

Schedule F

Draft Contract

Engineering and Construction of a Concrete Push Wall Extension in Transfer Station #2, located in the Town of Kingsville

Services Agreement

This contract is made and is first effective as of the Effective Date.

Between:

The Essex-Windsor Solid Waste Authority
360 Fairview Avenue West, Suite 211, Essex, Ontario N8M 3G4
(the "Authority")

And:

Name of Contractor
Contractor Address
(the "Contractor")

1.0 Background

The Essex-Windsor Solid Waste Authority is a municipal agency that was created by the City of Windsor and the County of Essex to manage waste on behalf of the City of Windsor and the seven (7) county municipalities (Amherstburg, Essex, LaSalle, Leamington, Kingsville, Tecumseh and Lakeshore).

The Authority operates the Transfer Station #2 in Kingsville six days a week as a staffed, self-serve public facility where residents and business can drop off volumes of waste for recycling or disposal. Most of the Essex-Windsor municipalities provide regular garbage, yard waste and recycling pickup at curbside, however, Transfer Station #2 exists for those items which are too large for, or are in quantities large enough, to render them unacceptable at curbside.

The existing concrete push wall at Transfer Station #2, was constructed in approximately 1995. Since that time, volumes have increased requiring additional containment of garbage to prevent damage to the building columns and siding. The existing concrete wall push wall (west side) and exterior block wall are inadequate to accommodate the volume of material.

For additional information about the Authority go to www.ewswa.org.

The Authority desires to retain the Contractor to provide the Services, Deliverables and Goods (defined below), at the price(s) stipulated, and in accordance with, the terms of the Contract (defined below).

In Consideration of the mutual covenants, conditions and agreements set forth in this Contract, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

2.0 Interpretation

All terms appearing with the first letter capitalized will have the meanings assigned in Section 34 (Definitions).

3.0 Contract Documents

The terms of the contract between the Authority and the Contractor for the supply of the Services, Deliverables and Goods, as applicable, are comprised of the following (collectively, the "**Contract**"):

- a) the main body of this Agreement;
- b) the Statement of Work appended hereto as Schedule "A";
- c) the Authority RFP, including (i) all Addenda (which, for greater certainty, will supersede the contents of the RFP) and (ii) all documents incorporated by reference into the RFP; and
- d) the Contractor's submission dated February 17, 2022, submitted in response to the above-noted RFP, but to the extent that the Contractor's submission conflicts with any term in any other component of the Contract, the term in the main body of this Agreement, the Statement of Work, and/or the Authority RFP shall prevail.

Where the document is not included as a schedule, it is deemed incorporated by reference. In the event of a conflict or inconsistency between any of the above documents, the conflict or inconsistency will be resolved in favour of the document first appearing on the above list.

4.0 Supply of Services, Deliverable and Goods

The Authority hereby retains the Contractor to provide the Authority with the Services and to supply the Deliverables and Goods described in the attached

Schedule "A". Where the context permits, the term "Services" will be deemed to include "Deliverables" and/or "Goods".

If Schedule "A" provides that the Services will be performed by a specific individual (the "**Representative**"), the Authority engages the Contractor to provide the Services on the express and essential condition that the Services will be performed by the Representative and by no other person. In the event that the Representative is no longer (i) able or willing to perform the Services, or (ii) active with, or employed by the Contractor, for any reason whatsoever, the Authority will have the right to terminate this Contract immediately upon written notice, without any liability to Contractor and without prejudice to the Authority's rights hereunder. Notwithstanding the foregoing, the Contractor may replace the Representative with another individual reasonably satisfactory to the Authority with the prior written consent of the Authority.

5.0 Term

This Agreement is effective as of the commencement date set out in Schedule "A" and, unless earlier terminated pursuant to Section 11.0 (Termination), will continue until the expiration date set out in Schedule "A" (the "**Term**").

6.0 Delivery Dates

The Contractor will supply the Services, Deliverables, and/or Goods by the date(s) specified in Schedule "A" or such other date as may be agreed upon by the Parties.

The Contractor will notify the Authority as soon as it becomes aware that it cannot provide the Services, Deliverables, and/or Goods on the terms and by the dates agreed to, and such failure to provide the Services, Deliverables, and/or Goods may be treated by the Authority as a default, in its sole and absolute discretion.

In the event of a delay, the Contractor will, at no additional cost to the Authority, employ accelerated measures such labour overtime to ensure the Goods or Services are delivered on or before the revised delivery date.

