


AGENDA ITEM #2J  
June 23, 2009

**Introduction**

**MEMORANDUM**

June 22, 2009

TO: County Council

FROM:  Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Introduction:** Resolution to Approve Task Orders 2 and 3 to the Intergovernmental Agreement between Montgomery County Government and the Northeast Maryland Waste Disposal Authority: Solar Panels at the Transfer Station and Materials Recovery Facility

On June 19, 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 provide for a long-term contract with Sun Edison, LLC (via NMWDA) to install, operate, and maintain solar panels on the roofs of the Transfer Station and the Materials Recovery Facility (MRF). These solar panels will provide about 26 percent of the electricity needs at the Transfer Station and about 21 percent of the electricity needs at the MRF.

There is no upfront cost to the County. The County will pay pre-determined rates per kilowatt hour over the next 20 years. These rates are expected to save the County approximately \$450,000 in energy costs over that period. The County will also be credited with an equivalent number of renewable energy credits (RECs) associated with this clean energy.

The Transportation, Infrastructure, Energy & Environment Committee is scheduled to discuss this item on June 29. Council Action is tentatively scheduled for June 30, 2009.

**Attachments**

KML:f:\levchenko\solid waste\introduction iga solar panels amendment resolution 6 23 09.doc

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:** Solar Energy on Solid Waste Facilities

**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 NMWDA plans to assist the County by entering into a multi-year task order with a provider of clean renewable energy which will supply an alternate form of energy to the solid waste facilities through the use of solar photovoltaic systems used to provide solar energy.
5. It is the policy of the County to "look to increase the amount of clean and renewable energy purchased in a competitive marketplace." (County Energy Policy, Resolution 14-427, February 8, 2000)
6. By entering into this task order with the NMWDA, the County, through its Department of Environmental Protection, Division of Solid Waste Services, will promote the use of clean renewable energy.

**Action**

The County Council approves the following action: The County shall enter into a task order with the Northeast Waste Disposal Authority to promote the use of clean renewable energy.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

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OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

June 19, 2009

To: Phil Andrews, President  
Montgomery County Council

From: Isiah Leggett, County Executive 

Subject: Solar Panels on Montgomery County's Transfer Station and Recycling Center

I invite the County Council to join me in approving a "win-win" project that was initiated and negotiated by our Department of Environmental Protection (DEP). This project would place electricity producing solar panels on the roofs of our solid waste facilities and further two objectives: (1) utilizing clean renewable energy to power county facilities; and (2) reducing the expenses paid by Solid Waste ratepayers.

DEP, in partnership with the Northeast Maryland Waste Disposal Authority (NMWDA), developed a project to procure, design, install, operate and maintain solar panels on the roofs of our Solid Waste facilities with no capital outlay to the County. Based on a competitive procurement, managed by NMWDA, Sun Edison, LLC of Beltsville, MD was deemed the apparent winner from the four bids received. Negotiations with Sun Edison to retrofit the roofs of the Transfer Station and Recycling Center in Derwood are nearing completion. As required by Section 48-44 of the County Code, I am attaching a copy of the final draft task orders number 2 (Recycling Center) and number 3 (Transfer Station) between NWMDA and the County. After these task orders are executed by both parties, NWMDA will enter an agreement with Sun Edison.

The following is a summary of the main terms and requirements of Sun Edison's proposal:

1. To maintain proposed pricing (which is dependent on assumptions regarding tax credits and depreciation) the panels must be in service by December 31, 2009.
2. Notice to proceed must occur by July 1, 2009 to ensure an in-service date of December 31, 2009.
3. All electricity produced by the panels will be purchased by the County via NMWDA for the next 20 years at predetermined rates estimated to remain below market rates.

Phil Andrews  
June 19, 2009  
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4. Based on comparing Sun Edison's firm pricing to today's electricity rates (escalated at 3 percent annually) the solid waste rates payers stand to save over \$450,000 over the next 20 years.
5. The aggregate energy produced is expected to be 945,000 kilowatts per year.
6. There is no capital outlay cost to the County.
7. Percent of facility needs provided by project: Transfer Station 26 percent and Recycling Center 21 percent.

Attached to this memorandum please find the current Intergovernmental Agreement entered into with NMWDA on June 18, 2007, and the Amendment #1 to the Intergovernmental Agreement (IGA) amended June 16, 2009, which I present with these task orders number 2 and 3. Also attached for your review and approval is a resolution that will enable the execution of the Sun Edison task orders. For your convenience, I am also attaching NMWDA's Notice of Intent to undertake this project. We request timely approval by the Council in order to allow adequate time to complete the design and installation of the solar panel system prior to the expiration of the tax credits at the end of this calendar year. Please have your staff contact Dan Locke, Chief, DEP/Division of Solid Waste Services at 240-777-6402 with any questions. Thank you.

IL:dl

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: [Signature]  
Timothy L. Firestone  
Chief Administrative Officer

By: [Signature]  
Robin B. Davidov  
Executive Director

Date: 5/26/2009

Date: 5/26/09

Approval Recommended:

By: [Signature]  
Robert Hoyt, Director  
Department of Environmental Protection

Date: 5/22/09

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

Date: May 21, 2009

Approved as to form and legality:

[Signature]  
Office of the County Attorney

Date: May 21, 2009

Resolution No.: 16-996  
Introduced: June 9, 2009  
Adopted: June 16, 2009

**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

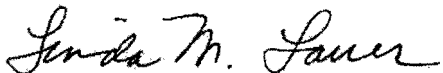
**Background**

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



# INTERGOVERNMENTAL AGREEMENT

## 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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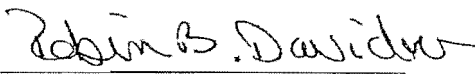


IN WITNESS WHEREOF, the parties herein, being duly authorized, have executed this Agreement as of the day and year first written above.

MONTGOMERY COUNTY, MARYLAND

NORTHEAST MARYLAND WASTE DISPOSAL  
AUTHORITY

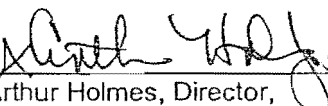
By:   
Timothy L. Firestine, Chief Administrative Officer

By:   
Robin B. Davidov  
Executive Director

Date: 6/18/2007

Date: May 29, 2007

Approval Recommended:

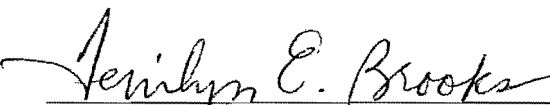
By:   
Arthur Holmes, Director,  
Department of Public  
Works and Transportation

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.

#### 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	
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.”

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:** Solar Energy on Solid Waste Facilities

**Background**

1. Pursuant to 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 (NWMDA) on June 18, 2007.
2. The NWMDA 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 Annotated Code of Maryland provides that the NMWDA's purpose includes, but is not limited to, assisting certain political subdivisions of the State of Maryland in providing facilities for the generation of electricity or other forms of energy obtained from fuels derived from or related to waste disposal facilities.
4. The NWMDA plans to assist the County by entering into a multi-year task order with a provider of clean renewable energy which will supply an alternate form of energy to the solid waste facilities through the use of solar photovoltaic systems used to provide solar energy.
5. It is the policy of the County to "look to increase the amount of clean and renewable energy purchased in a competitive marketplace." (County Energy Policy, Resolution 14-427, February 8, 2000.)
6. By entering into this task order with the NMWDA, the County, through its Department of Environmental Protection, Division of Solid Waste Services, will promote the use of clean renewable energy.

