

DRAFT CONTRACTOR AGREEMENT

BETWEEN

NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY

AND

[COMPANY]

This Agreement dated this [October 27, 2020], by and between Northeast Maryland Waste Disposal Authority, a body politic and corporate constituting an instrumentality of the State of Maryland (the "Authority") and [COMPANY] (the "Contractor"), an entity incorporated under the laws of [STATE], with offices at [ADDRESS].

RECITALS

The Authority is a body politic and corporate and a public instrumentality of the State of Maryland created and existing under the Northeast Maryland Waste Disposal Authority, codified as Subtitle 9 of Title 3 of the Natural Resources Article of the Annotated Code of Maryland (the "Act").

WHEREAS, the Authority has determined that it is necessary and desirable to retain the Contractor, on the terms and conditions set forth in this Agreement, in order to assist the Authority and its staff in carrying out the purposes of the Act, all as more particularly set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, and the undertakings of each party to the other, the Authority and the Contractor acting as aforesaid and each binding itself, its successors and assigns, do mutually covenant, promise and agree as follows:

ARTICLE 1. SCOPE OF WORK

Section 101. The Contractor is being retained to provide aerial services for Authority Member Jurisdictions. The Contractor will perform all work in accordance with National Map Accuracy Standards. Any site specific data will be provided to the Contractor as needed to perform work directed by Member Jurisdiction including but not limited to ground control data, existing topography, boundary maps, and volumetric calculations. The Member Jurisdictions will provide the ground control and set the panels. In general, the following requirements apply to services performed:

- A. The Contractor will perform the aerial services for Member Jurisdictions at the prices set forth in Sections 202 and 206 of this Agreement.
- B. The Contractor will coordinate with representatives from the Authority and participating Member Jurisdictions to secure mapping information as needed, prior to the performance of services under this Agreement.
- C. The aerial survey of sites shall be performed by the dates specified in the applicable Work Order, at the Authority's request generally during the months of November, December or January.
- D. The Contractor shall submit photographs, maps and images to the Member Jurisdictions requesting the services no later than 20 calendar days from the date of surveying, unless otherwise specified in the Work Order.
- E. The Contractor shall submit volumetric analysis, in paper and electronic form, no later than 30 calendar days after the date of surveying, unless otherwise specified by the Member Jurisdictions requesting the services.
- F. The Contractor shall provide the method of volume computation and it must be satisfactory to the Authority and its participating Member Jurisdictions.
- G. The Contractor must have volume computations certified by a registered professional engineer.
- H. The Contractor must have the appropriate licenses and certifications as required by applicable law to perform the services requested under this Agreement.

The contract documents consist of this Agreement, the Request for Proposals dated [October 27, 2020], and the Contractor's Proposal dated [November 20, 2020]. In the event of any conflict between these contract documents, this Agreement shall supersede the Request for Proposals and Contractor's

Proposal, and the Request for Proposals shall supersede the Contractor's Proposal.

Section 102. The Contractor shall only be entitled to retain the services of subcontractors when in accordance with Section 404.

Section 103. Kimberly Gordon shall be the Contract Officer for the Authority until such time as the Executive Director may appoint a successor Contract Officer by notice in writing to the Contractor. The Executive Director may also appoint an additional or alternate Contract Officer by notice in writing to the Contractor. Unless the Executive Director otherwise directs, the Contract Officer shall be responsible for the direct administration of all matters pertaining to this Agreement.

Section 104. The Contract Officer may from time to time give the Contractor a directive, oral or written, notifying the Contractor of additional work to be performed within the scope of this Agreement. If requested to do so, the Contractor shall promptly upon the receipt of such a directive furnish to the Contract Officer a preliminary written description of the work that the Contractor proposes to undertake in implementing the directive which shall include estimates of the compensation to be earned in performing the work and (if requested by the Contract Officer) the date by which the work will be completed. Following such consultations as the Contract Officer or the Executive Director may deem appropriate, the Contractor, if requested to do so, shall submit to the Contract Officer a final written description of the work to be undertaken which shall include an identification of the subcontractors to be used and a statement specifying the maximum amount and a breakdown of compensation to be earned by the Contractor and its subcontractors in performing the work and (if requested by the Contract Officer) the latest date by which the work will be completed. Upon its written approval by the Executive Director, such a final written description shall constitute a Work Order which shall be binding upon the Contractor and shall be subject to modification, amendment or withdrawal by the Contractor only with the express written consent of the Executive Director.

