

AGENDA ITEM #2D  
June 16, 2009

**Action**

**MEMORANDUM**

June 12, 2009

TO: County Council

FROM:  Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Action: Resolution to Approve Amendment No. 1 to the Intergovernmental Agreement between Montgomery County Government and the Northeast Maryland Waste Disposal Authority**

On May 30, the Council received from the County Executive a request for approval of an amendment to the Intergovernmental Agreement (IGA) with the Northeast Maryland Waste Disposal Authority (NMWDA) (see ©2). The amendment would extend the term of the IGA to match the initial term of the County's landfill gas-to-energy projects being performed under this IGA, replace the Director, Office of Procurement (PRO) with the Director, Department of Environmental Protection (DEP), and provide that all funds and contractual issues are managed directly by DEP.

County and State law provide the Council with an opportunity to review Solid Waste-related multi-year contracts prior to being finalized. If no action is taken with the time limits established in County and State law, then the contracts are approved by default. Typically, with contracts (or amendments in this particular case) which are non-controversial or technical in nature, the Council would be provided notification, the time period is allowed to elapse, and the new provision moves forward. However, in this case, the Chief Administrative Officer would like to finalize the contract amendment by June 30, 2009. Therefore, positive Council action is needed to meet this accelerated timeframe.

**Council Staff recommends approval of the attached resolution (see ©1) which notes Council approval of the contract amendment.**

**Attachments**

KML:f\levchenko\solid waste\action iga amendment resolution 6 16 09.doc

AGENDA ITEM #2C  
June 9, 2009

**Introduction**

MEMORANDUM

June 4, 2009

TO: County Council

FROM:  Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Introduction: Resolution to Approve Amendment No. 1 to the Intergovernmental Agreement between Montgomery County Government and the Northeast Maryland Waste Disposal Authority**

On May 30, the Council received from the County Executive a request for approval of an amendment to the Intergovernmental Agreement (IGA) with the Northeast Maryland Waste Disposal Authority (NMWDA) (see ©2). The amendment would extend the term of the IGA to match the initial term of the County's landfill gas-to-energy projects being performed under this IGA, replace the Director, Office of Procurement (PRO) with the Director, Department of Environmental Protection (DEP), and provide that all funds and contractual issues are managed directly by DEP.

Action on a resolution supporting this amendment (see ©1) is scheduled for June 16, 2009.

**Attachments**

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Resolution No.: \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the request of the County Executive

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**SUBJECT:** Amendment No. 1 to the Intergovernmental Agreement between  
Montgomery County Government and Northeast Maryland Waste Disposal  
Authority

**Background**

1. Under County Code Section 48-44(b), the Chief Administrative officer entered into a Intergovernmental Agreement (IGA), on behalf of the County, with the Northeast Maryland Waste Disposal Authority (NMWDA) on June 18, 2007.
2. The NMWDA is a body politic and corporate organized and existing under the laws of the State of Maryland.
3. Section 3-902 of the Natural Resources Article of the Maryland Code provides that the NMWDA's purpose includes, but is not limited to, assisting certain political subdivisions of the State of Maryland in providing adequate waste disposal facilities and facilities for the generation of electricity or other forms of energy obtained from fuels derived from or related to waste disposal facilities.
4. The principal purposes of this amendment are to: (A) extend the term of the IGA to match the initial term of County landfill gas-to-energy projects, which are being performed under this IGA, (B) replace the Director, Office of Procurement with the Director, Department of Environmental Protection (DEP) throughout the agreement, and (C) provide that all funds and contractual issues are managed directly by DEP since the Office of Procurement was not involved in contracting for these services.

**Action**

The County Council approves the attached amendments to the Intergovernmental Agreement between Montgomery County and the Northeast Maryland Waste Disposal Authority.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

ENV & ENERGY



KL  
CC  
SBF  
LL

OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett  
County Executive

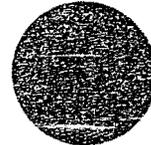
Timothy L. Firestine  
Chief Administrative Officer

MEMORANDUM

May 26, 2009

TO: Phil Andrews, President  
Montgomery County Council

042655



FROM: Timothy Firestine  
Chief Administrative Officer

SUBJECT: Amendment No. 1 to the Intergovernmental Agreement between  
Montgomery County Government and Northeast Maryland Waste Disposal  
Authority

Section 48-44(b) of the Montgomery County Code allows the County to enter into and amend multiyear contracts with the Northeast Maryland Waste Disposal Authority. It also requires that the Council be informed of any amendment to a multi-year contract executed under this section. The Chief Administrative Officer intends to sign Amendment No. 1 to the above referenced intergovernmental agreement (IGA). A copy of the amendment and the complete IGA are attached as background as well as a resolution for Council approval. The amendment will be approved by default if the Council does not disapprove the amendment within forty-five (45) days; however, we would appreciate a positive action by the Council to approve the amendment to meet a June 30, 2009 deadline for an extension of the IGA.