Resolution No.: \_\_\_\_\_

**Action**

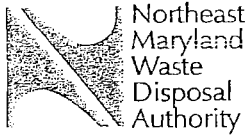
The County Council approves the following action:

The County shall enter into a task order with the Northeast Waste Disposal Authority to promote the use of clean renewable energy.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council



# NOTICE OF INTENT

May 15, 2009

*Sent Via Certified Mail: 7006 0100 0000 2193 5048*

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

*Sent Via Certified Mail: 7006 0100 0000 2193 5055*

Ms. Linda M. Lauer, Clerk  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Dear County Executive Leggett and Ms. Lauer:

The Division of Solid Waste Services (the "Division") of the Montgomery County (the "County") Department of Environmental Protection, in the interest of supporting the County's Renewable Energy Policy and saving money for the rate payers in the County, tasked the Northeast Maryland Waste Disposal Authority (the "Authority") with procuring roof mounted solar energy production systems to be installed on solid waste buildings in the County. The Authority has procured solar energy systems to be installed on the roofs of the County's Transfer Station (16101 Frederick Road, Derwood MD 20855), the County's Material Recycling Facility (16105 Frederick Road, Derwood, MD 20855) and the County's Yardwaste Composting Facility Pavilion (21210 Martinsburg Road Dickerson, MD 20842) (collectively the "Facilities"). The solar energy systems may consist of the addition of solar panels, conduit runs, invertors, meters and interconnections at the Facilities. The solar systems are designed to produce a significant amount of energy at each of the Facilities.

Prior to the acquisition, construction, leasing or installation of a project or the material extension of an existing project of the Authority, the Authority must notify the chief executive officer of the county in which such project is to be located and the secretary or clerk of the legislative body of such county of its intention to undertake such project or extension of a project. Md.Code Ann. Nat'l Res. Art §3-920.

This letter constitutes the notice of the intention of the Authority to undertake a project, or the extension of a project, described in Section 3-920, a copy of which is attached hereto for your information.

Tower II - Suite 402, 100 S. Charles Street • Baltimore, MD 21201-2705 • (410) 333-2730, Fax (410) 333-2721  
Website: [www.nmwda.org](http://www.nmwda.org) / E-mail: [authority@nmwda.org](mailto:authority@nmwda.org) / Business-to-Business Recycling Website: [www.mdrecycles.org](http://www.mdrecycles.org)

Comprehensive Waste Management Through Recycling, Reuse, Resource Recovery and Landfill

MEMBERS: Ronald E. Bowen, Anne Arundel County / David E. Scott, Baltimore City / Edward C. Adams, Baltimore County  
j. Michael Evans, Carroll County / Michael G. Marschner, Frederick County / Robert B. Cooper, Harford County / James M. Irvin, Howard County  
Daniel E. Locke, Montgomery County / James M. Harkins, Maryland Environmental Service / Robin B. Davidov, Executive Director

The Honorable Isiah Leggett  
Ms. Linda M. Lauer  
May 15, 2009  
Page 2

We have enjoyed a productive working relationship with you, the County Council and your respective staff in the past and look forward to working with you on this solar project. If you have any questions regarding this letter, please contact Dan Locke, Chief, Division of Solid Waste Services at 240.777.6402, or give me a call.

Very truly yours,



Robin B. Davidov  
Executive Director

Enclosure

MCG9991KLU.DOC

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

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.]

# FINAL DRAFT TASK ORDER

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## TASK ORDER NO. 2

TRANSFER STATION  
ROOFTOP SOLAR PROJECT

between

MONTGOMERY COUNTY, MARYLAND

and

NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY

Dated

\_\_\_\_\_, 2009

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**TASK ORDER NO. 2**  
**TRANSFER STATION**  
**ROOFTOP SOLAR PROJECT**

**TASK ORDER NO. 2 TRANSFER STATION ROOFTOP SOLAR PROJECT** is entered into as of \_\_\_\_\_, 2009 (the "Effective Date"), between Montgomery County, Maryland, a political subdivision 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").

**RECITALS**

WHEREAS, the County owns the Facility Building (as such term is defined hereinafter);

WHEREAS, the County desires for the Authority to cause a rooftop solar energy generating project at the Facility Building to be designed, engineered, constructed, started-up, tested, operated, maintained, and owned or controlled by a third party;

WHEREAS, the Authority issued a request for proposals to various vendors seeking proposals and bids for the licensing of necessary access to the Facility Building for the construction, operation and maintenance of a rooftop solar energy generating project at the Facility Building and the purchase of energy generated from such rooftop solar energy generating project;

WHEREAS, after an evaluation of vendor proposals, the Authority (in consultation with the County) selected Sun Edison LLC as the successful bidder;

WHEREAS, the Authority and Sun Edison LLC or a subsidiary of Sun Edison LLC (collectively or individually, as the context requires, "SunEdison") will enter into a Solar Power and Services Agreement (as defined herein) for the Facility Building, pursuant to which the Authority will grant to SunEdison rights to access and use the Facility Building in order to design, engineer, construct, start-up, test, operate, maintain and own or control a solar electric generating project at the Facility Building;

WHEREAS, pursuant to the Solar Power and Services Agreement, the Authority will cause the Operator (as defined herein) to accept from SunEdison the electricity generated by the Project and the Authority or the County, at the County's direction, will accept renewable energy credits in an amount equivalent to the number of credits generated by the Project;

WHEREAS, the Authority will oversee such Solar Power and Services Agreement in accordance with this Task Order; and

WHEREAS, the County will pay the Authority for the costs associated with (a) the preparation, negotiation, execution, and administration, on behalf of the Authority or the County,

of the Solar Power and Services Agreement, and (b) any costs incurred or paid by the Authority pursuant to the Solar Power and Services 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 Task Order have the meanings set forth in this Article I, unless a different meaning clearly appears from the context.

(B) As used in this Task Order, the following terms will have the meanings set forth below:

“Administrative Costs” has the meaning given in Section 4.1(D).

“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 the Project Agreement Counterparties, the Authority, the Facility Building or the performance of any obligations under this Task Order 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 each calendar month during the Term of this Task Order.

“Billing Statement” has the meaning given in Section 4.2(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.

“Construction Quality Assurance Agreement” means any agreement between the Authority and a contractor pursuant to which such contractor agrees to perform certain construction oversight or management services with respect to the Facility, as such agreement may be executed, amended, modified, supplemented, or replaced from time to time.

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

“County Representative” means the County’s Chief of the Division of Solid Waste Services, or any other person designated by the County’s Chief of the Division of Solid Waste Services as the County Representative hereunder.

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

“Facility Building” means the real property owned by the County and located at 16101 Frederick Road, Derwood, MD 20855, along with the buildings and improvements located thereon.

“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 Task Order and any other Project Agreement, and the construction and operation of the solar rooftop electric generating facilities.

“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.

“Intergovernmental Agreement” means that Intergovernmental Agreement between the County and the Authority dated January 17, 2007, as such agreement may be amended, modified or supplemented from time to time.

