

**Charles W. DeSanti**  
**Receiver for the Courts, Biscayne Landing Asset**  
c/o Kitson & Partners, LLC  
4500 PGA Boulevard, Suite 400  
Palm Beach Gardens, Florida 33418

September 15, 2010

Thomas McSweeney  
CH2M Hill Engineers, Inc.  
201 Alhambra Circle, Suite 600  
Coral Gables, FL 33134-5107

RE: Biscayne Landing -- MUNISPORT LANDFILL GROUNDWATER REMEDIATION  
SYSTEM DESIGN-BUILD CONTRACT

Dear Mr. McSweeney:

We are pleased to enclose a copy of the fully executed Munisport Landfill Groundwater Remediation System Design Build Contract for your files. Also enclosed is a copy of the Letter of Intent issued by the City of North Miami on September 10, 2010, as well as the Court Order approving the Contract, issued on September 8, 2010.

Pursuant to Section 2.2.13 of the Contract, the Effective Date of the Contract is September 10, 2010 (i.e. the date the City issued its Letter of Intent). Please advise our office immediately if you do not concur with this determination.

In furtherance of our discussion, until notice otherwise, we will use the Coral Gables address noted above for notice purposes to CH2.

Sincerely,



Richard De Lotto  
Office of the Receiver for the Biscayne Landing Project

Enclosures

Cc: Lynn Whitfield, City of North Miami  
Theodore Stotzer, Biscayne Landing Management, LLC  
Peter Hoelzle, TriMont Real Estate Advisors  
Eduardo Smith, ES Consultants  
Charles W. DeSanti, Receiver, Biscayne Landing Project

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

WELLS FARGO BANK, N.A., AS  
TRUSTEE FOR THE CREDIT SUISSE  
FIRST BOSTON MORTGAGE  
SECURITIES CORP., COMMERCIAL  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2007-TFL2,

CASE NO.: 09-64005 CA 10

Plaintiff,

vs.

BISCAYNE LANDING, LLC, a Florida  
limited liability company, *et al.*,

Defendants.

**ORDER GRANTING RECEIVER'S MOTION  
FOR AUTHORITY TO EXECUTE PROPOSED CONTRACT**

**THIS CAUSE** came before the Court upon the Receiver's Motion for Authority to Execute Proposed Contract (the "Receiver's Motion"). The Court, having reviewed the Receiver's Motion and being advised that the Lender, through its Directing Holder and TriMont Real Estate Advisors, Inc., Special Servicer for the Lender, has participated in the drafting and review of the Proposed Contract and has consented to the relief sought through the Receiver's Motion, and being otherwise advised in the premises, does hereby

**ORDER AND ADJUDGE** as follows:

The Receiver's Motion is **GRANTED**.

**DONE AND ORDERED** in Chambers in Miami-Dade County, Florida on this

8 day of Sept., 2010.

  
~~HONORABLE MARGARITA ESQUIROZ~~  
CIRCUIT COURT JUDGE

**SEP 08 2010**

Copies furnished to: all counsel of record  
PHILIP COOK  
SENIOR JUDGE  
{FT666154;1}



September 10, 2010

John Razzolini  
CH2M HILL  
1000 Abernathy Road  
Suite 1600  
Atlanta, Ga. 30328

Re: **Letter of Intent**  
**Biscayne Landing- Design Build Remediation Contract**

Dear Mr. Razzolini:

I am the City Manager for the City of North Miami, Florida. The City of North Miami is the owner of a certain parcel of land commonly known as "Munisport Landfill" or Biscayne Landing. Through our City Attorney, V. Lynn Whitfield, we have reviewed the proposed Munisport Landfill Groundwater Remediation System Design-Build Contract between Charles W. DeSanti, Court Appointed Receiver for the Biscayne Landing Project and CH2M HILL Engineers, Inc.

In the event the current ground lease on the parcel is terminated for any reason and possession and development rights revert to the City of North Miami, it is the City's intent to continue the Munisport Landfill Groundwater Remediation System Design-Build Contract with CH2M HILL Engineers, Inc. under the terms and agreement as currently set forth and approved by the court.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Benford", with a long, sweeping underline that extends to the right.

Russell Benford  
City Manager

RB:mp

c: **Charles W. DeSanti**  
Court-Appointed Receiver  
Kitson & Partners  
4500 PGA Boulevard, Suite 400  
Palm Beach Gardens, FL 33418

**MUNISPORT LANDFILL GROUNDWATER REMEDIATION SYSTEM  
DESIGN-BUILD CONTRACT  
(WHERE THE BASIS OF PAYMENT IS A LUMP SUM)**

**TABLE OF ARTICLES**

**ARTICLE 1 OVERVIEW.....2**

**ARTICLE 2 GENERAL PROVISIONS.....3**

    2.1 EXTENT OF AGREEMENT.....3

    2.2 DEFINITIONS.....3

**ARTICLE 3 VENDOR’S RESPONSIBILITIES .....4**

    3.1 DESIGN SERVICES .....4

    3.2 CONSTRUCTION SERVICES .....5

    3.3 HAZARDOUS WASTE .....5

    3.4 WARRANTIES AND COMPLETION.....7

    3.5 ADDITIONAL SERVICES .....8

**ARTICLE 4 VENDEE’S RESPONSIBILITIES .....8**

    4.1 INFORMATION AND SERVICES PROVIDED BY VENDEE .....8

    4.2 RESPONSIBILITIES DURING DESIGN .....9

    4.3 RESPONSIBILITIES DURING CONSTRUCTION .....9

    4.4 VENDEE’S REPRESENTATIVE.....9

**ARTICLE 5 CONTRACT TIME.....9**

    5.1 COMMENCEMENT OF THE WORK.....9

    5.2 DELAYS IN THE WORK .....9

**ARTICLE 6 CONTRACT PRICE .....10**

**ARTICLE 7 CHANGES IN THE WORK.....10**

**ARTICLE 8 PAYMENT .....10**

    8.1 DRAW REQUESTS AND PAYMENTS.....10

    8.2 FINALDRAW REQUEST AND PAYMENT.....11

    8.3 CHANGES TO LAWS AND REGULATIONS.....12

**ARTICLE 9 INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION.....12**

    9.1 INDEMNITY .....12

    9.2 VENDOR’S INSURANCE.....13

    9.3 PERFORMANCE AND PAYMENT BOND.....17

**ARTICLE 10 TERMINATION OF THE CONTRACT AND VENDEE’S RIGHT TO PERFORM  
VENDEE’S RESPONSIBILITIES .....17**

    10.1 TERMINATION BY VENDOR.....17

    10.2 VENDEE’S RIGHT TO PERFORM VENDOR’S OBLIGATIONS AND TERMINATION BY  
VENDEE FORCAUSE .....18

**ARTICLE 11 DISPUTE RESOLUTION.....19**

    11.1 INITIAL DISPUTE RESOLUTION.....19

    11.2 AGREEMENT TO ARBITRATE.....19

    11.3 NOTICE OF DEMAND.....19

    11.4 AWARD; COSTS .....19

    11.5 WORK CONTINUANCE AND PAYMENT .....19

**ARTICLE 12 MISCELLANEOUS PROVISIONS.....20**

    12.1 ASSIGNMENT.....20

12.2	GOVERNING LAW .....	20
12.3	SEVERABILITY .....	20
12.4	NO WAIVER OF PERFORMANCE .....	20
12.5	MUTUAL REPRESENTATIONS .....	20
12.6	VENDOR'S OBLIGATION TO MAINTAIN A LIEN FREE PROJECT .....	21
12.7	WAIVER OF CONSEQUENTIAL DAMAGES .....	21
12.8	HURRICANE PREPAREDNESS .....	21

**MUNISPORT LANDFILL GROUNDWATER REMEDIATION SYSTEM  
DESIGN-BUILD CONTRACT  
(Where the Basis of Payment is a Lump Sum)**

This **Munisport Landfill Groundwater Remediation System Design-Build Contract** ("Contract") is made by and between **Charles W. DeSanti, Receiver for the Biscayne Landing Project**, pursuant to Agreed Order Appointing Receiver in the case styled **WELLS FARGO BANK, N.A., AS TRUSTEE FOR THE CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TFL2 vs. BISCAYNE LANDING, LLC, A FLORIDA LIMITED LIABILITY COMPANY**, IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA CASE NO.: 09-64005-CA-10 (hereinafter referred to as "**Receiver**" and as the "**Initial Vendee**").

and **CH2M Hill Engineers, Inc.**, (hereinafter "**Vendor**"), whose address is 9191 S Jamaica Street, Englewood, CO 80112-5946, P. O. Box 241325, Denver, CO 80224.

**RECITALS**

**Whereas**, the Receiver is the court-appointed receiver on behalf of The Biscayne Landing Project ("**Receiver**"), pursuant to Agreed Order Appointing Receiver ("**Receiver Order**") in the case styled **WELLS FARGO BANK, N.A., AS TRUSTEE FOR THE CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TFL2 vs. BISCAYNE LANDING, LLC, A FLORIDA LIMITED LIABILITY COMPANY**, IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA, CASE NO. 09-64005-CA-10 ("**Foreclosure Action**"), and is the Initial Vendee hereunder;

**Whereas**, pursuant to the Receiver Order, the Receiver has been appointed to take possession of and manage the project described in the Receiver Order and commonly known as the Biscayne Landing Project (for purposes hereof, the "**Project**" and sometimes referred to as the "**Munisport**" project in other project documents) during the pendency of the Foreclosure Action;

**Whereas**, the Project is subject to that certain Amended and Restated Ground Lease by and between the City of North Miami, Florida ("**City**"), as Landlord and Biscayne Landing, LLC ("**BLLC**"), as Tenant, demising approximately 180 +/- acres to BLLC ("**Ground Lease**"), and that certain Amended and Restated Munisport Agreement by and between the City and BLLC ("**Munisport Agreement**"), and together these documents shall be referred to as the "**Governing Documents**";

**Whereas**, the Project is subject to Florida Department of Environmental Protection ("**FDEP**") Landfill Closure Permit # SF-13-002191514-009 ("**Landfill Closure Permit**");

**Whereas**, in 2005 the County and City approved a Comprehensive Landfill Closure Plan ("**CLCP**") for the closing of the landfill in accordance with the Landfill Closure Permit, and that CLCP provided for a schedule of values which allocated the Grant Escrow Funds to either landfill closure activities or groundwater remediation activities, and within those two categories several sub-items are identified ("**SOV**");

**Whereas**, as part of developing a revised groundwater remediation program a revised CLCP ("**Revised CLCP**") and a revised SOV ("**Revised SOV**") have been developed;

**Whereas**, the Revised CLCP identifies an approved groundwater remediation system that will be implemented at the Project site ("**Approved Groundwater Remediation System**");

**Whereas**, the City and the Miami-Dade County (“County”) have entered into that certain Second Amended Grant Agreement, whereby, the County has provided funds to the City and the City has escrowed those funds specifically for the landfill closure and groundwater remediation at the Project Site (“Grant Escrow” and “Grant Escrow Funds”, as appropriate);

**Whereas**, the Governing Documents require that BLLC perform the obligations under the Landfill Closure Permit and provide for the Grant Escrow Funds to be made available to BLLC, or its applicable successors and assigns, to fund the performance of such obligations;

**Whereas**, as of June 30, 2010, there is \$13,171,718.72 remaining in the Grant Escrow that is specifically allocated to the Approved Groundwater Remediation System construction purposed (“Groundwater Remediation Funds”), and said Groundwater Remediation Funds specifically exclude any funding for operations and maintenance of the Approved Groundwater Remediation System once constructed;

**Whereas**, pursuant to the Receiver Order, the Receiver oversees the performance of BLLC’s obligations under the Governing Document, subject to further court order and the availability of the Grant Escrow Funds;

**Whereas**, the Vendor has been provided copies of the Receiver Order, the Governing Documents, the Landfill Closure Permit, the Revised CLCP, the Revised SOV, the Approved Groundwater Remediation System, and the documents governing the Grant Escrow, and is familiar with same;

**Whereas**, the Vendee has worked with Vendor to pursue the Revised CLCP, Revised SOV and the Approved Groundwater Remediation System;

**Whereas**, the Vendee and Vendor acknowledge and agree that the Initial Vendee intends to assign this Contract subject to the terms and conditions set forth herein;

**Whereas**, the City is the permittee under permits affecting the Project site, and the City’s approval for permit documents is required pursuant to the Governing Documents;

**Whereas**, it is the intention of the Vendee that the Vendor commence the groundwater remediation and complete the tasks under the Revised CLCP, and the parties understand that both the City and the County are desirous of Vendor completing the groundwater remediation under the Revised CLCP after the conclusion of the Foreclosure Action, regardless of the ground tenant.

**Now, therefore, the Receiver (solely in his capacity as Receiver and as the Initial Vendee) and Vendor enter into this MUNISPORT GROUNDWATER REMEDIATION SYSTEM DESIGN-BUILD CONTRACT.**

## **ARTICLE 1 OVERVIEW**

**The foregoing Recitals are true and correct and incorporated into this Contract by reference.**

It is acknowledged and agreed to by the parties hereto, that the Vendee has specifically entered into this Contract with Vendor because of: (1) an agreement between Vendor and ES Consultants, Inc. (“ESC”) pursuant to which ESC is a Subcontractor of Vendor hereunder; (2) Vendor’s expertise in deep well permitting and construction and its commitment to provide a Total Cost Guarantee; (3) ESC’s familiarity with the Project site and its history, and its small business and minority-owned business status. Depending on the task being performed under the CLCP, the Vendee shall be permitted to contact the representative of either Vendor or ESC. Notwithstanding the above, the Vendor shall remain obligated under this Contract for performance. For purposes of this Contract, each entity’s representative is as follows:

CH2M Hill:  
Thomas McSweeney  
201 Alhambra Circle, Suite 600  
Coral Gables, FL 33134-5107

ESC:  
Eduardo Smith  
7700 North Kendall Drive, Suite 607  
Miami, FL 33156

Vendee:  
Richard De Lotto  
Office of Receiver, Biscayne Landing Project  
4500 PGA Boulevard, Ste 400  
Palm Beach Gardens, FL 33418

Vendor shall provide written notice to Vendee in the event of a change to either of the foregoing representatives.

Subject to the provisions of Article 6, Vendor shall commence and complete the Work as provided for on the Groundwater Remediation Timeline

## ARTICLE 2 GENERAL PROVISIONS

### 2.1 Extent of Contract

This Contract is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. Attachments A and B are incorporated into this Contract.

### 2.2 Definitions

**2.2.1 Contract Documents** means this Contract and its attachments and any agreed upon Change Orders or amendments to this Contract, as provided for herein.

