

Bill No. 57-10

Exhibit 2

Contract # 11-II-GL-2

Control # C0421

LANDFILL GAS TO ELECTRICITY PROJECT SERVICES AGREEMENT

Between

ANNE ARUNDEL COUNTY COUNCIL, MARYLAND

and

NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY

Dated

_____, 2010

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Exhibit A – Map of Millersville Landfill and Resource Recovery Facility

Exhibit B – Construction, Operation and Maintenance Agreement between Northeast Maryland Waste Disposal Authority and LES Operations Services, LLC

LANDFILL GAS TO ELECTRICITY PROJECT SERVICES AGREEMENT

THIS LANDFILL GAS PROJECT SERVICES AGREEMENT is entered into as of _____, 2010 (the “Effective Date”), between Anne Arundel County, Maryland, a body politic and corporate of the State of Maryland (the “County”), and the Northeast Maryland Waste Disposal Authority, a body politic and corporate organized and existing under the laws of the State of Maryland (the “Authority” and, together with the “County,” each a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, the County owns the Millersville Landfill and Resource Recovery Facility located in Anne Arundel County, Maryland (the “MLFRRF”);

WHEREAS, the County has requested that the Authority administer the design, engineering, construction, start-up, testing, operation and maintenance of a landfill gas to electricity generating project at the MLFRRF, as described in Exhibits A and B to this Agreement (the “Project”) (as such term is defined hereinafter);

WHEREAS, the Authority issued a request for proposals to various vendors seeking proposals and bids for the construction, operation and maintenance of the Project;

WHEREAS, after an evaluation of vendor proposals, the Authority (in consultation with the County) selected LES Operations Services, LLC (the “Contractor”) as the successful proposer;

WHEREAS, the Authority and Contractor shall enter into a Construction, Operation and Maintenance Agreement (the “Construction and O&M Agreement”), pursuant to which Contractor shall design, engineer, construct, start-up, test, operate and maintain the Project;

WHEREAS, the Authority shall oversee the design, engineering, construction, start-up, testing, operation and maintenance of the Project in accordance with this Agreement;

WHEREAS, the Authority shall own the Project and sell the electricity, Renewable Energy Credits, Emissions Reduction Credits, and any other Environmental Attributes generated by the Project; and

WHEREAS, any revenues received by the Authority from the sale of electricity, Renewable Energy Credits, Emissions Reduction Credits and any other Environmental Attributes generated by the Project will accrue to the County through the Service Fee Invoicing, as described in this Agreement; and

WHEREAS, the County shall pay the Authority for costs incurred by the Authority in performing its obligations under this Agreement and the Construction and O&M Agreement with respect to the Project, as further described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

(A) Capitalized terms used in this Agreement have the meanings set forth in this Article I, unless a different meaning clearly appears from the context.

(B) As used in this Agreement, the following terms shall have the meanings set forth below:

“Administrative Costs” has the meaning given in Section 4.2(D).

“Agreement” means this Landfill Gas to Electricity Project Services Agreement, as may be amended, modified or supplemented from time to time.

“Applicable Laws” means all federal, state and local constitutions, charters, acts, statutes, laws, ordinances, codes, rules, regulations, orders and Governmental Approvals, or other legislative or administrative action of any agency, department, authority, political subdivision or other instrumentality, or final decrees, judgments or orders of a court, in each case applicable to Contractor, the Authority, the Landfill, the Recovery System or the performance of any obligations under this Agreement or any Project Agreement.

“Authority” means Northeast Maryland Waste Disposal Authority, and its successors and permitted assigns.

“Authority Representative” means the Executive Director of the Authority, or any other person designated by the Executive Director as the Authority Representative hereunder.

“Billing Period” means a calendar month, except in the case of any partial month at the beginning of the operations period or the end of operations period of the Project.

“Billing Statement” has the meaning given in Section 4.3(a).

“Business Day” means a calendar day excluding Saturdays, Sundays and any other day that national banks located in the State of Maryland or the County offices are not open for business.

“Change In Work” means any modification, alteration, addition or deletion to the work to be completed by the Contractor pursuant to the Construction and O&M Agreement, agreed to in writing by the Contractor and the Authority.

“Construction and O&M Agreement” means the Construction, Operation and Maintenance Agreement to be entered into between the Authority and the Contractor; as such agreement may be amended, modified or supplemented from time to time.

“Construction Billing Period” means the period from Agreement award through Final Completion in accordance with the milestone payment schedule detailed in Exhibit B of this Agreement.

“Construction Period Fee” means the fixed construction price and interconnection costs as furthered detailed in Exhibit B of this Agreement, with the exclusion of any grant funds received by the Authority through the Grant Agreement with Anne Arundel Community Development Services.

“Contractor” means LES Operations Services, LLC, as created by Landfill Energy Systems, LLC and any successor or assign thereto.

“County” means Anne Arundel County, Maryland, and its successors and permitted assigns.

“County Representative” means the Director of the Division of Utilities and Solid Waste Management, or any other person designated by the County Representative hereunder.

“Effective Date” has the meaning given in the first paragraph of this Agreement.

“Emission Reduction Credits” means any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs); and (iii) any reporting rights of such avoided emissions, but specifically excluding any and all state and federal production tax credits, investment tax credits and other tax credits which are or will be generated by the Project

“Energy” means electrical energy generated by the Project.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, certificates, attributes and allowances, howsoever entitled and whether currently existing or arising in the future, which are attributable to the Project, the generation of Energy by the Project and/or the Project’s displacement of conventional electric energy generation, including, but not limited to, Renewable Energy Credits, and Emission Reduction Credits.

“Governmental Approvals” means any and all permits, clearances, licenses, authorizations, consents, filings, exemptions or approvals from or required by any Government

Authority that are necessary for the performance of this Agreement and work, the Construction and O&M Agreement or any other Project Agreement.

“Governmental Authority” means any and all national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directories, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.

“Indemnified Parties” has the meaning given in Section 11.1.

