CME prepared Construction QA/QC Manual.
- 17) Review and certify the validity of the Construction Contractor's payments requests, resolve all discrepancies with the Construction Contractor, and submit with recommendations and supporting documentation to the Authority for processing.
- 18) Construction Stakeout/Survey. The CME shall provide surveying services as required by the Construction QA/QC Manual and to perform periodic field stakeout and survey verification of the Construction Contractor's work to assess the quality of work and conformance with contract requirements. This work can be performed via a permitted drone or by traditional field survey techniques. Survey services and records shall be signed and sealed by a Professional Land Surveyor licensed in the State of Maryland and provided in hard-copy and electronic editable and PDF versions. The CME shall budget 320 hours and associated field expenses for the work.
- 19) Prepare Final Construction Certification Report signed and sealed by a Professional Engineer registered in the state of Maryland, as required in the Construction QA/QC Manual to submit to the Maryland Department of the Environment.
- 20) Prepare "red-lined" record prints of contract drawings, showing all "as constructed" conditions. These drawings will be used by the design consultant to prepare a set of original reproducible "Record Drawings". At a minimum the red-lined drawings shall show details on underground pipes, exact location of laterals, electrical ducts, utilities, and other underground structures tied to surface features to permit accurate location. Process lines to have pipe lengths, fittings, and runs identified. The red-lined drawings shall be submitted to the Authority/Montgomery County and the Design Engineer immediately following conditional acceptance by the Authority/Montgomery County. All records, logs, files, photos, video tapes created and collected during this construction period, clearly labeled and identified, shall be turned over to the Authority/Montgomery County following completion of the project.
- 21) Maintain a complete and progressive hard-copy and electronic project record of the remediation construction project on-site in the CME's Field Office. This documentation will be turned over to the Authority at the completion of the project in an orderly and chronological format. This includes, but is not limited to: all final and approved versions of:

- a) the Construction RFP, Addendums, the Construction Contract, and Amendments and any additional drawings issued subsequent to execution of the contract;
 - b) the Construction Documents;
 - c) Permits and Rights-of-Entry/Access Agreements;
 - d) Files for correspondence, records for all on-site meetings; daily inspection reports and project diary, and progress reports;
 - e) Construction Contractor RFIs, Shop Drawing and Sample Submittals, etc., and the Engineer's responses;
 - f) Design Engineer's clarifications and interpretations;
 - g) Material Testing documentation,
 - h) Field Orders and Change Orders;
 - i) Regulatory enforcement actions;
 - j) Red-lines of any changes to the Construction Documents; and
 - k) Other project-related documentation.
- 22) No Charge for Punch List Item Inspection Services. Per the Construction Documents, the CME is responsible for ensuring that the quality objectives specified therein receive the requisite attention. The CME will provide, at its sole cost and expense, all inspection services required to correct punch list items within the scope of the Construction Documents identified during the conditional acceptance inspection that were not reflected on the inspector's punch list. Such punch list items reflect work not conforming to the specifications of the Construction Documents.

Task-specific Assumptions

- 1) The CME will provide draft and final versions of all deliverables in Task 3.
- 2) The CME will attend up to 106 bi-weekly progress meetings.
- 3) The CME will incorporate up to two (2) rounds of comments from the Authority/Montgomery County on each of the draft deliverables in Task 3.
- 4) The CME will provide five (5) hard-copies of all draft and final documents to the Authority. The CME shall provide two (2) electronic PDF format copies along with all editable electronic copies in Microsoft Word, Microsoft Excel, Microsoft PowerPoint, or documents in other editable formats on USB.

Deliverables

- 1) From Task 1, the final Project Communication Plan and Construction QA/QC Manual (including the Document Review Acknowledgement with signatures) and updates as needed during Tasks 3 and 4.
- 2) Pre-construction, construction progress, and post-construction photographic and video recording documentation.
- 3) Draft and Final agendas, sign-in sheets, and minutes from the Remediation Construction Kick-off Meeting, bi-weekly progress meetings, and other project meetings in Task 3.
- 4) Updates to the Remediation Construction Project Schedule and Deliverables Schedule.
- 5) Weekly Progress Emails and Monthly Progress Reports.

- 6) Draft and Final Submittal Logs.
- 7) Draft and Final material testing and certification documentation.
- 8) Draft and Final Stakeout/Survey documentation.
- 9) A complete and progressive hard-copy and electronic project record of the remediation construction project that was maintained on-site by the CME.

Task 4 – Construction Inspection Services

It is the responsibility of the CME to integrate the various phases of work and the associated services prior to construction, during construction, and after construction. Refer to Section 3.1.3 of this RFP for the overarching construction management and project management services to be provided by the CME (i.e., the Offeror) for this project.

In addition, this project has several Quality Control objectives that the CME is required to comply with and perform their services to assure the Construction Contractor meets the quality control standard established by the Construction Documents and the Construction QA/QC Manual, which shall include, but not be limited to: 1) be alert to the use of proper materials; 2) be alert to the Construction Contractor's workmanship; and 3) review equipment for proper installation before initial operation checking proper rotation, oil levels, lubrication, related punchlist items, equipment readiness log, etc.

- 1) Construction Inspection. The CME shall provide various forms of communication and correspondence during the project, which is incumbent upon the project work. This includes, but is not limited to:
 - a) The CME will perform all necessary research, investigations, permitting enforcement and support activities, management and inspection, document reviews and responses, and other preparation work required to complete the MDE-approved CMA at the closed Gude Landfill and as required during project activities;
 - b) The CME shall prepare and provide applicable documentation (such as updated site drawings, narratives, etc.) to the Authority/Montgomery County with updating existing County Plans based on the project work at the end of the project(s);
 - c) The CME shall maintain detailed written documentation and records for correspondence with all applicable federal, state, and local permitting agencies to inquire about potential permitting requirements and public notification requirements regarding the work of the MDE-approved CMA at the closed Gude Landfill. CME must transmit electronic copies of all correspondence to the Authority/Montgomery County within one (1) business day of either transmittal or receipt;
 - d) Telephone, email, letter, and other associated correspondence with the Authority, its member jurisdiction and designated agents, regulatory agencies, and other entities and individuals as required by the project work;
 - e) Conduct meetings as necessary to discuss observed problems and/or to resolve conflicts. An appropriate representative of the CME firm shall chair all meetings and submit prepared minutes of meetings to all attendees;

- f) The CME shall be responsible for any required meetings with the regulating agencies and entities for the performance of work under Task 4;
- g) Review the Final Construction QA/QC Manual with all CME Staff and provide the Document Review Acknowledgement Form with signature for all staff on the project. Provide the Authority/Montgomery County with the Final Construction QA/QC Manual and updates as required;
- h) Meeting preparation, attendance, and documentation, which shall include advance agendas, meeting minutes, presentations, and other work items as required by the project work;
- i) Evaluate the Construction Documents and identify potential construction problems, for example; coordination with ongoing landfill operations, interruptions or delays in service to citizens, scheduling, relocation difficulties, etc. Plan and execute all steps necessary to avoid these problems;
- j) Review, coordinate, enforce, and document all of the applicable requirements of the Construction Documents, Permits, and Rights-of-Entry/Access agreements;
- k) Coordinate all necessary plan and specification interpretations and clarifications;
- l) Provide specialized technical support to assist the inspector as needed or requested by the Authority/Montgomery County.
- m) Be alert to problems and take steps to resolve them before they become major issues;
- n) The Construction Contractor is responsible for all safety on the job site. However, if, during the course their inspection, the CME observes a condition or act, which they believe to be unsafe, they shall immediately notify the Construction Contractor and the Authority/County;
- o) Prepare draft change orders and field orders for approval by the Authority/Montgomery County. Following approval, administer same with the Construction Contractor;
- p) Prepare an independent engineer's estimate on proposed change orders.
- q) Maintain detailed records of all work performed on a force account or time and material basis;
- r) Require special inspection or testing of the Construction Contractor's work.
- s) Recommend the acceptability of the work;
- t) Witness and record the results of all performance tests;
- u) Conduct and develop punch lists for all formal inspections;
- v) Develop supplemental punch lists for the Construction Contractor in conjunction with his readiness for the testing and inspections and recommend to the Authority/Montgomery County that the conditional acceptance or final acceptance inspections occur;
- w) Prepare routine letters, memorandum, reports, change orders and miscellaneous paperwork as directed by the Authority/Montgomery County for signature by the Authority/Montgomery County;
- x) Respond to public complaints, including contacting complainants, determining solutions; prepare letters, etc. in accordance with the Authority's/Montgomery County's policy and procedures, which requires timely action by the CME;