**2.2.2 Work** means the total set of tasks necessary to be undertaken by Vendor to satisfy all the conditions of the Revised CLCP and complete the Approved Groundwater Remediation System (other than operations and maintenance), as are more particularly described throughout this Contract, including without limitation, in the following subparts: Design Services (Paragraph 3.1); Construction Services (Paragraph 3.2); Additional Services, if any (Paragraph 3.6); and, other services which are necessary to complete the Approved Groundwater Remediation System in accordance with and reasonably inferable from the Contract Documents, Governing Documents, Laws/Regulations and Permits and Approvals.

**2.2.3 Total Cost Guarantee** means the commitment by Vendor to complete the Work within the funds remaining in the Groundwater Remediation Funds, as more specifically provided for in Article 6 of this Contract.

**2.2.4 Groundwater Remediation Timeline** means the timeline provided for on Attachment 5 to this Contract.

**2.2.5 Bond Commitment** means the commitment by Vendor to bond the total hard costs of the Work, as more specifically provided for in Article 9 of this Contract.

**2.2.6 Day** means a calendar day, unless business days are specifically identified.

- 2.2.7 Subcontractor** means a person or entity that has an agreement with Vendor to perform any portion of the Work. The term Subcontractor does not include any separate contractor employed directly by Vendee.
- 2.2.8 Sub subcontractor** means a person or entity that has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.
- 2.2.9 Supplier** means a manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with Vendor or with any Subcontractor at any tier to furnish materials or equipment to be incorporated into the Work by Vendor or any Subcontractor.
- 2.2.10 Hazardous Waste**, subject to the limitations contained in Paragraph 3.3, means asbestos, PCB's, petroleum, radioactive material and any other toxic substances, in whatever form or states that is known or suspected to adversely affect the health and safety of humans or of animal or plant organisms, or which are known or suspected to impair the environment in any way whatsoever and shall include but not be limited to substances with the meanings provided in Section 4004 of the Solid Waste Disposal Act (42 U.S.C. 6903); Section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601(14)); as listed or designated under Sections 1317 and 1321(b)(2)(a) of Title 33 (33 U.S.C. 1317 and 1321(b)(2)(a)) or as defined, designated or listed under United States OSHA any other Federal, State or local law, regulation or ordinance concerning hazardous waste, toxic substances or pollution.
- 2.2.11 Laws/Regulations** are any applicable laws, rules, regulations, ordinances, codes or orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction, whether in effect as of the Effective Date or subsequently enacted.
- 2.2.12 Permits and Approvals** shall mean the Munisport Landfill Closure Permit, and any and all other permits and approvals from whatever regulatory or governmental body obtained or to be obtained necessary to implement the groundwater remediation contemplated by the Revised CLCP and within the definition of the Work.
- 2.2.13 Effective Date** means the earliest date that all of the following conditions shall have been satisfied: (i) the Initial Vendee shall have received Court approval for the execution and delivery of this Contract, (ii) the City shall have delivered a Letter of Intent to accept an assignment of this Contract as anticipated in Section 12.1 herein, in form and substance reasonably acceptable to each of Vendor and Vendee, and (iii) each of Vendor and Vendee shall have executed and delivered this Contract to the other.
- 2.2.14 Lender(s)** means Well Fargo Bank, N.A. , as Trustee for the Registered Holders of the Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2007-TFL2, together with its successors, assigns and servicers.

### **ARTICLE 3 VENDOR'S RESPONSIBILITIES**

Vendor shall be responsible for the design, permitting and the construction of the Work consistent with the requirements of this Contract and at all times in strict conformance with the Revised CLCP, Revised SOV and the Groundwater Remediation Timeline. Vendor shall exercise reasonable skill and judgment in the performance of the Work.

#### **3.1 Design Services**

Vendor shall design (from initial design through to final design) the groundwater remediation system in compliance with the Revised CLCP. Upon approval of the final design by the Vendee

and receipt of the permits and approvals from the applicable regulatory agencies, Vendor will commence construction.

### **3.2 Construction Services**

- 3.2.1** In order to complete the Work, Vendor shall provide all necessary construction supervision, inspection, construction equipment, construction labor, materials, tools and subcontracted items.
- 3.2.2** Vendor shall give all notices and comply with all Laws/Regulations enacted as of the date of execution of the Contract and all Permits and Approvals which govern the proper performance of the Work. At all times Vendor shall comply with all Laws/Regulations which relate to equal opportunity employment and affirmative action.
- 3.2.4** Vendor is responsible for securing the building and regulatory permits necessary for the completion of the Work, and in so doing shall work cooperatively with the Vendee and with the City where the City will be the permittee under such permits.
- 3.2.5** Vendor shall take necessary precautions for the safety of its employees, suppliers, subcontractors, sub subcontractors performing any of the Work, and shall comply with all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project site. Vendor, directly or through its Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. Vendor, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project site carried on by Vendee or its employees, agents, separate contractors or tenants. The Vendee agrees to cause its employees, agents, separate contractors and tenants to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.
- 3.2.6** Vendor shall keep such full and detailed accounts as may be necessary for proper and expedient processing of grant draw requests, as provided for in Article 8. The Vendee shall be afforded access to all Vendor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Work. To the extent such documents are required as a basis for payment in accordance with the CLCP or permit applications and supporting documentation, such documents shall become the property of Vendee upon the funding of the applicable Draw Request(s) pursuant to Section 8.1.3 hereof. These documents will include digital files as applicable (such as drawings in AutoCAD or similar format and modeling files, as appropriate). Vendor shall preserve all such records for a period of three (3) years after the final payment or longer where required by law or by the Governing Documents.
- 3.2.7** Vendor shall provide periodic written reports to Vendee on the progress of the Work as agreed to by Vendee and Vendor.
- 3.2.8** At all times, Vendor shall maintain the site of the Work free from debris and waste materials resulting from the Work. At the completion of the Work, Vendor shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris.

### **3.3 Hazardous Waste**

For purposes herein, the parties acknowledge that the Project site is located upon the prior Munisport Landfill, and to the parties' knowledge, there is no hazardous waste contained within or under the Project site. For purposes herein, the landfill debris anticipated to be encountered at and under the site and during construction activities consists of Class I landfill debris and is not

deemed hazardous waste, nor is the ammonia and methane encountered on site deemed to be hazardous waste, for purposes of this Contract. Collectively, the Class I debris, the ammonia and methane are excluded from the definition of hazardous waste, and it is specifically contemplated by the parties that the Vendor will address these substances in accordance with all Law/Regulation, Permits and Approvals and within the Total Cost Guarantee (collectively, the "Exclusions").

- 3.3.1 Should Vendor encounter hazardous waste during performance of the Work, Vendor shall report in writing the condition to Vendee and, if required, to the government agency with jurisdiction. In such event, the Vendor shall not be obligated to commence or continue Work in the affected area but shall immediately recommence such discontinued Work effort upon either: (1) the Vendee having arranged for the removal of such known or suspected Hazardous Waste; or (2) the Vendee having obtained from an independent testing laboratory and approved by the appropriate government agency a certification that the suspected Hazardous Waste has been determined to be harmless. Nothing contained in this Paragraph shall be construed to impose on Vendor any obligation to report the foregoing matters.
- 3.3.2 In the event Vendor is delayed in performing the Work hereunder, the parties will meet to review a reasonable modification of the Groundwater Remediation Timeline. However, the Vendor shall make all reasonable efforts to mitigate and avoid such delays, by, for example, working in unaffected areas, while an affected area is being remediated.
- 3.3.3 All directions by Vendee shall comply with Laws/Regulations. If Vendor believes that compliance with any direction by Vendee would violate any Laws/Regulations, then Vendor shall not be required to comply with it and shall so advise Vendee, in writing. If Vendee fails to modify its directions within ten (10) days after Vendor's notice to Vendee or if Vendee fails to report to governmental authorities any matter which Vendee is required by Laws/Regulation to report, then Vendor shall have the right (after providing Vendee seven (7) days written notice and an opportunity to cure) to suspend the Work, which delay shall be attributable to Vendee, or to terminate the Contract pursuant to Article 10 of the Contract.

The Vendee acknowledges that, except to the extent included in the Work, Vendor has had no role in generating, treating, storing or disposing of Hazardous Waste which may be present at the Project Site and Vendor has not benefited from the processes that produced such Hazardous Waste. No Hazardous Waste encountered by Vendor in performing, or associated with, the Work shall at any time be or become the property of Vendor. Any arrangements made by Vendor for the treatment, storage, transport or disposal of any Hazardous Waste are made solely and exclusively for the benefit of the Vendee and shall not result in any liability of Vendor under this Contract or with respect to the Hazardous Waste. Vendor shall handle all Hazardous Waste in compliance with applicable Laws and Regulations and shall sign manifests and obtain generator identification numbers when required by Laws and Regulations. If required by the Contract Documents, Vendor shall furnish the names of facilities currently licensed to accept Hazardous Waste, but it shall be the sole responsibility of Vendee to select those to be engaged. Nothing contained in this Contract shall confer on Vendor the status of (a) a generator, storer, disposer or treater of Hazardous Waste, (b) the party who arranged for the disposal of Hazardous Waste or (c) a Hazardous Waste disposal facility, as provided in any Law or Regulation.

The Vendee warrants that, to the best of its knowledge, the City holds clear title to all wastes to be treated, stored and/or disposed and is under no legal restraint or order which would prohibit the treatment, storage and/or disposal of such wastes by any transporter or disposal facility. Notwithstanding the above, the parties will work together to conclude whether there is any impediment to such actions relative to wastes.

### 3.4 Warranties and Completion

3.4.1 Vendor will perform the Work in strict compliance with applicable Laws/Regulations, Governing Documents, Permits and Approvals, the Revised CLCP and according to accepted practices observed by other firms performing work similar to the Work or similar to aspects of the Work as outlined in the Revised CLCP. Vendor warrants that all materials and equipment furnished under this Contract will be new unless otherwise agreed to in writing by the Vendee. Vendor will repair or replace workmanship, materials or equipment which do not conform to the foregoing standards or the Contract Documents which appears within one (1) year of Vendor's receipt of funding of the Final Draw Request as provided for in Article 8 of this Contract, provided Vendee notifies Vendor in writing promptly upon discovery of such nonconforming Work. Vendor's liability for such reperformance shall not exceed the amount of the Bond Commitment as provided for in Paragraph 9.3 of this Contract, and Vendor shall not be entitled to additional pay for any portion of the Work that is reperformed.

Vendor shall collect all written warranties and equipment manuals from its contractors, subcontractors, subsubcontractors, materialmen and vendors, and deliver and assign them to Vendee.

3.4.2 Vendor will maintain work discipline on the Site and shall comply and secure compliance by its employees, agents and Subcontractors with all applicable Laws/Regulations relating to occupational health and safety and will take precautions and erect such safeguards as may be necessary for the protection of its employees.

3.4.3 Those products, equipment, systems or materials incorporated in the Work shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof.

3.4.4 Vendor specifically represents and warrants that it is licensed to perform the Work described hereunder, and that it will perform the Work in compliance with the Revised CLCP, Laws/Regulations, Governing Documents and the Permits and Approvals.

**All other warranties, express or implied, including (except as provided above) any warranty of merchantability and any warranty of fitness for a particular purpose are expressly disclaimed.**

3.4.5 Vendor shall secure required certificates of inspection, testing, completion and/or approval and deliver them to Vendee.

3.4.6 Vendor shall perform the inspection of utilities and operation of groundwater remediation system and its equipment for readiness, and assist in their initial start-up and testing.

#### 3.4.7

Notwithstanding anything to the contrary contained in this Contract, Vendee and Vendor agree and acknowledge that Vendee is entering into this Contract in reliance on Vendor's special and unique abilities with respect to performing the Work performed by the Vendor, its employees and subcontractors as enumerated in the Contract Documents. Vendor covenants with Vendee to use its best efforts, skill, judgment, and abilities to complete its Work in accordance with the requirements of this contract. Vendor acknowledges and agrees that notwithstanding the engagement of any Subcontractor or Sub subcontractor, Vendor shall not be released from the responsibility to complete the Work in the manner required hereunder. Nothing in this Contract shall be construed to eliminate the Vendor's responsibility for compliance of its services with local, state, and federal statutes and regulations, including but not limited to those that relate to hazardous materials and accessibility for the physically challenged. The Vendor agrees to perform its Work required to be performed hereunder in accordance with the professional standards and generally accepted construction standards and practices for projects of similar size, design and

complexity (the "Standard of Care"). Vendor will not be liable for the condition, design, application or code compliance of any equipment furnished by Vendee or other contractors which are not hired by or in privity with Vendor.

### **3.5 Additional Services**

It is understood and agreed to by the parties hereto that the Work performed hereunder and in compliance with the Revised CLCP will be completed for the Total Cost Guarantee and funded pursuant to the Revised SOV. Services rendered by the Vendor outside of the Revised CLCP and not reasonably anticipated as part of or attendant to performance of the Revised CLCP shall be considered "Additional Services." Additional Services shall be by separate written agreement between the parties. Additional Services may include but are not limited to:

- 3.5.1** Any work associated with handling, characterizing or otherwise dealing with potentially hazardous waste that may be discovered at the site.
- 3.5.2** Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Work and/or Project that are not specifically related to the groundwater remediation as provided for in the CLCP
- 3.5.3** Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Work, not specifically related to the Work contemplated herein and as required under the Revised CLCP; or, for any legal action taken against the Vendee, unless related to performance hereunder.
- 3.5.4** Any wetlands mitigation, stormwater, and landfill closure related design and/or construction work, other than wetland mitigation conceptual design related to the remedial action plan ("RAP") as provided for in the Revised CLCP.

## **ARTICLE 4 VENDEE'S RESPONSIBILITIES**

### **4.1 Information and Services Provided by Vendee**

- 4.1.1** Due to Vendor's familiarity with the Work and the Project site, the Vendor acknowledges that it has all necessary Project related information to complete the Work, or shall undertake to obtain same to the extent such additional Project related information needs to be generated to perform the Work in compliance with the Revised CLCP, Laws/Regulations, Governing Documents and the Permits and Approvals. In the event, such additional Project related information needs to be generated or obtained, the Vendor agrees that such additional work shall be deemed within the definition of the Work and within the Total Cost Guarantee. Given the Vendee's current role as the Receiver for the Project under the Receiver Order, the Receiver can only make available to the Vendor information which is located on the Project site, but offers no opinion or representation as to the utility of that information to the Work. The Vendee will make available to Vendor all Project related information that is contained on the Project Site, upon the request of Vendor. However, the Vendor is responsible to ensure the efficacy of that information for its applicability to the Work.
- 4.1.2** The Vendee shall provide unrestricted access to on-site work areas, subject to the Vendee safety practices and local ordinances. The parties hereto acknowledge that the Oaks Condominium is located on lands not immediately within the control of the Vendee, but which lands remain subject to the Revised CLCP, Revised SOV and the Permits and Approvals. Vendee shall cooperate with the Vendor to ensure access, and the Vendor

agrees to attend community meetings to explain to residents of the Oaks Condominium Association the Work. The Vendee will use its best efforts to minimize the need for such meetings. The Vendor represents that, as of the date of this Contract, the quality of access (i.e. physical) behind the structures located on the Oaks Condominium Association property and adjacent to the offsite wetlands has been taken into consideration by the Vendor in preparing the Revised CLCP and Revised SOV and in committing to the Total Cost Guarantee.

