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**SERVICE CONTRACT FOR THE  
ENGINEERING, BID PREPARATION, AND SUPPORT  
SERVICES FOR MONTGOMERY COUNTY**

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**SERVICE CONTRACT FOR THE  
ENGINEERING, PERMITTING AND SUPPORT  
SERVICES FOR THE GUDE LANDFILL REMEDIATION PROJECT  
FOR MONTGOMERY COUNTY**

This Service Contract for the Design, Permitting, and Support Services (“Contract”) is made by and between the Northeast Maryland Waste Disposal Authority, an instrumentality of the State of Maryland (“Authority”) and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ and authorized to do business in the State of Maryland (“Design Engineer”).

**RECITALS**

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

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

3. The Design Engineer must ensure that the required design, permitting, and support services of the remediation plans, specifications, and other associated documents (Construction Documents) will be complete within \_\_\_\_ months of the Notice to Proceed, no later than the Guaranteed Final Acceptance Date, pursuant to the terms of this Contract.

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

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

**ARTICLE I.  
DEFINITIONS**

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

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

Section 2.01 Contract Documents

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

- (i) Contract, including the Schedules and Appendices;

- (ii) Request for Proposals dated \_\_\_\_\_ (“RFP”) [*plus addenda if applicable*];
- (iii) Design Engineer’s Proposal dated \_\_\_\_\_ [*plus BAFO if applicable*];
- (iv) Construction Documents (Construction Design Drawings and Project Manual prepared by Design Engineer and approved by the Authority;
- (v) Shop Drawings prepared by Design Engineer and approved by the Authority.
- (vi) Detailed plans, specifications and other materials approved by or on behalf of Authority during prosecution of the Work; provided, however, that in no event shall a conflict be deemed to exist if the provisions of the Schedules, Appendices, Exhibits or materials approved by or on behalf of Authority during the prosecution of the Work are more specific or stringent or require more activity or Work than the terms of the main body of this Contract.

(b) Design Engineer represents and warrants that it has identified any and all conflicts between the provisions of this Contract on the one hand and the Schedules, Appendices, Exhibits hereto on the other, and such conflicts have been resolved to Design Engineer’s satisfaction prior to the execution of this Contract. In the event of a conflict (provided that the absence of a provision or clause shall not be construed as a conflict) in the provisions of this Contract, the priority of documents in Section 2.01(a) shall control the resolution of such conflict.

Section 2.02     Scope of Work

This Contract is for the technical expertise to develop the construction design of the Work Plan (Appendix J) of the Gude Landfill Assessment of Corrective Measures Report herein referred as Attachment A of Appendix 2. The first phase of the work will be the coordination of comments from the County, the GLCC, and MDE for the creation of a conceptual plan, including drawings, narrative, and budget level cost estimates, for submission to the County. After the final approval of the conceptual plan, the Design Engineer will proceed with the full design of the Corrective Measures and Beneficial Uses. Generally, the Design Engineer will undertake the following tasks:

1. Design Engineer must verify field site conditions before submitting the proposal. Failure to identify discrepancies between the scope of work in this Contract and existing conditions at the Landfill and failure to bring the discrepancies to the Authority’s attention constitutes acceptance of those conditions by the Design Engineer.

2. Design Engineer must contact and provide written documentation for correspondence with all applicable federal, state, and local permitting agencies to inquire about potential permitting requirements and public notification requirements for general remediation actions at the Gude Landfill. Design Engineer shall obtain right-of-entry for off-site locations.

3. Design Engineer must prepare a site-specific Health and Safety Plan (HASP), to address worker safety associated with planned field activities and provide a Site Safety Officer (SSO) during all fieldwork. A Certified Industrial Hygienist (CIH) must prepare and/or oversee

preparation of the (HASP) and the SSO will highlight the contents of the plan to field staff prior to beginning fieldwork.

4. Design Engineer must provide Project communication support (e.g., narratives, drawings, images, presentations, etc. for use by the Authority) to communicate with Gude Landfill Concerned Citizens (GLCC), regulators, and other stake holders. Design Engineer must prepare a detailed plan for communication and public outreach support. The plan must include, at minimum, applicable residences notification, planned attendance at weekly internal planning and progress meetings with County staff, attendance at the monthly public meetings, and presentations, etc.

5. Design Engineer, through a private utility locating service, must verify the locations of all elevations of existing piping, utilities, and other types of underground obstructions that may be present at the excavation and drilling areas by scanning the construction site boundaries with electromagnetic or sonic equipment, or other approved devices. The Design Engineer must determine and prepare a map depicting location entry sites for utilities at the site for proposed construction.

6. The Design Engineer must prepare a detailed project schedule outlining major work items in Microsoft Project format, including sequence of construction in accordance with Attachment A of Appendix 2.

7. Design Engineer must prepare a field-survey plan listing all fielded survey activities necessary for the implementation of the remediation plan in accordance with Attachment A of Appendix 2.

8. The Design Engineer must submit an estimate of the limits of the area(s) to be cleared and grubbed in accordance with Attachment A of Appendix 2 and depict this information on the existing site layout plans. Design Engineer must prepare grading and excavation plans for Northwest and Western areas of the Landfill prior to the placement of additional cover material as per Attachment A of Appendix 2 and address the measures that will be taken if any leachate seeps are observed during the excavation and cover placement.

9. Design Engineer must prepare a detailed Waste Relocation and Reclamation Plan (“Plan”) as per Attachment A of Appendix 2. The Plan, at minimum, must address: waste excavation and handling, material processing & segregation (waste vs. recyclable material), material reuse (soil), fill placement (soil, structural fill, other select media, etc.), waste disposal, environmental control considerations and mitigation mechanisms, vector control measures, odor control measures, and dust control measures.

10. Design Engineer must design final grading after the Waste Relocation and Reclamation to promote drainage. The final grading plan must be in accordance with the County approved Storm Water Pollution Prevention Plan (“SWPPP”).

11. Design Engineer must determine the suitability and volume of any soils for the range of soil types required for the remediation construction. Design Engineer must develop specifications for each type of soil to be used in the remediation process, i.e., cover improvements on side slopes, final top soil, structural soils, etc., to include specific structural and slope stability



requirements (e.g., for those soils used for cover improvements, construction of benches, and access roads). Soils also need to be specified for the areas that require cover after placement of excavated waste in accordance with Attachment A of Appendix 2. Some soils may be available through the Shady Grove Processing Facility and Transfer Station. The Design Engineer must design a suitable stockpile area with applicable storm water management and sediment control measures and permits, to allow general use soils to be stockpiled for planned future construction. Design Engineer shall also develop soil stockpile plans for the different soil types and each phase of construction.

12. Design Engineer must conduct a slope stability analysis for the areas of steep slopes and recommend stability measures with the design of permanent benches. Benches may be required to be designed to accommodate permanent access roads for use during well installation and future well monitoring and maintenance. For such cases, the Design Engineer must prepare detailed plans for permanent access roads.

13. Design Engineer must prepare a vegetation establishment plan for all the disturbed areas including soil stockpile areas explaining the seeding, mulching, and soil stabilization process.

14. Design Engineer must prepare a construction storm water control plan addressing drainage and erosion control for all the disturbed areas and soil stockpile areas. The Plan must include, at the minimum, measures such as sediment traps and silt fencing stormwater tarps, basins and diversion berms, and leachate containment sumps, etc.

15. Design Engineer must design additional landfill gas extraction wells and a revised collection and extraction system. The plan must address: the design and location of additional landfill gas extraction wells; the details of the existing above-ground landfill gas extraction system piping and retrofitting the landfill additional gas extraction wells into it; and the measures to be taken for the prevention of Landfill Gas Migration/Oxygen Intrusion in to the existing landfill gas collection system (above grade conveyance piping and extraction wells) during the cover improvements. Design Engineer must also design a phased approach for taking sections of the gas collection system out of service for the minimum feasible period to allow for each phase of construction which requires wells to be elevated, relocated, or otherwise disturbed. In some cases, it may be necessary to develop interim gas collection measures in an area to ensure safety during construction and minimize gas releases and gas migration.

16. Prior to the start of work, Design Engineer must submit a traffic control plan to the Authority describing traffic control procedures, access and haul routes, avenues of ingress and egress to the work area, and vehicle parking and staging areas.

17. Prior to the start of work, Design Engineer must submit a site plan showing the locations and dimensions of temporary facilities, including layouts and details, equipment and material storage area (on site and off site), and access and haul routes, avenues of ingress and egress to the fenced area and details of the fence installation. In addition, the site plan must: (i) Identify any areas which may have to be graveled to prevent the tracking of mud; (ii) Indicate if the use of a supplemental or other staging area is desired; and (iii) Identify locations of safety and construction fences, site trailers, construction entrances, trash dumpsters, temporary sanitary facilities, and worker parking areas.

18. The Design Engineer must provide final drawings, including but not limited to, 100% construction drawings, shop drawings and related narrative for the Bid for construction for the Corrective Measures. The Design Engineer will not manage the procurement process for the construction of the Corrective Measures and Beneficial Uses. The Design Engineer will provide assistance in responding to questions and comments during the bid process, including but not limited to drafting technical responses and providing revised drawings in a timely manner. The Design Engineer will review the bid tabulations and provide general comment on the proposals, including qualifications of the bidder and ability to perform the construction.

Section 2.03 Responsibilities of the Authority

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

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

Section 2.04 Responsibilities of the Design Engineer

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

- (a) furnish all labor, equipment, and materials necessary to investigate, design, provide bid support, and construction inspection services in accord with the Design Requirements in Schedule II and other requirements set forth in the Contract Documents;
- (b) obtain all Governmental Approvals necessary to investigate, design, provide bid support, and construction inspection services and perform all of its obligations under this Contract; and,
- (c) perform all necessary site work to investigate, design, provide bid support, and construction inspection services.

**ARTICLE III.  
TERM OF CONTRACT, DESIGN PERIOD RESPONSIBILITIES, NOTICE TO  
PROCEED DATE CONDITIONS, END OF TERM TRANSITION**

Section 3.01 Effective Date

This Contract shall be effective on the date the Authority executes, after the Design Engineer executes the Contract. 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 the third anniversary of the Effective Date (“**Initial Term**”) or, if renewed, as provided in Section 3.02(e), until the last day of the Renewal Term, unless earlier terminated by a Party in accordance with the provisions of this Contract.
- (b) The Effective Date shall constitute the first day of the Design Period.
- (c) The acceptance of the design drawings by the Authority, in writing, shall constitute the first day of the Bid Support Period.
- (d) The Authority shall have the option, in its sole discretion, to renew this Contract for up to two additional 1-year periods after the Initial Term (each a “**Renewal Term**”) on the same conditions as are applicable during the Initial Term. The Authority shall give Design Engineer written notice of its election to renew this Contract on or before the 90<sup>th</sup> day preceding the last day of the Initial Term or the then effective Renewal Term.

### Section 3.03 Period Responsibilities

- (a) Authority Design Period Responsibilities. During the Design Period, the Authority, at its own cost and expense, shall use good faith efforts to undertake and complete the following Authority responsibilities:
  - 1) Assistance with Environmental and Governmental Approvals. The Authority shall provide the Design Engineer reasonable assistance with the Design Engineer’s obligation to obtain all applicable Governmental Approvals in accordance with the requirements of this Contract.
  - 2) Landfill Access and Easements. The Authority shall negotiate and execute a Task Order, which shall include the access to the Landfill, access to pertinent data and the following easements, or other interests in real property relating to availability of Utilities for the Facility: sewer, water, electricity, telephone, and gas, as required.
  - 3) Support for Design Work. The Authority shall provide reasonable administrative, non-financial, support for all design work performed by the Design Engineer, which shall include reviewing design documents submitted for Authority approval in a timely fashion, provided, however, that Design Engineer shall remain liable for all Work to be performed during the Design Period.
- (b) Design Engineer Design Period Responsibilities.
  - 1) Prosecute the Design Period Work within the parameters set forth within this Contract, specifically under Section 2.04 and Appendix II.

(c) Authority Bid Support Period Responsibilities.

- 1) The Authority shall manage the procurement process for the construction services related to the Corrective Measures.

(d) Design Engineer Bid Support Period Responsibilities. Promptly following the acceptance of the design drawings by the Authority, the Design Engineer, at its own cost and expense, shall use commercially reasonable efforts to undertake and complete the following Design Engineer responsibilities:

- 1) The construction of Gude Landfill Closure will follow the design-bid-build process.
- 2) Design Engineer will participate in a pre-bid meeting to familiarize prospective bidders with the work associated with the remediation construction.
- 3) Design Engineer will answer bid related questions as they arise and provide clarifications for these questions. Questions must be answered within 3 business days of submission. It is estimated that three addenda will be prepared by the Design Engineer and distributed by Authority.
- 4) The Authority will prepare a bid tabulation based on the bids submitted and prepare a recommendation of award based on the bid results. Design Engineer will review successful bids for completeness.

(e) Payment for Design Engineer Bid Support Work. The Design Engineer shall be paid Reimbursable Bid Support Period Costs within 45 days after the submission of a satisfactory Invoice and required supporting documentation therefor establishing the achievement of the applicable precondition to payment of Payment Milestone, if any. Payment shall be subject to the requirements of Appendix 7.

Section 3.04 Notice to Proceed Conditions

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

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

- 2) The Task Order has been executed by the Authority and the County and all preconditions to the Notice to Proceed have been satisfied or waived by the County.

**ARTICLE IV.  
SITE LOCATION**

Section 4.01     Site

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

Section 4.02     Coordination with work at Site

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

Section 4.03     Site Access

The Authority will make the Site available to the Design Engineer through a Task Order between the Authority and the County. Design Engineer must comply with and perform all of the Authority's obligations under the Task Order (other than Sections \_\_\_\_\_ of the Task Order) and shall not cause directly or indirectly breach or violation of the Task Order.

**ARTICLE V.  
DEVELOPMENT OF CORRECTIVE MEASURES**

Section 5.01     Design of Corrective Measures and Beneficial Uses

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

The First phase of the design period will be the development of a conceptual design that incorporates Beneficial Uses, as identified through meetings conducted by the Design Engineer with County personnel and GLCC representatives. The final conceptual design will include budget level detail for the Corrective Measures as well as the Beneficial Uses for the site.

The second phase of the design period will start with acceptance of the conceptual drawings and budget level detail and proceed with 60%, 90%, and 100% drawings and construction plans for the Corrective Measures and the Beneficial Uses.

Section 5.02 Permits for the Design Period

(a) The Authority will provide to the Design Engineer technical and other information reasonably necessary for the preparation of the required applications and submissions, and, as set forth in Appendix 4, will have the right to review and approve all such applications and submissions, which must be made in a form and substance reasonably satisfactory to the Authority.

(b) Design Engineer is responsible for paying any fine, fees, costs, or penalties assessed or imposed for violations of or other failure to conform to the requirements of any necessary Governmental Approval to the extent that such fines, fees, costs, or penalties are not the result of data, information or direction received from the Authority. Design Engineer is responsible for the preparation of all reports necessary to conform to the requirements of Governmental Approvals. The Design Engineer must provide reasonable review time to the Authority for all reports and, where required by Applicable Law, the Authority will sign the necessary reports in an expeditious manner so as to avoid any potential non-compliance.

(d) Design Engineer is not responsible for the permits needed for the construction of the Corrective Measures.

Section 5.03 Corrective Measure Financing

Design Engineer must make available information reasonably necessary for a public offering of bonds to the County, its underwriters, their counsel, bond counsel, the rating agencies, Authority Engineer, or other consultant, credit facility providers and other financing institutions or parties involved in the financing process and the issuance of the bonds, including financial information concerning Design Engineer, its affiliates, Major Sub-Design Engineers, and Guarantor, if applicable.

Section 5.04 Corrective Measure Construction

Design Engineer shall not be required to perform inspection services during the construction of the Corrective Measures and Beneficial Uses.

Section 5.05 No Guarantee of Work

The Authority may (but is not obligated to) issue a Notice to Proceed (“**Notice to Proceed**”) when all Notice to Proceed Conditions have been satisfied or waived by the Authority, in its sole discretion. Design Engineer agrees to cause the Final Acceptance Date to occur before the \_\_\_\_ day after the Notice to Proceed Date (the “**Guaranteed Final Acceptance Date**”).