The IGA was executed by the Chief Administrative Officer on June 18, 2007, pursuant to Section 48-44(b) of the Montgomery County Code. The principal purpose of this amendment is to: (1) extend the term of the IGA to match the initial term of our landfill gas-to-energy projects, which are being performed under this IGA, (2) replace the Director, Office of Procurement (PRO) with the Director, Department of Environmental Protection (DEP) throughout the agreement, including the attachments since the Office of Procurement was not involved in contracting for these services, and (3) provide that all funds and contractual issues are managed directly by the DEP.

This IGA with the Northeast Maryland Waste Disposal Authority (NMWDA) is instrumental in several ongoing County projects. Since the NMWDA is a member of the Pennsylvania, New Jersey, Maryland (PJM) utility network, it is able to buy and sell electricity and is excellently suited for the gas-to-energy projects at the Oaks and Gude Landfills and a planned solar energy project to be established on the roofs of several solid waste facilities. NMWDA also has pre-qualified environmental engineering firms under contract which made it

Phil Andrews, President  
May 26, 2009  
Page 2

an excellent choice for initial work on the Gude Landfill remediation project which was recently mandated by the Maryland Department of the Environment.

Please contact Dan Locke, Chief, DEP, Division of Solid Waste Services, at 240-777-6402 with any questions. Thank you for your timely review and approval of this amendment.

RGH:pk

Attachments

**AMENDMENT NO. 1 TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN  
MONTGOMERY COUNTY GOVERNMENT  
AND  
NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY**

This Amendment is made this 26 day of May, 2009 between Montgomery County, Maryland, 101 Monroe Street, Rockville, Maryland, a body politic and a political subdivision of the State of Maryland (hereinafter referred to as the "County"), and the Northeast Maryland Waste Disposal Authority (hereinafter referred to as the "Authority"), a body politic and corporate and organized and existing under the laws for the State of Maryland. The County and the Authority are collectively referred to as the ("Parties").

**BACKGROUND**

1. The Parties entered into an Intergovernmental Agreement ("IGA") on June 18, 2007 (hereinafter "Agreement" or "Contract").
2. The term of the Agreement ends on June 30, 2009.
3. The County will pay the Authority for the out of pocket and third party costs and expenses that the Authority incurs to provide services under this Agreement.
4. The purpose of the Agreement is for the Authority to assist the County in planning, developing, and operating solid waste management facilities and programs for the County.
5. The Authority may, with the approval of the County's Project Manager, authorize contractors and consultants to perform services hereunder.
6. The purpose of this Amendment is to: (a) extend the term of the Agreement, (b) replace the Director, Office of Procurement with the Director, Department of Environmental Protection throughout the Agreement, including the attachments, and (c) provide that all funds and contractual issues are managed directly by the Department of Environmental Protection.

**CHANGES**

1. The term of this Agreement is extended to June 30, 2016.
2. ARTICLE II: TASK ORDERS, (d) shall read "The Authority must not commence work under any Task Order until the Division of Solid Waste Services has encumbered funding via a Direct Purchase Order for the Task Order and the Chief has issued a Notice to Proceed for that Task Order."

3. ARTICLE XVI: GENERAL CONDITIONS OF CONTRACT shall be amended with the addition of the following sentence: "For purposes of this Agreement, references to Director of Procurement or Director in Attachments "A" and "B" refer to the County's Director, Department of Environmental Protection. This Contract was created as an IGA in accordance with Section 44-48(b) of the Montgomery County Code".

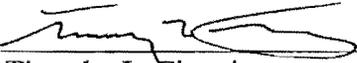
#### EFFECT

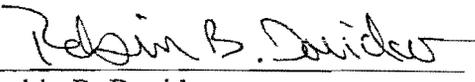
1. Existing provisions of the Contract remain in effect unless specifically changed by this Amendment.
2. This Amendment is entered into prior to the expiration of the contract term.
3. This Amendment is entered into on the date of signature by the Chief Administrative Officer.
4. The Contractor is not to provide or have provided any goods or services pursuant to this Amendment until and unless the Chief Administrative Officer signs it.

IN WITNESS WHEREOF, the parties herein, being duly authorized, have executed this Agreement as of the day and year first written above.

MONTGOMERY COUNTY, MARYLAND

NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY

By:   
Timothy L. Firestine  
Chief Administrative Officer

By:   
Robin B. Davidov  
Executive Director

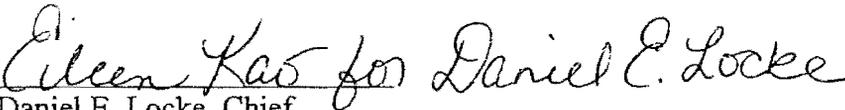
Date: 5/26/2009

Date: 5/26/09

Approval Recommended:

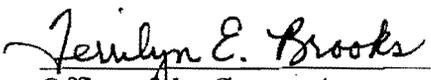
By:   
Robert Hoyt, Director  
Department of Environmental Protection

Date: 5/22/09

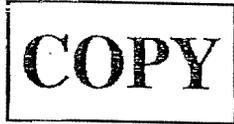
By:   
Daniel E. Locke, Chief  
Department of Environmental Protection  
Division of Solid Waste Services

Date: May 21, 2009

Approved as to form and legality:

  
Office of the County Attorney

Date: May 21, 2009



INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN  
MONTGOMERY COUNTY GOVERNMENT  
AND  
NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY

This Intergovernmental Agreement (this "Agreement") is made this Seventeenth day of January, 2007 by and between Montgomery County, Maryland (hereinafter referred to as the "County"), and the Northeast Maryland Waste Disposal Authority (hereinafter referred to as the "Authority").