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

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

“Operator” means the entity operating the Facility Building pursuant to a contract or other agreement with the Authority, which entity currently receives the electricity billing statement for the Facility Building from the applicable utility and, once the Project is completed, will receive monthly billing statements under the Solar Power and Services Agreement for the Project, as the same may change from time to time.

“Project” means the rooftop solar energy generating project to be constructed and operated at the Facility Building.

“Project Agreement Counterparty” means an entity entering into a Project Agreement with the Authority or the County. For purposes of clarification, for so long as the Solar Power and Services Agreement remains in full force and effect, SunEdison is a Project Agreement Counterparty hereunder.

“Project Agreements” means the Solar Power and Services Agreement, any other agreement that the Authority enters into with a third party that is related to the Project or the Facility Building, and all amendments, modifications or supplements to such agreements.

“Project Fee” has the meaning given in Section 4.1(C).

“Solar Power and Services Agreement” means that agreement to be entered into by the Authority and SunEdison, pursuant to which SunEdison will sell, and the Authority will purchase, electricity generated by the Project and renewable energy credits in an amount equal to the number of credits generated by the Project, as such agreement may be amended, modified or supplemented from time to time.

“SunEdison” has the meaning set forth in the recitals.

“Task Order” means this Task Order No. 2 Transfer Station Rooftop Solar Project, as may be amended, modified or supplemented from time to time.

“Task Order Service Fee” has the meaning given in Section 4.1(B).

“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 Facility Building, 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 will 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 will 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 Task Order, 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 Task Order 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 utility 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 Task Order contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Task Order and, except as expressly provided otherwise herein, nothing in this Task Order 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 Task Order.

(B) Severability. If any clause, provision, subsection, Section or Article of this Task Order is ruled invalid by any court of jurisdiction, then the parties will: (1) promptly meet and negotiate a substitute for such clause, provision, Section or Article which must, 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 Task Order; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Task Order 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 will not affect any of the remaining provisions hereof, and this Task Order will 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 Task Order.

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

## ARTICLE II

### FACILITY BUILDING; PROJECT

SECTION 2.1 SOLAR POWER AND SERVICES AGREEMENT. The County and the Authority acknowledge and agree that:

(A) The County owns the Facility Building, and SunEdison or its financing parties will own the Project and all rights, title and interests to the electricity, renewable energy credits, other renewable energy benefits or attributes and any other credits or benefits (including emission credits and tax credits) attributable to or generated by the Project.

(B) The County will, as provided in Section 3.1, license to the Authority all rights necessary to access and use the Facility Building to the extent reasonably necessary for the design, construction, and operation and maintenance of the Project.

(C) The Authority will enter into the Solar Power and Services Agreement with SunEdison, pursuant to which SunEdison will design, construct, operate, maintain, and own or control (as long-term lessee) the Project, and will sell the electric energy generated by such Project to the Operator and will transfer, retire, or otherwise credit to the Authority or the County, at the County’s direction, renewable energy credits in an amount equal to the amount of credits produced by the Project. The Authority will use commercially reasonable efforts to negotiate provisions in the Solar Power and Services Agreement that adequately protect the interests of the County.

(D) The Authority will enter into a Project Agreement with the Operator pursuant to which the Operator agrees to make payments to SunEdison in accordance with the Solar Power and Services Agreement for energy used at the Facility Building.

(E) The Authority will not be in default of its obligations under this Task Order for failure of a Project Agreement Counterparty to perform its obligations or to take any action under the Solar Power and Services Agreement or any other Project Agreement.

(F) The Authority will manage the Project for the County for the term of the Solar Power and Services Agreement. The Authority’s obligations as project manager hereunder will include overall project coordination and oversight of the Construction Quality Assurance Agreement, if any, pursuant to the Intergovernmental Agreement.

SECTION 2.2. TASK ORDER UNDER INTERGOVERNMENTAL AGREEMENT.

This Task Order will be effective upon the execution of the Solar Power and Services Agreement and will constitute a Task Order under the Intergovernmental Agreement.

SECTION 2.3. LIMITATION OF AUTHORITY PAYMENT OBLIGATIONS.

The liability of the Authority for any monetary payments with respect to, or as a result of, this Task Order are not payable from the general funds of the Authority and the incurrence or nonperformance of such obligations or payments will not constitute or create a legal or equitable pledge of, or lien or encumbrance upon or claim against, any of the assets or property of the Authority or of its income, receipts or revenues, except for the Authority Fee received by the Authority.

**ARTICLE III**

**USE OF COUNTY PROPERTY**

SECTION 3.1. GRANT OF LICENSE.

(A) The County hereby grants the Authority and the Project Agreement Counterparties the privilege, license and right ("License") to: (1) access and use the Facility Building (the "Licensed Premises") in accordance with the terms of this Task Order, including rights of ingress and egress, in any way necessary to carry out the Project Agreement Counterparty's purposes under the applicable Project Agreement. The Licensed Premises include the buildings, structures and other improvements located thereon and the rooftops thereof and the real property owned or controlled by the County that is located adjacent to or in the proximity of the Facility Building.

(B) The Authority covenants and agrees that it will: (1) use the Licensed Premises only for the purposes described in this Task Order and the Solar Power and Services Agreement; (2) perform its obligations with respect to the Project, in accordance with Applicable Laws; and (3) not undertake any alteration, change or improvement to the Facility Building not set forth in this Task Order and the Solar Power and Services Agreement, without the prior approval of the County Representative.

(C) Upon the termination or expiration of any Project Agreement, the License granted to such Project Agreement Counterparty thereunder will terminate, except to the extent that the grant of the License is necessary pursuant to the terms of such Project Agreement. For purposes of clarification, termination of a Project Agreement will not cause the termination of rights of access to or use of the Facility Building arising out of a different agreement or arrangement which has not been cancelled. Upon the termination or expiration of this Task Order, the License will automatically terminate, except to the extent necessary for the Authority, the Project Agreement Counterparties, or their agents, to access, secure, maintain or remove the Project, unless the Authority and the County mutually agree otherwise.



SECTION 3.2. COUNTY COVENANT FOR BENEFIT OF AUTHORITY. The County agrees and covenants that so long as this Task Order is in effect:

(A) Any use, alteration or modification of the Facility Building will 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 Task Order or the Project Agreements; or (2) any Project Agreement Counterparty's ability to perform its obligations under the Project Agreements.

(B) Each of the Authority and each Project Agreement Counterparty 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 and the Facility Building; and (2) to cooperate with the Authority with respect to all matters affecting such enjoyment; provided, however, that this Section 3.2 will not be construed to exempt the Authority from compliance with Applicable Laws or to preclude the County from enforcing Applicable Laws.

(C) The County will provide the Authority with information regarding the Project or the Facility Building, review and comment on documents or other materials and provide other reasonable assistance to the Authority, in each case, as required under the Project Agreements or as may be reasonably requested by the Authority from time-to-time, including, without limitation, providing information regarding electricity costs for the Project.

(D) The County disclaims any right to Solar Incentives or Environmental Attributes, as such terms are defined in the Solar Power Services Agreement, based upon the installation of the Project at the Facility Building, and will execute any document or agreement reasonably necessary to affirm such disclaimer.

(E) The County will perform any act or meet any requirement imposed on the Authority pursuant to the Solar Power and Services Agreement which the Authority can not reasonably perform without the assistance or action of the County, or which must be performed by the County as the owner of the Facility Building or for any other reason.