- y) Maintain a telephone recorder / voice mail system at the CME Field Office which is to be monitored daily;
 - z) Manage and log all aspects of the materials testing and certification requirements per the Construction Documents and the Construction QA/QC Manual; and
 - aa) The Construction Contractor will provide the CME will a Field Office with ingress and egress (i.e., office trailer) at the Gude Landfill site with electricity, water, and sewer connections. The CME is responsible for all other connectivity, equipment, furniture, supplies, and appurtenances for the project work.
- 2) From Task 1, provide the final Project Communication Plan and Construction QA/QC Manual (with the Document Review Acknowledgement with signatures), and continue to update these documents as needed during Tasks 3 and 4.
- 3) Prepare pre-construction, progress during construction, and post-construction records of the Gude Landfill and the remediation construction project. The pre-construction and post-construction work will include photographic cataloging and video recordings of the entire project site and all existing structures inside and out before the Construction Contractor begins their mobilization and following conditional acceptance of the remediation construction project. Progress construction photographic cataloging and video recordings shall be obtained over the course of the monthly work and provided with the CME's Monthly Progress Report. The CME will properly label photographs and videos for identification. Drone usage is acceptable; however, the obtaining of approvals and permits if required, is the responsibility of the CME. A complete record shall be turned over by the CMDE along with all supporting information after conditional and final acceptance. The photos on subsurface construction should receive special attention since that work will not be visible for future reference. In addition, photograph areas where problems are encountered, non-conformance by the Construction Contractor, and in general critical areas in the construction work. Photos are to be annotated, dated, and maintained at the job site.
- 4) Evaluate the Construction Documents and identify potential construction problems, for example; coordination with ongoing landfill operations, interruptions or delays in service to citizens, scheduling, relocation difficulties, etc. Plan and execute all steps necessary to avoid these problems.
- 5) Remediation Construction Kick-off Meeting and Bi-Weekly Project Progress Meetings. The CME shall schedule, hold, and facilitate bi-weekly project progress meetings and at other times if requested by the Authority/Montgomery County or as the CME deems necessary to discuss and review project-related activities for the entire duration of the project. The format and schedule for the Bi-Weekly Project Progress Meetings shall be approved by the Authority/Montgomery County. The estimated duration for the remediation construction project is 1,600 calendar days and the CME shall budget for 106 bi-weekly project progress meetings through the duration of construction.

- 6) Conduct additional meetings as necessary to resolve conflicts or specific problems. An appropriate representative of the inspecting consulting firm shall chair all meetings and submit prepared minutes of meetings to all attendees.
- 7) The number of inspectors shall be commensurate with the level of work in progress. The inspector shall perform detailed quality control inspection of all work in progress, check construction layouts against the Construction Documents, and inspect all materials prior to installation. In general, the inspector assures that all construction work is carried out in full compliance with the contract drawings and specifications. In addition, the inspector shall:
 - a) Review Construction Contractor's layout, alignment, elevations, and his control methods thereof;
 - b) Initiate, organize, and coordinate all required inspections including the assembly of all comments from the inspecting parties. These comments shall be culled for requirements in the Construction Documents and all items sent forward to County;
 - c) Items clearly required under the Construction Documents shall be administered as punch lists items to include tracking and follow-up with the Construction Contractor until completed;
 - d) Conduct on-site observations of work in progress and determine if the project is proceeding in accordance with the Construction Documents. Verify that completed work conforms to the requirements of the Construction Documents;
 - e) Observe all required tests performed by the Construction Contractor.
 - f) Report work considered unsatisfactory, and advise the County what work should be corrected, rejected, uncovered for observation, or subject to special tests or inspections;
 - g) Transmit the Design Engineer's clarifications and interpretations of Construction Documents to the Construction Contractor.
 - h) Evaluate the Construction Contractor's suggestions for variations from the Construction Documents and provide recommendations to the Authority/Montgomery County;
 - i) Permit no work to be covered before it is inspected.
 - j) Inspect sediment control measures and direct the Construction Contractor to take corrective measures to maintain or contain sediment and erosion control systems in accordance with the approved sediment and erosion control plan. Prepare weekly and monthly sediment control reports; and
 - k) Develop and maintain punch lists of unresolved work items required of the Construction Contractor but not completed. Develop this list as unresolved items occur and maintain it throughout the remainder of the construction stage, adding, or deleting work items as appropriate.

The CME shall provide staffing for the inspection service during the construction of the Project. This includes, but is not limited to, the provision of photography, videography and aerial survey services to monitor and document the progress of the

Project (sediment and erosion controls, grading, settlement, odor, and dust mitigation, storage of goods and materials, etc.)

The CME will provide adequate staffing for every day that construction activities are taking place. On days when weather or schedule precludes active construction activities, the CME field personnel may work remotely to reduce travel costs, for a maximum billing of 1.5 hours per work day without prior written authorization from the Authority/Montgomery County.

- 8) Daily Inspection, Inspection Reports and Project Diary/Log Book. The CME shall prepare daily records of the project work accomplished in conformance with Construction Documents. The CME will maintain a project diary or log book, in a format suitable for submission as evidence in court proceedings and to be surrendered to the Authority/Montgomery County upon request. Daily Inspection Reports during construction, will be submitted as a summary of the remediation construction diary or log book with the Monthly progress reports. The CME will record at a minimum, but not limited to, manpower, equipment in use, idle equipment, dewatering operations, hours on job site, weather conditions, data relative to questions of extras or deductions, list of visiting officials, daily activities including the location and description of tasks being performed by the Construction Contractor, decisions, general observations, and more detailed observations as in the case of observing test procedures.
- 9) The Construction Contractor is responsible for performing and providing documentation to demonstrate conformance with the material specifications and testing requirements within the Construction Documents. The CME is responsible for coordinating and monitoring these activities, performing the initial conformance review of shop drawing submittals and testing documentation, providing shop drawings and testing documentation to the Design Engineer, receiving responses from the Design Engineer and providing this information to the Construction Contractor, and ensuring overall compliance with the Construction Documents.
- 10) The CME shall perform pre-construction site inspection/testing of material sources, review submittals and material testing data submitted by the Construction Contractor at specified frequencies, perform daily visual observations and inspection of all materials brought on-site, and/or conduct all required materials testing requirements, per the Construction Documents and the CME prepared Construction QA/QC Manual. The CME will provide all labor, field testing equipment, supplies, laboratory conformance testing, and appurtenances to complete the project work for continuous inspection and materials testing. The CME will also establish critical points in the construction process related to materials testing and require check off before the Construction Contractor proceeds. CME to coordinate with the Design Engineer on all material testing and settlement monitoring requirements per the Construction Documents and the CME prepared Construction QA/QC Manual.
- 11) Upon the written request of the Authority, the CME shall perform additional independent material specification and material placement verification testing during the remediation construction project that may include, but is not limited to: soil, clay, aggregate, concrete, asphalt, and Geosynthetics, etc. The CME will provide all labor, field testing equipment, supplies, laboratory conformance testing, and appurtenances

to complete the project work for continuous inspection and materials testing. The CME will also establish critical points in the construction process related to materials testing and require check off before the Construction Contractor proceeds. CME to coordinate with the Design Engineer on all material testing and settlement monitoring requirements per the Construction Documents and the CME prepared Construction QA/QC Manual.