Section 5.06 Final Acceptance Delay Liquidated Damages

(a) The Design Engineer acknowledges that the Authority and County will suffer actual damages from its failure to timely complete all Design Period Work under this Contract by the Guaranteed Final Acceptance Date, including damage to the public interest, and these damages are difficult to ascertain on the date the Parties entered this Contract. Therefore, the Parties agree that, if the Final Acceptance Date has not occurred on or before the Guaranteed Final Acceptance Date, the Design Engineer shall pay liquidated damages of \$1,000 per day for each day after the

Guaranteed Final Acceptance Date until the Final Acceptance Date has occurred (“Final Acceptance Delay Liquidated Damages”). These damages reflect the additional burden borne by the Authority and the County for damage to the public interest, administrative costs, and debt service costs. These liquidated damages are a reasonable estimate of damage that will be incurred by the County and Authority for delay in completion of Design Period Work under this Contract beyond the Guaranteed Final Acceptance Date.

(b) Authority may require Design Engineer to pay Final Acceptance Delay Liquidated Damages accrued as they accrue by delivery of a Notice specifying the amount of such damages, and Design Engineer must pay the amount so specified within 5 days of such Notice. Late payments of such amounts will bear interest at Late Payment Rate. To the extent that Authority is holding retainage owed to Design Engineer, Authority may permanently retain such retainage for any Delay Liquidated Damages accrued as they accrue, and such Final Acceptance Delay Liquidated Damages owed by Design Engineer to Authority (up to the full amount of such retainage or the full amount of the Retainage).

## **ARTICLE VI. SPECIFICATIONS AND TECHNICAL REQUIREMENTS**

### Section 6.01     Standard of Workmanship

Design Engineer is responsible for performing the Work in accord with the highest standards of skill and workmanship, using its best skill and attention.

### Section 6.02     Warranty of Inspection and Acceptance of Site

(a) Design Engineer represents and agrees that (i) it has inspected the Landfill and (ii) it has reviewed all information provided by Authority relating to the Landfill and surrounding locations including information related to both surface and subsurface geotechnical conditions.

(b) Design Engineer acknowledges that it satisfied itself as to the conditions affecting the Work, including but not limited to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, physical conditions at the site of the Work, the conformation and conditions of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the Work. Design Engineer further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from the Site Inspection, as well as from information presented by the drawings and specifications made a part of this Contract or information available to or obtainable by Design Engineer, for the Site, including those subsurface geotechnical conditions and non-geotechnical subsurface conditions disclosed in, or reasonably inferable or predictable by an experienced and diligent Design Engineer from the Site Inspection, for the performance of the Work. Any failure of Design Engineer to acquaint itself with the site characteristics or conditions, or with all information reasonably available to or obtainable by it, does not relieve Design Engineer from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The Authority assumes no responsibility for any conclusions

or interpretations made by Design Engineer on the basis of the information made available by the Authority or County.

(c) In the event Design Engineer encounters unknown surface, subsurface or latent physical conditions at the Landfill (including, but not limited to, man-made obstructions, geotechnical conditions, Hazardous Materials and archeological remains) (“**Unknown Site Conditions**”), Design Engineer must give immediate Notice of the nature and extent of such differing conditions to Authority. Design Engineer must promptly investigate the conditions and provide Authority with a proposed plan on how to proceed to address such conditions. An Uncontrollable Circumstance shall not occur, because of Unknown Site Conditions, including (A) the presence of Hazardous Materials at the Landfill which were introduced to the Landfill by Design Engineer or its Sub-Design Engineers, (B) any surface condition, (C) any subsurface condition of or at the Landfill that is disclosed in, or reasonably inferable or predictable from, Design Engineer’s Site Inspection (which includes, without limitation, the Landfill background information set forth in Appendix 10), or (D) any Design Engineer Related Entity disrupts or Releases any Hazardous Materials encountered on the Landfill.

(d) Design Engineer must promptly, and before Unknown Site Conditions are disturbed, notify the Authority in writing of newly discovered unknown physical conditions at the Site of an unusual nature, different materially from those ordinarily encountered and generally recognized as inhering in Work. The Authority shall promptly investigate the conditions, and make a determination as to whether such conditions do materially so differ and cause an increase or decrease in the Design Engineer’s cost of, or the time required for, performance of any part of the Work under this Contract. No claim of the Design Engineer for any increased costs shall be allowed unless the Design Engineer has given the notice required in this Section.

(e) The Design Engineer must employ a geotechnical engineer to plan, oversee, and evaluate the results of all subsurface investigations and to determine requirements for the design, including under seismic conditions, of foundations, superstructures and dewatering systems, with regard to existing soil conditions, and to provide recommendations for construction requirements as to protecting the proposed work and existing structures and utilities.

#### Section 6.03 Design Specifications

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

#### Section 6.04 Drawings

(a) Design Engineer must prepare and submit for the Authority’s review three rounds of hard copies of Conceptual Design Drawings and Shop Drawings. Each round must reflect the



input from the County, and MDE with consideration given to input from GLCC. The Design Engineer must prepare a final set of the Conceptual Drawings, to include five plan set views (e.g., the overall site from overhead, typical detail for the Corrective Measures, elevation views of the final Corrective Measures and elevation views of the Beneficial Uses), mounted on ½” gator board and suitable for display.

(b) Design Engineer must prepare and submit, for the Authority’s review, three hard copies of Design Drawings and Shop Drawings. All drawings must be signed and sealed by a Maryland licensed Professional Engineer in good standing, where required by code or regulation for submission to a permitting body. The Construction Design Drawings and Shop Drawings must be submitted at or before the time required for their submission by the Approved CPM Schedule. Construction Design Drawings and Shop Drawings must meet the requirements set forth in the Contract Documents. The data on the Construction Design Drawings and Shop Drawings must be accurate and complete with respect to construction details, quantities, dimensions, specific performance, and/or other design criteria, materials and similar data to enable the Authority to review the information as required. These documents must be prepared by Design Engineer in conformity with the best practice and standards.

(c) Construction Design Drawings must show all work and materials necessary to complete the Work, must include all elements of the Design Requirements, and must include sufficient detail for the Authority to do a critical review and ensure that the requirements of the Contract Documents are met. Shop Drawings must be provided for all required components including, but not limited to, technical details on all synthetic materials to be used during Construction.

(d) Within the time frame set forth in Approved CPM Schedule, and in accord with Schedule 5, the Authority will review the Construction Design Drawings and Shop Drawings for conformance with the requirements of the Contract Documents. The Authority’s approval of the Construction Design Drawings and Shop Drawings is not intended to be a substitute for the approval of the licensed Professional Engineer, or for approval of any required Governmental Approvals.

(e) The Design Engineer is not relieved of its obligation to comply with the requirements of the Contract Documents, or for defective Work by: (i) approval by the Authority of any drawing, submittal, or other document prepared by Design Engineer; (ii) the activity, responsibility, or administration of the Contract by the Authority’s personnel, or (iii) inspections, tests, or approvals required or performed by Persons other than Design Engineer.

**ARTICLE VII.**  
**DESIGN PERIOD INVESTIGATIONS**

Section 7.01     Coordination of Work

Design Engineer must coordinate its Work with activities of the County or others currently being performed on Site or the Gude Landfill.

Section 7.02 Authority Project Manager

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

Section 7.03 Reserved

Section 7.04 Risk of Loss

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

Section 7.05 Storage of Materials

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

Section 7.06 CPM Schedule

(a) Within 10 calendar days after the Effective Date, Design Engineer must submit to the Authority a CPM Schedule for the Work which identifies the Design Engineer's schedule for completion of Final Acceptance of the Work by the Guaranteed Final Acceptance Date, including a schedule for completion of the necessary Design Period and Bid Support Period activities. The Authority shall review the submitted CPM Schedule, may request documents or other justification for the schedule, and shall approve a final version of the CPM Schedule ("**Approved CPM Schedule**"). The Design Engineer is responsible for submitting monthly Approved CPM Schedule updates to the Authority's Project Manager showing the progress of the Work.

(b) If, at any time during the performance of the Work, (i) Design Engineer is 30 days or more behind in the Approved CPM Schedule, or (ii) Authority reasonably believes Final Acceptance is not reasonably expected to occur before the Guaranteed Final Acceptance Date, then Authority shall give Notice to Design Engineer and Authority may require Design Engineer to prepare a proposed plan of recovery (the "**Recovery Plan**") and implement it. A Recovery Plan must explain and demonstrate how Design Engineer intends to re-sequence or progress the remaining Work (including Design Engineer's use of overtime) such that the Approved CPM Schedule can be achieved, if practicable, or as soon thereafter as possible if not practicable. The

Design Engineer is not be entitled to any adjustment in the Guaranteed Final Acceptance Date described in the Recovery Plan.

(c) Design Engineer must submit its initial proposed Recovery Plan to the Authority promptly and which in no event will exceed 14 days of receiving Notice from the Authority of the requirement for submission of a Recovery Plan. Upon receipt of such proposed Recovery Plan, the Authority shall review and comment upon the same. Design Engineer must coordinate with and incorporate all reasonable comments proposed by Authority to its proposed Recovery Plan and must promptly update and supplement the Recovery Plan. In the event Design Engineer disputes Authority's comments to the proposed Recovery Plan, the Parties may resolve such dispute in accordance with the dispute resolution procedures in this Contract. Design Engineer must, to the maximum extent possible, implement the Recovery Plan in order that the Approved CPM Schedule will be achieved. If Design Engineer determines it necessary to update or modify its Recovery Plan to reflect the progress of its recovery Work, it must, as soon as reasonably possible, submit the modified or updated Recovery Plan in writing, to Authority for the Authority's approval. Neither the Authority's review nor comment upon a Recovery Plan will relieve the Design Engineer of any of its obligations under this Contract.

#### Section 7.07 Warranties

(a) The Design Engineer must execute the Work in a manner that does not void the standard manufacturer's warranty for any installed improvements to the Landfill.

(b) The Authority's rights with respect to Warranties shall extend from the Effective Date until the later of: (i) 60 months from Final Acceptance Date or (ii) 24 months following corrective action on the Work (the "**Warranty Period**").

(c) The Design Engineer warrants the Work as follows:

(d) In addition to any warranties required by the RFP, the Design Engineer warrants that the Work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship, that the structures, improvements and materials incorporated into the Work will be new, of good quality, free from faults and defects, suitable for its intended purpose, and in conformity with the Contract Documents.

(e) The Work must substantially conform to the final drawings and specifications and all equipment incorporated into the Work shall perform substantially in accordance with the Scope of Work and Specifications.

(f) The Work must be free from material defects in design, and engineering.

(g) In the event of any breach of a Warranty, Design Engineer shall thereupon, and at its own cost and expense (including, without limitation, the payment of costs of accessing the defective Work and restoring the Facility to the condition that existed prior to such access ("**In and Out Costs**"), transportation costs, logistics costs, and applicable taxes (including import duties, value added taxes and any other Taxes imposed within and outside Maryland)), reperform any necessary Work and provide (at no expense to Authority) such design, engineering, equipment, material, labor, shipping and services necessary to cause the Work to conform to said Warranties.

Design Engineer shall use commercially reasonable efforts to extend equipment manufacturers warranties to twenty-four (24) months from any date of rework. The Design Engineer's Warranty Period shall for any rework of design, engineering, materials, construction or workmanship shall commence upon the completion of such rework. No such rework, however, shall extend Design Engineer's Warranty beyond the Warranty Period. Design Engineer's Warranties shall be assignable to the Trustee and holders of the Revenue Bonds without additional approval by Design Engineer.

(h) Without in any way derogating Design Engineer's representations and warranties (including Warranties) and its Performance Guarantees with respect to all of the Work, Design Engineer must use commercially reasonable efforts to obtain warranties from its Sub-Design Engineers with a duration at least as long as those warranties which Design Engineer is required to provide under this Contract (including additional time for any corrective work performed); provided that Design Engineer's inability to obtain such warranties from its Sub-Design Engineers shall not release Design Engineer from its obligations to provide the warranties required under this Contract. All warranties of major equipment vendors must include either (i) a written description of any warranty bonds or warranty guarantees or (ii) a redacted draft of any warranty bonds or warranty guarantees, each when obtained by Design Engineer must be (A) furnished promptly to Authority, (B) written so as to survive all Authority and Design Engineer inspections, tests, and approvals, (C) written in English, and (D) assignable to the Authority and Trustee. Warranties for repair or replacement of Work occurring after the Final Acceptance Date must remain in effect for the periods provided in 7.08 (as applicable).

(i) Until the expiration of the Warranty Period or earlier termination of this Contract, Design Engineer must enforce any Sub-Design Engineer representation, warranty, or guarantee, and must use commercially reasonable efforts to enforce the Sub-Design Engineer representation, warranty, or guarantee. Commencing on the expiration of the Warranty Period or earlier termination of this Contract, the Authority may, but shall not be obligated to, enforce all representations, warranties and guarantees that are still in effect from Sub-Design Engineers, and Design Engineer must provide reasonable and limited assistance to the Authority, at no cost to Authority, in enforcing such representations, warranties and guarantees, when requested by Authority.

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

the necessary remedy, and the reasonable and documented costs thereof shall be borne by Design Engineer.

Section 7.08      Substantial Completion; Punch Lists; Acceptance Tests

When the Bid Support Work is Substantially Complete, Design Engineer must notify the Authority that the Work will be ready for final inspection and test on a definite date. Sufficient notice must be given to permit the Authority to schedule the final inspection. The Authority may inspect the Site for materials, workmanship, dimensions, performance, and general compliance with the requirements of the Contract Documents. Work not in compliance with any part of the Contract Documents will be rejected, and Design Engineer must furnish acceptable replacement Work within three scheduled working days after notification of rejections. On the basis of the inspection, if the Authority determines that Substantial Completion has been achieved, the Authority will establish the date of Substantial Completion and fix the time (not longer than 30 days) within which the Design Engineer must complete any remaining items of the Bid Support Work, which will be indicated on a Final Punch List prepared by the Authority. If the Design Engineer fails to complete the items on the Final Punch List within the 30 days, or make an adjustment acceptable to the Authority, the Authority shall have the right to complete the Bid Support Work at the Design Engineer's expense and deduct the cost incurred from any monies retained under the Contract. Acceptance of the Work as Substantially Complete, or Final Acceptance, shall not excuse or waive any failure of the Design Engineer to complete the Bid Support Work as required by the Contract Documents.

Section 7.09      Final Completion

(a)      The following are conditions of Final Completion:

- (i)      The Final Acceptance Date has occurred;
- (ii)     All Work described in the Punch list is completed; and
- (iii)    All conditions under Governmental Approvals were met.

(b)      Within 5 calendar days of Final Acceptance of the Work, three copies of as-built drawings signed and sealed by a Maryland licensed Professional Engineer must be delivered to the Authority, plus CADD, and PDF files of the as-built drawings on CD or thumb drive.

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

(a)      Subject to the remedies provided for in this Contract, the Design Engineer must perform the Work and turn the design documents over to Authority in a manner that is: (i) sufficient, complete, and adequate in all respects necessary for the Corrective Measures to successfully be procured, permitted, and constructed; (ii) in conformance with Prudent Industry Practices and with professional standards, skill, expertise, and diligence of design and construction professionals regularly involved in projects of similar size and nature to the Corrective Measures; and (iii) in compliance with the terms of the Contract Documents, and all Applicable Laws and Governmental Approvals.

(b) In light of the foregoing, Design Engineer has included within the Price the cost to complete all Work. Items need not be specifically listed in the Contract Documents in order to be deemed as items within the Work. It is understood that the Design Engineer is better qualified to list exclusions than the Authority is to list inclusions. Therefore, any item indicated on the Contract Documents, reasonably inferable from and incidental to the Contract Documents or required in accordance with any Applicable Law, is to be considered as part of the Work. The objective of this Contract is to relieve the Authority of the necessity of engaging or supplying any labor, service, or material to complete the design work, bid support, and inspection services unless expressly stated in the Contract as being furnished by the Authority. As a result, unless otherwise permitted in this Contract, the Design Engineer waives any and all claims for an increase in the Price, in whole or in part, upon an assertion that any certain license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation, or management is beyond the scope of the Work when such license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation, or management is indicated in the Contract Documents, the Drawings, or other instruments of service prepared in connection with the Contract Documents, reasonably inferable from and incidental to the Contract Documents, required in accordance with any Applicable Law, Governmental Approvals, or otherwise necessary in order to complete the Work in accordance with and subject to the requirements of the Contract Documents.

(c) The Work must meet professional standards utilized by design and construction professionals regularly involved in projects similar to the Corrective Measures. The Corrective Measures must be designed to operate in accordance with the Contract Documents, all Applicable Laws, and Governmental Approvals. The Design Engineer must notify the Authority of any standards of the above listed organizations that are inconsistent with each other and advise the Authority of the manner in which it intends to resolve such inconsistency in accordance with the standard referenced above.