## ARTICLE IV

### TASK ORDER SERVICE FEE AND PAYMENTS

#### SECTION 4.1. TASK ORDER SERVICE FEE.

(A) Payment of Task Order Service Fee. In consideration for the Authority's obligations hereunder and under the Solar Power and Services Agreement and any other Project Agreements, the County must pay the Authority the Task Order Service Fee in accordance with the terms of this Section 4.1.



(B) Calculation of Task Order Service Fee. The “Task Order Service Fee” will be an amount equal to the Authority’s net costs arising from the Project, determined in accordance with the following formula:

$$SF = PF + AC$$

Where:

SF= Service Fee

PF = Project Fee

AC = Administrative Costs

Each component of the Task Order Service Fee must be computed in accordance with this Section 4.1 and may be adjusted from time to time as provided in this Task Order.

(C) Project Fee. The “Project Fee” is an amount equal to any amounts required to be paid by the Authority to any Project Agreement Counterparty under the Project Agreement(s), including, but not limited to, any fees, any termination damages, and other amounts payable thereunder.

(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 or the County’s obligations under this Task Order, including, but not limited to, the following: accounting, legal, engineering and other professional fees, including the fees of any engineer required to be retained by the Authority pursuant to the Solar Power and Services Agreement or this Task Order. With the exception of contractors and consultants that the Authority retains and pays to perform services under this Task Order or any Project Agreement, the Administrative Costs will not include: (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. BILLING OF THE TASK ORDER 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 end of the Billing Period. The Billing Statement must set forth the Task Order Service Fee and any other amounts due under this Task Order. The County must pay the Task Order 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. Notwithstanding anything to the contrary in this Agreement (and notwithstanding any amendment or termination of the other provisions of this Task Order or the Intergovernmental Agreement), the County will be obligated



to pay the Task Order Service Fee in the manner described herein, without offset of any other amount that may be payable by the County to the Authority.

(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 will be made on the Billing Statement for the Billing Period immediately after the item is accurately determined.

#### SECTION 4.3. COUNTY'S PAYMENT OBLIGATIONS.

(A) Payment Irrespective of Operational Status. The County must pay the Task Order Service Fee to the Authority and/or SunEdison, as provided hereunder, for each Billing Period during the Term of this Task Order, irrespective of whether the Project was operational during such Billing Period.

(B) County's Obligation to Pay the Task Order Service Fee. The obligation of the County to pay the Task Order 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 must take all such action as may be necessary to provide for the timely payment of the Task Order Service Fee and all other amounts due hereunder. The County hereby acknowledges that the services to be provided by the Authority pursuant to this Task Order are of a valuable and unique nature to the County and that the Task Order Service Fee 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 Task Order are limited obligations of the County payable solely from amounts appropriated in accordance with Section 25 of the General Conditions of Contract (Attachment A) of the Intergovernmental Agreement, as modified by the Addendum to General Conditions of Contract (Attachment B) of the Intergovernmental Agreement.

(C) Disputes. If the County disputes any amount billed by the Authority in any Billing Statement and such disputed amount is owed by the Authority under a Project Agreement, the County must nonetheless pay the entire billed amount and must 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 hereto will be excused for its failure to perform in accordance with this Task Order 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 will any Uncontrollable Circumstance excuse any party from performing any obligation to make any payment hereunder (including pursuant to Section 4.1(A)) in accordance with the terms hereof, regardless of whether such payment obligation arises before, during or after the occurrence of such Uncontrollable Circumstance. Any date by which an obligation under this Task Order must be performed will 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 must 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, must 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 Solar Power and Services Agreement. The Authority must not execute an amendment to the Solar Power and Services Agreement without the prior approval of the County Representative, which approval must not be unreasonably withheld, delayed or conditioned.

(B) Performance by Authority. The Authority must diligently and in a timely manner perform all of its obligations under the Project Agreements.

(C) Enforcement by Authority. The Authority must diligently enforce and administer the Project Agreements to which it is a party.

(D) Dispute Resolution Notices. In the event that any Project Agreement Counterparty asserts any dispute pursuant to a Project Agreement, the Authority must promptly provide the County with notice thereof.

#### SECTION 6.2. TERMINATION OF SOLAR POWER AND SERVICES AGREEMENT; PURCHASE RIGHT.

(A) County Right to Require Authority to Terminate Solar Power and Services Agreement for Convenience. The County may direct the Authority to exercise its rights under the Solar Power and Services Agreement to terminate such Solar Power and Services Agreement for convenience pursuant to the applicable provisions thereof by providing the Authority with

adequate notice thereof and providing payment of amounts payable in connection with such termination pursuant to such Solar Power and Services Agreement.

(B) Abandonment of Project. In the event the County requires the Authority to terminate the Solar Power and Services Agreement for convenience pursuant to the applicable provisions thereof, unless the County and the Authority mutually agree otherwise, the County must exercise its rights to terminate this Task Order for convenience pursuant to Section 7.4.

(C) Purchase Option. The County may direct the Authority to exercise its rights under the Solar Power and Services Agreement to purchase the Project pursuant to the applicable provisions thereof by providing the Authority with adequate notice thereof and providing payment of amounts payable in connection with such purchase option pursuant to such Solar Power and Services Agreement.

### SECTION 6.3. COUNTY RIGHTS OF INSPECTION.

(A) The County and its agents have the right to enter and inspect the Project at any time; provided, however, that such entry and inspection must be consistent with the provisions of the Solar Power and Services Agreement and any other Project Agreements. The County must use reasonable efforts to provide notice to the Authority prior to exercising its rights pursuant to this Section 6.3.

(B) The County and its agents may inspect the books and records of the Authority related to this Task Order or any Project Agreement to which the Authority is a party 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 hereto breaches any obligation under this Task Order or any representation made by either party hereunder is untrue in any material respect, the other party will 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 will have the right to terminate this Task Order except as provided in Section 7.2, and with respect to the County, Section 7.4. In no event will the breach of any obligation under this Task Order terminate, modify or reduce any obligation that the County would otherwise have to pay the Project Fee in accordance with Article IV.

(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 Task Order, will 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 the Intergovernmental Agreement or this Task Order.

SECTION 7.2. TERMINATION FOR DEFAULT.

(A) By Authority. The Authority will have no right to terminate this Task Order for any reason whatsoever, unless 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 Task Order 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 Task Order (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 will 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;

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

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 Task Order will 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 Task Order 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 Task Order.

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

(E) By County. The County will have no right to terminate this Task Order for any reason whatsoever (except pursuant to Section 7.4(A)), unless one or more of the following events has occurred:

1. 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 Task Order, 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 will 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;

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

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

(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 Task Order will 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 Task Order 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 Task Order; provided, however, the County's rights under this Section 7.2(G) are subject to Section 7.1(A).

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

SECTION 7.3. WAIVER. Unless otherwise specifically provided by the terms of this Task Order, no delay or failure to exercise a right resulting from any breach of this Task Order will impair such right or will 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 must be in writing and signed by the party granting such waiver. If any covenant or agreement contained in this Task

Order is breached by any party and thereafter waived by any other party, such waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach under this Task Order.

SECTION 7.4. TERMINATION FOR CONVENIENCE OR AT END OF TERM.

