

MASTER PROGRAM AGREEMENT

FOR THE

URBAN STORMWATER RETROFIT PROGRAM PUBLIC-PRIVATE PARTNERSHIP

BETWEEN

PRINCE GEORGE'S COUNTY, MARYLAND

AND

CORVIAS PRINCE GEORGE'S COUNTY STORMWATER PARTNERS, LLC

March ____, 2015

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SCHEDULES

- Schedule 1** Form of Annual Plan [**REDACTED IN ITS ENTIRETY**]
- Schedule 2** Form of Budget Book [**REDACTED IN ITS ENTIRETY**]
- Schedule 3** Codes and Standards
- Schedule 4** County Responsible Permits [Reserved]
- Schedule 5** List of General BMPs and Technical Requirements
- Schedule 6** Socio-Economic Participation Requirements
- Schedule 7** Incentive Fees and Criteria
- Schedule 8** Application For Payments [**PAGES 5-7 REDACTED**]
- Schedule 9** Form of Affidavit and Release
- Schedule 10** Vendors' Oath and Certification
- Schedule 11** [Reserved]
- Schedule 12** Form of Impervious Area Credit Certificate
- Schedule 13** Guaranty
- Schedule 14** Form of Letter of Credit [**REDACTED IN ITS ENTIRETY EXCEPT FOR THE AMOUNT AND BENEFICIARY**]
- Schedule 15** [Reserved]
- Schedule 16** Insurance
- Schedule 17** Technology Assignment Agreement
- Schedule 18** Technology License Agreement

Schedule 19 Program Performance Milestones

MASTER PROGRAM AGREEMENT

THIS MASTER PROGRAM AGREEMENT (this “**Agreement**”) is entered into as of _____, 2015, by and between **PRINCE GEORGE’S COUNTY, MARYLAND** (the “**County**”), a body corporate and politic of the State of Maryland (the “**State**”), and **CORVIAS PRINCE GEORGE’S COUNTY STORMWATER PARTNERS, LLC**, a Maryland limited liability company having its principal place of business at 16701 Melford Boulevard, Suite 400, Bowie, Maryland 20715 and authorized to do business in the State (the “**Manager**”). The County or the Manager or both may be referred to herein as the “**Party**” or the “**Parties**,” as the context of the usage of such term may require.

WITNESSETH

WHEREAS, on May 30, 2013, the County issued a Request for Qualifications (RFQ S13-083) (the “**RFQ**”) to solicit qualified vendors possessing the skills, qualifications and expertise to plan, design, finance, develop, redevelop, construct, renovate, manage, retrofit, integrate, operate, maintain and provide adaptive management of stormwater infrastructure within the County to achieve and maintain compliance with the County’s National Pollutant Discharge Elimination System (“**NPDES**”) MS4 permit and the Chesapeake Bay Watershed Implementation Plan through use of a public-private partnership approach (the “**Program**”);

WHEREAS, the County intends for the Program to initially focus on retrofitting up to two thousand (2,000) acres of publicly-owned Impervious Area within the County (the “**Initial Program Area**”);

WHEREAS, upon the success of the Manager in achieving the performance metrics established for the Program as specified herein, the scope of the Program will, upon the agreement of the Manager, be expanded to include the retrofit of an additional two thousand (2,000) acres of publicly-owned Impervious Area within the County (the “**Expanded Program Area**”);

WHEREAS, the County believes that a public-private partnership approach provides significant advantages through (a) improved economic feasibility, (b) increased project delivery and innovation, (c) the prospect for reduced costs through economies of scale and flexibility such as the standardization of design, construction and maintenance practices and leverage of future work to optimize cost savings in the procurement of products, materials and services, (d) operational efficiencies in design, construction, maintenance and management cost reductions when compared to traditional government contracting and procurement, (e) increased flexibility by encouraging the use of tailored solutions to leverage key value drivers such as cost efficiencies, innovations, ingenuity and Best Management Practices, (f) a shared risk model that accelerates the implementation of sustainable Low Impact Development/Green Infrastructure Practices, and (g) incentives to promote and meet job creation and economic development goals within the County in the area of stormwater management;

WHEREAS, as part of the Program, the County desires to invest in and encourage the development and use of innovative Low Impact Development/Green Infrastructure Practices for improved stormwater management to restore impaired water quality, satisfy Program and NPDES MS4 permit requirements, and manage stormwater runoff;

WHEREAS, the County envisions that the key elements for success of the Program are (a) the development and use of a combination of traditional and innovative stormwater retrofit approaches, including Best Management Practices and Low Impact Development/Green Infrastructure Practices, to satisfy the NPDES MS4 Permit and Program requirements, and (b) the effective and efficient operation and routine management thereof to ensure long-term project sustainability throughout the term of the Program;

WHEREAS, the Manager, in response to the RFQ, submitted a statement of qualifications describing, among other things, its experience and its proposed approach to perform such services with respect to the Program;

WHEREAS, on September 6, 2013, the Manager was notified by the County that it met the qualification requirements of the RFQ and was invited to participate in meetings and negotiations relative to the Initial Program Area, including (a) a master program agreement relative to the planning, design, construction, installation and Acceptance of the Project(s), and (b) a master maintenance agreement relative to the management and maintenance of the Approved Project(s) once Accepted;

WHEREAS, the County has selected the Manager in reliance on (a) the Manager's submissions and representations in response to the RFQ and (b) the negotiated and finalized Agreement and the Master Maintenance Agreement;

WHEREAS, as of the Contract Date, the County has not determined each of the Proposed Projects; rather, the County intends, from time to time on an annual basis, to establish Proposed Project priorities in a collaborative effort with the Manager in the development of the Annual Plan;

WHEREAS, the County desires to engage the services of the Manager (a) to assist the County in establishing Program priorities and preparing the Annual Plan for the Initial Program Area, and if the applicable criteria are met, for the Expanded Program Area, (b) to develop and implement the Social and Economic Development Programs, (c) following approval of a Final Budget for each Fiscal Year, to perform the planning and design for each Budgeted Project, (d) following approval by the County of a Budget Book for a Budgeted Project, to construct, install and obtain Acceptance of the Approved Project(s) for the subject Billing Year, and (e) to manage, operate and maintain each Approved Project following Acceptance in accordance with the terms and conditions of this Agreement and the Master Maintenance Agreement, and the Manager desires to perform such services under the terms and conditions and for the compensation provided herein and therein;

WHEREAS, the Parties acknowledge that there are significant opportunities for public benefit in the development, implementation and use of Best Management Practices and Low Impact Development/Green Infrastructure Practices for stormwater and runoff management throughout the County, and the Parties intend to utilize, to the extent practicable and economically feasible, such practices and techniques in connection with the development of the Approved Projects;

WHEREAS, the County intends to fund the Program from (a) the uncommitted bond proceeds received from the sale of County Stormwater Revenue Bonds (currently contemplated for issuance on an annual basis), (b) certain funds existing in the County's Local Watershed Protection and Restoration Fund, (c) private financing sources generated through the Manager's resources, efforts and capabilities as described in its response to the

County's Request for Qualifications No. S13-083, and (d) Grant proceeds that may become available to the County for Program costs;

WHEREAS, on or prior to incorporating Best Management Practices, which would constitute new Intellectual Property, into an Annual Plan, the Manager, the County and the initial Design Engineer will execute and deliver to the County a Technology Assignment Agreement substantially in the form set forth in Schedule 17 (Technology Assignment Agreement), pursuant to which the Manager and the Design Engineer will assign to the County, such right, title and interest in and to such share of the Intellectual Property developed by or on behalf of the Manager and the Design Engineer in connection with their activities and performance under this Agreement as shall be provided for therein; and

WHEREAS, the Guarantor has, on or prior to the Contract Date, executed and delivered the Guaranty to the County.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties do covenant and agree as follows:

SECTION I

THIS AGREEMENT

Section 1.1 Purpose. The purpose of this Agreement is to establish the terms and conditions pursuant to which the Manager shall (a) assist with the planning and development of an Annual Plan setting forth each Proposed Project to be developed, cause each Budgeted Project set forth in the Final Annual Plan to be designed, and if such

Budgeted Project is approved by the County in the relevant Budget Book, cause such Approved Project to be constructed, installed and Accepted, and (b) develop and implement jobs creation and business development and community/stakeholder outreach and education programs. The location, scope and methodology for each Approved Project, including required BMP(s) to be utilized, shall be set forth in the Design Documentation for such Project.

Section 1.2 Cooperation. The Parties shall cooperate with one another and exercise all reasonable efforts in performing their obligations under this Agreement to facilitate the development and timely implementation of the Annual Plans during the Term. The Parties also agree in good faith to undertake the amicable resolution of disputes, if any, in an equitable and timely manner so as to avoid, where feasible, the need for more formal resolution.

Section 1.3 Entire Agreement. The following Schedules are attached to and made a part of this Agreement:

- Schedule 1** Form of Annual Plan
- Schedule 2** Form of Budget Book
- Schedule 3** Codes and Standards
- Schedule 4** County Responsible Permits [Reserved]
- Schedule 5** List of General BMPs and Technical Requirements
- Schedule 6** Socio-Economic Participation Requirements
- Schedule 7** Incentive Fees and Criteria
- Schedule 8** Application For Payments
- Schedule 9** Form of Affidavit and Release

- Schedule 10** Vendors' Oath and Certification
- Schedule 11** [Reserved]
- Schedule 12** Form of Impervious Area Credit Certificate
- Schedule 13** Guaranty
- Schedule 14** Form of Letter of Credit
- Schedule 15** [Reserved]
- Schedule 16** Insurance
- Schedule 17** Technology Assignment Agreement
- Schedule 18** Technology License Agreement
- Schedule 19** Program Performance Milestones

This Agreement, including the recitals hereto and the foregoing Schedules, constitutes the entire Agreement of the Parties. This Agreement, inclusive of the Schedules, together with any written amendments, shall govern the rights and obligations of the Parties with respect to the finance, design, construction, installation and Acceptance of the Approved Projects. This Agreement, inclusive of the Schedules, contemplates that the Parties will enter into various agreements for services, including the Master Maintenance Agreement. The descriptions of any such agreements herein, in each and every case, are subject entirely to the actual terms of those agreements as executed.

SECTION II

DEFINITIONS AND GENERAL PROVISIONS

Section 2.1 Definitions. The following are definitions of certain terms used in this Agreement. To the extent an initial capitalized term is used but not defined herein, such term shall have the meaning specified in the Master Maintenance Agreement.

“Accept,” “Acceptance” or “Accepted” means, with respect to a particular Project, (a) that Substantial Completion has been achieved and the Project has been constructed in full compliance and conformance with the Design Standards and Design Documentation; or (b) Substantial Completion has been achieved, and notwithstanding that the Project has not been constructed in full compliance or conformance with the Design Standards or Design Documentation, the Project has been Accepted by the County pursuant to Section 9.6.2.2(A).

“Acceptance Certification” shall have the meaning set forth in Section 9.4.

“Acceptance Date” means, with respect to each applicable Approved Project, the date on which Acceptance has been achieved.

“Acceptance Report” shall have the meaning set forth in Section 9.4.

“Actual Program Costs” shall have the meaning specified in Section 7.2.

“Actual Project Costs” shall have the meaning specified in Section 7.1.

“Advance Payment” shall have the meaning specified in Section 7.5.

“Advance Payment Balance” shall mean, as of any date, the Advance Payment, less the sum of (i) the Upfront Payment and (ii) all Advance Payment Credits which, prior to the date of computation, have been credited against the fees due the Manager or repaid to the County, as applicable, pursuant to Section 7.5.

“Advance Payment Credit” shall have the meaning specified in Section 7.5.

“Affiliate” means, when used with reference to a specified Person, any Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person.

“Aggregate Exposure” shall have the meaning specified in Section 10.2.1.

“Agreement” shall have the meaning ascribed to it in the first paragraph of this Agreement, as the same may be amended from time to time in accordance with the terms herein.

“Annual Plan” means a written plan prepared annually in advance with respect to the upcoming Billing Year [**REDACTED**]

“Applicable Law(s)” means (a) every applicable federal, State, County, or local law, code (including Codes and Standards), rule, constitution, mandate, statute, regulation, ordinance, municipal charter provision, (b) every order, decree, Permit, writ, consent, guideline, action, determination, directive, standard, license, judgment, and other governmental requirement or resolution, in each case issued by a Governmental Authority and (c) any interpretation or administration of any of the foregoing by any Governmental Authority, in each case, which applies to the activities or Parties under this Agreement, whether now or hereafter in effect.

“Application for Payment” shall have the meaning specified in Section 8.1.1.

“Approved Project” shall have the meaning specified in Section 4.8.2.

“As-Built Drawings” means the as-built or record drawings specified to be supplied pursuant to this Agreement.

“Audited Financial Statements” means a balance sheet, income statement and statement of changes in financial position for the relevant period, in each case prepared in accordance with generally accepted accounting principles (GAAP), consistently applied, and prepared and audited by a nationally recognized firm of independent certified public accountants in accordance with generally accepted auditing standards (GAAS) and accompanied by such firm’s written audit opinion to the effect that such statements fairly present the financial position and the results of operations of the subject company as set forth therein.

“Authorized Representative(s)” means the County’s Authorized Representative and/or the Manager’s Authorized Representative as the context of the usage of such term may require, as such Authorized Representative is designated pursuant to Section 17.11.

“Base Fee” means a fee payable to the Manager for Work properly performed pursuant to this Agreement (including Work pursuant to Contingency Change Orders) in an amount equal to:

(a) for each Project (I) included within the Initial Program Area or (II) designated by the Parties as a Capital Repair and Replacement Project in accordance with the Master Maintenance Agreement, **[REDACTED]**

(b) for each Project included within the Expanded Program Area (if and only if the Agreement is extended pursuant to Section 17.1.1) **[REDACTED]**

“Best Management Practices” or “BMP(s)” means any or all, as the context may indicate, best structural device or nonstructural water quality practice as approved, published, or permitted by MDE (including those subsequently approved), which is designed to store or treat stormwater runoff in order to mitigate flooding, reduce pollution

loads or provide other amenities and benefits in retrofitting Impervious Areas or obtaining Impervious Area Credits.

“Billing Month” means each calendar month in each Billing Year, except that (a) the first Billing Month shall begin on the Contract Date and end at the close of business on March 31, 2015, and (b) the last Billing Month shall end concurrently with the end of the Term or, if applicable, on the date of termination of this Agreement.

“Billing Year” means a Fiscal Year comprised of twelve (12) calendar months, except that (a) the first Billing Year shall commence on the Contract Date and end on June 30 immediately following the Contract Date and (b) the last Billing Year shall end concurrently with the end of the Term or, if applicable, on the date of termination of this Agreement.

“Budget Book” means, with respect to each Budgeted Project, an exhibit setting forth or attaching:

[REDACTED]

“Budget Book Amendment” shall have the meaning set forth in Section 5.5.1.

“Budgeted Cost Incentive” shall mean a portion of the Incentive Fee, as described in Schedule 7 (Incentive Fees and Criteria).

“Budgeted Project” shall have the meaning set forth in Section 3.1.

“Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday, which is not a legal holiday in the County.

“Capital Repair and Replacement Projects” shall have the meaning set forth in the Master Maintenance Agreement and shall constitute and be deemed to be “Projects” for all purposes of this Agreement.

“Cause for Completion Certifier Replacement” shall have the meaning specified in Section 4.6.5.1.

“Change(s) in Law” means (a) the enactment, adoption, promulgation, modification or repeal, after the Contract Date, of any Applicable Law or any change in interpretation thereof by any Governmental Authority or (b) the imposition, after the Contract Date, of any conditions on the issuance, modification or renewal of any Permit that, in the case of either (a) or (b), (1) affects the Manager’s performance of the Work or increases the Manager’s costs to perform the Work, (2) affects the Manager’s performance of its obligations under this Agreement or increases the Manager’s costs to perform its obligations under this Agreement, (3) affects the County’s performance of its obligations hereunder, or (4) increases the County’s costs to perform its obligations under this Agreement or reduces or eliminates the revenues available under the Program, which in the case of (b)(1), (2) (3) or (4), imposes requirements on the applicable Party that are more burdensome than the most stringent requirements:

(A) in effect on the Contract Date; or

(B) agreed to by or on behalf of the Manager in any applications for Permits, other than any requirements set forth in said applications to comply with Applicable Laws.

For purposes of part (a) of this definition, no enactment, adoption, promulgation or modification of any Applicable Laws shall be considered a Change in Law if such Applicable Law was, as of the Contract Date, (i) officially proposed by the applicable Governmental Authority and published in final form in the Federal Register or equivalent federal, State or local publication and thereafter becomes effective without further action

or (ii) enacted into law or formally promulgated by the appropriate Governmental Authority before the Contract Date, and the comment period with respect to which had expired on or before the Contract Date and any required hearings had concluded on or before the Contract Date in accordance with applicable administrative procedures and which thereafter becomes effective without further action.

The enactment into law after the Contract Date of any Applicable Law establishing a fee, charge, levy or assessment (but not including taxes) which was not in existence in any form (including not existing in the form of a different rate or amount) as of the Contract Date, shall be considered a Change in Law under this Agreement.

The enactment into law after the Contract Date of any federal, State or local tax law imposing or changing the rate of taxation upon the Manager or the owners of the Manager, other than a discriminatory tax law having application to any Approved Project or the Manager (or upon the owners of the Manager) as the developer of the Projects, shall not be considered a Change in Law or any other Uncontrollable Circumstance under this Agreement.

“Change of Control” shall be deemed to have occurred if: (a) any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or person, or any syndicate or group becomes the beneficial owner, directly or indirectly, of securities of the Person representing fifty percent (50%) or more of the combined voting power of the Person’s then outstanding securities entitled to vote; (b) there occurs a transaction with respect to which the stockholders, members, partners or owners of the Manager immediately prior to such transaction do not, immediately after the transaction, own or control more than fifty percent (50%) of the combined voting power of

the Person; or (c) all or substantially all of the assets of the Person are sold, liquidated or distributed; provided, however, that, for purposes of clauses (a) and (b), a Change of Control shall not be deemed to have occurred solely by virtue of (i) transfers of direct or indirect interests in the Manager among affiliates of the Manager that are subject to the control of the same Person (or an Affiliate of such Person) that controls the Manager as of the Contract Date and (ii) transfers of direct or indirect interests in the Guarantor if the transfer is permitted by the Guaranty.

“Change Order” shall have the meaning set forth in Section 5.5.

“Clean Water Act Fees” means the fees of such name provided for pursuant to Section 10-302 of the County Code, together with any successor thereto.

“Codes and Standards” means those applicable technical or numerical codes and standards referenced in this Agreement, those applicable codes and standards of technical societies, organizations or associations, and all applicable provisions of all national, State, County or local established rules, including those requirements of the organizations, associations and other entities or requirements listed in Schedule 3 (Codes and Standards), for the Work that, in each case, pursuant to Applicable Law, shall be adhered to by the Manager in the performance of the Work. Changes to Codes and Standards after the Contract Date shall constitute a Change in Law provided such change meets the requirements of the Change in Law definition.

“Community Outreach Program” shall mean the program generally described in Section 6.1(a), including those general obligations described in Section 6.2(a) and in the section of the Social and Economic Development Plan entitled “Community Outreach

Program”, as the same is developed by the Manager and approved by the County in accordance with Section 6.2.

“Completion Certifier” means Maryland Environmental Service, an independent State agency, or such other competent and qualified professional engineer who is (a) licensed in the State and has experience inspecting, monitoring and evaluating stormwater projects similar to the Projects, and (b) procured by the Manager and approved in writing by the County in accordance with Section 4.6.5.

“Completion Certifier Agreement” shall have the meaning specified in Section 4.6.5.1.

“Construction Approval Date” means, with respect to each Approved Project, the date on which the County executes and delivers a Budget Book to the Manager’s Authorized Representative in accordance with Section 4.8.2.

“Construction Commencement Date” means, with respect to each Approved Project, the earlier of (a) the date on which construction activities begin at the applicable Project Site and (b) the date following the Construction Approval Date upon which the Manager commences or authorizes Subcontractors to commence acquiring equipment or materials for use at the Project Site.

“Construction Documentation” means, with respect to each Approved Project, all Design Documentation and all shop drawings, As-Built Drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary for construction of an Approved Project in accordance with this Agreement.

“Contingency Change Order(s)” means a change to the Work, the cost thereof or the schedule for an Approved Project that arises from (a) an Uncontrollable Circumstance, or (b) County Fault.

“Contract Administrator” means a Person, not involved in the sourcing or administration of this Agreement, to whom the Purchasing Agent delegates authority to render decisions on contract claims or disputes.

“Contract Date” means the date of the execution of this Agreement by the Parties.

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies, or both, of the Manager or the Guarantor, or the Manager’s development, construction, management, operation or maintenance (or any or all of the foregoing) of Project(s), whether through the ownership of voting securities or member or partnership interest, by contract, or otherwise.

“Control Program” means the stormwater retrofit project(s) designated by the County as within the “control group” for purposes of comparing (a) the County’s costs and expenses using a traditional contracting approach in procuring, developing and constructing such projects using General BMPs on not less than eight hundred (800) acres of impervious areas to (b) the County’s costs and expenses in procuring, developing and constructing stormwater retrofits using the Manager and approach under this Agreement.

“Cost Substantiation” means documentation reasonably acceptable to the County provided by the Manager to support any costs resulting from (a) an Uncontrollable Circumstance, (b) additional Work to be performed by or on behalf of the Manager, (c) costs resulting from County Fault, Contingency Change Order or Material Change Order

or (d) any other costs identified under this Agreement for which Cost Substantiation must be supplied.

“County” shall have the meaning ascribed to it in the first paragraph of this Agreement identifying the Parties hereto.

“County-Based Business Enterprise” or “CBE” shall have the same meaning as such terms are defined in the County Code or the Procurement Regulations.

“CountyBased Minority Business Enterprise” or “CMBE” shall have the same meaning as such terms are defined in the County Code or the Procurement Regulations.

“County-Based Small Business Enterprise” or “CSBE” shall have the same meaning as such terms are defined in the County Code or Procurement Regulations.

“County Code” means the Prince George’s County Code, as the same may be amended from time to time.

“County Council” means the Prince George’s County Council.

“County Fault” means (a)(1) any material breach, failure, nonperformance or noncompliance by the County with the terms and provisions of this Agreement for any reason, other than Uncontrollable Circumstance or Manager Fault; or (2) any negligence or willful misconduct of any officer, agent, employee, subcontractor or independent contractor of the County (other than the Manager, any Subcontractor or the Completion Certifier) which, in the case of (a)(1) or (2) of this definition, prevents or materially delays, either individually or cumulatively (i) the County’s performance of its obligations under this Agreement, or (ii) the Manager’s performance of its obligations under this Agreement or which deprives the Manager of any of its material rights under this Agreement; or (b) any knowing and willful act of any officer or employee of the County which directly (i)

prevents or materially delays the Work on the relevant Approved Project, or (ii) causes a material increase in the Actual Project Costs for such Project (but this clause (b) shall exclude (X) any act of the County caused by or attributable to an Uncontrollable Circumstance or the fault, failure, delay, negligence or willful misconduct of the Manager or any Subcontractor and (Y) any act of the County suspending Subcontractor work for a period of not more than thirty (30) days in accordance with Section 4.6.2). For purposes of making determinations pursuant to clause (b), the County may obtain the written opinion of the Independent Engineer prepared in accordance with Section 5.5.4.1.

“County Indemnified Parties” shall have the meaning set forth in Section 15.1.

“County Initiated Change in Law” shall have the meaning specified in Section 14.7.

“County-Located Business Enterprise” or “CLBE” shall have the same meaning as such terms are defined in the County Code or the Procurement Regulations.

“County Resident Participation Incentive” shall mean that portion of the Incentive Fee described in Schedule 7 (Incentive Fees and Criteria).

“County Responsible Permits” means those Permits specified on Schedule 4 (County Responsible Permits).

“County’s Authorized Representative” means the County’s representative specified in Section 17.11.

“County Stormwater Revenue Bonds” means the revenue bonds issued, from time to time, by the County to fund stormwater improvements pursuant to the Program.

“Curative Work” shall have the meaning set forth in Section 9.6.2.1.

“Cure Plan” shall have the meaning set forth in Section 9.6.2.1.

“Customized BMP” means a customized BMP developed for a particular Budgeted Project which is not a General BMP.

“Deferred Incentive Fees” has the meaning specified in Section 7.4.3.

“Design Documentation” means such plans, drawings, specifications (including the quality of equipment and materials), and other design documentation (including design standards, design or durability reports, models, samples, and calculations) in computer readable and written formats prepared by the Design Engineer(s) engaged by or on behalf of the Manager with respect to a Project.

“Design Engineer” means Bowman Consulting Group, Ltd, a Virginia corporation, and CH2M Hill Engineers, Inc., a Delaware corporation, or such other qualified design engineer who (a) has demonstrated experience in the area of civil engineering, planning, surveying, environmental, landscape architecture, and water and wastewater engineering, and (b) is procured by the Manager and approved in writing by the County in accordance with Section 4.6.5.

“Design Milestones” mean, with respect to a Budgeted Project,

[REDACTED]

stages of design.

“Design Standards” means all of those standards, requirements and specifications set forth in the Design Documentation for the relevant Approved Project.

“Direct Costs” means the actual, Third Party Costs directly incurred and paid or payable by the Manager under this Agreement in payment of its Subcontractors (including Prime Contractors) in connection with the performance of Work directly relating to (a) the

design, construction, installation and Acceptance of a Project, and (b) the implementation of the Social and Economic Development Programs.

“Early Completion Incentive” shall mean that portion of the Incentive Fee specified and described in Schedule 7 (Incentive Fees and Criteria).

“Emergency” means an incident beyond the reasonable control of the Manager and Subcontractors requiring immediate action on the part of the Manager that if not immediately addressed, may reasonably be expected to result in imminent and substantial damage, injury or loss.

“Environmental Attribute(s)” shall mean any existing or future certificate, offset, credit, allowance, permit, green tag, derivative or other tradable and transferable indicia, howsoever entitled, created, represented, registered, generated, issued, allocated or otherwise required or recognized (or both) by any Person under Applicable Law relative to the performance of the Work. An Environmental Attribute includes one or more of the following: (a) Impervious Area Credits; (b) reduction in Impervious Area(s); (c) the direct or avoided reduction in stormwater runoff; (d) avoided water use; (e) improved water quality; (f) as otherwise defined by any Person; or (g) as agreed to in writing by the Parties.

“Environmental Litigation” means any suit, action or claim alleging that (a) the Work will have an adverse effect on the environment, (b) the County has not duly considered, either substantively or procedurally, the effect of the Work on the environment, or (c) the Work or the Program, or any element thereof, does not or will not comply with the applicable (or asserted to be applicable) standards or requirements of the EPA, MDE or other Applicable Law concerning the environment or any Environmental Attribute.

“EPA” means the United States Environmental Protection Agency and its successor.

“Estimated Project Cost” means the estimated cost and expense to design, construct, install and Accept each Proposed Project, as reasonably determined by the County and the Manager for the relevant BMP(s) anticipated to be designed, constructed and installed for such Proposed Project, all as agreed to by the Parties.

“Event of Default” shall have the meaning specified in Section XIII.

“Expanded Program Area” shall have the meaning specified in the Recitals to this Agreement. For avoidance of doubt, the Expanded Program Area shall not include the acreage of any Capital Repair or Replacement Projects.

“Extension Period” shall have the meaning specified in Section 17.1.2.

“Final Annual Plan” shall have the meaning specified in Section 3.2.

“Final Budget Book” shall have the meaning specified in Section 4.8.2.

“Fiscal Year” means the County’s fiscal year commencing on July 1 and ending on the immediately succeeding June 30.

“GC Disclosure” means, with respect to a Budgeted Project, (a) the GC Markup, and (b) the amount of the General Contractor’s overhead allocation, itemized general requirements and contingency amount (each as specified separately), in each case, in excess of the amount of the Subcontractors bid(s) (other than the Prime Contractors) tentatively selected in accordance with Section 4.6.1.

“GC Markup” means, with respect to a Budgeted Project, the General Contractor’s mark-up or profit expressed as a percentage of the total Subcontractors bids (other than the Prime Contractors) tentatively selected in accordance with Section 4.6.1.

“General BMP” means a BMP set forth on Schedule 5 (List of General BMPs and Technical Requirements), as the same may be amended in writing by the Parties from time to time.

“General Contractor” means CH2M Hill Constructors, Inc., a Delaware corporation, or such other qualified general contractor procured by the Manager and approved by the County, as procured and selected in accordance with Section 4.6.5.

“Governmental Authority(ies)” means any federal, State, regional, city, County, or local government, any political subdivision thereof, or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, commission, administration, bureau or court having jurisdiction over, as applicable, the Program, the Project(s), the Project Site(s), or the transactions relative to the development, construction, installation, management, operation or maintenance of MS4.

“Grants” shall have the meaning ascribed to such term in Section 17.8.

“Guarantor” means Corvias Group, LLC, a Delaware limited liability company.

“Guaranty” means that certain Guaranty executed by the Guarantor in favor of the County, in the form attached hereto as Schedule 13 (Guaranty).

“IE Opinion” shall have the meaning ascribed to such term in Section 5.5.4.1.

“Impervious Area” means any land surface that does not allow stormwater to infiltrate into the ground as set forth on the County’s geographic information system (GIS) mapping of the relevant County property.

“Impervious Area Credit Certificate” means a certificate executed and delivered by the Completion Certifier, in the form attached hereto as Schedule 12 (Form of Impervious

Area Credit Certificate), certifying the number of Impervious Area Credits earned and received by the County upon Acceptance of any particular Project.

“Impervious Area Credits” means a credit earned and received by the County on a “per acre” basis pursuant to the MS4 Permit in respect of Work performed under this Agreement.

“Incentive Fee Criteria” means the performance metrics and achievement schedule used to determine the amount of the Early Completion Incentive, Budgeted Cost Incentive, Local-Based Small Business Incentive, Target Class Incentive, and County Resident Participation Incentive, or one or more of the foregoing, to be paid to the Manager as set forth on Schedule 7 (Incentive Fees and Criteria).

“Incentive Fees” means:

for each Approved Project that is Accepted and (I) included within the Initial Program Area during the first three (3) Billing Years of the Program or (II) designated by the Parties as a Capital Repair and Replacement Project in accordance with the Master Maintenance Agreement, an aggregate amount not to exceed **[REDACTED]**

(a) or

for each Approved Project that is Accepted and included within the Expanded Program Area (if and only if the Agreement is extended pursuant to Section 17.1.1) an aggregate amount not to exceed **[REDACTED]**

(b) in each case, payable to the Manager pursuant to Section 7.4 upon achievement or satisfaction of the Incentive Fee Criteria set forth in Schedule 7 (Incentive Fees and Criteria), as determined or calculated in accordance with Schedule 7 (Incentive Fees and Criteria) and this Agreement.

“Incubator Program” shall have the meaning ascribed to such term in Section 6.3.

“Independent Engineer” means a qualified and licensed engineer(s) (who shall be a registered professional engineer in the State) selected by the Parties in writing with the capability for evaluating the stormwater retrofit facilities, including the Projects. The fees and costs of the Independent Engineer shall be paid by the County.

“Initial Program Area” shall have the meaning ascribed to such term in the Recitals of this Agreement. For avoidance of doubt, the Initial Program Area shall not include the acreage of any Capital Repair or Replacement Projects.

“Initial Term” shall have the meaning specified in Section 17.1.

“Intellectual Property” means all intellectual property, trade secrets, trademarks, know-how, designs, processes, software, works of authorship, copyrightable works, mask works, data, discoveries, inventions and improvements, whether patentable or not, technology, information and documentation now owned or licensed, or hereafter owned or licensed, together with all improvements, enhancements, derivative works and modifications.

“Intellectual Property Owner” means, with respect to a Project incorporating or utilizing any Intellectual Property, the owner of or Person holding the right to grant a licensee of such Intellectual Property, as identified in the applicable Budget Book for the relevant Project.

“Letter of Credit” means that letter of credit required to be obtained and maintained by the Manager in accordance with Section 10.1 and in the form set forth in Schedule 14 (Form of Letter of Credit).

“Local-Based Small Business” in this Program means “County-Based Small Businesses Enterprise” and “County Based Minority Business Enterprise” as such terms are defined in the County Code or the Procurement Regulations.

“Local-Based Small Business Incentive” shall mean that portion of the Incentive Fee specified and described in Schedule 7 (Incentive Fees and Criteria).

“Local Watershed Protection and Restoration Fund” means the fund established by the County pursuant to, and as defined in, Section 10-302 of the County Code.

“Losses” means any and all debts, claims, suits, demands, actions, obligations and other liabilities, monetary damages, fines, fees, penalties, levies, assessments, impositions, interest obligations, deficiencies, losses, costs, expenses (including amounts paid in settlement, interest, court costs, costs of investigators, fees and expenses of attorneys, accountants, financial advisors, engineers and other experts, and other expenses of litigation) and any and all out-of-pocket costs incurred by the County for the procurement of similar services to cover any default by the Manager.

“Low Impact Development/Green Infrastructure Practices” means stormwater practices recognized by the County, MDE or EPA as “Low Impact Development/Green Infrastructure” practices for improved stormwater management.

“LSMWVBE” means County-based small business enterprise, minority-owned, woman-owned, and Veteran or Disabled Service-owned business enterprise qualified in the County, as such terms are defined in the County Code or the Procurement Regulations.

“Maintenance Manuals” means drawings, diagrams, schematics, instructions, parts lists, schedules, procedures and other literature provided by equipment suppliers or

Subcontractors or developed by the Manager for the purpose of providing guidance in operating, maintaining or repairing the relevant Approved Project.

“Manager” shall have the meaning ascribed to it in the first paragraph of this Agreement identifying the Parties hereto.

“Manager Convenience Termination Notice” shall have the meaning set forth in Section 14.4.2.

“Manager Convenience Transition Period” shall mean a period of ninety (90) days commencing on the date the Manager delivers a Manager Convenience Termination Notice to the County.

“Manager Fault” means (a) any material breach, failure, nonperformance or noncompliance by the Manager with the terms and provisions of this Agreement for any reason except to the extent such breach, failure, nonperformance or noncompliance is caused by the occurrence or continuing effect of an Uncontrollable Circumstance or County Fault, or (b) any material breach, failure, nonperformance, noncompliance, negligence or willful misconduct of any agent, officer, employee or Subcontractor of the Manager which (1) prevents or, individually or cumulatively, materially interferes with or materially delays the Manager’s or the County’s performance of its obligations, (2) deprives the County of any of its material rights, or (3) increases the County’s costs of performance its obligations, in any case, under this Agreement.

“Manager’s Authorized Representative” means the Manager’s representative designated pursuant to Section 17.11.

“Master Maintenance Agreement” means that certain Master Maintenance Agreement between the Parties dated as of the Contract Date, as the same may be amended, modified or supplemented from time to time.

“Material Change Order” shall have the meaning set forth in Section 5.5.1.

“Maximum Annual Social and Economic Program Costs” means the maximum Direct Costs to be incurred by the Manager for the development, implementation and management of all Social and Economic Development Programs for the subject Billing Year, as specified in the Final Annual Plan for the subject Billing Year. For avoidance of doubt, such Direct Costs (a) may include conference meeting room rentals, sound system or media equipment rental, Social and Economic Development Program event advertising and other similar Third Party Costs and (b) expressly exclude all personnel (whether as an employee, consultant or otherwise), overhead, back office, administrative and other internal costs of the Manager, the Guarantor and any of their Affiliates in developing, managing and implementing the Social and Economic Development Programs.

“Maximum Design Cost” means, with respect to all Work performed by the Design Engineer for each Budgeted Project, the maximum amount set forth in the Final Annual Plan for such Budgeted Project.

“Maximum Project Price” means, with respect to the relevant Approved Project, an amount equal to the sum of (a) the Maximum Design Cost and (b) the Maximum Subcontractor Cost.

“Maximum Subcontractor Cost” means, with respect to the relevant Approved Project, an amount equal to the product of (a) the sum of the actual Subcontractor bid(s)

received and tentatively selected by the Manager or General Contractor, as applicable, in accordance with Section 4.6, times (b) the GC Markup.

“Minority Business Enterprise” or “MBE” shall have the same meaning as such terms are defined in the County Code or Procurement Regulations.

“MBE/SB Outreach and Inclusion Program” shall mean the program generally described in Section 6.1(b), including those general obligations described in Section 6.2(b) and in the section of the Social and Economic Development Plan entitled “MBE/SB Outreach and Inclusion Program”, as the same is developed by the Manager and approved by the County in accordance with Section 6.2.

“MDE” means the Maryland Department of the Environment and its successors.

“Mentor Development Program” shall mean the program generally described in Section 6.1(c), including those general obligations described in Section 6.2(c) and in the section of the Social and Economic Development Plan entitled “Mentor Development Program”, as the same is developed by the Manager and approved by the County in accordance with Section 6.2.

“Milestone Performance and Payment Schedule” means, for each Approved Project, a schedule included in the Budget Book setting forth (a) the performance milestones to be achieved by the Manager for the evaluation of progress toward completion of such Approved Project and (b) the stage of Work milestones to be achieved by the Manager for progress payments eligible to be submitted by the Manager in accordance with Section 4.5.

“Minimum LSMWVBE Requirements” shall have the meaning set forth in Section 4.6.3.

“Minority Business Opportunities Program” shall mean all of the requirements set forth in Section 10A-136, et. seq., of the County Code, as amended.

“Monthly Status Report” shall have the meaning set forth in Section 5.4.2.

“MS4” means the municipal separate stormwater sewer systems of the County, including the stormwater conveyance or system of conveyances, outfalls and discharges (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, and stormwater management facilities or ponds), owned or operated by the County, except within the City of Bowie, Maryland.

“MS4 Permit” means the Permit received by the County with respect to MS4 pursuant to the Federal Clean Water Act NPDES, 40 C.F.R. Part 122, including any subsequent amendments.

“Non-Acceptance Certification” shall have the meaning set forth in Section 9.4.

“Non-County Property” shall have the meaning set forth in Section 5.6.1.

“Non-Material Change Order” shall have the meaning set forth in Section 5.5.2.

“Notice(s)” means written notice from the Authorized Representative of the applicable Party to the other, all in accordance with Section 17.2 and the timeframes and other applicable requirements of this Agreement.

“NPDES” means the National Pollutant Discharge Elimination System administered by the EPA and MDE.

“O&M Capital Project Period” means the period commencing immediately upon the expiration or termination of this Agreement and continuing until expiration or termination of the Master Maintenance Agreement.

“Payment and Performance Bonds” means those payment and performance bonds required to be secured and maintained by the Subcontractors (except for the Design Engineer) in accordance with Section 10.2, in a form approved in writing by the County.

“Permits” means all actions, reviews, approvals, consents, waivers, exemptions, variances, franchises, order, permits, authorizations, rights, licenses, filings, zoning changes or variances, and entitlements, of whatever kind and however described, which are required under Applicable Law to be obtained or maintained by any Person with respect to either or both of the subject Project or the Work.

“Person” means, without limitation, any individual, person, firm, corporation, company (including limited liability), partnership (including general and limited), joint venture, association, joint-stock company, trust (including business trusts), unincorporated organization, Governmental Authority, and other entities.

“Posting Notice” means an electronic notice delivered by email notifying the recipient that documents or information has been posted to the Project Dataroom, which shall include any automatic electronic notice generated by the Project Dataroom provider.

“Prime Contractors” shall have the meaning specified in Section 4.6.5.

“Procurement Officer” means any Person authorized by the County’s Director of Central Services, as Purchasing Agent, in accordance with procedures prescribed by regulations, to enter into and administer contracts and make determinations and findings with respect thereto. The term “Procurement Officer” shall also include individuals subordinate to the Purchasing Agent acting within the limits of their delegated procurement authority. This authority shall be designated in writing by the County’s

Director of Central Services, in his or her capacity as Purchasing Agent, for such period of time as shall be stated in the written designation.

“Procurement Regulations” means the County’s Procurement Regulations, as the same may be amended from time to time.

“Program” shall have the meaning specified in the Recitals to this Agreement.

“Program Performance Milestones” mean the performance milestones and measurements described on Schedule 19 (Program Performance Milestones).

“Project” shall mean a Proposed Project, Budgeted Project or Approved Project, as the context requires.

“Project Dataroom” means the online dataroom contracted or maintained by the Manager for upload and access of Program documentation by the Parties and each of their representatives.

“Project Site” means, with respect to each Approved Project, the location within the County specified in the Design Documentation.

“Property” shall have the meaning specified in Section 5.6.1.

“Proposed Candidate” shall have the meaning specified in Section 4.6.5.

“Proposed Project” means a stormwater retrofit project recommended or proposed to be developed pursuant to the Program.

“Purchasing Agent” means the County’s Director of the Office of Central Services.