RECITALS

1. The County's solid waste management system (the "County's Solid Waste Management System") includes the Solid Waste Transfer Station, the Materials Recovery Facility, the Yard Trim Composting Facility, the Resource Recovery Facility, the Site 2 Landfill, and the closed Gude and Oaks Landfills. In addition, the County has entered into various contracts that provide for the collection, disposal, and recycling of solid waste.
2. The County desires the Authority to provide technical, engineering, operations, procurement and marketing assistance in connection with these County facilities and with programs related to source reduction, recycling and solid waste.
3. The County has determined that it is in its best interest to sign this Agreement with the Authority for such services.
4. The Authority, pursuant to the Northeast Maryland Waste Disposal Authority Act, is a body politic and corporate organized and existing under the laws of the State of Maryland and has planned, developed, and operated solid waste management facilities and programs for the County and other Maryland political subdivisions.
5. The County's Chief Administrative Officer ("CAO"), or designee, is the duly authorized signatory of this instrument on behalf of the County and is solely responsible for all contractual changes and modifications to the Agreement on behalf of the County.
6. The Chief of the Division of Solid Waste Services ("Chief"), as designee of the Chief Administrative Officer ("CAO"), will serve as the County's contract administrator for this Agreement and will approve all services rendered hereunder.
7. The Authority has submitted to the County a notice of intent to provide services to the County under this Agreement.
8. In consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Authority covenant and agree as follows:

ARTICLE I: SCOPE OF SERVICES

The Authority, under the terms of this Agreement, agrees to provide technical, engineering, operations, procurement and marketing assistance to the County with respect to the County's Solid Waste Management System and in furtherance of the County's solid waste activities.

## ARTICLE II: TASK ORDERS

a. Work by the Authority under this Agreement must be limited to the completion of activities specified in a task order issued by the County ("Task Order"). A Task Order must be signed by the Chief and the Executive Director of the Authority. Each Task Order must describe the services to be provided and the schedule for the completion of those services performed and for the delivery of any work product. Each Task Order must also contain an estimate of the costs to complete the services thereunder and a certification by the County that it has legally available funds to pay such costs.

b. The project manager designated by the Authority in accordance with Section V.a (the "Authority's Project Manager") must work directly with the project manager designated by the County in accordance with Section V.b (the "County's Project Manager") to coordinate and manage each Task Order. The Authority's Project Manager must provide a high degree of day-to-day project management and internal quality control review of all draft and final products prior to delivery to the County.

c. Unless otherwise specified in a Task Order, the Authority must initiate work on a Task Order within five (5) business days after the date that the notice to proceed is issued by the Chief in accordance with Section II.d and must complete each task within the schedule described in the Task Order. Time is of the essence.

d. The Authority must not commence work under any Task Order until the Office of Procurement has executed a purchase order for the Task Order and the Chief has issued a Notice to Proceed for that Task Order.

e. The Authority may request a change order to modify the scope and the estimated cost of any Task Order. Such a change order will not be effective until approved by the Chief and a Notice to Proceed under the change order is issued. The Authority is not obligated to undertake the work as proposed in such a change order until it is approved by the Chief and the Authority has received the Notice to Proceed. If the scope of a Task Order is one in which circumstances may arise for which immediate action could be required that is outside of the scope of activities specified in the Task Order to protect people or property from harm, the County and the Authority will negotiate appropriate provisions within the Task Order to address such situations.

## ARTICLE III: TERM

The term of this Agreement begins on the date of execution and expires on June 30, 2009, unless terminated earlier as provided for herein. The term of this Agreement may be extended by a contract amendment to which the parties agree.

## ARTICLE IV: COMPENSATION

a. The County will pay the Authority for the out of pocket and third party costs and expenses that the Authority incurs to provide services under this Agreement. Such costs and expenses include, but are not limited to, costs and expenses for express mail or overnight delivery, out-of-state travel and external printing and graphics. With the exception contractors and consultants that the Authority retains and pays to perform services under this Agreement, the County will not pay the salary or fringe benefits or other compensation paid to the Authority's employees or personnel. The Authority's out of pocket costs that are reimbursable by the County under this Agreement do not include travel of Authority staff to the County facilities, the costs of operating the Authority's office, such as rent, phones, internet, photocopying and other general office and overhead costs.

b. The actual cost to be incurred by the Authority to provide services under this Agreement cannot be fully determined at this time.

c. The Authority may, with the approval of the County's Project Manager, authorize contractors and consultants to perform services hereunder. The Authority will seek competition for the performance of all subcontracted services to the extent feasible or required. The County will pay the Authority for the actual costs and expenses, without any mark-up, of such contractors and consultants. The Authority will invoice the County for such contractor and consultant costs and expenses promptly following the Authority's receipt of an invoice from the contractor or consultant, but the parties hereto acknowledge that such contractor and consultant invoices may be received more than a month after the performance of subcontracted services. The Authority will provide a non-binding good faith estimate of all anticipated costs and expenses that are outstanding within 30 days after the end of any County fiscal year. Authority contractors and consultants include, but are not limited to, consulting engineers, construction companies, facility operators, energy consultants, lawyers, financial advisors, underwriters and similar service providers.