In the event a delay in delivery or a new delivery date proposed by Contractor is not acceptable to the Authority, acting reasonably, in addition to any other rights and remedies that may be available to the Authority at law, the Authority may terminate the Contract without any liability to the Authority for such termination, but with the Authority reserving any rights it may have on account of the Contractor's failure to provide the Services, Deliverables, and/or Goods on the terms and by the dates agreed to.

For greater certainty, the Contractor will not be held responsible for delays outside the Contractor's reasonable control or to the extent any delay is caused by the Authority.

7.0 Shipping (Goods)

Where applicable, and unless otherwise specified herein, the Contractor will ship the Goods Delivery Duty Paid (DDP-Incoterms, 2018) (equivalent to FOB Destination), to the place of destination specified by the Authority in the Contract, using the most direct and economical means. A packing slip must accompany each shipment indicating the Authority-issued purchase order number. Title to the Goods will pass to the Authority upon acceptance by the Authority as set out in these terms. In the event of loss or damage during shipping, the Contractor will be required to promptly ship replacement Goods, at the Contractor's sole cost.

8.0 Inspection and Acceptance

The Authority, or persons authorized by the Authority, will have the right, at all reasonable times to inspect the Goods and Services; or otherwise review the Services performed, or being performed, and the premises where they are being performed to ensure compliance with the Contract requirements.

In addition, the Authority will have ten (10) business days following receipt to inspect and accept the delivered Goods or Deliverables prior to having any obligation to pay for such Goods or Deliverables.

Prior to accepting Goods or Deliverables, where the Authority discovers defective or non-conforming Goods or Deliverables, the Authority may at its option and without prejudice to any other rights or remedies it may have hereunder or at law: (a) at the Contractor's expense, return Goods or Deliverables for a refund, credit, repair or replacement or (b) obtain a price reduction or re-performance of non-conforming Services at no charge to the Authority. No payment will be owed for the Goods or Services unless and until the Authority has finally accepted the particular Good or Deliverable.

9.0 Fees and Invoicing

Fees. For and in consideration of the Goods and Services furnished by the Contractor to the Authority under this Contract, the Authority will pay the prices and fees set out in Schedule "A" (the "**Fees**").

Taxes. The Fees set out in Schedule "A" may not set out the relevant sales, goods and services, excise, value added or similar taxes, whether of provincial or other jurisdictional level, however taxes are to be charged to the Authority

and shown separately on each invoice in the normal course. The Contractor acknowledges that it may be subject to withholding tax under Canadian law. All taxes are to be shown separately on each invoice. The Contractor is entitled to apply for any tax credits applicable to or in relation to its services and is to provide such information as may be required by the relevant tax authority to such authority.

Invoicing. Unless otherwise agreed in writing or in this Contract, the Contractor is to invoice the Authority for the Services on a monthly basis during the Term, with each invoice for the prior month being issued within five (5) days following the end of the month, and for Goods, upon the Authority's acceptance of such Goods in accordance with this Contract.

Invoices are to be submitted to the attention of "Accounts Payable" at the address as set out in page 1 of this contract document. The invoice is to contain: (i) a description of the Goods or, if Services and Deliverables, a description of the Services and Deliverables, provided in the previous month; (ii) details of the Fees and, shown separately and applicable taxes due; and (iii) a description of any disbursements and expenses claimed. If not previously provided, the first invoice is to contain the Contractor's GST registration number. The Authority will pay any undisputed amounts owing to the Contractor within thirty (30) days of receipt of the invoice. The Contractor understands that failure to include all supporting documentation with the invoice and/or failure to provide any or all of the foregoing information as part of the invoice may result in a delay of payment to the Contractor and that the invoice may be returned to the Contractor unpaid and unprocessed.

Disputed Invoices. If the Authority disputes an invoice, the Authority will notify the Contractor in writing of the reasons for its dispute within fourteen (14) days of receiving the invoice. The Authority will pay only the undisputed portion of the Fees in accordance with the payment terms in this Contract. Any dispute in respect of an invoice will be resolved through the dispute resolution process set out in Section 27 (Dispute Resolution) of this Contract.

Withholdings. If any Fees payable to the Contractor are subject to withholding taxes, the Authority will withhold and remit such amounts to the applicable taxing authority, unless the Contractor provides the Authority with an exemption or waiver certificate. The Authority will provide the Contractor with written confirmation of any such withholding and remittance.

Disbursements and Expenses. The Contractor agrees that in no event will any expenses or disbursements be payable by the Authority, nor will the Authority be in any way liable for the same, unless such disbursement or expense was pre-approved in writing by the Authority and supporting documentation is provided to the Authority along with the invoice for the same.