#### **4.2 Responsibilities During Design**

The Vendee shall provide review comments or approval of submittals to regulatory agencies or others within five (5) business days of receipt.

#### **4.3 Responsibilities During Construction**

**4.3.1** If Vendee becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, Vendee shall give prompt written notice to Vendor.

**4.3.2** The Vendee shall communicate with Vendor's Subcontractors, Suppliers and Engineer only through the representatives identified in Article I of this Contract. The Vendee shall have no contractual obligations to Subcontractors, Suppliers, or the Engineer.

#### **4.4 Vendee's Representative**

The Vendee's representative designated in Article 1 shall be fully acquainted with the Work and the Project, and shall have the authority to bind Vendee in all matters requiring Vendee's approval, authorization or written notice. However, Change Orders or Amendments shall require the execution of the document by a principal of the Vendee. In the event the City becomes the Vendee hereunder, execution by the City Manager (or his designee) shall be required on all Change Orders or Amendments. If Vendee changes its representative or the representative's authority as listed above, Vendee shall notify Vendor in advance in writing.

### **ARTICLE 5 CONTRACT TIME**

#### **5.1 Commencement of the Work**

Vendor has prepared the Groundwater Remediation Timeline based upon its knowledge of the Work and the Project Site, and shall commence and proceed in general accordance with such Groundwater Remediation Timeline, as may be amended from time to time upon mutual agreement between the Vendee and Vendor, subject, however, to the provisions of Paragraph 3.3 (Hazardous Waste) and Subparagraph 4.1.2 (Access). Notwithstanding the preceding sentence, the parties hereto acknowledge that the Work and the Project maintain a high profile within the City and within the County, and, therefore, in the event excusable delays (as provided for below) are encountered the Vendor shall make all reasonable efforts to mitigate time delays before the Groundwater Remediation Timeline is modified.

#### **5.2 Delays in the Work**

If causes beyond Vendor's control delay the progress of the Work, then the Vendee and Vendor shall meet to discuss reasonable extensions of events listed on the Groundwater Remediation Timeline. However, the Vendor shall not be entitled to a change to the Total Cost Guarantee as provided in Article VI. For purposes of changes to the Groundwater Remediation Timeline, causes of delay shall include, but not be limited to: changes ordered in the Work, acts or omissions of Vendee or separate contractors employed by Vendee, Vendee preventing Vendor from performing the Work pending dispute resolution, Hazardous Waste, differing site conditions, adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, labor disputes, or

unavoidable accidents or circumstances. Obtaining regulatory agency approvals and permits is within the Revised SOV and Groundwater Remediation Timeline and is not considered beyond the control of Vendor.

## **ARTICLE 6 CONTRACT PRICE**

Vendor hereby agrees to complete the Approved Groundwater Remediation System within the funds remaining in the Groundwater Remediation Funds, i.e. Total Cost Guarantee, and to that end to absorb overages in costs to the extent the Groundwater Remediation Funds are insufficient to comply with the Revised CLCP. To avoid any confusion, the Total Cost Guarantee is the Vendor's commitment to complete the Approved Groundwater Remediation System for the Groundwater Remediation Funds (\$13,171,485.85). The Vendor has made this commitment based upon its own independent knowledge of the Project, the Work, its specialization in the business, and its own involvement in the preparation of the Revised CLCP, Revised SOV and Groundwater Remediation Timeline. The Total Cost Guarantee may be adjusted by a Change Order pursuant to Article 7.

## **ARTICLE 7 CHANGES IN THE WORK**

It is understood and agreed to by the parties hereto that the Revised CLCP and Revised SOV is the work product of a number of months of Vendee and Vendor working with the City and with the County to agree upon a new groundwater remediation design for the Project site. The Vendor's commitment to the Total Cost Guarantee is a material inducement to Vendee entering into this Contract. Therefore, it is not anticipated by the parties that change orders will be necessary, except as provided for in Subparagraph 8.3. Changes in costs due to unit cost changes or changes to the anticipated design features placed upon the Work by regulatory bodies were anticipated by the Vendor prior to entering into this Contract and committing to the Total Cost Guarantee, and thus will not be included by Vendor in a change order or cause an increase to the Total Cost Guarantee. The Vendee will support reasonable changes to the Revised SOV, provided the County and City agree to same, which are required or prudent in the course of completing the Work. For the purposes of clarity, it is specifically agreed to by the parties hereto that the Work includes all necessary right of way and any improvements needed to internal access within the Project Site to accommodate the Work and related equipment, all necessary regulatory reporting and all utility relocation. Further, the Vendor is uniquely familiar with the Project Site and has taken into consideration the condition of the Project Site before committing to complete the Work in accordance with the Revised CLCP and committing to the Total Cost Guarantee. Agreed upon changes to the Groundwater Remediation Timeline may be accomplished by Change Orders.

In the event of an emergency affecting the safety of persons and/or property, the Vendor shall act, at its discretion, to prevent threatened damage, injury or loss, and the Vendee and Vendor shall meet to approve an agreed upon modification to the Groundwater Remediation Timeline. However, the Vendor shall not be entitled to a modification to the Total Cost Guarantee.

## **ARTICLE 8 PAYMENT**

### **8.1 Draw Requests and Payments**

The Parties acknowledge that the Vendee, through the Governing Documents and the Revised CLCP, is entitled to receive funds from the Grant Escrow to fund the Work contemplated herein. The Vendor shall submit periodic draw requests ("Draw Request") for payment to Vendee for

review and execution. Pursuant to the Revised CLCP and Revised SOV, the Vendor shall work with the County's Bond Engineer to obtain an advance (or preliminary) approval from the County's Bond Engineer of all Draw requests. All Draw Requests submitted by the Vendor to the Vendee shall include either: (1) to the extent provided in writing, a copy of the advance (or preliminary) approval from the County's Bond Engineer indicating compliance with the Revised CLCP and Revised SOV; or (2) a statement by the Vendor that the Vendor and County's Bond Engineer conducted their preliminary meeting in accordance with the Revised CLCP and Revised SOV, and that the Draw Request is in conformance with the Bond Engineer's direction from said meeting. Within five (5) business days of receipt Vendee shall provide comment or approve such Draw Request for submission to the City. Once the Draw Request is complete to the satisfaction of Vendee and Vendor, the Vendee and Vendor shall formally submit the Draw Request to the City with a duplicate copy to the County. The Vendor shall expeditiously process all periodic Draw Requests through the City and the County, and the Vendee will direct the City to fund directly to the Vendor, and in the event the City funds directly to the Vendee, the Vendee shall within five (5) business days of receipt of any such funding shall wire such funds to the Vendor pursuant to wire instructions provided by Vendor. Initial Vendee shall not be responsible for the City's determination to grant or withhold its approval of any Draw Request or for any delay on the part of the City in responding to any Draw Request.

- 8.1.1** Vendor will submit on behalf of itself and all Subcontractors, Sub subcontractors and Suppliers a Partial Payment Affidavit with each Draw Request, starting with the first Draw Request. Starting with the second Draw Request, Vendor shall also provide full releases of lien for all previously funded Work in the form agreeable to Vendee.
- 8.1.2** Vendor will submit with each Draw Request a certified report indicating the fees that have been paid to small business Subcontractors, including ESC for services under this Contract.
- 8.1.3** Vendor warrants and guarantees that title to all Work, materials, equipment, and warranties (as provided for in Subparagraph 3.4.1) covered by a Draw Request, whether incorporated into the Project, Work or not, will pass to Vendee upon receipt of said Draw Request funds such by Vendor free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens".
- 8.1.4** The payment of a Draw Request, or Vendee's occupancy or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents, nor shall it be considered a waiver of any warranty provided for herein.

## **8.2 Final Draw Request and Payment**

- 8.2.1** The Final Draw Request ("Final Draw Request"), consisting of the unpaid balance of the Total Cost Guarantee, shall be processed in the same manner as a periodic Draw Request. However, the Final Draw Request shall only be due and payable when the Work is fully completed, which shall be upon final acceptance by the applicable regulatory bodies as provided for in the Revised CLCP and when the Vendor has provided Vendee with a Final Payment Affidavit in the form agreeable to Vendee. The Approval of the County's Bond Engineer required pursuant to Subparagraph 8.1 above shall confirm same. A final unconditional release of all liens from the Vendor, Subcontractors, Sub subcontractors and Suppliers in the form agreeable to Vendee shall be delivered within thirty (30) days of Vendor's receipt of funding for the Final Draw Request.
- 8.2.2** In approving the Final Draw Request, the Vendee waives all claims except for:
  - 8.2.2.1** outstanding liens;
  - 8.2.2.2** improper workmanship or defective materials appearing within one (1) year after the date of Completion;

8.2.2.3 any claim pursuant to a warranty provided for herein, obligations which survive the completion of the Work, latent design and/or construction defects or claims pursuant to other written agreements with the Vendor.

8.2.2.4 any claims previous made by Vendee in writing and which remain unsettled.

8.2.3 In accepting the Final Draw Requests funds, Vendor waives all claims for payment for the Work except those previously made in writing and which remain unsettled.

### **8.3 Changes to Laws and Regulations**

If there is a change in the Law/Regulations subsequent to the execution of this Contract that materially affects the Groundwater Remediation Timeline or the ability of the Vendor to complete the Work within the Total Cost Guarantee, the parties will meet in good faith and make all efforts to mitigate the effect by: (1) modifying the Groundwater Remediation Timeline; (2) by seeking appropriate revisions to the Revised CLCP and Revised SOV (which may include, among other things, changes to individual line items within the Revised SOV, allocation of Grant Fund presently allocated to operations/maintenance of the Approved Groundwater Remediation System or allocated to the landfill closure); or, by seeking other funding mechanisms. The parties shall execute a corresponding Change Order as provided for in Article 7 to reflect such efforts to mitigate. If the parties are unable to agree on a method to mitigate the effect of such change, this Contract shall be deemed terminated, upon written notice by either party of same. Vendor shall be entitled to funds for Work completed through the date of termination, but shall not be entitled to any other compensation, including but not limited to Damages as provided for in Article 10.

## **ARTICLE 9 INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION**

### **9.1 Indemnity**

9.1.1 To the fullest extent permitted by law, Vendor shall defend, indemnify and hold Vendee, Lenders, the City and, for so long as it remains the tenant under the Ground Lease, BLLC (collectively, the "Indemnified Parties"), harmless from all claims for bodily injury and property damage, including resulting loss of use that may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions by Vendor, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Vendor shall not be required to defend, indemnify or hold harmless any of the Indemnified Parties for any acts, omissions or negligence of such Indemnified Party or such Indemnified Party's employees, agents or separate contractors, nor for any liability arising out of any such Indemnified Party's statutory status as generator of the waste streams, which status is expressly retained by the applicable Indemnified Party(ies). The parties hereto acknowledge that ESC performs other activities onsite unrelated to the Work, and this exclusion to Vendor's indemnification obligation shall only be applicable to ESC where ESC is performing tasks unrelated to the Work.

9.1.2 The Vendee shall cause any other contractor which may have a contract with Vendee to perform work in the areas where Work will be performed under this Contract, to agree to indemnify Vendor and any Subcontractors or Sub subcontractors and to hold them harmless from all claims for bodily injury and property damage, that may arise from the negligence attributed to the acts or omissions by such contractor's operations. Such provisions shall be in a form satisfactory to Vendor. Prior to any such other contractor performing work in an area where the Work is progressing, Vendor shall meet with such additional contractor to advise them of the Work then currently taking place and appropriate safety precautions to minimize the risk of interference or delay in the Work. A representative of Vendee may attend, but is not required, to attend such meeting.

9.1.3 If Vendee contracts with others for the performance of other work on the site, Vendee will specify in writing the work scope and work area of each contractor. Vendor will not be responsible for procedures or adequacy of health and safety measures of such other contractors.

9.1.4 Vendor's liability for Vendee's damages for any cause or combination of causes, whether based upon contract, tort, breach of warranty, negligence or otherwise, will, in the aggregate, not exceed the total dollar amount invoiced by Vendor. Except in the case of gross negligence or willful misconduct, Vendor, its affiliated corporations, officers, employees, or any of its subcontractors shall not be liable for any incidental, indirect, special, punitive, economic or consequential damages, including but not limited to loss of profits, suffered or incurred by Vendee or any of its agents, including other contractors engaged. Any cause of action, suit, proceeding, demand or other claim, including claim of latent defects, whether based upon contract, tort, breach of warranty, negligence or otherwise, shall be deemed waived unless made by Vendee in writing and received by Vendor on or before one (1) year after the completion of the Work and final payment has been received by Vendor.

## 9.2 Vendor's Liability Insurance

### Minimum Insurance Requirements

9.2.1 All insurance policies referenced in this Insurance Section, shall use Insurers with a minimum A.M. Best rating of A- VII and all Insurers shall be licensed and admitted to do business in the state where the work is being done.

9.2.2 Vendor shall not charge a markup or fee of any type on any insurance policies required herein.

9.2.3 It is understood and agreed, authorization is hereby granted to Vendee to either terminate Vendor or withhold payments to Vendor until properly executed Acord certificates of insurance with copies of the Additional Insured, Primary and Non-Contributory Basis and Waiver of Subrogation endorsements for the commercial general liability, commercial auto liability and Vendor's pollution liability providing insurance as required herein are received and approved by the Vendee.

Vendor shall maintain, at their expense, the following insurance coverages:

9.2.3.1 Property - insurance to insure Vendor's own equipment, materials and tools that are used by the Vendor to perform work, which are not to be incorporated into the work.