d. If the County issues a Task Order or enters into an agreement for services with the Authority, for a term of twelve (12) months or more, the Authority will be entitled to a project management and administrative fee (the "Authority Fee"), which will be (a) \$25,000 annually per landfill for any landfill gas beneficial reuse project and (b) negotiated on a case-by-case basis for all other projects.

e. The County will pay the Authority for actual documented costs and expenses, without any mark-up, of providing services under this Agreement and, to the extent applicable, the Authority Fee.

f. The Authority will submit invoices and supporting documentation based upon the actual costs and expenses of performing the services, including time and materials. The Authority must document all costs and expenses in reasonable detail. Payment will be made within thirty (30) days from the date that an invoice is received by the County, except as noted in Section IV.g below. Unless otherwise agreed by the County and the Authority, all invoiced payments will be made to the Authority.

g. If the County disputes any amount invoiced by the Authority hereunder, the County must pay the portion of the invoiced amount that is not in dispute within 30 days of receipt of the invoice. The County must provide the Authority with written objection within 30 days of the receipt of such invoiced amount (if the basis for the objection can be known within 30 days, otherwise within 30 days after actual knowledge of the basis for the objection) indicating the amount that is being disputed and providing all reasons then known to the County for its objection to or disagreement with such amount. If the County and the Authority are not able to resolve such dispute promptly after the County's objection, then the dispute must be resolved in accordance with Section 8 of the General Conditions of Contract between County and Contractor (Attachment A), as modified by the Addendum to General Conditions (Attachment B).

h. If during the development of a Task Order, modifications to the compensation provisions herein are required in order for the Task Order to be accomplished, the Authority and the County will negotiate appropriate provisions to be included in the Task Order.

i. Minimum Compensation

1. The Authority must require that each of its contractors providing services pursuant to a Task Order compensate their employees, in an amount equal to or greater than the County's minimum wage rate during the time the employees actually provide services to the County under this Agreement;

2. The Authority must adjust the minimum wage rate as required by the County. Each year the County will base the adjusted minimum wage rate on the Consumer Price Index-Urban (CPI-U) for the Washington-Baltimore area for the previous year;
3. The County must promptly inform the Authority by written notice of any adjustment to the County's minimum wage rate.
4. With each invoice, the Authority must provide certified payroll records for any of its contractors' and contractors' employees who are eligible for the County's minimum wage rate and ensuing CPI-U adjustments; and
5. The Authority must notify its employees and contractors of the foregoing wage requirements by posting a notice at any County facility at which the Authority performs services.

#### ARTICLE V: PROJECT MANAGERS

a. The Authority will designate the Authority's Project Manager who will be the principal liaison for the Authority with the County on matters relating to this Agreement. The Authority's Project Manager will be responsible for coordinating and obtaining required actions by the Authority and transmitting information to the County's Project Manager. Should it be necessary to replace the Authority's Project Manager, the County must approve the Authority's new Project Manager. Only the Executive Director of the Authority is authorized to sign and amend this Agreement on behalf of the Authority.

b. For each Task Order, the County will designate a Project Manager who will be the principal liaison between the Authority and County on matters relating to that Task Order. The County's Project Manager will be responsible for coordinating and obtaining required actions by the County and transmitting information to the Authority's Project Manager. Should it be necessary to replace the County's Project Manager, immediate written notice will be provided to the Authority of the new appointee and the effective date of the appointment. Only the CAO, or designee, is authorized to sign and amend this Agreement on behalf of the County.

#### ARTICLE VI: REPORT

The Authority must submit a monthly operations report on all open Task Orders within fifteen (15) days after the end of each month. The report must include general descriptions of the following:

- (a) the progress to date on and status of each open Task Order;
- (b) any material problems that the Authority is aware of and that may reasonably be expected to impede performance under a Task Order and the Authority's proposed corrective action;
- (c) services expected to be performed under each open Task Order during the next month; and
- (d) a summary of expenses invoiced to date as compared to the estimated cost of the Task Order.

## ARTICLE VII: SUBCONTRACTS

The Authority may use the services of outside professional contractors for the performance of services provided through this Agreement. The Authority will be solely and fully responsible for the coordination, direction, cost control, and technical accuracy of all services performed by its consultants and contractors. The Authority must coordinate and administer its consultants and contractors, including with respect to staff assignments, invoicing, and project reporting, as needed.

## ARTICLE VIII: COORDINATION OF WORK

a. The County reserves the right to execute other contracts in connection with this Agreement or in conjunction with other phases of its solid waste program which will require the Authority to coordinate its work with others. The Authority will afford other County contractors reasonable opportunities to coordinate and conduct their work and will not unreasonably interfere with the work of such contractors. The Authority will not be held responsible for the failure of other County contractors to coordinate their work with the Authority.

b. The County acknowledges that the Authority's performance may be dependant upon the activities of the County or a County contractor. The Authority must promptly report to the County any County or County contractor activity or non-performance that hinders the Authority's performance of its obligations. In such an event, the obligations and fully documented costs of the Authority will be adjusted in accordance with the provisions of this Agreement.