Set-Offs. The Contractor expressly agrees and understands that the Contractor has no right of set-off against the Authority, and may not retain amounts the Contractor is to remit to the Authority as a set-off against amounts the Contractor asserts is owing to the Contractor by the Authority. The Contractor further expressly understands and agrees that the Authority, in addition to any other rights and remedies available to the Authority, may set-off amounts payable by the Authority to the Contractor to satisfy amounts owed by the Contractor to the Authority, or to pay third party suppliers or subcontractors who the Contractor fails to pay in a timely manner or at all.

Final Holdback. The Contractor agrees that the Authority shall be entitled to holdback all compensation that is payable to the Contractor under this Contract for the final calendar month of the Contract until such time as the Authority is satisfied that the Contractor has met all of its obligations under the Contract. Without limiting the generality of the foregoing, the holdback shall be retained until such time as the Authority is satisfied that the Contractor has met its repair and maintenance obligations with respect to the machinery, equipment, and facilities of the Authority, and returned same to the Authority at the conclusion of the Term in as good as or better condition (subject to reasonable wear and tear) as they were at the commencement of the Contract. Should the Contractor fail to satisfy the Authority that the Contractor has met its obligations as described above, the Authority, in its sole discretion, may retain a third party to conduct any necessary work to fulfill the obligations of the Contractor. Any and all cost and expense for a third party to fulfill the obligations of the Contractor shall be the sole responsibility of the Contractor, and the Authority may apply the holdback to recover the cost of same, and, to the extent the holdback does not cover the cost of same, the Authority may commence such legal action as may be necessary to recover the balance of the cost, plus applicable legal fees on a full indemnity basis, from the Contractor.

10.0 Fee Increases

Unless otherwise specified in the Contract, the Fees are the maximum prices and fees to be charged for the Services, Deliverables, and/or Goods during the term of the Contract.

Any maintenance services and unique parts and consumable items, or any additional Services, required in connection with Goods or Deliverables and not within the scope of the Contract must be offered by Contractor at a price that is not higher than Contractor's published prices at the time that the Contract is executed (where not published, then at commercially reasonable and competitive prices) and must not increase until completion of the project or, where the Contract is for a defined term, then for the term of the Contract.

11.0 Termination

The Authority may terminate this Contract:

- a) immediately upon written notice if the Contractor becomes insolvent, or is made the subject of bankruptcy, conservatorship, receivership or similar proceedings;
- b) if the Contractor breaches any provision of, or any of its obligations under, this Contract or the Schedules attached hereto and fails to remedy such breach within five (5) business days following notice thereof (or such extended period of time as may be agreed upon by the parties to remedy such breach if it cannot reasonably be cured within five (5) business days);
- c) immediately if the Contractor violates, threatens to violate, or is alleged to have violated any applicable law; and/or
- d) if the Contractor commits or is alleged to have committed an act such as fraud or misappropriation or conducts itself in such a manner as to materially harm or adversely affect in any material manner the Authority's name reputation or goodwill.

12.0 Consequences of Termination

Upon expiration or termination of this Contract, the Authority will pay the Contractor for all of the Goods, Services and Deliverables delivered to, and accepted by, the Authority prior to expiration or termination and for all pre-approved expenses reasonably and properly incurred by the Contractor prior to expiration or termination, if payable pursuant to Section 9 (Fees and Invoicing) and further, upon such termination of this Contract, Contractor will have no further obligation to provide the Goods, Services or Deliverables and the Authority will have no obligation to pay the Fees or make any other payments hereunder.

In the event of termination for cause by the Authority, the Authority may set-off any unpaid amounts due to the Contractor under this Contract, against any amounts owing by the Contractor to the Authority hereunder (including any amounts required to indemnify the Authority pursuant to Section 14 (Insurance), as determined by the Authority in its sole discretion) and any costs that the Authority may incur to supply the Goods or complete the Services or Deliverables.

Upon termination, if the Contractor owes any amounts to the Authority, including after any set-off made by the Authority pursuant to Section 9 (Fees and Invoicing), the Contractor will promptly pay such amounts to the Authority.

Upon termination of this Contract, the Contractor will immediately return to the Authority all records, files, lists, documents (including electronic material), equipment, software, intellectual property and any other property belonging to the Authority, unless otherwise directed by the Authority in writing, shall provide vacant possession of the Authority's premises, and shall return all equipment of the Authority to the Authority in good and working order, subject to reasonable wear and tear.