“Indemnifying Parties” has the meaning given in Section 11.1.

“Landfill Gas” means any and all gases resulting from the decomposition of materials within the Landfill.

“License” has the meaning given in Section 3.1(A).

“Licensed Premises” has the meaning given in Section 3.1(A).

“Millersville Landfill and Resource Recovery Facility” (MLFRRF) The landfill owned by the County and located in Severn, Maryland, as shown in Exhibit A.

“Millersville Landfill Gas Collection and Recovery System” means the Millersville Landfill Flare System and the landfill gas collection, extraction, and recovery system located at Millersville Landfill and Resource Recovery Facility (MLRRF), which is owned by the County, as shown in Exhibit A, but does not include the Project.

“Millersville Landfill Gas to Electricity Facility” otherwise known as the “Project”, is the electricity generating facility as described in Exhibit B, which is owned by the Authority.

“Offtaker” means the purchaser of electricity or any environmental attribute or greenhouse gas credit generated from the Project.

“Party” or “Parties” has the meaning given in the preamble.

“Pass Through Costs” has the meaning given in Section 4.2(D).

“PJM” PJM Interconnection, L.L.C and any successor thereto.

“Power Purchase Agreement” Any agreement entered into by the Authority or the County that provides for the purchase and sale of electricity, renewable energy credits and any other renewable energy benefits or attributes generated by the Project.

“Project” The Millersville Landfill Gas to Electricity Facility, together with the expansions, upgrades and improvements thereto to be designed and constructed by the Contractor, as shown in **Exhibit B**, which Contractor shall operate and maintain.

“Project Agreement Counterparty” means an entity entering into a Project Agreement with the Authority.

“Project Agreement” means (i) the Construction and O&M Agreement, (ii) any Substitute Contractor Agreement, (iii) any Power Purchase Agreements, (iv) interconnection service agreements, (v) interconnection construction agreements, (vi) Renewable Energy Credit Sales Agreements, (vii) any other agreement that the Authority enters into with a third party that is related to the Project, and (viii) all amendments, modifications or supplements to such agreements.

“Project Permits” All Governmental Approvals necessary for Contractor to perform the Work in accordance with applicable Laws.

“Project Revenues” has the meaning given in Section 4.2(E).

“Renewable Energy Credit” means a renewable energy credit, offset or other benefit or benefits allocated, assigned or otherwise awarded or certified to Contractor, Authority or the County by any governmental authority, program administrator or other certification board or other person or entity generally recognized in the wind generation industry (including “Certificates,” as defined in the PJM Generation Attributes Tracking System (GATS) Operating Rules), that is attributable to 1 MW of Energy generated from the Project, but specifically excluding any and all state and federal production tax credits, investment tax credits and other tax credits which are or will be generated by the Project.

“Service Fee” The amount the County shall reimburse the Authority for payment to Contractor as full compensation for the operation, maintenance, repair and replacement of the Project, as may be adjusted in accordance with this Agreement.

“Substitute Contractor” has the meaning given in Section 2.1(F).

“Substitute Contractor Agreement” has the meaning given in Section 2.1(E).

“Term” has the meaning given in Section 8.1.

“Uncontrollable Circumstances” means any event or condition occurring on or after the Effective Date affecting the Project, the Landfill, the Recovery System, the Authority, the County or a Project Agreement Counterparty, that delays or prevents: (i) the performance of the County’s or the Authority’s obligations; or (ii) the acquisition, design, construction, equipping, start-up, testing, ownership, operation or maintenance of the Project. However, such event or condition must be 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. Without in any manner limiting the foregoing, the following events or conditions shall constitute Uncontrollable Circumstances if they meet the requirements of the preceding sentence:

(a) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Project), hurricane, flood, landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, war, blockage, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage;

(b) Governmental Approval, if it is not also the result of willful or negligent action or lack of reasonable diligence of the non-performing Party and the non-performing Party does not control the Governmental Authority that issued such Governmental Approval, provided that the diligent contest in good faith of any such Governmental Approval shall not constitute or be construed as a willful or negligent action or lack of reasonable diligence of such non-performing Party;

(c) the adoption, promulgation, issuance, material modification or change in administrative or judicial application after the date of this Agreement, of any federal, state, county or local law, regulation, rule, requirement, plan or ordinance; a law, regulation, rule, requirement, plan or ordinance is deemed to be duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, when it is in provisional, interim or final form and effective or to become effective without any further action by any Governmental Authority having jurisdiction;

(d) the failure to issue, termination, suspension, denial or failure of renewal of, or unreasonable delay in connection with the foregoing with respect to any permit, license, consent or approval necessary for the performance of the non-performing Party's obligations under this Agreement or the imposition of any new condition in or other change to such a permit, license, consent or approval, provided that the non-performing Party has given the other Party sufficient notice of the application for and proceedings relating to the permit, license, consent or approval to afford the other Party an opportunity to participate fully in those proceedings;

(e) the failure of the jurisdiction in which the Project is situated or the appropriate federal or state agencies or public utilities having operational jurisdiction in the area of location of the Project to provide and maintain and assure the maintenance of all utilities services (excluding sewerage and water lines) to the Project for operation of the Project; or

(f) the failure of a Project Agreement Counterparty to perform any of its obligations under the applicable Project Agreement.

SECTION 1.2. RULES OF INTERPRETATION.

(A) Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to the transactions contemplated by this Agreement and, except as expressly provided otherwise herein, nothing in this Agreement is intended to confer on any person other than the Parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

(B) Severability. If any clause, provision, subsection, Section or Article of this Agreement is ruled invalid by any court of jurisdiction, then the Parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, Section or Article which shall, to the greatest extent legally permissible, effect the intent of the Parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the Parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

(C) References. All references to designated “Articles,” “Sections,” and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Agreement.

(D) Captions. The table of contents and the headings or captions used in this Agreement are for convenience of reference only and do not define, limit or describe any of the provisions of this Agreement or the scope or intent hereof.