(d) Design Engineer acknowledges that this Contract constitutes a not to exceed price obligation to engineer, design, and provide bid support services of the Corrective Measures within the time and for the purpose designated in the Contract. The Design Engineer is obligated to: supply all of the equipment and design 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 design documents and bid support satisfies the applicable terms, conditions, and Design Engineer's obligations concerning the Performance Guarantees and other guarantees and requirements set forth in the Contract Documents, all for the Price.

**ARTICLE VIII.  
RESERVED**

**ARTICLE IX.  
COMPENSATION**

Section 9.01     Payment for Work - Design Period and Bid Support Period

(a)     The Authority will pay the Design Engineer the Bid Support Price in accordance with this Section 9 and Schedule IV and Appendix 8. The form of this submission will be as agreed upon by the Design Engineer and the Authority and must be supported by such evidence as to its correctness as the Authority may direct (e.g., per task hourly breakdown for staff, narrative of the work accomplished in the period, work to be performed in the next period, and receipts for out of pocket expenses). In accordance with Appendix 8, this schedule will be used as the basis for progress payments unless, at a later date, found by the Authority to be in error. The Project Manager must be responsible for determining that the schedule of values accurately reflects the Work completed or materials on Site each month.

(b)     Design Engineer may invoice the Authority, in accordance with Appendix 4, for each progress payment after notice from the Authority that the Work represented by the progress payment was inspected and approved. Invoices must be sent to the Authority and the County. Payment will be made within 45 days of receipt of an approved Invoice from Design Engineer. Any amounts payable by the Authority that are not paid when due shall bear interest at the Late Payment Rate.

(c)     No payment made to the Design Engineer shall constitute an acceptance by the Authority of any Work not in accordance with the Contract Documents. The Authority may withhold or recover the whole or part of any Design Engineer payment to such extent as may be necessary to reimburse or protect the Authority from loss on account of defective or damaged Work not remedied, failure of the Design Engineer to make payments properly to Sub-Design Engineers for material or labor, a reasonable doubt by the Authority that the Work can be completed by the Guaranteed Final Acceptance Date or for the balance of the Price, or other damage caused by the Design Engineer for which the Authority may reasonably be liable. Payment of the entire Price will not be made until all Work is completed to the satisfaction of the Authority and Final Acceptance has occurred.

(d)     If the Authority or Design Engineer disputes any amount invoiced, or payment made, the disputed portion of the invoice or payment is not effective until resolution of the dispute. Pending resolution of any dispute, the Design Engineer must continue to perform of all of its obligations under the Contract.

Section 9.02     Invoicing

(a)     Invoices shall be sent to the following:

**If to the Authority:**

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

**If to the County:**

(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 Design Engineer will not be paid until resolution of the dispute. Pending resolution of any dispute, Design Engineer must continue to perform its obligations under the Contract.

Section 9.03 Offset

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

Section 9.04 Payment Is No Waiver of Rights

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



**ARTICLE X.  
CHANGES TO WORK**

Section 10.01 Changes

(a) The Authority unilaterally may, at any time, without notice to the Sureties or other providers of Performance Security, by written order designated or indicated to be a change order, make any change in the Work within the general scope of the Contract, including but not limited to, changes: (i) in the specifications (including drawings and designs); (ii) in the method or manner of performance of the Work; (iii) in the Authority, equipment, materials, services, or site; or (iv) in directing the acceleration or deceleration in the performance of the Work (“**Change-In-Work**”).

(b) Unless the Authority issues a Change-In-Work, no order, statement, or conduct of the Authority shall be treated as a Change-In-Work under this Section or entitle the Design Engineer to a price adjustment under the Contract.

(c) If any Change-in-Work causes an increase or decrease in the Design Engineer’s cost of, or the time required for, the performance of any part of the Work under this Contract, an adjustment will be made for Design Engineer’s Demonstrated Costs (as defined below) to be incurred or saved and the Contract modified in writing accordingly; provided, however, that no claim for any change above will be allowed for any costs incurred more than 10 days before the Design Engineer gives written notice as therein required.

(d) No claim by the Design Engineer for an adjustment under this Contract will be allowed if asserted after Final Completion under this Contract.

(e) The Demonstrated Costs of Change-In-Work will be developed on an open book approach and will be priced based on actual, incremental, internal costs plus actual, incremental, third party direct costs plus a fixed fee basis with Design Engineer’s fixed fee set at 3% (which includes overhead, profit, and risk) of the sum of the estimated costs of the Change-In-Work. The Design Engineer must provide the Authority with a detailed estimate of the cost for any requested Change-In- Work, which must include capital costs for equipment and materials, field labor, expenses, and engineering costs.

(f) The Authority will advise the Design Engineer of any proposed Change-In-Work and the Authority and Design Engineer will then promptly consult with each other concerning the cost and impact, if any, on the CPM Schedule of implementing the proposed change. Following the consultation, the Authority may request and Design Engineer must promptly prepare, at its own cost and expense, a detailed estimate relating to the contemplated change (a “**Change-In-Work Form**”), which must include (A) any projected increase or decrease of the Price and the applicable Payment Milestone amount occasioned by the change, (B) the projected effect on the CPM Schedule or any other schedule, and (C) the potential effect on Design Engineer’s ability to comply with any of its obligations under this Contract.

(g) Within five (5) Business Days after execution of a Change-In-Work Form by Design Engineer and Authority or a resolution of any matters in dispute regarding the Change-in-Work, the Parties, in accordance with such Change-In-Work Form and the resolution of the dispute, if applicable, will adjust the Price as provided in this Section 10.01 and the progress

payment Schedule, the Approved CPM Schedule and any other schedules requiring adjustment to reflect the change agreed upon.

(h) If the Authority and the Design Engineer cannot reach an agreement within 10 Business Days on the matters listed in the Change-In-Work Form, or cannot agree that the matters under discussion constitute a Change-in-Work, the Authority may, at its sole discretion, require the Design Engineer in writing to promptly proceed to complete the Change-In-Work in accordance with Authority's interpretation of the matter under dispute and Authority will pay the Design Engineer for the undisputed Demonstrated Costs of such Change-In-Work provided for in 10.01(e) as incurred. If the Authority and the Design Engineer cannot reach an agreement on the estimated cost, the Design Engineer must perform the Change-in-Work.

(i) In no event shall the Design Engineer undertake a Change-In-Work until (A) a Change-In-Work Form has been approved and signed by the Parties, and (B) if a disagreement exists as described in Section 10.01, the Design Engineer has received Notice from the Authority to proceed under protest. In no event shall changes to the Work necessary for Design Engineer's design and Detailed Plans to comply with this Contract constitute a Change-In-Work unless such changes are approved by the Authority at its sole discretion.

(j) After the Effective Date, Design Engineer may propose any addition, deletion, modification, or amplification to this Contract which in Design Engineer's opinion does constitute a Change-In-Work by giving the Authority and the Authority Engineer prior Notice thereof. The Authority will promptly review Design Engineer's proposed addition, deletion, modification, or amplification and accept or reject same. The Authority may, at its sole discretion and verification by the Authority Engineer, determine that the proposed addition, deletion, modification, or amplification be deemed a Change-In-Work, to be handled accordingly.

(k) The Design Engineer will be entitled to a Change-in-Work on account of: (1) additions, modifications, deletions, or enhancements to the Site proposed by Authority; or (2) if the Authority requires Design Engineer to take action to remedy conditions caused by Design Engineer Uncontrollable Circumstance; provided, however, that Design Engineer must provide Authority with Notice of a change in the Work. Design Engineer's failure to propose a change in the Work within the 25 days of determining the need for a change in the Work, will be deemed a waiver by Design Engineer of its right to a change in the Work; provided, however, the waiver will not relieve the Design Engineer of any of its obligations under this Contract. Design Engineer must not make any Change to Work (including changes that have no net cost effect on the Price) without a Change-In-Work Form signed by the Parties or the Design Engineer has received Notice from the Authority to proceed under protest. Neither the Price nor any component thereof will be increased with respect to any Change-In-Work proposed by Design Engineer unless the change requires a modification or change in Design Engineer's cost of performing the Work as so modified.

#### Section 10.02 Suspension of Work

(a) The Authority may unilaterally order the Design Engineer in writing to suspend, delay, or interrupt all or any part of the Work for a period of time it deems appropriate for the convenience of the Authority or the County.

(b) However, no adjustment will be made under Section 10.01(k) for any suspension, delay, or interruption to the extent (i) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Design Engineer-Related Entities, or (ii) for which an equitable adjustment is provided for or excluded by any other provision of this Contract.

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

Section 10.03 Authority to make changes in Work.

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

**ARTICLE XI.  
GENERAL PROVISIONS**

Section 11.01 Authority Representative

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

Section 11.02 Effect of Authority Approvals

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

(a) Relieves the Design Engineer of any of its obligations under this Contract or imposes any liability on the Authority; or

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

Section 11.03 Performance and Payment Security; Parent Guaranty

The Design Engineer must provide and maintain in effect a Performance Bond from a Qualified Surety licensed to do business in Maryland and acceptable to the Authority, covering the Design Engineer's performance obligations under this Contract, in the amount of \$1,000,000, and in the form set forth in Appendix 13. The Performance Bond must be in effect during the entire Design Period and Bid Support Period, and thereafter until the resolution of all claims by the Authority with respect to the work during the Design Period

and Bid Support Period, In the alternative, the Design Engineer may provide a Letter of Credit in the amount of \$1,000,000, in effect for the entire Design Period, from a Qualified Financial Institution and substantially in the form set forth in Appendix 13. Failure to provide and maintain the required performance security shall be considered an Event of Default under the Contract.

Section 11.04 Insurance Requirements

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

Section 11.05 Notice/contact information

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

**To the Authority:**

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

**To the Design Engineer:**

**To the County:**

Section 11.06 Indemnification

(a) To the fullest extent permitted by law, Design Engineer shall defend, indemnify, and hold harmless the Authority, the State, and Montgomery County and their respective officers, employees, elected officials, agents, contractors, consultants, engineers, officers, directors, elected representatives, officials, and other representatives (collectively, "**Authority Indemnified Parties**"), from and against all liability, suits, judgments, and claims by third parties, damages, losses, and expenses, including the costs of defense, settlement, and reasonable attorneys' fees (collectively, "**Losses**"), which may arise as a result of the performance of this Contract by Design Engineer or any of its officers, employees, agents or Sub-Design Engineers (the "**Design Engineer-Related Entities**") including (without limitation) the following:

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

- (viii) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Design Engineer-Related Entity with respect to any payment for the Work made to or earned by such Design Engineer-Related Entity under the Contract Documents;
- (ix) Trespass, nuisance, or similar taking of or harm to real property by reason of (i) the failure of any Design Engineer-Related Entity to comply with Good Industry Practice, requirements of the Contract Documents, or Governmental Approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the Work, (ii) the intentional misconduct or negligence of any Design Engineer-Related Entity in connection with the performance of the Work, or (iii) unauthorized physical entry onto or encroachment upon another's property by any Design Engineer-Related Entity in connection with the performance of the Work; and
- (x) any breach of Warranty.

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

(b) **Environmental Claims.** The Design Engineer shall also indemnify, defend, and hold harmless and hereby waives any claim for contribution against the Authority for any losses from any Environmental Claim to the extent arising from the performance of a Design Engineer-Related Entity, under this Contract, irrespective of whether such performance is negligent or willful or breaches any term or provision of this Contract.

(c) **Intellectual Property.** The Design Engineer shall defend, indemnify and hold harmless the Authority Indemnified Parties against all Losses arising from any claim or legal action for unauthorized disclosure or use of intellectual property, including any trade secrets or of patent, copyright, license or trademark infringement arising from acts or omissions of any Design Engineer-Related Person and/or asserted against any Authority Indemnified Party that either: (i) concerns any equipment, materials, supplies, or other items provided by Design Engineer or any of its Sub-Design Engineers under this Contract; (ii) is based upon the performance of the Work by Design Engineer or any of its Sub-Design Engineers, including the use of any tools, implements or construction by Design Engineer Related Entity; or (iii) is based upon the design or construction of any item or unit specified by Design Engineer under this Contract or the operation of any item or unit according to directions embodied in Design Engineer's final process design, or any revision thereof, prepared or approved by Design Engineer; provided, however, that the indemnification shall exclude any claim based upon uses by the Authority in violation of this Contract.

(d) **Design Defects.** Design Engineer shall indemnify and hold harmless the Authority Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Design Documents, regardless of whether such errors, omissions, inconsistencies or other defects were also included in the Contract Drawings or

Reference Documents. Design Engineer agrees that, because the Contract Drawings and Reference Documents are subject to review and modification by Design Engineer, it is appropriate for Design Engineer to assume liability for errors, omissions, inconsistencies and other defects in the completed Project even though they may be related to errors, omissions, inconsistencies and other defects in the Contract Drawings and Reference Documents.

(e) Authority's acceptance of Design Engineer's engineering designs and/or proposed or supplied materials and equipment shall not be construed to relieve Design Engineer of any obligation under this Section 11.06.

(f) Claims by Employees. In claims by an employee of the Design Engineer or a Sub-Design Engineer, anyone directly or indirectly employed by Design Engineer or a Sub-Design Engineer or anyone for whose acts Design Engineer or Sub-Design Engineer may be liable, the indemnification obligation under this Section 11.06 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Design Engineer or a Design Engineer under workmen's compensation, disability benefit or other employee benefits laws; *provided*, that this provision shall not be construed as a waiver in favor of any employee by Design Engineer or any Sub-Design Engineer of any limitation of liability afforded by such laws.

(g) Design Engineer shall ensure that each Subcontract includes indemnity provisions appropriate to the scope of the Work to be performed by the Sub-Design Engineer, naming the Authority Indemnified Parties as indemnitees.

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

#### Section 11.07 Change in Law

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

#### Section 11.08 Uncontrollable Circumstances

(a) A Party will not be in default under this Contract or liable to the other Party for its failure to perform its obligations under this Contract, but only to the extent that, and for so long as, the Uncontrollable Circumstances prevents the affected Party from performing its obligations in accordance with this Contract. Design Engineer shall work diligently to overcome or remove such Uncontrollable Circumstance as soon as possible.

(b) As soon as possible after an Uncontrollable Circumstance occurring on or after the Effective Date, Design Engineer shall give the Authority Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to Design Engineer), and a description of the conditions preventing the performance of Design Engineer's obligations. The Design Engineer must answer any inquiries of the Authority Representative regarding the conditions caused by the Uncontrollable Circumstance and must provide them with the

information as they reasonably request. Upon the request of the Authority Representative, the Authority Engineer, at the Authority's expense, may review the alleged causes of an Uncontrollable Circumstance and the Design Engineer's estimate of the time for remedying the Uncontrollable Circumstance.

(c) If, within 5 days after a Uncontrollable Circumstance occurrence (or if required due to the nature of the event, a shorter period of time) that has caused Design Engineer to suspend or delay performance of the Work, Design Engineer has failed to take commercially reasonable action to overcome or cure the Uncontrollable Circumstance occurrence or its direct or indirect effects on the performance of its obligations under this Contract, the Authority may, in its sole discretion and after Notice to Design Engineer, at Design Engineer's expense, initiate commercially reasonable measures to overcome or cure the Uncontrollable Circumstance occurrence or its direct or indirect effects on the performance of Design Engineer's obligations hereunder and thereafter require Design Engineer to resume full or partial performance of the Work (unless it is commercially unreasonable for Design Engineer to do so); provided, however, that no such action of Authority shall relieve Design Engineer of its obligations under this Contract.

(d) If a delay results from an occurrence which constitutes an Uncontrollable Circumstance, the Guaranteed Final Acceptance Date shall be extended pursuant to a Change-In-Work only to the extent Design Engineer demonstrates to the reasonable satisfaction of Authority and Authority Engineer that such delay is shown on the Approved CPM Schedule to affect said date in accordance with Section 11.08. This analysis shall be based on the most current Approved CPM Schedule in effect at the start of the Uncontrollable Circumstance occurrence and take into account the Work's Approved CPM Schedule and any material associated extra time built into the CPM Schedule ("Float") available for the activity affected by the Uncontrollable Circumstance occurrence in accordance with Section 11.08. The Approved CPM Schedule and any other schedule affected by such delay shall be adjusted, if appropriate, to reflect the new Guaranteed Final Acceptance Dates. Adjustment pursuant to a Change-In-Work in accordance with Section 11.08, the Guaranteed Final Acceptance Dates and adjustment of the Approved CPM Schedule and other affected schedules shall be Design Engineer's sole remedies in the event of a delay covered by this Article 11.