“Qualified Financial Institution” shall mean any depository institution incorporated under the laws of the United States or any state thereof (or domestic branches of any foreign bank) meeting the following criteria: (a) such depository institution is subject to supervision and regular examination by federal or State banking or depository institution

authorities; (b) such depository institution has a combined capital and surplus of not less than one hundred million dollars (\$100,000,000); and (c) the commercial paper or other short-term debt obligations of such depository institution (or, in the case of a depository institution which is the principal subsidiary of a holding company, the commercial paper or other short-term debt or deposit obligation of such holding company or depository institution, as the case may be) have a short-term rating of at least “P1” by Moody’s Investors Service (“Moody’s”) and a short-term rating of at least “A1” by Standard & Poor’s, a division of the McGraw-Hill Companies, Inc., or any successor in interest (“S&P”), and a long-term rating by Moody’s of at least “Aa” or a long-term rating by S&P of at least “AA”. The County may, in its discretion, waive in writing any of the foregoing requirements which it deems impracticable to satisfy.

“Records” shall have the meaning specified in Section 17.7.

“Renewal Term” shall have the meaning specified in Section 17.1.1.

“Required Bonds” shall have the meaning specified in Section 10.2.1.

“Required Manager Insurance” shall have the meaning specified in Section 15.2.

“RFQ” shall have the meaning ascribed to such term in the Recitals to this Agreement.

“Schedule” means a schedule to this Agreement which is incorporated into and shall be a part of this Agreement, unless the context or usage of such term clearly indicates a reference to another amendment or agreement.

“Scheduled Acceptance Date” shall, to the extent applicable, have the meaning specified in the applicable Milestone Performance and Payment Schedule for the

corresponding Approved Project, as such Scheduled Acceptance Date may be extended pursuant to this Agreement.

“Section” means a section of this Agreement, unless the context or usage of such term clearly indicates a reference to another agreement or statute.

“Social and Economic Development Plan” shall have the meaning specified in Section 6.2.

“Social and Economic Development Programs” means the Community Outreach Program, the MBE/SB Outreach and Inclusion Program, the Mentor Development Program and the Work Development Program.

“Social and Economic Development Program Requirements” means, on a Billing Year basis, the minimum requirements to be performed by the Manager for the subject Billing Year relative to the Social and Economic Development Programs.

“State” means the State of Maryland and all of its appropriate administrative, contracting and regulatory agencies and offices.

“Stormwater Program Funding Sources” shall have the meaning specified in Section 8.6.

“Subcontractor(s)” means any subcontractor or supplier to the Manager at any tier relative to or performing the Work.

“Substantially Complete” or “Substantial Completion” means that the design, procurement, construction and installation, as applicable, of all aspects of the relevant Approved Project are substantially complete.

“Target Class” shall include CBEs, CSBEs, CBMEs, MBEs, CLBEs, and Local-Based Small Business as defined herein.

“Target Class Incentive” shall mean that portion of the Incentive Fee specified and described in Schedule 7 (Incentive Fees and Criteria).

“Technical Requirements” means the technical standards prescribed in Schedule 5 (List of General BMPs and Technical Requirements) for BMPs.

“Technology Assignment Agreement” means an agreement to be entered into among the Manager, the Design Engineer and the County, substantially in the form set forth in Schedule 17 (Technology Assignment Agreement).

“Technology License Agreement” means an agreement between an Intellectual Property Owner and the County, substantially in the form set forth in Schedule 18 (Technology License Agreement), or such other form approved by the County.

“Term” means the Initial Term and, if extended pursuant to Sections 17.1.1 or 17.1.2, the Renewal Term or the Extension Period, if any, unless sooner terminated in accordance with the terms herein.

“Third Party Costs” means all costs incurred and paid or payable by the Manager to any Subcontractor directly relating to (a) the design, construction, installation and Acceptance of a Budgeted Project or an Approved Project, as applicable, and (b) the development, implementation and management of the Social and Economic Development Programs. The term “Third Party Costs” expressly excludes personnel (whether as an employee, consultant or otherwise), overhead, back office, administrative and other internal costs of the Manager, the Guarantor and any of their Affiliates to develop, implement, manage and coordinate the Work.

“Uncontrollable Circumstance(s)” means any act, event or condition that (a) prevents or, individually or in the aggregate, materially delays the Manager or the County

from meeting or (b) materially increases the cost of performing, in the case of (a) or (b), the applicable Party's obligations under this Agreement, to the extent such act, event or condition is due to circumstances beyond the reasonable control of the Party asserting an Uncontrollable Circumstance; provided, however, such act, event or condition is not the result of such Party's failure to perform its obligations hereunder in accordance with the terms and conditions of this Agreement.

(1) Subject to the terms and conditions of the immediately preceding paragraph of this definition, the following acts, events or conditions are examples, but not limitations, of what may qualify as an Uncontrollable Circumstance:

(A) an act of God, hurricane, tornado, severe storm, tsunami, severe flood, epidemic, pandemic, severe earthquake, severe fire, explosion or landslide, act of a public enemy, terrorism, war, blockade, insurrection, riot, restraint of government and people, civil disturbance, sabotage or similar occurrence;

(B) the order, injunction or judgment of any Governmental Authority, including any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity; excepting decisions interpreting federal, State or local tax laws; provided, however, that such order, injunction or judgment did not arise in connection with or is not related to the negligence or the willful misconduct of the Manager and that neither the contesting in good faith of any such order, injunction or judgment nor the reasonable failure to so contest shall constitute or be construed as negligence or the willful misconduct of the Manager;

(C) the suspension, termination, interruption, denial, failure to issue, modification, or failure of renewal of any Permit; provided that such act, event or condition

did not arise in connection with or is not related to the negligence or the willful misconduct of the Party relying thereon and that neither the contesting in good faith of any such order nor the reasonable failure to so contest shall be construed as negligence or the willful misconduct of such Party;

(D) a Change in Law;

(E) any subsurface or latent physical condition (including the presence or discovery of protected species, archaeological objects, geological conditions or hazardous waste, but excluding such materials brought to the Project Site by or generated by the Manager or Subcontractor), which shall prevent, or require redesign or change in, the construction of, or adversely affect the Work completion schedule for, the relevant Approved Project; provided, that the condition was unknown to the Manager or the Subcontractor(s), on or before the Construction Approval Date with respect to the relevant Approved Project;

(F) the failure of any Subcontractor to furnish services, materials, supplies, utilities or equipment on or before the dates agreed to , or the failure of any Subcontractor to procure labor or transportation in the open market; provided (i) such failure is the result of an act, event or condition outside of the Subcontractor's reasonable control and not due to such Subcontractor's negligence or willful misconduct, (ii) such failure materially and adversely affects the Manager's ability to perform its obligations and (iii) the Manager is not reasonably able to obtain substitute services, materials, supplies, utilities, equipment, labor or transportation on or before the agreed upon dates;

(G) the condemnation, taking, seizure, involuntary conversion or requisition of title to or use of a Project Site, or any material portion or part thereof by the action of a Governmental Authority;

(I) any labor strike, walkout, work stoppage or slowdown or similar industrial or labor action by the employees of the Manager or its Subcontractor performing Work on an Approved Project which directly results in a material delay in the performance of the Work exceeding, for each such event, thirty (30) continuous days, unless the final adjudication by a court of competent jurisdiction finds that such event was principally caused by the Manager's or Subcontractor's breach of any applicable collective bargaining agreement such Person may have with its employees or its employees' collective bargaining unit; and

(J) the failure of the Completion Certifier to perform its obligations pursuant to the Completion Certifier Agreement other than as a result of Manager Fault.

(2) None of the following acts, events or conditions shall constitute an Uncontrollable Circumstance under this Agreement:

(A) any act, event or condition which is caused by the negligence or willful misconduct of (i) the Manager, the Guarantor, any of their Affiliates, any of their respective Subcontractors or any of their Affiliates or (ii) the County, its subcontractors, agents or employees; provided, however, if the affected Party is the Manager, then a Change in Law resulting from an enactment of an Applicable Law by the County shall nevertheless constitute an Uncontrollable Circumstance;

(B) economic infeasibility, general economic conditions, interest or inflation rates or currency fluctuations;

(C) subject to the definition of a Change in Law regarding taxation or discriminatory taxes, any order, injunction or judgment of any Governmental Authority interpreting federal, State, or local tax laws;

(D) reasonably anticipated weather conditions in the geographic area of the County, other than those listed in (1) (A) of this definition or other prolonged, severe weather conditions;

(E) equipment failure, except due to acts, events or conditions specifically enumerated herein as an Uncontrollable Circumstance;

(F) changes in the financial condition of the County, the Manager, the Guarantor, Affiliates or any subcontractor (or, as applicable, any Subcontractor) or supplier affecting the affected Party's ability to perform its obligations under this Agreement;

(G) union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed by or otherwise increasing the cost to, the Manager of constructing the Approved Project(s);

(H) any impact of prevailing wage or similar law, customs or practices on the Work, except to the extent any impact is due to a Change in Law;

(I) any replacement of any Subcontractor or Affiliate that results in increased costs for any service, material, supply or chemical provided or to be provided under this Agreement; and

(J) (i) the failure or inability of the Manager to procure Subcontractors meeting the LSMWVBE criteria, or (ii) the failure or inability of any Subcontractor to procure labor that would permit it to meet the LSMWVBE criteria.

(3) The County may not assert the occurrence of an Uncontrollable Circumstance in order to excuse or delay the making of any payment due pursuant to this Agreement. In the event that the County is excused from the timely performance of any obligation hereunder because of the occurrence of an Uncontrollable Circumstance, the Manager shall be entitled to submit a Material Change Order pursuant to Section 5.5.1, the need for which is directly attributable to the County's excused or delayed performance as a consequence of such Uncontrollable Circumstance.

"Upfront Payment" shall have the meaning set forth in Section 7.5.

"Work" means all the duties, obligations and activities the Manager is responsible for performing or causing to be performed pursuant to this Agreement.

"Work Development Program" shall mean the program generally described in Section 6.1(d), including those general obligations described in Section 6.2(d) and in the section of the Social and Economic Development Plan entitled "Work Development Program", as the same is developed by the Manager and approved by the County in accordance with Section 6.2.

Section 2.2 Terms Generally. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," except as the context may otherwise require. The words "agree," "agreement," "approval" and "consent" shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed" except as the context may otherwise require. The word "or" is not exclusive. The phrase "sole cost and expense," when used with respect to a cost or expense to be paid by the Manager, means that no

portion of the amount payable shall be paid by the County. Words in the singular number include words in the plural and vice versa unless the context of the usage of such term clearly indicates otherwise. Accounting terms that are used, but not otherwise defined herein, are to be construed and interpreted in accordance with “generally accepted accounting principles” in effect on the Contract Date as described in Accounting Standards Board SAS No. 69 and established by pronouncements of the Accounting Principles Board, the Financial Accounting Standards Board and the American Institute of Certified Public Accountants.

Section 2.2.1 Payments to Manager. Unless the context shall clearly indicate to the contrary, whenever this Agreement authorizes or refers to a right of the County to withhold, delay, reduce or recover a payment to or claimed by the Manager, such right is intended to apply only to payments of fees or reimbursements due to or claimed by the Manager on its own behalf and not to payments owed or made by the Manager to Subcontractors or other parties not affiliated with the Manager for the performance of Work; provided, however, the foregoing shall not supersede or preclude satisfaction of the requirements for payments set forth in Sections 8.1 and 8.3, the requirements concerning retainage in Section 8.4 or the limitations on County payments in Section 8.6.

Section 2.3 Project Dataroom Postings and Notifications. As a general rule, all documents relative to the Program and the Projects shall be posted to the Project Dataroom when and as they are ready for delivery to the other Party. Any comments made by one Party on documents provided by the other Party shall be posted in the Project Dataroom and the Posting Notice electronically generated by the Project Dataroom shall constitute “notice” of such posting or comments. The Manager shall provide, or cause the Project

Dataroom operator to provide to the County and its representatives, at all times, full and complete access to the Project Dataroom, including the right and ability to view, print and download the information therein. The following documents shall be posted by the Manager to the Project Dataroom when they are ready for delivery to the County, and the Posting Notice generated and transmitted upon their posting, as well as upon a Party's posting of any comments to the Project Dataroom with respect to such documents, shall constitute notice to the other Party of such documents or comments: Sections 3.1.1 and 3.2 (Annual Plan); Sections 4.4.1 and 4.9 (Design Documentation); Section 4.6.1 (Bid Packages); Section 4.8.2 (Budget Book); Section 5.4.2 (Monthly Status Report; Meeting Agenda); Section 5.4.3 (Construction Documentation); Section 6.2 (Social and Economic Development Plan); and Sections 9.4, 9.5.2 and 9.7 (Acceptance Report; Acceptance Certification; Non-Acceptance Certification). Notwithstanding anything to the contrary in this Agreement, a Posting Notice shall not constitute, and shall not serve as, a formal "Notice" under this Agreement, including under Sections XIII, XIV, XV and XVII hereof.

Section 2.3.1 Posting Notices. Each Party shall, promptly upon posting any document or information to the Project Dataroom, deliver or cause to be delivered to the other Parties (including their respective Authorized Representatives) a Posting Notice. The Project Dataroom shall be contracted and designed, and the Person contracted and engaged to maintain the Project Dataroom shall be required, to automatically and concurrently generate and transmit to all Parties an electronic notification (by email) each time information or data has been posted to the Project Dataroom, which notification shall constitute the applicable required Posting Notice.

Section 2.3.2 Confidentiality and Disclosure. The Parties acknowledge and agree that, given the novel and innovative nature of the Program, (i) information contained in the Project Dataroom is intended to be of a confidential and proprietary nature, and (ii) access by, and disclosure of information in the Project Dataroom to, third parties (other than the Completion Certifier or the Independent Engineer) could either impair the future ability of the County, the Manager or its Affiliates to obtain information in a similar or different project or manner or could cause substantial harm to the competitive position of the County and/or the Manager or its Affiliates in similar or different endeavors. The County and the Manager will provide prompt Notice to each other of any requests from third parties (other than the Completion Certifier or the Independent Engineer) for information from or access to the Project Dataroom. The Parties further agree that in the event that use of the Project Dataroom as contemplated herein causes an enhanced risk of the disclosure to third parties (other than the Completion Certifier or the Independent Engineer) of confidential or proprietary information posted in the Project Dataroom, the Parties will collaborate in an effort to either make appropriate modifications to the requirements of the Project Dataroom or consider alternative means of communicating information under this Agreement intended to maintain the confidentiality of such information. Nothing herein shall prevent, impede or limit the County from complying with its obligations under Applicable Law with respect to the disclosure of information.

SECTION III

ANNUAL PLANNING

Section 3.1 Preparation and Contents of the Annual Plan.

Section 3.1.1 Preparation of the Annual Plan. During the one year period prior to each Billing Year (or, with respect to the first Billing Year, within one hundred twenty (120) days following the Contract Date), representatives of the County and the Manager shall, not less than on a monthly basis, meet to discuss (a) the Proposed Project(s) contemplated to be initiated during the upcoming Billing Year (or, in the case of the first Billing Year, for the remaining portion of the current Billing Year), and (b) the Social and Economic Development Program Requirements contemplated for the upcoming Billing Year (or, in the case of the first Billing Year, for the remaining portion of the current Billing Year). Based on such discussions between the Parties, not less than one hundred twenty (120) days prior to the start of each Billing Year (or, in the case of the first Billing Year, within one hundred twenty (120) days after the Contract Date), the Manager shall prepare and post to the Project Dataroom a draft of the Annual Plan.

Section 3.1.2 Contents of the Annual Plan. The draft Annual Plan, in the form attached hereto as Schedule 1 (Form of Annual Plan), shall set forth:

- (a) For each Proposed Project anticipated to be initiated during the upcoming Billing Year (or, in the case of the first Billing Year, for the remaining portion of the current Billing Year):
 - (i) the proposed Project Site;
 - (ii) the total number of acres to be retrofitted for storm water management and the number of Impervious Area Credits to be received by the County once such Proposed Project is fully constructed and Accepted;
 - (iii) the anticipated Construction Commencement Date;

- (iv) the anticipated Acceptance Date;
 - (v) the Estimated Project Cost;
 - (vi) based on the Estimated Project Cost, (A) the estimated Base Fee and (B) the estimated Incentive Fee; and
 - (vii) the Maximum Design Cost.
- (b) A general description of steps anticipated to be taken in the applicable Billing Year with respect to each Budgeted Project and Approved Project.
- (c) The Social and Economic Development Program Requirements and the Maximum Annual Social and Economic Program Costs for the upcoming Billing Year (or, in the case of the first Billing Year, for the remaining portion of the current Billing Year).

The Manager acknowledges and agrees that the Annual Plan, along with other information and documentation, is expected to be relied upon by the County in determining the amount of the aggregate funding needed for development and construction of the Proposed Project(s) for the upcoming Billing Year. Accordingly, in preparing the Annual Plan, the Manager shall use good faith estimates based on its current understanding of the relevant facts and circumstances for each Proposed Project.

If the Parties cannot agree on the Estimated Project Cost for one or more Proposed Project(s), the County may elect, by delivering Notice to the Manager's Authorized Representative, to (A) extend the date for approval of the Annual Plan, or (B) remove the Proposed Project(s) from the Annual Plan.

In addition to those Proposed Project(s) to be initiated during the upcoming Billing Year, for overall Program planning purposes only, the draft Annual Plan may set forth a list of Proposed Projects contemplated to be initiated or developed during the remaining portion of the Term or the O&M Capital Project Period; provided, however, (i) only those Proposed Projects specified in the Annual Plan for initiation during the upcoming Billing Year shall be considered by the County in its approval of the Annual Plan in accordance with Section 3.2, and (ii) the Manager shall not be entitled to receive reimbursement or compensation for Work on such additional Proposed Project(s) unless the Annual Plan is modified in accordance with Section 3.3. The assignment and sequencing of Proposed Projects for inclusion in an Annual Plan shall be at the discretion of the County, reasonably exercised to include within the Initial Program Area a diverse group of Projects with variations as to location, cost, complexity and particular BMPs employed.

Each Proposed Project specified for initiation during the upcoming Billing Year, as set forth and approved in the Annual Plan, shall be deemed to be a “**Budgeted Project**” for purposes of this Agreement. In connection with the preparation of the Annual Plan, the Parties may mutually agree in writing to amend Schedule 7 (Incentive Fees and Criteria) to redistribute the weighing of each Incentive Fee Criteria for Budgeted Projects to be initiated during the upcoming Billing Year.

Section 3.2 Review and Approval of the Annual Plan. The County and the Manager shall collaborate in an effort to finalize the Annual Plan no later than May 1 in each Fiscal Year. Approval of the final Annual Plan, together with any changes, modifications or amendments thereto from time to time (the “**Final Annual Plan**”), shall be in the sole and absolute discretion of the County, and upon such approval, the Final

Annual Plan shall be executed by the County and the Manager. A copy of each Final Annual Plan shall, upon execution, be attached as an exhibit to this Agreement and posted in the Project Dataroom.

Section 3.3 Amendment of Final Annual Plan. Except for the County's termination of a particular Project in accordance with this Agreement, the Final Annual Plan for a Billing Year may only be amended, modified or supplemented with the prior written consent of the County and the Manager.

SECTION IV

DEVELOPMENTAL PERIOD WORK; BUDGET BOOKS

Section 4.1 General Scope of Developmental Period Work. The Manager shall be responsible for all design, procurement and permitting means, methods, techniques, sequences and procedures necessary or desirable for the correct, prompt and orderly prosecution and completion of the Work during the development period, and shall furnish directly or through Subcontractors all Work, labor, materials, testing, instrumentation, supervision, equipment, tools and any and all similar items required for such design and construction of each Budgeted Project. On and after the date the Final Annual Plan is approved, the Manager shall (a) cause the Design Engineer to prepare the Design Documentation for the Budgeted Project(s) and post such to the Project Dataroom at each Design Milestone for the County's review and comment; (b) conduct, or cause the General Contractor to conduct a public competitive pricing process for Subcontractors for all Work relating to construction and development of the Budgeted Projects; (c) based on the Manager's evaluation of the Subcontractor proposals, **[REDACTED]** prepare and

deliver to the County a Budget Book for the Budgeted Project; and (d) obtain all necessary Permits and access rights to be obtained by the Manager.

Section 4.2 Meetings during Development Period. Once each Billing Month, or more frequently upon the reasonable request of the County's Authorized Representative, the Manager's Authorized Representative shall meet with the County's Authorized Representative, County staff and other representatives and agents to review the status of the Budgeted Projects, the Design Documentation (at each design stage), the draft Budget Books, on-going items, data and other information relating to the Parties' obligations under this Agreement.

Section 4.3 Engagement of Design Engineer. Promptly following the Contract Date, the Manager shall engage the Design Engineer(s) to prepare the Design Documentation for each Budgeted Project set forth in each Final Annual Plan.

Section 4.4 Budgeted Project Design; Design Review; Ownership of Design Documentation.

Section 4.4.1 Budgeted Project Design; Design Review. The Manager shall cause the Design Engineer to prepare the Design Documentation for each Budgeted Project set forth in the Final Annual Plan in a manner so as to meet the Technical Requirements set forth in Schedule 5 (List of General BMPs and Technical Requirements). The Manager shall post the Design Documentation to the Project Dataroom for County review and comment at each of the Design Milestones. The Design Documentation for County review and comment shall include:

- (a) Stormwater management plans, erosion and sediment control plans, BMP/LID details and specifications, BMP/LID

performance data (i.e., Impervious Area treated, resultant Impervious Area Credits, TMDL reductions, etc.);

- (b) A summary of required Permits for the Budgeted Project, together with copies of such Permits when issued;
- (c) Rights of entry agreements and maintenance agreements;
- (d) Architectural plans and elevations;
- (e) Site, drainage and landscape plans;
- (f) General arrangement drawings;
- (g) Equipment foundation structural criteria and design drawings;
- (h) Foundation and structural criteria and design drawings;
- (i) Piping and instrumentation and diagrams (P&ID's); and
- (j) Milestone Performance and Payment Schedule.

In addition, the Manager shall post to the Project Dataroom the following:

- (1) Any survey information, including topography, which is obtained by or on behalf of the Manager; and
- (2) Any geotechnical (e.g., soil and/or subsurface) reports, or information or investigation results obtained by or on behalf of the Manager.

The County may provide comments, by uploading the same to the Project Dataroom, to the Design Documentation of such Budgeted Project at each Design Milestone within a reasonable time as provided in this subsection. Unless disputed, the Manager shall address each comment of the County and proceed with the requisite

modifications so as to reasonably comply with the requirements of this Agreement. The Manager shall upload all revised Design Documentation of such Budgeted Project to the Project Dataroom. The County's Authorized Representative shall then post to the Project Dataroom any further comments, if any, within five (5) Business Days after receipt of the Posting Notice.

Unless otherwise specified, a "reasonable time" for review and comment by the County's Authorized Representative shall mean five (5) Business Days after receipt of a Posting Notice. Failure by the County's Authorized Representative to post comments to the Project Dataroom within ten (10) Business Days after its receipt of a Posting Notice shall constitute a waiver of any comments or objections thereto; provided, however, that if, within such 10-day period, the County's Authorized Representative notifies the Manager's Authorized Representative in writing that additional review time is required, a failure of the County's Authorized Representative to post comments to the Project Dataroom shall not constitute a waiver unless such failure continues for an additional five (5) Business Days.

The County encourages the development and use of Customized BMPs to increase stormwater treatment efficiencies, reduce costs and increase value. Prior to incorporating any Customized BMP into the design plans for any Budgeted Project, the Manager shall first obtain the County's written approval to consider such Customized BMP and shall enter into a Technology Assignment Agreement, substantially in the form set forth in Schedule 17, subject to such modifications as the parties thereto may agree upon, with respect to any Intellectual Property developed in the course of designing, implementing and testing such Customized BMP. To facilitate the County's review, the Manager shall

submit to the County a technology report setting forth the proposed specifications, design standards, pollutant reductions and other efficiencies, estimated installation, testing and maintenance cost, and such other information reasonably requested by the County for it to assess and evaluate the Customized BMP.

The County's monitoring, reviewing and commenting, as set forth above, shall not be construed as constituting formal action or approval on behalf of the County.

Section 4.4.2 Ownership and Use of Design Documentation. All Design Documentation prepared by or for the Manager relating to a Project shall (a) be and remain the property of the County, and (b) be delivered to the County's Authorized Representative upon completion of the Work. Unless otherwise approved in writing by the County, neither the Manager nor any of the Subcontractors shall have rights in such Design Documentation and shall not use it for other work or for other Persons.

Section 4.5 Preparation of Milestone Performance and Payment Schedule. In conjunction with the preparation of the Design Documentation, the Manager shall cause the preparation of a draft Milestone Performance and Payment Schedule for each Budgeted Project. **[REDACTED]** Following approval of a Budget Book with respect to an Approved Project, the Manager may propose amendments to the Milestone Performance and Payment Schedule consistent with and in accordance with Section 4.8.3.

Section 4.6 Procurement of Subcontractors. In furtherance of the Manager's obligations in Section 4.1, the Manager shall procure and select, or cause the General Contractor to procure and select, as applicable, the Subcontractors in accordance with the following procedures and requirements:

Section 4.6.1 Bid Packages; Bid Solicitation. The Manager shall develop, or cause the General Contractor to develop, appropriate Subcontractor bid packages for the Subcontractors to be procured for each Approved Project. The County shall have the right to review and provide written comments to any Subcontractor bid packages, if requested. The Manager shall, or shall cause the General Contractor to, conduct a public competitive pricing process for obtaining proposals from qualified Persons with respect to the Work being procured to ensure fair competition and reasonable opportunity for all interested Persons. Promptly following a request by the County's Authorized Representative, the Manager shall post to the Project Dataroom copies of each bid proposal received by the Manager or General Contractor, as applicable, for the subject procurement.

Section 4.6.2 Contracts with Subcontractors. The Manager shall, or shall cause the General Contractor to, include provisions in each contract with each Subcontractor (including the Design Engineer) requiring the Subcontractor to: (a) obtain and maintain in effect at all times all necessary Permits in compliance with Applicable Law and otherwise consistent with industry customs and standards, (b) obtain and maintain insurance in accordance with Schedule 16 (Insurance), and (c) allow the suspension of its work. The County may, upon Notice to the Manager, direct the Manager to suspend one or more Subcontractor(s)' work on a Project. If the County directs the Manager to suspend Subcontractor(s)' work for a period of (i) ten (10) days or less, such suspension shall (A) be at no cost or expense to the County, (B) neither constitute County Fault nor give rise to a Contingency Change Order and (C) give rise to an adjustment to the Scheduled Acceptance Date and Milestone Performance and Payment Schedule for the relevant Approved Project for the period of the suspension, (ii) more than ten (10) days but less than or equal to thirty

(30) days, such suspension shall (A) not constitute County Fault and the County shall reimburse the Manager any Direct Costs, subject to Cost Substantiation, directly resulting from the County's suspension of Subcontractor work and (B) give rise to an adjustment to the Scheduled Acceptance Date and Milestone Performance and Payment Schedule for the relevant Approved Project for the period of the suspension or such longer period as may be directly attributable to the County's suspension of Subcontractor work, and (iii) more than thirty (30) days, such suspension shall constitute County Fault and give rise to a Contingency Change Order. Further, it shall be made a condition of each subcontract that the Subcontractor shall not require any laborer or mechanic employed in performance of the relevant subcontract to work in surroundings under conditions which are unsanitary, hazardous or dangerous to their health or safety, as determined under Applicable Law. The Manager shall include, or cause the General Contractor to include, in all agreements with Subcontractors (including the General Contractor and the Design Engineers), provisions expressly stating that (A) the County is an intended third party beneficiary of such agreement and that the County is authorized to directly enforce such agreement against the Subcontractor in the County's name or in the name of the Manager or General Contractor without restriction, and (B) the County Indemnified Parties are named indemnitees with the same scope of indemnity and terms substantially similar to the indemnification provided for the benefit of the County Indemnified Parties under Section 15.1 hereof. The Manager shall, upon request by the County's Authorized Representative, provide copies to the County's Authorized Representative of each agreement with Subcontractors (including the General Contractor and the Design Engineers). The Manager shall assure that any appropriate enforcement actions are taken against Subcontractors in the event of default

and shall, if required by the County, require the termination of any such defaulting Subcontractor. The Manager shall not enter into any contract for Work which supersedes, abrogates or is in conflict with any of the terms or provisions of this Agreement.

Section 4.6.3 Socio-Economic Participation Requirements and County Equal Employment Opportunity Program Adherence. The selection of Subcontractors by the Manager or the General Contractor, as applicable, and contracts with Subcontractors relative to the design, construction and Acceptance of any Approved Project shall comply with the CBE, CSBE, CBME, MBE, and CLBE requirements set forth in Schedule 6 (Socio-Economic Participation Requirements and Goals) (the “Target Class”, and “Local-Based Small Business” requirements) on the basis of Approved Projects Accepted by the County. If, following the conclusion of any Billing Year, the County determines that the Manager failed to satisfy or meet the Minimum Target Class and Local-Based Small Business requirements for such immediately preceding Billing Year, the County may deliver Notice to the Manager’s Authorized Representative instructing the Manager to comply with the County’s Minority Business Opportunities Program. Following the Manager’s receipt of such Notice, the Manager shall, and shall cause the General Contractor to, comply with the County’s Minority Business Opportunities Program for the remaining portion of the Term or the O&M Capital Project Period, as applicable.

Section 4.6.4 Anti-Kickback. All contracts between the Manager and its Prime Contractors, and between the Prime Contractors and its Subcontractors (at any level) shall prohibit the making or receipt of payment or anything of value, either directly or indirectly, to or from any Person, the payment or receipt of which (a) is or may be intended to reward, induce or influence, or (b) rewards, induces or influences an award of a contract

to a Prime Contractor or Subcontractor. For the purposes of the foregoing sentence, the phrase “anything of value” includes, but is not limited to, (i) the receipt or promise of commissions, financial or ownership interests, or (ii) assistance in obtaining or retaining business for or with the Manager, any Prime Contractor or any of their respective Affiliates.

Section 4.6.5 Prime Contractors; Replacement of Prime Contractors; Completion Certifier. As of the Contract Date, the initial Prime Contractors who have been or shall be engaged by the Manager to serve in the capacity of General Contractor and Design Engineer (together, the “**Prime Contractors**”) have already been selected by the Manager and approved by the Parties. The Prime Contractors shall be treated as, and shall be deemed to be, Subcontractors for all purposes of this Agreement. The Manager shall not add, terminate or replace any Prime Contractor without the prior written approval of the County. The Manager may, at any time and for any reason, request that one or more Prime Contractors be reprocured, replaced or that a Prime Contractor be added. If the Manager desires to add, terminate or replace one or more Prime Contractors, the Manager shall deliver Notice to the County’s Authorized Representative setting forth the name of a Person proposed to replace the existing Prime Contractor or be added as a Prime Contractor (the “**Proposed Candidate**”), who need not be selected through a competitive process but who shall have the qualifications, experience and skills necessary to serve in the capacity of General Contractor or Design Engineer, as applicable, together with copies of the Proposed Candidate’s credentials and proposal materials. If the County does not respond within ten (10) Business Days following the receipt of such Notice and documentation, then the Manager may proceed with engaging such Proposed Candidate. If

the County delivers Notice to the Manager's Authorized Representative rejecting the Proposed Candidate recommended by the Manager within the 10-day period, the Manager may reprocure and recommend another Proposed Candidate by repeating the process described in this Section 4.6.5.

Section 4.6.5.1 Completion Certifier. Promptly following execution of this Agreement, the County and the Manager shall jointly negotiate and execute a contract with the Completion Certifier (the "**Completion Certifier Agreement**") on terms mutually satisfactory to the Parties to perform the Completion Certifier's obligations under this Agreement. The Completion Certifier Agreement shall provide that (a) the Manager shall have the authority to manage, coordinate and direct the Completion Certifier's work thereunder, and (b) the County, and not the Manager, shall be obligated to pay directly to the Completion Certifier the fees and expenses of the Completion Certifier thereunder. The Manager shall be obligated to manage, monitor, oversee and timely schedule the work of the Completion Certifier in order to timely meet the Milestone Performance and Payment Schedule for each Approved Project. For purposes of this Agreement, (i) the initial Completion Certifier is considered neither a Prime Contractor nor a Subcontractor, but is an independent agency engaged to act in that capacity on behalf of the Program and (ii) the Completion Certifier's fees and costs shall be neither Actual Project Costs nor Actual Program Costs hereunder. In the event of Cause for Completion Certifier Replacement, either Party may, upon thirty (30) days Notice to the other Party, request that the Completion Certifier be replaced by another Person qualified to act in such capacity. If the Parties cannot agree in timely fashion on a replacement Completion Certifier, either Party may invoke dispute resolution under Section 17.5 and

the then-engaged Completion Certifier shall continue to act until a replacement has been selected and a new Completion Certifier Agreement has been executed and becomes effective. For purposes hereof, the term “**Cause for Completion Certifier Replacement**” means (A) the gross negligence or willful misconduct of the Completion Certifier, (B) any material breach or default by the Completion Certifier of the Completion Certifier Agreement, or (C) the malfeasance, misfeasance or nonfeasance of the Completion Certifier in connection with its performance under the Completion Certifier Agreement.

Section 4.7 Permits and Licenses; Easements and Access to Project Site.

Section 4.7.1 Permits and Licenses. Except for County Responsible Permits, which the County shall acquire and maintain at its cost and expense, prior to the Manager’s submittal of a Budget Book in accordance with Section 4.8, the Manager shall secure, or cause to be secured, all Permits necessary to construct the relevant Budgeted Project. If requested by the Manager’s Authorized Representative, the County shall exercise all reasonable efforts to assist the Manager in obtaining these Permits, and as appropriate, recommend to the Manager such additions to or modifications of the Design Documentation for a Budgeted Project as will facilitate or enable the obtaining of required Permits. If the Parties deem it desirable, the Manager may submit and the County may approve in writing a particular Budget Book prior to the obtaining of all required Permits; provided, however, the County’s approval of such Budget Book shall not relieve or otherwise diminish the Manager’s liability and responsibility to secure Permit(s) prior to the performance of the Work for which such Permit(s) are required.

Section 4.7.2 Easements and Access to Project Site. Prior to the Manager's submittal of a Budget Book in accordance with Section 4.8, the Manager shall obtain, or cause to be obtained, any and all access rights, servitudes, easements and rights-of-way necessary to construct the relevant Budgeted Project from all Persons (other than the County), including all utility providers. The County shall grant to the Manager, at no expense to the Manager, any and all necessary access rights, servitudes, easements and rights-of-way on County property, subject to any limitations, conditions or restrictions already applicable to such properties, which are within the power and authority of the County. The County shall exercise all reasonable efforts to assist the Manager in obtaining necessary access rights, servitudes, easements and rights-of-way from Persons other than the County. The Manager shall notify the County's Authorized Representative of the nature and extent of any such reasonably necessary access rights, easement, servitude or right-of-way, and shall provide such information as may be required or requested by the County in connection with such assistance.

Section 4.8 Preparation of Budget Book; County Approval of a Budget Book and Budgeted Project.

Section 4.8.1 Preparation of Budget Book. Following the later to occur of (a) ninety percent (90%) completion stage of design of a Budgeted Project, and (b) receipt of all Permits, easements and authorizations necessary to construct the relevant Budgeted Project which are required to be obtained on or before the Construction Commencement Date, the Manager shall prepare, submit to the County and post to the Project Dataroom a Budget Book, substantially in the form of Schedule 2 (Form of Budget Book) attached hereto, for the subject Budgeted Project. Each Budget Book shall include a GC Disclosure

and shall contain a written certificate executed by an authorized officer of the Manager certifying that to the best of the Manager's knowledge, the information submitted (including all cost and price information) is accurate, complete and current based on the Subcontractor bids the General Contractor received or upon reasonable projections of Subcontractor costs.

The Budget Book shall also include a schedule of any Payment and Performance Bond(s) to be required of Subcontractors. In addition, if the Budgeted Project will incorporate or use any Intellectual Property that may not be lawfully incorporated or used in the Project absent a license from the Intellectual Property Owner, the Budget Book shall include a copy of the duly executed Technology License Agreement.

Section 4.8.2 County Approval of Budget Book. Following submission of the Budget Book for a Budgeted Project in accordance with Section 4.8.1, the Manager shall, if requested by the County's Authorized Representative, provide to the County, within three (3) Business Days of such request, copies of each bid proposal received by the Manager or General Contractor, as applicable, for the Project.

Within ten (10) Business Days following the County's receipt of the Manager-executed Budget Book, the County shall advise the Manager as to whether the Budget Book is approved, and if the County approves the subject Budget Book, the County shall execute and return a fully executed original Budget Book (the fully executed version being a "**Final Budget Book**") to the Manager. Upon the Manager's receipt, the Manager shall post the fully executed version of the Final Budget Book to the Project Dataroom. Once fully executed by the Manager and the County, the Final Budget Book shall be

attached to and made a part of this Agreement and the Budgeted Project described in such Final Budget Book shall constitute an “**Approved Project**”.

If the County does not respond within the ten (10) Business Day review and approval period described in this Section 4.8.2, then such Budget Book shall be deemed to be rejected by the County and the Manager shall cease all Work relative to the Budgeted Project. If, however, the County delivers Notice to the Manager’s Authorized Representative disapproving the proposed Budget Book or providing comments thereto, or both, the Parties shall, for a period of fifteen (15) days, meet in an attempt to resolve the outstanding issues. If all issues are not resolved within such fifteen day period, the County may elect, by delivering Notice to the Manager’s Authorized Representative, (A) further to extend the fifteen day period, or (B) to terminate all Work relative to the Budgeted Project, in which case, the County may either (i) develop and construct the Budgeted Project using County employees or an alternative vendor or (ii) decide not to proceed with development and construction of the Budgeted Project, all at the sole discretion of the County. If the County elects to extend the fifteen day extension period described in clause (A) of the preceding sentence, to the extent the pricing or bids obtained from Subcontractor(s) has expired or is subject to adjustment, the Manager may, upon Notice to the County, adjust the Maximum Project Price based on such new or adjusted Subcontractor pricing or bids.

Section 4.8.3 Amendment of Final Budget Book. The Final Budget Book for an Approved Project may only be amended, modified or supplemented by written agreement of the County and the Manager or pursuant to a Change Order as authorized by this Agreement.

Section 4.9 Final Design Documentation. If the County has approved the Budget Book for an Approved Project in accordance with Section 4.8, then upon completion of the design for such Approved Project, the Manager shall post to the Project Dataroom the final Design Documentation for such Project. If the final Design Documentation is materially different from the Design Documentation attached to the Final Budget Book, the Manager shall (a) prepare an amendment to the Final Budget Book updating the Design Documentation and (b) submit such amendment to the County for review and approval, in accordance with the procedure set forth in Section 4.8.2.

Section 4.10 Termination of Budgeted Projects Prior to Final Budget Book. The County shall have the right to terminate a Budgeted Project prior to the County's approval of the Budget Book in accordance with Section 4.8 for the relevant Budgeted Project (in which case, the Annual Plan shall be modified accordingly), without any liability on its part, other than payment of the Actual Project Costs (including the Base Fee and applicable Incentive Fee, to the extent earned) incurred by the Manager prior to the date of such termination, subject to Cost Substantiation and the Maximum Design Cost. Prior to approval of a Final Budget Book, the County retains the right, in its sole discretion, to decide if, when, by whom and the extent to which a Project is undertaken by the County, if at all. The County shall not be precluded or prohibited, in any manner, from procuring, engaging or contracting with an alternative vendor, or constructing any Projects using County employees, and any such actions by the County shall not constitute an Event of Default by the County or give rise to any cause of action or liability on the part of the County.

SECTION V

CONSTRUCTION PERIOD WORK

Section 5.1 General Scope of Construction Period Work. Following the County's approval of a Budget Book for an Approved Project in accordance with Section 4.8, the Manager shall promptly advise the County of the Construction Commencement Date for such Approved Project by uploading a Posting Notice to the Project Dataroom. On and after the Construction Approval Date for an Approved Project, the Manager shall be responsible for the Work and shall cause each Approved Project to be constructed, installed and Accepted, all in accordance with the requirements of this Agreement. The Manager shall be responsible for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt and orderly prosecution and completion of the Work and the Approved Project(s), and shall furnish and shall pay for or cause to be paid, directly or through Subcontractors, all Work, labor, materials, testing, instrumentation, supervision, equipment, tools, temporary facilities, security instruments, intellectual property rights and any and all similar items required for such construction, installation and Acceptance, all as specified in this Agreement.

Section 5.2 Project Site; Access Roads and Utilities.

Section 5.2.1 Site of Construction. The specified Approved Project shall be constructed on the relevant Project Site described or depicted in the Final Budget Book.

Section 5.2.2 Title. The County represents and warrants for all Approved Projects to be constructed on County property, that, except as may be set forth in the Budget Book for an Approved Project or to the extent the Manager or any Subcontractor

has actual knowledge of any limitations, conditions or restrictions applicable to such Project Site, the County has good title to the Project Site and that such title does not prohibit any of the activities or uses contemplated by this Agreement.

Section 5.2.3 Manager Access. The Manager shall comply with, and cause the Subcontractors to comply with, the terms and conditions of any servitudes, easements, rights-of-way or other access rights issued or granted to, granted in favor of, or relied upon by the Manager for construction of an Approved Project.