9.2.3.2 Commercial General Liability - insurance shall cover all operations of Vendor for bodily injury and property damage, advertising and personal injury liability limits of:

- a. \$2,000,000 General Aggregate Limit (Other than Products – Completed Operations)
- b. \$2,000,000 Products – Completed Operations Aggregate
- c. \$1,000,000 Personal and Advertising Injury Limit
- d. \$1,000,000 Each Occurrence Limit
- e. \$1,000,000 Damage to Rented Premises

Commercial General Liability coverage shall be written on an "occurrence" basis using ISO CG0001 12/07 edition or its equivalent form ("claims made" is not acceptable), with the following terms and conditions:

- a. Separation of Insureds (severability of interest),

- b. Contractual Liability for all oral or written contracts, and shall not have any additional restrictions or modifications to the definitions of "Insured Contract" as provided by ISO CG0001 12/07 edition,
- c. Coverage for Independent Vendors,
- d. Products - Completed Operations coverage must be maintained for a period of three (3) years after the completion of the work,
- e. Additional Insured endorsement ISO CG2010 11/85 edition or its equivalent,
- f. Additional Insured is on a primary and non-contributory basis,
- g. A Waiver of Subrogation endorsement ISO CG2404 10/93 edition or its equivalent,
- h. Designated Construction Project General Aggregate Limit endorsement ISO CG2503 3/97 edition or its equivalent,
- i. No "Vendors Conditions of Coverage" or "Subcontractor Required Insurance" or similar restrictions, endorsements or limitations shall be part of the coverage.

**9.2.3.3 Commercial Automobile Liability** – insurance coverage with limits of \$1,000,000 per accident for all Owned, Leased, Non-Owned and Hired vehicles with the following minimum enhancements:

- a. Designated Insured endorsement ISO CA2048 2/99 edition or its equivalent,
- b. A Waiver of Subrogation endorsement,
- c. If hazardous materials are being transported then Pollution Liability - Broadened Pollution for Covered Autos endorsement ISO CA9948 or its equivalent.

**9.2.3.4 Workers' Compensation** - insurance in accordance with the applicable State statutes and laws. This includes sole proprietorships, members of LLC's and partners who will be performing work.

**9.2.3.5 Employers Liability** – insurance coverage with limits as follows:

- a. \$500,000 Bodily Injury by Accident, for each accident
- b. \$500,000 Bodily Injury by Disease, policy limit
- c. \$500,000 Bodily Injury by Disease, each employee

**9.2.3.6 Umbrella Liability** - insurance shall be excess of employers liability, commercial general liability and commercial automobile liability. Insurance shall cover all operations of Vendor and coverage shall provide equivalent coverage. Additional Insureds, terms and conditions included in the primary policies.

Umbrella liability coverage shall be written on an "occurrence" basis form. General Vendors are required to maintain a limit of \$11,000,000 each occurrence, general aggregate and products – completed operations aggregate.

**9.2.3.7 Professional Liability (errors & omissions)** – insurance with a limit of \$5,000,000 each claim. Policy shall provide coverage for the work to be performed by Vendor for Vendee. Retroactive date shall be prior to the commencement of such work. Coverage or extended reporting period shall remain in force for three (3) years following the completion of work or termination of Vendor.

**9.2.3.8 Pollution Liability (Vendor's Form)** – insurance covering environmental work to be performed by Vendor with a limit of \$5,000,000 each claim with the following terms and conditions:

- a. Vendee is included as an Additional Insured,
- b. Vendor's policy is primary coverage for claims arising out of the Vendor's operations at the VendeeS site,

Such Vendor's Pollution Liability coverage can be written on either an occurrence or claims made form and shall remain in force until the end of work or termination of Vendor. If claims made form, coverage or extended reporting period shall remain in force for three (3) years following the completion of work or termination of Vendor.

- 9.2.4 Vendor shall furnish Vendee, City and, for so long as it remains the tenant under the Ground Lease, BLLC, with Acord certificates of insurance reflecting all of the insurance coverages required herein. Vendor shall endorse the commercial general liability, commercial auto liability, and Vendor's pollution liability to include the following: Additional Insured status, Additional Insured is on a Primary and Non-Contributory basis and Waiver of Subrogation to Vendee and provide copies of such endorsements. All Acord certificates will provide thirty (30) days prior written notice of cancellation or non-renewal for all of the required insurance coverages except ten (10) days for non-payment of premium.

Certificate Holders shall read:

"Charles DeSanti, As Receiver For Court  
C/O Kitson & Partners Asset Management, LLC  
4500 PGA Boulevard, Suite 400  
Palm Beach Gardens, FL 33418

And

The City of North Miami  
C/O City Manager  
776 NE 125th Street  
North Miami, FL 33161-5654

And

Biscayne Landing, LLC  
c/o Biscayne Landing Management, LLC  
321 East Hillsboro Blvd.  
Deerfield Beach, Florida 33441  
Attention: Theodore R. Stotzer, Executive Vice President and General Counsel

Certificate Holders are also Additional Insureds

Vendor's Acord certificates will evidence all self-insured retention's, and/or deductibles for any of the required insurance coverages. Vendor shall be responsible, at no additional cost to Vendee, the City or BLLC, for the payment of any and all deductibles, and/or self-insured retentions in connection with the insurance coverages required herein for claims arising out of the Vendor's work under this Agreement.

Vendor shall cooperate with Vendee's Insurers with respect to claims which may arise as respects their work under this Agreement. Vendor shall notify Vendee in writing as soon as practicable after they receive notice of loss, damage, or injury which may arise as respects its work under this Agreement. Vendor shall take no action under the policy that

may prejudice the policy terms and conditions on behalf of the Vendee in its defense of a claim based on such loss, damage or injury.

**9.2.5** Vendor shall cause all Subcontractors, Sub subcontractors and Suppliers to maintain for the full term of such parties' work and at such parties' own expense, the same minimum insurance coverages required herein except (i) professional liability is required only if performing work of a professional nature (such as an architect or engineer). In the event a Subcontractor, Sub subcontractor or Supplier does not maintain the policies or have sufficient policy limits as required in the above Insurance Section, then Vendor shall have authority to accept the following minimum insurance coverages:

**9.2.5.1** Commercial General Liability - insurance shall cover all operations of Vendor for bodily injury and property damage, advertising and personal injury liability limits of:

- a. \$2,000,000 General Aggregate Limit (Other than Products – Completed Operations)
- b. \$2,000,000 Products – Completed Operations Aggregate
- c. \$1,000,000 Personal and Advertising Injury Limit
- d. \$1,000,000 Each Occurrence Limit
- e. \$1,000,000 Damage to Rented Premises

**9.2.5.2** Commercial Automobile Liability – insurance coverage with limits of \$1,000,000 per accident for all Owned, Leased, Non-Owned and Hired vehicles

**9.2.5.3** Umbrella Liability - insurance shall be excess of employers liability, commercial general liability and commercial automobile liability. Insurance shall cover all operations of Vendor. and coverage shall provide equivalent coverage, Additional Insureds, terms and conditions included in the primary policies with limits of :

- a. \$2,000,000 General Aggregate Limit
- b. \$2,000,000 Each Occurrence Limit
- c. \$2,000,000 Products – Completed Operations Aggregate

**9.2.5.4** Workers' Compensation - insurance in accordance with the applicable State statutes and laws. This includes sole proprietorships, members of LLC's and partners who will be performing work.

**9.2.5.5** Employers Liability – insurance coverage with limits as follows:

- a. \$500,000 Bodily Injury by Accident, for each accident
- b. \$500,000 Bodily Injury by Disease, policy limit
- c. \$500,000 Bodily Injury by Disease, each employee

**9.2.5.6** Professional Liability (errors & omissions) – insurance with a limit of \$1,000,000 each claim.

**9.2.5.7** Pollution Liability (Contractors Form) – insurance covering environmental work to be performed by Vendor with a limit of \$2,000,000.

All other coverage terms and conditions are as specified in the above Insurance Section.

Vendor shall collect and maintain copies of all the same insurance Subcontractors, Sub subcontractors and Suppliers Acord certificates reflecting all of the same insurance coverages as required of Vendor herein except where Vendee has agreed in advance to accept coverage and policy limits. Vendor shall submit Acord certificates with required attachments to Vendee for approval prior to the start of any Work or providing supplies to Vendor. No work or delivery shall commence until Vendee has approved in writing to

the Vendor, each Subcontractors, Sub subcontractors or Suppliers Acord certificates of insurance as acceptable.

- 9.2.6 The insurance coverages set forth herein, will in no way limit Vendor, Subcontractors, Sub subcontractors or suppliers liability arising out of their Work or products (including liability under indemnification provisions or under any other agreements or at law).

### 9.3 Performance and Payment Bond

In addition to the Total Costs Guarantee, the Vendor will provide a statutory unconditional payment and performance bond for the total hard costs of the Approved Groundwater Remediation System in the amount of \$10,352,942.98, more specifically identified as the Extraction System, Site Work and Injection System on the Revised SOV ("Bond Commitment"). All bonds shall be executed by sureties, and in forms, acceptable to Vendee and shall remain in effect for at least one (1) year following Vendor's receipt of funding of the Final Draw Request.

Bond	Amount
Performance Bond	\$10,352,942.98 – Extraction System, Site Work, Injection System (see Revised SOV)
Payment Bond	\$10,352,942.98 same as above
Other (Specify)	N/A

The Parties acknowledge that the above provision is a material inducement by Vendor for Vendee to enter into this Contract.

The Bond Commitment, and the bonds provided, will be adjusted to be consistent with any Change Order agreed to pursuant to Article 7.

## ARTICLE 10 TERMINATION OF THE CONTRACT AND VENDEE'S RIGHT TO PERFORM VENDOR'S RESPONSIBILITIES

### 10.1 Termination by Vendor

- 10.1.1 Upon seven (7) days' written notice to Vendee, Vendor may terminate this Contract for any of the following reasons:

10.1.1.1 if the Work has been stopped for a thirty (30) day period;

a. under court order or order of other governmental authorities having jurisdiction;

b. as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Vendor, materials are not available; or

10.1.1.2 if the Work is suspended by Vendee for sixty (60) days;

10.1.1.3 if Vendee materially delays Vendor in the performance of the Work;

10.1.1.4 if Vendee otherwise materially breaches this Contract; or

- 10.1.2 Upon thirty (30) days written notice to Vendee that it has not been paid on a Draw Request, provided the Draw Request has been formally submitted to the City in accordance with the provisions of this Contract (see Article 8) and the Revised CLCP,

and Vendor has taken commercially reasonable efforts with the City and the County to complete the funding of any such Draw Request.

If the reason for Vendor's termination is cured within the applicable notice period, Vendor shall not be entitled to terminate this Contract, and Vendor shall recommence the Work, if temporarily stopped during the provision of the notice.

Upon termination by Vendor in accordance with Subparagraph 10.1., Vendor shall be entitled to recover compensation for all Work performed through the date of termination in accordance with the Revised CLCP from the Grant Funds, subject to the payment processes provided for herein (Article 8) and in the Revised CLCP. The Vendor shall be entitled to recover from Vendee reasonable, proven loss, costs, and expenses in connection with the Work performed, plus all commercially reasonable demobilization costs.

**The parties hereto specifically acknowledge and agree that the responsibility of the Receiver, as the Initial Vendee hereunder, is expressly limited to submitting Draw Requests for approval by the City in accordance with Article 8 of this Contract and that the Receiver shall not be responsible for the City's determination to grant or withhold its approval of any Draw Request or for any delay on the part of the City in responding to any Draw Request.**

## **10.2 Vendee's Right to Perform Vendor's Obligations and Termination by Vendee for Cause**

**10.2.1** If Vendor persistently fails to perform any of its obligations under this Contract, Vendee may, after seven (7) days' written notice, during which period Vendor fails to perform such obligation, undertake to perform such obligations. The Contract Price shall be reduced by the cost to Vendee of performing such obligations.

**10.2.2** Upon seven (7) days' written notice to Vendor and Vendor's surety, if any, Vendee may terminate this Contract for any of the following reasons:

**10.2.2.1** if Vendor utilizes improper materials and/or inadequately skilled workers;

**10.2.2.2** if Vendor does not make proper payment to laborers, Suppliers, Subcontractors or Sub subcontractors;

**10.2.2.3** if Vendor fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or

**10.2.2.4** if Vendor otherwise materially breaches this Contract.

If Vendor fails to cure within the seven (7) days, Vendee, without prejudice to any other right or remedy, may take possession of the Project Site and complete the Work utilizing any reasonable means. In this event, Vendor shall not have a right to further payment.

Notwithstanding any other provision herein to the contrary: (A) Vendee's right to terminate this Agreement shall not constitute Vendee's sole remedy for Vendor's unsatisfactory performance or other breach of this Contract, and failure by Vendee to exercise such right shall not constitute a waiver of any other right or remedy; and (B) termination of this Contract shall not prejudice any claim of either party arising prior to the termination or relieve either party from any liability arising prior to termination, nor shall it affect Vendor's warranties, express or implied, of the portion of the Work performed or relieve Vendor of its duty to correct any defective work performed or to indemnify, defend and hold Vendee harmless.

**10.2.3** If Vendor files a petition under the Bankruptcy Code, this Contract shall terminate if Vendor or Vendor's trustee rejects the Contract or, if there has been a default, Vendor is unable to give adequate assurance that Vendor will perform as required by this Contract or otherwise is unable to comply with the requirements for assuming this Contract under the applicable provisions of the Bankruptcy Code.

**10.2.4** In the event Vendee exercises its rights under Subparagraphs 10.2.1 or 10.2.2, upon the request of Vendor, Vendee shall provide a detailed accounting of the cost incurred by Vendee.

## **ARTICLE 11 DISPUTE RESOLUTION**

### **11.1 Initial Dispute Resolution**

If a dispute arises out of or related to this Contract or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall submit the dispute to a mutually acceptable neutral third party skilled in the review of design/build contracts before resorting to arbitration. Issues to be mediated are subject to the exceptions in Paragraph 11.2 for arbitration. The location of the mediation shall be the location of the Project. The parties agree to conclude such mediation within sixty (60) days of selection of the mediator. The mediator of any dispute under this Contract shall not serve as arbitrator of such dispute unless otherwise agreed. The parties shall split the cost of the mediation.

### **11.2 Agreement to Arbitrate**

Any controversy or claim arising out of or relating to this Contract or its breach not resolved by mediation, except for claims which have been waived by the making or acceptance of final payment, shall be decided by hearing before an arbitrator acceptable to both parties. If the parties are unable to agree on a single arbitrator, each party shall appoint one arbitrator, and the appointed arbitrators shall select a third arbitrator who shall serve as chairperson of the arbitration panel. Unless the parties mutually agree otherwise, rules comparable to the Construction Industry Arbitration Rules of the American Arbitration Association then in effect shall govern the proceedings, provided that failure of the arbitrator(s) to comply with the American Arbitration Association rules shall not invalidate the final decision by the arbitrator(s). The parties agree that all parties necessary to resolve a claim shall be parties to the same arbitration proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of arbitrations. Paragraph 11.2 of this Contract to arbitrate shall be governed by the Federal Arbitration Act.