- 12) The CME will collect, prior to the conditional acceptance inspection, the nameplate data on all mechanical and electrical equipment and instrumentation installed by the Construction Contractor. A complete Mechanical and Electronic Equipment Inventory shall be undertaken with the above-mentioned data collected and turned over to the Authority/Montgomery County in electronic M.S. Excel and PDF format.
- 13) Prepare Final Construction Certification Report signed and sealed by a Professional Engineer registered in the state of Maryland, as required in the Construction QA/QC Manual to submit to the Maryland Department of the Environment.
- 14) Prepare “red-lined” record prints of contract drawings, showing all “as constructed” conditions. These drawings will be used by the design consultant to prepare a set of original reproducible “Record Drawings”. At a minimum the red-lined drawings shall show details on underground pipes, exact location of laterals, electrical ducts, utilities, and other underground structures tied to surface features to permit accurate location. Process lines to have pipe lengths, fittings, and runs identified. The red-lined drawings shall be submitted to the Authority/Montgomery County and the Design Engineer immediately following conditional acceptance by the Authority/Montgomery County. All records, logs, files, photos, video tapes created and collected during this construction period, clearly labeled and identified, shall be turned over to the Authority/Montgomery County following completion of the project.
- 15) Maintain a complete and progressive hard-copy and electronic project record of the remediation construction project on-site in the CME’s Field Office. This documentation will be turned over to the Authority/Montgomery County at the completion of the project in an orderly and chronological format. This includes, but is not limited to, all final and approved versions of:
 - a) the Construction RFP, Addendums, the Construction Contract, and Amendments and any additional drawings issued subsequent to execution of the contract;
 - b) the Construction Documents;
 - c) Permits and Rights-of-Entry/Access Agreements;
 - d) Files for correspondence, records for all on-site meetings; daily inspection reports and project diary, and progress reports;
 - e) Construction Contractor RFIs, Shop Drawing and Sample Submittals, etc. and the Design Engineer’s responses;
 - f) Design Engineer’s clarifications and interpretations;
 - g) Material Testing documentation;

- h) Field Orders and Change Orders;
 - i) Regulatory enforcement actions;
 - j) Red-lines of any changes to the Construction; and
 - k) Other project-related documentation.
- 16) No Charge for Punch List Item Inspection Services. Per the Construction Documents, the CME is responsible for ensuring that the quality objectives specified therein receive the requisite attention. The CME will provide, at its sole cost and expense, all inspection services required to correct punch list items within the scope of the Construction Documents identified during the conditional acceptance inspection that were not reflected on the inspector's punch list. Such punch list items reflect work not conforming to the specifications of the Construction Documents.

Task-specific Assumptions

- 1) The CME will provide draft and final versions of all deliverables in Task 4.
- 2) The CME will attend up to 106 bi-weekly progress meetings.
- 3) The CME will incorporate up to two (2) rounds of comments from the Authority/Montgomery County on each of the draft deliverables in Task 4.
- 4) The CME will provide five (5) hard-copies of all draft and final documents to the Authority/Montgomery County. The CME shall provide two (2) electronic PDF format copies along with all editable electronic copies in Microsoft Word, Microsoft Excel, Microsoft PowerPoint, or documents in other editable formats on USB.

Deliverables

- 1) Daily Inspection Reports during construction, as a summary of the remediation construction diary or log book.
- 2) Construction Project diaries or log books.
- 3) Draft and Final Mechanical and Electronic Equipment Inventory.
- 4) Draft and Final Construction Certification Reports.
- 5) A complete and progressive hard-copy and electronic project record of the remediation construction project that was maintained on-site by the CME.

Task 5 – Project Performance Support Services

The CME shall integrate the various phases of work and the associated services prior to construction, during construction, and after construction. Refer to Section 3.1.3 of this Request for Proposals for the overarching construction management and project management services to be provided by the CME (i.e., the Offeror) for this project.

Following the conditional acceptance of the remediation construction project with MDE certification approval, the CME will provide construction management, construction inspection, and other related support services during the performance and/or warranty period of the remediation construction project. Information regarding the performance and/or warranty period will be included in the remediation project's Construction Documents; however, at this time, the CME will assume a period of 12 months (i.e., one-

year) following conditional acceptance for the remediation project. The CME shall ensure that warrantable repairs are responded to in a timely fashion and that all such repairs are performed in a workmanlike manner, without material errors, omissions, or defects in the work or construction methods. The Project Performance Support services for the CME will include, but are not limited to:

- 1) The CME will develop a checklist for review and approval by the Authority/Montgomery County to inspect the remediation construction project at the Gude Landfill. The CME will perform monthly inspections of the remediation construction project to identify performance issues and/or warranty repairs that need to be corrected by the Construction Contractor. The CME will provide monthly reports with its findings and will propose solutions for the correction action to the Authority/Montgomery County for review/comment;
- 2) Responding to questions, clarifications, and requests by the Authority/Montgomery County to investigate and assess the remediation project work as it relates to the performance and/or warranty period and the associated potential repair work;
- 3) Investigate, assess, and inspect the remediation project work and prepare written and photographic documentation to summarize findings. Prepare supplemental documentation as needed to support performance and/or warranty claims;
- 4) Coordination, correspondence, and inspection of the Construction Contractor's work required to correct any outstanding performance deficiency items or warranty repair issues that arise during the performance and/or warranty period;
- 5) Retain all project documentation during the performance and/or warranty period. Prepare a Deficiency/Repair Summary Report with written and photographic documentation for each deficiency or repair item during the performance and/or warranty period. This Report shall include a rolling list of deficiency and repair items along with an item description, start/completion dates, and closeout documentation;
- 6) Schedule and conduct a formal final inspection 30 to 60 days prior to expiration of the performance and/or warranty period; and
- 7) Prepare a written Final Inspection Report encompassing the entire performance and/or warranty period as well as the results of the final inspection results.

Task-Specific Assumptions

- 1) The CME will provide draft and final versions of all deliverables in Task 5.
- 2) The CME will perform monthly inspections during the performance and/or warranty period.
- 3) The CME will perform a site visit/inspection for each deficiency or warranty repair as the request of the Authority/Montgomery County.
- 4) The CME will incorporate up to two (2) rounds of comments from the Authority/Montgomery County on each of the draft deliverables in Task 5.
- 5) The CME will provide five (5) hard-copies of all draft and final documents to the Authority/Montgomery County. The CME shall provide two (2) electronic PDF format copies along with all editable electronic copies in Microsoft Word, Microsoft Excel, Microsoft PowerPoint, or documents in other editable formats on USB.

Deliverables

- 1) Draft and Final versions of the Monthly Performance/Warranty Inspection Reports.
- 2) Draft and Final versions of the Deficiency/Repair Summary Reports.
- 3) Draft and Final versions of the Final Inspection Report.

2.3 RESERVED

2.4 MANAGEMENT OF ON-SITE WATER DURING CONSTRUCTION MANAGEMENT

2.4.1 SOURCES OF CONSTRUCTION WATER

The Construction Management Engineer shall provide for the monitoring of the Construction Contractor's activities related to the detention, treatment, and discharge of all water generated during construction activities. Construction water will include surface water runoff and water removed from disturbed areas. The Construction Management Engineer shall ensure that the Construction Contractor plans and schedules its construction activities to reduce the amount of construction water to be managed.

2.4.2 TEMPORARY DRAINAGE FEATURES

The Construction Management Engineer shall ensure that the Construction Contractor conforms to the requirements of its Stormwater Management Permit associated with its activities.

2.4.3 SURFACE WATER QUALITY

The Construction Management Engineer shall ensure that the Construction Contractor takes no actions leading to a violation of surface water quality standards, including but not limited to any requirements that are made part of any Governmental Approvals or approvals for the Landfill.

The Construction Management Engineer shall be responsible for ensuring that the Construction Contractor installs and maintains adequate drainage to prevent soil erosion at the site. Prior to the beginning of construction of the Corrective Measures at the Landfill, drainage/erosion control measures sufficient to properly manage runoff shall be installed. As construction at the Landfill progresses, soil erosion features shall be maintained with the changing Site conditions. Temporary erosion control and protection measures shall be in place at all times, and shall be inspected throughout the process. As permanent drainage structures are installed, the Construction Management Engineer shall ensure that the Construction Contractor protects the intakes to avoid clogging. The Construction Management Engineer shall monitor and maintain the effectiveness of the runoff protection at all times, but particularly during and after anticipated rains. The Construction Management Engineer shall ensure that the Construction Contractor maintains an adequate supply of erosion control materials on-site for immediate use. The Construction Management Engineer shall install an electronic weather station prior to the start, and maintain during the duration, of Work.

Construction runoff shall be managed in an approved manner to prevent sediments and other pollutants from being transported from design investigation areas and to keep sediments and other material from being transported to the existing stormwater system. Discharges from detention facilities shall be routed through the existing on-site surface water drainage system.

2.5 RESERVED

2.6 RESERVED

2.7 GENERAL REQUIREMENTS DURING CONSTRUCTION MANAGEMENT

The Construction Management Engineer shall prepare a brief plan for the Construction Management of the Landfill. The Schedule of Deliverables is below in Table 2.7.1. The Construction Management will not begin until the Notice to Proceed is provided to the Construction Contractor.

