
**SERVICE CONTRACT FOR THE
CONCEPTUAL AND FINAL DESIGN AND PERMITTING SERVICES FOR A
RESOURCE RECOVERY PARK (RRP) AND MUNICIPAL WASTE LANDFILL
EXPANSION**

AT THE

CARROLL COUNTY RESOURCE RECOVERY PARK

**On behalf of,
CARROLL COUNTY, MARYLAND**

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On behalf of,
CARROLL COUNTY, MARYLAND**

This Service Contract for the conceptual and final design and permitting services for a Resource Recovery Park (RRP) and municipal waste landfill expansion at the Carroll County Resource Recovery Park (CCRRP) (“Contract”) is made by and between the Northeast Maryland Waste Disposal Authority, an instrumentality of the State of Maryland (“Authority”) and _____, organized and existing under the laws of the State of _____ and authorized to do business in the State of Maryland (“Contractor”).

RECITALS

1. At the request of Carroll County, Maryland, (the “County”), the Authority issued a Request for Proposals for the conceptual and final design and permitting services for a Resource Recovery Park (RRP) and municipal waste landfill expansion at the Carroll County Resource Recovery Park, located at 1400 Baltimore Blvd, Westminster, MD 21157.

2. The scope of work includes design services to evaluate the current Carroll County Resource Recovery Park and the recently acquired 326-acre property for the purposes of preparing a Northern Landfill expansion design and permitting package and a master plan for a Resource Recovery Park.

3. The County’s current Transfer Station sits on the permitted/to-be-built Cell 4. The Contractor will use industry standards to complete the final design permitting, procurement support, construction management, and construction quality assurance for the development of Cell 4 at the CCRRP. This work will include a conceptual level design for the relocation of the Transfer Station on the site within the phased plan for the development of the disposal capacity.

4. The Contractor will also develop a conceptual plan for the development of future waste diversion and potential processing capacity at the site. NOW, THEREFORE, in consideration of the mutual promises and covenants of each to the other contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties to this Service Contract agree as follows:

**ARTICLE I.
DEFINITIONS**

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

ARTICLE II.
SCOPE OF WORK AND RESPONSIBILITIES

Section 2.01 Contract

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

- (i) Contract, including the Appendices and Exhibits;
- (ii) Request for Proposals dated April 1, 2022 (“**RFP**”) and Addenda published on the following dates:
- (iii) Contractor’s Proposal dated _____;
- (iv) Detailed plans, specifications and other materials approved by or on behalf of Authority during prosecution of the Work; provided, however, that in no event shall a conflict be deemed to exist if the provisions of the Appendices and Exhibits or materials approved by or on behalf of Authority during the prosecution of the Work are more specific or stringent or require more activity or Work than the terms of the main body of this Contract.

(b) Contractor represents that it has reviewed Appendices and Exhibits hereto and such conflicts have been resolved to Contractor’s reasonable satisfaction prior to the execution of this Contract. In the event of a conflict (provided that the absence of a provision or clause shall not be construed as a conflict) in the provisions of this Contract, the priority of documents in Section 2.01(a) shall control the resolution of such conflict.

Section 2.02 Scope of Work

The Contractor will provide the design and permitting related services for the development of the **Carroll County Resource Recovery Park Project (CCRRP)** facility. The County has determined that a comprehensive evaluation needs to be performed and a facility Master Plan developed to guide planning, design, and construction of the improvements necessary to provide adequate customer support for current and future projected needs. This work does include an evaluation of the current Landfill, Citizen Drop-off areas, Solid Waste and Recyclables Transfer Station, Scale House, Maintenance Shop and Administration area. Reuse/innovative repurposing of materials for the site development is a very important consideration.

The deliverables for this work are (a) a 100% level landfill Cell 4 design, permitting and construction management, and construction quality assurance; (b) up to 75% conceptual level design of new transfer station); (b) a new landfill cell expansion design (100%) and permitting package; (c) up to 75% level design of Resource Recovery Park Master Plan (d) and overall site master plan

Responsibilities of the Authority

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

- (a) provide access to the Site through a Task Order/Memorandum of Understanding (MOU) with Carroll County;
- (b) provide access to County files and data needed for the Work.
- (c) pay for documented and approved work.
- (d) provide for the coordination of work at the Site such that there is no unreasonable interference with the Contractor's Work by the Authority, the County, or their representatives or agents, including the operator of the Transfer Station (see Section 7.01 below). The Authority agrees that any actions on the part of the Authority, the County, or their representatives that has a material adverse impact on the activities of the Contractor performing Work will be deemed unreasonable interference by the Authority and may result in a default under this Contract.

Section 2.03 Responsibilities of the Contractor

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

- (a) furnish all labor, equipment, and materials necessary to provide the Service in accordance with the Scope of Work;
- (b) ensure that the Work is performed in a safe and effective manner, in accordance with all Applicable Laws, and without hindering the operations of the Transfer Station.

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

Section 3.01 Effective Date

This Contract shall be effective upon the date that the Contract is fully executed. The Authority shall not execute the Contract until formal approval is provided by the County (“**Effective Date**”).

Section 3.02 Term

- (a) The Contract shall become effective on the Effective Date, and shall continue until Ninety-Six (96) months (8 years) after the Effective Date, 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 Work.