(A) County Termination for Convenience. Notwithstanding any other provision of this Task Order to the contrary, the County may terminate its obligations to the Authority under this Task Order for convenience at any time by: (1) giving the Authority at least thirty (30) days notice of such termination and (2) paying the termination costs described in Section 7.4(B).

(B) Termination Costs. Upon the expiration or termination of this Task Order 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 to which the Authority is a party, 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:

1. All costs and liabilities incurred by the Authority and associated with settling and paying termination claims or purchase option amounts under the Project Agreements and other agreements entered into by the Authority with respect to the Project and performance by the Authority of its obligations under this Task Order.
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 Solar Power and Services Agreement and any other Project Agreements that are incurred or payable as a result of the termination of this Task Order.
4. Any other costs or expenses incurred or to be incurred by the Authority as a result of the termination of this Task Order.

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 Task Order, any provisions of this Task Order that are required to ensure such exercise or performance will survive the termination or expiration of this Task Order. No termination of this Task Order 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 Task Order is in effect from the Effective Date and will continue in effect until: (A) the Intergovernmental Agreement is terminated in accordance with the terms thereof; (B) this Task Order is terminated in accordance with the terms hereof; or (C) this Task Order is terminated by the mutual agreement of the County and the Authority (the "Term").

## 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 Task Order, 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 Task Order.

(B) The Authority has duly authorized the execution and delivery of this Task Order and this Task Order 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 Task Order, 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 Task Order 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 Task Order 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 Task Order 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 Task Order.

(B) The County has duly authorized the execution of this Task Order and this Task Order 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 Task Order, 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 Task Order 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 Task Order 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 Task Order, or any other agreement or instrument entered into by the County in connection with the transactions contemplated hereby.

(F) The County's Chief of the Division of Solid Waste Services has issued a notice to proceed to the Authority with respect to this Task Order.

## ARTICLE X

### DISPUTE RESOLUTION

SECTION 10.1. DISPUTE RESOLUTION PROCEDURE. Either party may initiate the process to resolve a dispute under this Task Order by giving written notice thereof to the other party and such dispute will be resolved in accordance with Section 8 of the General Conditions of Contract (Attachment A) of the Intergovernmental Agreement.

## ARTICLE XI

### MISCELLANEOUS

SECTION 11.1. ASSIGNMENT. This Task Order may be assigned by a party hereto in connection with an assignment of the Intergovernmental Agreement in accordance with Section 4 of the General Conditions of Contract (Attachment A) of the Intergovernmental Agreement.

SECTION 11.2. NOTICES. All notices, designations, consents, approvals, and other communications required, permitted or otherwise delivered under this Task Order must 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 must be addressed as follows:

If to the County:       Montgomery County Department of Environmental Protection  
                                  Division of Solid Waste Services  
                                  101 Monroe Street  
                                  Rockville, Maryland 20850  
                                  Attention: Chief

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 hereto upon notice to the other party. Any such communications given in accordance with this Section 11.2 will be deemed to have been given five (5) Business Days after the date of mailing and communications given by any other means will be deemed to have been given when delivered.

SECTION 11.3. ENTIRE AND COMPLETE AGREEMENT. This Task Order and the Intergovernmental Agreement constitute the entire and complete agreement of the parties hereto with respect to their subject matter and supersede all prior or contemporaneous understandings, arrangements, commitments and representations with respect to the subject matter hereof.

SECTION 11.4. BINDING EFFECT. This Task Order binds and inures to the benefit of the parties to this Task Order and any successor or assignee acquiring an interest hereunder, as permitted by Section 11.1.

SECTION 11.5. FURTHER ASSURANCES. Each party must 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 Task Order.

SECTION 11.6. APPLICABLE LAW; VENUE. The laws of the State of Maryland govern the validity, interpretation, construction and performance of this Task Order. The venue and jurisdiction for any action, suit or proceeding arising out of this Task Order or any transaction contemplated hereby will be in accordance with Section 3 of the General Conditions of Contract (Attachment A) of the Intergovernmental Agreement, as modified by the Addendum to General Conditions of Contract (Attachment B) of the Intergovernmental Agreement.

SECTION 11.7. COUNTERPARTS. This Task Order may be executed in counterparts, each of which must be deemed an original, and all of which when executed and delivered together constitute one and the same instrument.

SECTION 11.8. AMENDMENT OR WAIVER. Neither this Task Order nor any provision of this Task Order 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 11.9. RELATIONSHIP OF THE PARTIES. Nothing in this Task Order must be deemed to constitute one party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

SECTION 11.10. NO PERSONAL LIABILITY. The execution and delivery of this Task Order by the Authority and the County must not impose any personal liability on the members, officers, employees or agents of the Authority or the County. No recourse will be had by a party to this Task Order for any claims based on this Task Order against any member, officer, employee or other agent of the other party to this Task Order 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 Task Order.

[SIGNATURES APPEAR ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the Authority and the County have executed and sealed this Task Order 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

MONTGOMERY COUNTY, MARYLAND

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

Name: Daniel E. Locke

Title: Chief of Division of Solid Waste  
Services

Approved as to form and legal sufficiency  
this \_\_ day of \_\_\_\_\_ 2009:

\_\_\_\_\_  
Terrilyn E. Brooks  
Associate County Attorney

# FINAL DRAFT TASK ORDER

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## TASK ORDER NO. 3

MATERIAL RECOVERY FACILITY  
ROOFTOP SOLAR PROJECT

between

MONTGOMERY COUNTY, MARYLAND

and

NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY

Dated

\_\_\_\_\_, 2009

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**TASK ORDER NO. 3**

**MATERIAL RECOVERY FACILITY  
ROOFTOP SOLAR PROJECT**

**TASK ORDER NO. 3 MATERIAL RECOVERY FACILITY ROOFTOP SOLAR PROJECT** is entered into as of \_\_\_\_\_, 2009 (the "Effective Date"), between Montgomery County, Maryland, a political subdivision 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").

**RECITALS**

WHEREAS, the County owns the Facility Building (as such term is defined hereinafter);

WHEREAS, the County desires for the Authority to cause a rooftop solar energy generating project at the Facility Building to be designed, engineered, constructed, started-up, tested, operated, maintained, and owned or controlled by a third party;

WHEREAS, the Authority issued a request for proposals to various vendors seeking proposals and bids for the licensing of necessary access to the Facility Building for the construction, operation and maintenance of a rooftop solar energy generating project at the Facility Building and the purchase of energy generated from such rooftop solar energy generating project;

WHEREAS, after an evaluation of vendor proposals, the Authority (in consultation with the County) selected Sun Edison LLC as the successful bidder;

WHEREAS, the Authority and Sun Edison LLC or a subsidiary of Sun Edison LLC (collectively or individually, as the context requires, "SunEdison") will enter into a Solar Power and Services Agreement (as defined herein) for the Facility Building, pursuant to which the Authority will grant to SunEdison rights to access and use the Facility Building in order to design, engineer, construct, start-up, test, operate, maintain and own or control a solar electric generating project at the Facility Building;

WHEREAS, pursuant to the Solar Power and Services Agreement, the Authority will cause the Operator (as defined herein) to accept from SunEdison the electricity generated by the Project and the Authority or the County, at the County's direction, will accept renewable energy credits in an amount equivalent to the number of credits generated by the Project;

WHEREAS, the Authority will oversee such Solar Power and Services Agreement in accordance with this Task Order; and

WHEREAS, the County will pay the Authority for the costs associated with (a) the preparation, negotiation, execution, and administration, on behalf of the Authority or the County,

of the Solar Power and Services Agreement, and (b) any costs incurred or paid by the Authority pursuant to the Solar Power and Services 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 Task Order have the meanings set forth in this Article I, unless a different meaning clearly appears from the context.