2.7.1 Temporary Utilities

The Construction Contractor shall supply all necessary temporary utilities, including electricity, telephone service, potable water, fire protection, lighting, and sanitary facilities, during at the Landfill.

2.7.2 Reserved

2.7.3 Access Roads and Parking Areas

The Construction Contractor is responsible for the building, maintenance and removal of temporary access roads and parking areas. The Construction Management Engineer shall cooperate with the Construction Contractor to keep the Access Roads and Parking Areas clean and litter free.

2.7.4 Staging and Stockpiling Areas

The County shall permit an erosion and sediment control plan through the County Department of Permitting Services for advance storage of approximately 90,000 cubic yards of soil from construction of the Purple line by the WMATA. The Construction Management Engineer shall ensure that the Construction Contractor locates all construction staging and temporary stockpile areas within the limits of disturbance shown on the accepted design drawings.

2.7.5 Protection of the Remediation Work and Property

The Construction Management Engineer shall ensure that the Construction Contractor takes all precautions, provides all programs, takes all actions necessary to protect from damage, and assume full responsibility for the preservation of the Remediation Work and all public and private property and underground and surface structures on or adjacent to the Site.

2.7.6 Subsurface Data

The Authority provided the Construction Management Engineer with data from preliminary subsurface investigations of the Site during the RFP process solely for informational purposes.

Underground structures are defined to include, but are not limited to, all sewer, water, gas, and other piping and manholes, chambers, electrical conduits, landfill gas collection piping and collection wells, and other existing subsurface work located within or adjacent to the Site. All underground structures known to the Authority are described or shown in Attachment A to Schedule II and Appendix 10. This information is shown for the assistance of the Construction Management Engineer, in accordance with the best information available, but is not guaranteed to be correct or complete. The Construction Management Engineer shall ensure that the Construction Contractor explores ahead of trenching and excavation and uncovers all obstructing underground structures sufficiently to determine their location, to prevent damage to them and to prevent interruption to the services that such structures provide ASCE 38-02.

Subsurface structures are defined as all existing buildings, structures, and other facilities above the ground surface. Included with such structures are their foundations or any extension below the surface. Surface structures include, but are not limited to, buildings, tanks, walls, bridges, roads, dams, channels, open drainage, piping, poles, wires, posts, signs, markers, curbs, walks and all other facilities that are visible above the ground surface.

Where Remediation Work is performed on or adjacent to any roadway, right-of-way, or public place, the Construction Management Engineer shall ensure that the Construction Contractor provides barricades, fences, lights, warning signs, danger signals, and watchmen and shall take other precautionary measures for the protection of persons or property and of the Construction Management Work. Barricades shall be painted to be visible at night. From sunset to sunrise, the Construction Management Engineer shall furnish and maintain at least one light at each barricade. Sufficient barricades shall be erected to keep vehicles from being driven on or into the site during construction. The Construction Management Engineer shall ensure that the Construction Contractor furnishes watchmen in sufficient numbers to protect the Remediation Work.

The Construction Management Engineer shall ensure that the Construction Contractor protects and maintains existing trees, shrubs, and plants on or adjacent to the Site that are shown or designated to remain in place in accordance with the Contract Standards. All damaged trees and plants that die or suffer permanent injury shall be removed and disposed of off-site when ordered by the Authority and replaced by a specimen of equal or better quality.

2.7.7 Security

The Construction Contractor shall safely guard all Work, materials, equipment and property from theft, damage or injury caused by trespass, negligence, vandalism, or malicious mischief of third parties. The Construction Contractor's duty to safely guard property shall include the Authority's property and other private property from injury or loss in connection with the performance of the Remediation Work.

2.7.8 Spill Prevention and Control

The Construction Management Engineer shall ensure that the Construction Contractor properly handles any necessary petroleum and chemical products and provide suitable measures for the prevention and control of spills in accordance with its Construction Spill Containment and Response Plan. Additionally, the Construction Management Engineer shall promptly notify the County's Spill Response Team and Maryland Department of the Environment. Petroleum-based products shall not be thrown, spread, or otherwise discharged on or beneath the surface of the ground.

2.7.9 Compliance with Easements

The Construction Management Engineer shall ensure that the Construction Contractor complies with all requirements of the Task Order and any easements and access Contracts for the Site, including but not limited to, those associated with any easements shown in Appendix 10.

2.7.10 Dust Control/Burning

The Construction Contractor shall be responsible for dust control during the Remediation Work. The Construction Management Engineer shall ensure that the Construction Contractor complies with all applicable Maryland Department of the Environment regulations. Spraying with dust control chemicals shall be prohibited on-site; however, spraying with water shall not be prohibited on-site. Street flushing is prohibited.

The Construction Management Engineer shall ensure that the Construction Contractor disposes of construction debris at the Shady Grove Processing Facility and Transfer Station permitted disposal facilities. Burning shall be prohibited.

2.7.11 Noise Control

The Construction Management Engineer shall ensure that the Construction Contractor complies with all applicable County and State noise regulations. Work will be allowed from 7:30 AM to 4:00 PM, 6 days per week (Monday through Saturday), except for County administered holidays. Work activities will also be allowed outside of these hours with notification to and written approval by the Authority, which shall not be unreasonably withheld, and Montgomery County and if appropriate security measures are employed. The Construction Management Engineer shall ensure that the Construction Contractor uses all reasonable efforts to minimize traffic and noise during Remediation Work.

2.7.12 Odor and Vector Control

The Construction Management Engineer shall ensure that the Construction Contractor complies with all applicable County and State odor standards and regulations. The Construction Management Engineer shall ensure that the Construction Contractor use all reasonable efforts to eliminate odors and control vectors, particularly when the Landfill is being disturbed.

2.8 RESERVED

2.9 RESERVED

2.10 GENERAL REQUIREMENTS FOR OTHER SERVICES

Additional Services Requiring County's Authorization in Advance. Consulting Engineering services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Construction Management Engineer or its design requirements. Additional consulting services shall be provided on an hourly basis, not to exceed 100 hours, at the project management rates in the Contract.

APPENDIX 3

QUALITY MANAGEMENT PLAN

3.1 PURPOSE OF APPENDIX

This Appendix describes the minimum requirements for the Construction Management Engineer's overall Quality Program (Quality Program) including its Design Review Period, Procurement Support Period, and Construction Management Quality Management Plan. The Design Review Period, Procurement Support Period, and Construction Management Quality Management Plan (Quality Management Plan or QMP) shall define quality control (QC) and quality assurance (QA) procedures that shall be implemented during design, Procurement, permitting, construction, and final acceptance.

3.2 AUTHORITY'S QUALITY OBJECTIVES

The Construction Management Engineer's overall Quality Program, including quality control and quality assurance, shall be consistent with and support the Authority's overall expectation of high quality and the following overall quality objectives:

1. Ensure that the Construction Management Engineer implements a well-developed quality program to help meet the Authority and Design Engineer's objectives for the Work.
2. Ensure that design, Procurement and permitting are consistent with the Contract.
3. Develop systems to assure that problems are discovered early, corrected adequately, and do not recur.
4. Provide independent oversight equipped with adequate resources to assure that quality is not compromised.

3.3 CONSTRUCTION MANAGEMENT ENGINEER'S QUALITY MANAGEMENT RESPONSIBILITIES

The development and implementation of the overall Quality Program shall be the responsibility of the Construction Management Engineer, which recognizes the Authority's emphasis on a high quality and efficient design for the Work. The Quality Program shall integrate design review, Procurement and permitting, and management and inspection, and shall include detailed quality control and assurance programs, staffing assignments and communication protocols, training, and other aspects as defined below.

The Construction Management Engineer's Quality Program shall define how the Construction Management Engineer will ensure that the Authority's quality objectives are met, including provisions for involving Authority representatives in discussions related to quality and provisions for reporting quality assurance findings to the Authority. In addition, the Construction Management Engineer's Quality Program shall ensure that:

1. Project staff, including all Sub-Construction Management Engineers, are qualified to perform their duties and meet all necessary regulatory and project-specific training requirements.

2. Items and services procured for the Work meet all necessary quality requirements.
3. Quality control work is documented and documents are properly managed and controlled.
4. Work is properly planned and implemented according to established procedures.
5. Work is reviewed and quality processes are audited by the Construction Management Engineer for effectiveness.
6. Deficiencies are documented and effective corrective action is promptly completed (Quality Assurance Program).
7. Work processes are improved continually through analysis of root causes and feedback of lessons learned.