ARTICLE II

LANDFILL PROJECT

SECTION 2.1. CONSTRUCTION AND O&M AGREEMENT; SUBSTITUTE CONTRACTOR AGREEMENT.

The County and the Authority acknowledge and agree that:

- (A) The Contractor shall design, engineer, construct, start-up, test, operate and maintain the Millersville Landfill Gas to Electricity Facility (the “Project”). The Contractor shall design, engineer, construct, start-up, test, operate and maintain the expansions, upgrade, and improvements to the Project as mutually agreed by the Parties and as set forth in further detail in Exhibit B hereto.
- (B) The County shall own the Landfill and the Collection and Recovery System. The Authority will own the Project, subject to the County Purchase Option in Section 8.2. For so long as the Authority owns a Project, the Authority will retain all rights, title and interests to the electricity, Environmental Attributes, Renewable Energy Credits, other renewable energy benefits or attributes and any other credits or benefits (including Emission Reductions Credits and tax credits) attributable to or generated by such Project and all net revenues from the sale of such will be passed on to the County, as set forth and described in Section 4.2.

- (C) The Authority has entered into the Construction and O&M Agreement with the Contractor to obtain the services of the Contractor to design, engineer, procure materials and equipment, supply, construct, start-up, conduct performance tests, operate and maintain the Project.
- (D) The Authority will enter into one or more Power Purchase Agreements with entities (such entity will be referred to herein individually as an "Offtaker") for and/or take such other actions necessary to cause the purchase and sale of electricity, renewable energy credits and other renewable energy benefits or attributes generated by the Projects, provided that copies of each such Power Purchase Agreement shall be provided to the County Representative for his/her review and approval prior to the Authority executing such Power Purchase Agreement. The Authority shall use commercially reasonable efforts to negotiate provisions in each Power Purchase Agreement that adequately protect the interests of the County.
- (E) If the Construction and O&M Agreement with Contractor is terminated, the Authority may, with the prior approval of the County Representative: (1) procure an entity (other than the Contractor) to construct, operate and/or maintain all or any portion of the Projects or Recovery Systems (such entity will be referred to herein either individually or collectively as a "Substitute Contractor"); and (2) enter into such agreement with any Substitute Contractor as may be necessary or appropriate to the continued construction, operation and/or maintenance of all or any portion of the Project (such agreements will be referred to herein either individually or collectively as a "Substitute Contractor Agreement").

SECTION 2.2. LIMITATION OF AUTHORITY PAYMENT OBLIGATIONS.

The liability of the Authority for any monetary payments with respect to, or as a result of, this Agreement are not payable from the general funds of the Authority and the incurrence or nonperformance of such obligations or payments shall 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 for the Project and Project Revenues.

ARTICLE III**USE OF COUNTY PROPERTY****SECTION 3.1. GRANT OF LICENSE.**

(A) The County hereby grants the Authority, the Contractor, any Substitute Contractor and any Counterparty to an interconnection construction service agreement that requires access to the site in order to perform its duties under the applicable Project Agreement, the privilege, license and right ("License") to: (1) access and use the Landfill and the Recovery System (the "Licensed Premises") in accordance with the terms of this Agreement, including rights of ingress and egress as identified and designated by the County; and (2) extract and use the Landfill Gas for the generation of electricity, renewable energy credits, other renewable energy benefits and attributes by the Project. The Licensed Premises include the buildings, structures and other improvements located thereon and the real property owned or controlled by the County that is located adjacent to or in the proximity of the Landfill Gas Collection and Recovery System or the Project. The County shall provide an easement for a pole line connecting the Project to the physical point of interconnection to the electric grid to allow the generation of electricity by the Project.

(B) The Authority covenants and agrees that it will: (1) use the Licensed Premises only for the purposes described in this Agreement, the Construction and O&M Agreement and the other Project Agreements; (2) perform its obligations with respect to the Landfill and the Recovery System in accordance with Applicable Laws; and (3) not undertake any alteration, change or improvement to the Landfill or the Recovery System not set forth in this Agreement, the Construction and O&M Agreement and the other Project Agreements, without the prior approval of the County Representative.

(C) Upon the termination or expiration of any Project Agreement, the License granted to the Project Agreement Counterparty for such Project Agreement will terminate, except to the extent that the grant of the License is necessary pursuant to the terms of such Project Agreement. Upon the termination or expiration of this Agreement, the License will automatically terminate, unless the Authority and the County mutually agree otherwise. Following any expiration or termination of this Agreement, where the County elects not to exercise the County Purchase Option, the License will continue to the extent necessary for the Authority, or its agents, to access, secure, maintain or remove the Project.

(D) If County decides not to exercise the Country Purchase Option, then the County will be responsible for removal and termination cost associated with Project. Authority may mitigate removal costs by attempting to sell equipment from the Project. The County and Authority may mutually agree to extend the license agreement to allow access in securing and/or removing the whole or portions of the Project.

SECTION 3.2. COUNTY COVENANT FOR BENEFIT OF AUTHORITY.

The County agrees and covenants that so long as this Agreement is in effect:

(A) Any use, alteration or modification of the Landfill Gas Collection and Recovery System or the MLFRRF, which would or would potentially affect the Project in any manner, shall be coordinated with the Authority and, unless otherwise mutually agreed by the Authority and the County, must not materially and adversely affect: (1) the Authority's ability to perform its obligations under this Agreement or any Project Agreement; or (2) any Project Agreement Counterparty's ability to perform its obligations under the applicable Project Agreement. Any use, alteration or modification of the Project that would or would potentially affect the Landfill Gas Collection and Recovery System or the MLRRF shall be mutually agreed by the Authority and the County, and shall not materially or adversely affect the operation of the Landfill Gas Collection and Recovery System or the MLRRF.