13.0 Indemnity

The Contractor hereby undertakes to indemnify and save harmless (but not defend) the Authority and its directors, officers, employees, agents and other representatives from and against any and all losses, claims, demands, debts, actions, causes of actions, damages, penalties, interest, costs or expenses (including reasonable legal fees and disbursements) or liability to the extent caused by:

- a) the negligent or wrongful acts or omissions of the Contractor or its employees and/or agents, including the Representative, arising in connection with this Contract or the Schedules attached hereto;
- b) any and all breaches by the Contractor or its employees and/or agents, including the Representative, of any representations, warranties, covenants, terms or conditions of this Contract or the Schedules attached hereto;
- c) any employee source deduction, employer contribution or other employer/employee obligation, including interest and penalties thereon, which the Authority may be assessed or otherwise may incur under any federal, provincial, state or municipal law as a result of a federal, provincial or municipal governmental department or agency, authority or competent tribunal determining that the Representative is considered an employee of the Authority; and any claim by any third party that the Goods, Services or Deliverables infringe the Intellectual Property Rights of any person.

14.0 Insurance

14.1 Insurance Coverage

Throughout the Term of this Contract, the Contractor must obtain and maintain at its own expense, including the cost of any applicable deductible, the following policies of insurance.

- a) Commercial General Liability Insurance including but not limited to bodily injury including death, personal injury and property damage having an inclusive limit of not less than **five million dollars (\$5,000,000) per occurrence.
- b) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than **five million dollars (\$5,000,000) per occurrence and for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor for the provision of services.
- c) Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than **two million dollars (\$2,000,000) per occurrence in respect of vehicles not owned by the Contractor, that are used or operated on its behalf for the provision of services under this Contract.
- d) **Umbrella and/or Excess Liability Insurance policies may be applied to increase liability limits for coverages indicated by double asterisks (**). Certificate(s) of insurance must specify the underlying policies (**) to which the umbrella/excess coverages apply and indicate any applicable aggregates.
- e) Contractors Environmental Insurance for gradual and/or sudden pollution events including cleanup expenses and, if applicable, transportation risks including loading and unloading exposures providing coverage in an amount of not less than two million dollars (\$2,000,000) per claim. Coverage must be maintained in force for twelve months following the termination of this Contract.
- f) Property Insurance, All Risk, Replacement Cost basis with respect to loss or damage of its own property and property of the Authority in Contractor's care, custody and control, used in connection with the Contract.

14.2 Terms and Conditions of Policies

All policies of insurance within the scope of section 14.1 must:

- a) include as additional insureds:

Essex-Windsor Solid Waste Authority
The Corporation of the City of Windsor
The Corporation of the County of Essex

- b) deposit with the Authority such evidence of its insurance as provided in or required under this Contract, and must be in a form and issued by an insurance company satisfactory to the Authority, that is licensed to carry on business in Ontario; and

- c) be maintained continuously during the course of carrying out the Contract, or for such period of time as may be required after completion of the Contract, as deemed necessary by the Authority.

15.0 Workplace Safety & Insurance Board

- a) The Contractor must provide a WSIB Clearance Certificate indicating their WSIB firm number, account number and that their account is in good standing. This form must be provided at the time of execution of the contract and again at the time that work commences. The successful Contractor further agrees to maintain their WSIB account in good standing throughout the Contract period.

- b) The Authority may require the Contractor to produce a Clearance Certificate from WSIB from time to time during the Contract on request and/or prior to final payment.

16.0 Warranty

The Contractor represents and warrants that Services will be performed in a diligent, good and workmanlike manner in accordance with an applicable schedule or committed delivery date, and of a quality at least equal to that generally accepted in the industry or profession for similar work (which includes providing Deliverables reasonably free of formatting and typographical errors); that the Goods are not subject to economic sanctions, will be new and of current production and that, for a period of one (1) year following acceptance by the Authority (or such longer warranty period as may be specified in the Contract), the Goods and Deliverables will be of satisfactory

quality, free from defects in design, material and workmanship; and where applicable, will conform to and perform in accordance with specifications, drawings and samples accepted by the Authority or included in the Contract.

Goods, Services or Deliverables failing to comply with applicable warranties will be, at the Authority's option and at no charge to the Authority: (i) returned for a full refund or credit of amounts paid by the Authority for the defective Goods, (ii) repaired, (iii) replaced; (iv) re-performed by Contractor using alternate personnel if instructed by the Authority or (v) rejected by the Authority, at no cost or expense to the Authority and with any shipping and transportation costs and risk of loss and damage in transit borne by Contractor. Repaired and replaced Goods or re-performed Services or Deliverables will be warranted as set forth in this Section. The above warranties, together with any additional Contractor warranties, survive inspection, test, acceptance of and payment for the Goods, Services or Deliverables.