To achieve these goals, the Construction Management Engineer shall:

1. Develop an overall Quality Management Plan. The Quality Management Plan shall describe in detail the Construction Management Engineer's comprehensive program to ensure that the Construction Management Engineer's Quality Program responsibilities and the Authority's quality objectives will be met.
2. Provide adequate resources dedicated exclusively to the Quality Management Plan's implementation. QA/QC staff must function independently of production staff and be empowered to enforce the Quality Program's objectives, define quality expectations, independently verify quality, and investigate the causes of poor-quality work.
3. Define Roles/Responsibilities. Clearly defining and communicating the roles and responsibilities and quality standards among all parties working on the CMA design review, including Sub-Construction Management Engineers, to ensure quality standards are met.
4. Manage Documentation. Accurate and complete documentation and records management, using a comprehensive document management system and project record filing system.
5. Coordinate County Engineer or designee travel to the equipment manufacturer's plants to attend training and familiarization with the equipment, processes, repairs, programming, and all other aspects of the equipment and its operations at the sole and total expense of the equipment manufacturer.

3.4 SUBMITTALS

The Construction Management Engineer shall submit for the Authority's review and approval Quality Management Plans for the different phases of the project in accordance with the following schedule:

1. Task 1 and Task 2 QA/QC Program – First Draft submitted within [15] days of the Effective Date
2. Task 3, Task 4 and Task 5 Program – Submitted to the Authority within [50] days of the Effective Date

Revisions and updates to the Construction Management Engineer's Quality Program may be proposed by the Construction Management Engineer as the project progresses. Changes to the

Quality Program shall require the approval of the Authority. The Construction Management Engineer shall not initiate any of the work under a proposed change to the Quality Program until reviewed and an acceptable Quality Program change is in place.

3.5 MINIMUM REQUIREMENTS FOR CONSTRUCTION MANAGEMENT ENGINEER'S QUALITY MANAGEMENT PLAN

3.5.1 Overall Program Requirements

The Construction Management Engineer's initial draft Quality Management Plan and subsequent revisions shall include, at a minimum, the following information for each phase of the project:

1. The Construction Management Engineer's overall quality approach, including its QC and QA philosophy and approach for each Task and a discussion of methods that will be used to assure that contracting and subcontracting relationships will support the Construction Management Engineer's and the Authority's quality objectives.
2. Minimum staffing and resource commitments for QC and QA activities for each Task, including fully explained responsibilities and authorities.
3. Organization charts for each Task showing the relationship and reporting plan for the QC manager, special inspectors, field engineers, Construction Management Engineers, Sub-Construction Management Engineers, the Authority, and others. This shall include descriptions of the relationships of QC and QA staff to the monitored organizations performing the work.
4. Definition of design change process during construction describing the sequence of events to implement a design change and documentation of the design change.
5. A description of the Construction Management Engineer's process to identify, document, and reach concurrence on corrective action for incidents of construction nonconformance.
6. Other QA and QC procedures and documentation requirements in detail.

3.5.2 Construction Management QA/QC Program

The Construction Management Engineer's design QA/QC program shall be described in detail in its Quality Management Plan.

1. The design QA/QC program shall identify the roles, responsibilities, and procedures necessary to ensure that design quality is maintained during the development, review, and approval processes.
2. Controls shall be established to ensure design development is coordinated with permit requirements and to obtain input from the Construction Management Engineer's teams.
3. Coordination shall include all internal and external parties involved in the design development and review process, including inter-discipline reviews

and constructability reviews, as well as the verification process used to ensure that changes are clearly and consistently shown on all affected design documents. Methods shall be incorporated to ensure that all design issues and reviewer comments are identified and tracked until they have been addressed and/or incorporated into the design. Tracking documents showing resolution of internal/external reviewer comments shall be developed, maintained, and be available to the Authority for review.

4. The design QA/QC program shall assure that documents are not provided for Authority review until all internal inter-discipline and constructability reviews have been completed.
5. Measures shall be taken to ensure that designs are not released to construction until authorized and approved by the Engineer of Record. Design documents shall clearly show detailed quality requirements such as: construction tolerances; requirements from codes and standards that are to be followed during construction; equipment model numbers; ASTM and industry standards; material requirements; and any test reports or certifications required from the manufacturers.

3.6 AUTHORITY ROLE IN QUALITY ASSURANCE

The Authority shall be provided in a timely manner with duplicate copies of all Quality Program documentation including:

1. quality control inspection reports;
2. quality control test reports;
3. nonconformance reports;
4. quality assurance reports;
5. pile driving blow count records (if required);
6. equipment test reports;
7. material test reports; and
8. quality control personnel qualifications and certifications.

APPENDIX 4

FINAL ACCEPTANCE

4.1 FINAL ACCEPTANCE CONDITIONS

Final Acceptance shall be deemed to have occurred when all of the following have occurred unless Authority waives in its sole discretion any of the following requirements:

- (1) is substantially and materially complete in accordance with this Contract (except as provided in the Punchlist;
- (2) final County permits inspections/approvals are in hand, or progress is made in final approval;
- (3) final MDE permits inspections/approvals are in hand, or progress is made in final approval;
- (4) Receipt by Authority of all data, drawings, materials, reports and information to be provided to it as described in Appendices 2, 3 and 5.

4.2 PROCEDURES FOR FINAL ACCEPTANCE DATE.

Within seven Business Days after receipt of Construction Management Engineer's Notice that the CMA construction has satisfied the requirements of Final Acceptance, Authority and County shall advise Construction Management Engineer in writing of any dispute with the representations set forth in Construction Management Engineer's Notice. Construction Management Engineer may challenge the finding of such flaws, defects or deficiencies in accordance with the dispute resolution procedures. Construction Management Engineer shall then ensure that the Construction Contractor performs corrective measures necessary to achieve Final Acceptance and upon completion of such corrective measures shall again notify Authority and County in writing that Final Acceptance has occurred. Authority and Authority Engineer will have seven Business Days after each subsequent notification to advise Construction Management Engineer, in writing, of any remaining defects, deficiencies and/or discrepancies which must be corrected. If any dispute resolution award pursuant to dispute resolution concludes that corrective work performed under protest by Construction Management Engineer was not required in order to satisfy Construction Management Engineer's obligations under this Section or was not otherwise required under this Contract, then a Change-In-Work shall be issued by Authority to compensate Construction Management Engineer for additional costs incurred by it and to appropriately extend the Completion Date on account thereof.

Within five Business Days after verification by Authority and County that Construction Management Engineer has satisfied all of the requirements of this Contract with respect to the Work, Authority shall issue an applicable "**Notice of Final Acceptance**" that shall specify that such Final Acceptance Date is the date on which Final Acceptance was achieved. Issuance of a Notice of Final Acceptance by Authority shall in no way relieve Construction Management Engineer of any of its obligations under this Contract.

No action properly taken by Construction Management Engineer, Authority or County shall affect the applicable Guaranteed Final Acceptance Date unless specifically agreed to in writing by Authority.

Care, custody and control of the Procurement documents will be turned over to Authority upon receipt by Construction Management Engineer and Authority of the applicable Notice of Final Acceptance.

APPENDIX 5

WORK REVIEW PROCEDURES AND SUBMITTALS

5.1 PURPOSE OF APPENDIX

The purpose of this Appendix is to describe the Authority's overall intent with respect to the review of project documents including items such as Governmental Approval applications, Design Package Reviews (i.e., 30%, 60%, and 90% plans and specifications for components packaged together for the purpose of obtaining building permits), various plans and reports, and other required submittals. In general, the primary purpose of the Authority's review is to assure that the project documents conform to the requirements of the Contract and Appendices.

5.2 GENERAL

5.2.1 Authority and Construction Management Engineer Obligations Generally

The Construction Management Engineer shall provide required project documents for review consistent with the submittal dates included in the Construction Management Engineer's CPM Schedule. The Construction Management Engineer acknowledges that Authority review will often involve input from a number of individuals. Therefore, should submittal dates to the Authority be delayed from those shown on the CPM Schedule updated monthly as required under Appendix 7, the Construction Management Engineer shall provide prompt notice to the Authority's Contract Representative of the delay. In no case shall this notice be given less than 10 calendar days prior to the scheduled submittal date.