(e) Notwithstanding the provisions of this Section 11.08, Design Engineer assumes full responsibility for completion of the Work without adjustment to the Guaranteed Final Acceptance Dates, the Price Service Fees or the CPM Schedule regardless of weather conditions, unless weather severity is substantially in excess of the data accepted for the norm established and substantiated for the Landfill.

(f) If an Uncontrollable Circumstance prevents Design Engineer from performing a material portion of its obligations under this Contract for more than 30 continuous days, then Authority, after providing the Design Engineer at least 10 Business Days' prior Notice, may, but shall not be obligated to, terminate this Contract without additional liability to Design Engineer and (except as provided in the last sentence of this Section 11.08(f)) to Authority as a result of such termination. Design Engineer 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.



(g) In the event that two delay events occur concurrently, the first event to occur will control until such event is overcome and then any remaining delay attributed to the second delay event will control.

#### Section 11.09 Events of Default

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

- (i) the failure or refusal by Design Engineer to fulfill any of its material obligations to the Authority in accordance with the Contract Documents, unless such failure or refusal is excused pursuant to this Contract; or
- (ii) if, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or Trustee of the Design Engineer or of a major part of its property is appointed, or if, by decree of such a court, the Design Engineer is adjudicated insolvent, or a major part of its property is sequestered, or if a petition to reorganize the Design Engineer pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Design Engineer, as now or hereinafter in effect, is filed against the Design Engineer, or if the Design Engineer is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against the Design Engineer under any such law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Design Engineer pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Design Engineer, as now or hereafter in effect; or
- (iii) If the Design Engineer makes an assignment for the benefit of creditors, or admits, in writing, an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or Trustee or assignee in bankruptcy or insolvency of either the Design Engineer or of a major part of its property; or
- (iv) If the Design Engineer assigns its rights or obligations under this Contract or any part thereof to any Person, except as otherwise permitted under this Contract; or
- (v) If any representation or warranty made by the Design Engineer herein or in any payment invoice or related documentation submitted hereunder is false or misleading in any material respect when made; or
- (vi) If the Design Engineer fails to provide and maintain in full force and effect the Performance Security; or
- (vii) If the Design Engineer fails to provide and maintain in full force and effect any Required Insurance in accordance with this Contract; or
- (viii) If the Design Engineer provides or has provided materially false or misleading information to the Authority; or

- (ix) The failure of the Design Engineer or its Sub-Design Engineer, and their respective agents, licensees, invitees, and successors to comply with Applicable Law in any material respect; or
- (x) Design Engineer fails to pay any undisputed amount that Design Engineer is required to pay to the Authority under this Contract within thirty (30) days after receipt by Design Engineer of written demand from Authority accompanied by a Notice stating that unless the delinquent amount is paid within thirty (30) days after this demand the failure will constitute an Event of Default; or
- (xi) Design Engineer abandons or suspends progress of the Work for thirty (30) days due to any reason other than Uncontrollable Circumstance or direction of Authority; or
- (xii) A guarantor or other surety is in default (after the expiration of all applicable cure periods) under any warranty bond or under any Performance Security provided to Authority and, except for a failure to pay, it is not replaced or otherwise cured in accordance with this Contract;
- (xiii) Design Engineer persistently or repeatedly fails or refuses to (1) provide a Recovery Plan in accordance with this Contract or (2) perform in accordance with an Authority approved Recovery Plan; or
- (xiv) If the Design Engineer refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as shall insure that the Final Acceptance Date occurs on or before the 90<sup>th</sup> day after the Guaranteed Final Acceptance Date.
- (xv) If the Final Acceptance Date does not occur on or before the Guaranteed Final Acceptance Date; or
- (xvi) A Design Engineer Change in Control occurs;

(b) No failure or refusal on the part of the Design Engineer as described in this Section (except for clause (ii), (iii), (iv), (vii), (x), (xi), or (xvi)) shall constitute an Event of Default unless and until: (A) the Authority has given notice to the Design Engineer specifying with particularity the existence of such default; and (B) the Design Engineer has failed to cure such default within 30 days after receipt of such notice.

(c) Each of the following constitutes an Event of Default on the part of the Authority, provided that none of the following shall constitute an Event of Default to the extent caused by the failure of the Design Engineer to perform its obligations under this Contract:

- (i) The failure by the Authority to pay any undisputed amount in excess of \$[50,000], that the Authority is required to pay to the Design Engineer under this Contract within 60 days after receipt by the Authority of written demand from the Design Engineer accompanied by notice stating that unless such amount is paid within 60 days after such demand the failure shall constitute an Event of Default; or

- (ii) The failure or refusal by the Authority to substantially fulfill any of its material obligations to the Design Engineer in accordance with this Contract, other than as provided in subparagraph (i) above, unless such failure or refusal is excused or justified pursuant to the provisions of this Contract, provided that no such failure or refusal constitutes an Event of Default unless and until:
- a) the Design Engineer gave prior written notice to the Authority and the Authority Representative stated that in their opinion a particular default or defaults (described in reasonable detail in such notice) exists and unless corrected, constitute a material breach of this Contract on the part of the Authority and gives the Design Engineer a right to terminate this Contract for default unless such default is corrected within a reasonable period of time; and
  - b) the Authority has not corrected the default nor initiated steps to correct it within a reasonable period of time (a reasonable period of time for purposes of this paragraph shall in any event not be less than thirty (30) days from the date of the notice given, provided that if the Authority has commenced to take reasonable steps to correct the default within such reasonable period of time, it shall not constitute an Event of Default for as long as the Authority is continuing to take reasonable steps to correct it; and
  - c) There is no reasonable expectation that the Design Engineer can obtain sufficient relief for the default, other than by termination of this Contract, to compensate it for any loss incurred as a result of the Authority default.

#### Section 11.10 Termination for Default

(a) The right of termination for cause may be exercised only by a Notice of Termination given to the Party in default. The proper exercise of the right of termination is in addition to and not in substitution for, any other remedies, whether damages or otherwise, of the Party exercising the right of termination.

(b) In the case of one or more Events of Default on the part of the Design Engineer, the Authority shall have the following rights and remedies, in addition to those rights and remedies that may be available to Authority at law or in equity and Design Engineer shall have the following obligations:

- (i) The Authority, without prejudice to any of its other rights or remedies, may upon fifteen (15) Business Days' Notice to Design Engineer (A) suspend disputed payment and/or (B) unless Design Engineer has cured such default therein thirty (30) days after receipt of such Notice, terminate this Contract on the date specified in a written or electronic mail notice of termination to Design Engineer.

(ii) If the Authority terminates this Contract in accordance with this Section 11.10 and determines in its sole discretion, to complete the Work under this Contract, the Design Engineer must, if requested by the Authority (A) withdraw from the Landfill, and as requested by Authority, (B) assign one or more of its contracts, subcontracts, purchase orders or other Contracts to Authority or any designee of Authority; provided, however, that such assignee assumes the obligations of Design Engineer thereunder and (C) shall turn over to Authority complete possession of any or all designs, materials, equipment, tools, purchase orders, inquiries, letters, computers, servers, software, schedules, and drawings of Design Engineer that Authority deems necessary to completion of the Work as well as any Primary Spare Parts and Critical Spare Parts. Authority may employ any other person, firm or corporation (hereinafter, a “**Replacement Design Engineer**”) to finish the Work in accordance with the terms of this Contract by whatever method that Authority may deem expedient. In addition, Design Engineer shall not remove any equipment, materials or tools that the removal of which could damage the Landfill or any portion thereof then constructed or otherwise materially adversely affect or delay the construction, use or maintenance of the Landfill. After the termination of this Contract, Authority shall be responsible for the care, custody, and control of all equipment, materials, tools and other items used in completion of the Work. Authority, without incurring any liability to Design Engineer, shall have the right to have the Work finished by the Replacement Design Engineer.

(c) If the Authority terminates the Contract for default during the Bid Support Period, all finished or unfinished Work provided by Design Engineer will, at the Authority’s option, become the Authority’s property, and the Authority may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the Work the materials, appliances, and plant as may be on site and necessary therefor. Whether or not Design Engineer’s right to proceed with the Work is terminated, the Design Engineer and its Sureties will be liable for any damage to the Authority or Montgomery County resulting from Design Engineer’s refusal or failure to complete the Work within the specified time.

(d) If this Contract is terminated by the Authority for cause as a result of an Event of Default by Design Engineer with respect to Work, the Design Engineer will be entitled to payment of that portion of the Price related to the Work performed until the date of termination; provided, however, Design Engineer will not be entitled to any recovery of profit or unabsorbed overhead in connection with Work not actually performed or future Work. The Design Engineer must reimburse the Authority for any costs in excess of the Price, as adjusted, incurred by Authority, or any Person acting on the Authority’s behalf in completing the Work or having the Work completed. The Authority will be entitled to withhold payments the Design Engineer determines are due to it prior to the date of termination until Final Acceptance and determination by Authority that Design Engineer is entitled to such payments. Upon completion of the Work by Authority or third parties, the total cost of the Work shall be determined, and the Authority will notify Design Engineer in writing of the amount, if any, that Design Engineer shall pay Authority or Authority shall pay Design Engineer. If at any time the total expense incurred by Authority in completing the Work exceeds the portion of the Price not paid to the Design Engineer as of the date of termination, then Design Engineer shall pay the amount of any such excess from time to time existing within thirty (30) days of written demand therefor by Authority. Any amounts not paid hereunder when due

shall bear interest at the Late Payment Rate. The Authority may, in its sole discretion, employ any other Person, as a Replacement Design Engineer to finish the Work by whatever method or means as the Authority deems expeditious.

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

#### Section 11.11 Termination for Convenience

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

#### Section 11.12 Dispute Resolution Procedures, Governing Law, and Venue

(a) The Authority and the Design Engineer shall in good faith attempt to resolve any dispute or matter in controversy under this Contract. As a condition to seeking judicial resolution of a dispute, the Authority and Design Engineer agree to pursue an administrative dispute resolution procedure. Under this procedure either Party may initiate dispute resolution by giving notice of its claim to the other Party. If a claim for additional compensation is being made under this Section 11.12, the notice of claim must be made within thirty (30) days. Within thirty (30) days of receiving such a claim, the Party receiving the claim shall investigate the merits of the claim, and the Parties shall meet to attempt resolution. If after this process, a resolution of the claim is not successful, either Party may seek judicial resolution.

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

#### Section 11.13 Governing Law

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

#### Section 11.14 Records Retention and Access

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

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

#### Section 11.15 Subcontracting

(a) Except as otherwise expressly provided in the Contract Documents, the Design Engineer is solely responsible for engaging, managing, supervising, and paying all Sub-Design Engineers. The Design Engineer must require all Work performed by Sub-Design Engineers to be performed, inspected, and otherwise furnished, in accordance with the Contract Documents. Design Engineer is solely liable for all acts, omissions, liabilities and Work (including defects therein) of such Sub-Design Engineers. The Authority will not have any obligation or liability to any Sub-Design Engineer. Nothing in any contract, subcontract or purchase order with any Sub-Design Engineer shall in any way diminish or relieve Design Engineer from any duties and obligations under the Contract Documents. No Sub-Design Engineer is intended to be or shall be deemed a third-party beneficiary of the Contract Documents. Nothing contained in this Contract or in any subcontract or purchase order shall create or constitute a contractual relationship between Authority and any Sub-Design Engineer.

(b) A list of approved Major Sub-Design Engineers as of the date hereof is attached to this Contract as a sub-set of the Staff Plan in Appendix 10. The Design Engineer may retain those Major Sub-Design Engineers which are set forth on Appendix 10 without further notice to or approval of the Authority. The Authority will have the right to approve, in advance in writing, each additional Sub-Design Engineer to be engaged by Design Engineer if selected for the transportation and disposal services, in accordance with the terms hereof. Prior to retaining any additional Major Sub-Design Engineers, Design Engineer must notify Authority in writing and provide it with such information as necessary to enable Authority to evaluate each such proposed Major Sub-Design Engineer for the portion of the Work proposed to be performed by it. Within 10 Business Days after receipt of such information, Authority will advise Design Engineer if any proposed Major Sub-Design Engineer is unacceptable. If Authority objects on a reasonable basis in writing within 10 Business Day period to such proposed Major Sub-Design Engineer, Design Engineer must not retain the proposed Major Sub-Design Engineer in connection with the performance of the Work under this Contract. Approval of any Major Sub-Design Engineer under this Section 11.3(b) shall only be for the portion of the Work so approved. Design Engineer hereby

acknowledges and agrees that the review and/or acceptance of any subcontract by Authority and the acceptance of the approved Major Sub-Design Engineers shall not: (i) modify, in any way, the obligations of Design Engineer pursuant to the Contract Documents; or (ii) be raised as a claim or as a defense or counterclaim to any claim in connection with the Contract Documents. Any addition, successor or replacement of any Major Sub-Design Engineer shall be subject to Authority's prior written approval, which shall not be unreasonably delayed or withheld.

(c) Each Subcontract and purchase order entered into by Design Engineer in connection with the Work must require such the Sub-Design Engineer to assume toward Design Engineer those terms and conditions of contracting which Design Engineer customarily includes in its subcontracts. At a minimum, all such Subcontracts and purchase orders must (i) require the Sub-Design Engineers to comply with Applicable Laws and Governmental Approvals, (ii) require the Sub-Design Engineers to provide certificates of insurance evidencing required insurance coverage maintained by such Sub-Design Engineer, and (iii) provide that the Authority has the right of inspection as provided under this Contract. The Design Engineer must require each Sub-Design Engineer that performs Work at the Site whose contract(s) and purchase order(s) with Design Engineer require payments by Design Engineer in the aggregate totaling \$25,000 or more, to provide waivers of Liens in the form to be agreed to.

(d) The Design Engineer shall use commercially reasonable efforts to enter into Subcontracts and purchase orders, or amend existing Subcontracts and purchase orders, with its Sub-Design Engineers that require each Sub-Design Engineer to: (i) provide warranty coverage with respect to its portion of the equipment or Work that is substantially similar in scope and duration to the warranty provided by Design Engineer under this Contract, (ii) provide waivers of Liens in the form of the exhibit to be agreed to in connection with its request for payment, and (iii) allow assignment of the relevant subcontract or purchase order to the Authority, without further consent from the Sub-Design Engineer. With respect to any Major Sub-Design Engineer, Design Engineer must inform Authority if Design Engineer will be unable to impose the requirements in the preceding sentence on such Major Sub-Design Engineer and if Authority so directs Design Engineer, Design Engineer must not retain the proposed Major Sub-Design Engineer in connection with the performance of the Work under this Contract.

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

#### Section 11.16 Montgomery County Living Wage and Minority Participation Requirements

Design Engineer must, at all times, meet all requirements of federal, state and local regulations and laws, including but not limited to those relating to workplace safety. For clarity, the Proposal must reflect the use of the County's living wage as found at <http://www.montgomerycountymd.gov/pro/DBRC/WRL.html> (last accessed 08.04.17). Furthermore, the Contactor must certify that it is in compliance with the County's MFD Program and provide a minimum 15% of the value of the Proposal is performed by a certified Minority, Female, and Disabled-Owned Business. Details on the County's program can be found here: <http://www.montgomerycountymd.gov/pro/DBRC/MFD.html> (last accessed 08.04.17).

Compliance with the Program can be achieved through direct and indirect services. Direct services relate to the firm providing the Service to the Authority and may include design work and field investigations. Indirect services include those support services, such as but not limited to equipment repair, that are required for the Service to be performed. The selected Design Engineer is expected to reach out to Alvin Boss at the County's MFD Program at alvin.boss@montgomerycountymd.gov or 240 777-9912 for clarification and ongoing compliance.

#### Section 11.17 Assignment

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

#### Section 11.18 Representations and Warranties

(a) Design Engineer hereby makes the following representations and warranties to and for the benefit of the Authority:

- (i) Design Engineer is duly organized and validly existing as a corporation under the laws of the State of \_\_\_\_\_ 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) Design Engineer is not in arrears with respect to the payment of any monies due and owing to the State of Maryland, and shall not become so during the term of this Contract;
- (iii) Design Engineer shall comply with all federal, state, and local laws, regulations and ordinances applicable to its activities and obligations under this Contract;
- (iv) Design Engineer shall obtain, its own expense, all licenses, insurance, and Government Approvals necessary to the performance of its obligations under this Contract;
- (v) Design Engineer has duly authorized the execution and delivery of this Contract and this Contract has been duly executed and delivered by Design Engineer and constitutes a legal, valid and binding obligation of Design Engineer, enforceable against Design Engineer in accordance with its terms.
- (vi) Neither the execution or delivery by Design Engineer of this Contract, nor the performance by Design Engineer of its obligations in connection with the transactions contemplated hereby, or the fulfillment by Design Engineer of the terms or conditions of this Contract (a) conflicts with, violates or results in a breach of any Applicable Law, or (b) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any Contract or instrument, to which Design Engineer is a party or by which Design Engineer or any of its properties or



assets are bound, or constitutes a default thereunder or (c) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Design Engineer.