Section 105. Except as provided in Section 202, the Contractor shall not be obligated to perform, and the Authority shall not be obligated to compensate the Contractor for, any work which is outside the Scope of a Work Order issued under this Contract.

Section 106. The Contractor shall, from time to time and as frequently as the Contract Officer may request, apprise the Contract Officer of the status and progress of the work being performed by the

Contractor pursuant to this Agreement. The Contractor shall maintain in a neat and orderly manner all documents and records relating to work performed pursuant to this Agreement and each Work Order and shall, upon the request of the Contract Officer, turn over to the Authority all information, data, documents, records, reports, drawings, and the like prepared in the course of work hereunder (including, without limitation, information regarding the names and addresses of any persons, firms, or agencies dealt with by the Contractor in the performance of such work). All materials prepared by Contractor in connection with this Agreement, including but not limited to records, drawings, reports shall be the sole and absolute property of the Authority. The Authority reserves the right to use any such material in any manner. Any use, reuse or modification of the documents shall be at the Authority's sole risk without liability or legal exposure to Contractor unless approved in writing by Contractor prior to such reuse or modification.

Section 107. The Contractor shall provide, at the Contractor's own expense, all personnel needed to perform any work required under this Agreement. All such personnel shall be qualified and authorized under applicable law to perform their respective functions. The Contractor shall ensure that none of the Contractor's employees has any direct or indirect interest, which would conflict in any manner with the performance of the Contractor's work under this Agreement. The Contractor shall be responsible for any withholding taxes and social security payment due as a result of payment made by the Authority pursuant to this Agreement.

ARTICLE II. TERM AND COMPENSATION

Section 201. This Agreement shall be effective upon execution hereof, and unless sooner terminated or renewed as herein provided, shall expire on July 1, 2023, or upon completion of all work authorized on or before the expiration date, unless sooner terminated in accordance with this Agreement. This Agreement may be renewed for two, one-year terms at the Authority's sole option.

Section 202. The Contractor shall be compensated for work performed and expenses incurred pursuant to this Agreement generally as provided in the Contractor's Price Proposals – Response Sheets attached as Schedule 1 and constituting an integral part hereof, as consideration for the performance of work which complies with an oral or written request of the Contract Officer and which is within the general duties described in Section 101.

The Contractor warrants that its rates and charges for the term of this Agreement are not higher than the standard rates and charges for the same services provided under the same circumstances to other clients within the Authority's jurisdiction.

Section 203. The Authority shall in no event be obligated to make any payment to the Contractor for work performed and expenses incurred pursuant to this Agreement if the amount of such payment, together with all other payments theretofore made to the Contractor under this Agreement, would exceed, in the aggregate, [to be determined] thousand dollars ([_____]), unless and until the Authority amends this Agreement to increase such limit.

Section 204. The Contractor shall submit invoices to the Authority on a periodic basis, but not more frequently than monthly. Each invoice shall specify: (a) the number assigned to this Agreement by the Authority; (b) the total amount of payments received by the Contractor, through the closing date of the invoice period, under this Agreement; (c) the opening and closing dates of the invoice period; and (d) a description of the work performed and itemization of reimbursable expenses incurred during the invoice period. The Contractor shall submit with each invoice such supporting documentation as the Contract Officer may reasonably request. The Contractor also shall submit its Form W-9 prior to payment of the first invoice.

Invoices which are received more than 60 days after services are performed will be reduced for payment by 20 percent of the amount invoiced. Invoices which are received more than 90 days after services are performed will not be paid. In the case of invoices reflecting work performed by subcontractors, invoices received more than 90 days after services are performed will be penalized 20 percent of the amount invoiced. Invoices which are received more than 120 days after services are performed will not be paid. Reimbursables are specifically excluded from these reductions.

The Authority shall render payment within 45 days after receipt of an acceptable invoice from Contractor. Notification of nonacceptance of an invoice shall be made within 30 days of receipt of Contractor's invoice.