Section 3.03 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 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/MOU has been executed by the Authority and the County and all preconditions to the Notice to Proceed have been satisfied or waived by the County.

ARTICLE IV.

SITE LOCATION

Section 4.01 Site

The Site is located at the Carroll County Resource Recovery Park located at 1400 Baltimore Blvd, Westminster, MD 21157.

Section 4.02 Coordination with Work at Site

Contractor's Work must be coordinated with and may not interfere with the ongoing operations at the Transfer Station.

Section 4.03 Site Access

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

ARTICLE V. RESERVED

ARTICLE VI. SPECIFICATIONS AND TECHNICAL REQUIREMENTS

Section 6.01 Standard of Workmanship

Contractor is responsible for performing the Work in accordance with ordinary and reasonable care per acceptable industry practices for similar services (or scopes of work), circumstances, and conditions. Contractor is responsible for providing management and technical oversight as well as quality assurance and quality control reviews of all staff performance aspects and all Work performed under this Contract to ensure the Work is free of errors and omissions.

Section 6.02 Warranty of Inspection and Acceptance of Site

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

Section 6.03 Work Specifications

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

**ARTICLE VII.
WORK INVESTIGATIONS**

Section 7.01 Coordination of Work

Contractor must coordinate its Work with activities of the Authority, the County, their respective agents, representatives and contractors, or others currently conducting work being performed on Site. The Contractor specifically acknowledges that its Work must be coordinated with the day-to-day activities of the operations of the Site, including the 3rd party operations of (a) the Transfer Station and (b) the yard trim operations, and will not unreasonably interfere with County’s ability to perform its operations at the Site. The Contractor agrees that any actions on the part of the Contractor that has a material adverse impact on the activities of the Authority, the County, or

others performing Work at the Site will be deemed unreasonable interference by the Contractor and may result in a default under this Contract.

Section 7.02 Authority Project Manager

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

Section 7.03 Reserved

Section 7.04 Risk of Loss

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

Section 7.05 Storage of Materials

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

Section 7.06 Schedule

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

Section 7.07 Time and Material Contract with a Not to Exceed.

- (a) Subject to the remedies provided for in this Contract, the Contractor must perform the Work in a manner that is: (i) sufficient, complete, and adequate in all respects necessary for the County to use the data; (ii) in conformance with Prudent Industry Practices and with professional standards, skill, expertise, and diligence of professionals regularly involved in projects of similar size and nature to the Work; and (iii) in compliance with the terms of the Contract, and all Applicable Laws and Governmental Approvals.
- (b) In light of the foregoing, Contractor has included within the Price the cost to complete all Work. Items need not be specifically listed in order to be deemed as items within the Work.

It is understood that the Contractor is better qualified to list exclusions than the Authority is to list inclusions. Therefore, any item indicated herein, reasonably inferable from and incidental to the Contract or required in accordance with any Applicable Law, is to be considered as part of the Work. The Contractor waives any and all claims for an increase in the Price, in whole or in part, upon an assertion that any certain license, technical assistance, service, labor, material, equipment, operation, or management is beyond the Scope of the Work when such license, technical assistance, service, labor, material, equipment, operation, or management is indicated in the Contract or other instruments of service prepared in connection with the Contract, reasonably inferable from and incidental to the Contract, required in accordance with any Applicable Law, Governmental Approvals, or otherwise necessary in order to complete the Work in accordance with and subject to the requirements of the Contract.

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

Table 7.1 (Base Proposal Prices)

Task	Price
1	
2	
3	
4	
5	
6 (as option)	
Total	

RESERVED

**ARTICLE VIII.
COMPENSATION**

Section 8.01 Payment for Work

- (a) The Authority will pay the Contractor in accordance with this Section 9 and Appendix 2, Appendix 3 and Appendix 6. The form of this submission will be as agreed upon by the Contractor and the Authority and must be supported by such evidence as to its correctness as the Authority may direct (e.g., per task hourly breakdown for staff, narrative of the work

accomplished in the period, work to be performed in the next period, and receipts for out of pocket expenses). The Project Manager must be responsible for determining that the schedule of values accurately reflects the Work completed or materials on Site each month.

- (b) Contractor may invoice the Authority, in accordance with Appendix 3. Invoices must be sent to the Authority and the County. Payment will be made within 45 days of receipt of an approved Invoice from Contractor. 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 Contractor shall constitute an acceptance by the Authority of any Work not in accordance with the Contract. The Authority may withhold or recover the whole or part of any Contractor payment to such extent as may be necessary to reimburse or protect the Authority from loss on account of defective or damaged Work not remedied, failure of the Contractor to make payments properly to Sub-Contractors for material or labor, a reasonable doubt by the Authority that the Work can be completed by the end of the Term, or for the balance of the Price, or other damage caused by the Contractor for which the Authority may reasonably be liable. Payment of the entire Price will not be made until all Work is completed to the satisfaction of the Authority and Final Acceptance has occurred.
- (d) If the Authority or Contractor disputes any amount invoiced, or payment made, the disputed portion of the invoice or payment is not effective until resolution of the dispute. Pending resolution of any dispute, the Contractor must continue to perform all of its obligations under the Contract.