Section 5.2.4 Manager Laydown and Staging Area. To the extent available based on the particular Project Site, the County shall provide, at no cost to the Manager and on a schedule as reasonably required by the Manager, a supply and material laydown, staging, storage and work force area. The Manager shall be responsible for stabilizing, fencing, providing security and making any additional improvements to the Project Site as may be deemed necessary by the Manager, in order to comply with Permits and Governmental Authorities. At completion of construction, such area shall be returned to its pre-construction condition by the Manager (as modified by the completed Approved Project improvements). If the Manager requires additional material laydown, staging, storage or work force area beyond that provided by the County, the Manager shall be responsible for obtaining the same and providing for such in the Budget Book, and the cost thereof shall be part of Maximum Project Price.

Section 5.2.5 Access Roads and Utilities. The Manager and the County shall cooperate fully in order to provide appropriately for roads, drainage systems, utilities and utility distribution systems within each Project Site. The Manager shall be responsible (a) for any damage, destruction, loss, or injury to roads, drainage systems, utilities and

utility distribution systems within each Project Site, (b) for obtaining all necessary electricity service connections required for construction, installation and Acceptance of the relevant Approved Project, and (c) with the cooperation of the County, for obtaining and maintaining all necessary taps into sewer and water lines. In doing so, the Manager shall comply with and follow the applicable legal requirements and specifications for such taps and connections. The cost of all such design and construction shall be included in the Maximum Project Price.

The Manager shall be responsible for notifying all affected utility companies prior to performing any Work that could impact the relevant utility service or infrastructure and shall cooperate with the utility providers in connection with such Work. All damage to utility services or infrastructure facilities caused by the Manager's Work shall be the responsibility of the Manager. The Manager shall cooperate with the owners of any underground utilities or overhead utility lines in order to minimize the disruption of these utility operations to the extent reasonably practicable. In the event of interruption to utility services as a result of accidental breakage, or as a result of being exposed or unsupported, the Manager shall promptly notify the proper authority and shall cooperate in the restoration of the service. Utility outages shall be kept to a minimum and shall be permitted only with the prior written approval of the County. The County shall be responsible for any roads, drainage systems or utility distribution systems outside of the relevant Project Site, except as otherwise provided in a Budget Book for the subject Approved Project.

Section 5.2.6 Associated Obligations. To the extent not inconsistent with this Section 5.2, the Manager shall, in connection with the performance of the Work, (a)

prepare or cause to be prepared the relevant Project Site for construction, and (b) provide appropriate parking area(s) on the Project Site and, if necessary, off the Project Site.

Section 5.2.7 Coordination of Other Work. The County shall have the right, at any time, to contract for and perform other work on, near, over or under the relevant Project Site; provided, however, such work does not materially interfere with the Manager's Work on the relevant Project Site during construction. The Manager shall cooperate fully with the County and coordinate the Work to such other County work as may be directed by the County, subject, as applicable, to the possibility of County Fault.

Section 5.2.8 Cleanup. The Manager shall, to the extent practicable, keep each Project Site, including adjacent areas, roadways, and ingress and egress into and out of the relevant Project Site(s), clean of dirt, debris, rubbish and waste materials arising out of the Work. At the completion of the Work, the Manager shall promptly remove all dirt, debris, rubbish and waste materials arising out of the Work from and about the Project Site(s) which shall be returned in a clean, neat, and workmanlike condition satisfactory to the County. The Manager shall include all costs for cleanup of a Project as part of the Maximum Project Price for the relevant Project, as specified in the approved Budget Book for such Approved Project.

Section 5.3 Construction.

Section 5.3.1 Tools and Equipment. Beginning on the Construction Approval Date, the Manager shall furnish, or cause to be furnished, all tools and equipment necessary for the Work. All construction tools and equipment owned or furnished by or on behalf of the Manager shall remain its property.

Section 5.3.2 Minimization of Interference.

Section 5.3.2.1 Public Convenience and Safety. The Manager shall at all times conduct the Work in a manner to create the least practicable interference and obstruction to all forms of traffic and the general public, residents and tenants at or adjacent to the relevant Project Site and shall take commercially reasonable steps to minimize noise, any objectionable or unpleasant odors, dust, vibrations, inconvenience and disruption to such Persons. The Manager shall develop and implement when applicable a Maintenance of Traffic (MOT) plan in accordance with the applicable County codes and ordinances. The Manager shall provide and maintain in passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted by construction of an Approved Project and shall provide and maintain in a safe condition temporary approaches to, and crossing of, the Project Site. Existing facilities planned to be removed, but which might be of service to the public during construction, are not to be disturbed until other and adequate provisions are made. Unless otherwise approved by the local fire authority, fire hydrants on or adjacent to the Project Site shall be kept accessible to fire fighting apparatus at all times, and no obstruction shall be placed within fifteen (15) feet of any such hydrant. Work closed down for the winter or at any other time shall be left entirely accessible at all points to fire fighting apparatus.

Section 5.3.2.2 Barricades and Warning Signs. The Manager shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other control devices, and shall take all necessary precautions for the protection of the Work and safety of the public. All roads and other facilities closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness with electric lights. The Manager shall erect warning signs at any

place on a Project Site where operations may interfere with use of the facility or Project Site by vehicular or pedestrian traffic. Such warning signs shall be constructed and erected in accordance with the Federal Highway Administration Manual on Uniform Traffic Control Devices or as directed in writing by the County. In cases where the Manager's sequence of operations results in grade differentials which would be hazardous to vehicular or pedestrian traffic, the Manager shall, to the extent specified in the Budget Book or as separately requested by the County (which request shall constitute a Material Change Order to the extent not specified in the Budget Book for the relevant Approved Project), provide substantial guardrail.

Section 5.3.2.3 Preservation, Protection and Restoration of Property. The Manager shall continuously maintain adequate protection of all of its Work from damage and shall protect County property from injury or loss arising from the Work. The Manager shall adequately protect property adjacent to the Project Site as provided by Applicable Law and this Agreement. The Manager shall box all trees along the way of access, also those trees surrounding the Work which are susceptible to injury therefrom. The Manager shall use no tree for attachment of any ropes or derricks. The Manager shall provide and maintain, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workmen.

Section 5.3.2.4 Land, Air and Water Pollution. The Manager shall ensure that all Project Sites are assigned a Person employed by Manager or a Subcontractor holding a current "Responsible Personnel for Erosion & Sediment Control Certification," issued by MDE who shall be responsible for inspecting and monitoring erosion and sediment controls. All erosion and sediment controls shall be installed and maintained in

compliance with Applicable Law. The Manager shall incorporate appropriate or necessary permanent erosion control features into the Work at the earliest practicable time. Temporary pollution control measures shall be implemented and maintained as needed in order to prevent or correct conditions that develop during construction, that are needed prior to installation of permanent pollution control features, or that are needed temporarily to control erosion that develops during normal construction practices. Temporary pollution control may include measures outside the applicable Project Site where such Work is necessary as a direct result of Approved Project construction. The County's Authorized Representative shall be kept advised of all such off-Project Site control measures taken by or on behalf of the Manager. If the Manager fails to control erosion, pollution, and/or siltation, the County reserves the right, at the Manager's expense, including as a setoff to or withholding from the Base Fee and/or Incentive Fee, to employ outside assistance or to use its own employees to provide the necessary corrective measures. Upon specific request of the County, the Manager shall submit written materials to the County's Authorized Representative demonstrating that the governing federal, State, County and local land, water and air pollution criteria have been and are being met.

Section 5.3.2.5 Environmental Litigation; Defense. If the performance of all or any part of the Work on a Project or under the Program is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of Environmental Litigation, the County, at the written request of the Manager, shall determine whether the order is due in any substantial part to the malfeasance, negligence or act or omission of the Manager or any Subcontractor in violation of this Agreement. If the County reasonably determines that the Environmental Litigation is due in any substantial

part to the malfeasance, negligence, act or omission of the Manager or any Subcontractor in violation of this Agreement, then such suspension, delay or interruption shall (i) constitute Manager Fault, (ii) be at the cost and expense of the Manager, and (iii) not give rise to a Contingency Change Order or any adjustment to the Maximum Project Price, Scheduled Acceptance Date or Milestone Performance and Payment Schedule for the relevant Projects. If the County reasonably determines that the Environmental Litigation is not due in any substantial part to the malfeasance, negligence, act or omission of the Manager or any Subcontractor in violation of this Agreement, then (i) such suspension, delay or interruption shall give rise to a Contingency Change Order, with appropriate adjustment(s), if any, in the applicable Maximum Project Price, Scheduled Acceptance Date or Milestone Performance and Payment Schedule in accordance with Section 5.5.3, and (ii) if the Manager is party to such Environmental Litigation, except as otherwise expressly provided in this Section 5.3.2.5, the County shall reimburse any reasonable attorneys fees and court costs incurred and paid or payable by the Manager, subject to Cost Substantiation, arising out of the Manager defending such Environmental Litigation.

The Manager shall give prompt Notice to the County, and in any event not later than ten (10) days, after the receipt of any written correspondence (including any compliant, pleading or notice of violation) relating to threatened or initiated Environmental Litigation, specifying in reasonable detail the parties, amount claimed, and the stated basis of the Environmental Litigation, and including therewith copies of any notices or other documents received from third parties with respect to such suit, action or claim. The Manager shall also promptly provide the County with such further information, assistance and cooperation concerning any such Environmental Litigation as the County may

reasonably request. If within twenty (20) days after the County receives such Notice, the County gives Notice to the Manager stating that the County believes it may be liable under this Section 5.3.2.5 for reimbursement of the Manager's reasonable attorney fees and court costs and that the County intends to defend against such Environmental Litigation at its own cost and expense, then counsel for the defense shall be selected by the County (which may include the selection of County attorneys and/or outside counsel) and the County shall not be required to reimburse the Manager for its further attorney fees and court costs as long as the County is conducting a good faith and diligent defense at the County's expense. Notwithstanding the foregoing, the Manager shall at all times have the right fully participate in such defense and may engage counsel at its own expense. If the County assumes such defense in accordance with the foregoing, (A) the County shall (i) keep the Manager apprised of the status of the Environmental Litigation, (ii) furnish the Manager with all documents and information that the Manager shall reasonably request and (iii) consult with the Manager prior to acting on major matters involved in such Environmental Litigation, including settlement discussions, and (B) the County shall have the right to settle all such Environmental Litigation; provided however, that consent of the Manager shall be required if the Manager is a party and would be materially affected by such settlement. If the County does not assume such defense in accordance with the foregoing, or if diligent and good faith defense is not being or ceases to be conducted by the County, then the Manager shall undertake the defense, at the expense of the County in accordance with this Section 5.3.2.5, but may only settle such Environmental Litigation with the consent of the County.

Section 5.3.3 Employees and Workmanship.

Section 5.3.3.1 Qualified Employees. Other than apprentices, only personnel trained and skilled in the task assigned to them may be employed on any portion of the Work. Any employee found by the Manager or the County to be unskilled or untrained in their Work shall be removed from the Work.

Section 5.3.3.2 Licensed Employees. When Applicable Laws require that certain personnel, electricians, plumbers, etc. be licensed, then all such personnel employed on the Work shall be so licensed.

Section 5.3.3.3 Reserved.

Section 5.3.3.4 Methods and Quality.

(a) All workmanship shall be of the standards set forth in the Design Documentation for such Approved Project. Whenever the method of the Work or manner of procedure is not specifically stated in the Design Standards, then it is intended that the best standard practice shall be followed. Recommendations of the manufacturers of approved materials shall be considered as a part of such specifications.

(b) Materials shall be accurately assembled and set, and when so required in good construction, shall be true to line, even, square, plumb, level, and regularly spaced and coursed. Under no circumstances, shall any material be applied over another which has not been properly installed or installed in a manner that would impair the performance or efficiency of the next applied item.

Section 5.3.3.5 Scheduling. The Manager shall schedule the Work, including cutting, patching and digging necessary to the execution of the Work, to ensure efficient and uninterrupted progress.

Section 5.3.3.6 Supervision. The Manager shall maintain appropriate and adequate supervision at each Project Site at all times during the progress of the Work.

Section 5.3.3.7 Discipline. The Manager shall at all times enforce strict discipline and good order among the Manager's employees and shall not employ or permit to remain on the Work or any Project Site any unfit Person. The Manager shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by Applicable Law and by the County. Employees must not be allowed to loiter on a Project Site before or after working hours.

Section 5.3.4 Safety. The Manager shall adopt and implement all legally mandated and all other reasonable precautions to prevent injury or damage to persons and property in or about the Approved Project and the Project Site, which precautions shall be applicable on and after the Construction Commencement Date through Acceptance of the applicable Project. The Manager shall not require any Person employed in performance of the Work to work in conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under Applicable Law. The Manager shall designate and identify to the County a responsible Person whose duty it shall be, in addition to his/her other duties, to prevent accidents and to enforce the standards of this Section 5.3.4.

Section 5.3.5 Emergencies. In the event of any Emergency affecting the safety of persons, the Work or property (including the Project Site and property immediately adjacent thereto), absent specific instructions or authorizations from the County's Authorized Representative if time or circumstances do not permit, the Manager shall take whatever reasonable measures are necessary under such circumstances to

prevent or mitigate threatened damage, injury or loss. The Manager's Authorized Representative shall, as expeditiously as reasonably practicable after the occurrence of such Emergency give Notice to the County's Authorized Representative of such Emergency providing reasonable details thereof. If the Manager reasonably believes the Emergency required additional Work which was actually performed, the Manager's Authorized Representative may submit to the County's Authorized Representative a written statement describing in reasonable detail (a) the Work performed, (b) the cost of the Work performed and (c) the material effect of the Work, if any, on the Maximum Project Price as set forth in the Budget Book and on the guarantees, warranties or obligations of the Manager under this Agreement. To the extent the County disagrees with any statements or conclusions of Manager in its written statement, absent mutually satisfactory resolution of such differences, the Parties may either elect to treat the Work as a Contingency Change Order under Sections 5.5.3 and 5.5.4 or proceed directly to dispute resolution under Section 17.5.

Section 5.4 Construction Monitoring and Review; Inspections.

Section 5.4.1 Monitoring Information. The Manager shall (a) promptly notify the County's Authorized Representative in writing of any material error, inconsistency or omission which the Manager may discover in the performance of the Work, (b) advise the County as to actions taken to remediate any such condition(s) at the relevant Approved Project, and (c) make available to the County all information reasonably necessary to permit the County and its representatives to monitor and review the design, re-design, construction, repair or reconstruction of the relevant Approved Project.

Section 5.4.2 Work Progress; Monthly Status Report; Monthly Meetings.

Beginning with the date of inclusion of a Budgeted Project in an Annual Plan and ending with the later to occur of the Acceptance Date for each Approved Project or final payment by the County pursuant to Section VIII, the Manager shall, on a monthly basis, prepare and submit to the County's Authorized Representative and post to the Project Dataroom a written report (the "**Monthly Status Report**") containing the status of design, procurement and construction activities for each Budgeted Project and Approved Project, including an updated project schedule for such Projects.

The Manager shall meet with the County's Authorized Representative and other County representatives monthly. The purpose of these meetings shall be to review the Monthly Status Report, discuss problems and corrective actions planned, identify any expected impacts to existing operations, and generally keep the County's Authorized Representative up to date on all material issues related to the Project(s). The Manager shall prepare a meeting agenda and submit the same to the County's Authorized Representative at least twenty-four (24) hours prior to the scheduled meeting. The Manager shall prepare and transmit minutes of each meeting to all attendees within a reasonable time following each meeting.

Section 5.4.3 Construction Review. The Manager shall maintain efficient supervision of the Work. The Manager shall evaluate the Work being performed at each Approved Project in light of the plans and specifications for such Approved Project. Following a request by the County, the Manager shall promptly upload to the Project Dataroom any documents or information requested by the County's Authorized Representative relating to or concerning the development or construction of an Approved

Project. The County's monitoring and review, as set forth above, shall not in any way be construed as relieving the Manager of any of its obligations, responsibilities or liabilities under this Agreement.

Section 5.4.4 Inspections. The County, its agents and Authorized Representatives, and representatives of governmental regulatory agencies having jurisdiction with respect to the Approved Project(s), shall be granted access to each Project Site at any time in order to monitor or inspect (a) the Project Site(s) and (b) the construction, installation, planning, and Acceptance of each Approved Project. Any such inspections or visits, other than those undertaken by representatives of government regulatory agencies, which shall be conducted in accordance with Applicable Law and Permits, shall be conducted in a manner to minimize interference with the Work. In connection with such inspections and visits, the County shall, and shall cause its invitees to, comply with all reasonable safety rules and regulations adopted by the Manager.

Section 5.5 Change Orders. Either Party may propose changes, improvements or additions to an Approved Project (each, a "**Change Order**") at any time prior to Acceptance of such Approved Project.

Section 5.5.1 Material Change Orders. Any Party proposing a Material Change Order (as defined below) shall submit Notice of the proposed Material Change Order to the other Party in advance for review and approval. For purposes hereof, a "**Material Change Order**" means any Change Order which will, or can reasonably be expected to:

- (a) cause the Actual Project Cost to exceed its Maximum Project Price;

- (b) increase or reduce the Impervious Area Credits to be received by the County;
- (c) reduce the quality, integrity, durability or reliability of such Approved Project;
- (d) change the particular type of BMP(s) to be used if (i) any substituted BMP is not a General BMP, or (ii) the County has specified in the applicable Budget Book that no change of such BMP(s) can be made without the County's prior approval;
- (e) materially affect the appearance or aesthetic quality of such Approved Project; or
- (f) cause a delay to the Scheduled Acceptance Date.

If the Manager proposes a Material Change Order, then it shall prepare and include with the Change Order Notice (described above) a proposed amendment to the applicable Budget Book (a "**Budget Book Amendment**") describing any resulting adjustment to the Maximum Project Price, Milestone Performance and Payment Schedule, Scheduled Acceptance Date and/or Design Documentation.

If the County proposes a Material Change Order, then its Change Order Notice shall describe in reasonable detail the proposed Material Change Order, and within fifteen (15) Business Days after receipt thereof (or such longer time period as may reasonably be required), the Manager shall prepare and provide to the County a proposed Budget Book Amendment as described above. The County shall have ten (10) Business Days to approve and execute or reject such Budget Book Amendment, and failure of the County to act

within such 10-day period shall be deemed to be a rejection of the Budget Book Amendment and the applicable Change Order proposal.

Disputes arising out of this Section 5.5.1 shall be resolved in accordance with Section 17.5; provided, however, that the Manager shall not be required to proceed with any Material Change Order requested by the County unless adequate provision is made for the direct impact, if any, of such Change Order on the Maximum Project Price, Milestone Performance and Payment Schedule, Scheduled Acceptance Date and/or Design Documentation. If the County and the Manager cannot agree as to the terms of “adequate provision” as described in the preceding sentence, and if the County insists upon proceeding with the particular Material Change Order, the Manager may terminate the applicable Approved Project as if for an Uncontrollable Circumstance in accordance with the provisions of Section 14.3.

Section 5.5.2 Non-Material Change Orders. Any Party proposing a Non-Material Change Order (as defined below) shall submit Notice of the proposed Non-Material Change Order to the other Party in advance. For purposes hereof, a “**Non-Material Change Order**” means any Change Order other than a Material Change Order or a Contingency Change Order.

If the County proposes a Non-Material Change Order, the Manager shall undertake and complete such Non-Material Change Order without any adjustment or modification to the terms of the Budget Book or this Agreement; provided, to the extent the Manager reasonably believes that such County-requested Change Order has been misclassified as a Non-Material Change Order rather than a Material Change Order, the Manager shall, within fifteen (15) Business Days after receipt thereof, submit Notice to the County

rejecting such Non-Material Change Order and describing, in reasonable detail, its basis of rejection. The County may thereafter resubmit a Material Change Order in accordance with Section 5.5.1 or submit a dispute claim in accordance with Section 17.5, subject to the proviso set forth in the last paragraph of Section 5.5.1.

If the Manager's Non-Material Change Order has any of the effects described in clauses (b) – (e) of Section 5.5.1, the Manager shall be responsible, at its cost and expense, for promptly acting to take such curative or corrective action as may be necessary to (a) eliminate the resulting impact, (b) return the relevant Approved Project to the condition existing prior to such Manager-initiated Change Order, and/or (c) effect a full and complete cure and correction, in each case as required by the County.

Disputes arising out of this Section 5.5.2 shall be resolved in accordance with Section 17.5.

Section 5.5.3 Contingency Change Orders.

Section 5.5.3.1 Change Orders Due to Uncontrollable Circumstance. An Uncontrollable Circumstance that results in changing, altering, adding to or deducting to from the Work or the costs thereof of, or the time to construct an Approved Project, may serve as a basis for the Manager to submit a Contingency Change Order to the County's Authorized Representative. If the County approves a Change Order resulting from the occurrence of an Uncontrollable Circumstance or elects not to proceed with such a Change Order, the County shall (a) if and to the extent they are directly and materially adversely affected by such Uncontrollable Circumstance, appropriately modify or, if required by the specific circumstance, waive the Manager's guarantees, warranties or other obligations under this Agreement in accordance with Section 5.5.4, and (b) make

appropriate changes to the County's obligations under this Agreement in accordance with Section 5.5.4. Any Change Order resulting from this Section 5.5.3.1 shall be a Contingency Change Order, paid for by the County in accordance with Section 7.6. If the County elects not to proceed with a Change Order resulting from the occurrence of an Uncontrollable Circumstance or fails to provide sufficient monies under any issued Contingency Change Order, the Manager may suspend Work on the Approved Project in part or in whole, and the County may terminate such Approved Project, to the extent permitted by Section 14.3.

Any material delay in or cost increase of the Work on an Approved Project due to an Uncontrollable Circumstance shall, to the extent appropriate, give rise to an adjustment to any or all of (1) the Maximum Project Price, (2) the Scheduled Acceptance Date, or (3) the Milestone Performance and Payment Schedule; provided, the Manager submits Notice of the occurrence of such Uncontrollable Circumstance to the County within a reasonable time following learning of the occurrence. The failure of the Manager to provide prompt Notice to the County may give rise to an adjustment of the relief to which the Manager might otherwise be entitled hereunder if and to the extent that such failure is reasonably determined to have increased the costs or delay caused by such Uncontrollable Circumstance. The Manager shall provide Cost Substantiation in support of any Uncontrollable Circumstance claim. If the Scheduled Acceptance Date is subject to an adjustment in accordance with this Section 5.5.3.1, the Scheduled Acceptance Date shall be extended by the number of Day(s) that the Manager can reasonably demonstrate to the County that are directly attributable to the Uncontrollable Circumstance.

Section 5.5.3.2 Change Orders Due to County Fault. Any material delay in or increase in the cost of the Work on an Approved Project due to County Fault shall serve as the basis for a Contingency Change Order under this Agreement and, to the extent appropriate, allow for adjustment to any or all of (a) the Maximum Project Price, (b) the Scheduled Acceptance Date, or (c) the Milestone Performance and Payment Schedule; provided, the Manager submits Notice of the occurrence of such County Fault to the County within a reasonable time following learning of the occurrence. The failure of the Manager to provide prompt Notice to the County may give rise to an adjustment to the relief to which the Manager might otherwise be entitled hereunder if and to the extent that such failure is reasonably determined to have increased the costs or delay caused by such County Fault. If the Scheduled Acceptance Date is subject to adjustment in accordance with this Section 5.5.3, the Scheduled Acceptance Date shall be extended by the number of days that the Manager can reasonably demonstrate to the County's Authorized Representative are directly attributable to the effects of such County Fault.

Section 5.5.4 Implementation of Contingency Changes Orders. The Manager's Authorized Representative shall post to the Project Dataroom, as soon as is reasonably practicable following the County's Authorized Representative's written request, non-binding estimates of the financial, construction, schedule or performance (including guarantees and warranties) obligations of the Manager impacted by any Contingency Change Order pursuant to Sections 5.5.3.1 or 5.5.3.2. Upon the County's Authorized Representative's written authorization, the Manager shall provide in writing, the fixed price to prepare a firm proposal relative to the Contingency Change Order,

including an estimate of the impact on the Milestone Performance and Payment Schedule and on the substance and cost of the Work on the affected Project.

If the County's Authorized Representative approves in writing the fixed price for preparation of the firm proposal for any Contingency Change Order, the Manager shall furnish a detailed proposal within fifteen (15) Business Days thereafter or such other period of time as the Parties may mutually agree, describing in reasonable detail the appropriate revisions (i) to the Work and the Design Standards, (ii) the Maximum Project Price, (iii) any obligation of either Party under this Agreement, and (iv) to the relevant Milestone Performance and Payment Schedule, including the extended Scheduled Acceptance Date, resulting from the Contingency Change Order (including the time periods for preparation, review and approval of said proposal).

If, within ten (10) Business Days following receipt of the Manager's proposal or such other period of time as the Parties may mutually agree, the County's Authorized Representative notifies the Manager in writing that the County wishes to proceed with such Contingency Change Order, the items and obligations referred to above shall be added, adjusted or amended, as applicable, in accordance with the Manager's proposal, and the Parties shall execute the Contingency Change Order.

Section 5.5.4.1 Review and Resolution of Particular Change Orders Due to County Fault. If the Manager submits a Contingency Change Order in accordance with Section 5.5.3.2 and the basis of the Contingency Change Order is an act of the County, as described in clause (c) of the definition of County Fault, the County may, in its discretion, deliver written notice to the Independent Engineer, with a copy to the Manager,

directing the Independent Engineer to review such Contingency Change Order and issue its opinion in accordance with this Section 5.5.4.1.

Within ten (10) Business Days after receipt of the County's notice requesting review of the Manager's Contingency Change Order, the Independent Engineer shall submit a written request to the County and the Manager for (a) all information, documentation and cost records relevant to the Contingency Change Order and (b) a written memorandum setting out each Party's respective position and possible defense. Each Party shall promptly, but not more than ten (10) Business Days after receipt of the Independent Engineer's request, prepare and deliver the requested information and its written memorandum to the Independent Engineer. The County and the Manager shall cooperate fully with the Independent Engineer. Within ten (10) Business Days following the Independent Engineer's receipt of all requested information, the Independent Engineer shall prepare and deliver to the County's and the Manager's Authorized Representatives a written opinion (the "**IE Opinion**") (i) summarizing in detail its own findings and conclusions, and (ii) providing its opinion, based on its professional judgment and experience, whether and the extent to which the County act constitutes County Fault under clause (c) of the definition of County Fault. Either Party may appeal the IE opinion to the Contract Administrator in accordance with Section 17.5.

Section 5.5.4.2 Failure of Parties to Agree to Contingency Change Order Terms. If the County and the Manager cannot agree to the terms of the Manager's proposal prepared in accordance with Section 5.5.4, including the resulting impact, if any, on the Parties' obligations under the Agreement, such dispute shall be resolved in accordance with Section 17.5. The Manager shall proceed with any Contingency Change

Order pursuant to this Section 5.5.4 only upon receiving from the County's written authorization thereof; provided, however, the Manager is authorized, notwithstanding the provision of this paragraph, to proceed with Emergency Work in accordance with Section 5.3.5.

Section 5.5.4.3 Costs and Time to Resolve Contingency Change Order Terms. In addition to such adjustments as are required by the Uncontrollable Circumstance or County Fault giving rise to a Contingency Change Order, the applicable Contingency Change Order shall include (a) any Direct Costs incurred by the Manager, subject to Cost Substantiation, together with the applicable Base Fee and Incentive Fee, (b) appropriate adjustments of the Milestone Performance and Payment Schedule, and (c) any extension of time to the Scheduled Acceptance Date or adjustment to the Milestone Performance and Payment Schedule, as applicable, in each case, directly associated with the process of determining, assessing and resolving a Contingency Change Order as set forth herein.

Section 5.6 Ownership and Title; Usage Rights.

Section 5.6.1 Ownership and Title. Each Approved Project constructed or installed on or about County property shall be titled in the name of and owned by the County. Title to each Approved Project and all equipment, spare parts, utility property on Project Site (to the extent not owned by the applicable public utility), materials and other items of similar nature relative to an Approved Project (collectively, "**Property**") shall, unless otherwise provided in writing by the County in its sole discretion, vest in and be deemed owned by the County upon the earlier to occur of (a) final payment for such item by the County, or (b) delivery to the relevant Project Site; provided, that the foregoing shall not apply to equipment or materials owned by the Manager, General Contractor or any

Subcontractor temporarily brought onto a Project Site for the purpose of performing Work on an Approved Project. In all events, provided that the County has paid the Manager for a particular item or made final payment with respect to a particular Project, the County's title thereto shall be free and clear of all liens, security interests and encumbrances, except for any encumbrances that may be imposed by the County or Applicable Law.

Subject to Section 5.6.2, title to drawings, Maintenance Manuals, and other manuals, reports, As-Built Drawings, specifications, operating data, maintenance records, analyses of the data, maps, photographs, meeting records, communications records, studies and similar items, including software licenses and industrial property rights to the extent such are transferable to the County, purchased, supplied or prepared by or on behalf of the Manager on and after the Contract Date for or in connection with the Work, shall be owned (and titled, where necessary) in the name of the County, free and clear of all liens, security interests and encumbrances of any kind, with the exception of (A) those items qualifying as confidential information under Applicable Law, (B) those items protected from disclosure by Applicable Law, (C) those items, the title to which is not transferable to the County from Subcontractors having title thereto, and (D) Manager's partnership records, internal personnel records, financial records (including tax returns, financial statements and documents generated in connection therewith), and internal communications and materials or communications with Affiliates of the Manager regarding contract negotiations or strategies (collectively, clauses (A), (B), (C) and (D) of this sentence, "**Non-County Property**"). Non-County Property shall remain the property of the relevant Person holding title thereto and shall be accessible by the County only to the extent permitted (i)

by Applicable Law, (ii) by the applicable Technology License Agreement or subcontract, or (iii) pursuant to the express provisions of this Agreement.

Except as provided in the preceding paragraph of this Section 5.6.1, the Manager warrants that none of the Manager, any Subcontractor or any other Person performing Work or furnishing Property, shall have any interest in, or any right or title to, all or any part of the Property which is to be owned by the County. The Manager shall protect, indemnify and hold the County Indemnified Parties harmless from and against all Losses arising from a breach of such warranty and shall defend the County Indemnified Parties in any proceeding or claim arising from or otherwise relating to a breach of such warranty. The Manager does not make any warranty with respect to title to the Project Site or to liens, security interests or encumbrances on improvements to a Project Site that exist or may exist as of the relevant Construction Approval Date or that subsequently arise by, under or through acts or omissions of the County, its agents and representatives.

Prior to the relevant Acceptance Date, the Manager shall bear the risk of loss with respect to an Approved Project, including structures, improvements, fixtures, machinery, equipment, materials, supplies and other items comprising all or any part of such Approved Project or on such Project Site, regardless of the extent to which the loss was insured, bonded or otherwise secured, including the availability of proceeds therefrom, except to the extent such loss was the result of the occurrence or continuance or both of an Uncontrollable Circumstance or County Fault.

Section 5.6.2 Plans, Specifications, Manuals and Drawings. All Project plans, specifications, manuals, drawings, As-Built Drawings, certifications and other documentation substantiating Impervious Area Credits and performance, prepared and

required to be delivered by the Manager to the County's Authorized Representative, shall be owned by the County. Upon or prior to the Manager submission of an application for final payment to the County pursuant to Section 8.3, the Manager shall provide the County's Authorized Representative with all such plans, specifications, drawings, manuals, As-Built Drawings, certifications and other documentation substantiating Impervious Area Credits and the Manager's performance relative to the Approved Project. If this Agreement or any Project is terminated by the County pursuant to Section XIV, subject to the Manager receiving final payment for Work performed through the date of Notice of termination, all such plans, specifications, manuals, drawings, As-Built Drawings, certifications and other documentation substantiating Impervious Area Credits and performance that have been wholly or partially completed as of the date of termination shall be promptly delivered by the Manager to the County's Authorized Representative for use by the County or its agents for completing, adding to, modifying, servicing and maintaining the Project(s).

Section 5.6.3 Usage Rights. Nothing herein shall be interpreted to prevent the County at any time (including following the expiration or termination of this Agreement) from using documents, methods, or procedures developed or obtained by the Manager, including the Budget Books, Annual Plans, and Social and Economic Development Plan, regardless of whether such use is in connection with the Program, the MS4 Permit, or for any other purpose.

Section 5.7 Project Sign. To the extent specified in the relevant Budget Book for such Approved Project, the Manager shall post one project sign at the main entrance to a Project Site, which shall be installed within thirty (30) days after the Construction

Approval Date and shall be subject to the prior written approval of the County's Authorized Representative. The County's sign requirements shall be provided to the Manager's Authorized Representative. The Manager shall be responsible for promptly removing the sign(s) after Acceptance of the Approved Project. Any other signage at the Project Site, shall, except as required by Applicable Law, be subject to the prior written approval of the County's Authorized Representative. To the extent the Manager violates this obligation specified in the immediately preceding sentence of this Section 5.7, the County shall have the right to remove such signage, logos or other identifications and dispose of the same at the Manager's sole cost and expense.

Section 5.8 Environmental Attributes. All Impervious Area Credits generated by the Work shall be owned and titled in the name of the County. If Impervious Area Credits are initially titled or issued in the name of the Manager, the Manager hereby assigns, transfers and sets over to the County all right, title and interest of the Manager in and to such Impervious Area Credits and agrees to execute any further documentation necessary to effect such transfer and assignment at no cost or expense to the County. The Parties acknowledge and agree that opportunities or obligations may arise during the Term for either Party to obtain, generate, register, receive, secure, hold, report, transfer and/or sell Environmental Attributes created or recognized under existing or future Applicable Law. The Parties shall provide Notice to and shall advise one another promptly whenever any such opportunities or obligations shall arise. Unless the Parties otherwise agree in writing, the County shall enjoy all of the economic and other benefits arising or resulting from Environmental Attributes.

SECTION VI

SOCIAL AND ECONOMIC DEVELOPMENT PROGRAMS

Section 6.1 Social and Economic Development Programs - General. The Manager shall develop, administer, perform and maintain the Social and Economic Development Programs during the Term. The general goals and objectives for each Social Economic Development Program are as follows:

- (a) Community Outreach Program. Provide up-to-date information to County residents and provide a forum to facilitate information exchange and to coordinate activities pertaining to the development of Approved Projects in the County.
- (b) MBE/SB Outreach and Inclusion Program. Increase the participation of LSMWVBES across all service areas and phases of the Program and maximize learning opportunities for local County business enterprises through an intensive targeted, technology transfer program.
- (c) Mentor Development Program. Enhance the local County workforce by developing a mentor-protégé network to enhance the protégé firms' skill levels so they can compete for significant work and increase their participation by leading and filling significant roles for the Work being performed hereunder.
- (d) Work Development Program. Forge innovative partnerships with the County's local educational institutions, including high schools and trade and technical schools, to facilitate the building of a skilled

labor force within the County for a full range of positions, from construction jobs to administrative to highly technical design and engineering.

Section 6.2 Preparation and Review of Proposed Social and Economic Development Programs. Based on general goals and objectives of the Social and Economic Development Programs described in Section 6.1, within thirty (30) days following the Contract Date, the Manager shall develop and post to the Project Dataroom a plan setting forth the proposed Social and Economic Development Programs to be implemented during the Term (the “**Social and Economic Development Plan**”). The Social and Economic Development Plan shall include the following Manager obligations at a minimum:

(a) Community Outreach Program. The Manager shall meet with community and religious organizations based in the County each Fiscal Year during the Term to provide an update on the Program. These meetings shall be conducted in a spirit of mutual good faith, with information to be freely exchanged for the purposes of (i) updating the community on the status of the Program and benefits achieved to date, and (ii) discussing ways in which County residents can perform their own stormwater retrofits and receive stormwater mitigation credits.

(b) MBE/SB Outreach and Inclusion Program.

(i) Hosting outreach event(s) to increase awareness of opportunities for LSMWVBE under the Program;

(ii) Participating in MBE conferences, fairs and outreach events;

(iii) Advertising requirements, opportunities and support services available to Subcontractors from the MBE community;

(iv) Establishing a transfer of technology plan that educates and trains LSMWVBES in specialized technical areas, such as sustainability, green infrastructure, stormwater management technologies and practices;

(v) Developing a pre-qualified pool of Subcontractors for work relevant to the Approved Projects;

(vi) Tailoring project contracts and structures so as to recognize the qualifications of LSMWVBE Subcontractors and maximize their ability to participate; and

(vii) Incorporating local preference clauses in contracts and the bundling and earmarking of contracts for LSMWVBE inclusion; and

(viii) Hosting small business job fair(s) within the County.

(c) Mentor Development Program. The Manager shall develop a network of protégé firms and integrate them into the activities carried out and the opportunities provided pursuant to Section 6.2(b).

(d) Work Development Program. Establish innovative partnerships with the County's local educational institutions, including local high schools and trade/technical schools, to educate and train students in specialized technical areas, such as sustainability, green infrastructure, stormwater management technologies and practices.

The Social and Economic Development Plan shall also include the Manager's estimate of Maximum Annual Social and Economic Program Costs for each year of the Initial Term.

Within thirty (30) days after the County's receipt of the Posting Notice regarding such proposed Social and Economic Development Plan, the County shall post its

comments and suggested changes, if any, on such plan to the Project Dataroom. If the County does not post its comments or suggested changes on such proposed plan to the Project Dataroom within such thirty (30) day period, the Manager's Social and Economic Development Plan as submitted to the County's Authorized Representative shall be the Social and Economic Development Plan during the Term. If, upon receipt of the Manager's Social and Economic Development Plan, the County posts written comments or suggested changes to such program in the Project Dataroom within such thirty (30) day period, the Manager shall review such comments and suggested changes and amend the proposed Social and Economic Development Plan, including any appropriate revisions to the estimates of Maximum Annual Social and Economic Program Costs for each year of the Initial Term. The Manager shall, upon revision of such plan, if at all, provide the revised Social and Economic Development Plan to the County's Authorized Representative within ten (10) Business Days following the Manager's receipt of the County's Authorized Representative's comments and suggested changes to the program. Such revised plan shall be the Social and Economic Development Plan during the Term, unless amended or otherwise revised by written agreement between the Parties.

Section 6.3 Social and Economic Development Program Requirements. During each Billing Year, the Manager shall diligently perform, satisfy and comply with all Social and Economic Development Program Requirements for such Billing Year, as the same shall be set forth in the Final Annual Plan for the relevant Billing Year. The Parties acknowledge and agree that the Social and Economic Development Program Requirements set forth in the Final Annual Plan are minimum quantitative requirements only, and satisfaction of the minimum requirements set forth in the Final Annual Plan for any

particular Fiscal Year does not necessarily imply that the Manager has satisfied all of Manager's obligations with respect to the Social and Economic Development Programs, as the same are more fully described and identified in the Social and Economic Development Plan. The Parties further agree periodically to consider the planning and implementation of an additional Social and Economic Development Program that will support the establishment of companies relocating to, or newly being created in, the County (the "**Incubator Program**"), and the incorporation of such Incubator Program into the Annual Plan for the applicable Billing Year. The Parties agree that the planning for such Incubator Program shall include the establishment of a budget for the activities thereunder, the identification of potential sources of funding therefor, and the development of criteria to evaluate the Manager's performance with respect thereto; provided that, for any Incubator Program agreed to within an Annual Plan, the costs thereof shall be allocated sixty percent (60%) to the County and forty percent (40%) to the Manager.

SECTION VII

COMPENSATION

Section 7.1 Actual Project Costs. The County shall pay and reimburse the Manager the Direct Costs incurred and paid or payable by the Manager, in connection with the design and performance of the Work for each Budgeted Project or Approved Project, as applicable (the "**Actual Project Costs**"), subject to Cost Substantiation, as design and construction progress costs are actually incurred and invoiced by the Manager to the County in accordance with this Section VII, Section VIII and Section IX.

Notwithstanding anything herein to the contrary, (i) in no event shall the County be liable for or be obligated to reimburse Actual Project Costs in excess of (A) the Maximum Design Cost for a Budgeted Project or (B) the Maximum Subcontractor Cost for an Approved Project, plus all Direct Costs incurred for Work specified in Material Change Orders and Contingency Change Orders for such Approved Project (if any), as approved in accordance with Sections 5.5.1 and 5.5.3, (ii) the Manager shall be required to perform, or cause to be performed, and complete all Work relative to an Approved Project for the sum of the Maximum Project Price for such Approved Project, plus all Direct Costs, subject to Cost Substantiation, incurred for Work specified in Material Change Orders and Contingency Change Orders for such Approved Project (if any), as approved in accordance with Sections 5.5.1 and 5.5.3, and (iii) the maximum liability of the County for all Work performed on Budgeted Projects and Approved Projects (inclusive of all fees payable to the Manager) relative to (A) the Initial Program Area shall not exceed one hundred million dollars (\$100,000,000) in the aggregate, (B) the Expanded Program Area, if applicable, shall not exceed the amount mutually agreed to in writing by the County and the Manager prior to the commencement of the Renewal Term, and (C) for any Capital Repair and Replacement Projects, shall not exceed the amount mutually agreed to in writing by the County.