The Authority will provide timely review and comment on all required submittals in order not to delay the progress of the work. Unless otherwise specified herein or waived by the Authority during the course of the project, the Authority, acting as owner, will review all submittals and return consolidated comments to the Construction Management Engineer within 14 calendar days of receiving the submittal or will grant a day for day extension on the schedule, if requested in writing.

5.2.2 Monthly Progress Reports –

Throughout the Term the Construction Management Engineer shall furnish the Authority with a Monthly Progress Report that summarizes all aspects of the completed month and cumulative work progress, as further described in Appendix 2.

The objectives of the Monthly Progress Report are to:

1. Provide a reliable and readily accessible summary record of project activities and accomplishments during the month, including copies of any Governmental Approvals or approvals obtained and photos of construction progress.
2. Provide a detailed description of all Work actually completed to date; revisions to the progress schedule which shall reflect changes in the Construction Management Engineer's Project Construction Schedule since

the date of the last report; and revisions to the CPM Schedule required under the Contract and Appendix 7, which shall reflect changes in the CPM Schedule since the date of the last Requisition.

3. Identify issues and problems requiring action by the Authority or Construction Management Engineer, including issues of conflicting priorities.
4. Provide information to help substantiate monthly pay request.

The Construction Management Engineer shall prepare and distribute the Monthly Progress Report at least seven calendar days in advance of monthly management meetings that the Construction Management Engineer shall hold with the Authority throughout the Term.

5.2.3 Reserved

5.2.4 Monthly Invoicing Requirements

The Construction Management Engineer shall identify the following types of work on its monthly invoices, as applicable:

1. Work, which will be paid for based on achievement of the milestones identified in Table 8-1.
2. Extra Work that has been negotiated subsequent to the Effective Date.

For Work, invoices shall append sufficient information to demonstrate achievement of the milestones identified in Table 8-1.

5.3 RESERVED

5.4 RESERVED

APPENDIX 6

100% DESIGN AND CONSTRUCTION CONTRACTOR AGREEMENT

APPENDIX 7

PROJECT SCHEDULE

7.1 PURPOSE

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

7.2 SCHEDULE

The Construction Management Engineer shall prepare a critical path schedule for the Work (the "Critical Path Schedule"). A copy of the Construction Management Engineer's preliminary project development schedule is attached hereto as Table 7-1. Updates to such schedule shall be prepared on a monthly basis and provided to the Authority along with the Construction Management Engineer's Monthly Progress Report.

At a minimum, the Construction Management Engineer's Critical Path Schedule shall include:

1. The Effective Date;
2. The Work plan amendment(s), submittal date(s) for Authority review and application dates to MDE and any other relevant Governmental Authority;
3. NEPA submittal dates (if applicable);
4. Major Design package submittals required under Appendix 5 and planned to occur and related Authority review periods;
5. Governmental Approval application package submittal dates, including any associated analyses and data submittals to the Authority prior to submittal to MDE or other Governmental Authority;
6. Other types of Governmental Approval application dates such as grading permits, building permit applications;

Table 7.1

Preliminary Project Schedule (CONSTRUCTION MANAGEMENT ENGINEER SUPPLIED)

APPENDIX 8

PAYMENT AND WORK PROGRESS

Payment to Construction Management Engineer shall be made as follows:

8.1 On or about the fifth day of each month, Construction Management Engineer shall submit a draft invoice to Authority, with the information specified in Schedule IV.

Authority shall, within 15 days after receipt of a draft invoice from Construction Management Engineer, determine whether (A) the Work performed conforms with the requirements of this Contract; (B) the draft invoice and required backup information have been properly submitted; and (C) the invoiced amount reflects the work performed to-date and shall inform Construction Management Engineer as to whether Authority disputes any portion of the draft invoice. Notwithstanding the foregoing, in no event shall Authority's determination or payment of any amount hereunder constitute or be deemed a waiver of any provision of this Contract, and Authority shall have the right to enforce this Contract against Construction Management Engineer notwithstanding any such determination or payment if Authority subsequently determines for any reason that any determination or payment of an invoice was erroneous. Subject to such determination by Authority, and except for disputed portions of any draft invoice, Authority shall pay Construction Management Engineer within the later of 45 days after receipt by Authority of Construction Management Engineer's draft invoice or within 10 days after receipt by Authority of Construction Management Engineer's final invoice, if any changes to the draft invoice were requested by the Authority, 100% of the invoiced amount and minus any disputed portion of such invoice and minus any undisputed amounts payable by Construction Management Engineer to Authority hereunder for the immediately preceding billing period or otherwise.

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

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

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

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

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

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

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

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

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

In the event that any Sub-Construction Management Engineer of Construction Management Engineer files a Lien against the Landfill or Authority, then Construction Management Engineer shall, within 10 days of Notice thereof, post a bond against such Lien. Such indemnity bond shall expire upon the date of final disposition and satisfaction of the claim secured by such indemnity bond.

APPENDIX 9

DESIGN AND PROCUREMENT SUPPORT ADJUSTMENT INDICES

9.1 PURPOSE

The purpose of this Appendix is to define the methodology to adjust the Price.

9.2 PRICE ADJUSTMENT FACTOR

The Price Adjustment Factor shall be used to adjust the Price from the BAFO Date to the Notice to Proceed Date.

Adjustments shall 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 July 1, 2020 adjustment shall compare the most recently reported CPI as of September 1, 2019 (the July 2019 reference month) to the most recent CPI reported on July 1st of 2020 (April reference month). Maximum change will be 3%. If the CPI decreases there will be no change in the bid pricing.

July 1, 2020 Inflation Adjustor:

CPI for July 1, 2020 (reference month April 2020): assume 257.352

CPI for September 1, 2019 (reference month July 2019): 252.185 (CPI used from previous year)

Index Point Change: $257.352 - 252.185 = 5.167$

Inflation Adjustor: $(5.167 / 252.185) + 1 = 1.02$ (rounded to second decimal place)

The maximum Price Adjustment Factor, shall not be less than 0.97 or exceed 1.03.

APPENDIX 10

STAFFING PLAN

10.1 WORK STAFFING PLAN

The purpose of this Appendix is to set forth the Construction Management Engineer's Work Staffing Plan, which shall include key management and supervisory personnel to be used by the Construction Management Engineer in performing the Work. The Construction Management Engineer will staff the Work with sufficient personnel to manage the subcontracted work. The subcontracted work will be managed with respect to safety, environmental compliance, quality, schedule and cost. Construction Management Engineer will also provide staff during the Term in order to set up the project, support the Governmental Approval applications with construction data, and support Authority deliverables.

Construction Management Engineer will staff the project at their office in XXXXXXXX, Maryland with sufficient engineering and support personnel to support the Work during the Term.

The Construction Management Engineer's project organization chart is shown in Exhibit 10.1.

The Staffing Plan of the Construction Management Engineer may be changed at any time without benefit or cost to the Authority.

Exhibit 10-1

Construction Management Engineer Project Organization Chart

APPENDIX 11

REQUIRED INSURANCE

PART 1: REQUIRED INSURANCE

General Insurance Requirements

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

B. Construction Management Engineer shall require its Sub-Construction Management Engineers to maintain insurance during the Development Phase, to the same extent required of Construction Management Engineer.

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

D. Insurance Certificates. Insurance, and any renewal thereof, shall be evidenced by certificates of insurance issued or countersigned by a duly authorized representative of the issuer and delivered to the Authority for its approval 30 days prior to the Notice to Proceed Date or, in the case of a renewal, as reasonably provided by the insurer. Not later than 30 days prior to the beginning of each Contract Year, the Construction Management Engineer shall furnish certificates of insurance to the Authority to confirm the continued effectiveness of the Required Insurance. The certificates of insurance shall provide for 60 days' written notice to the Authority of cancellation by the insurance Construction Management Engineer, except 10 days' notice of the insurance Construction Management Engineer's intent not to renew or a reduction in its coverage.

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

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

Construction Management Engineer must either:

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

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

G. Except as otherwise set forth herein and Section 11.04 of the Contract, the Construction Management Engineer shall obtain, pay for and maintain, or cause to be obtained, paid for and maintained, the insurance coverage listed below during the Term in connection with the design of the CMA without any reimbursement obligation on the part of the Authority or the County:

(a) Workers' Compensation Insurance required by law with the Construction Management Engineer as named insured as respects liabilities arising out of the Contract. Coverage is to comply with all state and federal statutory provisions, as applicable;

(b) Employer's Liability Insurance with limits not less than \$100,000 each accident, \$100,000 each employee by disease and a \$500,000 disease aggregate with the Construction Management Engineer as named insured as respects the liabilities arising out of the Contract. Coverage is to comply with all state and federal statutory provisions, as applicable;

(c) Commercial General Liability Insurance, with Contractual Liability and Products/Completed Operations coverage, with primary limits of:

- \$1,000,000 per occurrence combined single limit for bodily injury and property damage;
- \$1,000,000 for personal and advertising injury sustained by any one person or organization;
- \$2,000,000 products and completed operations aggregate;
- \$2,000,000 general aggregate applying per project.