Section 8.02 Invoicing

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

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

- (b) Any amounts payable by the Authority that are not paid when due shall bear interest at the Late Payment Rate.
- (c) If the Authority disputes any amount owed as the Price or other amounts due under the Contract or deductions therefrom, the disputed portion of the adjustment is not effective until resolution of the dispute, and the Contractor will not be paid such disputed amount until resolution of the dispute. Pending resolution of any dispute, Contractor must continue to perform its obligations under the Contract.

Section 8.03 Offset

Whenever the Authority is obligated to pay the Contractor any amount under this Contract, the Authority may deduct from that amount, before payment, any amount that the Contractor owes to the Authority. The failure of the Authority to offset such liability against amounts due to it shall in no way limit or restrict the right of the Authority to recover such amounts due to it from Contractor.

Section 8.04 Payment Is No Waiver of Rights

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

ARTICLE IX. CHANGES TO WORK

Section 9.01 Changes

- (a) Changes in the Scope of the Work must be in writing and agreed upon by both parties.
- (b) If any change in the Scope of the Work causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, an adjustment will be made for Contractor's Demonstrated Costs 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 Contractor gives written notice as therein required.
- (c) No claim by the Contractor for an adjustment under this Contract will be allowed if asserted after the Term under this Contract.

Section 9.02 Suspension of Work

- (a) The Authority may unilaterally order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for a period of time it deems appropriate for the convenience of the Authority or the County.
- (b) However, no adjustment will be made for any suspension, delay, or interruption to the extent (i) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Contractor-Related Entities, or (ii) for which an equitable adjustment is provided for or excluded by any other provision of this Contract.
- (c) No claim will be allowed for a suspension, delay, or interruption ordered by the Authority (i) for any costs incurred more than 10 days before Contractor shall have notified the Authority in writing of the act or failure to act involved (but this requirement shall not

apply as to a claim resulting from a suspension order), and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the Contract.

Section 9.03 Authority to make Changes in Work.

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

**ARTICLE X.
GENERAL PROVISIONS**

Section 10.01 Authority Representative

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

Section 10.02 Effect of Authority Approvals

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

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

Section 10.03 Insurance Requirements

- (a) Contractor must obtain and maintain, in full force and effect for the duration of the Contract, insurance necessary to cover claims arising from Contractor's operations under this Contract. The insurance coverage required of the Contractor for the Work and the Procurement Support Period are described in Appendix 7 ("**Required Insurance**"). Within 10 business days of Effective Date, and at any time thereafter as required by the Authority, the Contractor must deliver to the Authority copies of all certificates of insurance for Required Insurance.

Section 10.04 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:

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

To the Contractor:

To the County:

Clifford J. Engle
Bureau Chief – Solid Waste
Department of Public Works
225 North Center Street
Westminster, MD 21157
cengle@carrollcountymd.gov

Section 10.05 Indemnification

- (a) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the Authority, the State, and Carroll County and their respective officers, employees, elected officials, agents, contractors, consultants, engineers, officers, directors, elected representatives, officials, and other representatives (collectively, “**Authority Indemnified Parties**”), from and against all liability, suits, judgments, and claims by third parties, damages, losses, and expenses, including the costs of defense, settlement, and reasonable attorneys’ fees (collectively, “**Losses**”), which they may individually or collectively, incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent caused by Contractor, in whole or in part, by a breach of any term, provision, or representation or warranty of this Contract or any negligent act or omission or willful misconduct of the Contractor, or its directors, officers, employees or agents. This indemnification is not to be deemed as a waiver of any immunity, which may exist in any action against the Authority.

Section 10.06 Change in Law

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

Section 10.07 Uncontrollable Circumstances

- (a) A Party will not be in default under this Contract or liable to the other Party for its failure to perform its obligations under this Contract, but only to the extent that, and for so long

as, the Uncontrollable Circumstances prevents the affected Party from performing its obligations in accordance with this Contract. Contractor shall work diligently to overcome or remove such Uncontrollable Circumstance as soon as possible.

- (b) As soon as possible after an Uncontrollable Circumstance occurring on or after the Effective Date, Contractor shall give the Authority Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to Contractor), and a description of the conditions preventing the performance of Contractor's obligations. The Contractor must answer any inquiries of the Authority Representative regarding the conditions caused by the Uncontrollable Circumstance and must provide them with the information as they reasonably request.
- (c) If, within 5 days after an Uncontrollable Circumstance occurrence (or if required due to the nature of the event, a shorter period of time) that has caused Contractor to suspend or delay performance of the Work, Contractor has failed to take commercially reasonable action to overcome or cure the Uncontrollable Circumstance occurrence or its direct or indirect effects on the performance of its obligations under this Contract, the Authority may, in its sole discretion and after Notice to Contractor, at Contractor's expense, initiate commercially reasonable measures to overcome or cure the Uncontrollable Circumstance occurrence or its direct or indirect effects on the performance of Contractor's obligations hereunder and thereafter require Contractor to resume full or partial performance of the Work (unless it is commercially unreasonable for Contractor to do so); provided, however, that no such action of Authority shall relieve Contractor of its obligations under this Contract.
- (d) Notwithstanding the provisions of this Section 11.08, Contractor assumes full responsibility for completion of the Work without adjustment to the Term, the Price Service Fees or the Schedule regardless of weather conditions, unless weather severity is substantially in excess of the data accepted for the norm established and substantiated for the Transfer Station.
- (e) If an Uncontrollable Circumstance prevents Contractor from performing a material portion of its obligations under this Contract for more than 30 continuous days, then Authority, after providing the Contractor at least 10 Business Days' prior Notice, may, but shall not be obligated to, terminate this Contract without additional liability to Contractor and (except as provided in the last sentence of this Section 10.07(e)) to Authority as a result of such termination. Contractor shall be entitled to receive payment of the proportion of the Price for Work actually performed plus reasonable demobilization, contract cancellation costs and close out costs.
- (f) In the event that two delay events occur concurrently, the first event to occur will control until such event is overcome and then any remaining delay attributed to the second delay event will control.