(B) The Authority is entitled to exercise its rights with respect to the License and the Licensed Premises, without undue interference or interruption and the County accordingly agrees: (1) not to take any action (or fail to take any action) which would adversely affect the Authority's ability to enjoy the rights and benefits conferred upon the Authority or any Project Agreement Counterparty, or to undertake its obligations in connection with the Project, the Landfill or the Recovery System; and (2) to cooperate with the Authority with respect to all matters affecting such enjoyment; provided, however, that this Section 3.2 shall not be construed to exempt the Authority from compliance with Applicable Laws or to preclude the County from enforcing Applicable Laws.

(C) The County shall provide the Authority with information regarding the Project, the Landfill Gas Collection and Recovery System, review and comment on documents or other materials and provide other reasonable assistance to the Authority, in each case, as required under the Construction and O&M Agreement or any other Project Agreement or as may be reasonably requested by the Authority from time-to-time, including, without limitation, providing information regarding electricity costs for the Project and for the Landfill Gas Collection and Recovery System.

(D) The Authority shall provide to the County information regarding the Project including, but not limited to design drawings, check out packages and permits. The Authority shall review and comment on documents or other materials, and shall provide reasonable assistance to the County, in each case, as required or requested by the County from time-to-time as related to the Project, including all financial information related to the Project and any Project Agreement.

ARTICLE IV

SERVICE FEE AND PAYMENTS

SECTION 4.1. CONSTRUCTION PAYMENTS.

(A) Construction Period Fee. The Authority will invoice the County for the Construction Period Fee once the Construction and O&M Agreement is in effect. The Construction Period Fee includes an estimated interconnection construction cost based on a feasibility study conducted by PJM. The Authority will invoice the County at least monthly, the Construction Billing Period, for fees due and payable under the Construction and O&M Agreement, other Project Agreements and for the Authority's Administrative Costs during the Construction Billing Period, as defined in subsection (B).

(B) "Administrative Costs during the Construction Billing Period" is an amount equal to all reasonable administrative costs of the Authority attributable to the administration and enforcement by the Authority of its obligations under this Service Agreement, including, but not limited to, the following: (A) accounting, legal, engineering and other professional fees, including the fees of any engineer required to be retained by the Authority pursuant to the Construction and O&M Agreement, any Project Agreements or this Service Agreement, (B) all Authority third-party out-of pocket costs including but not limited to fees associated with leasing the Project site, overnight mailing, copying of construction and design prints. The Administrative Costs during the Construction Billing Period shall be included as part of the Authority's budget and shall be subject to County review and approval prior to commitment or expenditure of funds. The Administrative Costs during the Construction Billing Period will not include, as long as the County remains a Member Jurisdiction of the Authority: (1) the salary or fringe benefits or other compensation paid to the Authority's employees or personnel; (2) the Authority's out of pocket costs for the travel of Authority staff to the County's facilities; or (3) the costs of operating the Authority's office, such as rent, phones, internet, photocopying and other general office and overhead costs.

SECTION 4.2 SERVICE FEE.

(A) Payment of Service Fee. In consideration for the Authority's obligations hereunder and under the Construction and O&M Agreement and the other Project Agreements, the County must pay the Authority or the Authority must pay the County, as applicable, the Service Fee in accordance with the terms of this Section 4.2. If the calculated amount of the Service Fee during any Billing Period is positive, then the County must pay such amount to the Authority. If the calculated amount of the Service Fee during any Billing Period is negative, then the Authority must pay the absolute value of such amount to the County.

(B) Calculation of Service Fee. The "Service Fee" will be determined in accordance with the following formula:

$$SF = PF + AC - PR$$

Where:

SF = Service Fee

PF = Project Fee

AC = Administrative Costs

PR = Project Revenues

Each component of the Service Fee must be computed in accordance with this Section 4.2 and may be adjusted from time to time as provided in this Agreement. Although calculated by components, the Agreement Service Fee is and must be considered to be a single fee.

(C) Project Fee. The "Project Fee" is an amount equal to the sum of any amounts required to be paid by the Authority to the Contractor under the Construction and O&M Agreement, including, but not limited to, the Contractor Service Fee (including any gross revenues from Power Purchase Agreements payable to the Contractor), any fees, any termination damages, any reimbursements or payments related to capital improvements to the Project, and other amounts payable thereunder; and amounts required to be paid to any other Project Agreement Counterparty by the Authority under a Project Agreement.

(D) Administrative Costs. "Administrative Costs" is an amount equal to all reasonable administrative costs of the Authority attributable to the administration and enforcement by the Authority of its obligations under this Service Agreement, including, but not limited to, the following: (A) accounting, legal, engineering and other professional fees, including the fees of any engineer required to be retained by the Authority pursuant to the Construction and O&M Agreement, any Project Agreements or this Service Agreement, (B) all Authority third-party out-of-pocket costs including but not limited to fees associated with leasing the Project site, overnight mailing, copying of construction and design prints. The Administrative Costs during the Construction Billing Period shall be included as part of the Authority's budget and shall be subject to County review and approval prior to commitment or expenditure of funds. The Administrative Costs will not include, as long as the County remains a Member Jurisdiction of the Authority: (1) the salary or fringe benefits or other compensation paid to the Authority's employees or personnel; (2) the Authority's out of pocket costs for the travel of Authority staff to the County's facilities; or (3) the costs of operating the Authority's office, such as rent, phones, internet, photocopying and other general office and overhead costs.

(E) Project Revenues. "Project Revenues" is an amount equal to the aggregate net revenues received by the Authority during the Billing Period from any Offtaker under a Power Purchase Agreement. Project Revenues will also include any net revenues received from the sale of Environmental Attributes or Emission Reduction Credits from the Project.

SECTION 4.3. BILLING OF THE SERVICE FEE.

(A) Billing Statements. For each Billing Period, the Authority will render a statement (a "Billing Statement") to the County within twenty-one (21) days of the date that the Authority receives the Contractor Invoice. The Billing Statement must set forth an itemization of the Service Fee due under this Service Agreement. The County must pay the Service Fee and any other amounts due to the Authority within fourteen (14) days of the date that the County receives the Billing Statement, provided that if the last day of such 14-day period is not a Business Day, payment must be made on the next succeeding Business Day. If the Service Fee reflected in a Billing Statement is a negative amount, then the Authority must pay the absolute value of such amount to the County within seven (7) days of the date that the County receives the Billing Statement, provided that if the last day of such 7-day period is not a Business Day, payment must be made on the next successive Business Day.