- (vii) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery of this Contract by Design Engineer, except such as have been duly obtained or made.
- (viii) Except as disclosed to the Authority, in writing, there is no action, suit, or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of Design Engineer's knowledge, threatened, against Design Engineer, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by Design Engineer of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Contract, or any other Contract or instrument entered into by the Authority in connection with the transactions contemplated hereby.
- (ix) In addition to any warranties required by the Contract Documents, Design Engineer warrants that the work contains no faulty or imperfect material or equipment or any imperfect, careless or unskilled workmanship, that the structures, improvements and material incorporated into the Work will be new, of good quality, free from faults and defects, suitable for its intended purpose, and in conformity with the Contract Documents.
- (x) Design Engineer warrants good title to all materials, equipment, tools, and supplies furnished by it, and its Sub-Design Engineers pursuant to this Contract. Title to all or a portion of said materials, equipment, tools and supplies shall pass to Authority upon the date Design Engineer receives payment for said material, equipment, tools and supplies.
- (xi) For the purpose of protecting the interest of Authority in all materials, equipment, tools, and supplies with respect to which title has passed to Authority but which remain in the possession of Design Engineer or another Person, Design Engineer shall take or cause to be taken all reasonable steps known to Design Engineer under the Applicable Laws of the appropriate jurisdiction(s) to protect Authority's title and to protect Authority against claims by other parties with respect thereto. In the event of any such claim, Design Engineer must defend and hold harmless Authority if such claims are instituted against Authority.
- (xii) All drawings, engineering and other documents (including specifications) furnished or to be furnished by Design Engineer in performing the Work will become the property of Authority to be used by Authority as it may desire for purposes of operation, maintenance, repair, alteration or expansion of the Facility and, with the prior written consent from Design Engineer (such consent not to be unreasonably withheld), for any other purposes permitted by Applicable Law.

(xiii) All documents, including drawings and specifications prepared by Design Engineer pursuant to this Contract, shall be the property of Authority.

(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 Design Engineer.

- (i) The Authority is a body politic and corporate validly existing under the Constitution and laws of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Contract.
- (ii) The Authority has duly authorized the execution and delivery of this Contract and this Contract has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms.
- (iii) Neither the execution or delivery by the Authority of this Contract, nor the performance of the Authority's obligations in connection with the transactions contemplated hereby nor the Authority's fulfillment of the terms or conditions of this Contract (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any contract or instrument, to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.
- (iv) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery by the Authority of this Contract except those that have been duly obtained or made.

Section 11.19 Compliance with Election Law Requirement

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

Section 11.20 Compliance with Applicable Law

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

Section 11.21 Relationship of Parties

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

Section 11.22 Amendment of Contract

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

Section 11.23 Severability of provisions

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

Section 11.24 Headings

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

Section 11.25 Entire Contract

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

Section 11.26 Counterparts

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

Section 11.27 Intellectual Property

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

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

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

### Section 11.28 Liens

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

### Section 11.29 Limitation on Authority Obligations

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

(b) The execution and delivery of this Contract by the Authority does not impose any personal liability on the members, officers, employees or agents of the Authority or any Montgomery County Indemnitee. The Design Engineer shall have no recourse for any claims based on this Contract against any member, officer, employee or other agent of the Authority in his or her individual capacity, all such liability, if any, being expressly waived by the Design Engineer by the execution of this Contract.

(c) No recourse shall be had to the general funds or general credit of the Authority for the payment of any amount due the Design Engineer hereunder, whether on account of the Price or for any loss or expense of any nature arising from the performance or non-performance of the

Authority's obligations hereunder. The sole recourse of the Design Engineer for all such amounts shall be to the funds available for such payment under of the terms of this Contract and the Task Order.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, each of the Authority and the Design Engineer 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: \_\_\_\_\_ [SEAL]

Name:

By: \_\_\_\_\_ [SEAL] Title:

DESIGN ENGINEER

Attest: By: \_\_\_\_\_ [SEAL]

By: \_\_\_\_\_ [SEAL] Name:

Title:

## **SCHEDULE I DEFINITIONS**

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

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

**“Approved CPM Schedule”** means the CPM Schedule as finally approved by the Authority.

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

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

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

**“BAFO Date”** means DATE.

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

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

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

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

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

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

**Change Order** means a written order to the Design Engineer issued and signed by the Authority Representative.

**“Contract”** means this Service Contract for the design, bid support, and inspection services related to the Corrective Measures as dated above including the exhibits, schedules and appendices hereto of the documents referenced in Section 2.01.

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

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

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

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

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



revision occurs, to the Design Engineer’s knowledge, after the Contract Date, and prior to completion of the Work, the Design Engineer shall notify the Authority. If so directed by the Authority, the Design Engineer shall perform the Work in accordance with the revised professional and technical standard, code, or specification as long as the Design Engineer is compensated, subject to Cost Substantiation, for any additional cost or expense attributable to any such revision and is provided schedule relief for any delays attributable to any such revision.

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

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

**“Design Engineer”** means \_\_\_\_\_ a [ENTITY TYPE] organized and existing under the laws of [STATE], and its permitted successors and assigns.

**“Design Engineer’s Proposal”** means the proposal submitted by the Design Engineer [and/or BAFO submitted by the Design Engineer] dated \_\_\_\_\_.

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

**“CPI” or “Consumer Price Index”** means the Consumer Price Index for the Washington, D.C., Standard Metropolitan Statistical Area, All-Items for All Urban Consumers, 1996 Base, published by the United States Department of Labor, or, if such Index is no longer published or its method of computation is substantially modified, a substitute Index published by the United States government or by a reputable publisher of financial or economic statistics that will fairly and reasonably reflect the same or substantially the same information as the discontinued or modified Index.

**“CPM Schedule”** means the critical path method schedule required by Sections 6.05 and 7.07 of the Contract.

Construction Period

**“Design Firm”** means \_\_\_\_\_.

**“Design Period”** means the period from and including the Effective Date to the issuance of the Invitation For Bids (IFB).

**“Design Period Responsibilities”** means the Design Engineer’s responsibilities and/or the Authority’s responsibilities with respect to the Design Period under Section 3.03 hereof.

**“Design Period Work”** means all Work required to be furnished and done for and relating to the Facility by the Design Engineer pursuant to this Contract during the Design Period. Design Period Work shall mean any part and all of the Design Period Work unless the context otherwise requires.

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

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

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

**“Engineer of Record”** means [TBD].

**“Environmental Claim”** means any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim against the Design Engineer to the extent arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Waste or actual or alleged Hazardous Waste Activity, (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Waste, Environmental Law or other order of a Governmental Authority or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

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

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

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

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

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

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

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

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

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

**“Hazardous Waste”** means:

- A. Any waste or substance, the treatment, storage or disposal of which, because of the composition or characteristics of the waste or substance, is unlawful to treat, store or dispose of at the acceptance or disposal Facility or other facilities to be used in providing the services in this Contract, and is considered hazardous waste under Applicable Law, including, without limitation, wastes that are:
  1. regulated as a toxic or Hazardous Waste as defined under either Subtitle C of the Solid Waste Disposal Act, 42 U.S.C. §§ 6921-6939a, or Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. § 2605(e), as replaced, amended, expanded or supplemented, and any rules or regulations promulgated thereunder, or under the Environment Article of the Annotated Code of Maryland, Title 7, Section 7-101 et seq., as replaced, amended, expanded, or supplemented, and any rules or regulations promulgated thereunder; or

2. Low level nuclear wastes, special nuclear wastes or nuclear by-product wastes, all within the meaning of the Atomic Energy Act of 1954, as replaced, amended, expanded or supplemented, and any rules, regulations or policies promulgated thereunder.
- B. Any other waste which any Governmental Authority or unit having appropriate jurisdiction shall lawfully determine, from time to time, to be ineligible for disposal through facilities of the type being used to provide the service under this Contract because of the harmful, toxic, or dangerous composition or characteristics of the waste or substance.

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

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

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

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

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

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

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

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

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

**“MDE”** means the Maryland Department of the Environment.

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

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

**“Party”** means the Authority or the Design Engineer.

**“Parties”** means collectively the Authority and the Design Engineer.

**“Payment Milestone”** means \_\_\_\_\_.

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

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

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

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

**“Price Adjustment Factor”** has the meaning specified in Appendix subsection 7.2.

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

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

**“Qualified Surety”** means a bonding company licensed to do business in Maryland and having a rating of at least “A” in the latest revision of the A.M. Best Company’s Insurance Report

and listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies."

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

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

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

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

**"Required Design Period and Bid Support Period Insurance"** has the meaning specified in Appendix 9.

**"Required Insurance"** means the minimum insurance coverages required by Appendix 9 of the Contract.

**"Required Construction Inspection Insurance"** has the meaning specified in Appendix 9.

**"Residue"** means the previously landfilled waste that may have been unearthed during the Design investigation or Bid Support Periods. Residue is to be disposed of at the Montgomery County Transfer Station. There will be no charge for the disposal of this material.

**"Residue Transportation Charge"** means the means the \$\_\_\_\_\_ per ton fee for the transportation of Residue to the Montgomery County Transfer Station.

**"RFP"** means the request for proposals issued MM/DD/YYYY, including addenda thereto issued.

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

**"Security Instruments"** means the Guaranty Contract, the Construction Payment Bond and the Construction Performance Bond, the Design Engineer Construction Commitment, business interruption insurance (as set forth in Appendix 12) and the Letter of Credit and other Construction Performance Security or Operation Performance Security.

**"Shop Drawings"** means the drawings identified and described in Section 6.04 of the Contract.

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

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

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

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

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

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

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

**“Supplemental Technical Information”** means those portions of Appendix 16 that are expressly designated as “Supplemental Technical Information”.

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

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

**“Technical Specifications”** means the technical specifications set forth or referenced in Schedule II and Appendix 16, which comprise the Design Requirements and the Supplemental Technical Information, respectively.

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

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

**“Ton”** means a short ton of 2,000 lbs.

**“Tonnage”** means Tons of Acceptable Material.

**“Transaction Contracts”** means the Processing and Recovery Contracts, this Contract, the Task Order Contract, the Public Works Utility Contracts, and the Task Order, the Parent Guarantee and the Letter of Credit.

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

**“Trustee”** means, with respect to the issuance of bonds pursuant to the General Bond Resolution, the bank, trust Design Engineer or national banking association appointed to act as trustee under the General Bond Resolution, and any other person at any time substituted in its place in accordance with the terms of the General Bond Resolution.

**“Uncontrollable Circumstance”** means an event or condition listed in this definition, whether affecting the Authority, the County or the Design Engineer, that has, or may reasonably be expected to have, a material adverse effect on the operation of the Facility, 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 Design Engineer or its affiliates, or the Design Engineer’s Sub-Design Engineers of any tier;
- (b) the failure of the County or the appropriate federal or state agencies or public utilities having operational jurisdiction over the Facility to provide and maintain all utilities services (excluding sewerage and water lines) to the Facility.
- (c) A non-Design Engineer or non-Sub-Design Engineer Labor Action.

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

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

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

**“Uncontrollable Circumstance”** shall not include the following:

- (A) reasonably predictable weather conditions for the geographic area of the Facility;

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-Design Engineer) to any Contract with Design Engineer to perform its obligations under such Contract or undertaking unless the failure of such Party to perform is caused by a Uncontrollable Circumstance affecting such Party; or

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

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

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

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

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

**“Warranties”** means the warranties of Design Engineer under **Article 7 and 11** of this Contract.

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

**“Work”** means all work and activities to be performed by Design Engineer under this Contract, including, without limitation, the design, engineering, bid support and construction inspection services in accordance with this Contract.

## **SCHEDULE II DESIGN REQUIREMENTS**

The Design Engineer must conform all documents to the Design Requirements set forth in this Schedule. The Design Requirements are intended to include the basic design principles, concepts and requirements for the Work but do not include the final detailed designs, plans or specifications or indicate or describe each and every item required for full performance of the Corrective Measures and for achieving Final Acceptance. Finally, the Design Requirements explicitly incorporate all relevant laws and regulations.

### 1.1 Corrective Measures. (Requirements applicable to the Landfill)

See Attachment A, Assessment of Corrective Measures, referenced herein.

1.2 Beneficial Uses. County directed considerations, such as renewable power generation, walking paths, low impact recreational uses, vegetative materials processing, as reviewed and agreed to during the conceptual design process. The Design Engineer shall receive input during County staff meetings, meetings with the GLCC and other public meetings.

**SCHEDULE III  
TERMS OF PAYMENT**

Fee Paid to the Design Engineer by the Authority:

Price for work completed in the Period + Residue Transportation Fee – Liquidated Damages

Where:

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

Residue Transportation Fee equals the Residue Disposal Charge multiplied by the number of tons of Residue disposed of by the Design Engineer in accordance with this Contract.

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

**SCHEDULE IV**

**MILESTONE PAYMENT AND CONSTRUCTION PROGRESS, CONTENTS OF REPORT AND PAYMENT REQUEST**

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

Summary of Payments to date

Summary of work/milestones achieved since last payment

Requested payment amount (cannot be adjusted to reflect Retainage, the Authority will make that adjustment)

% of work remaining, % of money remaining

Summary of CPM schedule to date

Summary of work to be undertaken in next period

Deliverables Schedule: Need to talk through and align with the scope, the deliverables below are informed by the plans to be submitted (e.g., C. below is predicated upon the plan for the survey work). **\*\*UPDATE TO REFLECT THE SELECTED DESIGN ENGINEER’S PROPOSAL**

<b>Item</b>	<b>Task</b>	<b>RFP</b>	<b>Deliverables</b>
1	1	3.1 and Deliverables	Kick-off Meeting. Agenda and Meeting Minutes.
2	1	3.1 and Deliverables	Project Communications Plan with updates throughout the Project.
3	1	3.1 and Deliverables	Weekly Project Progress Emails.
4	1	3.1 and Deliverables	Weekly Project Progress Emails and Monthly Project Progress Reports.
5	1	3.1 and Deliverables	Monthly Project Progress Conference Call, Monthly Project Progress Meeting, and Other Meeting Agendas and Minutes.
6	1	3.1 and Deliverables	Presentations (included in scope of work, but not defined at this time).

7	1	3.1 and Deliverables	Project Schedule with monthly updates throughout the Project.
8	2	3.1 and Deliverables	Temporary Facilities Site Plan Drawing.
9	2	3.1 and Deliverables	Traffic Control Plan.
10	2	3.1 and Deliverables	Health and Safety Plan (HASP) for pre-design/design activities.
11	2	3.1 and Deliverables	Aerial Flyover Photographs and Updated Site Survey Drawings.
12	2	3.1 and Deliverables	Subsurface Utility Location Site Survey Drawing.
13	2	3.1 and Deliverables	Geotechnical Investigation Report.
14	2	3.1 and Deliverables	Landfill Gas Investigation Report.
15	2	3.1 and Deliverables	Environmental Assessment Report of the Project.
16	3	3.1 and Deliverables	Basis of Design Report.
17	3	3.1 and Deliverables	Engineer Design - 30% Draft Design Drawings, Project Manual (front end, specifications, etc.), and Engineer's Estimate of Probable Construction Costs, including other site plan drawings.
18	3	3.1 and Deliverables	Engineer Design - 60% Draft Design Drawings, Project Manual (front end, specifications, etc.), and Engineer's Estimate of Probable Construction Costs, including other site plan drawings.
19	3	3.1 and Deliverables	Engineer Design - 90% Draft Design Drawings, Project Manual (front end, specifications, etc.), and Engineer's Estimate of Probable Construction Costs, including other site plan drawings.
20	3	3.1 and Deliverables	Limit of Disturbance Site Plan.
21	3	3.1 and Deliverables	Material Stockpiling and Management Plan and Site Plans.
22	3	3.1 and Deliverables	Slope Stability Design Memorandum.