Section 10.08 Events of Default

(a) Each of the following constitutes an Event of Default on the part of Contractor:

- (i) the failure or refusal by Contractor to fulfill any of its material obligations to the Authority in accordance with the Contract, unless such failure or refusal is excused pursuant to this Contract; or
- (ii) if, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of the Contractor or of a major part of its property is appointed, or if, by decree of such a court, the Contractor is adjudicated insolvent, or a major part of its property is sequestered, or if a petition to reorganize the Contractor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Contractor, as now or hereinafter in effect, is filed against the Contractor, or if the Contractor is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against the Contractor under any such law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Contractor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Contractor, as now or hereafter in effect; or
- (iii) If the Contractor makes an assignment for the benefit of creditors, or admits, in writing, an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of either the Contractor or of a major part of its property; or
- (iv) If the Contractor assigns its rights or obligations under this Contract or any part thereof to any Person, except as otherwise permitted under this Contract; or
- (v) If any representation or warranty made by the Contractor herein or in any payment invoice or related documentation submitted hereunder is false or misleading in any material respect when made; or
- (vi) If the Contractor fails to provide and maintain in full force and effect any Required Insurance in accordance with this Contract; or
- (vii) If the Contractor provides or has provided materially false or misleading information to the Authority; or
- (viii) The failure of the Contractor or its Sub-Contractor, and their respective agents, licensees, invitees, and successors to comply with Applicable Law in any material respect; or
- (ix) Contractor fails to pay any undisputed amount that Contractor is required to pay to the Authority under this Contract within thirty (30) days after receipt by Contractor of written demand from Authority accompanied by a Notice stating that unless the delinquent amount is paid within thirty (30) days after this demand the failure will constitute an Event of Default; or

- (x) Contractor abandons or suspends support of the Work for thirty (30) days due to any reason other than Uncontrollable Circumstance or direction of Authority; or
 - (xi) A guarantor or other surety is in default (after the expiration of all applicable cure periods) under any warranty bond or under any Performance Security provided to Authority and, except for a failure to pay, it is not replaced or otherwise cured in accordance with this Contract;
 - (xii) A Contractor Change in Control occurs;
- (b) No failure or refusal on the part of the Contractor as described in this Section (except for clause (ii), (iii), (iv), (v), (vii), (ix), or (xii)) shall constitute an Event of Default unless and until: (A) the Authority has given notice to the Contractor specifying with particularity the existence of such default; and (B) the Contractor has failed to cure such default within 30 days after receipt of such notice.
- (c) Each of the following constitutes an Event of Default on the part of the Authority, provided that none of the following shall constitute an Event of Default to the extent caused by the failure of the Contractor to perform its obligations under this Contract:
- (i) The failure by the Authority to pay any undisputed amount in excess of \$10,000, that the Authority is required to pay to the Contractor under this Contract within 60 days after receipt by the Authority of written demand from the Contractor accompanied by notice stating that unless such amount is paid within 60 days after such demand the failure shall constitute an Event of Default; or
 - (ii) The failure or refusal by the Authority to substantially fulfill any of its material obligations to the Contractor in accordance with this Contract, other than as provided in subparagraph (i) above, unless such failure or refusal is excused or justified pursuant to the provisions of this Contract, provided that no such failure or refusal constitutes an Event of Default unless and until:
 - a) the Contractor gave prior written notice to the Authority and the Authority Representative 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 Contractor a right to terminate this Contract for default unless such default is corrected within a reasonable period of time; and
 - b) the Authority has not corrected the default nor initiated steps to correct it within a reasonable period of time (a reasonable period of time for purposes of this paragraph shall in any event not be less than thirty (30) days from the date of the notice given, provided that if the Authority has commenced to take reasonable steps to correct the default within such reasonable period of time, it shall not constitute an Event of Default for as long as the Authority is continuing to take reasonable steps to correct it; and

- c) There is no reasonable expectation that the Contractor can obtain sufficient relief for the default, other than by termination of this Contract, to compensate it for any loss incurred as a result of the Authority default.