## ARTICLE IX: CONFIDENTIALITY

Subject to the provisions of applicable law, the Authority and the County will take all reasonable precautions to prevent disclosure to third parties of any information designated in writing as confidential. The rights and obligations of the parties under this Article IX are subject to applicable law, which may require the Authority or the County to disclose such information to governmental agencies, judicial bodies or members of the public upon demand.

## ARTICLE X: COUNTY RESPONSIBILITY

a. Upon request and at all reasonable times, the County agrees to consult with the Authority, regarding the services rendered hereunder and the results obtained therefrom. The County further agrees to allow the Authority access to public and private lands that the County controls, as required for the Authority to perform under this Agreement. Except as prohibited by law, the County will permit the Authority reasonable access to non-confidential records and information within the custody of the County, which the Authority and the County agree are necessary for the performance of the services herein.

b. The County will provide data and services promptly and render approvals and decisions as expeditiously as necessary to allow the Authority to perform hereunder. The County will provide data and services at no cost to the Authority. The Authority will be entitled to rely upon the accuracy and completeness of any data or services provided by the County, to the extent that they are represented by the County as being accurate and complete.

c. The County agrees to give prompt written notice to the Authority if the County becomes aware of any fault or defect in any task performed hereunder or of any nonconformance with this Agreement..

**ARTICLE XI: SUSPENSION OF WORK**

The County may suspend work under this Agreement or a Task Order by written notification to the Authority. If the County fails to pay non-disputed amounts owed to the Authority under a Task Order, the Authority may suspend work under the Task Order for which such amounts are owed by written notification to the County.

**ARTICLE XII: FORCE MAJEURE**

Neither party will be considered in default in the performance of its obligations to the extent that such performance is delayed, hindered or prevented by any cause which is beyond the control of either party (hereinafter called "Force Majeure"). Force Majeure includes, but is not limited to, any of the following if beyond the control of the party claiming Force Majeure: acts of God, war (declared or undeclared), blockages, hostilities, revolution, riot, strike, lockout or other labor disturbances, epidemics, fire, storm, delay or interruption of transportation. Either party must give prompt notice of the nature and extent of Force Majeure claimed.

**ARTICLE XIII: LIMITATION OF AUTHORITY**

The Authority's personnel providing services in accordance with this Agreement are not agents of the County. The Authority will not be authorized to approve any payments to County contractors, authorize additional work or approve change orders on behalf of the County, approve or accept work performed by other County contractors on behalf of the County, or to obligate the County to the payment of any monies or the performance of any services beyond the services as provided in this Agreement.

**ARTICLE XIV: INVALIDATION AND WAIVER**

The parties to this Agreement expressly agree and understand that the invalidation of any terms, phrases, provisions, articles or covenants of this Agreement will not void this Agreement and all terms, phrases, provisions, articles and covenants not invalidated will remain in effect as though the invalidated terms, phrases, provisions, articles and covenants were not included therein. It is further understood and agreed that the waiver by the County of any term, phrase, provision, article or covenant of this Agreement will not constitute a precedent, nor bind the County to a waiver of any succeeding breach of the same or any other terms, phrases, provisions, articles or covenants of this Agreement.

**ARTICLE XV: DEFAULT AND TERMINATION**

**TERMINATION FOR CAUSE**

a. Events of Default

- (1) By Authority. Any one or more of the following events will constitute a default by the Authority under this Agreement:
  - (1) The failure of the Authority to comply with any of the material provisions of this Agreement.
  - (2) The failure of the Authority to fulfill any of its material obligations to the County under this Agreement.
  - (3) The failure of the Authority to exercise the level of managerial skill, knowledge,

judgment or practice which are reasonably or commonly expected for the management, development or operation of a solid waste program or facility.

(2) By County. Any one or more of the following events will constitute a default by the County under this Agreement:

- (1) The failure to pay, when due, any amount not in dispute and due the Authority under this Agreement.
- (2) The failure of the County to comply with any of the material provisions of this Agreement.
- (3) The failure of the County to fulfill any of its material obligations to the Authority under this Agreement.

b. Termination Upon Default. Either party hereto may terminate this Agreement for cause upon the occurrence of an event of default by the other party. Termination will not be effective unless and until a notice of intent to terminate for cause has been given to the party in default by the other party, and, within thirty (30) days of receipt of such notice, the party in default has not corrected the default, or if such default is not reasonably capable of being corrected within such 30-day period, the party in default has not commenced with correction of the default and is not diligently proceeding with correction of the default thereafter.

c. Sole Remedy. The County's sole remedy in the event of a breach by the Authority of its obligations under this Agreement will be the Authority's assignment or provision of items pursuant to Section XV.f following any termination of this Agreement. The Authority's sole remedy in the event of a breach by the County of its obligations under this Agreement will be the right to recover all outstanding amounts due to the Authority hereunder and all costs and expenses incurred by the Authority as a result of such breach.