23	3	3.1 and Deliverables	Construction Stormwater Control and Management Plan and Site Plans.
24	3	3.1 and Deliverables	Vegetation Establishment Plan and Site Plans.
25	3	3.1 and Deliverables	Grading and Excavation Plans and Site Plans.
26	3	3.1 and Deliverables	Leachate Management Plan and Site Plans.
27	3	3.1 and Deliverables	Landfill Gas Management Plan and Site Plans.
28	3	3.1 and Deliverables	Construction HASP.
29	3	3.1 and Deliverables	Construction QA/QC Plan.
30	3	3.1 and Deliverables	Post-Closure Care Plan and Site Plans.
31	4	3.1 and Deliverables	Permit and Right-of-Entry Applications, Responses to Regulatory Comments and Permit Approvals.
32	4	3.1 and Deliverables	Permitting Compliance Report with monthly updates.
33	4	3.1 and Deliverables	Documentation to support updating the existing Environmental Monitoring Plans.
34	5	3.1 and Deliverables	Final Bid Documents (Project Manual, Drawings, and Construction Cost Estimate) at 100% design.
35	5	3.1 and Deliverables	Final Bid Documents to include the Final Construction HASP and Construction QA/QC Plan (Task 3).
36	6	3.1 and Deliverables	Stakeholder Engagement Plan with monthly updates throughout the Project.
37	6	3.1 and Deliverables	Stakeholder Engagement Activities Tracking Spreadsheet with monthly updates throughout the Project.
38	6	3.1 and Deliverables	Meeting Agendas and Graphics. Meeting Minutes.
39	6	3.1 and Deliverables	Monthly and Quarterly Community Status Reports.
40	6	3.1 and Deliverables	Presentations (included in scope of work, but not defined at this time).

41	7	3.1 and Deliverables	Comparative Analysis for Land Uses.
42	7	3.1 and Deliverables	Summary Reports and Poster-board Figures for Selected Land Uses.
43	7	3.1 and Deliverables	Meeting Agendas and Graphics. Meeting Minutes.
44	7	3.1 and Deliverables	Presentations (included in scope of work, but not defined at this time).
45	1-7	3.1 and Deliverables	Final Editable and PDF copies of all deliverables.





## APPENDIX 2

### DESIGN REQUIREMENTS

#### 2.1 GENERAL

This Appendix identifies and establishes requirements for the Work, including verification of site conditions, demolition, safety and environmental controls and restoration of disturbed areas.

#### 2.2 DESIGN and BID SUPPORT

- (a) Design Engineer shall contact and provide written documentation for correspondence with all applicable federal, state, and local permitting agencies to inquire about potential permitting requirements and public notification requirements for general remediation actions at the Gude Landfill. Design Engineer should obtain right-of-entry for off-site locations.
- (b) Design Engineer shall prepare a site-specific Health and Safety Plan (HASP), to address worker safety associated with planned field activities and provide a Site Safety Officer (SSO) during all fieldwork. A Certified Industrial Hygienist (CIH) will prepare and/or oversee preparation of the (SHSP) and the SSO will highlight the contents of the plan to field staff prior to beginning fieldwork.
- (c) Design Engineer shall provide Project communication support to communicate with Gude Landfill Concerned Citizens (GLCC), regulators and other stake holders. Design Engineer shall prepare detailed plan for communication and public outreach support. The Plan should include at minimum applicable residences notification, planned attendance at weekly internal planning and progress meetings with County staff, attendance at the monthly public meetings and presentations, etc.
- (d) Design Engineer through a private utility locating service, will verify the locations of all elevations of existing piping, utilities, and other types of underground obstructions that may be present at the excavation and drilling areas by scanning the construction site boundaries with electromagnetic or sonic equipment, or other approved devices. The Design Engineer shall determine and prepare a map depicting where utilities enter areas of proposed construction.
- (e) The Design Engineer shall prepare a detailed project schedule outlining major work items in M.S. Project format, including sequence of construction in accordance with Attachment A of Appendix 2.
- (f) Design Engineer shall prepare a field-survey plan listing all fielded survey activities necessary for the implementation of the remediation plan in accordance with Attachment A of Appendix 2.

- (g) The Design Engineer shall submit an estimate of the limits of the area(s) to be cleared and grubbed in accordance with Attachment A of Appendix 2 and depict this information on the existing site layout plans. Design Engineer shall prepare grading and excavation plans for Northwest and western areas of the landfill prior to the placement of additional cover material as per Attachment A of Appendix 2 and address the measures that will be taken if any leachate seeps are observed during the excavation and cover placement.
- (h) Design Engineer shall prepare a detailed Waste Relocation and Reclamation Plan (“Plan”) as per Attachment A of Appendix 2. The Plan at minimum should address waste excavation and handling; material processing & segregation (waste vs. recyclable material); material reuse (soil); fill placement (soil, structural fill, other select media, etc.); waste disposal; environmental control considerations and mitigation mechanisms; vector control measures; odor control measures; and dust control measures.
- (i) Design Engineer shall design final grading after the Waste Relocation and Reclamation to promote drainage. The final grading plan shall be in accordance with the County approved Storm Water pollution Prevention Plan (“SWPPP”).
- (j) Design Engineer shall determine the suitability and volume of any soils for the range of soil types required for the remediation construction. Design Engineer shall develop specifications for each type of soil to be used in the remediation process, i.e., cover improvements on side slopes, final top soil, structural soils, etc. Soils likely to have specific structural and slope stability requirements include soils used for cover improvements, construction of benches, and access roads. Soils also need to be specified for the areas that require cover after placement of excavated waste in accordance with Attachment A of Appendix 2. Some soils may be available through the Shady Grove Processing Facility and Transfer Station. The Design Engineer shall design a suitable stockpile area with applicable storm water management and sediment control measures and permits, to allow general use soils to be stockpiled for planned future construction. Design Engineer shall also develop soil stockpile plans for the different soil types and each phase of construction.
- (k) Design Engineer shall conduct a slope stability analysis for the areas of steep slopes and recommend stability measures with the design of permanent benches. Benches may require to be designed to accommodate permanent access roads for use during well installation and future well monitoring and maintenance. For such cases, the Design Engineer is required to prepare detailed plans for permanent access roads.
- (l) Design Engineer shall prepare a vegetation establishment plan for all the disturbed areas including soil stockpile areas explaining the seeding, mulching and soil stabilization process.
- (m) Design Engineer shall prepare a construction storm water control plan addressing drainage and erosion control for all the disturbed areas and soil stock pile areas. The Plan should include at the minimum measures such as sediment traps and silt fence; stormwater tarps, basins and diversion berms; and leachate containment sumps; etc.

- (n) Design Engineer shall design additional landfill gas extraction wells and a revised collection and extraction system. The plan should address the design and location of additional landfill gas extraction wells; the details of the existing above-ground landfill gas extraction system piping and retrofitting the landfill additional gas extraction wells into it; and the measures to be taken for the prevention of Landfill Gas Migration/Oxygen Intrusion in to the existing landfill gas collection system (above grade conveyance piping and extraction wells) during the cover improvements. Design Engineer shall also design a phased approach for taking sections of the gas collection system out of service for the minimum feasible period to allow for each phase of construction which requires wells to be elevated, relocated, or otherwise disturbed. In some cases, it may be necessary to develop interim gas collection measures in an area to assure safety during construction and minimize gas releases and gas migration.
- (o) Prior to the start of work, Design Engineer shall submit a traffic control plan describing traffic control procedures, access and haul routes, avenues of ingress and egress to the work area, and vehicle parking and staging areas.
- (p) Prior to the start of site work at the Landfill, Design Engineer shall submit a site plan showing the locations and dimensions of temporary facilities, including layouts and details, equipment and material storage area (on site and off site), and access and haul routes, avenues of ingress and egress to the fenced area and details of the fence installation. Identify any areas which may have to be graveled to prevent the tracking of mud. Indicate if the use of a supplemental or other staging area is desired. To ensure that the public and other unauthorized personnel do not have access to the area during the construction period show locations of safety and construction fences, site trailers, construction entrances, trash dumpsters, temporary sanitary facilities, and worker parking areas.
- (q) The Design Engineer shall provide final drawings, including but not limited to 100% construction drawings, shop drawings and related narrative for the Bid for construction for the Corrective Measures. The Design Engineer will not prepare or manage the procurement process for the construction of the Corrective Measures. The Design Engineer will provide assistance in responding to questions and comments during the bid process, including but not limited to drafting technical responses and providing revised drawings in a timely manner. The Design Engineer will review the bid tabulations and provide general comment on the proposals, including qualifications of the bidder and ability to perform the construction.

## **2.3 RESERVED**

## **2.4 MANAGEMENT OF ON-SITE WATER DURING DESIGN PERIOD**

### **2.4.1 SOURCES OF CONSTRUCTION WATER**

The Design Engineer shall provide for the detention, treatment, and discharge of all water generated during its investigative activities. Construction water will include surface water runoff and water removed from disturbed areas. The Design Engineer shall plan and schedule its construction activities to reduce the amount of construction water to be managed.

## 2.4.2 TEMPORARY DRAINAGE FEATURES

The Design Engineer shall conform to the requirements of its Stormwater Management Permit associated with its activities. The Design Engineer's design of temporary detention, and discharge facilities shall account for the maximum disturbed area and maximum amount of construction water to be generated.

## 2.4.3 SURFACE WATER QUALITY

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

The Design Engineer shall reduce water quality impacts associated with design investigations by using appropriate measures to control erosion and sedimentation.

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

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

Dirt loads shall be covered and secured during off-site travel. At no time will the design investigation areas impact the existing stormwater control system at the Site.

## 2.5 MEETINGS AND REPORTS

### 2.5.1 PRE-DESIGN CONFERENCE

The Design Engineer shall hold a pre-design conference prior to commencement of the Design Periods. The Design Engineer shall prepare an agenda which will be reviewed with the Authority, and shall preside at the conference, contribute appropriate items for discussion, provide any data requested, record minutes to summarize significant proceedings and decisions, and distribute the minutes to all parties in attendance. The agenda shall include, but will not necessarily be limited to, the following:

- (a) Designation of responsible personnel during the Design and Bid Support Periods.
- (b) Sub-Design Engineers and their roles on the Design and Bid Support Periods.
- (c) Emergency contact list.
- (d) Coordination with other Design Engineers, projects and ongoing operations at the Site.
- (e) Progress Schedule.
- (f) Procedures for Design Engineer submittals and Authority review.
- (g) Schedule of Design Engineer submittals.
- (h) Processing of Requests for Information and Clarification.
- (i) Required Bid Support Period Insurance.
- (j) Processing and Schedule of Payments.
- (k) Design Engineer's site-specific Health and Safety Plan.
- (l) Housekeeping.
- (m) Governmental Approvals.
- (n) Emergency Telephone Numbers.
- (o) Temporary Utilities/Utilities Coordination.
- (p) Any other Design and Bid Support Period-related items.

The preconstruction conference will be scheduled by the Design Engineer at a time acceptable to the Authority and shall be attended by the Design Engineer's Project Manager, its, the principal discipline staff, and the Design Engineer's principal Sub-Design Engineers as the Design Engineer deems appropriate. Other attendees may include representatives of the Authority, the County and other contractors whose work affects or is affected by construction at the Landfill, and others as deemed appropriate by these parties.

#### 2.5.2 Design Progress Meetings

The Design Engineer shall schedule, hold, and facilitate regular monthly progress meetings and at other times if requested by the Authority or County, or as the Design Engineer deems necessary. The regular monthly progress meeting will be held in the conference room at the Shady Grove Processing Facility and Transfer Station, 16101 Frederick Road, Derwood, MD. At the start of the project, the Design Engineer will establish the schedule (Week number of the month and day of the week). Monthly progress meetings shall be held from the Notice to Proceed Date through Final Acceptance. The progress meetings shall be attended by the Design Engineer's Project Manager, the principal discipline staff, and the Design Engineer's principal Sub-Design Engineers as the Design Engineer deems appropriate (but no more than five). Other attendees may include representatives of the Authority, the County, and other contractors whose work affects or is affected by construction at the Landfill, and others as deemed appropriate by these parties. The Design and Bid Support progress meetings shall be held at the Site or at a convenient site located in Montgomery County.

At such meetings, discussions will be held concerning all aspects of the Design and Bid Support work including, but not limited to, schedule of Work, coordination of work with others, progress payments, Extra Work, Governmental Approvals and design submittals, and any test results. The Design Engineer shall prepare an agenda, preside at meetings, record minutes to

include significant proceedings and decisions, and distribute the minutes to all parties in attendance within seven days of the meeting. The agenda shall include but will not necessarily be limited to, the following:

1. Minutes or notes of previous meeting.
2. Progress since last meeting (Design Engineer and Sub-Design Engineers).
3. Planned progress and schedule for next six weeks.
4. Problems, conflicts, and observations.
5. Change Orders.
6. Status of Punch List items and other issues.
7. Status of submittals.
8. Quality standards and control.
9. Schedules, including off-site fabrication and delivery schedules; corrective measures, if required.
10. Coordination between parties.
11. Safety concerns.
12. Construction photographs.
13. Record drawings.
14. Other business.
15. Next meeting date.

### 2.5.3 Monthly Progress Reports

Monthly progress reports required to be submitted by the Design Engineer shall be submitted at least by the 7th of every month and shall include:

1. A summary of work activities during the reporting month;
2. A schedule of upcoming Work activities;
3. A listing of major submittals delivered during the reporting month and their status;
4. A listing of major submittals scheduled for delivery the following month;
5. The Design Engineer's verification that the record documents have been updated in accordance with the requirements of this Appendix;
6. A listing of any violations of Governmental Approvals or Applicable Law and actions taken or to be taken to eliminate any subsequent violations;
7. A listing of the Design Engineer's labor force requirements for the following three months;
8. A listing of issues needing resolution;
9. Progress Schedule update;
10. The Design Engineer's plan for accelerating the schedule to meet the Scheduled Acceptance Date should the Design Engineer's progress-to-date indicate that the Design Engineer's Work is behind schedule; and
11. Updated project schedule; and
12. Updated Communication Plan if required.

The monthly progress report shall also provide a description of any concerns or issues raised regarding the Work and the Design Engineer's approach to promptly address the issue. The format of the report shall be approved by the Authority. The monthly progress report shall also include a section containing health and safety statistics.

## **2.6 RESERVED**

## **2.7 GENERAL REQUIREMENTS DURING DESIGN AND BID SUPPORT PERIOD**

The Design Engineer shall prepare a brief plan [incorporate the plan from the proposal] for the Design Period investigation of the Landfill. The Schedule of Deliverables is below in Table 2.7.1. No Site investigations may take place until the Authority has provided written acceptance to the Design Engineer for the Design Work.

### **2.7.1 Temporary Utilities**

Unless access is supplied by the Authority, the Design Engineer shall supply all necessary temporary utilities, including electricity, telephone service, potable water, fire protection, lighting, and sanitary facilities, during design investigations at the Landfill. Holding tanks for sanitary service shall be serviced at least weekly, if needed. Prior to the start of the Inspection Period, the Design Engineer shall disconnect or arrange for the disconnection and removal of all temporary utility connections and services.

### **2.7.2 Reserved**

### **2.7.3 Access Roads and Parking Areas**

If needed, the Design Engineer shall provide all temporary construction roads, walks and parking areas required during the Design Period. The Design Engineer shall minimize the amount of disturbance to the Site throughout the Design Period. To the extent possible, the Design Engineer's construction roads and parking areas shall be located at existing permanent roads and parking facilities. All temporary roads and parking areas shall be constructed and maintained to control dust. Temporary roads, walks and parking areas shall be removed by the Design Engineer prior to the Inspection Period, and the ground returned to its original condition, unless otherwise required by the Contract. The Design Engineer shall keep temporary roads clean and serviceable at all times.

### **2.7.4 Staging and Stockpiling Areas**

The County shall permit an erosion and sediment control plan through the County Department of Permitting Services for advance storage of approximately 90,000 cubic yards of soil from construction of the Purple line by the WMATA. The Design Engineer shall locate all construction staging and temporary stockpile areas within the limits of disturbance shown on the accepted design drawings. The Design Engineer shall move any excess soil to an Authority designated location at the Gude Landfill

### 2.7.5 Protection of the Design Period and Bid Support Period Work and Property

The Design Engineer shall take all precautions, provide all programs, take all actions necessary to protect from damage, and assume full responsibility for the preservation of the Design Period and Bid Support Period Work and all public and private property and underground and surface structures on or adjacent to the Site. The Design Engineer shall not, except after written consent from proper parties, enter or occupy land not leased by the Authority with personnel, tools, materials, or equipment, except on easements provided herein. If any direct or indirect damage is done by or because any act, omission, neglect, or misconduct in the execution of the Design Period and Bid Support Period Work by the Design Engineer, it shall be restored promptly by the Design Engineer, at its expense, to a condition equal to that existing before the damage was done and to the satisfaction of the owner of the damaged structure or property.