Unless otherwise specified in the Contract, if an additional warranty-related obligation (e.g. manufacturer's warranty) sets a warranty time period or warranty standard that is not consistent with a warranty time period or warranty standard set out in this Section, Contractor will comply with the longest time period and highest standard.

17.0 Amendments

The Authority or the Contractor may, at any time, propose an amendment to Schedule "A", or to the Goods, Services or Deliverables outside the scope of Schedule "A" provided that no changes to this Contract are valid unless made in writing and mutually agreed by the parties.

Where an amendment is proposed, the party proposing the change will submit a written request to the other party, with its preferred wording of the proposed amendment.

If the amendment is accepted in writing by both parties, the additional language (as may be negotiated) and any change in the Goods, Services or Deliverables (as applicable), or the prices for same, will be confirmed through a formal written amendment to the Contract, which will not be effective until executed by both parties.

For greater certainty, where no prices have been clearly agreed to in writing in connection with any amendment, then the prices last agreed to in the Contract will apply for the purposes of calculating the cost of Goods, Services or Deliverables.

18.0 Working on Authority or County Property; Clean-up; Storage of Contractor Materials

The Contractor will comply with all Authority policies applicable to parties working on Authority property; will be responsible for any damage to Authority property or equipment caused by the Contractor personnel (including subcontractor personnel); and will be responsible for cleanup of Contractor’s worksite and the proper disposal of materials, including without limitation packaging or waste generated by the Contractor or those for whom it is responsible in law.

The Contractor will in all cases obtain a pre-approval in writing from the duly appointed Authority representative prior to storing any Contractor materials, including equipment or tools, on Authority property.

Storage of Contractor material on Authority property is at the Contractor’s sole and exclusive risk. The Authority is not responsible for any damage to, or loss of, the Contractor’s materials while stored on Authority property.

Failure by the Contractor to remove and dispose of any Contractor materials within five (5) days of an Authority request for removal will result in the Contractor being deemed to abandon such materials. The Authority will thereafter have the right to remove and dispose of such materials without further notice to the Contractor, and the Contractor will indemnify and hold harmless the Authority for all costs associated with such removal and disposal.

19.0 Non-Exclusivity

Subject to any conflict of interest, nothing in this Contract will prohibit or restrict the Contractor and the Representative from contracting with or being engaged in any capacity in promoting, undertaking, providing services to or in any way being involved with another person, firm or entity.

Nothing in this Contract will prohibit or restrict the Authority from contracting with or engaging in any capacity any person to provide services or perform work for the Authority that are similar to or compete with the Goods, Services or Deliverables provided by the Contractor hereunder.

20.0 Accessibility for Ontarians with Disabilities Act (AODA)

The Contractor will provide all Services in accordance with the Integrated Accessibility Standards Regulation 191/11 under the *Accessibility for Ontarians with Disabilities Act*.

The Contractor, and/or any service provider or sub-contractor to the Contractor, further agrees, upon request, to provide the Services in an accessible format in accordance with the AODA.

21.0 Intellectual Property

“Intellectual Property Rights” means all intellectual and industrial property rights of the Authority which include rights to inventions and patents for inventions, including reissues thereof and continuations in part, copyright, designs and industrial designs, trademarks, know-how, trade secrets and confidential information, and other proprietary rights. Subject to the provisions of Schedule “A”, the Contractor agrees that upon full payment of all monies properly owed to the Contractor, the Authority will be the exclusive owner of all Intellectual Property Rights howsoever created or developed by the Contractor, whether by it alone or jointly or with the contribution or assistance of others arising out of its engagement with the Authority, including without limitation all Intellectual Property Rights in the Deliverables. The Authority agrees, to the fullest extent permitted by law, to indemnify and hold the Contractor harmless from any claim, liability or cost (including reasonable attorney’s fees and defense costs) arising or allegedly arising out of any reuse or modification of the Intellectual Property by the Authority or any person or entity that obtains the Intellectual Property from or through the Authority.