Section 10.09 Termination for Default

- (a) The right of termination for cause may be exercised only by a Notice of Termination given to the Party in default. The proper exercise of the right of termination is in addition to, and not in substitution for, any other remedies, whether damages or otherwise, of the Party exercising the right of termination.
- (b) In the case of one or more Events of Default on the part of the Contractor, the Authority shall have the following rights and remedies, in addition to those rights and remedies that may be available to Authority at law or in equity and Contractor shall have the following obligations:
 - (i) The Authority, without prejudice to any of its other rights or remedies, may upon fifteen (15) Business Days' Notice to Contractor (A) suspend disputed payment and/or (B) unless Contractor has cured such default therein thirty (30) days after receipt of such Notice, terminate this Contract on the date specified in a written or electronic mail notice of termination to Contractor.
 - (ii) If the Authority terminates this Contract in accordance with this Section 10.09 and determines in its sole discretion, to complete the Work under this Contract, the Contractor must, if requested by the Authority (A) withdraw from the Transfer Station, and as requested by Authority, (B) assign one or more of its contracts, subcontracts, purchase orders or other Contracts to Authority or any designee of Authority; provided, however, that such assignee assumes the obligations of Contractor thereunder and (C) shall turn over to Authority complete possession of any or all designs, materials, equipment, tools, purchase orders, inquiries, letters, computers, servers, software, schedules, and drawings of Contractor that Authority deems necessary for completion of the Work. Authority may employ any other person, firm or corporation (hereinafter, a "**Replacement Contractor**") to finish the Work in accordance with the terms of this Contract by whatever method that Authority may deem expedient. In addition, Contractor shall not remove any equipment, materials or tools that the removal of which could damage the Transfer Station or any portion thereof then constructed or otherwise materially adversely affect or delay the construction, use or maintenance of the Transfer Station. After the termination of this Contract, Authority shall be responsible for the care, custody, and control of all equipment, materials, tools and other items used in completion of the Work. Authority, without incurring any liability to Contractor, shall have the right to have the Work finished by the Replacement Contractor.
- (c) If this Contract is terminated by the Authority for cause as a result of an Event of Default by Contractor with respect to Work, the Contractor will be entitled to payment of that portion of the Price related to the Work performed until the date of termination; provided, however, Contractor will not be entitled to any recovery of profit or unabsorbed overhead

in connection with Work not actually performed or future Work. The Contractor must reimburse the Authority for any costs in excess of the Price, as adjusted, incurred by Authority, or any Person acting on the Authority's behalf in completing the Work or having the Work completed. The Authority will be entitled to withhold payments the Contractor determines are due to it prior to the date of termination until Final Acceptance and determination by Authority that Contractor is entitled to such payments. Upon completion of the Work by Authority or third parties, the total cost of the Work shall be determined, and the Authority will notify Contractor in writing of the amount, if any, that Contractor shall pay Authority or Authority shall pay Contractor. If at any time the total expense incurred by Authority in completing the Work exceeds the portion of the Price not paid to the Contractor as of the date of termination, then Contractor shall pay the amount of any such excess from time to time existing within thirty (30) days of written demand therefor by Authority. Any amounts not paid hereunder when due shall bear interest at the Late Payment Rate. The Authority may, in its sole discretion, employ any other Person, as a Replacement Contractor to finish the Work by whatever method or means as the Authority deems expeditious.

- (d) In the event that any termination of this Contract by the Authority is due to a Contractor Event of Default pursuant to this Section 11.09 **and** is later adjudicated to have been improper, then Contractor will be entitled to recover the amounts the Contractor is entitled to in accordance with Section 11.10, Termination for Convenience.

Section 10.10 Termination for Convenience

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

Section 10.11 Dispute Resolution Procedures, Governing Law, and Venue

- (a) The Authority and the Contractor shall in good faith attempt to resolve any dispute or matter in controversy under this Contract. As a condition to seeking judicial resolution of a dispute, the Authority and Contractor agree to pursue an administrative dispute resolution procedure. Under this procedure either Party may initiate dispute resolution by giving notice of its claim to the other Party. If a claim for additional compensation is being made under this Section 11.11, the notice of claim must be made within thirty (30) days. Within thirty (30) days of receiving such a claim, the Party receiving the claim shall investigate

the merits of the claim, and the Parties shall meet to attempt resolution. If after this process, a resolution of the claim is not successful, either Party may seek judicial resolution.

- (b) All disputes under this Contract, if not resolved by the Parties, shall be resolved by a Maryland State court of competent jurisdiction, venue is Carroll County, and in accordance with the laws of the State of Maryland. Pending resolution of any claim or dispute the Contractor is obligated to continue performance of the Contract.

Section 10.12 Governing Law

This Contract shall be interpreted under Maryland law, without regard to its conflict of laws provisions.

Section 10.13 Records Retention and Access

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

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

Section 10.14 Subcontracting

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

to comply with Applicable Laws and Governmental Approvals, (ii) require the Sub-Contractors to provide certificates of insurance evidencing required insurance coverage maintained by such Sub-Contractor, and (iii) provide that the Authority has the right of inspection as provided under this Contract.