(B) As used in this Task Order, the following terms will have the meanings set forth below:

“Administrative Costs” has the meaning given in Section 4.1(D).

“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 the Project Agreement Counterparties, the Authority, the Facility Building or the performance of any obligations under this Task Order 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 each calendar month during the Term of this Task Order.

“Billing Statement” has the meaning given in Section 4.2(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.

“Construction Quality Assurance Agreement” means any agreement between the Authority and a contractor pursuant to which such contractor agrees to perform certain construction oversight or management services with respect to the Facility, as such agreement may be executed, amended, modified, supplemented, or replaced from time to time.



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

“County Representative” means the County’s Chief of the Division of Solid Waste Services, or any other person designated by the County’s Chief of the Division of Solid Waste Services as the County Representative hereunder.

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

“Eligible Cost” has the meaning given in Section 4.2(A).

“Facility Building” means the real property owned by the County and located at 16105 Frederick Road, Derwood MD, 20855, along with the buildings and improvements located thereon.

“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 Task Order and any other Project Agreement, and the construction and operation of the solar rooftop electric generating facilities.

“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.

“Intergovernmental Agreement” means that Intergovernmental Agreement between the County and the Authority dated January 17, 2007, as such agreement may be amended, modified or supplemented from time to time.

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

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

“Operator” means the entity operating the Facility Building pursuant to a contract or other agreement with the County, which entity currently receives the electricity billing statement for the Facility Building from the applicable utility and, once the Project is completed, will receive monthly billing statements under the Solar Power and Services Agreement for the Project, as the same may change from time to time.

“Project” means the rooftop solar energy generating project to be constructed and operated at the Facility Building.

“Project Agreement Counterparty” means an entity entering into a Project Agreement with the Authority or the County. For purposes of clarification, for so long as the Solar Power

and Services Agreement remains in full force and effect, SunEdison is a Project Agreement Counterparty hereunder.

“Project Agreements” means the Solar Power and Services Agreement, any other agreement that the Authority enters into with a third party that is related to the Project or the Facility Building, any agreement the County enters into with an Operator related to the Project, and all amendments, modifications or supplements to such agreements.

“Project Fee” has the meaning given in Section 4.1(C).

“Solar Power and Services Agreement” means that agreement to be entered into by the Authority and SunEdison, pursuant to which SunEdison will sell, and the Authority will purchase, electricity generated by the Project and renewable energy credits in an amount equal to the number of credits generated by the Project, as such agreement may be amended, modified or supplemented from time to time.

“SunEdison” has the meaning set forth in the recitals.

“Task Order” means this Task Order No. 3 Material Recovery Facility Rooftop Solar Project, as may be amended, modified or supplemented from time to time.

“Task Order Service Fee” has the meaning given in Section 4.1(B).

“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 Facility Building, 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 will 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 will 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 Task Order, 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 Task Order 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 utility 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 Task Order contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Task Order and, except as expressly provided otherwise herein, nothing in this Task Order 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 Task Order.

(B) Severability. If any clause, provision, subsection, Section or Article of this Task Order is ruled invalid by any court of jurisdiction, then the parties will: (1) promptly meet and negotiate a substitute for such clause, provision, Section or Article which must, 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 Task Order; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Task Order 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 will

not affect any of the remaining provisions hereof, and this Task Order will 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 Task Order.

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

## ARTICLE II

### FACILITY BUILDING; PROJECT

SECTION 2.1. SOLAR POWER AND SERVICES AGREEMENT. The County and the Authority acknowledge and agree that:

(A) The County owns the Facility Building, and SunEdison or its financing parties will own the Project and all rights, title and interests to the electricity, renewable energy credits, other renewable energy benefits or attributes and any other credits or benefits (including emission credits and tax credits) attributable to or generated by the Project.

(B) The County will, as provided in Section 3.1, license to the Authority all rights necessary to access and use the Facility Building to the extent reasonably necessary for the design, construction, and operation and maintenance of the Project.

(C) The Authority will enter into the Solar Power and Services Agreement with SunEdison, pursuant to which SunEdison will design, construct, operate, maintain, and own or control (as long-term lessee) the Project, and will sell the electric energy generated by such Project to the Operator and will transfer, retire, or otherwise credit to the Authority or the County, at the County's direction, renewable energy credits in an amount equal to the amount of credits produced by the Project. The Authority will use commercially reasonable efforts to negotiate provisions in the Solar Power and Services Agreement that adequately protect the interests of the County.

(D) The County will enter into a Project Agreement with the Operator pursuant to which the Operator agrees to make payments to SunEdison in accordance with the Solar Power and Services Agreement for energy used at the Facility Building.

(E) The Authority will not be in default of its obligations under this Task Order for failure of a Project Agreement Counterparty to perform its obligations or to take any action under the Solar Power and Services Agreement or any other Project Agreement.

(F) The Authority will manage the Project for the County for the term of the Solar Power and Services Agreement. The Authority's obligations as project manager hereunder will

include overall project coordination and oversight of the Construction Quality Assurance Agreement, if any, pursuant to the Intergovernmental Agreement.

SECTION 2.2. TASK ORDER UNDER INTERGOVERNMENTAL AGREEMENT.

This Task Order will be effective upon the execution of the Solar Power and Services Agreement and will constitute a Task Order under the Intergovernmental Agreement.

SECTION 2.3. LIMITATION OF AUTHORITY PAYMENT OBLIGATIONS.

The liability of the Authority for any monetary payments with respect to, or as a result of, this Task Order are not payable from the general funds of the Authority and the incurrence or nonperformance of such obligations or payments will not constitute or create a legal or equitable pledge of, or lien or encumbrance upon or claim against, any of the assets or property of the Authority or of its income, receipts or revenues, except for the Authority Fee received by the Authority.

**ARTICLE III**

**USE OF COUNTY PROPERTY**

SECTION 3.1. GRANT OF LICENSE.

(A) The County hereby grants the Authority and the Project Agreement Counterparties the privilege, license and right (“License”) to: (1) access and use the Facility Building (the “Licensed Premises”) in accordance with the terms of this Task Order, including rights of ingress and egress, in any way necessary to carry out the Project Agreement Counterparty’s purposes under the applicable Project Agreement. The Licensed Premises include the buildings, structures and other improvements located thereon and the rooftops thereof and the real property owned or controlled by the County that is located adjacent to or in the proximity of the Facility Building.

(B) The Authority covenants and agrees that it will: (1) use the Licensed Premises only for the purposes described in this Task Order and the Solar Power and Services Agreement; (2) perform its obligations with respect to the Project, in accordance with Applicable Laws; and (3) not undertake any alteration, change or improvement to the Facility Building not set forth in this Task Order and the Solar Power and Services Agreement, without the prior approval of the County Representative.