d. Termination for Convenience. Notwithstanding any other provisions of this Agreement to the contrary, either party hereto may terminate this Agreement (and all open Task Orders) for its convenience at any time upon thirty (30) days notice to the other party, except in cases where danger to public health, safety, property or the environment may occur, in which case the County and the Authority will negotiate an extension to the thirty (30) day notice period that is reasonable under the circumstances in order to mitigate any potential damages.

e. Termination for Convenience Costs. If the County exercises its right to terminate under Section XV.d, the Authority will take all reasonable measures to mitigate costs to the County and the County will pay the following amounts to the Authority:

- (1) All outstanding amounts due to the Authority under this Agreement as of the date of termination.
- (2) All authorized costs and expenses incurred by the Authority for any contract or subcontract relating to this Agreement.
- (3) All administrative or other costs and expenses incurred by the Authority as a result of such termination, including costs and expenses related to terminating employees, or costs and expenses incurred by the Authority in terminating any contract or subcontract relating to this Agreement.

f. Events After Termination. Within ninety (90) days of termination of this Agreement, for any reason, the Authority will provide or assign to the County:

All equipment and facilities purchased under this Agreement, all contracts and purchase agreements, and all files and records relating to any Task Order that is not required to be retained by the Authority under Subtitle 6 of Title 10 of the State Government Article of the Annotated Code of Maryland.

#### ARTICLE XVI: GENERAL CONDITIONS OF CONTRACT

The attached General Conditions of Contract between County and Contractor (Attachment A) and Addendum to General Conditions (Attachment B) are incorporated by reference herein and apply to this Agreement unless otherwise specified herein. In the event of any express conflict between the terms and conditions of this Agreement and the General Conditions of Contract, as modified by the Addendum to General Conditions, the terms and conditions of this Agreement will have precedence.

#### ARTICLE XVII: ENTIRE AGREEMENT

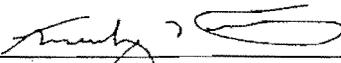
This Agreement (including the attached General Conditions of Contract and Addendum to General Conditions attached and incorporated as Attachment B) constitutes the entire agreement between the parties hereto, and except for modifications prepared in accordance with provisions herein, which will not become binding upon any party hereto until reduced to writing and executed by both parties hereto, there are no other collateral contracts or agreements between the parties hereto for the services contemplated hereunder.

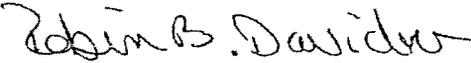
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IN WITNESS WHEREOF, the parties herein, being duly authorized, have executed this Agreement as of the day and year first written above.

MONTGOMERY COUNTY, MARYLAND

NORTHEAST MARYLAND WASTE DISPOSAL  
AUTHORITY

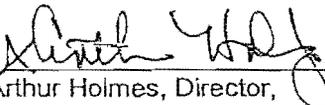
By:   
Timothy L. Firestine, Chief Administrative Officer

By:   
Robin B. Davidov  
Executive Director

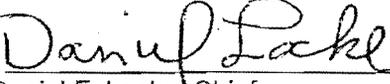
Date: 6/18/2007

Date: May 29, 2007

Approval Recommended:

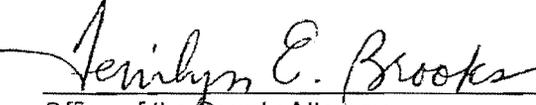
By:   
Arthur Holmes, Director,  
Department of Public  
Works and Transportation

Date: 12 JUN '07

By:   
Daniel E. Locke, Chief  
Division of Solid Waste Services

Date: May 22, 2007

Approved as to form and legality:

  
Office of the County Attorney

Date: 5/21/07

ATTACHMENT A  
GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

**1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION**

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first-tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first-tier subcontracts.

**2. AMERICANS WITH DISABILITIES ACT**

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, as amended, currently found at 42 U.S.C., § 12101, et seq.

**3. APPLICABLE LAWS**

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

Furthermore, by signing, or performing work under, a contract for services or arising from a grant award to participate in a County-funded program, contractor expressly certifies and agrees that it will not expend County funds to assist, promote, deter, or otherwise influence union activity or organizing, and that it will comply with the requirements of Montgomery County Code, Section 11B-33B.

**4. ASSIGNMENTS AND SUBCONTRACTS**

The contractor may not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Office of Procurement. Unless performance is separately and expressly waived in writing by THE DIRECTOR, OFFICE OF PROCUREMENT, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Director, Office of Procurement.

**5. CHANGES**

The Director, Office of Procurement, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the Director, Office of Procurement, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

**6. CONTRACT ADMINISTRATION**

A. The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Office of Procurement, in writing and is authorized to:

- (1) serve as liaison between the County and Contractor;
- (2) give direction to the Contractor to ensure satisfactory and complete performance;
- (3) monitor and inspect the Contractor's performance to ensure acceptable timeliness and quality;
- (4) serve as records custodian for this contract, including wage requirements;
- (5) accept or reject the Contractor's performance;
- (6) furnish timely written notice of the contractor's performance failures to the Director, Office of Procurement and to the County Attorney, as appropriate;
- (7) prepare required reports;
- (8) approve or reject invoices for payment;
- (9) recommend contract modifications or terminations to the Director, Office of Procurement;
- (10) issue notices to proceed; and
- (11) monitor and verify compliance with any MFD Performance Plan.