Section 10.15 RESERVED

Section 10.16 Assignment

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

Section 10.17 Representations and Warranties

- (a) Contractor hereby makes the following representations and warranties to and for the benefit of the Authority:
- (i) Contractor is duly organized and validly existing as a corporation under the laws of the state of its incorporation or organization with full legal right, power and authority to enter into and perform its obligations under this Contract, and is duly qualified to do business in the State of Maryland and will take such action as may be necessary to remain so qualified;
 - (ii) Contractor is not in arrears with respect to the payment of any monies due and owing to the State of Maryland, and shall not become so during the term of this Contract;
 - (iii) Contractor shall comply with all federal, state, and local laws, regulations and ordinances applicable to its activities and obligations under this Contract;
 - (iv) Contractor shall obtain, at its own expense, all licenses, insurance, and Government Approvals necessary to the performance of its obligations under this Contract;
 - (v) Contractor has duly authorized the execution and delivery of this Contract and this Contract has been duly executed and delivered by Contractor and constitutes a legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms.
 - (vi) Neither the execution or delivery by Contractor of this Contract, nor the performance by Contractor of its obligations in connection with the transactions contemplated hereby, or the fulfillment by Contractor of the terms or conditions of this Contract (a) conflicts with, violates, or results in a breach of any Applicable Law, or (b) conflicts with, violates, or results in a breach of any term or condition of any judgment or decree, or any Contract or instrument, to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder or (c) will result in the creation or imposition of any

lien, charge, or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.

- (vii) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery of this Contract by Contractor, except such as have been duly obtained or made.
 - (viii) Except as disclosed to the Authority, in writing, there is no action, suit, or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of Contractor's knowledge, threatened, against Contractor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by Contractor of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Contract, or any other Contract or instrument entered into by the Authority in connection with the transactions contemplated hereby.
 - (ix) All reports, presentations, spreadsheets and other documents furnished or to be furnished by Contractor in performing the Work will become the property of Authority to be used by Authority as it may desire and for any other purposes permitted by Applicable Law.
- (b) The Authority hereby makes the following respective representations and warranties, as of the date of execution and delivery of this Contract, to and for the benefit of Contractor.
- (i) The Authority is a body politic and corporate validly existing under the Constitution and laws of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Contract.
 - (ii) The Authority has duly authorized the execution and delivery of this Contract and this Contract has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms.
 - (iii) Neither the execution or delivery by the Authority of this Contract, nor the performance of the Authority's obligations in connection with the transactions contemplated hereby nor the Authority's fulfillment of the terms or conditions of this Contract (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any contract or instrument, to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.
 - (iv) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery by the Authority of this Contract except those that have been duly obtained or made.

Section 10.18 Compliance with Election Law Requirement

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

Section 10.19 Compliance with Applicable Law

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

Section 10.20 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 10.21 Amendment of Contract

Except as provided in Section 10.10 herein, this Contract may only be amended, or any provision of this Contract waived, by a written document signed by both Parties.

Section 10.22 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 10.23 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 10.24 Entire Contract

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

Section 10.25 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 10.26 Intellectual Property

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

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

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

Section 10.27 Reserved

Section 10.28 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/MOU Revenues as and to the extent such Task Order/MOU Revenues are received and available to pay such amounts under Applicable Law. The liability of the Authority for any monetary payments to the Contractor with respect to, or as a result of, this Contract are not payable from the general funds of the Authority or any amounts received by the Authority in respect of the Authority Administrative Cost as defined in the Task Order/MOU 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/MOU Revenues available to pay such amounts under Applicable Law and the Task Order/MOU. The Contractor shall have no recourse for the payment of any amounts due by the Authority under this Contract or upon any representation, warranty, covenant, contract or obligation contained in this Contract or in any document, certificate or instrument that this Contract requires to be executed and delivered by the Authority or for any claim hereon or thereon shall be had by the Contractor, except from such Task Order/MOU Revenues.
- (b) The execution and delivery of this Contract by the Authority does not impose any personal liability on the members, directors, officers, employees or agents of the Authority or any Carroll County Indemnitee. The Contractor shall have no recourse for any claims based on this Contract against any member, director, officer, employee or other agent of the

Authority in his or her individual capacity, all such liability, if any, being expressly waived by the Contractor by the execution of this Contract.

- (c) No recourse shall be had to the general funds or general credit of the Authority for the payment of any amount due the Contractor hereunder, whether on account of the Price or for any loss or expense of any nature arising from the performance or non-performance of the Authority's obligations hereunder. The sole recourse of the Contractor for all such amounts shall be to the funds available for such payment under of the terms of this Contract and the Task Order/MOU.

[SIGNATURES APPEAR ON THE NEXT PAGE]

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

NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY

Attest:

By: _____

Name: Andrew Kays

By: _____

Title: Executive Director

CONTRACTOR

Attest:

By: _____

Name:

By: _____

Title:

APPENDIX 1 DEFINITIONS

“Applicable Law” means any law, regulation, requirement or order of any Governmental Authority, and all by either Party of its Governmental Approvals, applicable to: 1) the acquisition, design, construction, equipping, testing, financing, ownership, possession or operation of the CMA used to meet Contractor’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.

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

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

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

“Billing Period” means each calendar month. The first Billing Period shall begin on the Acceptance Date and 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.

“Contractor” means _____, organized and existing under the laws of _____, and its permitted successors and assigns.

“Contract” means this Service Contract for the services related to the conceptual and final design and permitting services for a Resource Recovery Park (RRP) and municipal waste landfill expansion as dated above including the appendices and exhibits, and hereto of the documents referenced in Section 2.01.