Section 7.2 Actual Program Costs. The County shall pay and reimburse the Manager the Direct Costs incurred and paid or payable by the Manager in connection with the performance of the Work relating specifically to (a) implementing the Social and Economic Development Programs and (b) maintaining the Project Dataroom, to the extent that such costs are not reimbursed as Actual Project Costs pursuant to Section 7.1

(together, the “**Actual Program Costs**”), subject to Cost Substantiation, when costs are actually incurred and invoiced by the Manager to the County, all in accordance with this Section VII and Section VIII; provided, however, in no event shall the County be liable for or be obligated to reimburse Actual Program Costs in excess of the Maximum Annual Social and Economic Program Costs plus the Direct Costs of the Project Dataroom, subject to Cost Substantiation, for the relevant Billing Year.

Section 7.3 Base Fee. The Base Fee shall be paid by the County to the Manager as a markup of the sum of the Actual Project Costs and Actual Program Costs payable by the County in accordance with, and subject to the limitations set forth in Section 7.1 and 7.2, as applicable, as such costs are incurred and invoiced by the Manager to the County. Except for Direct Costs incurred by the Manager for Material Change Orders and Contingency Change Orders (if any), the Manager shall not be entitled to receive a Base Fee on (a) any Actual Project Costs in excess of (i) the Maximum Design Cost for such Budgeted Project or (ii) the Maximum Subcontractor Cost for such Approved Project, or (b) any Actual Program Costs in excess of the Maximum Annual Social and Economic Program Costs for the relevant Billing Year. The Base Fee includes all amounts to compensate the Manager and pay for all of its costs and expenses associated with or arising from the Work performed hereunder, including all costs for (A) personnel (whether as an employee, consultant or otherwise), overhead, back office, administrative and other internal costs of the Manager, the Guarantor and any of their Affiliates, (B) managing and implementing the payment process for all Projects and Program activities, (C) procuring, documenting, negotiating, and enforcing all contracts with Subcontractors, including Payment and Performance Bonds and other security, (D) coordinating, managing, and overseeing all

Subcontractors and the Completion Certifier (excluding the costs and fees of the Completion Certifier, which shall be paid by the County and not the Manager), (E) developing and implementing all plans, programs and arrangements contemplated by this Agreement (including the Annual Plans and Budget Books), and (F) attending and documenting all meetings with the County involving this Agreement or the Program. For avoidance of doubt, the Base Fee does not include (i) the Actual Project Costs of Subcontractors directly relating to the design, construction, installation and Acceptance of a Project, or (ii) the Actual Program Costs of Subcontractors directly relating to the implementation of the Social and Economic Development Programs.

Section 7.4 Incentive Fees.

Section 7.4.1 Incentive Fees Earned Upon Acceptance. The determination of whether the Manager is entitled to an Early Completion Incentive and/or a Budgeted Cost Incentive shall be made at the time of Acceptance of the relevant Approved Project. If an Early Completion Incentive and/or a Budgeted Cost Incentive is earned, then the County shall pay such earned fees (net of the Deferred Incentive Fee portion described in Section 7.4.3), as invoiced by the Manager to the County in its monthly Application for Payment.

Section 7.4.2 Incentive Fees Earned Following Acceptance. The Local-Based Small Business Incentive, Target Class Incentive and County Resident Participation Incentive shall be calculated as of each June 30 and December 31 for all Approved Projects that have been Accepted by the County during the preceding six (6) Billing Months. Within thirty (30) days following the end of each such six-month period, the Manager shall prepare and deliver to the County a detailed report summarizing its

performance and achievement with respect to the jobs creation goals and the economic development goals set forth on Schedule 7 (Incentive Fees and Criteria). If and to the extent the Local-Based Small Business Incentive, Target Class__Incentive and/or the County Resident Participation Incentive are earned by the Manager with respect to any such six (6) Billing Month period, then the amount due (net of the Deferred Incentive Fee portion described in Section 7.4.3) shall be invoiced by the Manager in its next monthly Application for Payment.

Section 7.4.3 Deferred Incentive Fees. **[REDACTED]**

Section 7.5 Advance Payment. Within five (5) Business Days following the Contract Date, the County shall pay and advance to Manager an amount equal to **[REDACTED]**

(the “**Advance Payment**”) for the purpose of funding Manager’s initial Program costs and as an advance payment of the fees expected to be earned by Manager hereunder.

[REDACTED] of the Advance Payment (the “**Upfront Payment**”) shall be fully earned and non-refundable on the Contract Date. The remaining **[REDACTED]** of the Advance Payment shall either (i) be credited against and reduce the Base Fees and Incentive Fees earned by Manager or (ii) be payable by the Manager to the County, as applicable, in accordance with this Section.

A portion of the Advance Payment equal to one hundred twenty-five thousand dollars (\$125,000) (each, an “**Advance Payment Credit**”) shall be credited against and reduce the Base Fees and Incentive Fees owed to the Manager on an annual basis, with such credit to be applied in the twelfth (12th) Billing Month following the Contract Date

and the next two anniversaries thereof. If, in any Billing Year, the Base Fees and Incentive Fees owed to the Manager as of the applicable twelfth (12th) Billing Month are less than the Advance Payment Credit due with respect to such Billing Year, then the Manager shall refund and pay the shortfall to the County with (and at the time for submission of) the Application for Payment pursuant to Section 8.1.1 for such Billing Month (but if no Application for Payment is made, then upon receipt of an invoice from the County). The remaining Advance Payment Balance shall be credited against and reduce the balance of unpaid Deferred Incentive Fees upon completion of the Initial Program Area in accordance with Section 7.4.3, but if the aggregate unpaid Deferred Incentive Fees are less than the remaining Advance Payment Balance, the Manager shall refund and pay the residual shortfall to the County with (and at the time for submission of) the Application for Payment pursuant to Section 8.1.1 (but if no Application for Payment is made, then upon receipt of an invoice from the County); provided, however, that

- (i) if this Agreement is terminated pursuant to (A) Section 14.1 (Manager Event of Default) or (B) Section 14.6 (Control Program Cost), then in addition to repaying the Advance Payment Balance to the County, the Manager shall also pay the County one hundred twenty-five thousand dollars (\$125,000), as liquidated damages, so that the aggregate amount refunded to the County in such event shall be six hundred twenty-five thousand dollars (\$625,000);
- (ii) if this Agreement is terminated pursuant to (A) Section 14.2 (County Event of Default), (B) Section 14.4.1 (County Termination For Convenience), or (C) Section 14.5 (Fiscal Non-Funding), then

the Advance Payment Balance shall be retained by the Manager, rather than credited or repaid to the County;

- (iii) if this Agreement is terminated pursuant to (A) Section 14.3 (Uncontrollable Circumstance) or (B) Section 14.7 (Change in Law), then the Advance Payment Balance shall be refunded to the County, so that the aggregate amount refunded to the County in such event shall be five hundred thousand dollars (\$500,000);
- (iv) if this Agreement is terminated pursuant to Section 14.4.2 (Manager Termination for Convenience), then the Manager shall make such termination payments to the County in accordance with Section 14.4.2; or
- (v) if (A) the County determines that the Manager has met or exceeded the Program Performance Milestones during the earlier to occur of (x) Acceptance of Approved Projects totaling one thousand (1,000) acres of the Initial Program Area or (y) the second anniversary of the Contract Date, and (B) the Manager exercises its option to extend the Program and this Agreement in accordance with Section 17.1.1, then the fourth Advance Payment Credit shall be retained by the Manager as additional compensation, rather than credited to the County, and the Manager shall repay the County any remaining amount so that the aggregate Advance Payment Credits refunded to the County in such event shall be three hundred seventy-five thousand dollars (\$375,000).

Section 7.6 Reconciliation. Following the end of each Billing Year, the Manager shall deliver to the County an annual reconciliation and settlement statement, together with an invoice setting forth any amounts due to either Party in accordance with this Section VII.

SECTION VIII

PAYMENT

Section 8.1 Method of Payment.

Section 8.1.1 Application for Payment. On or before the eighth (8th) Day of each Billing Month and pursuant to Section VII, the Manager shall submit to the County's Authorized Representative an application for payment in the form of Schedule 8 (Application for Payments) ("**Application(s) for Payment**") for Work performed in the immediately preceding Billing Month. Each Application for Payment shall include:

- (a) the Actual Project Costs during such preceding Billing Month in accordance with Section 7.1;
- (b) the Actual Program Costs during such preceding Billing Month in accordance with Section 7.2;
- (c) the Base Fees earned and payable to Manager in accordance with Section 7.3; and
- (d) the Incentive Fees earned and payable to Manager in accordance with Section 7.4, offset by the Advance Payment Credit, to the extent applicable, in accordance with Section 7.5.

To the extent that an Application for Payment includes payment for Work on an Approved Project, such Application for Payment shall also include:

- (i) a certification by the General Contractor that work completed to date is substantially in accordance with the Design Documentation for the Approved Project, specifying the percentage completion, and confirming that the Work is being performed in accordance with local building codes and ordinances;
- (ii) a certification by the Independent Engineer that work completed to date is substantially in accordance with the Design Documentation for the Approved Project, specifying the percentage completion, and confirming that the Work is being performed in accordance with local building codes and ordinances;
- (iii) a certification by the Manager that the Work completed to date is substantially in accordance with the Design Documentation for the Approved Project and that construction of the Approved Project can be completed on or before the Scheduled Acceptance Date;
- (iv) invoices from the General Contractor and from all Subcontractors;
- (v) a lien waiver from each Subcontractor to which disbursement is to be made (other than the General

Contractor), which shall be a conditional lien waiver (conditioned only upon clearance of payment) with respect to the amount being requested in the relevant Application for Payment and an unconditional lien waiver with respect to all preceding invoices; and

- (vi) a lien waiver from the General Contractor, which shall be a conditional lien waiver (conditioned only upon clearance of payment) with respect to the amount being requested in the relevant Application for Payment and an unconditional lien waiver with respect to all preceding Applications for Payment.

With the Application for Payment submitted to the County's Authorized Representative in each July and February, the Manager shall include a calculation of the Local-Based Small Business Incentive, Target Class Incentive and County Resident Participation Incentive earned by the Manager, if any, in accordance with Section 7.4.2. The Manager shall include an executed affidavit and release in form and substance specified in Schedule 9 (Form of Affidavit and Release).

Each Application for Payment shall include such further data and backup documentation substantiating the Manager's and Subcontractors' right to payment as the County may reasonably require, and, in the case of payment requested for final payment, the Construction Documentation and Impervious Area Credit Certificate for such Approved Project. The County shall not be required to make payments unless and until the

Application for Payment contains all the required items and is otherwise in compliance with all material requirements of this Section VIII.

Based upon the Application for Payment submitted by the Manager to the County in accordance with the preceding paragraphs, the County shall, subject to and in accordance with this Section VIII, make progress payments to the Manager in accordance with (i) Section 7.1 and 7.2 for Work performed in the immediately preceding Billing Month, and (ii) in the case of a progress payment for (A) a Budgeted Project, the Design Milestone for such Budgeted Project, or (B) an Approved Project, the relevant Milestone Performance and Payment Schedule for such Approved Project. Progress payments with respect to an Approved Project may be made for Work which is otherwise properly performed, notwithstanding a departure from a required percentage completion milestone within the applicable Milestone Performance and Payment Schedule, provided that the actual percentage of Work completed is no more than fifteen percent (15%) of completion below the required percentage completion milestone. If and to the extent that the percentage of Work completed is more than fifteen percent (15%) below the milestone associated with the requested expenditure level, the County may withhold payment of the applicable Application for Payment (or portion thereof) until the Manager has (i) provided sufficient funding, which may be a payment pursuant to the Guaranty, to assure completion of Work on an Approved Project pursuant to the applicable Budget Book for the Maximum Project Price set forth therein or (ii) otherwise demonstrated to the reasonable satisfaction of the County that such Approved Project can achieve Acceptance for a cost within the Maximum Project Price.

Section 8.1.2 Actions by the County Relative to Application for Payments.

After the County's Authorized Representative's receipt of the Manager's Application for Payment, the County shall review and either (a) approve such Application for Payment in the amount requested (less the retainage and any credit or setoff authorized by this Agreement) or (b) notify the Manager in writing within ten (10) Business Days following the receipt thereof of any reasons then known for withholding its approval of all or any portion of such application. In the latter case, either (i) the Manager shall make the necessary corrections and resubmit the Application for Payment or (ii) the County shall recommend payment of the portion of the Application for Payment deemed due and owing to the Manager and the Manager shall resubmit the portions not approved (corrected to remove the deficiencies stated by the County's Authorized Representative) as part of the Manager's future Application for Payment.

The County may decline to approve the Manager's Application for Payment and shall withhold its approval, in whole or in part, to the extent necessary to protect the County, if, based on the written opinion of the Independent Engineer in the exercise of its reasonable engineering judgment (which opinion the Independent Engineer or the County's Authorized Representative shall deliver to the Manager when payment is disapproved), (A) the Work has not been completed to the level of progress claimed in the Application for Payment, (B) the quality of the Work is not in accordance with the Technical Requirements and specifications set forth in the Design Standards, or (C) for specified reasons, the Manager is not entitled to all or any portion of the payment sought because the Work performed is outside the scope of Work for the corresponding Project. The County shall approve that portion of the Application for Payment that is not in dispute.

When the grounds for withholding approval for payment have been cured or removed by the Manager, an Application for Payment of the amount withheld (together with documentation supporting the Manager's claim that the grounds for withholding or rescinding approval for payment have been cured or removed) shall be included by the Manager as part of the Manager's next monthly Application for Payment, and shall be processed and, if approved, paid by the County in accordance with this Section VIII.

In the event that the County shall determine, through subsequently discovered evidence or subsequent inspections or audits, that it has overpaid the Manager under any prior Application for Payments because of (i) defective or incomplete Work, (ii) improper or unsupported invoice calculations, or (iii) lack of appropriate and supporting documentation, the County may, as may be necessary in its opinion to protect the County from loss, (I) withhold any amounts due the Manager for Base Fees or Incentive Fees, including Deferred Incentive Fees, (II) draw upon the Letter of Credit or call upon any Guaranty or other security provided by the Manager, and/or (III) proceed against the Manager as otherwise provided in this Agreement; provided, however, that the County may not withhold payments due Subcontractors under an Application for Payment, which Application is otherwise in accordance with the requirements of this Section VIII. In such case, the County's Authorized Representative shall give Notice to the Manager's Authorized Representative describing the Work in question and the basis for any claim against the Manager. In such event, the applicable credit or offsetting invoice which shall be presented to the Manager on or before the time for payment specified in this Section 8.1.2, or the County may invoice the Manager, and the Manager shall pay such undisputed amount to the County within thirty (30) days.

Upon approval of all or any portion of an Application for Payment, the County shall pay such approved amount to the Manager within thirty (30) days of the date of submission of the Application for Payment, subject to the provisions of Section 8.4. The Manager shall pay all Subcontractors in timely fashion in accordance with the applicable contracts after Manager's receipt of payment from the County. Subject to this Section 8.1.2, the County's approval of an Application for Payment shall not constitute any verification or approval by the County of the quality or any other aspect of such Work.

If the County shall directly pay a Subcontractor amounts owed by the Manager, the County may set off those amounts against the amounts claimed due by the Manager under the applicable Application for Payment for such Billing Month.

Section 8.2 Reserved.

Section 8.3 Application For Final Payment. Following (a) the County's receipt of the Acceptance Certification and the Impervious Area Credit Certificate in accordance with Section 9.5, (b) completion of any such corrections or other action by or on behalf of the Manager for the relevant Approved Project in compliance with this Agreement, including re-certification in accordance with Section 9.7, (c) delivery to the County's Authorized Representative of all Construction Documentation, warranties, certificates and Maintenance Manuals, if applicable, for the relevant Approved Project and (d) release and waiver of all liens of Subcontractors for the subject Approved Project, which waiver may be a conditional lien waiver (conditioned only upon clearance of payment) with respect to the amount being requested in the application for final payment, the Manager may make application for final payment (including retainage under Section 8.4) with the immediately succeeding monthly Application for Payment, following the procedure for Application for

Payment(s) set forth in Section 8.1. The application for final payment shall (i) be accompanied by the Manager's affidavit and release in the form attached hereto as Schedule 9 (Form of Affidavit and Release), and (ii) include a duly executed original of the Subcontractor's surety's consent to final payment. The County shall not be required to make final payment unless and until the application for final payment contains all the required items contained in this Section 8.3. Upon approval of all or any portion of an application for final payment in accordance with Section 8.1 and this Section 8.3, the County will pay such approved amount to the Manager in accordance with Section 8.1.2.

Section 8.4 Retainage

Section 8.4.1 Amount Retained. The County shall withhold a retainage amount of five percent (5%) from each payment otherwise due and payable to the Manager for or on account of Subcontractor costs (other than the Design Engineer) on each Approved Project; provided, however, to the extent the applicable Subcontractor (other than the General Contractor) has properly completed all of its work on the relevant Approved Project and the Manager and the General Contractor certify in writing to the County as part of the Application for Payment that such Subcontractor work has been completed to their satisfaction and in compliance with the relevant contract, then unless the certification or progress of such Subcontractor's work is disputed by the County, the County shall release the retainage for final payment to such Subcontractor.

Section 8.4.1.1 Reduction of Retainage After Acceptance. Within twenty one (21) days after the County's Authorized Representative and the Independent Engineer have been advised in writing that the Acceptance Date for an Approved Project has occurred, the County's Authorized Representative and the Independent Engineer may

inspect the completed Work on the applicable Project and shall meet with the Manager's Authorized Representative to review the Work and estimate, in the County's and the Independent Engineer's reasonable judgment, the cost of completing or correcting any such Work, if necessary. Such inspection may be performed concurrently with any inspection pursuant to Section 9.4. Within twenty one (21) days following such review and estimation, the County's Authorized Representative shall deliver to the Manager a written statement specifying the amount, if any, of the retainage then held by the County that will be retained until the completion or correction of the Work for such Approved Project, which shall be no more than one hundred fifty percent (150%) of the amount that, in the reasonable opinion of the Independent Engineer, is the estimated cost of completing or correcting any such Work. The County's Authorized Representative's written statement shall set forth in reasonable detail the basis for determining the amount of retainage to be withheld by the County and shall include the Independent Engineer's written certification.

The retainage, if any, in excess of the amount specified in the preceding paragraph for completion or correction of the Work shall be reflected on the immediately following monthly Application for Payment and be paid by the County to the Manager in accordance with Section 8.1.2. All remaining retainage which is withheld pursuant to this Section 8.4.1.1 shall be paid on or before the date that the final payment is made pursuant to Section 8.3.

Section 8.4.1.2 [Reserved].

Section 8.4.1.3 Waiver of Retainage. The Manager may propose to the County that it waive the retainage or reduce the amount thereof in instances in which the retainage as provided in Section 8.4.1 would impose an undue burden upon the

particular Subcontractor, hamper efforts to meet Social and Economic Development Program Requirements, or otherwise impede Program objectives, including timeliness and cost efficiency. The County shall consider any such request in its discretion; provided, however, the failure of the County to approve any such request shall not give rise to any adjustment or claim hereunder.

Section 8.5 Audit. The County shall have the right to audit all Applications for Payment under this Section VIII consistent with Section 17.7.

Section 8.6 Source of Funds for County Payments. Except as otherwise provided in this Section 8.6, any payments or monetary obligations of any kind or nature whatsoever that may at any time be due and owing by the County pursuant to this Agreement shall be strictly limited to, and payable solely out of the sum of the following (hereinafter, the “**Stormwater Program Funding Sources**”), to the extent permitted by any applicable indentures, financing and Grant documents: (a) the remaining uncommitted bond proceeds received from the sale of County Stormwater Revenue Bonds, (b) the funds existing in the County’s Local Watershed Protection and Restoration Fund, and (c) any private financing sources and Grant proceeds available to the County dedicated specifically to pay Program costs governed by this Agreement. No such payment obligation shall be, or be construed as, a debt of the County. Neither this Agreement nor the County’s obligations hereunder shall constitute or be construed as a pledge of the full faith and credit of the County, and the County shall not be required to appropriate funds from any other source to pay for any amounts due or payable under this Agreement. The Manager shall have no right, under any circumstance, to compel the exercise of any taxing power of the County to pay any amount due or owing to the Manager under this Agreement. The Manager shall have no recourse

for payment hereunder against any other source of funds other than the Stormwater Program Funding Sources, and the Manager hereby irrevocably and unconditionally waives any recourse to or claim it may have against any other payment source other than the Stormwater Program Funding Sources. Prior to commencing Work on any Budgeted Project or any Approved Project, the Manager may request that the County certify that sufficient Stormwater Program Funding Sources are and will be available to pay the Maximum Design Cost or Maximum Project Price of such Project, as applicable, and upon making such certification, the County will set aside or earmark the applicable amount of Stormwater Program Funding Sources in such fashion as the County determines appropriate in order to assure their continued availability as needed. The failure of the County to set aside or earmark the required amount(s) after such certification shall constitute County Fault hereunder and a breach of its obligations under this Agreement, in the event that sufficient Stormwater Program Funding Sources are not available to pay the Maximum Design Cost or Maximum Project Price of the applicable Project(s).

Section 8.7 Private Financing. At any time during the Term or during the O&M Capital Project Period, the County may request from the Manager, and the Manager shall provide, a detailed proposal to pursue and obtain private financing to fund Work on one or more Projects. If the County decides to proceed with such private financing, the Parties agree to negotiate in good faith the terms and conditions of such private financing, including appropriate compensation to the Manager to arrange such private financing and any necessary and appropriate amendments to this Agreement to facilitate such private financing.

SECTION IX

TIME OF PERFORMANCE; ACCEPTANCE

Section 9.1 Construction Approval Date. On and after the Construction Approval Date for an Approved Project, the Manager shall, or shall cause the Subcontractors to, construct, install and achieve Acceptance of the relevant Approved Project(s), all in accordance with this Agreement. Except for design Work performed pursuant to Section IV, the Manager shall begin Work for each Approved Project only following the relevant Construction Approval Date. Any preliminary Work started or materials ordered before the relevant Construction Approval Date for the subject Approved Project shall be at the sole risk and liability of the Manager. Time is an essential element of construction and Acceptance of each Approved Project and all time limits set forth in the relevant Milestone Performance and Payment Schedule and this Agreement are of the essence of this Agreement. The Manager shall prosecute the Work and its obligations hereunder vigorously until final completion and Acceptance of each Approved Project.

Section 9.2 Scheduled Acceptance Date.

Section 9.2.1 Acceptance by Scheduled Acceptance Date. The Manager shall use reasonable efforts to achieve Acceptance of each Approved Project or portion thereof, as applicable, on or before the corresponding Scheduled Acceptance Date(s) in accordance with the applicable Milestone Performance and Payment Schedule for such Approved Project.

Section 9.2.2 Acceptance After Scheduled Acceptance Date.

(a) If Acceptance of an Approved Project does not occur on or before its Scheduled Acceptance Date for any reason other than the occurrence of an

Uncontrollable Circumstance or County Fault, the County shall be entitled to withhold from the Manager all remaining unpaid Base Fees owed to Manager for such Approved Project until such Project is Accepted; and

(b) If Acceptance of an Approved Project occurs more than thirty (30) days after its Scheduled Acceptance Date for any reason other than the occurrence of an Uncontrollable Circumstance or County Fault and the County has not theretofore approved a Cure Plan in writing, the Manager shall pay to the County liquidated damages as follows:

(A) for an Approved Project with a Maximum Project Price less than one million dollars (\$1,000,000), liquidated damages equal to one thousand dollars (\$1,000) for each day of delay in Acceptance after thirty (30) days following its Scheduled Acceptance Date until the earlier of sixty (60) days or the Approved Project is Accepted, or

(B) for an Approved Project with a Maximum Project Price equal to or greater than one million dollars (\$1,000,000), liquidated damages equal to two thousand dollars (\$2,000) for each day of delay in Acceptance after thirty (30) days following its Scheduled Acceptance Date until the earlier of sixty (60) days or the Approved Project is Accepted.

Upon Acceptance of such delayed Approved Project, the amount withheld from the Manager pursuant to Section 9.2.2(a) shall be paid to the Manager with final payment for the delayed Project pursuant to Section 8.3. Any liquidated damages pursuant to this Section 9.2.2(b) shall, at the County's sole discretion, be (A) subtracted from any fees or other amounts owed to the Manager pursuant to this Agreement or (B) paid by the Manager

to the County, in which case, such amounts shall be paid by the Manager to the County within thirty (30) days. This Agreement shall not (i) limit the Manager's or the County's remedies against the Subcontractors or (ii) relieve the Manager of any obligation it may have hereunder to correct Work that requires correction due to Manager Fault. The Parties agree that it would be impossible, impractical or extremely difficult to fix the actual damages suffered by the County as a result of the failure of Manager to achieve Acceptance of an Approved Project on or before the Scheduled Acceptance Date for such Approved Project, and accordingly hereby agree that the liquidated damage amounts specified in this Section 9.2.2 are reasonable and do not constitute a penalty. This Section 9.2.2 will survive expiration or termination of this Agreement.

Section 9.3 Acceptance; Inspection.

Section 9.3.1 Initial Determination. Upon Substantial Completion of each Approved Project, the Manager shall direct the Completion Certifier to determine (i) whether the Approved Project has been completed substantially in conformance and compliance with the Design Documentation for such Approved Project and (ii) the amount of Impervious Area Credits to be earned by the County as a consequence thereof. Unless the County rejects the determination of the Completion Certifier in accordance with Section 9.5.2, the Parties shall be bound by such determination for purposes of this Agreement.

Section 9.3.2 Inspection. The County and its representatives shall have the right, at all times, to be present during the Acceptance review of each Approved Project and to take such steps, at its expense, as it shall deem advisable for the purpose of verifying

the integrity and performance of the Acceptance determination. The Manager shall cooperate fully with the County and its representatives in this regard.

Section 9.4 Acceptance Report. The engagement with the Completion Certifier shall require that, and the Manager shall direct the Completion Certifier to, within fifteen (15) days following its Acceptance determination, the Completion Certifier shall provide to the Manager and the County (a) a written report (the “**Acceptance Report**”) containing the Completion Certifier’s certification that either (i) Acceptance has been achieved (an “**Acceptance Certification**”) or (ii) Acceptance has not been achieved (a “**Non-Acceptance Certification**”), which non-acceptance notification shall specify in reasonable detail what portions of the Work of an Approved Project are defective, incomplete or otherwise not in conformance or compliance with the Design Documentation or this Agreement, and (b) if Acceptance has been achieved, an Impervious Area Credit Certificate for the number of acres of the Project Accepted.

Section 9.5 Acceptance; Independent Engineer Reassessment. Within fifteen (15) days following the County’s receipt of the Acceptance Report, the County may review it to determine whether there is any basis to challenge the conclusions therein. The Manager shall fully cooperate in such review process.

Section 9.5.1 Acceptance. If the County (a) accepts the Acceptance Report containing the Acceptance Certification and Impervious Area Credit Certificate or (b) does not respond within fifteen (15) days following its receipt, then such Approved Project shall be deemed to have achieved Acceptance and the Acceptance Date shall be established as of the date the Acceptance Certification and Impervious Area Credit Certificate is delivered to the County.

Section 9.5.2 Rejection of Completion Certifier's Acceptance Certification; Independent Engineer Reassessment. If, within such fifteen (15) day period, the County rejects all or part of the Completion Certifier's Acceptance Report, the County shall provide Notice to the Manager's Authorized Representative describing in reasonable detail the basis of such rejection and, absent mutual resolution with the Manager, the County shall engage the Independent Engineer to separately conduct an Acceptance determination with respect to the Approved Project. Upon the Independent Engineer's completion of such determination, the Independent Engineer shall render a written report, which the County shall furnish to the Manager's Authorized Representative, describing (a) the Acceptance review conducted, (b) whether Acceptance has been achieved, and (c) if Acceptance has not been achieved, what portions of the Work of the subject Approved Project are defective, incomplete or otherwise not in conformance with the Design Documentation or this Agreement. If the Independent Engineer's Acceptance Report confirms that Acceptance has been achieved, then such Approved Project shall be deemed to have achieved Acceptance and the Acceptance Date shall be established as of the date the Completion Certifier's Acceptance Certification and Impervious Area Credit Certificate was originally delivered to the County in accordance with Section 9.4.

Section 9.6 Failure to Achieve Acceptance.

Section 9.6.1 Failure to Achieve Acceptance Due to Reasons Other than an Uncontrollable Circumstance or County Fault. If the Acceptance determination performed by the Completion Certifier or the Independent Engineer states that the subject Approved Project has not achieved Acceptance, and such result is due to reasons other than an Uncontrollable Circumstance or County Fault, then in addition to the withholding of

certain of its Base Fees, Incentive Fees and the payment of liquidated damages, in each case pursuant to Section 9.2.2, the Manager shall, at its sole cost and expense, promptly cure and correct such deficiencies such that the Approved Project satisfies and is in full compliance and conformance with the Design Documentation.

If the Manager fails to cure such deficiencies within sixty (60) days following the Scheduled Acceptance Date, the County may, further, elect to terminate all or any portion of an Approved Project by delivering Notice to the Manager's Authorized Representative, whereupon the Manager shall, at its sole cost and expense, dismantle and remove the specified portion of or the entire Approved Project, as specified in such Notice, and surrender possession of the subject Project Site to the County not later than ninety (90) days following Notice to the Manager delivered pursuant to this Section 9.6.1. If the County, in its sole discretion, elects to terminate the Approved Project in accordance with this Section 9.6.1, (a) the Manager shall leave the Project Site in pre-construction condition, free of debris, rubbish and waste materials from the removal of the Approved Project, (b) (i) the Manager shall promptly reimburse and pay the County the Actual Project Costs, Base Fees and Incentive Fees previously paid to the Manager for such terminated Project and (ii) any accrued but unpaid Base Fees or Incentive Fees payable to the Manager for such terminated Project shall be immediately cancelled and shall no longer be a payment obligation of the County to Manager, and (iii) the County may pursue all available remedies against the Manager for any damages suffered by the County, including for failure of the Manager to achieve Acceptance of the Approved Project. This Section 9.6.1 will survive expiration or termination of this Agreement.

Section 9.6.2 Failure to Achieve Acceptance Due to an Uncontrollable Circumstance or County Fault. If the Acceptance review and certification performed by the Completion Certifier or the Independent Engineer states that the subject Approved Project has not achieved Acceptance, and such result is due to an Uncontrollable Circumstance or County Fault, then the Manager shall (a) prepare a Cure Plan pursuant to Section 9.6.2.1 and (b) the Parties shall proceed in accordance with Section 9.6.2.2.

Section 9.6.2.1 Cure Plan. The Manager shall prepare and deliver to the County's Authorized Representative a written report (the "**Cure Plan**") identifying, to the extent possible, the problems with the Approved Project leading to or resulting in its failure to comply with the Design Documentation and identifying the corrective Work necessary to cure, mitigate or remedy the reasons or causes for such failure to the extent possible (the "**Curative Work**") and any Contingency Change Order required to accomplish such Curative Work. The Parties shall meet to review and discuss the Cure Plan and the Acceptance Report within ten (10) Business Days following the County's Authorized Representative receipt thereof. The Manager shall fully cooperate with the County and be available to the County's Authorized Representative as frequently as the County's Authorized Representative may reasonably request to discuss Curative Work. As a result of such meeting(s) and reviews of the Cure Plan, the County shall determine the appropriate course(s) of action to be taken to remedy the performance deficiencies of the Approved Project.

Section 9.6.2.2 County Options. The County shall have the rights and options available to it under this Section 9.6.2.2 and the County may proceed with such

rights and options individually or collectively, as the County shall determine, in its sole discretion.

(A) Acceptance. The County may Accept the Approved Project and, if applicable, waive any rights to require the Manager to perform all or part of the Curative Work. If the County elects to exercise such option, the County's Authorized Representative shall give Notice of Acceptance of the relevant Approved Project to the Manager's Authorized Representative, and the Manager's obligation to cause Acceptance to be achieved for such Approved Project shall be so satisfied following the County's receipt of an Impervious Area Credit Certificate, as executed by the Completion Certifier, for the number of acres of the Project completed or Accepted. If the County elects to Accept the Approved Project pursuant to this Section 9.6.2.2(A), then the Acceptance Date shall be the date of the conclusion of the final Acceptance determination.

(B) Curative Work.

(i) The County may elect to require the Manager to perform or cause to be performed Curative Work to cure, correct or improve the Approved Project so that it complies and conforms with the Design Documentation; provided, that the County and the Manager have agreed upon a Contingency Change Order for the Curative Work. If the County elects to proceed under this Section 9.6.2.2(B), the County's Authorized Representative shall give Notice to the Manager's Authorized Representative of the course(s) of action the County proposes to pursue or have the Manager pursue. Such Notice shall describe in reasonable detail any proposed Curative Work or remedies that the County desires the Manager to pursue against its Subcontractors or the Subcontractor's security. The County's Authorized Representative and the

Manager's Authorized Representative shall meet promptly thereafter to review and discuss the actions the County proposes to pursue or to cause to be pursued. The Manager, within thirty (30) days following such meeting, shall prepare, or cause to be prepared, and submit to the County's Authorized Representative a revised Cure Plan setting forth (a) the County's proposed actions, (b) a time schedule to accomplish the Curative Work identified by the County, (c) cost and pricing provisions of the Curative Work, and (d) the anticipated impacts and potential changes to the fees, costs, rights, obligations, warranties and guarantees of the Manager under this Agreement. The County's Authorized Representative and the Manager's Authorized Representative shall thereafter meet as frequently as necessary and practicable to reach agreement on a Cure Plan to accomplish the foregoing and upon reaching agreement, shall prepare a Contingency Change Order for execution by the Parties. If the implementation of such Curative Plan results in the Approved Project achieving Acceptance, such Acceptance shall not preclude either Party from pursuing its remedies against the Subcontractors, or the County from pursuing any remedies to which it may be entitled against the Manager.

(ii) If the Parties cannot agree on a Cure Plan pursuant to Section 9.6.2.2(B)(i), then the County may pursue all available remedies that the County determines are in its best interests, as determined solely by the County, and the Manager shall comply with the course(s) of action the County determines to pursue, including performance of Curative Work under any applicable Contingency Change Orders. The County shall reimburse the Manager its Direct Costs and pay its Base Fee thereon incurred to implement such course(s) of action under Section 9.6.2.2(B)(i) on a monthly basis, subject to Cost Substantiation.

Section 9.7 Reinspection and Certification. Upon the County's Authorized Representative's request for reinspection of an Approved Project which has previously failed to achieve Acceptance, the Completion Certifier, which may be accompanied by the County's Authorized Representative or other County representatives, shall within fifteen (15) Business Days after the Manager Authorized Representative's receipt of such request, reinspect the applicable Approved Project to determine if the Manager has made, or caused to be made, the necessary corrections or taken such other action in compliance with this Agreement and the applicable Design Documentation, to fully address the remedial or curative matters required to be undertaken by the Manager under this Agreement. Following such reinspection, the Completion Certifier shall provide to the County and the Manager (a) an updated Acceptance Report, certifying such reinspection, completion and satisfaction of the remedial matters, and (b) if Acceptance has been achieved, an Impervious Area Credit Certificate for the Approved Project.

Section 9.8 Change in Law Affecting Acceptance. The Parties acknowledge and agree that if the requirements of EPA, MDE or any other applicable Governmental Authority are modified or interpreted to impose additional determinations, including performance testing, upon Projects in order for such Projects to earn Impervious Area Credits for the County, the satisfaction of such requirements and the performance thereof shall be a condition to Acceptance for purposes of this Agreement, and the Manager shall take such steps, subject to County prior written approval, as shall be required to assure either that the Completion Certifier is engaged to make the requisite determinations and perform any required testing or that an alternative Completion Certifier, reasonably satisfactory to the County, is so engaged. A change in Acceptance procedures as described

in this Section 9.8 may (a) give rise to a Contingency Change Order as a consequence of a Change in Law, if it otherwise qualifies as such, and (b) require an amendment to this Agreement, in which case, the Parties will diligently and in good faith develop appropriate Acceptance procedures to address the circumstance where an Approved Project may not achieve Acceptance because it fails to satisfy the then legally mandated metrics.

Section 9.9 Maintenance of each Approved Project. Following Acceptance of each Approved Project by the County, the Manager shall manage, maintain and operate such Approved Project pursuant to the terms and conditions of the Master Maintenance Agreement.

Section 9.10 Environmental Regulations. The Manager shall, relative to the design, construction, installation, operation and maintenance prior to Acceptance of the relevant Approved Project, meet the requirements of Section 17.2, and the Manager shall, and in its contracts with the General Contractor shall require the General Contractor to, indemnify, defend and hold harmless the County from and against any and all penalties, fines or charges, howsoever designated, that may be levied by any federal, State or local agency having jurisdiction over the subject Approved Project for failure of the Manager or Subcontractor to comply with the requirements of Section 17.2.

SECTION X

SECURITY

Section 10.1 Letter of Credit. As additional security for the performance of the Manager's obligations under this Agreement, the Manager's Authorized Representative shall, on or prior to the Contract Date, provide the County's Authorized Representative

with an irrevocable letter of credit (“**Letter of Credit**”) issued by a Qualified Financial Institution, selected pursuant to the immediately succeeding paragraph of this Section 10.1, in form and substance as provided in Schedule 14 (Form of Letter of Credit) or as may otherwise be acceptable to the County. **[REDACTED]** The County shall have the right to present such Letter of Credit for payment immediately and without notice upon the occurrence of any Event of Default under this Agreement, taking into account relevant notice and cure periods therefor, if any. If the Qualified Financial Institution or its parent corporation experiences a rating downgrade, withdrawal or suspension by or from Moody’s or S&P (as such terms are defined in the definition of Qualified Financial Institution), the County shall have the right to require that the Manager secure a substitute letter of credit from a different Qualified Financial Institution in accordance with the requirements of this Section 10.1. If a substitute Letter of Credit is not secured within thirty (30) days after the date the Manager receives Notice from the County’s Authorized Representative that such a substitute Letter of Credit will be required, the County shall have the right to present the Letter of Credit for payment immediately and without further Notice. If the County draws upon the Letter of Credit under such circumstances and the Manager subsequently provides the County’s Authorized Representative with a substitute Letter of Credit, the County shall return any amounts drawn by the County to the Manager’s Authorized Representative within ten (10) Business Days after the County’s Authorized Representative’s receipt of such substitute Letter of Credit. The Manager shall give the County’s Authorized Representative a copy of any notice or information it receives relative to any rating downgrade, withdrawal or suspension.

If this Program is extended to include the Expanded Program Area pursuant to Section 17.1.1, the County shall consider reducing the amount of or waiving the Letter of Credit during the Renewal Term. If the County, in its sole discretion, decides to reduce or waive the Letter of Credit required during the Renewal Term, the Parties shall execute appropriate amendments to this Agreement. The obligation to maintain the Letter of Credit under this Section 10.1 shall not extend beyond the Term and shall not apply during the O&M Capital Project Period (for which Section 10.4 requires a different Letter of Credit that is otherwise subject to the requirements of this Section).

Section 10.2 Payment and Performance Bonds.

Section 10.2.1 Subcontractors Payment and Performance Bonds.

The Manager shall (a) require each Prime Contractor (except for the Design Engineer) to obtain Payment and Performance Bonds with coverage limits not less than the aggregate value of the Approved Projects contracted to such Prime Contractor, (b) require each Subcontractor (other than Prime Contractors) with an Aggregate Exposure greater than or equal to one million dollars (\$1,000,000) to obtain Payment and Performance Bonds with coverage limits not less than the Aggregate Exposure of such Subcontractor, and (c) require the Design Engineer(s) to carry an “errors and omissions” insurance policy with reasonable and customary coverage limits. For purposes of this Section 10.2.1, “**Aggregate Exposure**” of a Subcontractor shall mean the aggregate value of all contracts (including purchase, sales and task orders - based on the fixed price or, in the case of non-fixed pricing, the estimated maximum contract price) of the applicable Subcontractor (including its Affiliates) on all Approved Projects which have not been Accepted. The Manager shall also determine, on a case by case basis, whether to require Subcontractors

with Aggregate Exposure of less than one million dollars (\$1,000,000) to obtain Payment and Performance Bonds. The Payment and Performance Bonds required to be delivered in accordance with this Section 10.2.1 are referred to as the “**Required Bonds.**” In determining whether to require, modify or waive bonding requirements with respect to particular Subcontractors, the Manager shall consider whether such requirements would hamper efforts to meet Social and Economic Development Program Requirements.

Section 10.2.2 Terms and Conditions of Payment and Performance Bonds.

Each Payment and Performance Bond of a Subcontractor shall meet the following requirements:

(a) Name the Manager as obligee and the County as an additional obligee;

(b) Secure such Subcontractor’s performance of its scope of Work in the time and manner prescribed in, as applicable, this Agreement or the Subcontractor’s contract(s) with the Manager;

(c) Such bond shall not be terminated, revoked, materially modified or the coverage limits reduced without the County’s prior written consent; and

(d) Be in form and substance approved in writing by the County prior to performance of any such Work by the relevant Subcontractor(s).

The County shall have a reasonable time to review and comment on each proposed Payment and Performance Bond submitted by the Manager, together with any revisions, amendments or supplements thereto. Neither the review, comment and approval period of the County nor the failure of the County to approve a proposed Payment and Performance Bond, in its reasonable discretion, shall constitute County Fault hereunder. A copy of each

executed Payment and Performance Bond shall be delivered to the County's Authorized Representative prior to performance of any such Work by the relevant Subcontractor(s).