The Design Engineer shall carefully sustain in their places and support all underground and surface structures located within or adjacent to the Site and as required by the party owning or controlling such structure. Before proceeding with the Design Period and Bid Support Period Work of sustaining and supporting such structure, the Design Engineer shall satisfy the Authority that the methods and procedures to be used have been approved by the party owning same. The Design Engineer shall assume all risks when working in the proximity of all underground and subsurface structures (as such terms are defined in the subsequent two paragraphs) within or adjacent to the Site. Existing surface facilities which are temporarily removed to facilitate installation of the Design Period and Bid Support Period Work shall be replaced and restored to their original condition at the Design Engineer's expense.

#### Subsurface Data

The Authority provided the Design Engineer with data from preliminary subsurface investigations of the Site during the RFP process solely for informational purposes. As provided by Section 6.02 of the Contract, the Design Engineer shall conduct further subsurface investigations as necessary to determine design requirements for construction.

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

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



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

The Design Engineer shall protect and maintain existing trees, shrubs, and plants on or adjacent to the Site that are shown or designated to remain in place throughout the Design Period and Bid Support Period in accordance with the Contract Standards. All damaged trees and plants that die or suffer permanent injury shall be removed and disposed of off-site when ordered by the Authority and replaced by a specimen of equal or better quality.

#### 2.7.7 Security

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

#### 2.7.8 Spill Prevention and Control

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

#### 2.7.9 Compliance with Easements

The Design Engineer shall comply with all requirements of the Task Order and any easements and access Contracts for the Site, including but not limited to, those associated with any easements shown in Appendix 10.

#### 2.7.10 Dust Control/Burning

The Design Engineer shall be responsible for dust control during Site investigation and shall comply with all applicable Maryland Department of the Environment regulations. Spraying with dust control chemicals shall be prohibited on-site; however, spraying with water shall not be prohibited on-site. Street flushing is prohibited.

The Design Engineer shall dispose of construction debris at the Shady Grove Processing Facility and Transfer Station permitted disposal facilities at the Design Engineer's cost. Burning shall be prohibited.

#### 2.7.11 Noise Control

The Design Engineer shall comply with all applicable County and State noise regulations. Investigation work will be allowed from 7:30 AM to 4:00 PM, 6 days per week (Monday through Saturday). Investigation activities, will also be allowed outside of these hours with notification to and written approval by the Authority, which shall not be unreasonably withheld, and Montgomery County and if appropriate security measures are employed. The Design Engineer shall use all reasonable efforts to minimize traffic and noise during the Design Period and Bid Support Period.

#### 2.7.12 Odor and Vector Control

The Design Engineer shall comply with all applicable County and State odor standards and regulations. The Design Engineer shall use all reasonable efforts to eliminate odors and control vectors during the Design and Bid Support Work Periods, particularly when the Landfill is being disturbed.

### **2.8 RESERVED**

### **2.9 RESERVED**

### **2.10 GENERAL REQUIREMENTS FOR OTHER SERVICES**

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

## **APPENDIX 3**

### **QUALITY MANAGEMENT PLAN**

#### **3.1 PURPOSE OF APPENDIX**

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

BOD Report

Communication Plan

#### **3.2 AUTHORITY'S QUALITY OBJECTIVES**

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

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

#### **3.3 DESIGN ENGINEER'S QUALITY MANAGEMENT RESPONSIBILITIES**

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

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

1. Project staff, including all Sub-Design Engineers, are qualified to perform their duties and meet all necessary regulatory and project-specific training requirements.
2. A strong emphasis is placed on selection of quality materials and equipment during the design and on quality workmanship during construction.

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

To achieve these goals, the Design Engineer shall:

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

### **3.4 SUBMITTALS**

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

1. Permitting QA/QC Program – First Draft submitted within [15] days of the Effective Date
2. Design QA/QC Program – Submitted to the Authority within [50] days of the Effective Date

Revisions and updates to the Design Engineer's Quality Program may be proposed by the Design Engineer as the project progresses. Changes to the Quality Program shall require the approval of the Authority. The Design Engineer shall not initiate any of the work under a proposed

change to the Quality Program until reviewed and an acceptable Quality Program change is in place.

### **3.5 MINIMUM REQUIREMENTS FOR DESIGN ENGINEER'S QUALITY MANAGEMENT PLAN**

#### **3.5.1 Overall Program Requirements**

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

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

#### **3.5.2 Design Period and Bid Period QA/QC Program**

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

1. The design QA/QC program shall identify the roles, responsibilities, and procedures necessary to ensure that design quality is maintained during the development, review, and approval processes.
2. Controls shall be established to ensure design development is coordinated with permit requirements and to obtain input from the Design Engineer's construction and permitting teams.
3. Coordination shall include all internal and external parties involved in the design development and review process, including inter-discipline reviews and constructability reviews, as well as the verification process used to ensure that changes are clearly and consistently shown on all affected design documents. Methods shall be incorporated to ensure that all design issues

and reviewer comments are identified and tracked until they have been addressed and/or incorporated into the design. Tracking documents showing resolution of internal/external reviewer comments shall be developed, maintained, and be available to the Authority for review.

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

### **3.6 AUTHORITY ROLE IN QUALITY ASSURANCE**

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

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

## APPENDIX 4

### FINAL ACCEPTANCE OF DESIGN PERIOD

#### 4.1 FINAL ACCEPTANCE CONDITIONS

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

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

#### 4.2 PROCEDURES FOR FINAL ACCEPTANCE DATE.

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

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

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

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



## **APPENDIX 5**

### **DESIGN PERIOD AND BID SUPPORT PERIOD WORK REVIEW PROCEDURES AND SUBMITTALS**

#### **5.1 PURPOSE OF APPENDIX**

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

#### **5.2 GENERAL**

##### **5.2.1 Authority and Design Engineer Obligations Generally**

The Design Engineer shall provide required project documents for review consistent with the submittal dates included in the Design Engineer's CPM Schedule. The Design Engineer acknowledges that Authority review will often involve input from a number of individuals. Therefore, should submittal dates to the Authority be delayed from those shown on the CPM Schedule updated monthly as required under Appendix 6, the Design Engineer shall provide prompt notice to the Authority's Contract Representative of the delay. In no case shall this notice be given less than 10 calendar days prior to the scheduled submittal date.

The Authority will provide timely review and comment on all required submittals in order not to delay the progress of the work. Unless otherwise specified herein or waived by the Authority during the course of the project, the Authority, acting as owner, will review all submittals and return consolidated comments to the Design Engineer within 14 calendar days of receiving the submittal.

##### **5.2.2 Monthly Progress Reports – Development and Bid Support Periods**

Throughout the Development and Bid Support Periods, the Design Engineer shall furnish the Authority with a Monthly Progress Report that summarizes all aspects of the completed month and cumulative work progress, as further described in Appendix 2.

The objectives of the Monthly Progress Report are to:

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

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

3. Identify issues and problems requiring action by the Authority or Design Engineer, including issues of conflicting priorities.
4. Provide information to help substantiate monthly pay request.
5. A sample Monthly Progress Report outline to be substantially followed by the Design Engineer is attached to this Appendix as Table 5-1 at the end of this section.

The Design Engineer shall prepare and distribute the Monthly Progress Report at least seven calendar days in advance of monthly management meetings that the Design Engineer shall hold with the Authority throughout the Design Period and Bid Support Period.

#### 5.2.3 Reserved

#### 5.2.4 Monthly Invoicing Requirements

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

1. Design Period Work, which will be paid for based on achievement of the milestones identified in Table 8-1.
2. Extra Design Period and Bid Support Period Work that has been negotiated subsequent to the Effective Date.
3. Design Period and Bid Support Period Work, which will be paid for based on estimated percent complete for the month being invoiced, provided that the cumulative drawdown in that month does not exceed the amount shown in Table 8-1.

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

### **5.3 PERMIT APPLICATION REVIEWS**

The Design Engineer is responsible for obtaining project Governmental Approvals and approvals or amendments thereto as required for the Design Period and Bid Support Period Work.

The Design Engineer shall provide draft copies of Governmental Approval or Governmental Approval amendment applications to the Authority for review and comment. The Authority will provide its comments on Governmental Approval and Governmental Approval amendment applications review as owner, within seven calendar days.

#### 5.3.1 Required Permit-Related Submittals

The Design Engineer shall be required to make all necessary Governmental Approval-related submittals, including, but not limited to:

1. any Governmental Approval-related information, such as drawings;
2. the grading and sediment and erosion control permit applications;
3. well installation application;
4. any water permit application.

Table 5-2 Likely Governmental Approvals or Approvals the Design Engineer Shall Obtain

<b>Governmental Approval/ Approval</b>	<b>Issuing Body</b>
Grading, Sediment and Erosion Control	Montgomery County
Zoning	Montgomery County (may include Fire)
Stormwater Discharge	MDE
Industrial Discharge	MDE
Sanitary Connection	Montgomery County/WSSC
Potable Water Connection	Montgomery County
Phone Service	Carrier
Electricity	Utility

Note: This list is not exhaustive and the Design Engineer has the responsibility for identifying and obtaining all necessary Governmental Approvals/approvals.

## **5.4 DESIGN REVIEWS**

### **5.4.1 Design Review Intent – Authority Review as Owner**

As Owner, the Authority will review design documents for consistency with the Design Requirements of the Contract. All changes shall require Authority approval. Such approval will not, however, relieve the Design Engineer of its performance obligations under the Contract.

### **5.4.2 Required Design-Related Submittals**

The Authority recognizes that the Design Period and Bid Support Period process requires that the Design Engineer and the Authority work cooperatively to assure timely design review and that design work will continue after the Notice to Proceed is issued. The Authority also recognizes that the Design Engineer may decide to segregate the project into various work packages and that multiple 50% or 90% submittals may be provided by the Design Engineer to correspond to the way it has segregated the work.

At a minimum, the Design Engineer shall provide the following design submittals to the Authority (for each package of work for which the Design Engineer contemplates preparing separate Governmental Approval applications) for review and comment:

1. Conceptual design (roughly 30%) including all design standards and bases of design, and internal/external facility layouts;
2. approximately 60% design including drawings and specifications;

3. approximately 90% complete or at the point sufficient to support Governmental Approval Applications including drawings and specifications; and
4. “As permitted for construction” drawings and specifications including a complete set of building official comments. These shall be in 3-Dimensional CADD (Release 2017 or later)

#### 5.4.3 Design Changes Requested by the Authority

The Authority may require design changes where the Design Engineer’s design does not conform to the requirements of the Contract. In those cases, no change to the Price will be granted the Design Engineer.

If the Design Engineer believes a design change requested by the Authority falls outside of these parameters and that a change to the Price is warranted, the Design Engineer shall promptly notify the Authority in accordance with the requirements of the Contract.

Table 5-1  
Sample Monthly Progress Report Outline

- I. Monthly Brief <sup>(1)</sup>
- II. Environmental, Safety and Health
  - a.
  - b. Safety and Health
- III. Project/Contract Management <sup>(2)</sup>
  - A. Summary of Work Activities for Previous Month
  - B. Summary of Work Activities for Current (Upcoming) Month
  - C. Cash Flow Forecasting
- IV. Permitting <sup>(3)(5)</sup>
  - A. Summary of Work Activities for Previous Month
  - B. Summary of Work Activities for Current (Upcoming) Month
- V. Design <sup>(4)(5)</sup>
  - A. Summary of Work Activities for Previous Month
  - B. Summary of Work Activities for Current (Upcoming) Month
  - C. Authority Activities for Current (Upcoming) Month
- VI. Activities Affecting Operations <sup>(7)</sup>
  - A. Summary of Work Activities for Previous Month
  - B. Summary of Work Activities for Current (Upcoming) Month
- VII. Status Synopsis <sup>(8)</sup>
  - A. Key Issues
  - B. Critical Path
- VIII. Status of Submittals <sup>(9)</sup>
  - A. Previous Month Submittals
  - B. Current (Upcoming) Month Submittals
- IX. Compliance with Other Authority Requirements
  - A. Summary of Previous Month Work Activities
  - B. Summary of Current (Upcoming) Month Work Activities
- X. Schedule <sup>(10)</sup>
  - A. General Highlights

B. Current and Upcoming Near Critical Construction Activities

C. Changes in Schedule Since Last Update

Notes:

- (1) The "Monthly Brief" shall be written in a manner that it can be copied and provided to County Councils or to an external party for them to have a general understanding of the overall status, and recent and upcoming project activities.
- (2) The "Project/Contract Management" section shall provide a summary of the activities led by the Company's Construction Manager or Contract Representative, and such reports as quality assurance, partnering activities, and communications. During construction, this shall also include a report covering on-site safety.
- (3) Permitting shall provide a report on each of the permits that are being pursued by the Design Engineer, and include status, scheduled activities, and a contact name and phone number for the project person responsible for each.
- (4) Design shall provide a report on status of design activities, scheduled activities, and design issues affecting permitting or construction.
- (5) During the Design Period and Bid Support Period the report shall include a one-page attachment that lists the upcoming on-site activities. If there will be any geotechnical work, and wetlands work, any site visits with regulators, etc., the Design Engineer shall identify it on this attachment.
- (6) Operations should be reported on throughout the Development and Construction Periods to provide the Authority with information on what integration activities are occurring.
- (7) "Key Issues" shall include a listing of critical business, policy, and technical items (may be repeated from the prior sections) to be used by the Authority Engineer to communicate project issues. Critical path should list the critical path and near critical path items.
- (8) "Status of Submittals" shall list the status of submittals that are currently in development and in review. This section shall provide the Authority advance notice of soon-to-arrive submittals that it will need to be reviewed or otherwise require action. The Design Engineer shall list the project team person responsible, and the amount of time that the Authority will have to review. If a shorter turnaround is desired than provided in the Service Contract and Appendices, the Design Engineer shall highlight such a request in this section.
- (9) Provide general highlights in narrative form, focusing on items for which there is little or no float, those that have changed, and whatever else would be helpful to point out. Attach the schedule.

## **APPENDIX 6**

### **FACILITY OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT (OPERATION AND MAINTENANCE PLAN)**

DO WE WANT THE DESIGN ENGINEER TO PROVIDE A STANDARD OPERATING PROCEDURE FOR THE CORRECTIVE MEASURES? NO

## **APPENDIX 7**

### **PROJECT SCHEDULE**

#### **7.1 PURPOSE**

The purpose of this Appendix is to define the Design Engineer's implementation schedules for the Design Period.

#### **7.2 DESIGN PERIOD SCHEDULE**

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

At a minimum, the Design Engineer's Design Period Critical Path Schedule shall include:

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

Table 7.1

Preliminary Project Schedule (DESIGN ENGINEER SUPPLIED)



## APPENDIX 8

### MILESTONE PAYMENT AND WORK PROGRESS

The purpose of this Appendix is to establish a payment schedule pursuant to which the Authority will pay to the Design Engineer for the Design Period, Bid Support Period and Inspection Period. Prior to the Effective Date, the Design Engineer has submitted to the Authority a cost loaded schedule inclusive of milestones. The schedule assigns values to each summary schedule activity that represents the costs to complete each activity (a milestone). The sum of all the guaranteed values in the schedule will be equal to the Price. Upon review and approval by the Authority Representative, the schedule of values shall become the basis for progress payments. Each month, the Design Engineer shall assign a percent completion to each activity and multiply that percentage by the value of that activity. The earned value at the activity level of all the statused/milestoned and completed activities will be summed to calculate the total progress payment amount for that month. The cumulative payment from the prior month will then be subtracted to determine the current progress payment amount, less Retainage. The Design Engineer's determination of percent completion is subject to the review and approval of the Authority Representative. Notwithstanding the foregoing, the Design Engineer is not entitled to requisition payments, in any month, which exceed the monthly (unless and to the extent a contingency credit exists) or cumulative "not to exceed" percentage specified below.

Table 8.1 sets forth the Design Engineer's construction payment schedule. [Design Engineer Supplied]

Payment to Design Engineer shall be made as follows:

8.1 On or about the first day of each month, Design Engineer shall submit a draft invoice to Authority, with the information specified in Schedule IV. Such draft invoice shall properly represent the Payment Milestones that have been achieved during preceding months and which have not been the subject of a previous invoice and any Authority taxes permitted to be included in such invoice. Design Engineer shall not be entitled to invoice for Payment Milestones<sup>1</sup> prior to the month in which such Payment Milestones are scheduled to be achieved according to the most recent Payment Milestone schedule, regardless of whether such Payment Milestones have been achieved earlier than scheduled, unless (i) the substitution of such Payment Milestones does not increase the aggregate amount of the total Payment Milestones as of such date that should have been due had such substitution not occurred, (ii) such events that were substituted (the "**Substituted Payment Milestone**") are not part of the CPM schedule, (iii) the Substituted Payment Milestone were not previously a Substituted Payment Milestone.