(C) Upon the termination or expiration of any Project Agreement, the License granted to such Project Agreement Counterparty thereunder will terminate, except to the extent that the grant of the License is necessary pursuant to the terms of such Project Agreement. For purposes of clarification, termination of a Project Agreement will not cause the termination of rights of access to or use of the Facility Building arising out of a different agreement or arrangement which has not been cancelled. Upon the termination or expiration of this Task Order, the License will automatically terminate, except to the extent necessary for the Authority, the Project



Agreement Counterparties, or their agents, to access, secure, maintain or remove the Project, unless the Authority and the County mutually agree otherwise.

SECTION 3.2. COUNTY COVENANT FOR BENEFIT OF AUTHORITY. The County agrees and covenants that so long as this Task Order is in effect:

(A) Any use, alteration or modification of the Facility Building will 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 Task Order or the Project Agreements; or (2) any Project Agreement Counterparty's ability to perform its obligations under the Project Agreements.

(B) Each of the Authority and each Project Agreement Counterparty 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 and the Facility Building; and (2) to cooperate with the Authority with respect to all matters affecting such enjoyment; provided, however, that this Section 3.2 will not be construed to exempt the Authority from compliance with Applicable Laws or to preclude the County from enforcing Applicable Laws.

(C) The County will provide the Authority with information regarding the Project or the Facility Building, review and comment on documents or other materials and provide other reasonable assistance to the Authority, in each case, as required under the Project Agreements or as may be reasonably requested by the Authority from time-to-time, including, without limitation, providing information regarding electricity costs for the Project.

(D) The County disclaims any right to Solar Incentives or Environmental Attributes, as such terms are defined in the Solar Power Services Agreement, based upon the installation of the Project at the Facility Building, and will execute any document or agreement reasonably necessary to affirm such disclaimer.

(E) The County will perform any act or meet any requirement imposed on the Authority pursuant to the Solar Power and Services Agreement which the Authority can not reasonably perform without the assistance or action of the County, or which must be performed by the County as the owner of the Facility Building or for any other reason.

#### ARTICLE IV

#### TASK ORDER SERVICE FEE AND PAYMENTS

##### SECTION 4.1. TASK ORDER SERVICE FEE.

(A) Payment of Task Order Service Fee. In consideration for the Authority's obligations hereunder and under the Solar Power and Services Agreement and any other Project

Agreements, the County must pay the Authority the Task Order Service Fee in accordance with the terms of this Section 4.1.

(B) Calculation of Task Order Service Fee. The "Task Order Service Fee" will be an amount equal to the Authority's net costs arising from the Project, determined in accordance with the following formula:

$$SF = PF + AC$$

Where:

SF= Service Fee

PF = Project Fee

AC = Administrative Costs

Each component of the Task Order Service Fee must be computed in accordance with this Section 4.1 and may be adjusted from time to time as provided in this Task Order.

(C) Project Fee. The "Project Fee" is an amount equal to any amounts required to be paid by the Authority to any Project Agreement Counterparty under the Project Agreement(s), including, but not limited to, any fees, any termination damages, and other amounts payable thereunder.

(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 or the County's obligations under this Task Order, including, but not limited to, the following: accounting, legal, engineering and other professional fees, including the fees of any engineer required to be retained by the Authority pursuant to the Solar Power and Services Agreement or this Task Order. With the exception of contractors and consultants that the Authority retains and pays to perform services under this Task Order or any Project Agreement, the Administrative Costs will not include: (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. BILLING OF THE TASK ORDER 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 end of the Billing Period. The Billing Statement must set forth the Task Order Service Fee and any other amounts due under this Task Order. The County must pay the Task Order 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 any amount which would be payable by the County to the Authority hereunder if paid by the Authority to SunEdison (an "Eligible Cost") is instead invoiced to the Operator by SunEdison, then the County will take reasonable efforts to cause the Operator to pay such Eligible Cost within 30 days of the invoice. Notwithstanding anything to the contrary in this Agreement (and notwithstanding any amendment or termination of the other provisions of this Task Order or the Intergovernmental Agreement), the County will be obligated to pay the Task Order Service Fee in the manner described herein, without offset of any other amount that may be payable by the County to the Authority.

(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 will be made on the Billing Statement for the Billing Period immediately after the item is accurately determined.

#### SECTION 4.3. COUNTY'S PAYMENT OBLIGATIONS.

(A) Payment Irrespective of Operational Status. The County must pay the Task Order Service Fee to the Authority and/or SunEdison, as provided hereunder, for each Billing Period during the Term of this Task Order, irrespective of whether the Project was operational during such Billing Period.

(B) County's Obligation to Pay the Task Order Service Fee. The obligation of the County to pay the Task Order 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 must take all such action as may be necessary to provide for the timely payment of the Task Order Service Fee and all other amounts due hereunder. The County hereby acknowledges that the services to be provided by the Authority pursuant to this Task Order are of a valuable and unique nature to the County and that the Task Order Service Fee 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 Task Order are limited obligations of the County payable solely from amounts appropriated in accordance with Section 25 of the General Conditions of Contract (Attachment A) of the Intergovernmental Agreement, as modified by the Addendum to General Conditions of Contract (Attachement B) of the Intergovernmental Agreement.

(C) Disputes. If the County disputes any amount billed by the Authority in any Billing Statement and such disputed amount is owed by the Authority under a Project Agreement, the County must nonetheless pay the entire billed amount and must 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.

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## ARTICLE V

### UNCONTROLLABLE CIRCUMSTANCES

#### SECTION 5.1. UNCONTROLLABLE CIRCUMSTANCES.

(A) General. Each party hereto will be excused for its failure to perform in accordance with this Task Order 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 will any Uncontrollable Circumstance excuse any party from performing any obligation to make any payment hereunder (including pursuant to Section 4.1(A)) in accordance with the terms hereof, regardless of whether such payment obligation arises before, during or after the occurrence of such Uncontrollable Circumstance. Any date by which an obligation under this Task Order must be performed will 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 must 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, must 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 Solar Power and Services Agreement. The Authority must not execute an amendment to the Solar Power and Services Agreement without the prior approval of the County Representative, which approval must not be unreasonably withheld, delayed or conditioned.

(B) Performance by Authority. The Authority must diligently and in a timely manner perform all of its obligations under the Project Agreements.

(C) Enforcement by Authority. The Authority must diligently enforce and administer the Project Agreements to which it is a party.

(D) Dispute Resolution Notices. In the event that any Project Agreement Counterparty asserts any dispute pursuant to a Project Agreement, the Authority must promptly provide the County with notice thereof.

#### SECTION 6.2. TERMINATION OF SOLAR POWER AND SERVICES AGREEMENT; PURCHASE RIGHT.

(A) County Right to Require Authority to Terminate Solar Power and Services Agreement for Convenience. The County may direct the Authority to exercise its rights under the Solar Power and Services Agreement to terminate such Solar Power and Services Agreement for convenience pursuant to the applicable provisions thereof by providing the Authority with adequate notice thereof and providing payment of amounts payable in connection with such termination pursuant to such Solar Power and Services Agreement.

(B) Abandonment of Project. In the event the County requires the Authority to terminate the Solar Power and Services Agreement for convenience pursuant to the applicable provisions thereof, unless the County and the Authority mutually agree otherwise, the County must exercise its rights to terminate this Task Order for convenience pursuant to Section 7.4.

(C) Purchase Option. The County may direct the Authority to exercise its rights under the Solar Power and Services Agreement to purchase the Project pursuant to the applicable provisions thereof by providing the Authority with adequate notice thereof and providing payment of amounts payable in connection with such purchase option pursuant to such Solar Power and Services Agreement.