(B) Estimates and Adjustments. If an item in the Billing Statement is mutually agreed by the County Representative and the Authority Representative to be in error, the Billing Statement may be corrected prior to the payment due date for such Billing Statement. If an item is mutually agreed by the County Representative and the Authority Representative to be in error after such time, an adjustment shall be made on the Billing Statement for the Billing Period immediately after the item is accurately determined.

SECTION 4.4. PAYMENT OBLIGATIONS.

(A) Payment Irrespective of Operational Status. If the County owes to the Authority any amount under this Agreement, such amount shall be due and payable to the Authority, irrespective of whether the Project was operational during such Billing Period or Construction Billing Period.

(B) Parties' Obligation to Pay. The Parties' obligation to pay amounts due under this Agreement shall be as follows:

1. If the County owes to the Authority any amount of the Service Fee or Construction Period Fee during any Billing Period or Construction Billing Period or any other amount hereunder, the obligation of the County to pay such amount of the Service Fee is absolute and unconditional and is not to be subject to delay or diminution by reason of set-off, abatement, counterclaim, existence of a dispute or otherwise and the County shall take all such action as may be necessary to provide for the timely payment of such Service Fee or Construction Period Fee and all other amounts due hereunder. The County hereby acknowledges that the services to be provided by the Authority pursuant to this Agreement are of a valuable and unique nature to the County and that the Service Fee as calculated pursuant to Section 4.2 hereof, and all other amounts to be paid by the County to or for the account of the Authority constitutes fair consideration therefor. The liability and obligations of the County for all monetary payments under this Agreement are limited obligations of the County payable solely from amounts appropriated for such purpose.

2. If the Authority owes to the County any amount of the Service Fee during any Billing Period, the obligation of the County to pay such amount of the Service Fee is absolute and unconditional and is not to be subject to delay or diminution by reason of set-off,

abatement, counterclaim, existence of a dispute or otherwise and the Authority shall take all such action as may be necessary to provide for the timely payment of such Service Fee and all other amounts due hereunder. Notwithstanding the foregoing, the liability and obligations of the Authority for all monetary payments under this Agreement are limited obligations of the Authority payable solely from amounts received from the Contractor pursuant to the Construction and O&M Agreement and the other Project Agreements, as reduced by the Project Fees and the Administrative Cost Payments, each of which may be retained by the Authority.

(C) Disputes. If the County disputes any amount billed by the Authority in any Billing Statement, the County nonetheless pay the entire undisputed amount, if any, and shall provide the Authority with written 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. Either Party may pursue resolution of the dispute pursuant to Article X.

ARTICLE V

UNCONTROLLABLE CIRCUMSTANCES

SECTION 5.1. UNCONTROLLABLE CIRCUMSTANCES.

(A) General. Each Party shall be excused for its failure to perform in accordance with this Agreement any obligation required to be performed by it hereunder to the extent that such failure results from an Uncontrollable Circumstance, provided, that in no event shall any Uncontrollable Circumstance excuse any Party from performing any obligation to make any payment hereunder in accordance with the terms hereof. Any date by which an obligation under this Agreement shall be performed shall be extended to a date reasonably necessary (as determined by the mutual agreement of the Parties hereto) to allow for the delay in performance caused by the Uncontrollable Circumstance. Each Party shall seek diligently and in good faith to overcome or remove such Uncontrollable Circumstance.

(B) Notice. Promptly after becoming aware of an Uncontrollable Circumstance, the Authority or the County, as the case may be, shall give the County Representative or the Authority Representative, respectively, notice of the Uncontrollable Circumstance, its cause (to the extent known) and expected duration.

ARTICLE VI

PROJECT AGREEMENTS; INSPECTIONS

SECTION 6.1. PROJECT AGREEMENTS.

- (A) Approval of County Representative Required Prior to Amendment of Construction and O&M Agreement or Execution of Substitute Contractor Agreement. The Authority shall not execute an amendment to the Construction and O&M Agreement (excluding a Change in Work form) or execute a Substitute Contractor Agreement, without the prior approval of the County Representative, which approval shall not be unreasonably withheld, delayed or conditioned. The Authority shall use reasonable efforts to include a provision in any Substitute Contractor Agreement which states that the County is a third party beneficiary of such Substitute Contractor Agreement and to include indemnification provisions in favor of the County.
- (B) The Authority will enter into one or more Power Purchase Agreements with an entity (such entity will be referred to herein individually as an "Offtaker") for and/or take such other actions necessary to cause the purchase and sale of electricity, Renewable Energy Credits and other renewable energy benefits or Environmental Attributes generated by the Projects, provided that copies of each such Power Purchase Agreement shall be provided to the County Representative for his/her review and approval prior to the Authority executing such Power Purchase Agreement. The Authority shall use commercially reasonable efforts to negotiate provisions in each Power Purchase Agreement that adequately protect the interests of the County.
- (C) The Authority will not be in default of its obligations under this Agreement for failure of any Project Agreement Counterparty to perform its obligations or to take any action under the applicable Project Agreement if reasonable efforts were used.
- (D) Performance by Authority. The Authority shall diligently and in a timely manner perform all of its obligations under the Project Agreements.
- (E) Enforcement by Authority. The Authority shall diligently enforce and administer the Project Agreements.
- (F) Dispute Resolution Notices. In the event that any party with which the Authority shall have entered into the Construction and O&M Agreement or a Substitute Contractor Agreement asserts any dispute pursuant to such agreement, the Authority shall promptly provide the County with notice thereof.

SECTION 6.2. AUTHORITY RIGHT TO TAKE ACTIONS TO AVOID DEFAULT.