For each invoice, Design Engineer shall submit a sworn statement and a waiver of Liens for all Work completed and materials provided for which payment is requested (contingent upon receipt of the invoice amount from Authority), as of the date of such invoice (in accordance with the Lien waiver form set forth in the exhibit attached to this Appendix hereto), and representing that Design Engineer has made all payments due to all of its Sub-Design Engineers in accordance with the terms of their respective subcontracts. If any dispute arises with respect to the compliance

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<sup>1</sup> Parties agreed that the Payment Milestone for Final Completion shall be ---% of the Fixed Construction Price.

with the terms of any subcontract, Design Engineer shall provide Notice of such dispute to Authority together with a sworn statement to Authority representing that Design Engineer is in compliance with such subcontract.

Authority shall, within 15 days after receipt of a draft invoice from Design Engineer, determine whether (A) the Payment Milestones covered by the draft invoice have been met and the Authority Taxes covered by the draft are reasonably likely to be incurred by Design Engineer during the applicable period; (B) the Work performed conforms with the requirements of this Contract; (C) the draft invoice and required backup information have been properly submitted and are accompanied by the appropriate waiver of Lien; and (D) the invoiced amount reflects the payment due under the Progress Payment Schedule and shall inform Design Engineer as to whether Authority disputes any portion of the draft invoice. Notwithstanding the foregoing, in no event shall Authority's determination or payment of any amount hereunder constitute or be deemed a waiver of any provision of this Contract, and Authority shall have the right to enforce this Contract against Design Engineer notwithstanding any such determination or payment if Authority subsequently determines for any reason that any determination or payment of an invoice was erroneous. Subject to such determination by Authority, and except for disputed portions of any draft invoice, Design Engineer shall submit to Authority a final invoice and Authority shall pay Design Engineer within the later of 25 days after receipt by Authority of Design Engineer's draft invoice or within 10 days after receipt by Authority of Design Engineer's final invoice, 100% of the invoiced amount minus the Retainage percentage and minus any disputed portion of such invoice and minus any undisputed amounts payable by Design Engineer to Authority hereunder for the immediately preceding billing period or otherwise.

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

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

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

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

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

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

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

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

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

In the event that any Sub-Design Engineer of Design Engineer files a Lien against the Facility, the Landfill or Authority, at any time after the payment of the Retainage or the reduction in the amount of Retainage Security (as the case may be) to Design Engineer as described in this Section 8, then Design Engineer shall, within 10 days of Notice thereof, post a bond against such Lien. Such indemnity bond shall expire upon the date of final disposition and satisfaction of the claim secured by such indemnity bond.

#### 8. 2 Documented Costs.

Payment to Design Engineer of its Documented Costs for Documented Cost Items shall be made as follows:

8.2.01 On or about the first day of each month, Design Engineer shall submit a draft invoice to Authority, with information as specified in Schedule IV (the "**Documented Cost Invoice**"), for payment of its Documented Costs for the preceding month. The draft Documented Cost Invoice shall properly represent the Documented Costs that have been paid by Design Engineer for each Documented Cost Item during the preceding months and which have not been the subject of a previous Documented Cost Invoice.

8.2.02 For each Documented Cost Invoice, Design Engineer shall submit a lien waiver in the form set forth in the exhibit attached to this Appendix hereto for all Documented Cost Items provided for which Documented Costs are requested, contingent upon receipt of the Documented Cost Invoice amount from Authority, and representing that Design Engineer has made all undisputed payments due as per the subcontracts to all its Sub-Design Engineers for Documented Cost Items for which Authority has previously made payment to Design Engineer. If Design Engineer is unable to provide the lien waiver with respect to any amount, Design Engineer may substitute evidence that a bond has been posted or other appropriate action taken so as to vacate any such lien against the Landfill.

8.2.03 Authority shall, within 15 days after receipt of a draft Documented Cost Invoice from Design Engineer, determine whether (A) the Documented Cost Items covered by the draft Documented Cost Invoice have been provided by Design Engineer in accordance with this Contract; (B) the Documented Cost Items provided conform with the requirements of this

Contract; (C) the draft Documented Cost Invoice and any required backup information have been properly submitted and are accompanied by the appropriate waiver of Lien or evidence that other appropriate action has been taken so as to vacate any Lien; and (D) the amount of the draft Documented Cost Invoice reflects the payment due under the provisions of this Contract and shall inform Design Engineer as to whether Authority disputes any portion of the draft Documented Cost 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 Design Engineer notwithstanding any such determination or payment if Authority subsequently determines for any reason that any determination or payment of a Documented Cost Invoice was erroneous. Subject to such determination by Authority, and except for disputed portions of any draft Documented Cost Invoice, Design Engineer shall submit to Authority a final Documented Cost Invoice and Authority shall pay Design Engineer within the later of 25 days after receipt by Authority of the draft Documented Cost Invoice or within 10 days after receipt by Authority of Design Engineer's final Documented Cost Invoice, 100% of the amount of the Documented Cost Invoice minus any disputed portion of such Documented Cost Invoice and minus any undisputed amounts payable by Design Engineer to Authority hereunder.

Authority, based on its reasonable estimate, may withhold such portion of any payment to such extent as may be necessary to protect Authority from the following:

- (a) Documented Cost Items that do not conform with the requirements of this Contract;
- (b) Claims filed against Authority, the Facility or the Landfill arising from Design Engineer's failure to perform in accordance with the terms of its subcontracts in connection with the Documented Cost Items, other than claims for which Liens have been filed against the Facility or the Landfill that Design Engineer has bonded or otherwise secured or caused to be vacated in accordance with this Contract;
- (c) Failure of Design Engineer to make payments that are due and owing in respect of material or labor or other obligations incurred as a result of activities covered by this Contract, unless Design Engineer has disputed such payments and, if any Lien is filed with respect thereto, Design Engineer has posted a bond or other security against such Lien or otherwise caused such Lien to be vacated in accordance with this Contract;
- (d) Evidence that the Documented Cost Invoice (together with previously invoiced amounts) exceeds the amount payable with respect to the Documented Cost Items provided; and
- (e) Undisputed damages or any other undisputed amounts owed by Design Engineer to Authority under this Contract for which Authority has not been paid.

Authority shall advise Design Engineer in writing within 15 days after receipt of Design Engineer's draft Documented Cost Invoice of any evidence leading to a possible delayed payment of any portion of a Documented Cost Invoice. Upon receipt of such Notice, Design Engineer shall promptly take any and all steps available to remedy any condition identified by Authority leading to such claims. No action properly taken by either Party in compliance with this Section 8.2 shall

affect either Guaranteed Final Acceptance Date or Scheduled Final Completion Date unless specifically agreed to in writing by Authority.

## APPENDIX 9

### DESIGN AND BID SUPPORT ADJUSTMENT INDICES

#### 9.1 PURPOSE

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

#### 9.2 PRICE ADJUSTMENT FACTOR (numbers are for example and will be refreshed later)

The Price Adjustment Factor shall be used to adjust the Price from the BAFO Date to the Notice to Proceed Date. All adjustments shall be made using the Bureau of Labor Statistics Consumer Price Index (“CPI”) for the Washington-Baltimore Area (series id: CUURA311SA0; Base Period: November 1996=100). The adjustment shall compare the most recent reported CPI as of the Notice to Proceed Date (the MONTH, 20XX published CPI) to the reported CPI nearest to the final and complete BAFO Date (MONTH, 2016), which was published in MONTH of 2016. The BAFO Date CPI is [144.327]. The most recent reported CPI as of the Notice to Proceed Date less the CPI used from the final and complete BAFO Date equals the index point change. Divide the index point change by the CPI used in the previous year and add 1 to equal the Price Adjustment Factor. The Fixed Price Adjustment Factor shall be rounded to the second decimal place.

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

Examples of Price Adjustment Factor Calculation:

Commencement Date adjustor:

CPI for Notice to Proceed Date: (reported index for MONTH, 20XX, which will be published before.)

CPI on the BAFO Date: (MONTH 2016 CPI) 144.327

Example 1: using the actual BAFO Date CPI (144.327) and a *DRAFT* Notice to Proceed Date CPI of 147.201:

Index Point Change:  $147.201 - 144.327 = 2.874$

Price Adjustment Factor:  $(2.874 / 144.327) + 1 = \mathbf{1.02}$  (rounded to second decimal place)

Example 2: using the actual BAFO Date CPI (144.327) and a *DRAFT* Notice to Proceed Date CPI of 140.0:

Index Point Change:  $140.0 - 144.327 = -4.327$

Price Adjustment Factor:  $(-4.327 / 144.327) + 1 = \mathbf{0.97}$  (rounded to second decimal place)

Example 3: using the actual BAFO Date CPI (144.327) and a *DRAFT* Notice to Proceed Date CPI of 153.200:

Index Point Change:  $153.200 - 144.327 = 8.873$

Price Adjustment Factor:  $(8.873 / 144.327) + 1 = \mathbf{1.06}$  (rounded to second decimal place) (Inflation adjustor would be **1.03** because the adjustor cannot be greater than 1.03).

## **APPENDIX 10**

### **STAFFING PLAN**

#### **10.1 DESIGN PERIOD AND BID SUPPORT PERIOD WORK STAFFING PLAN**

The purpose of this Appendix is to set forth the Design Engineer's Work Staffing Plan, which shall include key management and supervisory personnel to be used by the Design Engineer in performing the Work. The Design Engineer will staff the Work with a [Project Manager, a Project Engineer, a Field Engineer, Environmental Health and Safety Representative, Controller and Administrative Assistant during the Design Period and Bid Support Period.] Design Engineer will staff the Bid Support Work at the project site with sufficient personnel to manage the subcontracted work. The subcontracted work will be managed with respect to safety, environmental compliance, quality, schedule and cost. Design Engineer will also provide staff during the Design Period in order to set up the project, support the Governmental Approval applications with construction data, and support Authority deliverables.

Design Engineer' Engineer will staff the project at their office in [CITY, STATE] with sufficient engineering and support personnel to support the Work during the Design Period and procurement during the Bid Support Period.

The Design Engineer's Bid Support Work project organization chart is shown in Exhibit 10.1.

The Bid Support Work Staffing Plan of the Design Engineer may be changed at any time without benefit or cost to the Authority.

Exhibit 10-1

Design Engineer Bid Support Period Project Organization Chart

## APPENDIX 11

### REQUIRED INSURANCE

#### PART 1: REQUIRED DESIGN PERIOD INSURANCE

##### General Insurance Requirements

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

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

C. All insurers underwriting Design Engineer's insurance must be allowed to do business in Maryland and acceptable to Authority. The insurers must have a financial strength rating of "A-" or better, and a financial size category of "Class VII" or higher in the latest evaluation by A. M. Best Design Engineer, 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. Design Engineer is required to notify Authority of such cancellation or non-renewal.

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

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

Design Engineer must either:

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

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



## Design Engineer's Liability Insurance

Design Engineer 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 Design Engineer, its employees or Sub-Design Engineers 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 Design Engineers;
- Liability arising from products and completed operations;
- Contractual liability including protection for Design Engineer from bodily injury and property damage claims arising out of liability assumed under this Contract; and
- Liability arising from the explosion, collapse and underground (XCU) hazards.

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

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

- The maintenance, use or operation of any auto; and
- Contractual liability including protection for Design Engineer from bodily injury and property damage claims arising out of liability assumed under this Contract.

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

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

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

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

- commercial general liability;
- business auto liability; and
- employer's liability.

This insurance shall name Authority and its directors, officers and employees as 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. Design Engineer's professional liability insurance for claims that arise from the performance of professional services. A minimum annual aggregate limit of at least \$2,000,000 is required. The insurance shall include contractual liability coverage. Certificates of insurance shall evidence a retroactive date no later than the beginning of Design Engineer's services under this Contract.

**PART 2: REQUIRED BID SUPPORT PERIOD INSURANCE**

1. Except as otherwise set forth herein and Section 11.04 of the Contract, the Design Engineer shall obtain, pay for and maintain, or cause to be obtained, paid for and maintained, the insurance coverage listed below during the Bid Support Period in connection with the construction of the Facility without any reimbursement obligation on the part of the Authority or the County:

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

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

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

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

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

three years following the completion of construction, with the Trustee, the Authority (and its officers, officials and employees) and the County (and its officers, officials and employees) included as additional insureds as respects the liabilities arising out of the Contract. Coverage is to include both certified and non-certified terrorism.

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

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

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

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

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

3. Insurance Certificates. Insurance, and any renewal thereof, shall be evidenced by certificates of insurance issued or countersigned by a duly authorized representative of the issuer and delivered to the Authority for its approval 30 days prior to the Notice to Proceed Date or, in the case of a renewal, as reasonably provided by the insurer. Not later than 30 days prior to the beginning of each Contract Year, the Design Engineer shall furnish certificates of insurance to the

Authority to confirm the continued effectiveness of the Required Insurance. The certificates of insurance shall provide for 60 days' written notice to the Authority of cancellation by the insurance Design Engineer, except 10 days' notice of the insurance Design Engineer's intent not to renew or a reduction in its coverage.

4. Non-Recourse Provision. All insurance policies shall provide that the insurers shall have no recourse against the additional insureds, or the Authority if the Authority is named as a named insured, for payment of any premium or liability policies. The coverages provided by mutual coverage liability insurance policies required pursuant to the Contract shall be the primary source of any restitution or other recovery for any injuries to or death of persons or loss or damage to property incurred as a result of an action or inaction of the Design Engineer, of their respective suppliers, employees, agents, representatives, or invitees, that fall within these coverages and also within the coverages of any liability insurance or self-insurance program maintained by the Authority.

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

6. Qualifications of Insurers. The Design Engineer shall obtain the insurance set forth herein with insurance companies with at least a financial size category of VII and that carry a minimum of Best's "A-" equivalent rating. In addition, insurance may not be obtained or maintained with insurers which are prohibited from conducting Business in the State.

## APPENDIX 12

### DESCRIPTION OF SITE

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

#### 1. SITE DESCRIPTION

##### 1.1 Site Location and Overview

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

##### 1.2 Site and Surrounding Area Land Use

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

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

### 1.3 Site History

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

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

### 1.4 Assessment of Corrective Measures

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

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

## 1.5 Approved Corrective Measure

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

**APPENDIX 13**

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



**PERFORMANCE BOND**

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Principal

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Business Address of Principal

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Surety

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

Obligee  
Northeast Maryland Waste Disposal Authority  
and  
Montgomery County, Maryland

Penal Sum of Bond  
(express in words and figures)

Date of Contract: \_\_\_\_\_, 20\_\_

Date Bond Executed: \_\_\_\_\_, 20\_\_

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

Contract Number:

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

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

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

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

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

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

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

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

In Presence of: Individual Principal

\_\_\_\_\_ as to \_\_\_\_\_ (SEAL)  
Witness

In Presence of: Partnership Principal  
Witness

\_\_\_\_\_ (SEAL)  
Name of Partnership  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (SEAL)  
\_\_\_\_\_ (SEAL)  
\_\_\_\_\_ (SEAL)

Corporate Principal

Attest:

(Name of Corporation)

\_\_\_\_\_  
Corporate Secretary

\_\_\_\_\_  
President

AFFIX  
CORPORATE  
SEAL

.....

\_\_\_\_\_  
(Surety)

Attest:

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

Title:

AFFIX  
CORPORATE  
SEAL

Business Address of Surety:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Bonding Agent's name:

\_\_\_\_\_

Agent's Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved as to legal form and sufficiency this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Date: \_\_\_\_\_

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

FORM OF PERFORMANCE LETTER OF CREDIT

Date: \_\_\_\_\_

Ladies and Gentlemen:

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

2. The Letter of Credit is being issued in support of the performance by the Design Engineer of its obligation to provide solid waste disposal services to the Authority as set forth in the “**SERVICE CONTRACT FOR THE ENGINEERING, BID PREPARATION AND SUPPORT, AND CONSTRUCTION INSPECTION SERVICES FOR MONTGOMERY COUNTY,**” dated \_\_\_\_\_, 20\_\_ (the “Contract”).

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

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

Name of Bidder \_\_\_\_\_

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

5. If a demand for payment delivered to us pursuant to the foregoing paragraph does not conform to the terms and conditions of this Letter of Credit, we will notify you of our intention

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

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

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

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

Very truly yours,  
[NAME OF FINANCIAL INSTITUTION]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **APPENDIX 14**

### **LIQUIDATED DAMAGES**

#### **14.1 Purpose.**

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

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

##### **1. Final Acceptance Delay Liquidated Damages**

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