### **11.3 Notice of Demand**

A written demand for arbitration stating the contentions of the party shall be filed with the other party to this Contract and with other parties necessary to resolve a dispute. Such demand shall be filed within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding would have run. Each party shall perform all acts necessary to enable the arbitration hearing to proceed within 90 days following filing of the written demand, unless the parties mutually agree to extend the time.

### **11.4 Award; Costs**

The arbitration award shall be final. Judgment upon the award may be confirmed in any court having jurisdiction. The prevailing party in any dispute arising out of or relating to this Contract or its breach that is resolved by arbitration or litigation shall be entitled to recover from the other party reasonable attorney's fees, costs and expenses incurred by the prevailing party in connection with such arbitration or litigation.

### **11.5 Work Continuance and Payment**

Unless otherwise agreed in writing, Vendor shall continue the Work and maintain the approved schedules during any arbitration proceedings. If Vendor continues to perform, Vendee shall continue to make undisputed payments in accordance with this Contract.

**ARTICLE 12  
MISCELLANEOUS PROVISIONS**

**12.1 Assignment**

Vendor acknowledges and agrees that, provided the Grant Escrow Funds continue to be disbursed in accordance with the Draw Request requirements described in Article 8 hereof following the completion of such work that is the subject of the applicable Draw Request(s) and the submission of such Draw Requests by Vendor, Vendor shall continue to perform its obligations hereunder notwithstanding:

(i) Initial Vendee's assignment of this contract to any assignee acquiring title to the Ground Lease through the Foreclosure Action or otherwise, including without limitation, pursuant to any replacement ground lease demising the Biscayne Landing Project site (any such assignee, a "Successor Ground Lessee") (in which event such Successor Ground Lessee shall automatically become the Vendee hereunder without the necessity of any act, instrument or deed);

(ii) the termination of Initial Vendee's appointment as Receiver pursuant to the Receiver Order (in which event BLLC (or the applicable Successor Ground Lessee) shall automatically become the Vendee hereunder without the necessity of any act, instrument or deed); and/or

(iii) the termination of the Ground Lease or Munisport Agreement following any default by BLLC thereunder (in which event, pursuant to the Letter of Intent provided for in Section 2.2.13 hereof, the City shall automatically become the Vendee hereunder without the necessity of any act, instrument or deed).

It is expressly understood by the parties signing this Contract, the Receiver has been appointed by the Court in the Foreclosure Action, and the Receiver's obligations as the Initial Vendee hereunder will terminate completely upon the earlier of the Court entered order of dismissal of the Receiver, the Initial Vendee's assignment of this Contract to a Successor Ground Lessee or the City's termination of the Ground Lease or Munisport Agreement. No obligations of the Receiver hereunder shall survive such terminations or assignment.

**12.2 Governing Law**

This Contract shall be governed by the laws of Florida, and venue for any legal action hereunder shall be Miami-Dade County, Florida.

**12.3 Severability**

The partial or complete invalidity of any one or more provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.

**12.4 No Waiver of Performance**

The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Contract, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

**12.5 Mutual Representations**

Vendee and Vendor hereby represent to each other as of the date of execution of this Contract that:

(a) It has full power and authority to enter into and perform this Contract, and in the case of Vendee, the Vendee has received specific Court approval to enter into this Contract.

(b) Execution and delivery of this Contract to the other party is duly authorized.

(d) This Contract is a valid and binding agreement enforceable against the representing party according to its terms.

These mutual representations will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

**12.6 Vendors obligations to Maintain a Lien Free Project**

If, at any time, any notices of lien are filed by a Subcontractor or anyone else acting or claiming through Vendor, then Vendor, within ten (10) days after the date of filing of such notice of lien, and to the Vendees' satisfaction, shall obtain the discharge and removal of such lien by placing a bond or otherwise and shall indemnify and hold the Vendees harmless for all costs, including but not limited to attorneys' fees and expert fees, regarding such lien or claim. This obligation of Vendor survives the expiration or termination of this Contract.

**12.7 Waiver of Consequential Damages**

Notwithstanding anything to the contrary contained in any other provision of this Contract, in no event will either party be liable to the other for consequential or special damages.

**12.8 Hurricane Preparedness**

Vendor shall secure the Project in the event of any named windstorm or hurricane to take reasonable precautions to avoid damage to the Work, and to prevent flying debris.

**(SIGNATURES ON FOLLOWING PAGE)**

**VENDOR:**

**VENDEE:**

Date: 09 Sept 2010

Date: \_\_\_\_\_

By: *John T Razzolini*

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

Print Name: John T Razzolini

Print Name: \_\_\_\_\_

Print Title: Vice President

Print Title: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

**BISCAYNE LANDING, LLC:**

Date: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

**VENDOR:**

Date: \_\_\_\_\_

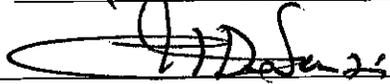
By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

**VENDEE:**

Date: September 9, 2010

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

Print Name: Charles W. DeSanti

Print Title: Receiver

**ACKNOWLEDGED AND AGREED:**

**BISCAYNE LANDING, LLC:**

Date: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

**VENDOR:**

**VENDEE:**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

**BISCAYNE LANDING, LLC:**

Date: September 8, 2010

By: 

Print Name: Theodore R. Stotzer

Print Title: Vice President

**ATTACHMENT A, Part 1**  
**REVISED CLCP and Revised SOV**

# **MUNISPORT LANDFILL GROUNDWATER REMEDIATION PROJECT**

## **PROJECT OVERVIEW**

### **BACKGROUND**

The City of North Miami – Miami-Dade County grant for the closure and remediation of the former Munisport Landfill contains two major sections: landfill closure and groundwater remediation. This revision to the schedule of values (SOV) of the grant is only for the groundwater remediation portion of the project. Currently, including unallocated accrued interest, there is approximately \$14.5 to \$15 million available in the grant to complete the groundwater remediation portion of the project, which includes up to seven years of pre-closure O&M.

To date, several groundwater remediation approaches have been considered for the Former Munisport Landfill site. The main approaches that were considered consisted of:

1. Conventional groundwater extraction methods followed by ex-situ biological treatment and re-injection of the treated water into select portions of the surficial aquifer. This approach was approved for pilot testing by DERM, but was later abandoned by the developer (Biscayne Landing, LLC). This system would be expected to produce 3 to 5 million gallons per day (mgd) of groundwater for treatment, resulting in a relatively large treatment facility. Capital costs for such a system would likely be \$15 to \$20 million and based on a similar system operating in Miami-Dade County (County's Old South Dade Landfill), O&M costs would be well over \$1 million annually.
2. An in-situ system was pilot tested at the site for approximately two years. While the in-situ system would likely have been less costly than options that include groundwater extraction and treatment, it was disapproved by DERM. The current funding allocated for groundwater remediation in the grant is based on the projected cost of the in-situ system.
3. A funnel and gate extraction system followed by ex-situ biological treatment and re-injection of the treated water into the salt water portion of the aquifer, below the contaminant plume was approved for pilot testing by DERM. The funnel and gate system was proposed to minimize the groundwater extraction flow rate, thereby minimizing the required capacity (and cost) of the treatment facility. The extraction system would consist of sheet pile or slurry walls installed to approximately 35 feet below grade and recovery wells would be located within the open slots of the wall (spaced every 300 feet or so). Capital cost for such a system would likely be near \$15 million and based on the aforementioned similar system in Miami-Dade, O&M costs would be approximately \$1 million annually. When this approach was considered, the developer at the time requested an increase to the grant of \$19 million.

## SOV REVISION

The alternative remediation system that is being proposed by the team of ES Consultants and CH2M Hill (collectively the Contractor) for the project site consists of a conventional groundwater extraction system utilizing vertical groundwater recovery wells and a Class I injection well to dispose of the groundwater into the boulder zone (approximately 3,300 feet below ground). This approach provides the level of protection required; uses technology that has been proven and approved by DERM throughout Miami-Dade County; can be implemented more timely than other proposed systems; drastically reduces capital and O&M costs; has less uncertainty; and provides much greater flexibility than other systems.

To move forward with the project, a revision to the SOV of the grant is needed to allocate funding for this beneficial approach. The proposed SOV revision provided herein is based on the concepts detailed below. Although the detailed design of this new remediation approach has not commenced, based on experience with the technology proposed and similar local sites, the Contractor has agreed to complete the project for a lump sum in an amount less than what is available in the grant for groundwater remediation, plus the accrued interest to date. The Contractor will provide a performance and payment bond to provide assurance that the project will be completed satisfactorily. This approach will result in a minimum savings on the order of \$10 million to project stakeholders.

Along with this "Project Overview", the revised Schedule of Values (Table) and a "Basis of Estimate" comprise the documents the Contractor has developed in support of the SOV revision. To develop the SOV revision, the Contractor utilized reasonable estimates of equipment requirements and material quantities based on project requirements and experience on similar sites in South Florida. Because this project will be completed for a lump sum amount and the Contractor is assuming considerable risk, the costs provided in the SOV are only intended to provide a basis for payment to ensure that grant funds are disbursed commensurate with the work progress.

## TECHNICAL OVERVIEW

### **Extraction System – Vertical Recovery Wells**

Vertical recovery wells will be installed along the eastern and southern property boundaries (approximately total 8,000 feet) to create a hydraulic barrier to off-site migration of the ammonia contaminated fresh water lens below the landfill. Based upon established DERM requirements, the lens of groundwater that requires treatment is approximately 20 to 25 feet thick at the eastern property boundary and deepens along the southern boundary as one moves westward. This lens has been defined as Zones 1 and 2 in prior reports.

It is likely that 20 to 40 recovery wells will be required to establish and maintain the hydraulic barrier. Extensive groundwater modeling will be conducted to simulate the extraction system and determine appropriate well spacing and flow rates. Once those criteria are established, wells, pumps, controls, etc. will be sized and selected accordingly. The expected total flow rate for

the extraction system is from 3 and 5 mgd. The extracted groundwater will be conveyed to the injection system pump station (see below) through a common header pipe.

### **Disposal System**

The extracted groundwater is non-hazardous and can be directly injected into the Boulder Zone via Class I injection well. With this approach, groundwater treatment will not be required, thus eliminating the challenges of other remedies that would require operating a biological treatment system, maintaining effluent quality and preventing system upsets. In addition a biological system would not be able to provide the flexibility in flow control that is inherent in this new proposed remedy.

### **Class I Injection Well**

The injection well will have a design capacity of 5 MGD (3,500 gpm at 12.5 ft/s) and will be constructed using multiple casings to isolate and protect the aquifers penetrated during drilling and testing. The injection zone will be completed as a nominal 16-inch diameter open-hole from approximately 2,800 feet to 3,300 feet in depth. The exact casing depths will be determined pending evaluation of drilling and testing data throughout well construction and subject to the approval of the FDEP. The injection well steel casings will be installed and fully cemented to ground surface. A monitoring annulus for leak detection will be provided by installing an 11.75-inch Fiberglass Reinforced Plastic (FRP) pipe with packer inside of the final 16-inch diameter seamless steel casing.

As the well is constructed, various data will be collected and submitted to the FDEP in support of the casing setting depths. Additional features of the injection well include continuous measurement and recording of injection flow and pressure. An annular leak detection system will be installed that is comprised of a hydropneumatic tank connected to the fluid-filled annulus between the 16-inch and 11.75-inch well casings. The tank and monitoring annulus will be maintained at an approximate pressure of 125 psi. Pressure and water level monitoring within the hydropneumatic tank will be provided; loss of pressure or the decline in water level within the tank will be used to evaluate the potential development of leaks in the 16-inch and/or 11.75-inch casing during operation.

### **Dual-Zone Floridan Aquifer Monitor Well**

A dual-zone monitor well will be constructed to permit the continuous measurement of the potentiometric surface and for obtaining water samples from two zones within the Floridan aquifer. Drilling and testing will be comparable to that described for the injection well, but will focus on identification of two specific monitoring zones; the selection of the two monitor zones are subject to the approval of the FDEP. Since the Biscayne Landing site is adjacent to Miami-Dade County's North District Wastewater Treatment Plant, there is historical data that indicates the base of the USDW is located at approximately 1,310 feet below land surface (bls). Current guidance from the FDEP requires the completion of an Upper Monitor Zone (UMZ) at or immediately below the USDW; the location is selected and approved based on site specific testing. A Lower Monitor Zone (LMZ) will be constructed approximately 200 feet below the UMZ. The expected length of the open-hole sections for each monitor zone will be between 50 feet and 100 feet.

Upon completion of the dual-zone monitor well, both monitor zones will be equipped with water sampling and transfer pumps; pressure transducers will be installed to measure and record the elevation of the water surface in the two monitor zones. Purge water produced during periodic sampling of the two monitor zones will be disposed of in the injection well.