Notwithstanding anything herein to the contrary, the Authority may, without the prior written consent of the County or the County Representative, take any action (or refrain from taking any action) that is necessary to perform its obligations under a Project Agreement or

otherwise to avoid any default (or to remedy any condition, which with the passage of time or giving of notice would constitute a default) under a Project Agreement.

SECTION 6.3. TERMINATION OF CONSTRUCTION AND O&M AGREEMENT AND SUBSTITUTE CONTRACTOR AGREEMENT.

(A) County Right to Require Authority to Terminate Construction and O&M Agreement and Substitute Contractor Agreement for Convenience. The County may direct the Authority to exercise its rights under the Construction and O&M Agreement or a Substitute Contractor Agreement to terminate the Construction and O&M Agreement or Substitute Contractor Agreement for convenience pursuant to the applicable provisions thereof, in either case, by providing the Authority with notice thereof and providing payment of amounts payable in connection with such termination pursuant to the Construction and O&M Agreement or such Substitute Contractor Agreement, as the case may be. Upon such termination of the Construction and O&M Agreement or any Substitute Contractor Agreement, the County must advise the Authority as to whether the County intends to continue operations of the Projects or discontinue operations of the Projects. The Authority and the County will have the respective rights and obligations set forth in paragraphs (B) and (C) of this Section 6.3 in connection with any such termination.

(B) Continuance of Operations at Projects. In the event the County requires the Authority to terminate the Construction and O&M Agreement or any Substitute Contractor Agreement for convenience pursuant to the applicable provisions thereof and intends to continue operations of the Projects, unless the County and the Authority mutually agree otherwise, the County must either: (1) direct the Authority to enter into a Substitute Contractor Agreement; or (2) exercise the County Purchase Option pursuant to Section 8.2.

(C) Abandonment of Project. In the event the County requires the Authority to terminate the Construction and O&M Agreement or any Substitute Contractor Agreement for convenience pursuant to the applicable provisions thereof and intends to discontinue operations of the Projects, unless the County and the Authority mutually agree otherwise, the County must exercise its rights to terminate this Agreement for convenience pursuant to Section 7.4(B).

SECTION 6.4. COUNTY RIGHTS OF INSPECTION.

(A) The County has the right to enter and inspect the Project and the books and records of the Contractor related to the Project, at any time; provided, however, that such entry and inspection shall be consistent with the provisions of the Construction and O&M Agreement and any other Project Agreements. The County shall use reasonable efforts to provide notice to the Authority prior to exercising its rights pursuant to this Section 6.3.

(B) The County may inspect the books and records of the Authority related to this Agreement or any Project Agreement during normal business hours and upon reasonable prior notice.

ARTICLE VII**BREACH, ENFORCEMENT AND TERMINATION****SECTION 7.1. BREACH.**

(A) The Parties agree that in the event either Party breaches any obligation under this Agreement or any representation made by either Party hereunder is untrue in any material respect, the other Party shall have the right to take any action at law or in equity (including actions for injunctive relief, mandamus and specific performance) it may have to enforce the payment of any amounts due or the performance of any obligations to be performed hereunder. Neither Party shall have the right to terminate this Agreement except as provided in Section 7.2, and with respect to the County, Section 7.4.

(B) No Special, Consequential or Indirect Damages. In no event, whether based upon contract, tort or otherwise arising out of the performance or non-performance by the Authority or the County of any its respective obligations under this Agreement, shall the Authority or the County be liable or obligated in any manner to pay special, consequential or indirect damages, or any other amount, except as specifically provided in this Agreement.

SECTION 7.2. TERMINATION FOR DEFAULT.

(A) By Authority. The Authority shall have the right to terminate this Agreement for cause if one or more of the following default events has occurred:

1. if a default by the County is made in the payment of all or any portion of the Construction Period Fee or Service Fee or any other amount due hereunder and such default continues for a period of ten (10) Business Days after written notice thereof;

2. if a default is made by the County in the performance or observance of any covenant, agreement or condition on its part provided in this Agreement (other than a default described in clause (1) above), and such default continues for a period of sixty (60) days after written notice thereof is given to the County by the Authority, provided that if such default is capable of being remedied but cannot be remedied within such sixty (60) day period it shall not constitute a basis for termination hereunder if corrective action is instituted by the County within such period and diligently pursued until the default is remedied; or

3. if the County files a petition or otherwise seeks relief under any federal or state bankruptcy or similar law.

4. if an Event of Default under the Intergovernmental Agreement (as such term is defined therein) by the County occurs and remains uncured after the expiration of any applicable cure periods.

(B) Accounting and Examination of Records After Default. The County covenants that if a default event has occurred and is not remedied, the books of records and accounts of the County related to this Agreement shall at all times be subject to the inspection and use of the Authority and of its agents and attorneys during normal business hours and upon reasonable prior notice.

(C) Proceedings Brought by Authority. If a default event in Section 7.2(A) occurs and has not been remedied, then and in every such case, the Authority may proceed to protect and enforce its rights under this Agreement by pursuing all of its available remedies at law or in equity, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against the County as if the County were the trustee of an express trust or in the enforcement of any other legal or equitable right as the Authority deems most effectual to enforce any of its rights or to perform any of its duties under this Agreement.

(D) Remedies Not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the Authority is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or provided at law or in equity or by statute.

(E) By County. The County shall have the right to terminate this Agreement for cause if one or more of the following events has occurred:

1. if a default by the Authority is made in the payment of all or any portion of the Service Fee or any other amount due hereunder and such default continues for a period of ten (10) Business Days after written notice thereof;

2. if a default is made by the Authority in the performance or observance of any covenant, agreement or condition on its part provided in this Agreement (other than a default described in clause (1) above), and such default continues for a period of sixty (60) days after written notice is given to the Authority by the County, provided that if such default is capable of being remedied but cannot be remedied within such sixty (60) day period it shall not constitute a basis for termination hereunder if corrective action is instituted by the Authority within such period and diligently pursued until the default is remedied; or

3. if the Authority files a petition or otherwise seeks relief under any federal or state bankruptcy or other similar law.