The Contractor further agrees that it has no rights in any such Intellectual Property Rights and hereby assigns to the Authority all rights, title and interest that may accrue to the Contractor as a result of its engagement with the Authority. The Contractor hereby undertakes and agrees to cause the Representative to waive all moral rights and droits de suite that either the Contractor or Representative now or in the future may have to the Intellectual Property Rights. Each of the Contractor and the Representative agree that all Deliverables and other works created in full or in part by the Contractor may be maintained, changed, modified and/or adapted by the Authority without consent of either the Contractor or the Representative.

Notwithstanding the foregoing, the Contractor and the Authority may agree in writing that certain identified and designated Intellectual Property Rights will remain with the Contractor.

The Authority acknowledges that Contractor and Representative possess knowledge and expertise relating to the subject matter of the Services and Deliverables and may be contributing pre-existing materials to the Deliverables which may include intellectual property rights (“Contractor Background IP”). Nothing in this Contract is intended to transfer to the Authority any rights in the Contractor Background IP, which will remain the property of the Contractor. To the extent that any Contractor Background IP is included in any Goods or Deliverables, Contractor hereby grants to the

Authority a perpetual non-exclusive right and license to use the Background IP to the extent reasonably necessary to exercise the Authority's rights in the Goods and Deliverables.

22.0 Confidentiality

All specifications, drawings, patterns, samples, employee compensation, processes, and other information furnished to the Contractor by the Authority in connection with the Contract will be used solely for the purpose of carrying out the work and for no other purpose; will remain the property of the Authority; and be returned or destroyed at the Authority's request at the expense of the Contractor. The Contractor specifically agrees that it will not take any photographs or videos of the Fibre MRF or the Container MRF without the prior express written authorization of the Authority, and then, only for such purposes as may be approved by the Authority. The Contractor may retain irretrievable electronic copies of information contained in routine back-ups created as part of its information technology system back-up and disaster recovery protocols. Such retained confidential information will remain subject to the provisions of this s. 22 until destruction of such confidential information.

This Contract and information issued, used or disclosed in connection with the work are confidential and may be classified as to the degree of precaution necessary for their safeguarding. The Contractor will at all times take all measures reasonably necessary, including those set out in any instructions issued by the Authority, for the protection of same.

The restrictions on the use and disclosure of the confidential information will not apply to information which (a) was known to the Contractor before receipt of same from the Authority; or (b) becomes publicly known other than through breach of any confidentiality obligations; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

23.0 Compliance with Laws

The Contractor acknowledges that the Authority is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c M.56 ("**FOI Legislation**") and that information provided to or from the Authority in connection with this Contract may be subject to the provisions of these acts and other applicable law.

Without limiting anything else in this Contract, the Contractor hereby covenants and agrees that it will comply with all duties and obligations as set out in all applicable laws, as amended from time to time, and will make all reasonable efforts to assist the Authority in complying with the Authority's

duties and obligations as set out in and which arise from law applicable to this Contract or to the Goods, Services and Deliverables provided hereunder.

24.0 Audit

The Contractor will keep proper accounts and records of the cost relating to the Goods, Services and Deliverables, including all invoices, receipts and vouchers.

If this Contract includes payment for time spent by the Contractor, its employees, Representatives, agents or subcontractors providing the Goods, Services and Deliverables, the Contractor must keep a record of the actual time spent each day by each individual providing any part of the Goods, Services and Deliverables.

Unless the Authority has consented in writing to its disposal, the Contractor must retain all the information described in this section for seven (7) years after either:

- a) the Contractor receives the final payment under this Contract; or
- b) until the settlement of all outstanding claims and disputes, whichever is later.

During this time, the Contractor must make this information available for audit, inspection and examination by the representatives of the Authority, who may make copies and take extracts. The Contractor must provide all reasonably required facilities for any audit and inspection and must furnish all the information the Authority or its representatives may, from time to time, require to perform a complete or partial audit of this Contract. Notwithstanding the foregoing, the Authority's right to inspect, copy and audit will not extend to the composition of the Contractor's rates and fees, percentage mark-ups or multipliers but will apply only to their application to the applicable units.

Where such audit or inspection discloses an overpayment by the Authority, the Authority will have a right to set-off the amount of such overpayment against future Contractor invoices issued pursuant to this or any other Contract and, to the extent that the Authority's right of set-off is not exercised or not adequate to cover such overpayment, the Contractor will be responsible for promptly repaying such overpayment.

25.0 Subcontractors

If the Contractor subcontracts portions of the work pursuant to this Contract, the Contractor will be liable for its subcontractors' compliance with the Contract, and any breach of the Contract by any subcontractor, shall be treated as a breach by the Contractor itself.