The Manager, at its cost and expense, may proceed against Subcontractors' Payment and Performance Bonds without consent of the County; provided, however, the Manager shall give prompt Notice to the County of any claims made or actions taken against a surety, shall keep the County apprised of the status of all such claims and actions, and shall permit the County, at its cost and expense, to participate in any such actions consistent with the County's rights as an additional obligee.

The Prime Contractor's Payment and Performance Bonds shall remain effective beginning no later than the relevant Construction Acceptance Date until the earlier of the date of Acceptance of the relevant Approved Project. The Manager shall cause all Subcontractors (other than the Prime Contractor and the Design Engineer) to maintain their Payment and Performance Bonds until the completion of their respective obligations for the relevant Approved Project, including any warranty period under its contracts with the Manager. All Payment and Performance Bonds shall (i) be underwritten by a surety authorized to do business in the State with a rating of "A" or better by S&P or "A3" or better by Moody's and have an A.M. Best rating of "A" or better and Class XII or higher as to financial size category, and (ii) be subject to and governed by Maryland law.

Section 10.3 Right to Security. The County shall, in its sole discretion, have the right to proceed concurrently against the Letter of Credit and any Payment and Performance Bonds as provided hereunder in the event of Manager Fault, including for failure to make payment to Subcontractors, at any tier. The County's election to proceed

against any one or more forms of such security shall not constitute a waiver of its right to proceed against all other forms of such security, simultaneously or otherwise.

Section 10.4 Security for Capital Repair and Replacement Projects. If, during the O&M Capital Project Period, the County proposes the development of any Capital Repair and Replacement Project, then (a) the Manager shall obtain and deliver to the County's Authorized Representative, prior to commencement of Work on such Project(s), a Letter of Credit conforming to the requirements set forth in Section 10.1 in the amount of (i) five percent (5%) of the sum of the Estimated Project Cost and the Maximum Design Cost for all Capital Repair and Replacement Project(s) scheduled during the relevant Billing Year or (ii) such lesser amount agreed to in writing by the County, and (b) the Manager shall cause Payment and Performance Bonds to be obtained and maintained for such Project(s) in accordance with Section 10.2. In lieu of the Letter of Credit required by this Section 10.4, the Manager may post cash or immediately available funds by deposit with the County (if agreed upon by the County) or with a third party escrow agent pursuant to a written escrow agreement acceptable to the County in its absolute discretion.

SECTION XI

WARRANTIES

Section 11.1 Material and Workmanship. With respect to each Approved Project, the Manager expressly warrants its Work and shall require all Subcontractors to warrant their respective Work, in each case, against defects for a period of twenty four (24) months after Acceptance of the subject Approved Project. The Manager shall also require each applicable Subcontractor to warrant, with respect to each such Subcontractor's Work and

with respect to equipment and materials furnished hereunder that are of its own manufacture, against defects in material and workmanship under normal use as contemplated by this Agreement (with those exceptions that are customary in the industry) for a period of at least twenty four (24) months after Acceptance of the subject Approved Project. All equipment and material not manufactured by the Manager or the Subcontractors shall be warrantied as provided by the manufacturer or vendor thereof, all of which warranties shall be assigned, to the extent they are assignable, to the Manager and upon request of the County, to the County. The Manager's obligation and each applicable Subcontractor's obligation relative to its Work with respect to an Approved Project is limited to, and shall be fully discharged by, repairing, at its cost and expense, any defective part, or supplying without charge a similar part to replace any defective part within twenty four (24) months after Acceptance of the subject Approved Project. Non-erection equipment suppliers shall be required to supply equipment warranties consistent with industry practice. The Manager or, as applicable, the pertinent Subcontractors shall be obligated to repair or replace, at its cost and expense, any such defective materials, and the Manager shall be obligated to secure such Subcontractor(s) performance; provided, however, nothing in this Agreement, including this Section 11.1, shall reduce or limit the Manager's maintenance responsibilities under the Master Maintenance Agreement.

The Manager shall enforce all warranties, whether in the Manager's name, a Subcontractor's name or the County's name.

Section 11.2 Title. The Manager warrants and guarantees and the Manager shall require each Subcontractor to warrant and guarantee, that title to all Work, including all materials and equipment covered by an Application for Payment, will have passed to the

County free and clear of all liens, security interests and encumbrances either by the date of incorporation into the relevant Approved Project or upon receipt by the Subcontractor of payment, whichever occurs first; provided, the County has reimbursed the Manager for the Work performed by such Subcontractor. The Manager further warrants and guarantees, and shall require each Subcontractor to warrant and guarantee, that, except as provided in the preceding sentence, no materials or equipment, documents or data covered by an Application for Payment will have been acquired by the Manager or by any other Subcontractor or Person performing the Work or furnishing materials and equipment for each Approved Project which is subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Manager or such other Subcontractor or Person. In the event of any claim affecting such titles, the Manager and the applicable Subcontractors shall, at no cost to the County, defend title to all Work, equipment and material and shall obtain good and marketable title to the same on behalf and in the name of the County. The Manager makes no warranties with respect to title to any Project Site.

SECTION XII

EXCLUSION OF SPECIAL AND CONSEQUENTIAL DAMAGES

Section 12.1 For the Manager. IN NO EVENT, WHETHER BECAUSE OF A BREACH OF WARRANTY CONTAINED IN THIS AGREEMENT OR ANY OTHER CAUSE, WHETHER BASED UPON CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE BY THE MANAGER, ITS SUBCONTRACTORS, AGENTS, CONSULTANTS OR

VENDORS AT ANY TIER, OF THEIR OBLIGATIONS UNDER THIS AGREEMENT, SHALL THE MANAGER, ITS SUBCONTRACTORS, AGENTS, CONSULTANTS OR VENDORS AT ANY TIER, BE LIABLE FOR OR OBLIGATED IN ANY MANNER TO PAY SPECIAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, OR ANY OTHER AMOUNTS, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

Section 12.2 For the County. IN NO EVENT, WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE BY THE COUNTY, ITS SUBCONTRACTORS, AGENTS, CONSULTANTS OR VENDORS AT ANY TIER OF THEIR OBLIGATIONS UNDER THIS AGREEMENT, SHALL THE COUNTY, ITS SUBCONTRACTORS, AGENTS, CONSULTANTS OR VENDORS AT ANY TIER BE LIABLE FOR OR OBLIGATED IN ANY MANNER TO PAY SPECIAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, OR ANY OTHER AMOUNTS, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

SECTION XIII

EVENTS OF DEFAULT

Section 13.1 Remedies for Default. The Manager may terminate this Agreement upon the occurrence of an Event of Default by the County upon Notice to the County in accordance with Section 14.2. The County may terminate this Agreement upon the occurrence of an Event of Default by the Manager upon Notice to the Manager in accordance with Section 14.1.

Section 13.2 Events of Default by the Manager. Each of the following shall constitute an Event of Default on the part of the Manager:

Section 13.2.1 Failure or Refusal to Perform. The persistent or repeated failure or refusal by the Manager to perform timely any material obligation under this Agreement, unless such failure or refusal is excused or justified by (a) an Uncontrollable Circumstance, or (b) County Fault; provided, however, this Section 13.2.1 shall not apply in the following events: (A) payment obligations of the Manager or the Guarantor, in which case, Sections 13.2.2 and 13.2.5, respectively, shall govern, (B) the failure to maintain the Letter of Credit, the Required Bonds or the Required Manager Insurance, or any one or more of the foregoing, pursuant to Sections 10.1, 10.2 or 15.2, respectively, in which case, Section 13.2.3 shall govern, (B) the failure of the Manager or the Guarantor to maintain solvency, in which case, Section 13.2.4 shall govern, (C) the failure of the Guarantor to comply with its obligations under the Guaranty, in which case, Section 13.2.5 shall govern, (D) an Event of Default (as defined in the Master Maintenance Agreement), in which case, Section 13.2.6 shall govern, (D) any Change of Control of the Manager or the Guarantor, in which case, Section 13.2.7 shall govern, or (E) the failure to comply with the County's

Minority Business Opportunities Program, following a failure to comply with the Minimum LSMWVBE, Target Class or Local-Based Small Business requirements, in which case, Section 13.2.8 shall govern; provided, however, that no such default shall constitute an Event of Default unless and until (a) the County has given Notice to the Manager's Authorized Representative and the Guarantor specifying that a particular default or defaults exist which will, unless corrected, constitute a material breach of this Agreement on the part of the Manager and (b) the Manager has not corrected such particular default, or if a particular default cannot be corrected within thirty (30) days, the Manager has failed to take expeditious and substantive steps within said thirty (30) day period to correct or cure such default to completion; provided, further (i) if repeated cures (no more than two (2) in any Billing Year) are undertaken to address Events of Default under Section 13.2 (other than Sections 13.2.3, 13.2.4, 13.2.5 and 13.2.7), the County may, notwithstanding the preceding proviso, exercise its right to immediately terminate this Agreement pursuant to Section 13.2.1, and (ii) there shall be no opportunity to cure or correct an Event of Default pursuant to Sections 13.2.3, 13.2.4, 13.2.5 and 13.2.7.

Section 13.2.2 Failure or Refusal to Make Payment. Failure on the part of the Manager to pay all undisputed amounts of any amount required to be paid to the County under this Agreement within thirty (30) days of the due date under this Agreement; provided, however, the County shall have given Notice of any such non-payment to the Manager after the due date and prior to thirty (30) days before the County exercises its rights under Section 14.1 and the Manager shall not have cured the payment default during such period.

Section 13.2.3 Failure to Maintain Security Obligations. Failure of the Manager to obtain, maintain and renew, or cause to be obtained, maintained and renewed, in a timely manner (a) the Letter of Credit in accordance with Section 10.1 (or, in the event the County has drawn on the Letter of Credit and has applied a portion of the resulting cash collateral to pay for amounts secured thereby, the Manager's failure to replenish such cash collateral to the full amount specified in Section 10.1 within two (2) Business Days after the County has provided Notice thereof to the Manager's Authorized Representative), (b) the Required Bonds in accordance with Section 10.2, or (c) the Required Manager Insurance in accordance with Section 15.2.

Section 13.2.4 Voluntary Bankruptcy. Any of the following: (a) the written admission by the Manager or the Guarantor that it is bankrupt, or the approving of, consenting to, or acquiescing in a proceeding described in Section 13.2.4(b), (b) the bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Manager or the Guarantor under the laws of any jurisdiction, which proceeding has not been dismissed within sixty (60) days, (c) the consent by the Manager or the Guarantor to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or (d) the making by the Manager or the Guarantor of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary regardless of how designated of all or a substantial portion of the Manager's or the Guarantor's property or business. Notwithstanding the preceding, it shall not be an Event of Default hereunder if the particular insolvency of the Manager is caused by the failure or refusal of the County to make any payment that is due and properly payable pursuant to this Agreement.

Section 13.2.5 Guarantor Default Under the Guaranty. The failure of the Guarantor under the Guaranty to comply with its obligations thereunder in accordance with the terms and conditions therein.

Section 13.2.6 Master Maintenance Agreement Event of Default. An Event of Default (as defined in the Master Maintenance Agreement) of the Manager, or its Affiliate serving as the servicer, under the Master Maintenance Agreement.

Section 13.2.7 Change of Control. Any Change of Control occurs with respect to the Manager or the Guarantor.

Section 13.2.8 Minority Business Opportunities Program. The failure of the Manager to comply with the County's Minority Business Opportunities Program following a failure of the Manager to comply with the Minimum Target Class, Local-Based Small Business, and LSMWVBE requirements in any Billing Year, all in accordance with Section 4.6.3.

Section 13.3 Events of Default by the County. Each of the following shall constitute an Event of Default on the part of the County:

Section 13.3.1 Failure or Refusal to Make Payments. The failure or refusal by the County without justification to make payment of an undisputed amount as due under this Agreement; provided, however, the Manager shall have given Notice of any such non-payment to the County after the due date and at least ten (10) Business Days before the Manager exercises its rights under Section 13.2 and the County shall have failed to cure such payment default during such 10-day period. Notwithstanding the preceding, it shall not be an Event of Default hereunder if the aggregate undisputed amount unpaid by the County at any time is no more than fifty thousand dollars (\$50,000); provided, however,

that (a) the Manager shall have the right to proceed against the County under this Agreement for the payment of any such amount and (b) the failure to make any such payment shall become an Event of Default if still unpaid thirty (30) days after the Notice required by this Section 13.3.1.

Section 13.3.2 County Actions. The persistent or repeated failure or refusal by the County to substantially fulfill any of its material obligations under this Agreement; provided, however, that no such default shall constitute an Event of Default unless and until: (a) the Manager has given Notice to the County specifying that a particular default exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County, and (b) the County either has not corrected or has not initiated reasonable steps to correct the same within thirty (30) days from the date of such Notice and thereafter does not continue to take reasonable steps to correct such default.

Section 13.3.3 Insolvency. The filing of a petition by the County seeking relief under any federal or State bankruptcy or receivership statute intended to provide relief for insolvency.

SECTION XIV

TERMINATION

Section 14.1 Termination for Manager Event of Default. If the County shall have given the Manager Notice that a Manager Event of Default has occurred pursuant to Section 13.2, the County may, upon thirty (30) days prior Notice to the Manager, terminate (a) the applicable Project(s), or (b) this Agreement, or both. If this Agreement or a Project

is terminated pursuant to this Section 14.1, the County shall have the remedies specified in Section 14.9.1.

Section 14.2 Termination for County Event of Default. If the Manager shall have given the County Notice that a County Event of Default has occurred pursuant to Section 13.3, the Manager may, upon thirty (30) days prior Notice to the County, terminate (a) the applicable Project(s), or (b) this Agreement, or both. If this Agreement or a Project is terminated pursuant to this Section 14.2, the Manager shall have the remedies specified in Section 14.9.2.

Section 14.3 Termination for Uncontrollable Circumstance. If an Uncontrollable Circumstance occurs after the Contract Date and such Uncontrollable Circumstance or the effect thereof prevents, or is reasonably anticipated to prevent, performance of all or a significant portion of the Manager's or the County's material obligations under this Agreement with respect to a Budgeted Project or an Approved Project for a period of one hundred eighty (180) days or more, the County may, upon fifteen (15) Business Days prior Notice to the Manager, terminate the applicable Project. If an Uncontrollable Circumstance occurs after the Contract Date and such Uncontrollable Circumstance or the effect thereof prevents, or is reasonably anticipated to prevent, performance of all or a significant portion of the Manager's or the County's material obligations under this Agreement with respect to the carrying out of the Program for a period of one hundred eighty (180) days or more, the County may, upon fifteen (15) Business Days prior Notice to the Manager, terminate this Agreement. If this Agreement or a Project is terminated pursuant to this Section 14.3, the Parties shall have the remedies specified in Section 14.9.

Section 14.3.1 Approved Project(s) to be Completed After Uncontrollable Circumstance Termination. If, subsequent to termination of one or more Project(s) (but not termination of this Agreement) pursuant to Section 14.3, the County decides to evaluate the possibility of commencing construction or reconstruction of the terminated Project(s), then the County's Authorized Representative shall give the Manager Notice thereof. Upon receipt of such Notice, the Manager shall proceed diligently to establish the amount of the Maximum Project Price for such construction and/or reconstruction. If, after consideration of the such Maximum Project Price, the County decides to initiate construction and/or reconstruction of the terminated Project(s), the County's Authorized Representative shall provide Notice to the Manager of such decision in which case the Manager shall recommence Work on the Approved Project(s) based on the reestablished Maximum Project Price approved by the County in accordance with this Section 14.3.1, which Maximum Project Price shall include the Manager's Base Fee and its Incentive Fees, with Incentive Fee Criteria adjusted to take into account the timing and circumstances of the recommenced Approved Project.

Section 14.4 Termination for Convenience.

Section 14.4.1 County Termination for Convenience. At any time, upon ninety (90) days prior Notice, the County may terminate (a) one or more Project(s), in whole or in part, or (b) this Agreement, or both, whenever the County shall determine that such termination is in the best interests of the County. Any such termination shall be effected by delivery to the Manager's Authorized Representative of Notice of termination specifying the extent to which performance of Work for the relevant Project or the

Agreement itself, or both, is terminated and the date upon which such termination becomes effective.

Section 14.4.1.1 Termination Claim. After receipt of a Notice of termination in accordance with Section 14.4.1, the Manager shall submit to the Purchasing Agent the Manager's termination claim, in the form and with certification prescribed by the Purchasing Agent. Such claim shall be submitted promptly, but in no event later than one hundred eighty (180) days from the effective date of the termination. Upon failure of the Manager to submit its termination claim within the time allowed, the Purchasing Agent may determine on the basis of information available to him or her, the amount, if any, due to the Manager by reason of the termination and shall thereupon pay to the Manager the amount so determined.

Section 14.4.1.2 Termination Claim Amount – Resolution between the County and the Manager. The Manager and the County may agree in writing upon the whole or any part of the amount or amounts to be paid to the Manager by reason of the total or partial termination of Work pursuant to Section 14.4.1. Nothing in Section 14.4.1.3 shall be deemed to limit or otherwise determine the amounts which may be agreed upon to be paid to the Manager pursuant to this Section 14.4.1.2.

Section 14.4.1.3 Termination Claim Amount – Failure to Reach Resolution. If the Manager and the County fail to reach agreement on a termination claim amount as provided in Section 14.4.1.2, upon the whole amount to be paid to the Manager by reason of the termination of Work pursuant to this Section 14.4.1, the County shall pay the Manager the amounts determined by the Purchasing Agent as follows, but without duplication of any amounts agreed upon in accordance with Section 14.4.1.2:

(a) With respect to all Work performed prior to the effective date of the Notice of termination, the total (without duplication of any items) of:

(i) the Actual Project Costs and Actual Program Costs incurred by the Manager;

(ii) the cost of settling and paying claims arising out of the termination of Work under subcontracts or task orders issued thereunder, as provided in Section 14.8(e) below, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor before the effective date of the Notice of termination of Work, which amounts shall be included in the cost on account of which payment is made under paragraph (i) above;

(iii) (A) in the case of termination of one or more Project(s), the Base Fee for all Work completed prior to the date of termination for such Project(s), or (B) in the case of termination of this Agreement, the sum of (x) the Base Fee for all outstanding Approved Projects which have not been Accepted as of the date of termination less the aggregate amount of the Base Fees already paid by the County for such Approved Projects, and (y) Incentive Fees with respect to all Work on Approved Projects timely completed prior to the date of termination which have not been Accepted as of the date of termination, assuming (absent evidence to the contrary)

that the Incentive Fees would be fully earned; provided, the sum of subsection (x) and (y) shall not exceed nine hundred thousand dollars (\$900,000), in the case of either (A) or (B), all as determined by the Purchasing Agent; and

(iv) all Deferred Incentive Fees.

(b) The reasonable cost of the preservation and protection of property incurred pursuant to Section 14.8(i) and any other reasonable Direct Costs incidental to termination of Work under this Agreement.

Except to the extent that the County shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Manager under Section 14.4.1.3(a) above, the fair value, as determined by the Purchasing Agent, of property which is destroyed, lost, stolen, or damaged so as to be undeliverable to the County, or to a buyer pursuant to Section 14.8(g).

Section 14.4.1.4 Disputes. The Manager shall have the right of appeal, under Section 17.5, from any determination made by the Purchasing Agent under Sections 14.4.1.1, 14.4.1.3, or 14.4.1.6 hereof, except that if the Manager has failed to submit a claim within the time provided in Section 14.4.1.1 or 14.4.1.6 thereof, and has failed to request extension of such time, the Manager shall have no such right of appeal. In any case where the Purchasing Agent has made a determination of the amount due under Section 14.4.1.1, 14.4.1.3, or 14.4.1.6 hereof, the County shall pay to the Manager the following:

(a) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Purchasing Agent; or,

(b) If an appeal has been taken, the amount finally determined on such appeal.

Section 14.4.1.5 Considerations relative to Termination Claim Amount. In arriving at the amount due the Manager under this section there shall be deducted:

(a) All unliquidated advances or other payments or account theretofore made to the Manager, applicable to the terminated portion of the Project(s) or this Agreement, as applicable;

(b) Any claim which the County may have against the Manager (exclusive of amounts owned and properly payable to Subcontractors pursuant to this Agreement) in connection with this Agreement or the Master Maintenance Agreement; and

(c) The agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by the Manager or sold, pursuant to the provisions of this section, and not otherwise recovered by or credited to the County.

Section 14.4.1.6 Partial Termination. If a Project is terminated hereunder in part, the Manager may file with the Purchasing Agent a claim for payment with respect to the terminated portion and a request for an equitable adjustment of costs and schedule relating to the continued portion of the Project. Any claim by the Manager for an equitable adjustment under this Section 14.4.7 shall be asserted within one hundred eighty

(180) days from the effective date of the termination Notice, unless an extension is granted in writing by the County.

Section 14.4.1.7 Termination Payments. The County, may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Manager whenever, in the opinion of the Purchasing Agent, the aggregate of such payments shall be within the amount to which the Manager shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 14.4.1.7, such excess shall be payable by the Manager to the County upon demand.

Section 14.4.2 Manager Termination for Convenience. If, at any time during the Initial Term, the Manager determines that termination of this Agreement is in the best interests of the Manager, then the Manager may deliver Notice of termination to the County (a “**Manager Convenience Termination Notice**”), which Notice shall include a list of all outstanding Approved Projects which have not been Accepted as of the date of the Notice, together with a summary of the status of each such Approved Project (including percentage completion). Following delivery to the County of a Manager Convenience Termination Notice, (a) the Manager shall continue to diligently perform and complete all Work on all outstanding Approved Projects in accordance with this Agreement, and (b) except as expressly provided below, this Agreement shall remain in effect until the later to occur of (i) expiration of the Manager Convenience Transition Period and (ii) with respect to all outstanding Approved Projects, the date that the last Approved Project is either Accepted or terminated by the County hereunder (or such other date mutually agreed upon in writing by the Parties), at which time this Agreement shall immediately terminate

without further action. During the Manager Convenience Transition Period, in addition to its express obligations under this Agreement, the Manager shall use commercially reasonable efforts to effect an orderly transition of all matters hereunder, including those under Sections III, IV and VI hereof. Upon expiration of the Manager Convenience Transition Period, (A) all Work relating to Budgeted Projects which are not then Approved Projects shall terminate, and (B) all Work relating to the preparation of subsequent Annual Plan(s) and implementation of the Social and Economic Development Programs under Sections III and VI hereof shall terminate.

If the Manager terminates this Agreement pursuant to this Section 14.4.2, in addition to those payments and reconciliation amounts specified in this Agreement, the Manager shall pay the County the following as liquidated damages:

- (a) If the Manager Convenience Termination Notice is delivered to the County during the first twelve (12) months of the Initial Term, the sum of (i) the Advance Payment (less any Advance Payment Credit(s) received by the County) and (ii) nine hundred thousand dollars (\$900,000);
- (b) If the Manager Convenience Termination Notice is delivered to the County during months thirteen (13) through twenty-four (24) of the Initial Term, the sum of (i) the remaining Advance Payment Balance so that the aggregate amount of the Advance Payment refunded to the County shall be five hundred thousand dollars (\$500,000) and (ii) six hundred thousand dollars (\$600,000); or

- (c) If the Manager Convenience Termination Notice is delivered to the County during months twenty-five (25) through thirty-six (36) of the Initial Term, the sum of (i) the remaining Advance Payment Balance so that the aggregate amount of the Advance Payment refunded to the County shall be five hundred thousand dollars (\$500,000) and (ii) two hundred fifty thousand dollars (\$250,000).

In addition, if each outstanding Approved Project (other than an Approved Project terminated by mutual written agreement of the County and the Manager) is not completed and Accepted such that (A) the Actual Project Costs of such outstanding Approved Project is equal to or less than the Maximum Project Price for such Approved Project, and (B) Acceptance of the relevant outstanding Approved Project occurs on or before the Scheduled Acceptance Date for such Approved Project, subject to any adjustment of the Maximum Project Price or the Scheduled Acceptance Date for the relevant Approved Project required by a Contingency Change Order or Material Change Order approved by the County, all Deferred Incentive Fees shall constitute liquidated damages and shall be automatically forfeited and no longer payable to the Manager.

The Parties agree that it would be impossible, impractical or extremely difficult to fix the actual damages suffered by the County as a result of a termination of this Agreement by the Manager in accordance with this Section 14.4.2, and accordingly hereby agree that the liquidated damage amounts specified in this Section 14.4.2 are reasonable and do not constitute a penalty. This Section 14.4.2 will survive expiration or termination of this Agreement.

Liquidated damages pursuant to this Section 14.4.2 shall, at the County's sole discretion, be (A) subtracted from any fees or other amounts owed to the Manager pursuant to this Agreement or (B) paid by the Manager to the County, in which case, such amounts shall be paid by the Manager to the County in accordance with Section 14.10.

Section 14.5 Fiscal Authorization Limitation and Termination for Fiscal Non-Funding. The Parties recognize and agree that pursuant to the terms and conditions of this Agreement, the Maximum Project Price and other costs and fees payable hereunder may be paid over a multi-year period. The County cannot, by law, expend or contract for the expenditure in any Fiscal Year of more than the amount authorized, appropriated, budgeted and made available for funding the Project(s). If a subsequent County Council fails to approve, authorize, appropriate, set aside and make available funds for the Project(s), the County or the Manager, may terminate (a) the applicable Project(s), in whole or in part, or (b) this Agreement, or both. If this Agreement is terminated by the County or the Manager pursuant to this Section 14.5, following such termination, the Manager shall be paid the amounts calculated pursuant to Section 14.9.2 following such termination and in accordance with Section XIII; provided, however, monies have been budgeted and are available for payment to the Manager. The termination of this Agreement hereunder will discharge both the Manager and the County from future performance, but not from their right and obligations existing at the time of termination. The County shall notify the Manager as soon as it has knowledge that funds may not be available for the continuation of a Project or this Agreement, as applicable, for each succeeding Fiscal Year.

Section 14.5.1 Project to be Completed After Termination for Fiscal Non-Funding. If, subsequent to termination pursuant to Section 14.5, the County decides to evaluate the possibility of commencing design, construction and/or reconstruction of one or more terminated Project(s) and this Agreement has not been terminated, the Manager, upon Notice from the County's Authorized Representative, shall proceed diligently to establish the amount of (a) the Maximum Design Cost for design Work for the terminated Budgeted Project, and/or (b) the Maximum Project Price for construction and/or reconstruction Work for the terminated Approved Project(s). The County shall pay the Manager the Direct Costs incurred by the Manager, subject to Cost Substantiation, inclusive of the Base Fee, to establish such (i) Maximum Design Cost or (ii) Maximum Project Price, as applicable. If, after consideration of such Maximum Design Cost or Maximum Project Price, the County decides to initiate design, construction and/or reconstruction of the terminated Project(s), the County's Authorized Representative shall provide Notice to the Manager of such decision in which case the Manager shall recommence Work on the Project based on the reestablished Maximum Design Cost or Maximum Project Price and the Manager's Base Fee and its Incentive Fees, with Incentive Fee Criteria adjusted to take into account the timing and circumstances of the recommenced Approved Project, in accordance with the terms and conditions of this Agreement. Following the County's Authorized Representative's Notice to the Manager above, the Parties shall perform their obligations in accordance with this Agreement.

Section 14.6 Termination Based on Control Program Cost. During the first Billing Year and from time to time during the Term, the County may, at its option and at its sole cost and expense, establish a Control Program and procure, develop, construct and

install one or more Projects within such Control Program. If, following the County's development and construction of the Projects included within the Control Program, the County determines that the cost of developing and constructing the Projects by the Manager pursuant to this Agreement is reasonably expected to exceed the cost of the County to develop and construct similar Projects using a traditional contracting method (based on the costs incurred by the County to develop the Projects included within the Control Program after adjusting for any differences in cost, complexity and the procurement or assignment of Intellectual Property as between Projects carried out by the Manager and those included within the Control Program), then the County may, upon thirty (30) days prior Notice to the Manager, terminate (a) particular Project(s), in whole or in part, or (b) this Agreement, or both. If this Agreement is terminated by the County pursuant to this Section 14.6, following such termination, the Manager shall be paid the amounts calculated pursuant to Section 14.9.2 following such termination and in accordance with Section XIV. The termination of this Agreement hereunder will discharge both the Manager and the County from future performance, but not from their rights and obligations existing at the time of termination.

Section 14.7 Termination Based on Change in Law. Notwithstanding Section 14.3 to the contrary, if one or more Change(s) in Law (other than a County Initiated Change in Law) shall occur after the Contract Date which can be reasonably expected to have the effect (either individually or collectively) of (a) increasing the Direct Costs to perform the Work on Approved Project(s) by more than ten percent (10%) over the Initial Term or Renewal Term, as applicable; provided, however, in no event shall the maximum liability of the County under this Agreement exceed the amounts set forth in Section 7.1; or (b)

reducing or eliminating the Clean Water Act Fees, then, in either event described in subsection (a) or (b), the County may terminate this Agreement upon thirty (30) days prior Notice from the County to the Manager's Authorized Representative. Except for the amounts specified in Section 14.9.2, any such termination shall be without any termination damages, penalties or other payments to the Manager and the Manager waives all claims to any such damages, penalties or other payments. For purposes hereof, a "**County Initiated Change in Law**" shall mean an action, law or ordinance taken or adopted by the County Council that is not taken or adopted in response to or as a result or consequence of (i) some other Change in Law or (ii) a threatened, pending or completed action, claim, cause, or proceeding which challenges the validity, legality, enforceability or collectability of the Clean Water Act Fees.

Section 14.8 Procedures following Notice of Termination. Except following a Manager Convenience Termination Notice pursuant to Section 14.4.2 (unless the Manager fails to diligently perform and cause such outstanding Approved Projects to be Accepted), after receipt of a Notice of termination in accordance with this Section XIV and except as otherwise directed by the County, the Manager shall:

- (a) Stop all Work on such Project(s) on the date and to the extent specified in the Notice of termination;
- (b) Place no further orders or subcontracts for materials, services, supplies or facilities except as may be necessary for completion of the portion of the Work on such Project(s) which are not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of termination;

(d) To the extent requested by the County in writing to the Manager, assign to the County in the manner, at the times, and to the extent directed by the County, all of the right, title, and interest of the Manager under the orders and subcontracts so terminated, in which case, the County shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders or subcontracts, provided that any such settlement or payment shall resolve the applicable claim(s) in full, without any remaining liability of the Manager to such Subcontractors;

(e) Settle all outstanding liabilities and claims arising out of such termination of orders and/or subcontracts, including Subcontractor demobilization costs, with the approval or ratification of the County to the extent the County may require, which approval or ratification shall be final for all purposes of this Section 14.8;

(f) Transfer title and deliver to the County in the manner, at the times, and to the extent, if any, directed by the County's Authorized Representative, subject to any Subcontractor liens and claims relating to unpaid Work and terminated orders or subcontracts for amounts due and properly payable hereunder (but only if and to the extent such amounts have not been paid by the County to the Manager):

(i) the fabricated or unfabricated parts, Work in progress, completed Work and supplies; and

(ii) other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of

termination, and other property which, if the Approved Project(s) had been completed, would have been required to be furnished to the County;

(g) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the County's Authorized Representative, any property of the types referred to in subsection (f) above; provided, however, the Manager:

(i) shall not be required to extend credit to any purchaser; and,

(ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the County; and provided, further, that the proceeds of any such transfer or disposition shall be applied in such manner as the County may direct. The Manager may submit to the Purchasing Agent a list, certified as to the quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Purchasing Agent and may request the County to remove such items or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Purchasing Agent.

(h) Complete performance of such part of the Work that shall not have been terminated by Notice of termination; and,

(i) Take any action that may be necessary, or as the County may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Manager and in which the County has or may acquire an interest, subject to the County's obligation and ability to pay the costs of any such action.

Section 14.9 Remedies; Advance Payment.

Section 14.9.1 Remedies Available to the County. If this Agreement or one or more Approved Project(s) are terminated pursuant to Section XIV, the County shall, at its sole discretion, have the right to (a) secure a third party to complete the terminated Project(s), (b) complete the terminated Project(s) using employees of the County, or (c) not complete the terminated Project(s). If the County elects to complete the Project(s) terminated pursuant to Section 14.1, the cost and expense associated with completing the Project(s) in accordance with this Agreement and the preceding sentence less the remaining portion of the Maximum Project Price for such Project(s) that has not been paid under this Agreement shall be borne by the Manager. If the County elects to (1) complete the Project(s) terminated pursuant to Section 14.1 and (2) proceed in accordance with clause (a) or (b) in this paragraph, the County, to ensure payment of the costs and expenses relative to completing such terminated Project, shall instruct the Independent Engineer to prepare a cost estimate to complete such Project(s) and such cost estimate, less the remaining portion of the Maximum Project Price that has not been paid or accrued to the Manager under this Agreement, shall be paid by the Manager to the County within forty-five (45) days after such termination. Upon completion of the applicable Project(s), any amounts paid by the Manager in excess of the Actual Project Costs to complete such

Projects shall be reimbursed to the Manager within forty-five (45) days. The exercise of the rights granted to the County in this Section 14.9.1 does not, in the event of an Event of Default by the Manager under Section 13.2, preclude the County from pursuing any and all other remedies available at law or in equity.

If the County elects to (A) complete the Project terminated pursuant to Section 14.2, 14.3, 14.4, 14.5, 14.6 or 14.7, and (B) proceed in accordance with clause (a) or (b) in the first paragraph of this Section 14.9.1, the cost and expense associated with completing the Project shall be borne by the County.

Section 14.9.2 Remedies Available to the Manager. Except as provided in Section 14.4, the remedies and relief available to the Manager as a consequence of termination of any Approved Project(s) or this Agreement shall be limited strictly to those expressly available under this Section 14.9.2. Subject to Sections 14.3.1, 14.4.2 and 14.5.1, if a Project or this Agreement is terminated pursuant to this Section XIV, the Manager shall immediately have no obligation to do further Work on or complete the applicable Project(s), or manage, operate or maintain such Project(s) in its then state of development. To the extent the Manager is entitled to any demobilization or cancellation charges in accordance with Section 14.9.2.1 or 14.9.2.3, the Manager shall exercise reasonable efforts to minimize any such charges.

Section 14.9.2.1 Termination for County Event of Default or Fiscal Non-Funding. If this Agreement or one or more Project(s) are terminated pursuant to Sections 14.2 (County Event of Default) or 14.5 (Fiscal Non-Funding), the Manager shall be entitled to receive the following (without duplication of any items):

(a) any outstanding but unpaid Actual Project Costs and Actual Program Costs for Work performed in accordance with this Agreement prior to the effective date of the Notice of termination, including any retainage held pursuant to Section 8.4;

(b) (i) any earned but unpaid Base Fee(s) for such terminated Approved Projects, and (ii) in the event this Agreement is terminated, the sum of (x) all outstanding Base Fee(s) the Manager would have been entitled to receive upon completion and Acceptance of all such terminated Approved Project(s) and (y) Incentive Fees with respect to all Work on Approved Projects timely completed prior to the date of termination which have not been Accepted as of the date of termination, assuming (absent evidence to the contrary) that the Incentive Fees would be fully earned; provided, that the sum of subsection (x) and (y) shall not exceed nine hundred thousand dollars (\$900,000);

(c) subject to Cost Substantiation, any Subcontractor demobilization and cancellation charges actually incurred and paid or payable by the Manager as a direct result of such termination; and

(d) in the case of a termination of this Agreement, the portion of the Advance Payment, if any, specified in Section 14.9.3.

Section 14.9.2.2 Termination for Manager Event of Default or Control Program Cost. If this Agreement or one or more Project(s) are terminated

pursuant to Sections 14.1 (Manager Event of Default) or 14.6 (Control Program Cost), the Manager shall be entitled to receive the following (without duplication of any items):

(a) any outstanding but unpaid Actual Project Costs and Actual Program Costs for Work properly performed in accordance with this Agreement prior to the effective date of the Notice of termination, including any retainage held pursuant to Section 8.4;

(b) any earned but unpaid Base Fees for such terminated Approved Project(s) through the date of termination; and

(c) in the case of termination pursuant to Section 14.6, subject to Cost Substantiation, any Subcontractor demobilization and cancellation charges actually incurred and paid or payable by the Manager as a direct result of such termination.

Section 14.9.2.3 Termination for Uncontrollable Circumstance or Change in Law. If this Agreement or one or more Project(s) are terminated pursuant to Sections 14.3 (Uncontrollable Circumstance) or 14.7 (Change in Law), the Manager shall be entitled to the following (without duplication of any items):

(a) any outstanding but unpaid Actual Project Costs and Actual Program Costs for Work properly performed in accordance with this Agreement prior to the effective date of the Notice of termination, including any retainage held pursuant to Section 8.4;

(b) any earned but unpaid Base Fees for such terminated Approved Project(s) through the date of termination;

(c) the prorated Incentive Fees with respect to all Work on Approved Projects timely completed prior to the date of termination which have not been Accepted as of the date of termination, assuming (absent evidence to the contrary) that the Incentive Fees would be fully earned, as determined by the County based on the amount of the Work completed on such Approved Project(s) through the date of termination;

(d) subject to Cost Substantiation, any Subcontractor demobilization and cancellation charges actually incurred and paid or payable by the Manager as a direct result of such termination; and

(e) in the case of a termination of this Agreement, the portion of the Advance Payment, if any, specified in Section 14.9.3.

Section 14.9.2.4 Termination for Convenience. If this Agreement or one or more Project(s) are terminated pursuant to Sections 14.4.1 (County Termination for Convenience), the Manager shall be entitled to the termination amounts specified and determined in accordance with Section 14.4.1.

Section 14.9.3 Advance Payment. If this Agreement is terminated pursuant to Section XIV, the outstanding Advance Payment Balance shall be applied in a manner consistent with Section 7.5.

Section 14.10 Manner of Payment Upon Termination; Records. Any amount payable by either Party as a result of termination shall be paid within forty-five (45) days after such termination. If the Parties disagree as to the amount due, there shall nevertheless be paid to the Manager, or, as applicable, to the County, within such forty-five (45) Day period, the amount not in dispute and any balance shall be payable promptly following

resolution of the disagreement. Unless otherwise provided for in this Agreement or by Applicable Law, the Manager shall, for a period of three (3) years the effective date of termination, preserve and make available to the County at all reasonable times at the office of the Manager but without direct charge to the County, all Manager's Records and other evidence bearing on the costs and expenses of the Manager under this Agreement and relating to the Work terminated hereunder.

Section 14.11 Manager Suspension. In the event of (a) a failure or refusal by the County without justification to make payment of an undisputed aggregate amount of fifty thousand dollars (\$50,000) or more under this Agreement when due or (b) County Fault that materially and substantially interferes with the performance by the Manager of its obligations hereunder, then the Manager shall have a right to suspend performance of all or any portion of the Work by delivering a Notice of such suspension to the County; provided: (i) with respect to a payment failure, such payment failure has continued for a period of ten (10) Business Days past the date such payment is due and (ii) with respect to County Fault, such County Fault has not been cured within thirty (30) days after the County's receipt of such suspension Notice. Such suspension shall terminate upon receipt by the Manager of the payment of amounts owed by the County that are referred to in the suspension notice (which payment shall include interest as provided pursuant Section 17.26) or the curing of County Fault if applicable, at which time the Manager shall promptly recommence performance of the Work. The Scheduled Acceptance Date for the applicable Approved Project(s) shall be extended by the number of days of such suspension or such longer period as may be required as a consequence thereof. Such remedy is in addition to any

other remedies the Manager may have under this Agreement, including, without limitation, the obtaining of an appropriate Contingency Change Order.

Section 14.12 Master Maintenance Agreement. Termination by the County of a Project or this Agreement in accordance with this Section XIV shall not by itself constitute a termination of the Master Maintenance Agreement, unless the County exercises its right to terminate the Master Maintenance Agreement in accordance with its terms.

SECTION XV

INDEMNIFICATION AND INSURANCE

Section 15.1 Manager Indemnification. The Manager shall indemnify, hold harmless and defend the County, members of the County Council, and the County's agents, officers, consultants and employees (collectively, the "**County Indemnified Parties**"), from and against any and all Losses on account of any negligence, recklessness, or willful misconduct (including any act or fraud) of the Manager, Subcontractors and their agents and employees with respect to performance under this Agreement. This provision is intended to apply even if the injury or damage is caused in part by any act, omission or default of the County Indemnified Parties. The Manager shall not be required to reimburse, defend, or indemnify the County Indemnified Parties for loss or claim due to the sole negligence or willful misconduct of such County Indemnified Parties. The Manager shall promptly notify the County of the assertion of any claim against which the County Indemnified Parties are indemnified hereunder, shall defend the County Indemnified Parties against any such claim, and shall have the right to settle such claim without the approval of the County Indemnified Parties. The County agrees that it shall promptly notify the Manager's Authorized Representative of the assertion of any claims against

which the County Indemnified Parties seek to be indemnified hereunder; provided, however, that the failure to give such notice shall not affect the Manager's indemnification obligation hereunder, except insofar as the failure to provide such notice increases the amount of the particular Losses. The extent of the Manager's indemnification shall not be limited in any way as to the amount of any insurance limits contained in any insurance policy procured or provided in connection with this Agreement. The Manager's indemnification obligations under this Section 15.1 shall be in addition to its other indemnification obligations to the County Indemnified Parties hereunder and any such other indemnification obligations shall not supersede the obligations under this Section 15.1.