Section 205. The Contractor shall maintain, and make available for inspection by the Contract Officer, detailed records of time spent, and receipts for reimbursable expenses incurred in the performance of work undertaken pursuant to this Agreement.

Section 206. Price Proposals – Response Sheets attached as Schedule 1 to this Agreement shall be firm through June 30, 2021. The Authority will allow for an escalation to prices effective July 1, 2021 and annually thereafter, in accordance with the appropriate inflation adjustor. The inflation adjustor shall be 100% of any change in the Bureau of Labor Statistics Consumer Price Index (“CPI”) for all Urban Consumers for Baltimore-Columbia-Towson, MD and Washington-Arlington-Alexandria, DC-VA-MD-WV - All Items (1982-84=100). Washington-Arlington-Alexandria, DC-VA-MD-WV includes Frederick and Montgomery Counties in Maryland while Baltimore-Columbia-Towson, MD includes Baltimore City and Anne Arundel, Baltimore, Carroll, Harford and Howard Counties in Maryland. The first adjustment shall compare the most recent reported CPI as of July 1, 2021 to the most recent reported CPI as of July 1, 2020 . Thereafter the most recent CPI reported on July 1st of current year will be compared to the CPI used from previous period. The most recent reported CPI as of July 1st of current year less the CPI used from previous year equals the index point change. Divide the index point change by the CPI used in the previous year and add 1 to equal the inflation adjustor. The inflation adjustor shall be rounded to the second decimal place. The maximum Inflation Index increase, for each one-year period, shall not exceed 1.03, or 3%.

ARTICLE III. DISPUTES

Section 301. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which cannot be resolved by informal agreement between the parties shall be decided by the Contract Officer. The Contract Officer shall render written decisions within fifteen (15) days from receipt of a written request therefore from the Contractor. Upon rendering a decision, the Contract Officer shall promptly deliver or mail it to the Contractor. The written decision of the Contract Officer shall be final and conclusive unless, within thirty (30) days after the date of receipt of such written decision, the Contractor delivers to the Contract Officer a written appeal addressed to the Executive Director of the Authority. The Contractor, prior to decision by the Executive Director, shall be afforded an opportunity to be heard and to offer evidence in support of the appeal. Within thirty (30) days after the date of receipt by the Contract Officer of such written appeal, the Executive Director shall decide the dispute relating thereto, reduce such decision to writing, and deliver or mail it to the Contractor. The decision of the Executive Director shall be final and conclusive, and the Contractor hereby waives any right which it may have, now or in the future, to sue the Authority regarding a question of fact arising under this Agreement, unless such issue of fact has been raised in the aforementioned

written appeal and unless the Executive Director's decision is arbitrary, capricious, or unreasonable. Nothing herein contained shall preclude consideration by the Contract Officer or Executive Director of questions of law relating to any dispute arising under this Agreement, but no decision of the Contract Officer or the Executive Director shall be final or conclusive on any question of law. In the event of any dispute arising under this Agreement, the Contractor shall commence or continue to perform diligently all services described herein pending resolution of such dispute.

ARTICLE IV. GENERAL PROVISIONS

Section 401. The Contractor must be qualified to do business in Maryland and shall comply with all applicable legal and regulatory requirements in the performance of work under this Agreement, and the Contractor shall provide, at the Contractor's own expense, any licenses, permits or insurance needed to comply with such requirements. The Contractor must not be in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that is shall not become so in arrears during the term of this Agreement.

Section 402. The Contractor warrants that the Contractor has not employed or retained any person, partnership, or corporation, other than a bona fide employee or agent working for the Contractor, to solicit or secure this Agreement, and that the Contractor has not paid or agreed to pay any person, partnership, or corporation, other than a bona fide employee or agent, any fee, or any other consideration, contingent upon the making of this Agreement. In addition, no employee of the Authority or an Authority Member Jurisdiction, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement, shall, while so employed, become or be an employee of the Contractor. For the breach or violation of this Section, the Authority or its successor may terminate this Agreement without liability and/or, at its option deduct from any amount otherwise due the Contractor hereunder, or otherwise recover, the full amount of such fee or consideration. Upon termination of this Agreement pursuant to this Section, the Contractor shall refund any and all profits realized under this Agreement. The rights and remedies set forth herein shall be in addition to, and the exercise thereof shall in no way be considered and construed as a waiver of, any other legal or equitable rights of the Authority.