26.0 Relationship

The Contractor will render the Goods, Services and Deliverables hereunder as an independent Contractor and the Contractor expressly agrees and acknowledges that the Contractor's employees and/or agents, including the Representative, are not employees of the Authority.

Neither the Contractor nor any of its employees and/or agents, including the Representative, will have any right to any Authority employee benefit, entitlement or advantage.

Nothing in this Contract will be construed as creating a partnership, joint venture or agency relationship between the parties, or as authorizing either party to act as agent for the other or to enter into any contracts on behalf of the other party. Neither the Contractor nor the Representative is authorized to bind or commit the Authority, either actually or apparently, in any manner whatsoever, without express prior written authority from the Authority to do so.

27.0 Dispute Resolution

The Contractor must send copies of all claims, reported damages, and any other dispute or occurrence (the "**Dispute**") to the Authority in written form for each individual Dispute within five (5) Working Days (as defined in the Scope of Work) of the Dispute, or the Dispute will be deemed ineligible.

The parties agree that any Dispute between the parties under this Contract will be resolved in the following manner:

- a) The parties will first endeavour to resolve any such Dispute matter or matters by good-faith negotiation, which will begin with formal notice by the aggrieved party to the other and conclude on the earliest of: (a) the parties reach an agreement settling the Dispute; (b) a party declares an impasse; or (c) thirty (30) calendar days after the aggrieved party gave notice to the other.
- b) If the Dispute is not resolved, the Authority and the Contractor shall attempt to resolve any Dispute between

them arising out of or in connection with this Contract by entering into structured non-binding negotiations with the assistance of a mutually agreeable mediator on a without prejudice basis. The mediator is to be appointed by agreement of the parties, but should the parties be unable to agree, the mediator selected by the Authority shall mediate the Dispute.

- c) If the parties have not reached an agreement settling the Dispute within thirty (30) days of the first mediation session being held with the mediator, the Authority or the Contractor may refer the Dispute to final binding arbitration subject to the terms of the *Arbitration Act, 1991*, S.O. 1991, c. 17 by notice in writing to the other party.
- d) Any Dispute that has not been referred to arbitration within thirty (30) days of the first mediation session being held with the mediator will be deemed to have been settled satisfactorily by the parties.
- e) Notwithstanding the foregoing, any action, proceeding, or submission to arbitration of any Dispute under or by virtue of this Contract is absolutely barred unless commenced within 120 days after the Dispute occurs.

In no case is a Dispute between the parties, or involving either of them, to delay the supply of the Goods, Services or Deliverables.

Each party will bear its own costs associated with any mediation process and/or any arbitration process and the mediator's and/or arbitrator's fees will be equally shared by the parties, and each party shall bear its own legal costs regardless of the outcome of any mediation and/or arbitration.

28.0 Severability

All notices and communications hereunder are to be in writing and are to be either (a) delivered personally, (b) delivered by commercial courier service, (c) sent by registered or certified mail to the postal address indicated below or such other address as may hereafter be designated in writing in accordance herewith, or (d) transmitted by e-mail address indicated below:

To the Contractor:

Contractor Name
Contractor Address
Tel: Contractor Telephone Number
Email: Contractor Contact Email

To the Authority:

The Essex-Windsor Solid Waste Authority
360 Fairview Avenue West, Suite 211, Essex, Ontario, N8M 3G4
Tel: (519) 776-6441 ext.1394
Attention: Tom Marentette
Email: tommarentette@ewswa.org

Notices delivered personally will be deemed to have been received when delivered; if delivered by courier, will be deemed to have been delivered on the delivery date and time recorded by the courier in its delivery records; if transmitted by facsimile or by e-mail, will be deemed to have been received when confirmed by the recipient as having been received and notices sent by certified or registered mail will be deemed to have been received four (4) days after mailing.

29.0 Amendment, Waivers and Assignment

This Contract may be amended in whole or in part only by the express written agreement of the parties hereto.

No waiver of any provision of this Contract will be implied, and no waiver will be valid unless it is in writing and signed by the party waiving its rights. No waiver of any breach of any of the terms, provisions or conditions of this Contract will be construed as or held to be a waiver of any other breach, or a waiver of, acquiescence in, or consent to, any further or succeeding breach hereof.

The Contractor may not assign its rights under this Contract without the prior written consent of the Authority, and any attempt to do so will be a breach of this Contract and will be void.

30.0 Entire Agreement

This Contract and the Schedules attached hereto constitute the entire agreement between the parties and supersede all previous negotiations, understandings and agreements, verbal or written with respect to any matters referred to in this Contract except as specifically set out in this Contract.