B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

**7. COST & PRICING DATA**

Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Office of Procurement, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

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#### 8. DISPUTES

Any dispute by Contractor arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Office of Procurement, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Office of Procurement, for the purpose of dispute resolution. The Department Head, or his/her designee, must forward to the Director, Office of Procurement, a copy of any written resolution of a dispute. The Department Head may, with the contractor's consent, delegate this responsibility to another person (other than the contract administrator). A contractor must notify, in writing, the contract administrator of a claim, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Office of Procurement. The contractor waives any dispute or claim not made in writing and received by the Director, Office of Procurement, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Office of Procurement, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the Contractor agrees to be made a party to any related dispute involving another contractor.

#### 9. DOCUMENTS, MATERIALS AND DATA

All documents, materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The Contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

#### 10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

#### 11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

#### 12. ETHICS REQUIREMENTS/ POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b)
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with County Code Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 .

In addition, the contractor must comply with the political contribution reporting requirements currently codified under Title 14 of Article 33 of the Annotated Code of Maryland.

#### 13. GUARANTEE

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.
- E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable unless specifically requested by the County in the Specifications.

#### 14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material



Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

**15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE**

In addition to the provisions stated above in Section 3. "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

**16. IMMIGRATION REFORM AND CONTROL ACT**

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

**17. INCONSISTENT PROVISIONS**

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

**18. INDEMNIFICATION**

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

**19. INDEPENDENT CONTRACTOR**

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County.

**20. INSPECTIONS**

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

**21. INSURANCE**

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(ies) licensed or qualified to do business in the State of Maryland, and acceptable to the County's Division of Risk Management. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Office of Procurement, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Forty-five days written notice to the County of cancellation or material change in any of the policies is required. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Office of Procurement, may waive the requirements of this section, in whole or in part.

**22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT**

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

**23. NON-CONVICTION OF BRIBERY**

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

**24. NON-DISCRIMINATION IN EMPLOYMENT**

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

TABLE A. - INSURANCE REQUIREMENTS  
 (See Paragraph #21 Under the General Conditions of Contract Between County and Contractor)

	<u>CONTRACT DOLLAR VALUES (IN \$1,000's)</u>			
	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Workers Compensation (for contractors with employees)				
Bodily Injury by Accident (each)	100	100	100	See Attachment
Disease (policy limits)	500	500	500	See Attachment
Disease (each employee)	100	100	100	
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attachment
Minimum Automobile Liability (including owned, hired and non-owned automobiles)				
Bodily Injury each person	100	250	500	See Attachment
each occurrence	300	500	1,000	
Property Damage each occurrence	300	300	300	
Professional Liability* for errors, omissions and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000	250	500	1,000	See Attachment

Certificate Holder  
 Montgomery County Maryland (Contract #)  
 Office of Procurement  
 Rockville Center  
 255 Rockville Pike, Suite 180  
 Rockville, Maryland 20850-4166

\*Professional services contracts only

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TABLE B. - INSURANCE REQUIREMENTS  
(See Paragraph #21 Under the General Conditions of Contract Between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attachment

Certificate Holder

Montgomery County Maryland (Contract # )  
Office of Procurement  
Rockville Center  
255 Rockville Pike, Suite 180  
Rockville, Maryland 20850-4166

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25. PAYMENTS

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Procurement prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

26. PERSONAL PROPERTY

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

27. TERMINATION FOR DEFAULT

The Director, Office of Procurement, may terminate the contract in whole or in part, and from time to time, whenever the Director, Office of Procurement, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Office of Procurement, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

28. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

29. TIME

Time is of the essence.

30. WORK UNDER THE CONTRACT

Work may not commence under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

THIS FORM MAY NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY. PMMD-45. REVISED 01/06/05

Attachment B  
Addendum to General Conditions of Contract Between County & Contractor

This attachment modifies, as set forth below, the General Conditions of Contract between County and Contractor ("General Conditions") to the Intergovernmental Agreement, dated as of \_\_\_\_\_, 2007 (the "Agreement"), between Montgomery County, Maryland and the Northeast Maryland Waste Disposal Authority (the "Authority").

1. References in the General Conditions to "contract" will be deemed to be a reference to the Agreement.
2. References in the General Conditions to "contractor" will be deemed to be a reference to the Authority.
3. References in the General Conditions to the "subcontracts" will be deemed to be a reference to contracts that the Authority enters into in connection with Agreement.
4. In Section 3 of the General Conditions, the second and third sentences will be deleted.
5. In Section 3 of the General Conditions, the phrase "without additional cost to the County" will be deleted.
6. In Section 7 of the General Conditions, the first and last sentences will be deleted.
7. In Section 11 of the General Conditions, the phrase "with the exception of express warranties given to induce the County to enter into the contract" will be deleted.
8. Section 13(A) of the General Conditions is amended and restated as follows:

"Contractor guarantees for one (1) year from acceptance all services provided to the County under the contract. The contractor must correct any and all defects in such services that may appear during the guarantee period. All warranties that the Authority obtains on materials, equipment, goods and products provided to the County under the contract will be passed through to the County. Unless otherwise provided for in a Task Order, the County will be responsible for enforcing such warranties."