Section 15.2 Insurance. The Manager shall maintain insurance of the types and in the amounts described in this Agreement and meeting the requirements specified in Schedule 16 (Insurance) (the "**Required Manager Insurance**"). The Manager shall cause the Subcontractors to secure and maintain insurance as part of their subcontracts with the Manager in accordance with Schedule 16 (Insurance). Such Subcontractor insurance except for professional errors and omissions policies and workers compensation policies, shall name the County as an additional insured. The County may permit the Manager to arrange for a Managers Controlled Insurance Program ("**CCIP**") in order to satisfy some its insurance obligations hereunder. In arranging the CCIP, the Manager shall consult with the County's Authorized Representative. The CCIP coverage required shall be as specified in the applicable Budget Book for an Approved Project.

SECTION XVI

[RESERVED]

SECTION XVII

MISCELLANEOUS

Section 17.1 Term. The term of this Agreement shall commence on the Contract Date and, unless terminated earlier pursuant to the terms of this Agreement, shall end on the third (3rd) anniversary of the Contract Date (the “**Initial Term**”).

Section 17.1.1 Expanded Program Area; Renewal Term. If the County determines that the Manager has met or exceeds the Program Performance Milestones during the earlier to occur of (a) Acceptance of Approved Projects totaling one thousand (1,000) acres of the Initial Program Area or (b) the second anniversary of the Contract Date, then within thirty (30) days thereafter, the Manager may deliver Notice to the County exercising its option to extend (i) the Program to include the Expanded Program Area, and (ii) the Initial Term for an additional period of three (3) years from the expiration of the Initial Term (the “**Renewal Term**”). If the Manager exercises its extension right pursuant to this Section 17.1.1, this Agreement shall be extended on the same terms and conditions, except to the extent such terms are expressly modified for the Renewal Term as specified herein.

Section 17.1.2 Extension Period. If Acceptance of one or more Approved Projects has not been achieved and any such Project remains in process, or is expected to remain in process, upon expiration of the Initial Term or the Renewal Term, if applicable,

the County may, in its sole discretion, extend the Initial Term or the Renewal Term, if applicable, for additional period(s) of up to three (3) months (each such period, an “**Extension Period**”). If the County exercises its option under this Section 17.1.2, the County shall deliver Notice to the Manager’s Authorized Representative as soon as reasonably practicable, but at least thirty (30) days prior to expiration of the Initial Term or Renewal Term, if applicable, whereupon this Agreement shall be extended on the same terms and conditions to facilitate completion of the Project(s) underway.

Section 17.2 Standard of Professional Service; Compliance with Law. The Work to be provided and performed by the Manager and by any Subcontractor will be done in accordance with the generally accepted standards of professional practice and in compliance with all Applicable Laws. References in this Agreement to Codes and Standards are to the most recent published professional Codes and Standards in effect on the Contract Date. Unless otherwise specified to the contrary, (a) all such Codes and Standards will apply as if incorporated in this Agreement, and (b) if any revision occurs after the Contract Date and prior to completion of the Parties’ respective obligations under this Agreement, the Party whose obligations are affected by the revision will perform the applicable work in accordance with the revised Codes and Standards if and to the extent applicable. The Manager shall (i) pay, subject to a right to contest, any fines or penalties imposed by any Governmental Authority for Permit violations that were not caused by the occurrence of an Uncontrollable Circumstance or County Fault, (ii) promptly reimburse the County for the same to the extent paid by the County, and (iii) pay the costs of performing all work included in administrative orders, notices or similar directives of violation that were the result of Manager Fault.

Section 17.3 Assignment and Control.

Section 17.3.1 Assignment. This Agreement shall not be assigned by the Manager without the prior written consent of the County, and the Manager shall not enter into any contractual agreement with a third party for the delegation to such third party of performance obligations of the Manager of any part of this Agreement without the prior written consent of the County, which consent may be withheld by the County in its sole discretion; provided, however, the Manager may, without such consent, assign its interest and obligations hereunder to an Affiliate; provided, however, that any such assignment shall not relieve the Guarantor from its obligations and undertakings under the Guaranty, and the Guarantor shall execute such documents as are necessary to assure that the Guaranty shall continue and remain in full force and effect; provided, further, that the Manager's Letter of Credit shall remain in full force and effect and the Manager shall direct the Qualified Financial Institution to provide such assurance to the County that said Letter of Credit remains and continues in full force and effect in accordance with its terms. Any other assignment of this Agreement by the Manager without the express written consent and approval of the County, except as expressly recognized herein, shall be null and void at inception and of no force and effect. It is understood and agreed between the Parties that this Section 17.3.1 shall not be interpreted or construed to restrict the Manager's ability to employ Subcontractors to perform the Work pursuant to Section 17.10 in connection with the performance of portions of its obligations hereunder.

Section 17.3.2. Control. The Manager shall not, and shall have no authority to, transfer, sell, relinquish or otherwise convey in any form, indirectly or directly, Control to any Person without the prior written consent of the County, which

consent may be withheld in the County's sole discretion. To the extent the Manager attempts or does transfer, sell, relinquish or otherwise convey in any form, indirectly or directly, Control to any Person, such action shall be null and void at inception and of no force and effect. The Guarantor shall not authorize, institute, condone, accept, direct or promote any action by the Manager to attempt to transfer, sell, relinquish or otherwise convey Control to any Person.

Section 17.4 Uncontrollable Circumstance. Either Party to this Agreement is excused for failure or delay in performance of any act required herein by reason of an Uncontrollable Circumstance except for payments pursuant to Section VIII. This provision shall not, however, relieve such Party from exercising all reasonable efforts to overcome or remove such Uncontrollable Circumstance. The Party experiencing the effects of the Uncontrollable Circumstance shall, promptly on discovery thereof or of its consequences, notify the other Party, followed as soon as is reasonably practicable by a written description of (a) the commencement and nature of the event of Uncontrollable Circumstance, its anticipated effect upon construction, installation and Acceptance of the subject Approved Project and the steps necessary to cure the adverse effect of such event, (b) its estimated duration and cost impact on the Maximum Project Price for such Approved Project, (c) its impact, if any, on the Scheduled Acceptance Date for the subject Approved Project, and (d) its estimated impact on its obligations under this Agreement. Either Party shall additionally provide prompt Notice of the cessation of the effect of such Uncontrollable Circumstance. The failure of a Party to provide timely notice as required herein may give rise to an adjustment to the relief to which said Party might otherwise be entitled hereunder, to the extent that the failure to provide such notice is reasonably

determined to have increased the costs of and/or delay caused by such Uncontrollable Circumstance to the applicable Project.

Section 17.5 Claims and Disputes. All claims or disputes arising under this Agreement shall be administered by the Contract Administrator and handled in accordance with Sections 10A-104 and 10A-107 of the County Code and Chapter XXV.1 of the County's Procurement Regulations. Subject to the County Code and the County's Procurement Regulations, such regulations generally provide that (a) all claims and disputes arising under a contract shall be submitted in writing by the contractor to the Contract Administrator within thirty (30) days after the occurrence of the event giving rise to the claim or dispute for adjudication by the Contract Administrator, (b) the Manager may, within thirty (30) days after receipt of the Contract Administrator's final decision, appeal the final decision of the Contract Administrator to the Purchasing Agent, and (c) the Manager may, within thirty (30) days after receipt of the Purchasing Agent's final decision, appeal the decision to an independent hearing examiner or to the Circuit Court of the County. Pending final resolution of any claim of the Manager, the Manager shall diligently proceed with the Work and the County shall continue to make payments to the Manager in accordance with this Agreement. No payment will be made for increased Payment or Performance Bond premiums as a result of any act or omission by the County which results in a claim. No claim by the Manager for an equitable adjustment hereunder shall be allowed or asserted after final payment for the relevant Approved Project if such claim was not asserted prior to or in Manager's submission of its final Application for Payment.

Section 17.6 Intellectual Property Rights. The Manager shall pay or cause Subcontractors to pay all royalties and license fees relating to its performance of its

obligations hereunder, including the design, construction, installation, Acceptance and maintenance or operation of the Approved Project. The Manager on behalf of itself and all of the Subcontractors hereby warrants that the Work, the subsequent operation of the completed Approved Project(s), the use of any component unit thereof and the use of any article, machine or process, or a combination of any or all of the aforesaid, by the County or any third Person shall not infringe any patent, trademark or copyright of any other third Person. The Manager shall defend any claim or lawsuit brought against the County and any County Indemnified Parties, for infringement of any patent, trademark or copyright relating to the Approved Projects and the subsequent operation of the Approved Project(s) or for the unauthorized use of trade secrets by reason of the construction or operation of the Approved Project(s), or the Manager may, at its option, acquire the rights of use under infringed patents, trademarks, copyrights or trade secrets, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment or other property does not so infringe, and the Manager shall indemnify the County Indemnified Parties and hold each and all harmless against all liability, judgments, decrees, damages, interest, costs and expenses (including reasonable attorneys' fees) recovered against any County Indemnified Party sustained by any or all by reason of any such actual or alleged infringement of any patent, trademark or copyright or the unauthorized use of any trade secret.

Section 17.7 Retention and Access to Records. The Manager shall allow the County, the State and EPA and each of their representatives and agents full and complete access to all books, records, documents, papers and letters that are made or received by the Manager in connection with this Agreement (collectively, "**Records**"). The Records shall

be made available for audit or inspection purposes by the County and its representatives and agents at the Manager's principal office within the County at any time during normal business hours upon reasonable notice to the Manager's Authorized Representative. The Manager shall retain for such inspection purposes all Records applicable to this Agreement for five (5) years after receipt of final payment pursuant to Section VIII or after any applicable statute of limitations, whichever is longer. The Manager further agrees to include, or cause to be included, in all contracts with Subcontractors (including those entered into by Subcontractors) a provision to the effect that the Subcontractor agrees that the County or any of its duly authorized representatives shall, until the expiration of the two (2) year period after final payment under any subcontract, have access to and the right to examine any directly pertinent books, records, documents, papers and letters of such Subcontractor, involving transactions related to any subcontract for Work on an Approved Project. This Section 17.7 shall survive the termination or expiration of this Agreement for such period referenced above.

Section 17.8 Grants, Incentives and Subsidies. The Manager shall actively assist and support the County in locating and pursuing (including the preparation of reports, communications and applications for the same) grants, incentives, subsidies and other forms of assistance (collectively, "**Grants**") which may be available to the County or the Program for development of the Proposed Projects, the Budgeted Projects or the Approved Projects, as applicable. The Manager shall promptly advise County's Authorized Representative whenever the Manager becomes aware of any such opportunities for Grants. If the County decides to pursue any such Grant(s), the Manager shall, in a timely manner, generate, save and store, record, sign as the contractor and/or operator and provide

to all Governmental Authorities or private parties, as applicable, all information, applications, renewals and modifications of Grants, notices and reports as may be required to comply with the terms, conditions or other obligations of such Grant(s). If the signature of the contractor or operator of the Approved Projects is required relative to such Grants, the appropriate Manager representative shall sign such Grants and deliver the same to, or file as instructed by, the County's Authorized Representative. Any Grant funds received shall be the property of the County, except to the extent otherwise expressly provided in the documentation governing such Grant.

The Manager shall provide to the County all requested documentation, materials and, if applicable, signatures, sufficiently in advance of the date for submission to the applicable Governmental Authority or such other Person issuing such Grant to allow the County to review and comment on the same. If the County requests the Manager to submit all or any portion of a Grant application, amendment or renewal to the applicable Governmental Authority or other Person issuing such Grant, the Manager shall promptly provide a copy of the executed original to the County that was filed with such Person.

With respect to applications, renewals or modifications to Grants, the Manager shall provide the County such assistance as the County may require with the County's efforts to coordinate its efforts and activities with Governmental Authorities in its capacity as the owner of Project Site and Approved Projects

Section 17.9 Relationship of the Parties. Neither Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other Party and nothing in this Agreement shall be deemed to

constitute either Party a partner, agent or legal representative of the other Party or to create any fiduciary relationship between the Parties.

Section 17.10 Subcontractors. Subject to the procurement of Subcontractors in accordance with Section 4.6, the Manager may, in its sole discretion, subcontract all or any portion of the Work covered under this Agreement directly relating to the design, construction, installation and Acceptance of a Budgeted Project or an Approved Project, as applicable, provided that to the extent set forth in this Agreement, the Manager shall remain liable to the County for any Work so subcontracted.

The Manager warrants, and shall use its best efforts to assure that the Manager's contracts with the Subcontractors are assignable to the County in the event of a default by the Manager, and contain appropriate remedies for default. If any such Subcontractor defaults on its contract, the Manager shall use all reasonable efforts to enforce its rights under such contract and, in the event the Manager fails to do so and shall be in default hereunder, the Manager shall, at the County's request, assign its rights under such contract to the County.

Section 17.11 Representatives. The Authorized Representative of the County for purposes of this Agreement shall be the Director of the County Department of the Environment and his or her designee. The Authorized Representative of the Manager for purposes of this Agreement shall be the Manager's Program Manager. Either Party (in the case of the Manager, by act of the CEO of the Manager) may change its Authorized Representative upon five (5) days prior Notice to the other Party.

Section 17.12 Notices. Except for Posting Notices in accordance with Section 2.3, all Notices and consents required or permitted by this Agreement shall be in writing, shall

be transmitted by (a) registered or certified mail, return receipt requested, with Notice deemed to be given upon receipt; postage pre-paid, (b) delivered by hand or by nationally recognized courier service, or (c) if sent by facsimile transmission with confirmed receipt thereof, and addressed as follows:

If to the County:

Director of Office of Central Services
Prince George's County
1400 McCormick Drive, Suite 336
Largo, Maryland 20774
Fax: 301-883-6464

With a copy to:

County Attorney
Prince George's County
County Administration Building
14741 Governor Oden Bowie Drive, Room 5121
Upper Marlboro, Maryland 20772-3050
Fax: 301-952-3071

With a copy to (which shall not constitute Notice):

Director of Department of the Environment
Prince George's County
Department of Environment
1801 McCormick Drive, Suite 500
Largo, Maryland 20774
Fax: (301) 883-5444

If to the Manager:

Corvias Prince George's County Stormwater Partners, LLC
c/o Corvias Solutions, LLC
Attn: Greg Cannito, Vice President of Corvias Solutions,
LLC
16701 Melford Blvd., Suite 400
Bowie, Maryland 20715
Fax: (401) 336-2571

With a copy to (which shall not constitute Notice):

Corvias Prince George's County Stormwater Partners, LLC
c/o Corvias Group, LLC
Attn: John G. Picerne, CEO
1405 South County Trail Suite 530
East Greenwich, RI 02806
Fax: (401) 336-2571

Changes in the respective names and addresses to which such Notices may be directed may be made from time to time by either Party by Notice to the other Party. If an Event of Default occurs, the Notice required to be given under this Agreement shall clearly identify in bold letters that such an event has occurred.

Section 17.13 Entire Agreement. This Agreement, together with the Master Maintenance Agreement and the Schedules attached to this Agreement, (a) constitutes the entire and complete agreement with respect to the Work and the Approved Projects and (b) supersedes all prior or contemporaneous understandings, arrangements and commitments, whether oral or written, relating to the subject matter hereof.

Section 17.14 Binding Effect. This Agreement shall bind and inure to the benefit of the Parties to this Agreement and any successor or assignee acquiring an interest hereunder consistent with Section 17.3.

Section 17.15 Applicable Law. The law of the State shall govern the validity, interpretation, construction and performance of this Agreement.

Section 17.16 Waiver. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any representation, warranty or covenant contained in this Agreement is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

Section 17.17 Representations and Warranties.

Section 17.17.1 Representations and Warranties of the County. The County represents and warrants to the Manager that:

Section 17.17.1.1 The County is a body corporate and politic of the State and has the power and authority to conduct the governmental functions and activities as contemplated by this Agreement.

Section 17.17.1.2 The County has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof by the County (a) have been duly authorized and approved by the County Council, (b) do not require any other approvals by any other governmental officer or body, other

than those Permits or approvals contemplated to be obtained after the Contract Date with respect to Approved Projects, (c) do not require any consent or referendum of voters and (d) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the County under any agreement or instrument to which the County is a party or by which the County or its assets may be bound or affected.

Section 17.17.1.3 This Agreement has been duly entered into and delivered by the County and, as of the date of this Agreement, constitutes a legal, valid and binding obligation of the County, subject to (a) the applicable bankruptcy, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights or remedies generally, (b) general equitable principles concerning remedies and (c) limitations on the enforceability of rights to indemnification under applicable federal or State laws or regulations or public policy.

Section 17.17.1.4 Except as has been disclosed in writing to the Manager, to the County's best information and belief and without independent investigation, there is no action, suit, proceeding or official investigation announced or commenced by any Person or Governmental Authority, that seeks to enjoin, assess damages or civil or criminal penalties against, or obtain any judgment, order or consent decree with respect to the County or the Manager as a result of or with respect to this Agreement, the Master Maintenance Agreement, or the performance by the Parties of their respective obligations thereunder or the transactions contemplated thereby, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the County of its obligations hereunder or the other transactions contemplated hereby,

or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the County in connection with the transaction contemplated hereby.

Section 17.17.2 Representations and Warranties of the Manager. The Manager hereby represents and warrants to the County that:

Section 17.17.2.1 The Manager is a duly organized as a limited liability company in the State of Delaware, is qualified to do business in the State and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.

Section 17.17.2.2 The Manager has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof by the Manager, (a) have been duly authorized and all necessary corporate approvals have been obtained, (b) do not require the approval of any governmental officer or body, other than those Permits or approvals contemplated to be obtained after the date of execution of this Agreement, (c) will not violate any provisions of the Manager's certificate of formation and operating agreement and (d) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Manager under any agreement or instrument to which the Manager is a party or by which the Manager or its assets may be bound or affected.

Section 17.17.2.3 This Agreement has been duly entered into and delivered and, as of the date of this Agreement, constitutes a legal, valid and binding obligation of the Manager, subject to (a) the applicable bankruptcy, reorganization,

moratorium or similar laws affecting the enforcement of creditors' rights or remedies generally; and (b) general equitable principles concerning remedies.

Section 17.17.2.4 To the Manager's best information and belief and without independent investigation, there is no action, suit, proceeding or official investigation announced or commenced by any Person or Governmental Authority, that seeks to enjoin, assess damages or civil or criminal penalties against, or obtain any judgment, order or consent decree with respect to the County or the Manager as a result of or with respect to this Agreement, the Master Maintenance Agreement, or the performance by the Parties of their respective obligations thereunder or the transactions contemplated thereby, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Manager of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Manager in connection with the transactions contemplated hereby.

Section 17.17.2.5 There has been no material adverse change in the Manager's or the Guarantor's financial condition during the twelve (12) month period immediately preceding the Contract Date. Neither the Manager nor the Guarantor is aware of any occurrence, event or situation that could reasonably be expected to cause a material adverse change in the Manager's or the Guarantor's financial condition in the foreseeable future which in either case, would materially impair the Manager's ability to perform its obligations under this Agreement or the Guarantor's ability to fulfill its obligations under the Guaranty.

Section 17.17.2.6 The Manager's performance of its obligations under this Agreement or the other transaction contemplated hereby do not conflict with the Manager's performance under any other agreements to which it is a party.

Section 17.17.2.7 The Guarantor has secured all necessary approvals for the Guaranty.

Section 17.18 Headings. Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 17.19 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

Section 17.20 Amendment. No amendment, modification or change to this Agreement shall be effective unless the same shall be in writing and duly executed by the Parties and approved by the Purchasing Agent.

Section 17.21 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the County and the Manager shall negotiate in good faith an amendment to this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 17.22 Further Assurances. Each Party agrees to, and shall use all reasonable efforts to, provide such information, execute and deliver any instruments and

documents and take such action as may be necessary or reasonably requested or required by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement in order to give full effect to this Agreement and to carry out the intent of this Agreement.

Section 17.23 Non-Discrimination in Construction Contract Employment. Any Person who proposes to perform any Work or furnish any goods under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public because of religion, race, sex, age, physical or mental disability, or perceived disability. Discriminatory practices based upon the foregoing are declared to be contrary to the public policy of the County. Manager agrees to be in full compliance with federal mandates of the Americans with Disabilities Act. Manager further agrees that this Section 17.23 will be incorporated by Manager in all contracts with Subcontractors. The Manager and each Subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

Section 17.24 County Meetings; Media Relations; Publicity. Throughout the Term and during the O&M Capital Project Period, the Manager shall, at its cost and expense, make its staff available in person for meetings with County representatives from time to time on reasonable Notice to the Manager's Authorized Representative. The Manager shall consult with and receive the approval of the County's Authorized Representative prior to the Manager responding to any inquiry from, or initiating any contact with, the press or other media regarding any matter relating to the Work, the development, construction or

installation of an Approved Project or any other activities or matters involving the Manager with respect to the Program. The Manager shall not use the name or logo of the County in any advertising, brochures, public relations documents or news releases without the prior written consent of the County's Authorized Representative; provided, however, the Manager may use or furnish the name, address and telephone number of the County as a client reference and make such press or media releases as expressly required by Applicable Law. This Section 17.24 shall not be construed to limit the Manager's right to make any and all required filings or disclosures to Governmental Authorities, stock exchanges or similar Persons.

Section 17.25 Relationship of Manager to Public Officials and Employees.

Section 17.25.1 Actions by County's Authorized Representative. In carrying out any of the provisions of this Agreement, or in exercising any power or authority granted to them by or within the scope of this Agreement, there shall be no liability upon the County's Authorized Representative or other authorized representatives of the County, it being understood that in all such matters they act solely as agents and representatives of the County.

Section 17.25.2 Anti-Kickback. Notwithstanding anything herein to the contrary, the County shall have the right to terminate an Approved Project or this Agreement, or both, if the Purchasing Agent determines that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Manager or any agent or representative of the Manager to any officer or employee of the County with a view toward securing this Agreement, an Approved Project or securing a favorable treatment with respect to the awarding or amending or the making of any determination with respect to the

performance of this Agreement. The facts upon which the Purchasing Agent makes such findings may be reviewed in any competent court.

Section 17.25.3 Termination. In the event an Approved Project or this Agreement, or both, is terminated as provided in Section 17.25.2 above, the County shall be entitled:

- (a) to all amounts which the County has paid on the terminated Approved Project or this Agreement, as applicable; and
- (b) to pursue the same remedies against the Manager as it could pursue in the event of a breach of this Agreement by the Manager, including damages to which it may be entitled by Applicable Law. The rights and remedies of the County provided in this Section 17.25 shall not be exclusive and are in addition to any other rights and remedies provided by Applicable Law or under this Agreement.

Section 17.25.4 Conflict of Interest. As a prerequisite for the payment pursuant to Section VII of this Agreement, there shall be furnished to the County a statement, under oath, set forth in Schedule 10, paragraph A, that no member of the elected governing body of Prince George's County, no current or former County employee that directly and materially participated in the selection of the Manager or the negotiations of this Agreement or Master Maintenance Agreement, nor members of his or her immediate family, including spouse, parents, or children, or any person representing or purporting to represent any member or members of the elected governing body, current or former employee, their agents and or assigns, has received or has been promised, directly or

indirectly, any financial benefit, by way of fee, commission, finders fee, political contribution, royalty or any other similar form of remuneration and/or on account of the acts of awarding, selecting, negotiating and/or executing this Agreement or an Approved Project, and that upon request by the County, as a prerequisite to payment pursuant to the terms of this Agreement, there will be furnished to the requester, under oath, answers to any interrogatories related to a possible conflict of interest as herein embodied. Any contract made or entered into where it is discovered that the violation of the intent of this provision exists shall be declared null and void and all monies received by the Manager shall be returned to the County. Manager shall further require that, as a condition to receiving payment under contracts between the Manager and its Prime Contractors, and between the Prime Contractors and its Subcontractors (at any level), such Prime Contractors and Subcontractors shall furnish the statement under oath set forth in Schedule 10, paragraph B. Whenever any person shall be convicted of falsely executing a statement under oath, as required above, such person shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine not exceeding one thousand dollars (\$1,000) or imprisonment not exceeding six (6) months, or both such fine and imprisonment.

Section 17.26 Interest on Payments. In accordance with the provisions of Section 10A-153 of the County Code, the County shall pay interest in the event that payment against proper invoices is not made as prescribed in accordance with that section.

Section 17.27 Survival; O&M Capital Project Period. Notwithstanding the other provisions herein relating to termination and expiration, the parties expressly agree that all terms and conditions of this Agreement shall remain in full force and effect until the

termination or expiration of the Master Maintenance Agreement solely for purposes of, and shall be applicable to, Capital Repair and Replacement Projects designated thereunder, which surviving terms shall include all those applicable to the planning, budgeting, development, construction and Acceptance of such Projects and the terms of payment therefor. The parties further acknowledge that certain definitions set forth in this Agreement shall be used under and throughout the term of the Master Maintenance Agreement. Any other term, condition, covenant or obligation which requires performance by a Party subsequent to termination or expiration of this Agreement shall remain enforceable against such Party subsequent to such termination or expiration.

Section 17.28 Costs and Expenses Incurred Prior to Contract Date. Each Party shall bear all of the costs and expenses incurred by it in connection with the negotiation, drafting and execution of this Agreement and the transactions herein contemplated.

Section 17.29 No Conflict of Interest; No Affiliate Transactions. Without receiving prior written authorization from the County, the Manager shall not (a) enter into any agreement that would conflict with the Manager's performance of its obligations under this Agreement or the other transactions contemplated hereby, or (b) enter into any transaction with any Affiliate of the Manager pertaining to any Work required by or as may be contemplated by this Agreement.

Section 17.30 Guarantor Audited Financial Statements. The Guarantor shall provide the County with its Audited Financial Statements within one hundred twenty (120) days following the last day of the Guarantor's fiscal year for each fiscal year throughout the Term.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned Parties, intending to be legally bound hereby, have duly executed this Agreement as of the date first written above.

ATTEST:

**PRINCE GEORGE'S COUNTY,
MARYLAND**

By:

By:

Name:

Name: Thomas Himler
Title: Deputy Chief Administrative Officer

ATTEST:

**CORVIAS PRINCE GEORGE'S
COUNTY STORMWATER
PARTNERS, LLC**

By:

By:

Name:

Name:

Title:

Reviewed for Legal Sufficiency

Reviewed and Approval Recommended:

Office of Law

Adam Ortiz
Director, Department of the Environment

Roland L. Jones
Director, Office of Central Services

Clean Water Partnership
Prince George's County, Maryland

Form of Annual Plan – FY 201X

[REDACTED IN ITS ENTIRETY]

Clean Water Partnership
Prince George's County, Maryland

Budget Book Template

[REDACTED IN ITS ENTIRETY]

SCHEDULE 3

CODES AND STANDARDS

Work shall be performed in accordance with the latest edition of the following:

- Maryland Department of the Environment (MDE) 2000 Maryland Stormwater Design Manual Vols. I & II
- Maryland Department of the Environment (MDE) Environmental Site Design (ESD) Process & Computations (July 2010)
- Maryland Department of the Environment (MDE) Accounting for Stormwater Wasteload Allocations and Impervious Acres Treated (August 2014)
- Maryland Department of the Environment (MDE) 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control
- Prince George's County SWM Design Manual
- Prince George's County Grading and Stormwater Management Ordinance, Subtitle 32 (inclusive Divisions 1 – 5)
- Prince George's County Roads & Sidewalks, Subtitle 23
- Prince George's County Department of Public Works and Transportation (DPW&T) Performance Standards (reference 12/12/13 version)
- Soil Conservation District (SCD) Sediment and Erosion Control Standards & Specifications
- Prince George's County Department of Public Works and Transportation (DPW&T) Roads Design Manual
- Maryland State Highway Administration (SHA) Standards and Specifications

Technical Requirements

Best Management Practices (BMPs) will be designed under the appropriate codes and standards with the goal of being credited for treatment of impervious area based on the volume treated in relation to the *Manual's* WQv, or one inch of rainfall. If BMPs are designed to a criterion less than the WQv, impervious area credits may be pro-rated based on the proportion of the volume treated. Should further research and innovation provide alternate methods the Manager will incorporate them into the new designs or retrofit old ones.

Stream Restoration BMP's must meet MDE Standards to obtain full water quality credit.

Guidance Reference: Recommendations of the Expert Panel to Define Removal Rates for Individual Stream Restoration Projects (January 17, 2014 version or subsequent approved versions)

Standard Directives

Work will be generally performed in accordance with the DPW&T Performance Standards referenced above. If required by DoE, the Manager shall:

- Obtain and provide DPIE Third Party (PEER Review) plan review and approval certification.
- Obtain and provide DPIE Third Party Inspection Program (TPIP) approval for Inspection services.
- Ensure all concrete and pavement repair work meets County minimum standards/specifications
- Ensure all earthwork compaction meets County minimum standards/specifications
- Ensure all grading, including temporary and permanent stabilization, and vegetative practices meets County minimum standards/specifications
- Ensure the manufacturing, handing and installation of BMP Hi-Flow "media" materials is in accordance with manufacturers specifications
- Ensure all MAC/ADA compliance

SCHEDULE 3

CODES AND STANDARDS

- Develop a Maintenance of Traffic (MOT) Operations Plan acceptable to the County

Manager shall coordinate with County Agencies and Utility companies, some of the most common Utilities are as follows:

- WSSC, BGE, PEPCO, Washington Gas, Cable, Fiber Optic, Phone, etc.
- Utility Agreement. Develop agreements with Utility Companies indicating Urban Retrofit work will be taking place within the Project area. Develop acceptable standards for installation clearances, repairs, maintenance, and restoration responsibilities.
- Develop protocols for notification and repair of existing damaged utilities encountered on site.

The Manager's restoration work will be in support of and compliance with County Local TMDL reduction goals as established by MDE.

Construction and Build

- Manager will coordinate community meetings to inform local residents, elected officials, community groups, and key stakeholders about the Project scope, duration, benefits, etc., and respond to and address property owner and community concerns. Manager shall also implement a general Project plan for installation of proposed BMP's at specified locations.
- Coordinate Miss Utility service, and/or use private utility locator contractor (business/job growth opportunity)
- Oversee and ensure work is performed in accordance with performance standards and schedule.
- Implement Maintenance of Traffic (MOT) Operations Plan
- Manager shall develop and maintain onsite an Emergency Procedure and Response Plan (EPRP) that includes, but is not limited to:
 - Utility emergencies
 - HAZMAT procedures
 - Facility damage/failure
 - 24/7 response team
 - Inclement weather

Water Quality Restoration Project Checklist

- Manager shall develop a Water Quality Restoration Project Checklist acceptable to the County. Sample included at end of this Schedule.

Inspection

- If required by DoE, Manager must obtain and provide DPIE Third Party Inspection Program (TPIP) approval for Inspection services.

SCHEDULE 3

CODES AND STANDARDS

Form of Acceptance Report

Manager shall develop a Form of Acceptance Report acceptable to the County that includes, but is not limited to:

- Certified As-Builts from Manager's Engineer, P.E.
- Certification Statement (Water Quality, Impervious Area Credit and TMDL load reductions) from Manager's Engineer, P.E. (Schedule 12)
- Acceptance Report from Completion Certifier

Impervious Acreage Restoration Plan Development

Manager shall develop a restoration plan that identifies opportunities for water quality improvement, through construction of BMPs, outreach programs, services, and operations which will support the County's impervious acreage treatment goals. Each local municipality has been issued an MS4 phase II permit, and subject to similar numerical accounting and reporting as the County's MS4 permit. Therefore, the Manager will track and report progress of Projects, services operations and BMP construction for these municipalities separately and be reported to the County accordingly.

Impervious Acreage Restoration Tracking and Reporting

Track and report the restoration of up to 2,000 acres of the County's untreated impervious surface area in support of the 20% of untreated impervious acreage goal of the MS4 permit."

Reporting Requirement / Database: Track and report accepted restoration projects completed (structural and non-structural BMPs) in accordance with *D. Water Quality Improvement Project Locations Associated with GIS Coverage* (Attachment A. MS4 Permit)

TMDL Compliance Monitoring and Program Evaluation

Evaluate and document progress toward meeting all applicable stormwater WLAs included in EPA approved TMDLs.

Reporting Requirement / Database: Submit water quality modeling (GIS) and pollutant reduction benchmarking reports annually to demonstrate progress toward meeting all applicable WLAs and impervious acreage restoration goals.

SCHEDULE 3

CODES AND STANDARDS

SAMPLE - CWP Water Quality Restoration Project Checklist		
Project:	Contractor:	
Start Date:	Completion Date:	
Inspector:	Engineer, P.E.:	
<i>Construction Sequence</i>	<i>Satisfactory</i>	<i>Comments</i>
1. Pre-Construction		
Photo/video record Project work area		
Insure utilities have been marked		
Stake out/test pits made prior to disturbance		
Clearing and grubbing in accordance		
Are sediment controls installed properly per SCD plan		
Materials are stored properly		
2. During Construction		
Material info submitted (i.e. Hi-Flow media, storage system, underdrain, pervious concrete, pavers, stone, seed mix, filter fabric)		
Laboratory results supporting media performance, mixture specification, and batch certification prior to installation. Manager shall be required to certify that all Hi-Flow soil/media materials meet 100"/hr. or better infiltration rate. Batch plant tickets from manufacturer/supplier will be provided for each load used in Project.		
Manager and/or Manufacturer shall submit a letter of certification that the complete system meets or exceeds all technical and packaging requirements. Biofiltration media packaging must bear a batch number marking from the manufacturer which matches a letter from the manufacturer certifying performance testing of the batch to meet or exceed the required infiltration rate to achieve the required water quality controls		
The Manager shall develop a methodology / protocol to spot check high flow rates periodically through the life of the practices.		
Manager's Engineer (PE As-Built Plan and Certification). All sites/each facility, Inspection and certifying work; As-Built condition of each facility.		

SCHEDULE 3

CODES AND STANDARDS

SAMPLE - CWP Water Quality Restoration Project Checklist		
Examine prepared excavation for smoothness, compaction and level. Check for presence of high water table, which must be kept at levels below the bottom of the under drain structure at all times. If the base is pumping or appears excessively soft, a geotechnical engineer should be consulted for advice.		
Plants, topsoil, seed, mulch, fertilizer-complies with specs		
Is top soil stripped and stockpiled for future stabilization		
Is stockpiled topsoil utilized/maintained according to specs		
Is excavated material suitable/subgrade stable		
Reject gravel contaminated by vegetation or surface soils		
Prevent sorting of gravel, due to improper handling.		
Pipe used is certified, required for Project & not damaged		
Pipe perforations are correct size, location and cleanly cut		
Proper couplings are furnished		
Trench excavations are according to plans/details		
Monitor and resolve conflicts with underground utilities not shown on plans		
Materials are stored properly and re-inspect daily		
Insure sediment control is intact and re-inspect daily		
Pretreatment devices installed per plans		
Excavated materials are placed 2' from excavation		
Monitor contractor set up for checking grade of pipe		
Ensure backfill is placed in 8"-10" lifts and compacted per specifications to allow for infiltration rates		
Underdrain installed to grade/per plans		
Outlets installed per plans		
Topsoil evenly spread & fine graded disturbed area		
Adequate bed preparation/soil amendments are provided		
Fine grading approved by inspector prior to stabilization		

SCHEDULE 3

CODES AND STANDARDS

SAMPLE - CWP Water Quality Restoration Project Checklist		
3. Final Inspection		
Soil properly stabilized for permanent erosion control		
Dimensions per plans		
Pretreatment operational		
Inlet/Outlet operational		
Soil/filter bed permeability verified		
Construction generated sediment removed		
Contributing watershed stabilized flow is diverted to bio		
Ensure quality and depth of mulch is as required		
Surface debris and stones/rocks picked up		
Ensure positive drainage/smooth grading transitions		
Check contractors restoration of roads, sidewalks, driveways, fences, trees, etc. on site and on haul routes		
As-Builts and Certifications. Manager's Engineer (Licensed Professional Engineer (PE) provides As-Built Plan and Certification for all sites/each facility, includes construction Inspection, materials and installation.		
Manager's Engineer P.E. shall perform a final inspection of each Project ensuring Project was built in accordance with plans, specifications, and standards to include materials conformance.		
Manager's Engineer, P.E., provides certification statement; certifying all Project facilities/BMP's meet the minimum Project standards, technical criteria, calculations and computations, and meet or exceed minimum technical standards described in 3.c. and d., and MDE Design Manual		
As-Builts and certifications are subject to County final review, approval and acceptance.		
Certification on Impervious Area Credit and pollutant load reductions. Manager's Engineer, P.E. shall submit a certification statement on impervious area treatment credit in accordance with MDE Accounting for Stormwater Wasteload Allocations and Impervious Acres Treated for each Project installed. Calculated Impervious Area treatment and pollutant load reduction for each BMP installed based on As-built BMP information (As-Built WQ worksheet)		

SCHEDULE 3

CODES AND STANDARDS

SCHEDULE 5

LIST OF GENERAL BMP AND TECHNICAL REQUIREMENTS

The Manager may use conventional Best Management Practices (BMPs) and modify as necessary to accommodate unique site constraints often encountered in urbanized settings. General BMP design guidance can be found in the list of references below. Furthermore, the Manager is encouraged to develop new innovative BMP technologies to increase treatment efficiencies, reduce costs and increase value. Use of new BMPs must be discussed with and agreed to by the County prior to their use. In such case, the Manager will submit to the County for review a technology report outlining proposed specification, design standards, pollutant reductions and other efficiencies.

General BMP design guidance and specifications by reference:

Latest edition of the following:

- Maryland Department of the Environment (MDE) 2000 Maryland Stormwater Design Manual Vols. I & II
- Maryland Department of the Environment (MDE) National Pollutant Discharge Elimination System (NPDES) Guidance Document, June 2011
- Maryland Department of the Environment (MDE) Environmental Site Design (ESD) Process & Computations (July 2010)
- Maryland Department of the Environment (MDE) Accounting for Stormwater Wasteload Allocations and Impervious Acres Treated (August 2014)
- Maryland Department of the Environment (MDE) 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control
- Prince George's County SWM Design Manual
- Prince George's County Grading and Stormwater Management Ordinance, Subtitle 32 (inclusive Divisions 1 – 5)
- Prince George's County Roads & Sidewalks, Subtitle 23
- Prince George's County Department of Public Works and Transportation (DPW&T) Performance Standards (reference 12/12/13 version)
- Soil Conservation District (SCD) Sediment and Erosion Control Standards & Specifications
- Prince George's County Department of Public Works and Transportation (DPW&T) Roads Design Manual
- Maryland State Highway Administration (SHA) Standards and Specifications

Customized (New Innovative) BMP's

The County encourages the use of new and innovative approaches and practices for urban retrofit by the Manager to achieve lower costs, higher efficiencies, multiple benefits and greater value. Innovative practices can be used provided a technical report is submitted that supports the proposed use. In order to ensure that innovative practices will achieve watershed restoration goals and comply with stormwater requirements for both MS4 Permit and WIP-II mandates, the County's acceptance of each Customized BMP and practice will be subject to the provisions of Article IV of the Agreement and the following guidelines and requirements:

- Reference is made to MDE Accounting for MDE Accounting for Stormwater Wasteload Allocations and Impervious Acres treated (Draft August 2014)
- Each Customized BMP shall be submitted in accordance with MDE Accounting for MDE Accounting for Stormwater Wasteload Allocations and Impervious Acres treated (Draft August 2014) to MDE for performance evaluation, and credit approval.

SCHEDULE 5

LIST OF GENERAL BMP AND TECHNICAL REQUIREMENTS

- The proposed Customized BMP should, where applicable, provide independently verified assessment data to evaluate the effectiveness of the practice, and its removal efficiencies.
- The County may ask, when applicable, for recommendations for monitoring protocols to verify performance. Generally monitoring protocols will only be required for highly innovative Customized BMPs where no existing data exists or there are no functionally equivalent technologies.
- The Manager and/or BMP manufacturer will, when requested by the County, submit monitoring data to MDE for evaluation and approval of the appropriate credit toward meeting pollutant reduction targets under established TMDL's.
- The Manager on behalf of the County will submit the Customized BMPs to MDE for review and approval.

With the goal to improve water quality and reduce TMDL loads the Manager is encouraged to use innovation in the following areas but, not limited to:

- Retention, infiltration, filtration and reuse of runoff within all aspects of the urban infrastructure (streets, sidewalks, green space, buildings, etc.)
- Use of low maintenance practices
- Development of construction and maintenance equipment
- Runoff / pollution prevention techniques
- Hi-Flow Media Standards and Specifications
- Hi-Flow inlet
- Hi-Flow curb strip infiltration
- Hi-Flow Tree Box/inlet
- Hi-Flow swale
- Hi-Performance (nutrient reduction) outfall

SCHEDULE 6

SOCIO-ECONOMIC PARTICIPATION REQUIREMENTS AND GOALS

Supplier/Subcontractor Target Class Participation Goals

The effectiveness of the Manager's overall performance and ability to earn the Target Class Incentive will be evaluated in part by how successfully the Manager achieves the following annual participation goals of Minority Business Enterprise, County-Based Small Business Enterprise, County Based Minority Business Enterprise, County-Based Business Enterprise, County-Located Business Enterprise, and Local-Based Small Business as defined in the Agreement (i.e., the "Target Class").