#### SECTION 6.3. COUNTY RIGHTS OF INSPECTION.

(A) The County and its agents have the right to enter and inspect the Project at any time; provided, however, that such entry and inspection must be consistent with the provisions of the Solar Power and Services Agreement and any other Project Agreements. The County must use reasonable efforts to provide notice to the Authority prior to exercising its rights pursuant to this Section 6.3.

(B) The County and its agents may inspect the books and records of the Authority related to this Task Order or any Project Agreement to which the Authority is a party 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 hereto breaches any obligation under this Task Order or any representation made by either party hereunder is untrue in any material respect, the other party will 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 will have the right to terminate this Task Order except as provided in Section 7.2, and with respect to the County, Section 7.4. In no event will the breach of any obligation under this Task Order terminate, modify or reduce any obligation that the County would otherwise have to pay the Project Fee in accordance with Article IV.

(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 Task Order, will 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 the Intergovernmental Agreement or this Task Order.

SECTION 7.2. TERMINATION FOR DEFAULT.

(A) By Authority. The Authority will have no right to terminate this Task Order for any reason whatsoever, unless 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 Task Order 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 Task Order (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 will 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;

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

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 Task Order will 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 Task Order 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 Task Order.

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

(E) By County. The County will have no right to terminate this Task Order for any reason whatsoever (except pursuant to Section 7.4(A)), unless one or more of the following events has occurred:

1. 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 Task Order, 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 will 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;

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

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

(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 Task Order will 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 Task Order 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 Task Order; provided, however, the County's rights under this Section 7.2(G) are subject to Section 7.1(A).

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

SECTION 7.3. WAIVER. Unless otherwise specifically provided by the terms of this Task Order, no delay or failure to exercise a right resulting from any breach of this Task Order will impair such right or will 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 must be in writing and signed by the party granting such waiver. If any covenant or agreement contained in this Task Order is breached by any party and thereafter waived by any other party, such waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach under this Task Order.

SECTION 7.4. TERMINATION FOR CONVENIENCE OR AT END OF TERM.

(A) County Termination for Convenience. Notwithstanding any other provision of this Task Order to the contrary, the County may terminate its obligations to the Authority under this Task Order for convenience at any time by: (1) giving the Authority at least thirty (30) days notice of such termination and (2) paying the termination costs described in Section 7.4(B).

(B) Termination Costs. Upon the expiration or termination of this Task Order 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 to which the Authority is a party, 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:

1. All costs and liabilities incurred by the Authority and associated with settling and paying termination claims or purchase option amounts under the Project Agreements and other agreements entered into by the Authority with respect to the Project and performance by the Authority of its obligations under this Task Order.
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 Solar Power and Services Agreement and any other Project Agreements that are incurred or payable as a result of the termination of this Task Order.
4. Any other costs or expenses incurred or to be incurred by the Authority as a result of the termination of this Task Order.

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 Task Order, any provisions of this Task Order that are required to ensure such exercise or performance will

survive the termination or expiration of this Task Order. No termination of this Task Order 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 Task Order is in effect from the Effective Date and will continue in effect until: (A) the Intergovernmental Agreement is terminated in accordance with the terms thereof; (B) this Task Order is terminated in accordance with the terms hereof; or (C) this Task Order is terminated by the mutual agreement of the County and the Authority (the "Term").

## 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 Task Order, 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 Task Order.

(B) The Authority has duly authorized the execution and delivery of this Task Order and this Task Order 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 Task Order, 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 Task Order 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 Task Order 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 Task Order 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 Task Order.

(B) The County has duly authorized the execution of this Task Order and this Task Order 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 Task Order, 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 Task Order 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 Task Order 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 Task Order, or any other agreement or instrument entered into by the County in connection with the transactions contemplated hereby.

(F) The County's Chief of the Division of Solid Waste Services has issued a notice to proceed to the Authority with respect to this Task Order.

## ARTICLE X

### DISPUTE RESOLUTION

SECTION 10.1. DISPUTE RESOLUTION PROCEDURE. Either party may initiate the process to resolve a dispute under this Task Order by giving written notice thereof to

the other party and such dispute will be resolved in accordance with Section 8 of the General Conditions of Contract (Attachment A) of the Intergovernmental Agreement.

## ARTICLE XI

### MISCELLANEOUS

SECTION 11.1. ASSIGNMENT. This Task Order may be assigned by a party hereto in connection with an assignment of the Intergovernmental Agreement in accordance with Section 4 of the General Conditions of Contract (Attachment A) of the Intergovernmental Agreement.

SECTION 11.2. NOTICES. All notices, designations, consents, approvals, and other communications required, permitted or otherwise delivered under this Task Order must 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 must be addressed as follows:

If to the County:       Montgomery County Department of Environmental Protection  
                                  Division of Solid Waste Services  
                                  101 Monroe Street  
                                  Rockville, Maryland 20850  
                                  Attention: Chief

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 hereto upon notice to the other party. Any such communications given in accordance with this Section 11.2 will be deemed to have been given five (5) Business Days after the date of mailing and communications given by any other means will be deemed to have been given when delivered.

SECTION 11.3. ENTIRE AND COMPLETE AGREEMENT. This Task Order and the Intergovernmental Agreement constitute the entire and complete agreement of the parties hereto with respect to their subject matter and supersede all prior or contemporaneous understandings, arrangements, commitments and representations with respect to the subject matter hereof.

SECTION 11.4. BINDING EFFECT. This Task Order binds and inures to the benefit of the parties to this Task Order and any successor or assignee acquiring an interest hereunder, as permitted by Section 11.1.



SECTION 11.5. FURTHER ASSURANCES. Each party must 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 Task Order.

SECTION 11.6. APPLICABLE LAW; VENUE. The laws of the State of Maryland govern the validity, interpretation, construction and performance of this Task Order. The venue and jurisdiction for any action, suit or proceeding arising out of this Task Order or any transaction contemplated hereby will be in accordance with Section 3 of the General Conditions of Contract (Attachment A) of the Intergovernmental Agreement, as modified by the Addendum to General Conditions of Contract (Attachment B) of the Intergovernmental Agreement.

SECTION 11.7. COUNTERPARTS. This Task Order may be executed in counterparts, each of which must be deemed an original, and all of which when executed and delivered together constitute one and the same instrument.

SECTION 11.8. AMENDMENT OR WAIVER. Neither this Task Order nor any provision of this Task Order 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 11.9. RELATIONSHIP OF THE PARTIES. Nothing in this Task Order must be deemed to constitute one party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

SECTION 11.10. NO PERSONAL LIABILITY. The execution and delivery of this Task Order by the Authority and the County must not impose any personal liability on the members, officers, employees or agents of the Authority or the County. No recourse will be had by a party to this Task Order for any claims based on this Task Order against any member, officer, employee or other agent of the other party to this Task Order 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 Task Order.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Authority and the County have executed and sealed this Task Order 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

MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_  
Name: Daniel E. Locke  
Title: Chief of Division of Solid Waste  
Services

Approved as to form and legal sufficiency  
this \_\_ day of \_\_\_\_\_ 2009:

\_\_\_\_\_  
Terrilyn E. Brooks  
Associate County Attorney