

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between Casco/Naples Bulky Waste & Transfer Station Council (“Owner”) and _____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

1. All work associated with phased construction. The existing site is an active solid waste transfer facility and will require phased construction to allow for continued operation during the construction. Contractor is responsible for coordination with the transfer station operator, providing temporary traffic signage, barricades, access roads, maintenance of the site and all associated work for phasing. The phasing work will require the construction of a temporary MSW collection and processing area as depicted on the contract drawings.
2. The Owner will be installing new compactors and a relocating an existing compactor to the temporary MSW collection area. This will be under separate contract between the owner and Atlantic Recycling Equipment. Atlantic Recycling Equipment will provide and install compactors and complete associated electrical and hydraulic work for the compactors. Contractor is responsible for installation of all conduits and conductors to equipment, lights and electrical panels, earthwork, concrete and associated construction and shall coordinate directly with Atlantic Recycling Equipment. As part of the bidding process, the Contractor shall contact Atlantic Recycling Equipment to coordinate what equipment and installation will be completed by Atlantic Recycling Equipment and supporting work that will be required by the contractor. The supporting contractors’ work shall be included in the contractors bid.
3. Site preparation of temporary facilities including but not limited to tree clearing, grubbing, stripping topsoil, concrete pad installation for temporary MSW, gravel access drive construction, temporary fencing, security gates, and underground electrical services.
4. Demolition of existing concrete retaining walls and concrete pads in the Transfer Station and Bulky Waste Facility, Canopy at existing transfer station building, miscellaneous demolition as needed to facilitate new construction.
5. The partial demolition and modification of existing concrete retaining walls at the Transfer Station building.
6. Removal of the existing transfer station canopies and residing the building with similar materials at face of building where canopy was removed. Match existing vinyl siding to infill where canopy is removed at transfer station building.
7. Construction of new reinforced concrete retaining wall systems for waste and recycling bin areas and site retaining walls including fencing, guardrails, metal cap plats, inserts and all other associated items shown on plans and required in contract documents.
8. Construction of reinforced concrete pads at retaining walls, including embedded steel skid plate protection as required.

9. Paving throughout the facility.
10. Relocation and/or replacement of utility services including electrical, water, and sanitary sewer (force main and gravity).
11. Stormwater collection infrastructure including catch basins, grassed swales, riprap channels, culverts, and storm drain pipe.
12. Reconstruction/restoration of stormwater treatment facilities including infiltration basins and retention pond along with drainage ditches and conveyance systems.
13. Site improvements to include but not limited to earthwork, excavation, subgrade and subbase preparation, dewatering, shoring and bracing, general conditions, erosion control, gravels, export of unsuitable materials, backfilling, structural fill, paving, landscaping, fencing, guardrail, and all other site related work required by contract documents.
14. Installation of commercial cantilever sliding gates and swing gates.
15. Jobsite trailers, temporary storage, staging areas, waste removal, portable toilets, temporary power, coordination with power company, winter conditions, site security, traffic control, barricades and all other work necessary to facility construction and comply with health and safety regulations and accommodate phased construction.
16. Repair to all surfaces, reseeding, re-loaming, maintaining erosion and sedimentation control measures throughout construction including storm, snow and ice damage throughout construction and during the warrantee period until final owner acceptance.
17. Plowing, mowing (weekly) and related site maintenance during construction.
18. Coordination with solar installer who will have installed solar on the landfill during the 2023 construction season and may have follow-up maintenance and construction in the spring/summer of 2024.

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

Casco/Naples Bulky Waste & Transfer Station Improvements

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Sebago Technics, Inc. of South Portland, Maine.
- 3.02 The Owner has retained Sebago Technics, Inc. of South Portland, Maine (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

- A. The Work will be substantially completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner **\$1,000 for each day** that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,000 for each day** that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, at the prices stated in Contractor’s Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

- a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, and if all submittals identified in the Contract Document have been submitted to the Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the Work completed less the aggregate of payments previously made; and
 - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 98 percent of the Work completed, less such amounts as Engineer shall determine in accordance with general conditions. The final two percent of the value of the Work shall be retained for a period of one year from the date of substantial completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06 of the General Conditions, less any sum Owner is entitled to set off against Engineer's recommendation, including but no limited to liquidated damages.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall not bear interest.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if

any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (inclusive).
 - 2. Performance bond (inclusive).
 - 3. Payment bond (inclusive).
 - 4. General Conditions (inclusive).
 - 5. Supplementary Conditions (inclusive).
 - 6. Specifications as listed in the table of contents of the Project Manual.
 - 7. Drawings (not attached but incorporated by reference) consisting of all sheets bearing the following general title: Casco/Naples Bulky Waste & Transfer Station Improvements, or shortened to Bulky Waste & Transfer Station Improvements.
 - 8. Addenda (inclusive).
 - 9. Exhibits to this Agreement (enumerated as follows):

- a. Contractor's Bid (inclusive).
- b. Documentation submitted by Contractor prior to Notice of Award

10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:

- a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)