With the Construction Management Engineer as named insured and the Authority (and its officers, officials, and employees) and the County (and its officers, officials, and employees) as additional insureds as respects the liabilities arising out of the Contract. Additional insured status for the Authority and the County is to include products and completed operations coverage as respects liabilities arising out of the Contract. If the Construction Management Engineer is not the operator upon completion of construction, products and completed operations insurance must be evidenced for three years following the completion of construction, with the Authority (and its officers, officials and employees) and the County (and its officers, officials and employees)

included as additional insureds as respects the liabilities arising out of the Contract. Coverage is to include both certified and non-certified terrorism.

(d) Excess Umbrella Liability Insurance in the amount of \$2,000,000 per occurrence, \$2,000,000 products and completed operations aggregate and \$2,000,000 general aggregate with the Construction Management Engineer as named insured, and the Authority (and its officers, officials and employees) and the County (and their officers, officials and employees) included as additional insureds as respects the liabilities arising out of the Contract. Coverage is to include both certified and non-certified terrorism.

(e) Coverage for Property in the Course of Construction for loss, damage or destruction to the Project caused by “all risk” perils (including machinery, flood, earth movement, certified terrorism and non-certified terrorism) in an amount equal to the full replacement value of the Project. An agreed value provision is to apply to suspend any coinsurance clause. The Construction Management Engineer and the Authority shall be named insured and the County (and their officers, officials and employees) included as additional insureds as respects the liabilities arising out of the Contract.

(g) Pollution Liability Insurance with limits of at least \$5,000,000 per claim, \$5,000,000 annual aggregate covering on and off-site liability for bodily injury and property damage, and on and off-site remediation costs. The Construction Management Engineer is to be the named insured and the Authority (and its officers, officials and employees) and the County (and its officers, officials and employees) are to be additional insureds as respects liabilities arising out of the Contract. Coverage is to include both certified and non-certified terrorism.

(h) The Construction Management Engineer shall procure a quotation for Owner’s Protective architects and engineers professional liability on a project specific basis with limits of coverage equal to a minimum of \$10,000,000 per claim, \$10,000,000 annual aggregate, for purchase by the Authority at its discretion. The Construction Management Engineer will require any Sub-Construction Management Engineer performing architectural or engineering services to carry professional liability insurance with limits of coverage equal to a minimum of \$1,000,000 per claim, \$1,000,000 annual aggregate, with such insurance shall remain in place following Acceptance of the CMA design to allow for claims to be presented for a three year period following the Acceptance of the CMA design.

2. Deductibles. The Authority may require other levels of insurance or accept, in its sole discretion, deductible levels other than presented above if the Construction Management Engineer can demonstrate the financial ability to fund the deductible. Except as provided in the Contract, payment of any deductible shall be the sole responsibility of the Construction Management Engineer.

3. Non-Recourse Provision. All insurance policies shall provide that the insurers shall have no recourse against the additional insureds, or the Authority if the Authority is named as a named insured, for payment of any premium or liability policies. The coverages provided by mutual coverage liability insurance policies required pursuant to the Contract shall be the primary source of any restitution or other recovery for any injuries to or death of persons or loss or damage to property incurred as a result of an action or inaction of the Construction Management Engineer,

of their respective suppliers, employees, agents, representatives, or invitees, that fall within these coverages and also within the coverages of any liability insurance or self-insurance program maintained by the Authority.

4. Sub-Construction Management Engineers. The Construction Management Engineer shall be responsible for ensuring that all Sub-Construction Management Engineers of the Construction Management Engineer performing Work secure and maintain all insurance coverages (including workers' compensation insurance) and other financial sureties required by the laws of the State in connection with their presence and the performance of their duties pursuant to the Contract.

APPENDIX 12

DESCRIPTION OF SITE

[Site Plan, Metes and Bounds and Site Survey Attached]

1. SITE DESCRIPTION

1.1 Site Location and Overview

The Landfill is located at 600 East Gude Drive, Rockville, Maryland 20850. The site has road access at two (2) locations: East Gude Drive and Southlawn Lane. The Landfill is currently owned and maintained by the Montgomery County Department of Environmental Protection (DEP). The Landfill was used for the disposal of municipal solid waste and incinerator residues from 1964 to 1982. The Landfill property encompasses approximately one hundred sixty-two (162) acres, of which approximately one hundred forty (140) acres were used for waste disposal. An additional seventeen (17) acres of waste disposal area was delineated on Maryland-National Capital Park and Planning Commission (M-NCPPC) property, beyond the northeastern property boundary of the Landfill. A land exchange was completed in 2014 between the County and M-NCPPC that transferred ownership of this additional waste disposal area to the County in exchange for a similar area of land without waste on the perimeter of the site which was transferred to M-NCPPC.

1.2 Site and Surrounding Area Land Use

The typical ground cover across the Landfill site is open grassy fields with patches of brushy vegetation and trees on most side slopes and along the perimeter borders of the Landfill. The existing landfill gas collection system, including the gas extraction system well heads and gas conveyance piping, is situated above-grade on the Landfill's ground surface. The site also has a limited area on the top of the Landfill that is currently designated for flying model airplanes and a concrete pad near the Southlawn Lane facility entrance road that is used for managing storm related debris. The surrounding area and properties adjacent to the Landfill have mixed uses including parkland, industrial property, and residential development. Specifically, the adjacent land areas consist of:

- M-NCPPC land and Crabbs Branch Stream (north by northeast).
- Asphalt and cement production facilities, equipment storage yards, scrap metal recycling facilities, and Southlawn Lane (east by southeast).
- East Gude Drive, Washington Suburban Sanitary Commission (WSSC) property and Southlawn Branch Stream (southwest by south by southeast).
- Transcontinental (Williams Gas)/Columbia Gas natural gas pipeline right-of-way and the community of Derwood Station South residential development (west by northwest).

1.3 Site History

The Landfill was initially permitted by the County in 1963. The Landfill was subsequently operated and closed under several facility names and refuse disposal permits from 1964 to 1982. The facility name of the Gude-Southlawn Landfill was modified by reference to the Gude Landfill. There is no current refuse disposal permit that is applicable to the Landfill. The Landfill was constructed and operated prior to modern solid waste management disposal and facility design and closure standards that were implemented by the U.S. Environmental Protection Agency (EPA), under the Resource Conservation and Recovery Act (RCRA).

Therefore, the Landfill was not originally constructed with a geosynthetic liner or compacted clay bottom liner, a leachate collection system, a landfill gas collection system, or a stormwater management system. Reportedly, soil was used as daily cover during waste filling, and a two (2) foot (ft.) (minimum) final layer of soil was reportedly placed over the waste mass during closure of the Landfill (in 1982) to support the vegetative cover. Since 1982, the County has voluntarily, or through regulatory mandates, implemented and maintained Best Management Practices (BMPs) for pre-regulatory era landfills to ensure compliance with Code of Maryland Regulations (COMAR) requirements. These BMPs include: soil and vegetative cover system installation; cover system maintenance; leachate seep repairs, landfill gas collection system installation and maintenance, water quality and landfill gas monitoring, and stormwater infrastructure improvements. The County currently maintains an active landfill gas collection system including: flares, a gas-to-energy system, over one hundred (100) gas extraction wells, and horizontal gas conveyance piping. A network of on-site and offsite groundwater monitoring wells; a network of on-site landfill gas monitoring wells; environmental monitoring programs for groundwater, surface water, and landfill gas; and stormwater management infrastructure are also maintained at and for the Landfill site.