- Initial Program Area - 1st 2000 acres

Year 1 – The Target Class participation in the Program is at least 30% (of which at least 50% must be Local-Based Small Business)

Year 2 – The Target Class participation in the Program is at least 35% (of which at least 50% must be Local-Based Small Business)

Year 3 – The Target Class participation in the program is at least 40% (of which at least 50% must be Local-Based Small Business)

- Expanded Program Area - 2nd 2000 acres

The Target Class participation in the Program is at least 50% (of which at least 50% must be Local-Based Small Business)

Man-Hours - County Resident Participation Incentive

The effectiveness of the Manager's overall performance and ability to earn the County Resident Participation Incentive will be evaluated on the basis of how successfully the Manager achieves the following annual man-hours/job participation requirements by County residents, as determined as of each June 30 and December 31 for all Approved Projects that have been Accepted by the County during the preceding six (6) Billing Months. Man-hours are defined as the total man-hours of employment the Program will produce and the required percentage refers to the minimum requirement man/hours that must be filled by County residents.

- Initial Program Area - 1st 2000 acres

SCHEDULE 6

County Resident Man-Hour/Job Participation Year 1 of the Initial Term – At least 15%
County Resident Man-Hour/Job Participation Year 2 of the Initial Term – At least 30%
County Resident Man-Hour/Job Participation Year 3 of the Initial Term – At least 51%

- Expanded Program Area - 2nd 2000 acres

County Resident Man-Hour/Job Participation – At least 51%

Mentor Development Program

The effectiveness of the Manager's overall socio-economic participation performance (as further described at Schedule 19) will be evaluated in part by how successfully the Manager implements a mentoring program for local businesses already in the County interested in participating in the Program. The Manager's metric for success of this requirement also includes developing a mentor-protégé relationship with at least two (2) new companies in the County each Billing Year.

SCHEDULE 7

INCENTIVE FEES AND CRITERIA

The Manager is entitled to earn Incentive Fees in addition to Base Fees which shall be determined, calculated, invoiced, and disbursed as outlined in Section 7.4.1, Section 7.4.2., Section 8.1.1, Schedule 6 and Schedule 19 of the Agreement.

The Manager's overall performance and determination of earned Incentive Fees will be made pursuant to the provisions of the Agreement by a four-member panel selected by the County's Purchasing Agent. The Manager's performance evaluation of earned Incentive Fees pursuant to the Agreement and the earned Incentive O&M Fees pursuant to the Master Maintenance Agreement shall be conducted separately and independent of the other.

The Manager shall be evaluated and measured against the following factors when determining Incentive Fees:

- 1- TARGET CLASS INCENTIVE - Meeting the specified Target Class participation goals (as defined in Schedule 6) assessed semi-annually in accordance with Section 8.1.1 of the Agreement.
- 2- LOCAL-BASED SMALL BUSINESS INCENTIVE - Meeting the specified Local-Based Small Business participation goals (as defined in Schedule 6) assessed semi-annually in accordance with Section 8.1.1 of the Agreement.
- 3- COUNTY RESIDENT PARTICIPATION INCENTIVE - Meeting the specified County resident man hours/job participation requirements (as defined in Schedule 6) assessed semi-annually in accordance with Section 8.1.1 of the Agreement.
- 4- EARLY COMPLETION INCENTIVE - Meeting the specified dates, schedules, and timelines outlined in each Budget Book assessed upon completion and Acceptance of the relevant Approved Project pursuant to the relevant provisions of the Agreement.
- 5- BUDGETED COST INCENTIVE - Completing each Project within the budgeted cost as specified in each Budget Book assessed upon completion and Acceptance of the relevant Approved Project pursuant to the relevant provisions of the Agreement.

[REDACTED]

SCHEDULE 8

APPLICATION FOR PAYMENTS

An Application for Payment shall contain all of the following:

- 1) Application for Payment Checklist
- 2) CWP Invoice
- 3) Vendor's Oath and Certificate
- 4) Program Cost Details
- 5) Project Design Cost Details
- 6) Project Construction Cost Details
- 7) Retainage Account Details
- 8) Prince George's County Jobs Monthly Report

Samples of each are attached.

SCHEDULE 8

APPLICATION FOR PAYMENT CHECKLIST

- CWP Invoice# _____ and Invoice Date: _____
- Vendor's Oath and Certificate
- Program Cost Details
- Project Design Cost Details
- Project Construction Cost Details
- Retainage Account Details
- Prince George's County Jobs Monthly Report

Checklist to be submitted with each Application for Payment.

SCHEDULE 8

CWP INVOICE

BILL TO:

Prince George's County Government
 Department of the Environment
 Stormwater Management Division
 Clean Water Partnership
 1801 McCormick Drive, Suite 500
 Largo, MD 20774

REMIT TO:

Corvias Prince George's County Stormwater Partners, LLC
 16701 Melford Boulevard, Suite 400
 Bowie, MD 20715

EIN: 61-1738563 TIN: 46-2911834 Vendor No.: 1000002029

INVOICE NUMBER	
INVOICE DATE	
INVOICE AMOUNT	

ITEM#	DESCRIPTION	AMOUNT
1	Program Costs	
2	Project Design Costs	
3	Project Construction Costs	
	a) Retainage Withheld	
	b) Retainage Released	
INVOICE AMOUNT		

SCHEDULE 8

VENDORS OATH AND CERTIFICATION

Pursuant to Subtitle 10, Section 10A-110 of the Prince George's County Code, the Purchasing Agent requests as a matter of law that any contractor receiving a contract or award from Prince George's County, Maryland, shall affirm under oath as below. Receipt of such certification, under oath, shall be a prerequisite to the award of contract and payment thereof.

"I (We) hereby declare and affirm under oath and the penalty of making a false statement that if the contract is awarded to our firm, partnership or corporation that no officer or employee of the County whether elected or appointed, is in any manner whatsoever interested in, or will receive or has been promised any benefit from, the profits or emoluments of this contract, unless such interest, ownership or benefit has been specifically authorized by resolution of the Board of Ethics pursuant to Section 1002 of the Charter of Prince George's County, Maryland; and

I (We) hereby declare and affirm under oath and the penalty of making a false statement that if the contract is awarded to our firm, partnership or corporation that no member of the elected governing body of Prince George's County, Maryland, or members of his or her immediate family, including spouse, parents or children, or any person representing or purporting to represent any member or members of the elected governing body has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution, or any other similar form of remuneration and/or on account of the acts of awarding and/or executing this contract, unless such officer or employee has been exempted by Section 1002 of the Charter of Prince George's County, Maryland.

Handwritten Signature of Authorized Principal(s):

Name: _____ Title: _____

SCHEDULE 8

PAGE 5 [REDACTED IN ITS ENTIRETY]

SCHEDULE 8

PAGE 6 [REDACTED IN ITS ENTIRETY]

SCHEDULE 8

PAGE 7 [REDACTED IN ITS ENTIRETY]

SCHEDULE 8

RETAINAGE ACCOUNT DETAILS

Invoice # _____

Date: _____

§8.4 Retainage Withheld this Invoice

ITEM#	SUBCONTRACTOR	INVOICE#	DATE	INVOICE AMOUNT	RETAINAGE WITHHELD
1					\$0.00
2					\$0.00
3					\$0.00
4					\$0.00
5					\$0.00
Retainage Withheld (Line 3a of CWP Invoice)					\$-

§8.4 Retainage Released this Invoice

ITEM#	SUBCONTRACTOR	RETAINAGE RELEASE
1		\$0.00
2		\$0.00
3		\$0.00
4		\$0.00
5		\$0.00
Retainage Released (Line 3b of CWP Invoice)		\$-

§8.4 Current Retainage

ITEM#	SUBCONTRACTOR	RETAINAGE TO DATE
1		
2		
3		
4		
5		
Total Current Retainage		

SCHEDULE 8

PRINCE GEORGE'S COUNTY JOBS MONTHLY REPORT

Invoice # _____

Date: _____

CONTRACTING SUMMARY TYPE	THIS MONTH		FISCAL YEAR TO DATE	
	%	DOLLAR VALUE	%	DOLLAR VALUE
County-Based Business Enterprise ("CBE")				
County-Based Small Business Enterprise ("CBSBE")				
County-Based Minority Business Enterprise ("CMBE")				
Minority Business Enterprise ("MBE")				
Local-Based Small Business ("LBSB")				
County-Based Small Business Enterprise, Minority-Owned, Woman-Owned, and Veterans or Service disabled Veterans-Owned Business Enterprise ("LSMWVBE")				

HIRING SUMMARY

TYPE	THIS MONTH	FISCAL YEAR TO DATE
Number of County Residents Employed		
New County Resident Hires		
Total Hours Worked by County Residents		
MBE – Minority Business Enterprise		
HIRING TOTALS		

SCHEDULE 9-A

FORM OF AFFIDAVIT AND RELEASE

(MONTHLY PAYMENT)

TO (COUNTY):

Prince George's County Government
Department of the Environment
Stormwater Management Division
Clean Water Partnership
1801 McCormick Drive, Suite 500
Largo, MD 20774

FROM (MANAGER):

Corvias Prince George's County Stormwater
Partners, LLC
16701 Melford Boulevard, Suite 400
Bowie, MD 20715

PROJECT NAME/BUDGET BOOK:¹ _____ (hereinafter the "Project")

ADDRESS: _____

BILLING PERIOD: From: _____, 20__ to _____, 20__ (hereinafter the "Partial Completion Date")

PAYMENT REQUEST AMOUNT: _____

1. The Manager (hereinafter "the Undersigned"), hereby certifies and warrants as follows:
 - a. The Payment Request Amount set forth above represents the actual value of all work performed for the Billing Period listed above, for which payment is due under the Master Program Agreement ("MPA")(and all authorized changes thereto) between the Undersigned and the County, including: (i) all labor furnished for the Project, (ii) all materials and equipment delivered to the site(s) and incorporated or to be incorporated in the Project; (iii) all material and equipment for the Project stored off-site to the extent payment therefore is permitted by the MPA, (iv) all other services performed for the Project, and (v) all equipment used or provided for use, in or for the Project. Item (i) through (v) above are hereafter referred to as "work performed for the Project."
 - b. Subject to receipt of payment for the Payment Request Amount set forth above, the Undersigned certifies it has received payment in full, less retainage, for all work performed for the Project through the Partial Completion Date set forth above and, except for retainage, the Undersigned has no claims, on its own behalf or on behalf of others, against the County, based upon or relating to work performed for the Project through the Partial Completion Date, except for outstanding written request for change orders relating to work performed previously submitted by Manager to County in writing in conformity with the terms of the MPA, or as otherwise indicated below.
 - c. The Undersigned has not assigned any claim, lien or any right to file a lien against the County.
 - d. The Undersigned has paid in full all laborers, materialmen, sub-contractors and others for all work performed for the Project through and including the last application for payment for which County has paid the Manager.
2. Subject to the receipt of payment for the Payment Request Amount set forth above, the Undersigned does hereby forever quitclaim, release, relinquish and waive any and all rights and claims (except as stated herein against the County), liens and damages, arising in any manner against the Manager arising now or in the future, relating to or arising from the Project from its inception through the Partial Completion Date.

¹ Submit for each Project.

3. Subject to the receipt of payment for the Payment Request Amount set forth above, the Undersigned hereby agrees and commits to indemnify, save and hold harmless the County from any judgments, claims, cost, damages and expenses including reasonable attorney fees incurred by the County in any action to discharge liens placed or that may subsequently be placed against the County with respect to any work performed by the Undersigned or any of its subcontractors, for the Project through the Partial Completion Date. Upon demand, the Undersigned shall defend such causes of actions, claims, or liens and shall bond off any liens, at its sole expense

EXCEPTIONS:²

Corvias Prince George's County Stormwater Partners, LLC

By: _____

Name and Title: _____

Date: _____

State of _____:

County of _____:

Before me, a Notary Public, did personally appear _____ on this _____ day of _____, 20____, and did acknowledge the foregoing Affidavit and Release as his/her act done of free will under due authority.

My commission expires: _____, Notary Public

² If none, write "NONE." If required, the Manager shall furnish satisfactory bond for each exception.

SCHEDULE 9-B

FORM OF AFFIDAVIT AND RELEASE

(FINAL PAYMENT)

TO (COUNTY):

Prince George's County Government
Department of the Environment
Stormwater Management Division
Clean Water Partnership
1801 McCormick Drive, Suite 500
Largo, MD 20774

FROM (MANAGER):

Corvias Prince George's County Stormwater
Partners, LLC
16701 Melford Boulevard, Suite 400
Bowie, MD 20715

PROJECT NAME/BUDGET BOOK:³

_____ (hereinafter the "Project")

ADDRESS:

BILLING PERIOD:

Inception to _____, 20____ (hereinafter the "Final Completion Date")

FINAL PAYMENT REQUEST AMOUNT:

4. The Manager (hereinafter "the Undersigned"), hereby certifies and warrants as follows:

- e. The Undersigned has completed all of its work on the Project, and has achieved Final Completion of the Project.
- f. The Final Payment Request Amount set forth above represents the actual value of all work performed for the Final Completion and for which final payment is due under the Master Program Agreement ("MPA")(and all authorized changes thereto) between the Undersigned and the County, relating to the Project including: (i) all labor expended or furnished for the Project, (ii) all materials and equipment incorporated or to be incorporated in the Project; (iii) all materials and equipment for the Project stored off-site to the extent payment therefore is permitted by the MPA, (iv) all services furnished and performed for the Project, and (v) all equipment used or provided for use, in or for the Project. Item (i) through (v) above are hereafter referred to as "work performed for the Project."
- g. Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned certifies it has received payment in full, including all retainage, for all work performed for the Project through the Final Completion Date of the Project; and the Undersigned certifies that no further payments are or will be due to it on this Project. The Undersigned further certifies that it has no claims, on its own behalf or on behalf of others, against the County, based upon or relating to work performed for the Project, or otherwise relating to or arising from the Project, whether for labor, materials, equipment or otherwise relating to the Project.
- h. The Undersigned has not assigned any claim, lien or any right to file a lien against the County.
- i. The Undersigned has paid in full all laborers, materialmen, sub-contractors and others with respect to all work performed for the Project through the Final Completion Date.

5. Subject to the receipt of the Final Payment Amount set forth above, the Undersigned does hereby forever quitclaim, release, relinquish and waive any and all rights and claims (except as stated herein against the County), liens and damages, arising in any manner against the Manager arising now or in the future, relating to or arising from the Project from its inception through the Final Completion Date.

³ Submit for each Project.

6. Subject to the receipt of payment for the Final Payment Request Amount set forth above, the Undersigned hereby agrees and commits to indemnify, save and hold harmless the County from any judgments, claims, cost, damages and expenses including reasonable attorney fees incurred by the County in any action to discharge liens placed or that may subsequently be placed against the County with respect to any work performed by the Undersigned or any of its subcontractors, for the Project through the Partial Completion Date. Upon demand, the Undersigned shall defend such causes of actions, claims, or liens and shall bond off any liens, at its sole expense.

EXCEPTIONS:⁴

Corvias Prince George's County Stormwater Partners, LLC

By: _____

Name and Title: _____

Date: _____

State of _____:
County of _____:

Before me, a Notary Public, did personally appear _____ on this _____ day of _____, 20____, and did acknowledge the foregoing Affidavit and Release for Final Payment as his/her act done of free will under due authority.

My commission expires: _____, Notary Public

⁴ If none, write "NONE." If required, the Manager shall furnish satisfactory bond for each exception.

SCHEDULE 10

VENDORS' OATH AND CERTIFICATION

A. WITH RESPECT TO THE MANAGER

Pursuant to Section 17.25.4 Conflict of Interest of the Master Program Agreement and Subtitle 10, Section 10A-110, of the Prince George's County Code, the Purchasing Agent requests, as a matter of law, that any contractor receiving a contract or award from Prince George's County, Maryland, shall affirm under oath as below. Receipt of such certification, under oath, shall be a prerequisite to the award of the contract and any payments thereof.

I (We) hereby declare and affirm under oath and the penalty of making a false statement that with respect to the contracts awarded to the Manager, no member of the elected governing body of Prince George's County, Maryland, no current or former County employee that directly and materially participated in the selection of the Manager or the negotiations of this Agreement or the Master Maintenance Agreement, nor members of his or her immediate family, including spouse, parents or children, or any person representing or purporting to represent any member or members of the elected governing body, current or former employee, their agents and or assigns, has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution, royalty or any other similar form of remuneration and/or on account of the acts of awarding, selecting, negotiating and/or executing this contract, or otherwise, unless such officer employee or former employee has been specifically exempted by the County Administration pursuant to Section 1002 of the Charter of Prince George's County, Maryland.

SCHEDULE 10

OATH AND AFFIRMATION

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF MAKING A FALSE STATEMENT AND BASED ON MY OWN PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING STATEMENTS AND CERTIFICATION ARE TRUE AND ACCURATE.

Handwritten Signature of Authorized Principal(s):

**CORVIAS PRINCE GEORGE'S COUNTY
STORMWATER PARTNERS, LLC**

By: _____

Name: _____

Title: _____

SCHEDULE 10

B. WITH RESPECT TO CONTRACTORS AND SUBCONTRACTORS

Pursuant to Section 17.25.4 Conflict of Interest of the Master Program Agreement and Subtitle 10, Section 10A-110, of the Prince George's County Code, the Purchasing Agent requests, as a matter of law, that any contractor receiving a contract or award from Prince George's County, Maryland, shall affirm under oath as below. Receipt of such certification, under oath, shall be a prerequisite to the award of the contract and any payments thereof.

I (We) hereby declare and affirm under oath and the penalty of making a false statement that with respect to the contract awarded by the Manager or a contractor to the undersigned contractor, no member of the elected governing body of Prince George's County, Maryland, no current or former County employee that directly and materially participated in the selection of the undersigned contractor, nor members of his or her immediate family, including spouse, parents or children, or any person representing or purporting to represent any member or members of the elected governing body, current or former employee, their agents and or assigns, has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution, royalty or any other similar form of remuneration and/or on account of the acts of awarding, selecting, negotiating and/or executing this contract, or otherwise, unless such officer employee or former employee has been specifically exempted by the County Administration pursuant to Section 1002 of the Charter of Prince George's County, Maryland.

SCHEDULE 10

OATH AND AFFIRMATION

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF MAKING A FALSE STATEMENT AND BASED ON MY OWN PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING STATEMENTS AND CERTIFICATION ARE TRUE AND ACCURATE.

Handwritten Signature of Authorized Principal(s):

[CONTRACTOR]

By: _____

Name: _____

Title: _____

**SCHEDULE 12
FORM OF IMPERVIOUS AREA CREDIT CERTIFICATE**

An IMPERVIOUS SURFACE TREATMENT CERTIFICATION shall be developed with the assistance of the Maryland Department of the Environment in order to provide sufficient information for MDE to calculate treatment credits. An example certification is attached.



**PRINCE GEORGE'S COUNTY
DEPARTMENT OF THE ENVIRONMENT
IMPERVIOUS SURFACE TREATMENT CERTIFICATION**



Project ID No.:		Field Certified By:						
Project Name:		Certification Date:						
Address:				Tax Parcel Acct # (if applicable):				
Lat. (NAD 83 m):		Long.:		DPIE Permit #: (Structural BMPs Only):				
Watershed (MDE 8):		Watershed (MDE 12):		TMDL Catchment:				
State Permit(s)		Description (if applicable: DNR, SHA, MDE, etc.)				Permit #		
Federal Permit (s)		Description (if applicable: Corps, EPA, FEMA, etc.)				Permit #		
BMP ID#	BMP Type	Drainage Area to BMP (A)	Impervious Cover Treated (controlled) (I)		Placement (If Private, Easements and Maintenance Agreement are attached)			
		Acres	%	Acres	Private	Public	Description	
Predominant Land Use (MDP LULC Code):		LD Res <input type="checkbox"/> 11	MD Res <input type="checkbox"/> 12	HD Res <input type="checkbox"/> 13	Comm. <input type="checkbox"/> 14	Ind. <input type="checkbox"/> 15	Institutional <input type="checkbox"/> 16	Large Lot Sub. <input type="checkbox"/> 191 <input type="checkbox"/> 192
Composite Runoff Curve Number (RCN):								
Construction Type:	New Development	Y <input type="checkbox"/>	N <input type="checkbox"/>	Sub-Surface Condition	Underdrain		Infiltration Rate (inches/hr.)	
	Redevelopment	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Y <input type="checkbox"/> N			
	Restoration	<input type="checkbox"/>	<input type="checkbox"/>	Soil Type Under BMP (NRCS HSG):				
BMP Vol. Dimensions:		Footprint Area (sq.ft)		Depth (ft)	Observed Ground Water Depth (ft)			
BMP Treatment Storage in acre-feet (BMP _{Vol} / 43,560 ft ²) account only void space:								
WATER QUALITY VOLUME CALCULATION								
WQ _v Calculation:	P _E (Rainfall Target inches)			R _v (Runoff Coeff.) = 0.05 + 0.009 (I)	ESD _v = Runoff Volume (Acre-Feet) = (P _E) x (R _v) x (A)/12			
	1 inch	2.7 inch	Other					
CHANNEL PROTECTION VOLUME CALCULATION								
CP _v Calculation: CPV = Q ₁ x A, Where: Q ₁ = runoff from 1- year, 24 hr. storm								
P (1 yr., 24 hr. storm) in inches:								
S (1,000/RCN) - 10):								
Q ₁ (P-0.2(S)) ² / (P+0.8(S)):								
CP _v (acre-feet):								
POLLUTANT LOAD (lbs/acre/year) Use County Provided Calculator								
	Urban Impervious	Reduction Achieved	Urban Pervious	Reduction Achieved				
Total Nitrogen	15.3		10.80					
Total Phosphorus	1.69		0.43					
Total Suspended Solids	880.0		140.0					
MDE Impervious Area Credit (acres):								

I hereby certify to the best of my knowledge that the stormwater management facility (BMP) as referenced in the permit number shown above, has been constructed in accordance with the plans and specifications approved by Prince George's County, and provides the impervious area treatment stated in this certification.

Company Name: _____

Date: _____

Print Name: _____

Signature: _____

SCHEDULE 13

GUARANTY

THIS GUARANTY made as of _____, 2015 (the “**Effective Date**”), **CORVIAS GROUP, LLC**, a Delaware limited liability company (“**Guarantor**”), having its principal place of business at 1405 S. County Trail, Suite 530, East Greenwich, Rhode Island 02806, to and for the benefit of **PRINCE GEORGE’S COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the “**County**”). Guarantor and the County are referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, the County intends to contract with Corvias Prince George’s County Stormwater Partners, LLC, a Maryland limited liability company (the “**Manager**”), an Affiliate of the Guarantor, for (a) the financing, planning, design, development, construction, installation and Acceptance of stormwater infrastructure projects, and (b) the planning, development, performance and maintenance of various social and economic development programs within the County, pursuant to that certain Master Program Agreement, dated as of even date herewith, between the County and the Manager (as further amended, supplemented or otherwise modified from time to time, the “**Master Program Agreement**”);

WHEREAS, the County is willing to enter into the Master Program Agreement only upon the condition that Guarantor execute this agreement;

WHEREAS, the Guarantor has agreed to guarantee certain of the Manager’s covenants, agreements and obligations under the Master Program Agreement and any amendment(s) thereto; and

WHEREAS, because of the Guarantor’s relationship with the Manager, the Guarantor will benefit from the transactions contemplated by the Master Program Agreement.

NOW, THEREFORE, in consideration of the foregoing and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Guarantor for the purpose of inducing the County to enter into the Master Program Agreement, the Guarantor hereby makes the following guarantees to and agreements with the County:

Section 1. Definitions. Capitalized terms not otherwise defined herein shall have the meanings assigned them in the Master Program Agreement.

Section 2. Guaranty. Guarantor absolutely, irrevocably and unconditionally guarantees to the County the due and punctual performance, observance and payment of all of the following obligations of the Manager under the Master Program Agreement (the “**Guaranteed Obligations**”):

- (a) All Losses of the County Indemnified Parties resulting from:
 - (i) the negligence, recklessness, or willful misconduct (including any

act or fraud) of the Manager, its Affiliates and their respective employees with respect to performance under the Master Program Agreement as set forth in Section 15.1 of the Master Program Agreement, subject to all limitations set forth therein; and

(ii) the acts or omissions of the Subcontractors (including, without limitation, the General Contractor and the Design Engineers) and their respective employees, agents, subcontractors and suppliers, but only if and to the extent such Losses are incurred as a consequence of the Manager's failure to ensure that: (A) each Subcontractor (including the General Contractor and Design Engineers) obtains and maintains the insurance required of Subcontractors pursuant to Section 15.2 of the Master Program Agreement; or (B) each contract with Subcontractors (including the General Contractor and Design Engineers) provides that: (I) the County Indemnified Parties are indemnified by the Subcontractor as named indemnitees with the same scope of indemnity provided in Section 15.1 of the Master Program Agreement and (II) the County is an intended third party beneficiary with direct rights of enforcement against such Subcontractor without restriction.

For the avoidance of doubt, except to the extent expressly provided in Section 2(a)(ii) above, the Guaranteed Obligations under Section 2(a)(i) do not extend to Losses incurred by the County Indemnified Parties as a result of the acts or omissions of the Subcontractors and their respective employees, agents, subcontractors and suppliers.

(b) The timely completion of and payment for the Work for each Approved Project as set forth in the applicable Final Budget Book at the Maximum Project Price specified in such Final Budget Book, in accordance with all terms and conditions of the Master Program Agreement, as such Maximum Project Price may be adjusted pursuant to the Master Program Agreement.

(c) Payment or reimbursement of all amounts due to the County with respect to (i) the Advance Payment and liquidated damages, as described in Section 7.5 of the Master Program Agreement, (ii) a Manager Termination for Convenience pursuant to Section 14.4.2 of the Master Program Agreement, (iii) termination of an Approved Project in accordance with Section 9.6.1 of the Master Program Agreement, and (iv) any other monetary obligations of the Manager to the County under the Master Program Agreement (other than the Manager's indemnity obligations with respect to Subcontractors and their agents and employees under Section 15.1).

(d) Breach of warranties of the Manager pursuant to Sections 5.6.1 and 11.1 of the Master Program Agreement.

For the avoidance of doubt, the Guaranteed Obligations hereunder do not include Capital Repair and Replacement Projects.

Section 3. Obligations Not Waived. To the fullest extent permitted by Applicable Law, Guarantor waives all notices whatsoever with respect to this Guaranty and the Master Program Agreement or with respect to the Guaranteed Obligations, including presentment to, demand of payment from and protest to the Manager of any of the Guaranteed Obligations, and notice of acceptance of its guarantee and notice of protest for nonpayment. To the fullest extent permitted by Applicable Law, the Guaranteed Obligations of Guarantor hereunder shall not be affected by (a) the failure of the County to assert any claim or demand or to enforce or exercise any right or remedy against the Manager in respect of the Guaranteed Obligations or otherwise under the provisions of the Master Program Agreement, or otherwise, or, in each case, any delay in connection therewith, or (b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of the Master Program Agreement, or any other agreement to which the Manager is a party.

Section 4. Continuing Guaranty of Payment and Performance. Guarantor further agrees that its guaranty constitutes a continuing guaranty of payment and performance when due, and not of collection, and Guarantor further waives any right to require that any resort be had by the County to any security. Guarantor agrees that the Guaranteed Obligations may be extended, amended, modified or renewed, in whole or in part, without notice to or further assent of Guarantor, and that of Guarantor will remain bound by and will honor its guarantee hereunder notwithstanding any extension, amendment, modification or renewal of any Guaranteed Obligation by the County and the Manager.

Section 5. No Discharge or Diminishment of Guaranty.

(a) The obligations of Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination, or be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever, or otherwise be affected, for any reason (other than the performance in full of all Guaranteed Obligations, including the indefeasible payment in full of all Guaranteed Obligations, or the termination of all the Guaranteed Obligations), including: any claim of waiver, release, surrender, alteration or compromise of any of the Guaranteed Obligations; the invalidity, illegality or unenforceability of the Guaranteed Obligations; the occurrence or continuance of any event of bankruptcy, reorganization, insolvency, receivership or other similar proceeding with respect to the Manager or any other person (for purposes hereof, "person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or governmental authority), or the dissolution, liquidation or winding up of the Manager or any other person; any permitted assignment or other transfer of this Guaranty by the County or any permitted assignment or other transfer of the Master Program Agreement; any sale, transfer or other disposition by Guarantor of any direct or indirect interest it may have in the Manager or any other change in ownership or control of the Manager; or the absence of any notice to, or knowledge on behalf of, Guarantor of the existence or occurrence of any of the matters or events set forth in the foregoing clauses.

(b) Without limiting the generality of the foregoing, the Guaranteed Obligations of Guarantor hereunder shall not be discharged or impaired or otherwise affected by

the failure of the County to assert any claim or demand or to enforce any remedy under the Master Program Agreement, by any waiver or modification of any provision thereof, by any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of Guarantor or that would otherwise operate as a discharge of Guarantor as a matter of law or equity (other than the performance in full of all Guaranteed Obligations, including the indefeasible payment in full in cash of all Guaranteed Obligations, or the termination of all the Guaranteed Obligations).

Section 6. Defenses Waived. The County may compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with the Manager or exercise any other right or remedy available to it against the Manager, without affecting or impairing in any way the liability of Guarantor hereunder except to the extent all the Guaranteed Obligations have been fully and finally performed, including the indefeasible payment in full of all Guaranteed Obligations, or terminated. To the fullest extent permitted by Applicable Law, Guarantor waives any defense arising out of the County's election even though such election operates, pursuant to Applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of Guarantor against the Manager or any security. Guarantor waives all defenses to which it may be entitled under Applicable Law as in effect or construed from time to time.

Section 7. Representations and Warranties of Guarantor. Guarantor represents and warrants to the County as follows:

(a) Organization. Guarantor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as is now being conducted.

(b) Authority Relative to this Guaranty. Guarantor has all necessary limited liability company power and authority to execute and deliver this Guaranty and to perform its obligations hereunder. The execution and delivery by Guarantor of this Guaranty and performance by Guarantor of its obligations hereunder have been duly and validly authorized by and on behalf of the Guarantor and no other proceedings on the part of Guarantor are necessary to authorize this Guaranty or performance by Guarantor of its obligations hereunder. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a valid and binding agreement of Guarantor, enforceable against Guarantor in accordance with its terms.

(c) Consents and Approvals; No Violation.

(i) Neither the execution and delivery of this Guaranty by Guarantor nor performance by Guarantor of its obligations hereunder will (x) conflict with or result in any breach of any provision of the organizational or governing documents or instruments of Guarantor, (y) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Guarantor or any of its subsidiaries is a party or by which any of their respective assets may be bound or (z)

violate any order, writ, injunction, decree, statute, rule or regulation applicable to Guarantor, or any of its assets, except in the case of clauses (y) and (z) for such failures to obtain a necessary consent, defaults and violations which would not, individually or in the aggregate, have a material adverse effect on the ability of Guarantor to discharge its obligations under this Guaranty (a "**Guarantor Material Adverse Effect**").

(ii) No declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental authority is necessary for performance by Guarantor of its obligations hereunder, other than such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made would not, individually or in the aggregate, have a Guarantor Material Adverse Effect.

Section 8. Agreement to Perform and Pay Subordination. In furtherance of the foregoing and not in limitation of any other right that the County has at law or in equity against Guarantor by virtue hereof, upon the failure of the Manager, to perform or pay any Guaranteed Obligation when and as the same shall become due, Guarantor hereby promises to and will forthwith, as the case may be, (a) perform, or cause to be performed, such unperformed Guaranteed Obligations and (b) pay, or cause to be paid, to the County the amount of such unpaid Guaranteed Obligations. Upon payment by Guarantor of any sums to the County as provided above, all rights of Guarantor against the Manager, arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full of all the Guaranteed Obligations. If any amount shall erroneously be paid to Guarantor on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of the Manager, such amount shall be held in trust for the benefit of the County and shall forthwith be paid to the County to be credited against the payment of the Guaranteed Obligations or performance in accordance with the terms of the Master Program Agreement.

Section 9. Information. Guarantor assumes all responsibility for being and keeping itself informed of the Manager's financial condition and assets, and of all other circumstances bearing upon the risk of nonperformance of the Guaranteed Obligations (including the nonpayment of Guaranteed Obligations) and the nature, scope and extent of the risks that Guarantor assumes and incurs hereunder, and agrees that the County do not have any duty to advise Guarantor of information known to it regarding such circumstances or risks.

Section 10. Effectiveness; Termination and Reinstatement. This Guaranty shall be effective as of the Effective Date and (a) shall terminate when all the Guaranteed Obligations relative to the Initial Program Area and Expanded Program Area, if applicable, have been (i) performed in full, including the indefeasible payment in full of the Guaranteed Obligations or (ii) terminated and (b) shall continue to be effective or be reinstated, as the case may be, if at any time any payment, or any part thereof, of any Guaranteed Obligation is rescinded or must otherwise be restored by the County upon the bankruptcy or reorganization of the Manager or Guarantor or for any other reason.

Section 11. Assignment; No Third Party Beneficiaries. This Guaranty and all of the provisions hereunder shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, and nothing herein express or implied will give or be construed to give any entity any legal or equitable rights hereunder. Neither this Guaranty nor any of the rights, interests and obligations hereunder shall be assigned by Guarantor, including by operation of law, without the prior written consent of the County; provided, however, that no assignment or transfer of rights or obligations by Guarantor shall relieve it from the full liabilities and the full financial responsibility, as provided for under this Guaranty, unless and until the transferee or assignee shall agree in writing to assume such obligations and duties and the County have consented in writing to such assumption.

Section 12. Amendment and Modification, Extension; Waiver. This Guaranty may be amended, modified or supplemented only by an instrument in writing signed on behalf of each of the Parties. Any agreement on the part of a Party to any extension or waiver in respect of this Guaranty shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of a Party to this Guaranty to assert any of its rights under this Guaranty or otherwise shall not constitute a waiver of such rights.

Section 13. Governing Law. It is the express intention of the Parties that all legal actions and proceedings related to this Guaranty or to any rights or any relationship between the Parties arising therefrom shall be solely and exclusively initiated and maintained in the courts of the State of Maryland and the laws of the State of Maryland shall govern the validity, interpretation, construction and performance of this Guaranty, excluding any conflict-of-law rules which would direct the application of the law of another jurisdiction.

Section 14. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (as of the time of delivery or, in the case of a facsimile communication, of the times of confirmation) if delivered personally, facsimile (which is confirmed) or sent by overnight courier (providing proof of delivery) to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

If to the County:

Director of Office of Central Services
Prince George's County
1400 McCormick Drive, Suite 336
Largo, Maryland 20774
Fax: 301-883-6464

With a copy to

County Attorney
Prince George's County
County Administration Building
14741 Governor Oden Bowie Drive, Room 5121
Upper Marlboro, Maryland 20772-3050
Fax: 301-952-3071

With a copy (which shall not constitute notice) to:

Director of Department of the Environment
Prince George's County
Department of Environment
1801 McCormick Drive, Suite 500
Largo, Maryland 20774
Fax: 301-883-5444

If to the Guarantor:

Corvias Group, LLC
Attn: John G. Picerne, CEO
1405 South County Trail Suite 530
East Greenwich, RI 02806
Fax: (401) 336-2571

With a copy to

Corvias Prince George's County Stormwater Partners, LLC
c/o Corvias Solutions, LLC
Attn: Greg Cannito, Vice President of Corvias Solutions, LLC
16701 Melford Blvd., Suite 400
Bowie, Maryland 20715
Fax: (401) 336-2571

Section 15. Claims and Disputes.

(a) All claims or disputes arising under this Agreement shall be administered by the Contract Administrator and handled in accordance with Sections 10A-104 and 10A-107 of the County Code and Chapter XXV.1 of the County's Procurement Regulations. Such regulations provide that all claims and disputes arising under a contract shall be submitted in writing by the Manager to the Contract Administrator within thirty (30) Days after the occurrence of the event giving rise to the claim or dispute.

(b) The Guarantor irrevocably submits to the exclusive jurisdiction of any

Maryland court sitting in Prince George's County, Maryland for the purposes of any suit, action or other proceeding arising out of this Guaranty or any transaction contemplated hereby. Each of the Parties further agrees that service of process, summons, notice or document by hand delivery or U.S. registered mail at the address specified for such Party in Section 14 (or such other address specified by such Party from time to time pursuant to Section 14) shall be effective service of process for any action, suit or proceeding brought against such Party in any such court. The Guarantor irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Guaranty or the transactions contemplated hereby in any Maryland court sitting in Prince George's County, Maryland and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(c) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Guaranty were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled equitable relief, including without limitation, an injunction or injunctions to prevent breaches of this Guaranty and to specifically enforce the terms and provisions of this Guaranty, this being in addition to any other remedy to which they are justly entitled to, whether at law or in equity.

Section 16. Survival of Guaranty. All covenants, agreements, representations and warranties made by Guarantor herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Guaranty shall be considered to have been relied upon by the County and shall unconditionally survive the consummation of the transactions contemplated by the Master Program Agreement, regardless of any investigation made by the County or on their behalf, and shall continue in full force and effect as long as any Guaranteed Obligations remain outstanding.

Section 17. Rules of Interpretation. The rules of interpretation specified in Section 2.2 of the Master Program Agreement shall be applicable to this Guaranty.

Section 18. Severability.

(a) If any term or other provision of this Guaranty is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Guaranty shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Guaranty so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by Applicable Law, in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

(b) In the event that the provisions of this Guaranty are claimed or held to be inconsistent with any other agreement or instrument evidencing the Guaranteed Obligations, the terms of this Guaranty shall remain fully valid and effective.

Section 19. Entire Guaranty. This Guaranty embodies the entire agreement and

understanding of the Parties in respect of the matters contemplated hereby. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This Guaranty supersedes all prior agreements and understandings between the Parties with respect to the matters contemplated hereby.

[Signature Page Follows]

IN WITNESS WHEREOF, this Guaranty has been duly executed and delivered by the Guarantor as of the date first above written.

CORVIAS GROUP, LLC

By: _____
Name: _____
Title: _____

[Signature Page to Guaranty – Master Program Agreement]

Schedule 14

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER:

BENEFICIARY
PRINCE GEORGE'S COUNTY, MARYLAND
C/O DIRECTOR OF FINANCE
14741 GOVERNOR ODEN BOWIE DRIVE
SUITE 3200
UPPER MARLBORO, MD 20772

AMOUNT
NOT EXCEEDING USD 2,000,000.00
NOT EXCEEDING TWO MILLION AND 00/100 'S US DOLLARS

[REDACTED IN ITS ENTIRETY]

INSURANCE REQUIREMENTS

MANAGER'S INSURANCE COVERAGE

INSURANCE REQUIREMENTS: The Manager shall provide the County with evidence of the Manager's commercial insurance coverage for the following exposures:

WORKER'S COMPENSATION: An insurance policy complying with the requirements of the statutes of the jurisdiction(s) in which the work shall be performed. The Manager shall provide coverage for these exposures on an "if any basis." The coverage under such an insurance policy or policies shall have limits of not less than:

Worker's Compensation: STATUTORY LIMITS

Employer's Liability: Each Accident	\$500,000
Disease Policy Limits	\$500,000
Disease -- Each Employee	\$500,000

COMMERCIAL GENERAL LIABILITY INSURANCE: An insurance policy covering the liability of the Manager for all work or operations under or in connection with this Program and all obligations assumed by the Manager under this Contract. Products, Completed Operations and Contractual Liability must be included. The required limits of liability in this section may be met by the purchase of an Excess or Umbrella Liability policy. The coverage under such an insurance policy or policies shall have limits of not less than:

COMMERCIAL GENERAL LIABILITY	\$10,000,000
BODILY INJURY AND PROPERTY DAMAGE LIABILITY	\$1,000,000/\$3,000,000 per occurrence/ aggregate
PREMISES MEDICAL PAYMENTS	\$5,000
PERSONAL INJURY / ADVERTISING	\$1,000,000
BUILDERS RISK	Damage is based on project estimated hard construction values
MANAGER'S POLLUTION LIABILITY	\$10,000,000

Prince George's County, Maryland, must be included as an additional insured under the general liability insurance coverage with respect to activities related to this Contract.

AUTOMOBILE LIABILITY INSURANCE: An insurance policy covering the use of all owned, non-owned, hired, rented, or leased vehicles bearing license plates appropriate for the circumstances for which they are being used, as required by the Motor Vehicle Laws of the State of Maryland and not covered under the Manager's aforementioned

Schedule 16

Commercial General Liability Insurance. The required limits of liability in this section may be met by the purchase of an Excess or Umbrella Liability policy.