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

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

“Environmental Claim” means any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim against

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

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

“Event of Default” means any of the events described in Section 11.08 of the Contract.

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

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

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

“Hazardous Waste” means:

- A. Any waste or substance, the treatment, storage or disposal of which, because of the composition or characteristics of the waste or substance, is unlawful to treat, store or dispose of at the acceptance or disposal facility or other facilities to be used in providing the services in this Contract, and is considered hazardous waste under Applicable Law, including, without limitation, wastes that are:

1. regulated as a toxic or Hazardous Waste as defined under either Subtitle C of the Solid Waste Disposal Act, 42 U.S.C. §§ 6921-6939a, or Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. § 2605(e), as replaced, amended, expanded or supplemented, and any rules or regulations promulgated thereunder, or under the Environment Article of the Annotated Code of Maryland, Title 7, Section 7-101 et seq., as replaced, amended, expanded, or supplemented, and any rules or regulations promulgated thereunder; or
 2. Low level nuclear wastes, special nuclear wastes or nuclear by-product wastes, all within the meaning of the Atomic Energy Act of 1954, as replaced, amended, expanded or supplemented, and any rules, regulations or policies promulgated thereunder.
- B. Any other waste which any Governmental Authority or unit having appropriate jurisdiction shall lawfully determine, from time to time, to be ineligible for disposal through facilities of the type being used to provide the service under this Contract because of the harmful, toxic, or dangerous composition or characteristics of the waste or substance.

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

“Health and Safety Plan (HASP)” shall mean the specific plan prepared by the Contractor for the Work. The HASP shall be developed in consultation with the Authority 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 Contractor which has issued a policy of Required Procurement Support Period Insurance or Required Construction Inspection Insurance under this Contract, as in effect during the Term hereof, compliance with which is a condition to the effectiveness of such policy.

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

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

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

“MDE” means the Maryland Department of the Environment.

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

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

“**Party**” means the Authority or the Contractor.

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

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

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

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

“**RFP**” means the request for proposals issued April 1, 2022, including addenda thereto issued.

“**Site**” means the property located at 1400 Baltimore Blvd, Westminster, MD 21157.

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

“**Task Order/MOU**” means the Task Order/MOU between the Authority of the County under which the County grants access to its Transfer Station for the Work at the Transfer Station.

“**Transfer Station**” means Carroll County’s Transfer Station located at 1400 Baltimore Blvd, Westminster, MD 21157.

“**Site-Related Information**” means all site-related information provided to the Contractor prior to the Effective Date, inclusive.

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

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

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

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

“**Tax**” or “**Taxes**” means all fees, taxes (including sales taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible)), levies,

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

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

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

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

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

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

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

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

For clarification purposes, “Uncontrollable Circumstance” shall not include the following:

- (A) reasonably predictable weather conditions for the geographic area of the Transfer Station; or
- (B) the imposition of any new condition in or other change to a Governmental Approval on or before the Notice to Proceed Date; or
- (C) the failure of a Party (including a Sub-Contractor) to any Contract with Contractor to perform its obligations under such Contract or undertaking unless the failure of such Party to perform is caused by an Uncontrollable Circumstance affecting such Party; or
- (D) with respect to Contractor only, any error or defect in the design or construction or equipping of the Corrective Measures; or
- (E) any labor strike or work stoppages solely caused by or solely directed at Contractor or its Sub-Contractors (or the affiliates of either);
- (F) any insolvency or bankruptcy of a Sub-Contractor of any tier;
- (G) general economic or industry conditions or increased costs of equipment, material, labor, or other components of the Work.

“Work” means all work and activities to be performed by Contractor under this Contract, including, without limitation, the Scope of Work as set forth in accordance with this Contract.

**APPENDIX 2
TERMS OF PAYMENT**

Fee Paid to the Contractor by the Authority:

Price for work completed in the Period

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.

If the Contractor seeks a rate increase for an upcoming Fiscal Year, no later than sixty (60) days after the end of the current Fiscal Year, the Contractor must submit a written request to the Contract Officer for an increase in the rates in the "Rate Schedule." No later than thirty (30) days after receipt of the written request, the Authority will inform the Contractor in writing as to the accepted adjustment for the succeeding Fiscal Year. The Contractor may submit additional detail to the Authority to substantiate a larger increase. No annual increase will be greater than the lesser of 4% or actual CPI over the previous year. Project Principal/Officer/Director annual adjustments are capped at 50% of the calculated adjustment, if allowed.

The Requested Maximum Annual Inflation Adjuster will be calculated as follows:

All 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, 2023 adjustment shall compare the most recently reported CPI as of July 1, 2023 (the April 2023 reference month) to the April 2022 CPI reference month. Thereafter the most recent CPI reported on July 1st of current year (April reference month) will be compared to the CPI used from previous period (April reference month).

The Requested Maximum Annual Inflation Adjuster shall be the lesser of 4% or 100 % of any increase in the CPI. 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 Requested Maximum Annual Inflation Adjustor, for each one-year period, shall not exceed 1.04 and be applied to the most recent Fiscal Year's rates.