#### Injection Well Pump Station

Groundwater from the extraction trench will be conveyed to the injection well pump station for disposal in the injection well. To the maximum extent possible, "off the shelf" components will be used in the construction of the facility to ensure components can be quickly replaced or repaired should there be a failure. The pump station will include the following major components:

- Fiberglass ground storage tank for recovered groundwater and dual-zone monitor well purge water; final tank size (currently estimated to be approximately 50,000 to 100,000 gal) will be based on the final pump size (horsepower and capacity)
- Storage tank level float system and/or transducer for pump control
- Pump station will be installed on a concrete pad at grade with metal canopy over the facility to provide protection for the equipment
- In-line centrifugal or vertical turbine constant speed injection pumps sized for a maximum flow of 5 MGD. A minimum of two pumps will be installed to meet this capacity requirement. The final number of pumps will be based upon hydraulic modeling and pump selection options.
- Precast concrete building (approximately 20'x12') for electrical switchgear, pump controls and Programmable Logic Control (PLC) for Station instrumentation and control
- Telemetry for groundwater recovery pumps shutoff during injection pump station outage
- Surge control system consisting of mechanical and/or hydropneumatic surge dampening
- 480 VAC, 3 Phase electrical power service rated at a minimum of 500 amps
- Piping will be lined ductile iron with basket strainers, gate valves, check valves and air/release valves as required to provide system isolation and pump protection

Munisport Groundwater Remediation Project  
Schedule of Values  
Grant Draw Basis

<u>Task</u>	<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Rate</u>	<u>Amount</u>
1	Payment and Performance Bond	1	Lump Sum	\$ 130,540.00	\$ 130,540.00
2	Permit and Agency Review Fees	1	Lump Sum	\$ 100,000.00	\$ 100,000.00
3	Engineering and Permitting	10%	Lump Sum	\$ 10,352,942.98	\$ 1,035,294.30
4	Construction-Phase Engineering, Surveying, CQA	10%	Lump Sum	\$ 10,352,942.98	\$ 1,035,294.30
5	Project Management	5%	Lump Sum	\$ 10,352,942.98	\$ 517,647.15
<b>Extraction System and Site Work</b>					
6	Mobilization for Site Work and Extraction System	7.5%	Lump Sum	\$ 2,126,006.63	\$ 159,450.50
7	Erosion Control/Silt Fence	20,000	Linear Feet	\$ 6.00	\$ 120,000.00
8	Electrical Supply to Work Site	1	Lump Sum	\$ 25,000.00	\$ 25,000.00
9	Site Preparation	1	Lump Sum	\$ 230,000.00	\$ 230,000.00
10	<b>Extraction System</b>				
10.1	Recovery Wells	32	ea	\$ 9,500.00	\$ 304,000.00
10.2	Pumps/Controls	32	ea	\$ 13,070.00	\$ 418,240.00
10.3	Header Trench Excavation (6' D x 4' W)	7,111	cy	\$ 6.95	\$ 49,421.45
10.4	Relocate Waste from Header Trench	9,244	cy	\$ 8.80	\$ 81,349.84
10.5	Temporary Cover (1') over Waste	4,807	tons	\$ 20.88	\$ 100,370.16
10.6	Header Pipe (18")	8,000	Linear Feet	\$ 63.25	\$ 506,000.00
10.7	Header Trench Backfill	11,093	cy	\$ 20.88	\$ 231,625.18
10.8	Piezometers/Monitoring Wells	40	ea	\$ 1,500.00	\$ 60,000.00
					\$ 1,751,006.63
	<b>Extraction System and Site Work Subtotal</b>				\$ 2,285,457.13
<b>Injection System</b>					
11	Mobilization for Injection System Only	7.50%	Lump Sum	\$ 7,504,638.00	\$ 562,847.85
12	Deep Injection Well			<b>Sub Total</b>	\$ 4,483,000.00
13	Deep Dual-Zone Monitoring Well			<b>Sub Total</b>	\$ 1,885,000.00
14	<b>Pump Station</b>				
14.1	Storage Tank/Effluent Extraction Tank	1	ea	\$ 243,100.00	\$ 243,100.00
14.2	Injection Pumps & Piping	1	ea	\$ 572,188.00	\$ 572,188.00
14.3	Precast BLDG/ Concrete	1	ea	\$ 111,700.00	\$ 111,700.00
14.4	Site Prep	1	ea	\$ 67,800.00	\$ 67,800.00
14.5	I&C	1	ea	\$ 141,850.00	\$ 141,850.00
				<b>Sub Total</b>	\$ 1,136,638.00
	<b>Injection System Subtotal</b>				\$ 8,067,485.85
	<b>Subtotal Engineering, Permitting and Capital</b>				\$ 13,171,718.72
15	Ops., Monitoring, Reporting	5	years	\$ 281,000.00	\$ 1,405,000.00
	<b>Total Project Cost</b>				\$ 14,576,718.72

**MUNISPORT LANDFILL GROUNDWATER REMEDIATION PROJECT  
SCHEDULE OF VALUES**

**BASIS OF ESTIMATE  
June 11, 2010**

This basis of estimate has been prepared to support the revised Schedule of Values (SOV) for the City of North Miami – Miami-Dade County grant that incorporates the conventional groundwater extraction and injection system as the method of groundwater remediation at the Former Munisport Landfill site proposed by ES Consultants, Inc. and CH2M Hill (together the “Contractor”). This basis of estimate and the SOV have been developed by the Contractor based on their prior remediation design, permitting and construction experience nationally and in particular in South Florida, including Miami-Dade County. At the time of developing the SOV, the remediation system is at the conceptual level; however, regulatory agencies having jurisdiction over the project have expressed their support of the concept. The work will include design, permitting, construction and an operations and maintenance period. The Contractor will provide a performance and payment bond to the City of North Miami prior to commencing construction. The bond will provide the City and other stakeholders the assurance that the project will be completed satisfactorily for the amount indicated herein.

**1. Performance and Payment Bond**

A performance and payment bond will be provided for the construction portion of the project. The bond will be obtained upon completion of design and permitting and will be provided to the City prior to commencing construction. The cost of the bond will be reimbursed at cost and is estimated at 1.1 to 1.3% of the total construction cost.

**2. Allowance**

Permit and agency review fees will be required for the various approvals and permits needed from DERM, FDEP, SFWMD, building department, etc. Permit and review fees will be reimbursed at cost; \$100,000 has been allocated for these fees. This line item can also be used to reimburse other grant eligible costs.

All permit fees will be issued or reimbursed in the form of a check upon presenting an original receipt or upon submittal of a letter from the Contractor stating the amount of the fee, purpose and agency letter or copy of the requesting agency’s fee table.

**3. Engineering and Permitting**

It is anticipated that the engineering and permitting for the groundwater remediation system will include the following:

- Review, evaluation and acceptance of prior onsite work that will be used in the development of the remediation design, including prior pump tests, geologic investigations, groundwater quality trends, etc.
- Groundwater modeling to demonstrate the effectiveness of the proposed extraction system and predict future groundwater conditions
- Address issues related to potential wetland impacts due to the extraction system
- Stormwater modeling to evaluate the impact to the extraction system capture

- Preparation of a Remedial Action Plan, or modification of prior plans
- Preparation of construction drawings of the full-scale groundwater extraction system
- Preparation of construction drawings of the injection well system including pump station and other appurtenances
- Participation in meetings with regulatory agencies throughout their review process
- Participating in public meetings as necessary

Additionally, this item includes the preparation of applications and services to obtain the following permits/approvals:

- Approval of the RAP by DERM Pollution Remediation Section
- Approval of the RAP by DERM Coastal Section
- Underground Injection Control (UIC) Permit for well construction from FDEP
- Water Use Permit from SFWMD
- Environmental Resource Permit (ERP) Modification from SFWMD
- Landfill Closure Permit Modification from FDEP
- Permitting of the construction plans through the County and City of North Miami

Ten percent of the construction cost is provided in the SOV for the engineering and permitting services. The fee is based on past experience with projects of this complexity, size, and involving the number of stakeholders, and is commensurate with similar projects. Permit fees are not included in the cost for this item (see item 2).

In order to provide a basis for payment to ensure that grant funds are disbursed commensurate with the work progress, the milestones listed below will be used as a guideline for payment. These are only anticipated activities and others may arise that will require agreement between the Contractor and Independent Engineer on a payment basis. Note that the total compensation for this item is the amount indicated herein (or SOV), and is not dependent on the number of RAIs issued or the specific activities listed below. The percentages within each activity listed below tied to deliverables are the maximum percentage of the fees for that activity that may be drawn upon achieving the milestone.

<b>Activity</b>	<b>% of line item</b>
Initial concept presentation and meetings with agencies, City, County; Contractor will provide meeting materials or other relevant information with the draw	3
Groundwater modeling; Contractor will provide a status of work completed for modeling with each draw; 100% upon RAP submittal	15
Address wetland issues; Contractor will provide a status report of work completed with each draw; 100% upon RAP submittal	5
Prepare RAP; 100% upon submittal	18
Respond to RAP RAI #1; 100% upon submittal	3
Respond to RAP RAI #2; 100% upon RAP approval	2
Construction drawings for full-scale extraction system; 60% at RAP submittal; 90% at submittal for construction permits; 100% once permits obtained	12.5

Water Use Permitting; 90% upon submittal of application; 100% upon receipt of permit	2
ERP Permitting; 90% upon submittal of application; 100% upon receipt of permit	1
Landfill Closure Permit Mod.; 90% upon submittal of application; 100% upon receipt of permit modification	2
FDEP UIC application; 100% upon submittal of application	8
Respond to UIC RAI #1; 100% upon submittal of RAI response	3
Respond to UIC RAI #2; 100% upon receipt of notice of intent to issue permit	2
Construction drawings for pump station; 90% at submittal for construction permits; 100% once permits obtained	17.5
Public notice/meetings	1
Construction Permitting; 100% upon obtaining permits	5
	100

During the course of the design and permitting, draws will be submitted monthly based on the work completed. A description of the work completed and a partial deliverable, as warranted, will be submitted by the Contractor to the Independent Engineer. The Contractor and Independent Engineer will meet monthly and agree to the percent complete for the activities underway. Draws will be submitted by the Contractor using the standard AIA form and engineer's certification.

#### 4. Construction-Phase Engineering, Surveying, and CQA

These services will include the following:

- Modification of design documents as necessary
- Surveying during construction and for as-builts
- Quality assurance testing and reporting
- Preparation of O&M Manual
- Operator training, start-up and balancing of the system
- Injection Well and Dual-Zone Monitor Well Engineering Report
- Engineer/Geologist of Record construction certification

Ten percent of the construction cost is provided in the SOV for this item. A majority of the cost for this item is for the supervision by a geologist during the drilling of the injection and dual-zone monitoring well. The contractor is planning on providing coverage by a geologist 24 hours per day during the drilling activities which are expected to last 10 to 12 months. Draws for construction-phase engineering services will be 10% of the amount for construction activities on each draw.

#### 5. Project Management

This task includes the following essential components of the project during the engineering, permitting, and construction phases:

- Management of in-house personnel and project delivery teams
- Ensuring QA/QC procedures are being implemented

- Coordination, meetings, and communication with Receiver/developer, City, County, and regulatory agencies
- Reporting as necessary throughout project
- Scheduling
- Contracting
- Permit compliance
- Construction administration
- Health and safety monitoring

Five percent of the construction cost is provided in the SOV for project management. The fee is based on past experience, general industry standards, and is commensurate with similar projects. Draws for project management will be equally distributed over a 24-month expected project duration.

**6. Mobilization for Site Work and Extraction System (excluding Injection Well System)**

This item includes the mobilization of equipment, personnel, temporary offices, project signage, etc. (and also includes all estimated subcontractor mobilization charges). The fee of 7.5% of the construction cost is based on past experience and is commensurate with similar projects. Mobilization line item 6 of the SOV is only for the erosion control, electrical power supply, site preparation, and extraction system line items. A second mobilization line item (item 11) covers the remaining construction scope of work. A draw for mobilization will be submitted after the necessary permits are obtained to allow for construction commencement.

**7. Erosion Control/Silt Fence**

In accordance with DERM Natural Resources Coastal Section requirements, it is expected that two rows of silt fence will be installed along the 6,000 foot eastern property boundary and one row along the 2,000 foot southern property boundary for a total of 14,000 linear feet of silt fence. Also, 6,000 feet of high visibility temporary construction fence will be required along the eastern property boundary because of the abutting wetlands.

The cost of \$6.00 per linear foot is less than the \$7.15/LF that was previously approved for the Homestead Landfill project and includes material, installation, and maintenance and repair of the fences for the duration of construction activities. Draws will be based on the percent completed of the total linear footage of silt fence required. 10% is to be paid upon submittal of the notice of intent to use the general NPDES permit and receipt of acknowledgement from the FDEP. 80% is to be paid based on completion of the installation, and the last 10% as 4 equal payments of 2.5% at 3 month intervals as the project progresses to ensure maintenance of the erosion silt fence and compliance with the FDEP and DERM regulations and closure of the NPDES permit.

**8. Electrical Supply to Work Site**

Permanent electrical service is anticipated to be 480 volt, 3 phase, 500 amp service from FPL. Tie-in to existing high-voltage electrical service originating at the west side of the Biscayne Landing property will be needed. A lump sum fee of \$25,000 is included for this line item to be paid upon completion of this line item.

## **9. Site Preparation**

Significant site preparation activities will be required to enable access to the needed areas of the site by heavy equipment, including the sizable drilling equipment for the deep injection well. Other typical site preparation will also be needed. We have included the following as part of site preparation activities:

- Approximately 3,500 linear feet of 30' wide access roads for heavy equipment
- Equipment staging area (approximately 50'x50')
- Temporary security fence for staging area
- Temporary electricity distribution for equipment
- Construction pathways, etc.
- Foundations (excavation of waste and replacement with structural fill as needed) for pump station ASTs

Draws for site preparation activities will be equally distributed over a four month period beginning at the inception of site construction work.

## **10. Extraction System**

Based on our local experience, the Contractor expects to utilize from 20 to 40 vertical extraction wells to create a hydraulic barrier along the eastern and southern property boundaries. The wells will be sized to accommodate the required pumps and flows that will be needed to create the barrier, based on groundwater modeling results. The wells are expected to terminate at -15' to -25' NGVD, depending on the depth of the salt water interface at the well location. Well diameter will likely be from 8" to 12". The Contractor may utilize open boreholes (similar to those used at the Old South Dade Landfill) if the geology permits.

The recovery wells will be connected through a header system pumping the extracted groundwater to storage tank(s) associated with the injection well pump station. Instrumentation and controls will be installed to operate, monitor and record data from the individual groundwater recovery pumps. Communication with the injection well pump station will be provided as a fail safe to prevent overflow of the groundwater storage tank(s) in the event of an injection well pump station outage.

### **10.1 Recovery Wells**

For purposes of preparing the lump sum fee in the SOV, the Contractor assumed an extraction well spacing of 250 feet, resulting in 32 wells to cover the 8,000 feet of eastern and southern property boundary. The recovery wells will likely consist of flush mounted 8" to 12" diameter PVC slotted well screens with risers. To avoid garbage from entering the screen interval, a surface casing will be installed to seal off the waste from the borehole. Once the casing is installed and the waste removed, the borehole will be advanced until the depth at which the well will be set. The wells will be developed after installation and the development water will be disposed of appropriately. Garbage that comes to the surface during drilling activities will be relocated and covered with temporary cover as appropriate. The unit price of \$9,500.00 per well includes the work described herein as well as the technical supervision needed by an engineer or geologist.

Eight thousand feet of hydraulic barrier are needed. Groundwater model results will determine well spacing and the average linear foot of "coverage" each well provides; therefore, draws for the recovery wells will be based on the percent complete of the required linear feet of barrier needed. Draws may be split to include 30% after well installation; 50% upon installation of pumps and controls; 15% when operational; and 5% when approval of the construction certification for the system is obtained.

## **10.2 Pumps/Appurtenances**

Based on the expected flows of 3 to 5 mgd, we anticipate each of the extraction wells will be equipped with the following:

- Instantaneous and totalizing flow meter
- Manually operated flow control valve
- Vault to house flow meter and flow adjustment valve
- Stainless steel 2 hp submersible pump (150 gpm @ 20' tdh) with Teflon seals and bearings
- Pump controller with level indicator and level alarm
- Level transducer
- 50' motor lead
- 2" discharge connection
- Satellite monitoring system to display on/off and instantaneous flow for each well

This line item also includes the lateral piping from each recovery well and tapping into the header pipe. The necessary electrical conduit, wiring, and connection for the extraction system are also included in this line item.