(F) Accounting and Examination of Records After Default. The Authority covenants that if a default event has occurred and is not remedied, the books of records and accounts of the Authority and all other records relating to this Agreement shall at all times be subject to the inspection and use of the County and of its agents and attorneys during normal business hours and upon reasonable prior notice.

(G) Proceedings Brought by County. If a default event in Section 7.2(E) occurs and has not been remedied, then and in every such case, the County may proceed to protect and

enforce its rights under this Agreement by all of its available remedies at law or in equity, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against the Authority as if the Authority were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the County deems most effectual to enforce any of its rights or to perform any of its duties under this Agreement.

(H) Remedies Not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the County is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or provided at law or in equity or by statute.

SECTION 7.3. WAIVER.

Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any covenant or agreement contained in this Agreement is breached by any Party and thereafter waived by any other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

SECTION 7.4. TERMINATION.

(A) Upon the expiration or termination of this Agreement in accordance with its terms: (1) the County must either (a) enter into valid and binding agreements whereby the County irrevocably assumes all of the rights, duties, liabilities and obligations of the Authority under the Project Agreements, or (b) take any and all steps to assist the Authority in terminating the Project Agreements, at the County's expense, and without any cost, liability or expense to the Authority; and (2) the County must pay to the Authority an amount equal to the sum of the following costs, provided the County has not previously paid, or made arrangements satisfactory to the Authority for the payment of, such costs that may occur:

1. All reasonable and necessary costs and liabilities incurred by the Authority and associated with settling and paying termination claims under the Project Agreements and other agreements entered into by the Authority and approved by the County with respect to the Project and the performance by the Authority of its obligations under this Agreement..
2. All reasonable and necessary costs incurred by the Authority for any accounting, clerical or other expenses reasonably necessary for the preparation of termination settlement documents and supporting data.
3. Any payments or other charges due and payable by the Authority under the Construction and O&M Agreement and any other Project Agreements that are incurred or payable as a result of the termination of this Agreement.

4. Any other costs or expenses incurred or to be incurred by the Authority as a result of the termination of this Agreement.
5. All reasonable and necessary storage, transportation, and other costs incurred by the Authority for the preservation, protection, or disposition of Project equipment, materials and facilities.
6. The Authority shall use any revenue received from the Project in order to offset the costs as listed above.

(B) County Termination for Convenience. Notwithstanding any other provision of this Agreement to the contrary, the County may terminate its obligations to the Authority under this Agreement for convenience at any time by: (1) giving the Authority at least thirty (30) days notice of such termination; (2) paying the termination costs described in Section 7.4(A); and (3) if the County elects to do so, exercising the County Purchase Option pursuant to Section 8.2.

SECTION 7.5. SURVIVAL OF CERTAIN RIGHTS AND OBLIGATIONS.

In order that the Parties may fully exercise their rights and perform their obligations under this Agreement, any provisions of this Agreement that are required to ensure such exercise or performance shall survive the termination or expiration of this Agreement. No termination of this Agreement limits or otherwise affects the rights and obligations of any Party that have accrued before the date of such termination.

ARTICLE VIII

TERM

SECTION 8.1. TERM.

This Agreement is in effect from the Effective Date and will continue in effect until: (A) ten (10) years from the beginning of operations of the Project as contemplated under the Construction and O&M Agreement; (B) this Agreement is terminated in accordance with the terms hereof; or (C) this Agreement is terminated by the mutual agreement of the County and the

Authority (the "Term"). This Agreement may be renewed for any period of time upon mutual agreement of the parties.

The County and the Authority may mutually agree to terminate this Agreement prior to the termination date. In this case, the County will comply with the provisions of either Section 8.2 or Section 8.3, as applicable.

SECTION 8.2. SALE OF THE PROJECT

(A) County Purchase Option. Upon the expiration or termination of this Agreement in accordance with the terms hereof, the County may purchase the Project from the Authority for the amount of One Dollar (\$1.00) (the "County Purchase Option").

(B) No Other Transfers Permitted. During the Term, the Authority must not sell, lease, sublease or otherwise transfer the Project or any portion of the Project to any entity, without the prior written approval of the County Representative.

(C) Requirements for County Exercise of Purchase Option. In the event that the County elects to purchase the Project pursuant to Section 8.2(A) above, the County must enter into valid and binding agreements, in form reasonably satisfactory to the County and the Authority, whereby simultaneously with such purchase: (1) the County irrevocably assumes all of the rights, duties, liabilities and obligations of the Authority under the Project Agreements; or (2) the Project Agreements are terminated, at the County's expense, and without any cost, liability or expense to the Authority.

SECTION 8.3 REMOVAL OF PROJECT

If County elects not to purchase the Project, then County will be responsible for removal and termination costs pursuant to Section 3.1 (C).

ARTICLE IX

REPRESENTATIONS AND WARRANTIES

SECTION 9.1. REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY.

The Authority hereby makes the following respective representations and warranties, as of the date of execution and delivery of this Agreement, to and for the benefit of the County:

(A) The Authority is a body politic and corporate validly existing under the Constitution and laws of the State of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(B) The Authority has duly authorized the execution and delivery of this Agreement and this Agreement 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.

(C) Neither the execution or delivery by the Authority of this Agreement, 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 Agreement conflicts with, violates or results in a breach of any Applicable Laws or any term or condition of any judgment or decree, or any agreement 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.

(D) 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 Agreement except those that have been duly obtained or made.

(E) There is no action, suit or proceeding, at law or in equity, before or by any Governmental Authority, pending or, to the best of the Authority's knowledge, threatened, against the Authority, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of its obligations hereunder or in connection with the other transactions contemplated hereby or which, in any way, would adversely affect the validity or enforceability of this Agreement or any agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.

SECTION 9.2. REPRESENTATIONS AND WARRANTIES OF THE COUNTY.