9. Section 18 of the General Conditions is amended by adding the following as new paragraphs after the last sentence thereof:

"The County is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the County's negligence or failure to perform any contractual obligations. The County must indemnify and save the Authority, and its members, officers,

employees and agents harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the County's negligence or failure to perform any of its contractual obligations. If requested by the Authority, the County must defend the indemnified parties in any action or suit brought against such parties arising out of the County's negligence, errors, acts or omissions under this contract. The acts of any agent, other contractor or employee of the County are deemed to be the acts of the County.

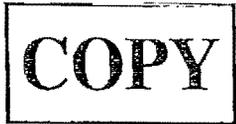
Any obligation or liability of a party hereto arising from this Agreement is limited by and contingent upon the appropriation and availability of funds, as well as the types of liability, damage caps, and notice requirements in the Maryland Local Government Tort Claims Act. Any indemnification by a party hereto is not intended to create rights in any third parties."

10. In Section 21 of the General Conditions, the first three sentences will be amended and restated as follows:

"Throughout the term of the contract, the contractor will maintain at its own cost and expense insurance coverage that meets the limits specified in the attached Schedule 1, with one or more insurance company(ies) licensed or qualified to do business in the State of Maryland. Contractor must keep such insurance coverages in full force and effect during the term of this contract, including all extensions."
11. In Section 25 of the General Conditions, the second sentence will be deleted.
12. In Section 27 of the General Conditions, the fourth sentence of the second paragraph will be deleted.
13. In section 28 of the General Conditions, the phrase "up to the date of termination" in the third sentence will be replaced with "as a result of such termination."



May 21, 2009



The Honorable Isiah Leggett  
Montgomery County Executive  
Executive Office Building  
101 Monroe Street  
Rockville, Maryland 20850

*(Sent Via US Postal Service Certified Mail #7006-0100-0000-2193-5062 w/Return Receipt)*

Ms. Linda M. Lauer  
Clerk of the Montgomery County Council  
100 Maryland Avenue, 5<sup>th</sup> Floor  
Rockville, Maryland 20850

*(Sent Via US Postal Service Certified Mail #7006-0100-0000-2193-5079 w/Return Receipt)*

Re: Notice regarding the Amendment of the Intergovernmental Agreement to be entered into between Montgomery County, Maryland (the "County") and the Northeast Maryland Waste Disposal Authority (the "Authority").

Dear County Executive Leggett and Ms. Lauer:

In response to a request by County staff, the Authority hereby notifies the County, in accordance with Section 48-44 of the Montgomery County Code, of the Authority's intention to enter into an amendment of the above referenced Intergovernmental Agreement (the "IGA").

Under the IGA, the Authority provides certain technical, engineering, operations, procurement and marketing services in connection with the County's solid waste management system and related facilities and County programs related to source reduction, recycling and solid waste.

We have enjoyed the productive working relationship with the County on solid waste matters and look forward to continuing to work with the County under the IGA. If I can answer any questions or be of assistance regarding this matter, please contact me.

Sincerely,

Robin B. Davidov  
Executive Director

MCG100080LU.DOC

Executive Office, 101 101 S. Charles Street • Baltimore, MD 21201-2705 • (410) 334-2730 • Fax (410) 334-2721  
Website: [www.nmda.org](http://www.nmda.org) • Email: [info@nmda.org](mailto:info@nmda.org) • Business-to-Business Recycling Website: [www.mnrcycle.org](http://www.mnrcycle.org)

Cooperating in Waste Management Through Recycling, Reuse, Recovery and Landfill

MEMBERS: Ronald E. Bowen, Anne Arundel County / David E. Soren, Baltimore City / Edward C. Adams, Baltimore County  
J. Michael Evans, Carroll County / Mitchell G. Marsden, Frederick County / Robert B. Cropper, Harford County / James M. Hays, Howard County  
Daniel F. Locke, Montgomery County / James M. Parkins, Maryland Environmental Service / Robin B. Davidov, Executive Director

§ 3-920. Notice of intention to undertake project; adverse finding by subdivision.

**COPY**

Prior to the acquisition, construction, leasing or installation of a project or the material extension of an existing project, the Authority shall deliver or mail by certified mail a notice of its intention to undertake such project or extension of a project to the chief executive officer of the county in which such project is or is to be located and to the secretary or clerk of the board of county commissioners or the legislative body of such county (as the case may be). The Authority shall not acquire, construct, lease, or install a project or materially extend any existing project if the board of county commissioners, the city council, or the county council (as the case may be) of the county in which such project is or is to be located advises the Authority, within 120 days following the date of the notice required in this section, that it has found that, after a public hearing which has been advertised in a newspaper of general circulation in the affected county at least 14 days prior to such hearing and after considering the recommendations of the chief executive officer of the county and such other facts as it deemed relevant and material, such acquisition, construction, leasing, installation, or extension would be contrary to the best interests of the residents of such county because it would be contrary to the health, safety and welfare of the citizens of such county by reason of (i) the impact of such project on the environment, or (ii) a conflict of such project with the master plan of the county, or (iii) such other facts concerning such project or effects of such project as such legislative body shall find would have an adverse effect on such health, safety and welfare.

[1980, ch. 871.]