The lump sum fee for this line item is based on a unit price of \$13,070 for the assumed 32 recovery wells. The draw basis for the pumps and controls is provided under item 10.1, Recovery Wells.

## **10.3 Header Trench Excavation**

A header pipe system will be needed to run the entire length of the extraction system to accept flows from the recovery wells. Using the 8,000 linear feet of eastern and southern property boundary and a 6' deep by an average of 4' wide trench to accommodate the pressure pipe results in the following calculation for the material excavation:

$$8,000 \text{ LF} \times 6' \text{ deep} \times 4' \text{ wide} = 192,000/27 = 7,111 \text{ cy}$$

The unit price of \$6.95 per cy of material/waste excavated includes equipment and operators, and is based on a production rate of 250' lf of excavation per day for the trench and is comparable to unit prices from prior projects and industry standards. Draws for the trench excavation will be based on the percent complete of the total required length of header. Draws will be made as follows: 80% based on the linear foot of trench excavated; 10% upon pipe installation; 5% when pipe is tested; and 5% when approval of the construction certification for the system is obtained.

#### **10.4 Relocate Waste from Header Trench**

Approximately 7,111 cy of excavated waste from the header trench excavation will be relocated to an on-site location. A swell factor of 1.3 is added to the waste volume, bringing the total volume to 9,244 cy. This waste will be spread, lightly compacted and covered with 1' of temporary cover (see item 10.5).

The unit price of \$8.80 per cy includes \$4.00 per cy for loading, \$1.00 per cy for hauling to an on-site location and \$3.00 per cy for spreading the waste, plus 10% markup. Draws for the relocation of waste from the header trench will be based on the percent complete of the total required length of header, as these activities are expected to occur simultaneously with the header trench excavation.

#### **10.5 Temporary Cover over Waste**

One foot of temporary cover will be used to cover the 9,244 cy of relocated waste from the header trench. Assuming a stockpile height of 3', an approximately 288' x 288' area of waste will need cover. One foot of cover over that area yields approximately 3,081 cy of cover material needed. Using a conversion factor of 1.3 tons per cubic yard and a compaction rate of 1.2, yields a total of 4,807 tons of temporary cover material needed.

The unit price of \$20.88 per ton includes \$14.00 per ton of fill, 7% sales tax, \$4.00/ton to backfill and spread, plus 10% markup. Draws for the temporary cover will be based on the percent complete of the total required length of header, as these activities are expected to occur simultaneously with the header trench excavation.

#### **10.6 Header Pipe**

The header system for the groundwater extraction will likely consist of an average of 18" diameter pressure HDPE or similar pipe running the entire length of the extraction system and terminating at the injection well pump station.

The unit price of \$63.25 per linear foot includes \$50.00/lf for materials, 7% sales tax, \$4.00/lf for installation, plus 10% markup. Draws for installation will be based on the percent complete of the total required length of header. Draws for the header pipe will be as follows: 30% when the pipe is delivered; 60% when installed; 5% when the pipe is tested; and 5% when approval of the construction certification for the system is obtained.

#### **10.7 Header Trench Backfill**

Select soil, such as crushed limerock, will be used to backfill the header trench. 7,111 cy (from item 10.3) using a conversion factor of 1.3 tons per cubic yard and a compaction factor of 1.2 yields a total of 11,093 tons of fill material needed.

The unit price of \$20.88 per ton includes \$14.00 per ton of fill, 7% sales tax, \$4.00/ton to backfill and spread, plus 10% markup. Draws for the trench backfill will be based on the percent complete of the total required length of header. Draws will be made as follows: 90% per linear foot of trench backfilled; 5% when pipe is tested; and 5% when approval of the construction certification for the system is obtained.

### 10.8 Piezometers/Monitoring Wells

We estimate that approximately 40 piezometers/monitoring wells may be required as part of the monitoring network for the remediation system. The piezometers/wells will be installed to various depths; therefore, we used an average cost of \$1,500 which includes drilling and supervision. Draws will be based on the percent complete of the total required piezometers/monitoring wells. Draws will be made as follows: 95% upon completion log submittal; and 5% when approval of the construction certification for the system is obtained.

### Injection Well System for Groundwater Disposal

A Class I industrial injection well system will be constructed in accordance with Underground Injection Control requirements in F.A.C. 62-528 and the FDEP's UIC Class I Test/Injection Well construction permit. The injection well system will include an injection well with an annular leak detection system, dual-zone Floridan aquifer monitor well, and a pump station with associated control and monitoring equipment.

### 11. Mobilization for Injection Well System

This item includes the mobilization of equipment, personnel, and temporary offices, etc. The fee of 7.5% of the construction cost is based on past experience and is commensurate with similar projects. Mobilization line item 11 of the SOV is only for Injection Well System components (deep injection well, dual-zone monitoring well, and the pump station). A draw for mobilization will be submitted after the necessary permits are obtained to allow for construction commencement.

### 12. and 13. Class I Industrial Injection Well and Dual Zone Monitor Well

The basis of cost for the construction of the proposed Biscayne Landing injection well system, including a Class I Industrial Injection Well and Dual-Zone Floridan aquifer monitor well, was developed from quotations received January 7, 2010 from three drilling contractors: Youngquist Brothers, Inc. (YBI), All Webbs Enterprises, Inc. (AWE), and Layne Christensen (Layne). Note that the quotations were based on an injection well with a disposal capacity of 3 MGD; however, 5 mgd well will be provided for disposal at as safe operating velocities. The quotations are summarized as follows:

	YBI	AWE	Layne
Injection Well (3 mgd)	\$4,750,000*	\$3,082,707	\$4,703,711
Dual-Zone Monitor Well		\$1,278,962	\$1,597,925
Total Construction	\$4,750,000	\$4,361,669	\$6,301,636

\*Lump sum quote provided for construction of both wells

Analysis of the bids determined that AWE's quote was significantly lower than historical pricing for similar injection well systems. Also, their referenced projects do not list any injection well construction experience similar to the work required for Biscayne Landing. AWE's quoted price was not believed to be representative of the established scope of work. Both Layne's and YBI's quotations were within the expected range for the construction of the injection well system and both contractors have significant experience with the type of drilling required for the Biscayne Landing project. Based on the review of contractor quotations and experience, a price of

\$5,525,818 for the construction of the injection well and dual-zone monitor well is appropriate; this price was developed by averaging Layne's and YBI's quotations. Due to the uncertainties in subsurface conditions, the requirements for testing and data evaluation concurrent with the drilling, and regulatory reviews and approvals throughout the well drilling operations, as well as potential cost escalation for commodity materials (i.e. cement, steel, FRP) \$300,000 is added to the quote average, which is normal and customary for the industry. This results in an estimated subcontractor cost for the injection and dual-zone monitor well construction of \$5,825,818.

For the Biscayne Landing groundwater remediation system, the injection well and dual-zone monitor wells are similar in design and depth to those constructed for Miami-Dade Water and Sewer Department (MDWASD) which successfully operate four injection wells and four dual-zone monitor wells at their North District Wastewater Treatment Plant. Additionally, FDEP has indicated that those wells are operating properly and there are no issues related to confinement of the wastewater effluent within the injection zone. Unlike MDWASD's injection wells, the Biscayne Landing injection well will be designed and constructed to comply with Class I industrial injection well standards which includes a pressurized monitoring annulus in the well. To meet the construction standards, an 11.75" FRP casing and packer will be installed in the final 16" steel casing. In the unlikely event of a leak in either the 16" or 11.75" casings, a drop and annulus pressure would occur. With the added 11.75" FRP casing, the injection capacity is 5 mgd at 12.5 ft/s.

In order to provide a basis for payment to ensure that grant funds are disbursed commensurate with the work progress, the following milestones will be used as a guideline for payment:

Activity	% of Line Item
<b>Deep Injection Well</b>	
Pump package/mud cleaning system setup	5
Drilling Rig Erection	5
Drilling Fluid Containment Pad & Pit Casing	5
44" casing - drilling, testing & installation	5
36" casing - drilling, testing & installation	10
26" casing - drilling, testing & installation	35
16" casing - drilling, testing & installation	20
11.75" casing & packer - installation & testing	10
FDEP Cert & Clearance letter	5
<b>Dual-Zone Monitoring Well</b>	
Drilling Rig Erection	10
Drilling Fluid Containment Pad & Pit Casing	10
30" casing - drilling, testing & installation	35
20" casing - drilling, testing & installation	25
12.75" casing - drilling, testing & installation	15
6.625" casing - drilling, testing & installation	5

#### **14. Injection Well Pump Station**

Groundwater collected by the groundwater recovery system will be conveyed to the injection well pump station for disposal via deep well injection. For purposes of developing the SOV, we are including as part of the pump station the conveyance piping to the injection well, a hydraulic surge control system, hydropneumatic tank and annular leak detection system for the injection well, dual-zone monitor well sample/transfer pumps and piping, permanent electrical equipment for the pump station, temporary electrical service for the drilling rig, climate controlled precast concrete building (approximately 20' x 12'), monitor and control instrumentation, and ≤50,000 gallons aboveground storage tank(s) (AST).

The pump station will be designed for a maximum flow of 5 mgd and will include basic equipment and controls with a low degree of complexity. The pump station will not be designed or constructed to meet Class I redundancy as defined in EPA-430-99-74-001. No secondary/backup power (generator) will be provided or redundant pump(s), controls, valves and piping.

Three to four constant speed centrifugal pumps, generally off the shelf, will be used for injecting the recovered groundwater into the injection well. Based upon the projected operating pressure range, ±75 horsepower pumps are anticipated to be used to convey the full 5 mgd flow.

AST(s) will be low profile and designed to receive the estimated 5 mgd of groundwater flow produced by the recovery system. The tank(s) will be sized to prevent excessive cycling of the pumps, and to the extent practical, minimize visibility from neighboring properties.

Pump station piping will be Class 250 ductile iron; the primary method of protection of ductile iron and metallic valves will be with epoxy linings/coatings, as required, because the groundwater produced from the recovery system will be brackish. A hydraulic surge suppression system consisting of a bladder filled hydropneumatic tank may be required; hydraulic modeling will be provided for the piping system to evaluate and size the necessary hydraulic surge suppression equipment.

Telemetry between the individual groundwater recovery wells and injection well pump station will provide on/off controls to prevent overflow of the injection pump station AST(s) during outages; other safety elements will be provided as needed.

Temporary power will be required for electric motor powered drilling equipment including drill rig, mud pumps and mud cleaning systems. FPL connection for either 22.9 KV or 13.2 KV power will be provided to a portable sub-station. Tie-in to the existing high voltage power from FPL will occur west of the pump station site and may be run overhead; electrical power for local temporary service will be run at ground surface in 4,160 V shielded mining cable that is identified and protected. Temporary daily power demand will be approximately 500 KW.

Excavation and backfilling with structural fill will be conducted under the precast building, pump station, AST(s) and other places, as needed, to provide adequate foundations for installation of concrete slabs. Use of piles for support is not anticipated.

For collection of groundwater samples from the dual-zone monitor well, two manually operated centrifugal pumps (approximately 2 HP each) will be installed for purging and conveying the groundwater to the AST(s). Each monitor zone will also be provided with pressure monitoring and recording instrumentation.

For the injection well, flow (instantaneous and totalized) and pressure will be monitored and recorded. Also, a hydropneumatic tank and pressurized nitrogen supply will be connected to the injection well's monitoring annulus. Monitoring and recording instrumentation for pressure and fluid level within the tank will be provided. This equipment comprises the leak detection system required under UIC industrial injection well construction requirements.

In order to provide a basis for payment to ensure that grant funds are disbursed commensurate with the work progress, the following milestones will be used as a guideline for payment:

Activity	% of Line Item
<b>Pump Station</b>	
Temporary Electrical Service for Portable Substation	10
Permanent Electrical Service for Pump Station	10
Concrete Foundations (Pumps, Tanks, Precast Bldg.)	5
Groundwater Storage Tank(s)	10
Injection Pumps, Piping, and Hydraulic Surge System	50
Precast Bldg (approx. 12' x 20')	3
Injection Well Annular Monitoring Tank	1
Dual-Zone Well Pumps and Piping	1
I&C	5
Start up Services	5

The Contractor will meet with the Independent Engineer each month prior to submittal of the draw to review the work progress and agree to the percentage complete on each of the pump station construction activities.

**15. Annual Operations, Monitoring and Maintenance**

In accordance with the City-County grant, operations, monitoring and maintenance expenses for activities associated with the groundwater remediation system are grant eligible for the period of time up to the completion of the landfill closure. At this time, the expected completion date of the landfill closure is unknown; therefore, the five years of O&M activities allocated in the line item are simply based on the available grant funds for groundwater remediation. If the landfill is closed within the five years allocated in this line item, O&M activities will no longer be grant eligible at the time of closure completion/certification, regardless if there is funding left in this line item.