The County hereby makes the following representations and warranties to and for the benefit of the Authority:

(A) The County is a political subdivision of the State of Maryland duly organized and validly existing under the Constitution and laws of the State of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(B) The County has duly authorized the execution of this Agreement and this Agreement has been duly and validly executed and delivered by the County and constitutes a legal, valid and binding special obligation of the County, enforceable against the County in accordance with its terms.

(C) Neither the execution or delivery by the County of this Agreement, nor the performance by the County of its obligations in connection with the transactions contemplated hereby, or the fulfillment by the County of the terms or conditions of this Agreement conflicts with, violates or results in a breach of any Applicable Laws or any term or condition of any judgment or decree, or any agreement or instrument, to which the County is a party or by which the County or any of its properties or assets are bound, or constitutes a default thereunder.

(D) 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 Agreement by the County, except such as have been duly obtained or made.

(E) There is no action, suit or proceeding, at law or in equity, before or by any Governmental Authority, pending or, to the best of the County's knowledge, threatened, against the County, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the County 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 Agreement, or any other agreement or instrument entered into by the County in connection with the transactions contemplated hereby.

ARTICLE X

DISPUTE RESOLUTION

SECTION 10.1. DISPUTE RESOLUTION PROCEDURE. Either Party may initiate the process to resolve a dispute under this Agreement by giving written notice thereof to the other Party. Within ten (10) Business Days of the receipt of such notice, the Authority Representative and the County Representative shall meet and confer, in an attempt to resolve the dispute.

ARTICLE XI

INDEMNIFICATION

SECTION 11.1 INDEMNIFICATION. To the fullest extent permitted by applicable Law, each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its assigns, employees, agents, officers, directors, members, and their successors and assigns (the "Indemnified Parties") from and against all liability, suits, judgments and claims by third parties, damages, losses, and expenses (including, but not limited to, costs of response, removal, remediation, any other clean up costs, liabilities and/or penalties, court costs and reasonable attorneys' fees) which may arise as a result of any negligent act, error or omission or willful misconduct of the Indemnifying Party or its assigns, employees, agents, officers and directors, and their successors or assigns, provided that this indemnification shall not apply to any claim, damage, loss or expense to the extent caused by the action or inaction of any Indemnified Party.

ARTICLE XII

MISCELLANEOUS

SECTION 12.1. ASSIGNMENT.

Neither the Authority nor the County may assign this Agreement without the prior written consent of the other Party.

SECTION 12.2. NOTICES.

All notices, designations, consents, approvals, and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and may be facsimiled or delivered by hand or mailed by first class registered or certified mail, return receipt requested, postage prepaid, or dispatched by next day delivery service and in any case shall be addressed as follows:

If to the County: Anne Arundel County
(Insert Address)
Attention: _____

With a copy to: Anne Arundel County
Waste Management Services
2662 Riva Road, Suite 490
Annapolis, MD 21401
Attention: Deputy Director

Anne Arundel County
Department of Public Works

Anne Arundel County
County Attorney

If to the Authority: Northeast Maryland Waste Disposal Authority
Tower II – Suite 402
100 South Charles Street
Baltimore, MD 21201
Attention: Executive Director

Changes in the respective addresses to which such communication may be directed may be made from time to time by any Party upon notice to the other Party. Any such communications given in accordance with this Section 12.2 shall be deemed to have been given five (5) Business Days after the date of mailing and communications given by any other means shall be deemed to have been given when delivered.

SECTION 12.3. BINDING EFFECT.

This Agreement binds and inures to the benefit of the Parties to this Agreement and any successor or assignee acquiring an interest pursuant to Section 12.1 hereof.

SECTION 12.4. FURTHER ASSURANCES.

Each Party shall execute and deliver any instruments and perform any acts that may be necessary and reasonably requested by the other Party in order to give full effect to this Agreement.

SECTION 12.5. APPLICABLE LAW; VENUE.

The laws of the State of Maryland govern the validity, interpretation, construction and performance of this Agreement. The Authority and the County agree that any action, suit or proceeding arising out of this Agreement or any transaction contemplated hereby shall be brought in the Circuit Court of Anne Arundel County, Maryland, and that the Authority and the County shall not object to the institution and maintenance of any such action, suit or proceeding in such court based on improper venue, forum non conveniens, or any other ground relating to the appropriate forum for such action, suit or proceeding.

SECTION 12.6. COUNTERPARTS.

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

SECTION 12.7. AMENDMENT OR WAIVER.

Neither this Agreement nor any provision of this Agreement may be changed, modified, amended or waived except by a written instrument signed by the Party against whom enforcement of such change, modification, amendment or waiver is sought.

SECTION 12.8. RELATIONSHIP OF THE PARTIES.

In the performance of this Agreement, the parties, including their employees, agents, and subcontractors, shall act solely as independent contractors, and nothing contained in or implied by this Agreement shall be construed at any time to create any other relationship between the County and the Authority, including employer and employee, partnership, principal and agent, or joint venturer.

SECTION 12.9. NO PERSONAL LIABILITY.

The execution and delivery of this Agreement by the Authority and the County shall not impose any personal liability on the members, officers, employees or agents of the Authority or the County. No recourse shall be had by a Party to this Agreement for any claims based on this Agreement against any member, officer, employee or other agent of the other Party to this Agreement in his or her individual capacity, all such liability, if any, being expressly waived by the County and the Authority by the execution of this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Authority and the County have executed and sealed this Agreement as of the date first set forth above.

NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY

Attest:

By: _____
Name:
Title:

By: _____
Name: Robin B. Davidov
Title: Executive Director

ANNE ARUNDEL COUNTY,
MARYLAND

Attest:

By: _____
Name:
Title:

By: _____
Name:
Title:

Approved as to form and legal sufficiency

Office of Law

Date

EXHIBIT A

MAP OF MILLERSVILLE LANDFILL AND RESOURCE RECOVERY FACILITY

EXHIBIT B

**CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT BETWEEN
NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY AND LES
OPERATIONS SERVICES, LLC**