Examples of Inflation Adjustor Calculation:

1. July 1, 2023 Inflation Adjustor:

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

April 2022 CPI reference month: 247.688

Index Point Change: $252.185 - 247.688 = 4.497$

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

2. July 1, 2024 Inflation Adjustor:

CPI for July 1, 2024 (reference month April 2024): assume 257.352

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

Index Point Change: $257.352 - 252.185 = 5.167$

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

APPENDIX 3 PAYMENT REQUEST

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

Summary of Payments to date

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

Requested payment amount

% of work remaining, % of money remaining

Summary of schedule to date

Summary of work to be undertaken in next period

*meals must conform to the GSA daily reimbursement guidelines for the District of Columbia and cannot include charges for alcohol. [Per Diem Rates Look-Up | GSA](#) (last accessed 03.28.2022)

APPENDIX 4 WORK REQUIREMENTS

4.1 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.

4.2 CONCEPTUAL AND FINAL DESIGN AND PERMITTING SERVICES FOR A RESOURCE RECOVERY PARK (RRP) AND MUNICIPAL WASTE LANDFILL EXPANSION

Final Contract must include final version of Exhibit 1

APPENDIX 4
PROJECT SCHEDULE

The purpose of this Appendix 4 is to define the Contractor's implementation schedules for the Work.

Final Contract must include Contractor supplied project schedule

APPENDIX 5
STAFFING PLAN and SCOPE OF WORK

5.1 WORK STAFFING PLAN

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

Exhibit 5-1

Contractor Project Organization Chart

5.2 SCOPE OF WORK

[Insert final scope from the RFP, as amended and agreed to]

**APPENDIX 6
PAYMENT AND WORK PROGRESS**

Payment to Contractor shall be made as follows:

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

Authority shall, within 15 days after receipt of invoice from Contractor, determine whether (A) the Work performed conforms with the requirements of this Contract; (B) the invoice and required backup information have been properly submitted; and (C) the invoiced amount reflects the work performed to-date and shall inform Contractor as to whether Authority disputes any portion of the invoice. Notwithstanding the foregoing, in no event shall Authority's determination or payment of any amount hereunder constitute or be deemed a waiver of any provision of this Contract, and Authority shall have the right to enforce this Contract against Contractor notwithstanding any such determination or payment if Authority subsequently determines for any reason that any determination or payment of an invoice was erroneous. Subject to such determination by Authority, and except for disputed portions of any invoice, Authority shall pay Contractor within 45 days after receipt by Authority of Contractor's invoice.

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

- (A) Work not performed in accordance with the requirements of this Contract whether payment for such Work is requested by invoice or previously made by Authority;
- (B) Claims filed against Authority or the County arising from Contractor's failure to perform in accordance with the terms of its subcontracts, other than claims for which Liens have been filed against the County that Contractor has bonded or has secured with any other kind of security permitted by Applicable Law against such Lien which is reasonably acceptable to Authority;
- (C) Failure of Contractor to make payments in respect of material or labor or other obligations incurred as a result of activities covered by this Contract, unless Contractor has, in good faith, reasonably disputed such payments and, if any Lien is filed with respect thereto, Contractor has posted a bond or any other kind of reasonable security permitted by applicable Law against such Lien;
- (D) Evidence that the invoice (together with previously invoiced amounts) exceeds the amount payable with respect to the Work achieved;
- (E) Undisputed damages or any other amounts owed by Contractor to Authority under this Contract for which Authority has not been paid;
- (F) Contractor's failure to provide a Recovery Plan, or Contractor fails to implement any approved Recovery Plan; and

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

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

APPENDIX 7 REQUIRED INSURANCE

General Insurance Requirements

- A. Contractor shall not commence Work until Contractor has obtained, at Contractor's own expense, all of the insurance as required hereunder and such insurance has been approved by Authority. Approval of insurance required of Contractor will be granted only after submission to Authority of original certificates of insurance signed by authorized representatives of the insurers.
- B. Contractor shall require its Sub-Contractors to maintain insurance, to the same extent required of Contractor.
- C. All insurers underwriting Contractor's insurance must be allowed to do business in Maryland and acceptable to Authority. The insurers must have a financial strength rating of "A-" or better, and a financial size category of "Class VII" or higher in the latest evaluation by A. M. Best Contractor, unless Authority grants specific approval for an exception.
- D. All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation or non-renewal until 30 days prior written notice has been given to Authority. Contractor is required to notify Authority of such cancellation or non-renewal.
- E. Insurance provided to Authority and its directors, officers and employees by Contractor shall be primary, and any other insurance, coverage or indemnity available to Authority and its directors, officers and employees shall be excess of and non-contributory with insurance provided by Contractor.
- F. If any liability insurance purchased by Contractor has been issued on a "claims made" basis, Contractor must comply with the following additional conditions.

Contractor must either:

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

Contractor's Liability Insurance

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

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

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

This insurance shall include coverage for all of the following:

- Any general aggregate limit shall apply per project;
- Liability arising from premises and operations;
- Liability arising from the actions of independent Contractors;
- Liability arising from products and completed operations;
-
- Liability arising from explosion, collapse and underground (XCU) hazards.

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

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

- The maintenance, use or operation of any auto; and
-

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

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

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

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

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

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