31.0 Governing Law and Attornment

This Contract is to be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Without limiting the requirement to submit disputes to arbitration, each party

irrevocably and unconditionally attorns to the exclusive jurisdiction of the courts located in the Province of Ontario for the purpose of any action or proceeding brought by either of them in connection with this Contract or any alleged breach thereof.

32.0 Survival

The representations, warranties and other provisions in this Contract that by their sense and context are intended to survive completion of performance, expiration or termination of this Contract, will so survive the performance, expiration or termination of this agreement as necessary to give effect to their intention.

33.0 Counterparts

This Contract may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will constitute one agreement. To evidence the fact that it has executed this Contract, a party may send a copy of its executed counterpart to the other party by electronic transmission and the signature transmitted by such transmission will be deemed to be that party's original signature for all purposes.

34.0 Definitions

In this Contract, capitalized terms will have the following meanings:

- a) Background IP has the meaning assigned in Section 21 (Intellectual Property);
- b) Contract has the meaning assigned in Section 3 (Contract Documents);
- c) Deliverables means the deliverables described in Schedule "A";
- d) Dispute has the meaning assigned in Section 27 (Dispute Resolution);
- e) Effective Date has the meaning assigned Schedule "A";
- f) Fees means the prices and fees set out in Schedule "A";
- g) Fibre MRF, Container MRF, and MRFs have the meanings assigned in Section 1 (Background);

- h) FOI Legislation has the meaning assigned in Section 23 (Compliance with Laws);
- i) Goods the goods described Schedule "A";
- j) Representative means the representative described in the attached Schedule "A";
- k) Services means the services described in the attached Schedule "A";
- l) Term has the meaning assigned in Section 5.0 (Term); and
- m) Any terms as defined in the associated Choose an item. and addenda thereto, which are referred to herein.

35.0 Force Majeure

If any of the facilities of the Authority, City of Windsor, or County of Essex are not available to the Contractor or the Authority is delayed in the performance of any of its obligations by any act of God, acts, regulations or decrees of any government, natural phenomena, war, strikes, lockouts, freight embargoes, fire, plant breakdown, process upset or any other cause, whether similar or dissimilar, beyond its reasonable control, then:

- a) the Authority shall not have the liability to the Contractor;
- b) the Contractor shall not have any right to make any claim or bring any action against the Authority for any damage it may suffer as a consequence; and
- c) the time for performance of such obligations by the Authority must be extended for a reasonable period of time but in no case must the extension of time be less than the time lost as the result of the event causing the delay, unless such shorter extension be agreed to by the parties.

36.0 Limit of Liability; Waiver of Consequential Damages

- a) The total amount of all claims the Authority may have against the Contractor under this Contract or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, will be strictly limited to the higher of: i) the fees paid to the Contractor; or ii) the limit of insurance required to be maintained hereunder. This limit of liability will not

apply to claims arising under sections 13, 15, 16, 18, 20, 21, 22, and 23 of this Contract.

- b) Neither the Authority nor the Contractor will be liable to the other or will make any claim for any incidental, indirect, consequential damages, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies ("Consequential Losses") arising out of or connected to this Contract. This s. 36b) will not apply to Consequential Losses arising under sections 13, 15, 16, 18, 20, 21, 22, and 23 of this Contract.

The parties hereto have each executed this Contract by their respective duly authorized officers.

Name of Contractor

Signature

Name

Title

Date

I have authority to bind the Corporation.

The Essex-Windsor Solid Waste Authority

Signature

Name

Title

Date

Signature

Name

Title

Date

I/We have authority to bind the Authority.

Schedule "A"

Statement of Work

Effective Date:	Click or tap to enter a date.
Commencement Date:	Click or tap to enter a date.
Termination Date:	Click or tap to enter a date. (Unless further extended at the Authority's discretion in accordance with the provisions of Section 3 of the Authority's RFP and in accordance with the pricing provided for in Schedule "B" to this Agreement)
Representative of the Contractor:	Representative Name of the Contractor Contractor Representative email
Representative of the Authority:	Tom Marentette, Manager of Waste Disposal tommarentette@ewswa.org

Description of Services:

Engineering and Construction of a Concrete Push Wall Extension in Transfer Station #2, located in the Town of Kingsville.

Pricing

[Insert pricing table and related terms / basis of payment]

The pricing is in Canadian funds.

Please refer to Section 9 (Fees and Invoicing) of this Contract for further terms regarding the fees.