Section 403.

- a. Upon the occurrence of one or more of the following conditions, the Authority may terminate this Agreement without liability: (1) the Contractor materially fails, or refuses, to comply with any of the terms of this Agreement or with a directive issued by the Contract Officer; (2) the Contractor, or any of the Contractor's officers, partners, principals, or employees, is convicted of a crime arising out of, or in connection with, the procurement of work to be done or payment to be made under this Agreement; or (3) the Contractor is adjudged, bankrupt, or a petition for the appointment of a receiver is filed, or an assignment for the benefit of creditors is made, or the Contractor becomes insolvent during the term of this Agreement. Upon termination of this Agreement pursuant to this Section 403(a), the Contractor shall be paid only the earned value of work performed to the date of termination, as determined by the Authority. If this Agreement is terminated because the Contractor, or any of the Contractor's officers, partners, principals, or employees is convicted of a crime arising out of, or in connection with, the procurement of work to be done or payment to be made under this Agreement, then the Contractor shall refund any and all profits realized under this Agreement. The rights and remedies set forth herein shall be in addition to, and the exercise thereof shall in no way be considered and construed as a waiver of, any other legal or equitable rights of the Authority.

- b. The Authority may, without liability, terminate this Agreement or any part (or all) of any Work Order for its own convenience upon written notice to the Contractor not less than thirty (30) days prior to the effective date for such termination. In the event of any such termination, the Contractor shall be entitled to compensation for work performed until the termination plus any cost incurred affecting the termination as provided in Article III.

Section 404. Except as provided in Section 102, no right or duty hereunder shall be sublet, assigned, delegated, or otherwise disposed of by the Contractor, except with the prior written consent of the Authority. Any sublease, assignment, delegation or other disposal in violation of this Section shall be null and void.

Section 405. The Contractor must comply with all federal, State and local requirements that relate to non-discrimination and equal employment opportunity.

Section 406. This Agreement shall be governed in accordance with the laws of the State of Maryland, without regard to principles of conflicts of law. All disputes under this Agreement, if not resolved pursuant to Section 301, shall be resolved by courts of competent jurisdiction in the State of Maryland..

Section 407. If any provision hereof shall for any reason be held to be invalid or unenforceable, the validity or unenforceability of such provision shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid and unenforceable provision had not been contained herein.

Section 408. This Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire agreement between the parties hereto in respect thereof.

Section 409. This Agreement may be amended by written instrument, duly authorized and executed by the parties hereto. Oral statements purporting to amend this Agreement shall be null and void.

Section 410. The Contractor shall conduct itself in a manner consistent with its status as a Contractor of the Authority under the terms of this Agreement and shall neither hold itself out as, nor claim to be, an officer or employee of the Authority by reason hereof, and shall not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Authority. Nothing herein shall be construed as authorizing the Contractor to enter into any contract or agreement, or to incur and obligation whatsoever, on behalf of the Authority.

Section 411.

- a. The Contractor shall defend, indemnify and hold harmless the Authority and its governing board, members, officers, agents, and employees (collectively the “Indemnified Parties”), from all sums for which it is finally determined that the Contractor has legal liability arising out of any negligent acts, errors or omissions of the Contractor in furnishing services pursuant to this Agreement.
- b. Except for claims for payment for work performed, the Contractor will limit any and all claims it may have under this Agreement by the Contractor against the Authority, its

members, officers, staff and employees to an amount not to exceed amounts paid to or on behalf of the Authority as the proceeds of any applicable insurance to pay such claims.

- c. In the event of any payment of any kind by or on behalf of either party to this Agreement under the provisions of this Section to or on behalf of the other party, the paying party shall be subrogated to the extent of the amount of such payment to all rights and remedies of the other party against any third party regarding any matter to which such payment is pertinent.

Section 412. The Contractor and its subcontractors shall procure, as necessary, and maintain until the termination of this Agreement, the mandatory insurance requirements per Schedule II.