1.4 Assessment of Corrective Measures

The ACM Report was prepared for the Landfill in accordance with the specific requirements set forth under Title 40 Code of Federal Regulations (CFR) § 258.56 and the general requirements of the Maryland Department of the Environment (MDE) for regulating solid waste disposal facilities under COMAR to recommend a Corrective Measures Alternative (CMA) that addresses the following:

- Reported concentrations exceeding MCLs, established by EPA as limits for drinking water, for volatile organic compounds (VOCs) and other groundwater impacts at and beyond the Landfill property boundary per the COMAR 26.08.02. The constituents identified in the NES Amendment No. 1 for the Landfill (EA 2011) as groundwater impacts, based on MCL exceedances in 2011, include cadmium, 1,1-dichloroethene (DCE), cis-1,2-DCE, 1,2-dibromoethane, 1,2-dichloropropane, benzene, methylene chloride, tetrachloroethene (PCE), trichloroethene (TCE), vinyl chloride (VC), and nitrate.
- Intermittent exceedances of the lower explosive limit (LEL) for methane gas at the Landfill property boundary (per COMAR 26.04.07.03B(9)).
- Occurrences of non-stormwater discharges (e.g., leachate seeps) at the Landfill property boundary (per COMAR 26.08.04.08).

1.5 Approved Corrective Measure

MDE has approved Toupee Capping and Additional Landfill Gas Collection as the corrective measure.

APPENDIX 13

**FORM OF PERFORMANCE BOND, LETTER OF CREDIT, PAYMENT BOND, AND
GUARANTY**

PERFORMANCE BOND

Principal

Business Address of Principal

Surety

a corporation of the State of _____ and authorized to do business in the State of Maryland.

Obligee
Northeast Maryland Waste Disposal Authority
and
Montgomery County, Maryland

Penal Sum of Bond
(express in words and figures)

Date of Contract: _____, 20__

Date Bond Executed: _____, 20__

Service Contract to provide Waste acceptance, processing, transportation and disposal.

Contract Number:

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such ability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a Contract with the Northeast Maryland Waste Disposal Authority (the “Authority”), which Contract is described and dated as shown above, and incorporated herein by reference. The Contract and all items incorporated into the Contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the Contract or to the work to be performed thereunder or any of them, or to any other items incorporated into the Contract shall hereinafter be referred to as “the Contract.”

NOW, THEREFORE, during the term of said Contract, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the Authority to be in default under the Contract, the Surety may within fifteen (15) days after notice of default from the Authority notify the Authority of its election to either promptly proceed to remedy the default or promptly proceed to complete the Contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Authority thereupon shall have the remaining Contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of: Individual Principal

_____ as to _____ (SEAL)
Witness

In Presence of: Partnership Principal
Witness

_____ (SEAL)
Name of Partnership

_____ (SEAL)
_____ (SEAL)
_____ (SEAL)

Corporate Principal

Attest:

(Name of Corporation)

Corporate Secretary

President

AFFIX
CORPORATE
SEAL

.....

(Surety)

Attest:

Signature

By: _____

Title: _____

AFFIX
CORPORATE
SEAL

Business Address of Surety:

Bonding Agent's name:

Agent's Address:

Approved as to legal form and sufficiency this _____ day of _____ 20__.

Date: _____

The Northeast Maryland Waste Disposal Authority
100 South Charles Street
Tower II- Suite 402
Baltimore, MD 21201

FORM OF PERFORMANCE LETTER OF CREDIT

Date: _____

Ladies and Gentlemen:

1. We hereby establish, at the request of _____ [NAME OF PROPOSER] (“the Construction Management Engineer”), in your favor and for the account of The Northeast Maryland Waste Disposal Authority, a public body corporate and politic organized and existing under the laws of the State of Maryland (the “Authority”), our Irrevocable Letter of Credit, No. _____ (the “Letter of Credit”), in the amount of _____ (\$_____) DOLLARS (the “Letter of Credit Amount”), effective _____ and expiring on _____ (the “Expiration Date”).

2. The Letter of Credit is being issued in support of the performance by the Construction Management Engineer of its obligation to provide solid waste disposal services to the Authority as set forth in the “**SERVICE CONTRACT FOR THE CONSTRUCTION MANAGEMENT, CONSTRUCTION INSPECTION, AND SUPPORT SERVICES FOR THE GUDE LANDFILL REMEDIATION PROJECT FOR MONTGOMERY COUNTY,**” dated _____, 20__ (the “Contract”).

3. We hereby irrevocably authorize you to draw on us, at sight and in one or several drawings, an amount up to the Letter of Credit Amount. Such draft(s) shall be in writing and signed by your authorized representative and shall be accompanied by a completed certificate in the form attached hereto as Exhibit 1 (such draft accompanied by such certificate being collectively your “Draft”). The Draft shall be payable by us on-sight in accordance with paragraph 4 below. Funds under this Letter of Credit are available to you against your Draft (referring thereon to the number of this Letter of Credit) upon the occurrence of an Event of Default by the Construction Management Engineer and the subsequent exercise by the Authority of its rights under the Disposal Contract, all in accordance with the terms of such Disposal Contract.

4. The Draft shall be dated the date of its presentation, and shall be presented to our office located at [NAME OF FINANCIAL INSTITUTION] and [ADDRESS OF FINANCIAL INSTITUTION]. If we receive your Draft at such office, in conformance with the terms and conditions hereof, on or prior to the Expiration Date, we will honor the same in accordance with

Name of Vendor _____

the provisions hereof and your payment instructions by 5:00 p.m. on the next succeeding Business Day after presentation of your Draft. For purposes of this Letter of Credit, “Business Day” shall mean any day other than a Saturday, Sunday or public holiday under the laws of the [STATE]. If requested by you, payment under this Letter of Credit may be made by wire transfer of immediately available Federal Funds to your account in a bank on the Federal Reserve wire system or by deposit of immediately available funds into a designated account that you may establish with us. All drawings under the Letter of Credit will be paid with our own funds.

5. If a demand for payment delivered to us pursuant to the foregoing paragraph does not conform to the terms and conditions of this Letter of Credit, we will notify you of our intention to dishonor the same after presentation of the Draft by 5:00 p.m. on the next succeeding Business Day. Such notice of dishonor shall be promptly confirmed by written notice, specifying the number of this Letter of Credit, the date of the non-conforming Draft and the reasons that we are not honoring the same. Upon being notified that the Draft was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment prior to the Expiration Date.

6. Upon the earlier to occur of (a) payment to you or your account of the Letter of Credit Amount, or (b) the Expiration Date, we shall be fully discharged of our obligation under this Letter of Credit with respect to such Draft, and we shall not thereafter be obligated to make any further payments under this Letter of Credit in respect of such Draft to you or to any other person.

7. This Letter of Credit shall be governed by the International Code of Uniform Customs and Practices for Documentary Credits, Publication No. 500 (1993 Revision), including any amendments, modifications or revisions thereto. Communications with respect to this Letter of Credit shall be in writing and shall be addressed to [BANK], [ADDRESS OF BANK], specifically referring to the number of this Letter of Credit. We shall address communications to you at the address noted on the first page of this Letter of Credit unless otherwise advised by you in writing.

8. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or Contract referred to herein (including, without limitation, the Disposal Contract), except only the Draft referred to herein; and any such reference shall not (unless otherwise provided herein) be deemed to incorporate by reference any such document, instrument or Contract except for such Draft.

Very truly yours,
[NAME OF FINANCIAL INSTITUTION]

By: _____
Name: _____
Title: _____

APPENDIX 14

LIQUIDATED DAMAGES

14.1 Purpose.

The Construction Management Engineer acknowledges that the Authority and County will suffer actual damages from a failure to timely complete all Work under this Contract, including damage to the public interest, but that such damages are difficult to ascertain on the date of this Contract. Therefore, the Parties agree to the manner of Liquidated Damages described hereof and to be applied to the terms of the Contract.

14.2 The following schedule of damages are subject to be offsets considered in Section 9.01.

1. Daily Damages

If the CME fails to provide staffing for any day wherein Remediation Work is scheduled to take place and is not cancelled, the CME shall pay liquidated damages of \$1,000 per day unless the Authority provides written approval for the missing time, either prior to the Day or within 5 business days after the Day.

2. Final Acceptance Delay Liquidated Damages

If the Final Acceptance Date has not occurred on or before the Guaranteed Final Acceptance Date the Construction Management Engineer shall pay liquidated damages of \$1,000 per day for each day after the Guaranteed Final Acceptance Date until the Final Acceptance Date has occurred. These liquidated damages are reasonable estimate of damage that will be incurred by the County and Authority for delay in completion of Procurement Support Work under this Contract beyond the Guaranteed Final Acceptance Date.