The coverage under such an insurance policy or policies shall have limits not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY

\$15,000,000 Combined Single Limit

MISCELLANEOUS PROFESSIONAL (ERRORS AND OMISSIONS) LIABILITY INSURANCE:

A separate insurance policy to pay on behalf of the Manager all costs the Manager shall become legally obligated to pay as damages due to any claim caused by any negligent act, error, or omission of the Manager or any other person for whose acts the Manager is legally liable for arising out of the performance under this Contract. The coverage under such an insurance policy shall have a limit of liability of not less than:

\$5,000,000 per claim and aggregate

A Certificate of Insurance for the above-mentioned minimum requirements is needed after the Contract has been awarded.

SUBCONTRACTOR'S INSURANCE COVERAGE

INSURANCE REQUIREMENTS: The Manager shall require that all subcontractors working on the project maintain insurance coverage as outlined in the applicable section of the Manager's construction or operations agreement with the Subcontractors. For insurance other than Workers Compensation and Professional Errors and Omissions, Manager shall require Subcontractors to include Prince Georges County, Maryland as an additional insured as related to duties and services performed under the Agreement and shall provide the County with evidence of Subcontractor's commercial insurance coverage's for the following exposures:

WORKER'S COMPENSATION: An insurance policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, and *if* there is any exposure to the Subcontractor or any of the Subcontractor's personnel due to the U.S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, the subcontractor will provide coverage for these exposures on an "if any basis. The coverage under such an insurance policy or policies shall have limits not less than:

Schedule 16

Worker's Compensation:	<u>STATUTORY Limit's (State of Maryland)</u>
Employer's Liability: Each Accident	\$500,000
Disease Policy Limits	\$500,000
Disease - Each Employee	\$500,000

COMMERCIAL GENERAL LIABILITY INSURANCE (CGL): An insurance policy covering the liability of the Subcontractor for all work or operations under or in connection with this Project; and all obligations assumed by the Subcontractor pursuant to its contract with Manager. Products, Completed Operations and Contractual Liability must be included, in addition to coverage for explosion, collapse, and underground hazards (XCU), wherever applicable.

The coverage under such an insurance policy or policies shall have limits not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY	\$1,000,000/\$2,000,000 per occurrence/ aggregate
PREMISES MEDICAL PAYMENTS	\$5,000
FIRE LEGAL LIABILITY	\$300,000
PERSONAL INJURY / ADVERTISING	\$1,000,000
	or aggregate limit not less than \$2,000,000

Prince George's County, Maryland must be included as an additional insured under the general liability insurance coverage with respect to activities related to this Contract.

AUTOMOBILE LIABILITY INSURANCE: An insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing license plates appropriate for the circumstances for which they are being used, as required by the Motor Vehicle Laws of the District of Columbia, Maryland or Virginia, and not covered under the subcontractor's aforementioned Commercial General Liability Insurance.

The coverage under such an insurance policy or policies shall have limits not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY	\$1,000,000 Combined Single Limit
---	-----------------------------------

Prince George's County must be included as an additional insured under the automobile liability insurance coverage with respect to activities related to this Contract.

Schedule 16

Misc. PROFESSIONAL (ERRORS AND OMISSIONS) LIABILITY INSURANCE:

If applicable, a separate insurance policy to pay on behalf of the Subcontractor all costs the Subcontractor shall become legally obligated to pay as damages due to any claim caused by any negligent act, error or omission of the Subcontractor or any other person for whose acts the Subcontractor is legally liable arising out of the performance under this PROJECT WORK. The coverage under such an insurance policy shall have a limit of liability not less than:

\$1,000,000 per claim and aggregate

SPECIAL PROVISIONS FOR INSURANCE:

(1) The Manager shall forward to the County, a certificate(s) of insurance indicating the Manager's insurance and any special provisions required under the foregoing provisions. Such certificate(s) shall be in a form satisfactory to the County and shall list the various coverage's and limits. Insurance companies providing the coverage must be acceptable to the County, rated by A.M. Best and carry at least an "A" Rating VIII). In addition to the aforementioned provisions; such insurance policies shall include an endorsement (provided such endorsement is reasonably commercially available) stating that such policies shall not be changed or canceled and that they will be automatically renewed upon expiration and continued in full force and effect until completion and acceptance of all work covered by the Contract, unless the County is given thirty (30) days written notice before any change or cancellation is made effective. If requested, the subcontractor shall directly furnish the County with a certified copy of each insurance policy upon request.

(2) The Manager's initial and subsequent certificates of insurance shall include a description of the project work and the assigned Contract number. Prior to beginning any project work, the Manager's insurance requirements as outlined must be submitted and approved in writing.

(3) Manager's insurance shall be procured from insurance or indemnity companies acceptable to the County and licensed and authorized to conduct business in the District of Columbia, State of Maryland and Commonwealth of Virginia. The County's approval or failure to disapprove insurance furnished by the Manager or any Subcontractor shall not release such parties of full responsibility for liability for damage and accidents.

(4) If at any time the above required materially significant insurance policies should be canceled, terminated or modified so that the insurance is not in full-force and effect as required herein, Manager shall be considered in default of its obligations under the Agreement, and shall have ten (10) business days to cure such default to the County's reasonable satisfaction.

Schedule 16

(5) The Manager shall require each Subcontractor, at all tiers, to provide evidence of insurance coverage required. Such coverage shall remain in full force and effect during the performance of activities under this Contract.

SCHEDULE 17

TECHNOLOGY ASSIGNMENT AGREEMENT

THIS TECHNOLOGY ASSIGNMENT AGREEMENT (this “**Agreement**”) is made and entered into as of _____, 201_, by and among **PRINCE GEORGE’S COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the “**County**”), **CORVIAS PRINCE GEORGE’S COUNTY STORMWATER PARTNERS, LLC**, a Maryland limited liability company (the “**Manager**”), and _____, a _____ (the “**Company**”). All or some of the County, the Manager and/or the Company may be referred to herein as the “**Party**” or the “**Parties**”, as the context of the usage of such term may require.

RECITALS

WHEREAS, the County and the Manager are parties to that certain Master Program Agreement dated as of _____, 2015 (as further amended, supplemented or otherwise modified from time to time, the “**MPA**”), pursuant to which the Manager is engaged to plan, design, develop, redevelop, construct, renovate, retrofit, integrate and provide adaptive management of stormwater infrastructure within the County;

WHEREAS, the Manager is subcontracting a specific scope of work under the MPA relating to engineering, design and architectural services to the Company pursuant to Task Order No. ___ dated _____, 20__ (the “**Design Services Task Order**”), issued under that certain Master Agreement for Professional Engineering, Consulting, Environmental and Construction Services dated _____, 2015, between the Manager and the Company (as further amended, supplemented or otherwise modified from time to time, the “**Master Services Agreement**”);

WHEREAS, it is contemplated that the Company, in providing engineering, design and/or architectural services pursuant to the Design Services Task Order (collectively, the “**Services**”), will develop Work Product (as defined herein) and associated Intellectual Property Rights (as defined herein), rights which are considered by the County to be valuable and important assets of the County;

WHEREAS, the County is willing to enter into the MPA only upon the condition that the Company will assign and transfer such of its right, title and interest in and to certain Work Product and associated Intellectual Property Rights to the County, as is described herein; and

WHEREAS, the Company will directly and indirectly benefit from the transactions contemplated by the MPA and the Design Services Task Order, and desires to assign and transfer all Work Product and associated Intellectual Property Rights being developed in connection the Design Services Task Order to the County.

NOW, THEREFORE, for and in consideration of the promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into and made part of this Agreement.

2. Definitions.

(a) **“Design and Testing Costs”** means any costs, including fees of the Company, incurred by the Company in designing, planning for and testing the efficacy of a Custom BMP, as such term is defined in the MPA, which costs are designated as such by the Manager and the County in the process of planning, designing and executing Projects pursuant to the MPA.

(b) **“Intellectual Property Rights”** means any and all rights in all forms of intellectual property associated with Custom BMP developed pursuant to the above-referenced Design Services Task Order, whether registered or unregistered, existing under the laws of any jurisdiction, including without limitation (i) copyright rights and all other rights in works of authorship, including those arising under the Copyright Act of 1976, as amended, (ii) patent rights and all other rights in inventions, including rights under the Patent Act of 1952, as amended, (iii) rights in trademarks, service marks, and other indicia of the origin or quality of goods and services, including rights granted under the Lanham Act of 1946, as amended, (iv) rights in all data and information that qualifies for protection as a trade secret under applicable law, and (v) rights in goodwill associated with any of the preceding items.

(c) **“Work Product”** means (i) any and all designs, drawings, sketches, diagrams, plans and specifications, record and as-built plans and specifications, design, architectural and engineering documents, geotechnical soils and soil boring data, analyses, reports and records engineers’ and inspectors’ diaries and reports, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, environmental reviews, studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding hazardous substance investigations, testings, borings, monitoring and analyses, change orders, cross-section notes, drainage notes, photographs, records of construction materials, and any other documents which can be reasonably described as design, technical, engineering, architectural or construction documents, (ii) any and all inventions, works of authorship, discoveries, ideas, concepts, properties, formulas, methods, programs, procedures, systems, techniques, products, improvements, innovations, writings, documentation, computer programs, pictures, audio, video, still images, and artistic works, (iii) any and all forms of tangible and intangible property, and (iv) any and all Intellectual Property Rights in, arising from, or relating to any of the foregoing, that in each case referred to above resulted in any manner from the Company’s performance of the Services in developing Custom BMP pursuant to the above-referenced Design Services Task Order, whether (a) requested by the Manager or delivered to the County, or (b) for the County’s direct or indirect benefit.

3. Transfer and Assignment.

a. If and only if the price to be paid to the Company under the Design Services Task Order includes reimbursement or payments to the Company for the

Design and Testing Costs and subject to the County's payment to the Manager under the MPA for the Services included in the Design Services Task Order, the Company, at no cost or expense to the County (apart from the County's payment to the Manager under the MPA for the Services included in the Design Services Task Order), hereby assigns, transfers and conveys, and upon future creation thereof automatically assigns, transfers and conveys, fully, unconditionally, and irrevocably, all of the Company's ownership (or assignable) right, title and interest in and to (i) all Work Product and (ii) any related applications, registrations, derivative works, extensions and other permutations of the Work Product, regardless of the form or type, as well as (iii) all renewals and extensions thereof, and all rights and privileges relating thereto, including without limitation the right to seek applications and registrations therefor and to recover damages and seek other remedies for past, present and future infringement or misappropriation of the Work Product.

- b. If and only if under the Design Services Task Order, the Company does not include reimbursement requests or charges for the Design and Testing Costs and subject to the County's payment to the Manager under the MPA for the Services included in the Design Services Task Order, the Company, at no cost or expense to the County (apart from the County's payment to the Manager under the MPA for the Services included in the Design Services Task Order), hereby assigns, transfers and conveys, and upon future creation thereof automatically assigns, transfers and conveys, fully, unconditionally, and irrevocably, _____ percent (___%) of the Company's ownership (or assignable) right, title and interest in and to (i) all Work Product and (ii) any related applications, registrations, derivative works, extensions and other permutations of the Work Product, regardless of the form or type, as well as (iii) all renewals and extensions thereof, and all rights and privileges relating thereto, including without limitation the right to seek applications and registrations therefor and to recover damages and seek other remedies for past, present and future infringement or misappropriation of the Work Product.

4. Further Documentation and Actions. The Company shall not take or attempt to take any action inconsistent with this Agreement and shall, upon the County's request, execute and deliver to the County any further documents and instruments, and perform other reasonable acts, that the County deems necessary or appropriate to evidence and fully vest its ownership of the Work Product, pursue patent applications or other forms of intellectual property relating to the Work Product, as well as to enable the County to record its interest with any appropriate governmental authority or agency. The Company shall not refuse to provide additional evidence to support the foregoing if such evidence is considered necessary by the County, is in the Company's possession or control, and is reasonably available and retrievable. It is nevertheless agreed and understood that the Company shall not be obligated to incur more than *de minimis* cost or expense (either direct or indirect) in complying with this Section 4 (Further Documentation and Actions).

5. Representations and Warranties. The Company represents and warrants to County that:

(a) The Company has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof by the Company (i) have been duly authorized, and (ii) will not violate any provisions of the Company's governing documents;

(b) The Company's execution and delivery of this Agreement and its performance of its obligations hereunder does not conflict with or violate (i) the Design Services Task Order] or any other agreement to which the Company is a party, or (ii) any laws applicable to the Company; and

(c) The Company has not assigned or licensed any rights in the Work Product, or otherwise taken any actions that would contradict the County's exclusive ownership rights in the Work Product as contemplated by this Agreement.

6. Indemnification. The Company shall indemnify, hold harmless and defend the County, its elected officials, agents, officers, consultants and employees, and the successors and assigns of any of the foregoing (each, an "**Indemnified Party**") from and against any and all losses, liabilities, damages, actions, claims, fines, penalties, judgments, payments, demands, costs, fees and expenses (including reasonable attorneys' fees and court costs), as the same are incurred, of any kind or nature whatsoever (whether or not arising out of third party claims and including all amounts paid in investigation, defense or settlement of the foregoing) which may be sustained or suffered by any Indemnified Party, based upon, arising out of, by reason of or otherwise in respect of or in connection with: (a) any inaccuracy in or breach or non-performance by the Company of any representations, warranties or covenants contained in this Agreement, or (b) any claim, action or proceeding asserted or instituted that the Work Product violates the rights of any third party under copyright law or trade secret law.

7. Governing Law; Jurisdiction and Enforcement. This Agreement is governed by and construed and interpreted in accordance with the laws of the State of Maryland, without giving effect to its laws governing conflicts of law. The exclusive forum and venue for any claims arising out of or related to this Agreement are the state and federal courts located in Prince George's County, Maryland. The Company consents to the personal jurisdiction of such courts and waives any defense claiming lack of personal jurisdiction or improper venue in any action brought in such court.

8. Miscellaneous. The Company shall not assign Company's rights or obligations under this Agreement without the prior written consent of the County. No failure of either Party to exercise or enforce any of its rights under this Agreement will act as a waiver of such or any other rights. This Agreement may only be modified, or any rights under it waived, by a written document executed by the authorized representatives of both Parties. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect. Headings of particular Sections are

inserted only for convenience and are not to be used to define, limit or construe the scope of any term or provision of this Agreement. This Agreement represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes all other written or oral agreements heretofore made by or on behalf of the County or the Company with respect to the subject matter hereof. Any notice required or permitted to be given under this Agreement shall be in writing, shall be transmitted by (a) registered or certified mail, return receipt requested, with notice deemed to be given upon receipt, postage pre-paid, (b) delivered by hand or by nationally recognized courier service, or (c) facsimile transmission with confirmed receipt thereof, and addressed to the address indicated on the signature page. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which taken together will constitute the one and the same instrument. Facsimile or PDF format signatures will be deemed original signatures.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the parties as of the date first above written.

COMPANY:

By: _____

Name: _____

Title: _____

Address:

**CORVIAS PRINCE GEORGE'S COUNTY
STORMWATER PARTNERS, LLC**

By: _____

Name: _____

Title: _____

Address:

COUNTY:

**PRINCE GEORGE'S COUNTY,
MARYLAND**

By: _____

Name: _____

Title: _____

Address:

Director of Department of
Environmental Resources
Prince George's County
9400 Peppercorn Place, Suite 500
Largo, Maryland 20774
Fax: 301-883-5444

With copy to (which shall not constitute
notice):

County Attorney
Prince George's County
County Administration Building
14741 Governor Oden Bowie Drive
Room 4121
Upper Marlboro, Maryland 20772-3050
Fax: 301-952-3071

[Signature Page to Technology Assignment Agreement - By Task Order]

SCHEDULE 18

TECHNOLOGY LICENSE AGREEMENT

THIS TECHNOLOGY LICENSE AGREEMENT (this "**Agreement**") is made and entered into as of _____, 201__ (the "**Effective Date**"), by and between _____, a _____ ("**Licensor**" or the "**Company**"), and PRINCE GEORGE'S COUNTY, MARYLAND, a body corporate and politic of the State of Maryland ("**Licensee**" or the "**County**"). Licensor and Licensee or both may be referred to herein as the "**Party**" or the "**Parties**", as the context of the usage of such term may require.

WHEREAS, Licensee and Corvias Prince George's County Stormwater Partners, LLC, a Maryland limited liability company ("**Manager**"), are parties to (a) that certain Master Program Agreement dated as of _____, 2015 (as further amended, supplemented or otherwise modified from time to time, the "**MPA**"), pursuant to which the Manager is engaged to design, develop, redevelop, construct, renovate and retrofit stormwater projects within the County (each, a "**Project**" and collectively, the "**Projects**"), and (b) that certain Master Maintenance Agreement dated as of _____, 2015 (as further amended, supplemented or otherwise modified from time to time, the "**MMA**"), pursuant to which the Manager is engaged to manage, maintain, operate, repair and replace Project(s) following their completion and acceptance;

WHEREAS, in connection with the development of the Projects pursuant to the MPA, the Manager has procured and engaged, or has caused to be procured and engaged, Licensor to (a) provide certain technology and related services or (b) use certain technology to which Licensor has rights, in each case, in connection with the Projects;

WHEREAS, the term "**Project Intellectual Property**" means all intellectual property rights that result from Company's performance of services pursuant to the MPA or MMA that meet the following two criteria: the intellectual property right (i) is not transferred and assigned to the County under the Technology Assignment Agreement, but (ii) relates to the Projects or the Work Product, including without limitation, all such know-how, technology, blueprints, drawings, programs, diagrams, trade secrets, sketches, designs, systems, plans, methods, processes, improvements, devices, specifications, formulae, inventions, discoveries, concepts, ideas, technical descriptions, reports or other data, and records, whether written, verbal, electronic or otherwise, and whether or not patentable, whether created or otherwise owned or licensed by Licensor prior to or after the Effective Date, any other patents, patent applications, copyrights, or trade secrets now or hereafter owned or controlled by Licensor which would be infringed by Licensee in exercising its rights and license under this Agreement or based on any products or systems currently sold by Licensor, and any modification or improvements thereto made by Licensor or Licensee;

WHEREAS, Licensee desires to enter into a technology license agreement with Licensor to provide that Licensee has the non-exclusive right and license to (a) practice and use Project Intellectual Property in connection with Licensee's ownership, management, maintenance, operation, repair and replacement of any tangible or intangible assets associated with or relating

to the Project(s), whether performed by the County or any third party contractor, and (b) obtain parts or services from Licensor, all in accordance with the terms and conditions set forth herein; and

WHEREAS, Licensor will benefit from the use of its Intellectual Property by Licensee in connection with the Project(s).

NOW, THEREFORE, in consideration of the mutual covenants and agreement of the Parties hereto, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound thereby, the Parties agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into and made part of this Agreement.

2. License.

(a) Grant of License. Licensor hereby grants to Licensee a non-exclusive, perpetual, irrevocable, royalty-free right and license to all rights owned or licensable by the Licensor in Project Intellectual Property to (i) use the parts, materials, components and equipment comprising or utilizing such Intellectual Property in the maintenance, management, operation, repair and replacement of the Project(s) by Licensee and its employees, representatives and agents; (ii) make, have made, use, develop, distribute and import the systems, processes, practices and methods, designs, or any other tangible or intangible assets comprising such Intellectual Property; and (iii) use the documentation comprising such Intellectual Property in connection with the maintenance, management, operation, repair and replacement of the Project(s). Licensor grants and shall make available, on terms that are commercially reasonable in light of market conditions, all proprietary parts, replacements and components to or of such Intellectual Property for installation, repair, replacement, maintenance and use by Licensee and its employees, representatives and agents for the Project(s).

(b) Documentation. At the request of Licensee and from time to time, Licensor shall promptly provide to Licensee any and all technical information and know-how that result from Company's performance of services pursuant to the MPA or MMA then within the possession of Licensor which was not already provided to Licensee and which would be helpful to Licensee in connection with the Intellectual Property and the Projects (collectively, "**Documentation**"); provided, however, that the Licensor is not obligated under this Agreement, standing alone, to create or modify Documentation.

3. No Fees or Royalties. The license granted by Licensor to Licensee hereunder is fully paid and is given in consideration of the direct and indirect benefits that Licensor will receive and has received. No fees or royalties shall be due or payable to Licensor by Licensee or any of its affiliates, successors or assigns as a result of the grant of such license hereunder.

4. Term. This Agreement shall commence on the Effective Date and shall remain in effect for the physical life of the assets associated with or relating to the Projects

5. Representations and Warranties. Licensor represents and warrants to Licensee that:

(a) Licensor is the valid owner or has sufficient legal rights in the Project Intellectual Property to grant to Licensee the license and rights contemplated herein;

(b) Licensor has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof by Licensor (i) have been duly authorized, and (ii) will not violate any provisions of Licensor's governing documents;

(c) entering into this Agreement and performing its obligations hereunder does not conflict with or violate (i) any other agreement to which Licensor is a party; or (ii) any laws applicable to Licensor;

(d) no claim has been made that the use of any of the Project Intellectual Property violates the rights of any third party;

(e) no action or proceeding is pending which seeks to limit or cancel the validity of any of the Project Intellectual Property; and

(f) that, to the best of Licensor's knowledge, the Project Intellectual Property does not infringe, misappropriate or otherwise violate any patent, copyright, trademark, trade secret, or other intellectual or proprietary right of any third party.

6. Indemnification. Licensor shall indemnify, hold harmless and defend Licensee, its elected officials, agents, officers, consultants and employees, and the successors and assigns of any of the foregoing (each, an "**Indemnified Party**") from and against any and all losses, liabilities, damages, actions, claims, fines, penalties, judgments, payments, demands, costs, fees and expenses (including reasonable attorneys' fees and court costs), as the same are incurred, of any kind or nature whatsoever (whether or not arising out of third party claims and including all amounts paid in investigation, defense or settlement of the foregoing) which may be sustained or suffered by any Indemnified Party, based upon, arising out of, by reason of or otherwise in respect of or in connection with: (a) any inaccuracy in or breach or non-performance by Licensor of any representations, warranties or covenants contained in this Agreement, or (b) any claim, action or proceeding asserted or instituted that the Intellectual Property violates the rights of any third party under copyright law or trade secret law.

7. Miscellaneous.

(a) Governing Law; Jurisdiction and Enforcement. This Agreement is governed by and construed and interpreted in accordance with the laws of the State of Maryland, without giving effect to its laws governing conflicts of law. The exclusive forum and venue for any claims arising out of or related to this Agreement are the state and federal courts located in Prince George's County, Maryland. Licensor consents to the personal jurisdiction of such courts

and waives any defense claiming lack of personal jurisdiction or improper venue in any action brought in such court.

(b) Assignment. The Licensee shall not assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the Licensor; provided, however, Licensee may assign this Agreement to a substitute maintenance contractor of the Project(s) (whether public or private entity) without the prior written consent of Licensor.

(c) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their permitted successors, assigns and representatives.

(d) Entire Agreement. This Agreement (including any and all exhibits) represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes all other written or oral agreements heretofore made by or on behalf of the Parties with respect to the subject matter hereof. This Agreement may not be changed, altered, modified, amended or revoked except by an agreement in writing executed by both Parties.

(e) Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable law, in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

(f) Notices. Any notice required or permitted to be given under this Agreement shall be in writing, shall be transmitted by (a) registered or certified mail, return receipt requested, with notice deemed to be given upon receipt, postage pre-paid, (b) delivered by hand or by nationally recognized courier service, or (c) facsimile transmission with confirmed receipt thereof, and addressed to the address indicated on the signature page.

(g) Waiver. Waiver by Licensor or Licensee of the breach of any provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

(h) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed the original, but all of which shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first written above.

Licensor:

Licensee:

PRINCE GEORGE'S COUNTY,
MARYLAND

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Address:

Address:

Director of Department of
Environmental Resources
Prince George's County
9400 Peppercorn Place, Suite 500
Largo, Maryland 20774
Fax: 301-883-5444

With copy to (which shall not constitute
notice):

County Attorney
Prince George's County
County Administration Building
14741 Governor Oden Bowie Drive
Room 4121
Upper Marlboro, Maryland 20772-3050
Fax: 301-952-3071

SCHEDULE 19

Program Performance Milestones

Pursuant to and for the purposes outlined in Sections 7.5(v), 17.1, and 17.1.1 of the Master Program Agreement, the County will conduct performance progress evaluations of the Manager on a semi-annual basis. The Manager's performance will be evaluated pursuant to the metrics outlined herein by a 4-member panel selected by the County's Purchasing Agent. The County and Manager will review the results of the Manager's Program performance evaluation during the monthly project reviews. The below metrics may be revised if agreed upon in writing by both Parties through the Annual Planning process or by other written agreements executed by the Manager and the County, and shall be modified, to the extent appropriate, by virtue of a delay brought about by events considered "Uncontrollable Circumstances" and/or "County Fault" under the Agreement. On or about June 30th and December 31st during the term of the Agreement, Manager's performance, outcomes, and achievements are to be evaluated pursuant to Section 17.1.1(a) or (b) of the Agreement. The County's 4-member panel will evaluate the Manager's performance, outcomes, and achievements, on the seven factors enumerated below. Manager's total weighted score must equal or exceed 75% of the total weighted score that Manager would achieve if they met the goals for each factor at the 100% level (3.75 points or more out a total of 5 points). The overall performance score for all completed and Accepted Projects and for Work performed during such evaluation period shall establish whether the Manager met, did not meet, or exceeded the Program Performance Milestones for the purposes of Sections 7.5(v) and 17.1.1 of the Agreement.

The below factors 1, 2, 5 and 6 will be evaluated and scored on a scale of 1-7 (7 being the highest). Factors 3, 4 and 7 will be evaluated and scored on a scale of 1-5 (5 being the highest). Each factor is assigned a specified weight to the Manager's overall performance score (weight of each factor appears in parenthesis). A zero (0) is awarded only in the case of the Manager not achieving 75% of the goal set, where applicable and, in the case of factors 1, 2, 5 and 6, a six (6) or seven (7) may be awarded in cases where the Manager exceeds the targets identified, as outlined below.

Economic Development:

- 1- Meeting the specified target class and local-based small business participation goals (35%):** This segment measures the Manager's success in achieving the participation levels of the Target Class (as outlined in Schedule 6).

Manager will achieve aggressive participation goals for Target Class supplier/subcontractor participation starting in year 1 of the Initial Term (with at least 30% participation in year 1) and increasing the participation of the Target Class (to at least 40%) in year 3, all as provided in Schedule 6. In each year, at least 50% of the

Target Class participation must be Local-Based Small Business, also as provided in Schedule 6. This component will be on a scale as follows:

Variance from % Target	Point Score (1-7)
+10% (Exceeds Target by 10%)	7
+5% (Exceeds Target by 5%)	6
0% (100% Target Reached)	5 (100% Goal Achieved)
5% (participation 0.1% to 5% under target total, i.e., 33% instead of 35% in year 2)	4
10% (5.1% to 10% under target total)	3
15% (10.1% to 15% under target total)	2
25% (15.1% to 25% under target total)	1

- 2- **County resident participation (employment man-hours) (15%):** This segment measures the Manager's success in achieving the specified County resident's man-hours/job participation goals as provided in Schedule 6. Man-hours are defined as the total man-hours of employment the Program will produce and the required percentage refers to the minimum requirement man/hours that must be filled by County residents.

Manager will achieve aggressive participation goals for man-hours/job participation requirements starting in year 1 of the Initial Term (range of participation requirements begins with at least 15% by County residents in year 1 to at least 51% by County residents in Year 3). This component will be on a scale as follows:

Variance from % Target	Point Score (1-7)
+10% (Exceeds Target by 10%)	7
+5% (Exceeds Target by 5%)	6
0% (100% Target Reached)	5 (100% Goal Achieved)
5% (participation 0.1% to 5% under target total)	4
10% (5.1% to 10% under target total)	3
15% (10.1% to 15% under target total)	2
25% (15.1% to 25% under target total)	1

- 3- **Mentor Development Program and Incubator Program (15%):** This segment measures the Manager's success in mentoring local businesses already in the County and supporting and promoting the establishment of new companies in the County.

Manager is required to develop new mentor-protégé relationships with at least two new companies in the County each Billing Year. Manager will earn a score of 5 if two or more new companies participate in the mentor-protégé program; earn a score of 3 if one new company participates in the mentor-protégé program and 0 if no new company participates in the mentor-protégé program. If the Parties establish an Incubator Program

pursuant to Section 6.3 of the Agreement and the Manager successfully recruits a company participating in the Program to establish their headquarters in the County or to become a County-Located Business Enterprise, the Manager will automatically earn a score of 6 for this factor during the given Billing Year.

Scope, Schedule and Budget:

- 4- **Meeting the construction schedules as outlined in the Budget Book (10%):** This segment will be assessed at the completion of each budget book.

Point and percentage completion is outlined as follows, with a percentage of time based on the week targeted for completion; i.e., if a Project is scheduled to be completed by a particular date, the target for this metric is based on completion of the applicable Project during the work week containing that date, and percentage variance is assessed by the number of weeks of variance from the week of the completion date. If there is a delay due to Uncontrollable Circumstance or County Fault, for purposes of calculating this metric, Manager will be allowed to extend the schedule by the number of days lost as a result of such delay.

Variance from % Target	Point Score (1-5)
0% (%Target Reached or Exceeded)	5 (100% Goal Achieved)
5% (0.1% to 5% under target total)	4
10% (5.1% to 10% under target total)	3
15% (10.1% to 15% under target total)	2
25% (15.1% to 25% under target total)	1

- 5- **Impervious acres identified for each Approved Project in a Budget Book are retro-fitted to obtain the necessary credits from MDE and/or EPA as outlined in the Budget Book (10%):** This segment will be assessed at Acceptance of each Project.

To meet the metrics related to retro-fit credits from MDE and/or EPA, Manager will achieve the percentages of acres identified in the Budget Book that are retro-fitted to obtain the necessary credits.

Variance from % Target	Point Score (1-7)
Exceeds Target by 10%	7
Exceeds Target by 5%	6
0% (%Target Reached or Exceeded)	5 (100% Goal Achieved)
5% (0.1% to 5% under target total)	4
10% (5.1% to 10% under target total)	3
15% (10.1% to 15% under target total)	2
25% (15.1% to 25% under target total)	1

6- Completion Within Budget (10%): This segment will be assessed at the completion and Acceptance of each Project.

This component will be earned based on completion of each Project for the applicable Maximum Project Price, as such may be adjusted in accordance with the Agreement.

Variance from % Target	Point Score (1-7)
Exceeds Target by 10%	7
Exceeds Target by 5%	6
0% (%Target Reached or Exceeded)	5 (100% Goal Achieved)
5% (0.1% to 5% under target total)	4
10% (5.1% to 10% under target total)	3
15% (10.1% to 15% under target total)	2
25% (15.1% to 25% under target total)	1

Customer Service:

7- Customer Service/Responsiveness (5%): This segment measures the effectiveness of Manager’s customer service and responsiveness, based upon the last completed survey.

County representatives and residents within Project work areas will receive random surveys annually or following completion and Acceptance of a Project.

Survey Score	Point Score (1-5)	% of Goal Achieved
3.5 Points or More	5	100%
3.0 – 3.4	4	75%
2.5 – 3.0	3	50%
2.0-2.4	2	25%
1.9 or below	1	0%

Manager’s overall performance score will be calculated by (1) multiplying the Manager’s score for each factor by the weighted percentage assigned to the factor, (2) adding the weighted scores from each of the seven factors to determine the Manager’s total weighted score, and (3) dividing the Manager’s total weighted score by 5 (the score Manager would receive if they met each factor at the 100% goal level). The result would equal Manager’s overall performance score.

The following is an example of the intended calculation of the preceding paragraph. If Manager received a score of 3 for each of the seven factors above, The first step would be to determine Manager weighted score for each factor as follows: local-based small business and target class participation: $1.05 = (3 \times .35)$, county resident participation: $.45 = (3 \times .15)$, mentor dev. prg.: $.45 = (3 \times .15)$, meeting construction schedules on time: $.3 = (3 \times .10)$, meeting the impervious acres goal: $.3 = (3 \times .10)$, meeting the budgeted costs: $.3 = (3 \times .10)$ and customer service: $.15 = (3 \times .05)$. Secondly, Manager’s total weighted score would be determined by adding all of the weighted scores which would equal $3 = (1.05+.45+.45+.30+.30+.30+.15)$.

Final step, divide 3 (Manager's total weighted score) by 5 (the total weighted score if the 100% goal was achieved for each factor): $.60$ ($3/5$). Manager's overall performance score would equal 60%.

**AMENDMENT NO. 1 TO
MASTER PROGRAM AGREEMENT FOR THE
URBAN STORMWATER RETROFIT PROGRAM PUBLIC-PRIVATE PARTNERSHIP
BETWEEN PRINCE GEORGE'S COUNTY, MARYLAND
AND
CORVIAS PRINCE GEORGE'S COUNTY STORMWATER PARTNERS, LLC**

This Amendment No. 1 amends that certain Master Program Agreement ("Agreement") dated as of March 26, 2015, by and between:

MANAGER: CORVIAS PRINCE GEORGE'S COUNTY STORMWATER PARTNERS, LLC
1801 McCormick Drive, Suite 280
Largo, MD 20774

and

COUNTY: PRINCE GEORGE'S COUNTY, MARYLAND.

1. **Section XVI of the Agreement is amended in its entirety to read as follows:**

SECTION XVI

PROJECTS ON PRIVATE LAND

Section 16.1 Projects on Private Land.

Section 16.1.1 Authorization. In addition to Projects to be carried out on publicly-owned Impervious Area within the County, the County and the Manager may determine to carry out one or more Projects located on privately-owned Impervious Area within the County (each such Project being a "Private Project"). For purposes of this Section XVI and all Private Projects carried out pursuant to its authorization, the term "Impervious Area" shall not be limited to the County's geographic information system (GIS) mapping of the relevant County property.

Section 16.1.2 Status of Projects. Except as otherwise provided in this Section XVI, a Private Project identified and developed pursuant to this Section shall be treated, in all respects, as a Project under this Agreement.

Section 16.2 Identification of Private Projects. During the development of the Annual Plan for a Billing Year, or at any time during a Billing Year, either the Manager or the County may propose the inclusion of a

Private Project in the Annual Plan for the applicable Billing Year, and upon the agreement of the other Party, such Private Project shall become a Proposed Project for such Billing Year and may thereafter become a Budgeted Project and an Approved Project in accordance with the terms of this Agreement. If the County and the Manager shall agree to undertake a Private Project after the approval of an Annual Plan for a Billing Year, the Manager shall prepare and the Parties shall execute an appropriate amendment to the Annual Plan for such Billing Year reflecting the inclusion of the Private Project.

Section 16.3 Access to Project Site. A Private Project may not become an Approved Project until the County has obtained for itself, its agents and employees, and for the Manager and its Subcontractors, (A) a perpetual easement to install the BMPs and/or the facilities on the applicable Project Site and (B) perpetual rights of entry to ingress and egress over the property of the owner of the Project Site (the "Site Owner"), at reasonable times and in a reasonable manner, in order to install the Project and to inspect and verify the constructed BMPs and/or facilities, so as to assure that they are being properly maintained and functioning, and to perform functional maintenance as determined necessary. The Site Owner shall be required to execute a Declaration of Covenants, Easement and Right of Entry in the form set forth on Schedule 20 hereto or in such other form as shall be acceptable to the County and the Manager.

Section 16.4 Maintenance of Private Projects. Unless otherwise determined by the Manager and the County with respect to a particular Private Project or group of Private Projects, the Manager shall be responsible for the management, maintenance and operation of Accepted Private Projects pursuant to the terms and conditions of the Master Maintenance Agreement as provided in Section 9.9; *provided, however*, that the Project Maintenance Plan (as such term is defined in the Master Maintenance Agreement) for a Private Project shall require the Manager to be responsible for the maintenance of the technical aspects and performance of the applicable BMP(s) and assign responsibility for maintenance of the aesthetic aspects of such Project to the Site Owner, setting forth the anticipated duties of each of the Manager and the Site Owner in appropriate detail.

Section 16.5 Inapplicability of Provisions to Private Projects. Unless otherwise agreed in writing by the Parties, the following provisions of this Agreement shall not apply to Private Projects or shall apply in modified form, as provided herein:

- (a) Acreage treated in Private Projects shall be considered to be within the Initial Program Area or the Expanded Program Area, as applicable, and the costs of Private Projects shall be counted for purposes of the limitation on the County's liability for the costs of Work performed in Projects in the Initial Program Area set forth in Section 7.1 and for purposes of the Advance Payment pursuant to Section 7.5.
- (b) Unless otherwise specifically provided in this Section XVI, the Site Owner shall not benefit from any of the rights or privileges accorded to the County or obligations or liabilities imposed upon the Manager pursuant to this Agreement. Any specific exclusion of rights to the Site Owner under Sections cited in this Section XVI shall not be interpreted to imply the granting of rights to the Site Owner pursuant to uncited Sections.
- (c) "Uncontrollable Circumstances" shall include, without limitation, (i) any interference by the Site Owner, or any officer, agent, member, director, trustee, manager, employee, subcontractor or independent contractor of the Site Owner, with access to the Project Site by the Manager or the County, or any of their Subcontractors, agents or employees, and (ii) damage to a Project caused by the Site Owner or any Person permitted on the Project Site by the Site Owner, or the failure of the Site Owner properly to maintain or protect the Project Site.
- (d) Notwithstanding Section 16.5(c), unless the context shall clearly indicate otherwise, any act or omission of the Site Owner or any officer, agent, member, director, trustee, manager, employee, subcontractor or independent contractor of the Site Owner, which, were the Project Site owned by the County, would be considered "County Fault," may be treated by the Manager as equivalent to County Fault for purposes of the rights and responsibilities of the Manager hereunder.
- (e) The costs and expenses of the County with respect to Private Projects shall not be considered for purposes of the Control Program, which shall include a comparable proportion of acres treated on privately-owned Impervious Area.

- (f) Section 5.2 shall apply, generally, such that references to the County as owner of the Project Site shall, instead, be read as applicable to the Site Owner; provided, however, that if the Site Owner fails to do any act required of the County (as owner of the Project Site) pursuant to said Section, such failure shall be considered an Uncontrollable Circumstance.
- (g) All of Section 5.3.2, other than Section 5.3.2.5, shall not apply.
- (h) Section 5.6 shall not apply to the extent that the Manager cannot provide the required title or rights by virtue of the ownership of the Project Site by the Site Owner.
- (i) Sections 5.7 and 5.8 shall not apply.
- (j) The warranties of Section 11.1 shall run only to the County, and Section 11.2 shall not apply to the extent that the Manager cannot provide the required title or rights by virtue of the ownership of the Project Site by the Site Owner.
- (k) The indemnification provided by the Manager to the County pursuant to Section 15.1 shall not run to the Site Owner and shall not extend to any loss based upon a claim of the Site Owner other than a claim caused by the negligence, recklessness, or willful misconduct (including any act or fraud) of the Manager.
- (l) The County and the Manager may determine, as a condition to proceeding with a Private Project, to require the Site Owner to procure and maintain such insurance as they deem appropriate to cover the Project Site and the Work to be undertaken thereon. The costs of such insurance coverage may be included in the applicable Budget Book for such Private Project.
- (m) The representations and warranties of the Parties pursuant to Section 17.17 shall not run to the Site Owner.

2. Section XVII of the Agreement is amended by adding at the end thereof the following:

Section 17.31 Piggyback Clause. It is understood and agreed by the County and the Manager that any local governmental entity implementing a watershed protection and restoration program which is under


a comparable obligation to reduce the discharge of pollutants and improve water quality pursuant to the NPDES and an underlying MS4 permit, as overseen by MDE and EPA, in order to achieve Impervious Area Credits, subject to MDE standards and review, may purchase the services specified herein in accordance with the terms and conditions of this Agreement. It is also understood and agreed that each local entity will establish its own contract with the Manager, be invoiced therefrom and make its own payments to the Manager in accordance with the terms of the contract between the local governmental entity and the Manager. It is also understood and agreed that the County is not a legally bound party to any contractual agreement made between the Manager and any local entity other than the County.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned Parties, intending to be legally bound hereby, have duly executed this Agreement as of the date first written above.

ATTEST:

PRINCE GEORGE'S COUNTY,
MARYLAND


By: 
Name: Dawn Accepiter

By: 
Name: Barry L. Stanton
Title: Deputy Chief Administrative Officer for Public Infrastructure

ATTEST:

CORVIAS PRINCE GEORGE'S COUNTY
STORMWATER PARTNERS, LLC

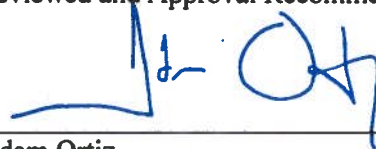
By: 
Name: Lauren V. Freese

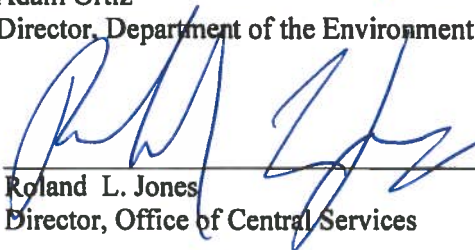
By: 
Name: TIMOTHY X. TOOMEY
Title: AUTHORIZED REPRESENTATIVE

Reviewed for Legal Sufficiency


Office of Law

Reviewed and Approval Recommended:


Adam Ortiz
Director, Department of the Environment


Roland L. Jones
Director, Office of Central Services