The cost of procuring and maintaining this insurance will be paid by the Contractor and its subcontractors, as applicable.

The Contractor's liability coverage shall include, without limitation, contractual liability coverage indemnifying the Contractor for all sums which the Contractor by reason of the contractual liability assumed by it under this Agreement shall become obligated to pay as damages because of bodily injury or property damages. Evidence of the insurance required by this Section shall be delivered promptly to the Contract Officer upon request. The provisions of this Section shall be deemed in no way to limit or waive the rights of the Authority or the State or any other indemnitee under Section 411.

The Contractor and its subcontractors shall maintain the minimum insurance coverages required by this Agreement and ensure that the insurance policy will not be canceled, interrupted or otherwise modified to the potential detriment of the Authority without first providing the Authority with 45 days advance written notice (or such other written notice as may be provided by law) of such cancellation, interruption or modification. The Contractor and the Authority shall be named insureds.

All subcontractors are subject to the requirements stated within this Section.

Section 413. The Contractor shall not release, other than to the Authority, or publish any information, reports, or documents relating to work performed under this Agreement without the express written consent of the Contract Officer except for information, reports or documents already in the public

domain, already in possession of the Contractor, received from a third party with a right to disclose such information or required to be disclosed by operation of law.

The Contractor has a special duty to the Authority to maintain confidentiality of documents, information and records that come under the Contractor's control. The Contractor shall refer to the Contract Officer any and all requests for information from persons other than employees of the Contractor, the Authority Member Jurisdictions, or employees of the Authority.

Section 414. The Contractor shall retain and maintain all records and documents relating to this Contract for three (3) years after completion or termination of services under this Agreement, and shall make them available for inspection and audit by authorized representatives of the Authority at all reasonable times.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

Attest: _____ **NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY**
By: _____
Christopher W Skaggs
Executive Director

Date: _____

Attest: _____ **[COMPANY]**
By: _____
Title: _____
Date: _____

SCHEDULE 1

PRICE PROPOSALS – RESPONSE SHEETS

[INSERT PRICE PROPOSAL FORMS]

SCHEDULE II

MANDATORY INSURANCE REQUIREMENTS

Prior to the execution of this Agreement by the Authority, the [CONTRACTOR] must obtain at its own cost and expense and keep in force and effect until termination of the contractual relationship with the Authority, the following insurance with insurance company/companies licensed to do business in the State of Maryland evidenced by a certificate of insurance and/or copies of the insurance policies. Contractor's insurance shall be primary. If deemed necessary by the Authority, the Authority may request, and the Contractor shall provide, any applicable declaration and forms list with respect to the required insurance.

Aircraft Liability

Aircraft liability insurance covering bodily injury and property damage arising out of the ownership, maintenance and use of any aircraft utilized in providing aerial survey services during the period of the contractual relationship with the Authority with a minimum limit of \$5,000,000 per occurrence and a maximum deductible of \$25,000. The Authority and its directors, officers and employees, applicable Member Jurisdiction are to be included as additional insureds.

General Liability

General liability insurance on an occurrence basis covering bodily injury, property damage and personal and advertising injury during the period of the contractual relationship with the Authority with a minimum limit of \$5,000,000 per occurrence and aggregate and a maximum deductible of \$25,000. The Authority and its directors, officers and employees, applicable Member Jurisdiction are to be included as additional insureds.

Worker's Compensation/Employer's Liability

Meeting all requirements of Maryland Law and with the following minimum employer's liability limits:

- Bodily Injury by Accident - \$100,000 each accident
- Bodily Injury by Disease - \$500,000 policy limit
- Bodily Injury by Disease - \$100,000 each employee

Policy Cancellation

Forty-five (45) days written notice of cancellation, non-renewal or material change of any of the policies is required.

Certificate Holder(s)

Northeast Maryland Waste Disposal Authority
Tower II – Suite 402
100 South Charles Street,
Baltimore, Maryland 21201-2705
Attention: Mr. Christopher W. Skaggs

AND

APPLICABLE MEMBER JURISDICTION (IF REQUESTED BY THE AUTHORITY)