As part of this item, we anticipate conducting the following activities specifically for the groundwater remediation system:

- Performing weekly inspections of the extraction and injection systems
- Repairing or replacing parts as needed to maintain performance of the system
- Balancing and adjusting the system as necessary

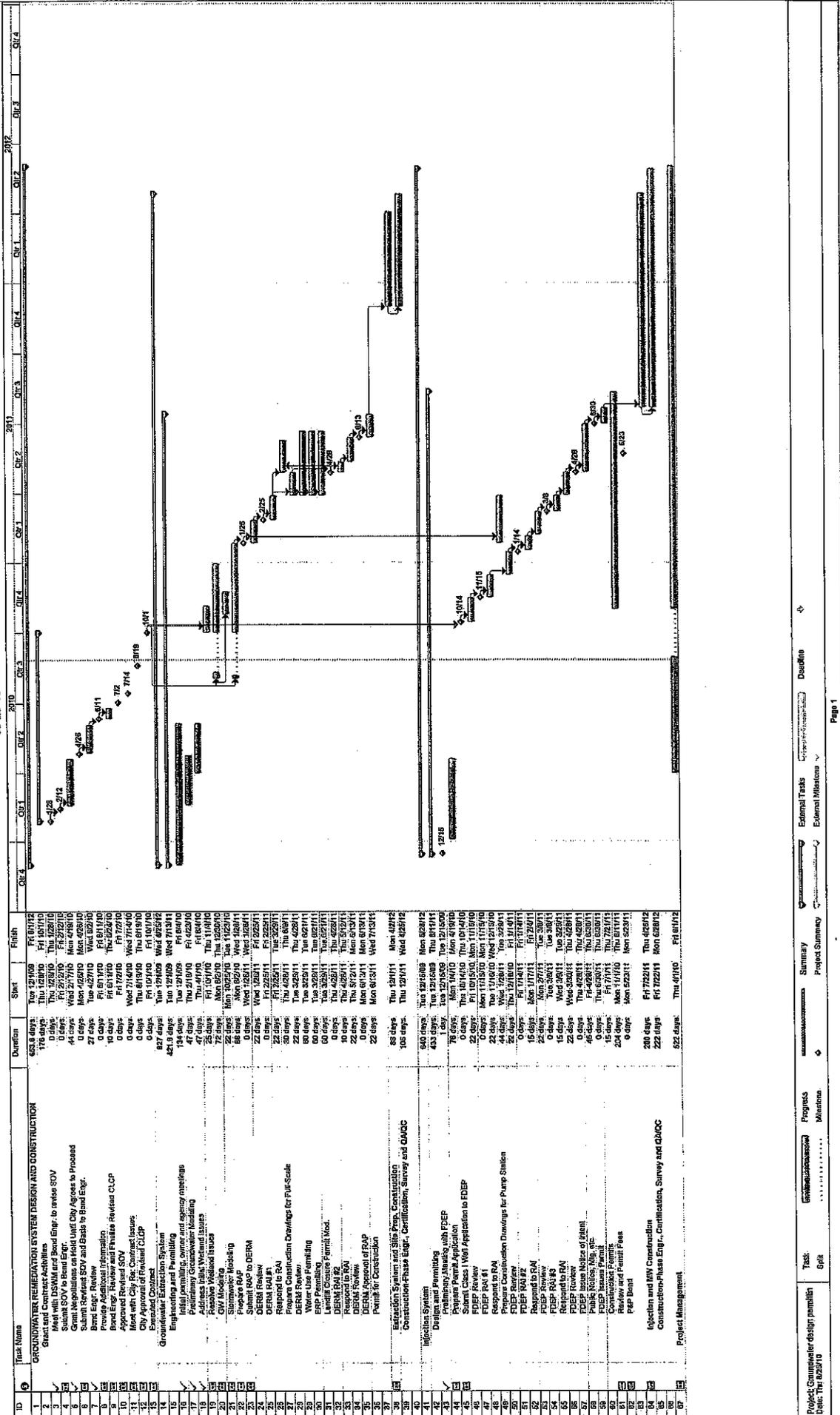
- Conducting water quality sampling and analyses as required for compliance of the extraction and injection systems
- Preparing quarterly reports of system performance and others as required by the regulatory agencies for the remediation system
- Preparing renewal applications for permits specifically for the remediation system
- Mechanical integrity testing of the injection well at year five as required by the FDEP UIC permit

The fee for Operations, Monitoring and Maintenance in the SOV is for a 5 year duration, beginning after system start-up and balancing. This item does not include activities associated with the landfill closure or routine site-wide water quality monitoring. Charges for electricity consumption are not included in the fee.

The Contractor recommends that the City and County consider setting up an annuity account upon completion of negotiating this SOV. We anticipate that if the annuity can return approximately 4.25%, a sixth year of pre-closure O&M may be funded within the same line item allocation. Equally distributed draws will be made from the account on a quarterly basis beginning at the inception of the O&M period.

**ATTACHMENT A, Part 2**  
**Groundwater Remediation Timeline**

BISCAYNE LANDING GROUNDWATER REMEDIATION SCHEDULE  
08-26-10



ID	Task Name	Duration	Start	Finish
1	GROUNDWATER REMEDIATION SYSTEM DESIGN AND CONSTRUCTION	652.8 days	Tue 12/16/09	Fri 6/17/12
2	Meet with Contractor/Advisors	116 days	Thu 1/20/10	Fri 10/16/10
3	Meet with DSWM and Bond Engr. to review SOV	0 days	Thu 1/20/10	Thu 1/20/10
4	Submit SOV to Bond Engr.	0 days	Thu 1/20/10	Thu 1/20/10
5	Get approval on Initial City Agrees to Proceed	4 days	Mon 2/1/10	Mon 2/8/10
6	Get approval on SOV and Agrees to Bond Engr.	0 days	Mon 2/1/10	Mon 2/1/10
7	Bond Engr. Review	27 days	Tue 4/27/10	Wed 5/26/10
8	Provide Additional Information	0 days	Fri 6/11/10	Fri 6/11/10
9	Approved Revised SOV	10 days	Fri 6/11/10	Thu 6/25/10
10	Meet with City Eng. to Review Agrees	0 days	Wed 7/14/10	Wed 7/14/10
11	Extended Contract	0 days	Thu 8/19/10	Thu 8/19/10
12	Groundwater Extraction System	827 days	Fri 10/16/10	Fri 10/16/12
13	Engineering and Permitting	421.9 days	Tue 12/15/09	Wed 7/13/11
14	Initial permitting, owner and agency meetings	194 days	Thu 1/20/10	Fri 10/16/10
15	Preliminary Construction Modeling	47 days	Thu 4/15/10	Fri 6/11/10
16	Final Construction Modeling	47 days	Thu 4/15/10	Fri 6/11/10
17	Final Construction Modeling	47 days	Thu 4/15/10	Fri 6/11/10
18	Final Construction Modeling	47 days	Thu 4/15/10	Fri 6/11/10
19	Final Construction Modeling	47 days	Thu 4/15/10	Fri 6/11/10
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65	Final Construction Modeling	47 days	Thu 4/15/10	Fri 6/11/10
66	Final Construction Modeling	47 days	Thu 4/15/10	Fri 6/11/10
67	Final Construction Modeling	47 days	Thu 4/15/10	Fri 6/11/10

**ATTACHMENT B**  
**SECOND AMENDED GRANT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE**  
**CITY OF NORTH MIAMI**

SECOND AMENDED GRANT AGREEMENT  
BETWEEN  
MIAMI-DADE COUNTY, FLORIDA  
AND  
CITY OF NORTH MIAMI, FLORIDA

THIS SECOND AMENDED GRANT AGREEMENT, made and entered this 26 day of MARCH, 2004, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter "COUNTY") and the City of North Miami, Florida, a Florida municipal corporation (hereafter "CITY").

WITNESSETH

WHEREAS, pursuant to Resolution No. R-333-96 of the Board of County Commissioners, the COUNTY agreed to provide certain grant funds to the CITY for the cost of financing the remediation and closure of the CITY's Munisport Landfill Site (hereinafter the "LANDFILL"); and

WHEREAS, pursuant to Resolution No. R-910-99 of the Board of County Commissioners, the COUNTY agreed to amend said grant agreement and approved a "FIRST AMENDED GRANT AGREEMENT", dated the 16th day of September, 1999; and

WHEREAS, COUNTY desires to further amend the FIRST AMENDED GRANT AGREEMENT; and

WHEREAS, The consideration on the part of the CITY, for this agreement is the execution of a solid waste disposal services extension agreement through December 31, 2033 which is acceptable to the COUNTY, and that all requirements herein are specifically contingent upon that execution,

NOW, THEREFORE, IN CONSIDERATION of the mutual benefits derived herefrom, the parties covenant and agree as follows:

I. STATUS OF FORMER AGREEMENTS.

This SECOND AMENDED GRANT AGREEMENT shall substitute for all prior grant agreements between the COUNTY and the CITY.

II. FUNDING ASSISTANCE

A. Contingent upon the execution of a solid waste disposal services extension agreement by the CITY which is valid through December 31, 2033, the COUNTY and CITY shall create and the COUNTY shall fund an escrow account/s in the amount of THIRTY-ONE MILLION TWENTY- SEVEN THOUSAND (\$31,027,000.00) DOLLARS for the purposes set forth in Section III of this Agreement. This grant payment shall be made exclusively from proceeds of a COUNTY tax exempt revenue bond sale pledging revenues from the Utility Service Fee, initially implemented by Dade County Ordinance No. 95-174, as adopted on September 20, 1995, or other revenues of the Department of Solid Waste Management. The escrow funds shall be placed in a COUNTY and CITY administered escrow account/s, with all disbursements to the CITY based on invoices or draw requests for eligible costs in accordance with Section III of this Agreement. Said invoices or draw requests shall be in a form generally accepted in the industry in support of construction draw requests from a construction lender and based upon a schedule of values and level of detail agreed upon by the CITY and the COUNTY BOND ENGINEER, prior to the first invoice or draw request. Prior to the next requested disbursement made pursuant to invoices or draw requests, CITY shall provide affidavits and releases of payment

for the prior invoices or draw requests. The account depository/ies and all investments therein shall be chosen by the CITY with approval of the COUNTY and shall consist of interest bearing account/s, with accrued interest being deposited back into the account/s. Disbursements from the account shall require the approval of the representative of the COUNTY designated by the County Manager and the representative of the CITY designated by the City Manager. The CITY and COUNTY shall cooperate in drafting any additional documentation as may be necessary to establish said escrow account/s, consistent with the terms hereof. If required by an affected regulatory agency, the terms of the escrow account/s shall be modified, except as to the amount set forth herein, so that said escrow may meet any such agencies requirements for financial assurances, as noted in Paragraph III J. hereof.

### III. USE OF GRANT FUNDS

A. CITY shall utilize the grant funds provided for the following purposes, as applicable, but said funds shall not be used for post closure monitoring or long term care:

1. Construction, operation , remediation, closure and pre-closure monitoring of the Munisport Landfill Site required by the CITY's U.S. EPA Consent Decree entered into in September 1991 and approved by the U.S. District Court on March 23, 1992, Case No. 91-2834 (U.S. Dist. Ct. S.D., FL.), and as the same may be amended; and
2. Construction, operation , remediation, closure and pre-closure monitoring of the Munisport Landfill Site required by the April 25, 1995 Consent

Agreement between the CITY and the State DEP and as the same may be amended, as made final by Landfill Closure permit or final Consent Agreement to be issued by the State DEP under Sec. 62-701, F.A.C., and as the same may be amended; and

3. Construction, operation, remediation, closure and pre-closure monitoring of the Munisport Landfill Site (excluding Wetlands Mitigation Bank) required by the CITY and Miami-Dade Department of Environmental Resources Management (DERM) Consent Agreement entered into on February 10, 1998, and as the same be amended; and
4. Payment of all or any part of the principal and interest on any short or long term indebtedness owed by CITY for construction, operation, remediation and closure and pre-closure monitoring of the Munisport Landfill site required pursuant to items 1-3 above.

The terms construction and operation, as used in this paragraph A are specifically limited to construction and operation of facilities necessary and required as part of the remediation and closure of the site. In no instance, may funds be used for construction or operations which are not required as part of the remediation and closure, as set forth in the approved remediation and closure plans.

- B. The authorized purpose of construction expenditure under paragraph (A) above includes hard construction costs as well as engineering, scientific and related administrative costs. It specifically does not include any post closure monitoring or any long term maintenance on the project site. No more than \$1.5 million of the funds provided herein shall be used for the in situ remediation pilot project

approved by DERM as an amended Interim Remedial Action Plan (IRAP) on December 24, 2003, excluding the project development costs associated with bench scale and the initial pilot test and incurred prior to the date hereof. Compliance with the terms of paragraph A and the permissible costs shall be based on an engineering certification by CITY which shall be approved by the COUNTY's Bond Engineer.

- C. The grant funds provided hereunder shall supplement and cover items not fully covered by the funds to be received by CITY from the State DEP pursuant to State Grant Contract HW-241, which was provided to assist the CITY with a portion of the costs of the Consent Decree Remedial Action by Sec. 24 of Chapter 92-30, Laws of Florida (1992), and shall not reimburse CITY for the expenditure of such State Grant funds.
- D. The CITY and its developer, contractors and/or subcontractors shall maintain accurate and complete books, records and documents, such as vouchers, bills, invoices, receipts and cancelled checks, sufficient to reflect properly all receipts and expenditures of grant funds for a period of three (3) years following final disbursement from the escrow account under this Agreement. All the above referenced records shall be retained by the City of North Miami in a secure place and in an orderly fashion. The system of accounting will be in accordance with generally accepted accounting principles and practices, consistently applied.
- E. The CITY, its developer, contractors and/or subcontractors shall permit representatives of COUNTY including but not limited to the Office of the Inspector General, to inspect and audit all books, records, documents and other

supporting data and documentation relating to the CITY's and/or its developer's, contractors' or subcontractors' performance hereunder, including the use of funds. These rights of inspection and audit shall extend for a period of three (3) years following final disbursement from the escrow account under this Agreement.

- F. The CITY shall promptly submit to the COUNTY Manager other written reports and documents as may be reasonably requested concerning the Remedial Action and Landfill Closure. This provision shall not affect and is not related to the regulatory matters which the City must comply with in its dealing with DERM or FDEP.
- G. The CITY shall promptly reimburse escrow account for any unauthorized expenditures which may be properly determined by COUNTY, in good faith.
- H. The COUNTY reserves the right to cancel this Agreement for the wrongful refusal by the CITY or its developer, contractors or subcontractors to allow public access to all documents, papers, letters, or other materials, including those subject to the disclosure provisions of Chapter 119, F.S., if made or received by the CITY in conjunction with this Agreement. Cancellation under this paragraph shall be considered an event of default as defined herein.
- I. The CITY shall allow representatives of the COUNTY access to the Site during any reasonable times for purpose of determining compliance with this Agreement. The primary representative of the COUNTY with respect to determining compliance with this Agreement shall be the Bond Engineer for the COUNTY's Department of Solid Waste Management ("the DSWM Bond Engineer"). However, this shall not be interpreted as a limitation on reasonable access to the

site by other COUNTY representatives. The scope of work of the DSWM Bond Engineer with regard to this shall be to provide oversight of the work accomplished by the CITY and its subcontractors under this Agreement in order to determine compliance with the following terms of this Agreement which the City agrees to cooperate with:

- a. Allowable use of grant funds as set forth in Section III of this Agreement, including those uses of grant funds set forth above in paragraphs A, B, and C; and
- b. Compliance with regulatory agency technical and permitting requirements, including those referenced above in paragraphs A, B, and C.

Nothing in this paragraph or this agreement shall be read to limit the access which is necessary and required by other COUNTY personnel including all regulatory departments of the COUNTY.

J. The CITY is permitted to provide or utilize this Second Amended Grant Agreement to any affected governmental agency or lender to evidence, in whole or in part, any necessary or required Financial Assurances or security for the cost of construction, operation, remediation and closure of the landfill site. COUNTY agrees to execute any and all reasonable documentation requested by CITY and directed to said affected governmental agency or lender to provide such assurances or security.

K. Any funds remaining in the escrow account, not used for the purposes described herein, shall be returned to the COUNTY at the end of the term hereof. Any

shortage of funds for the complete remediation and closure shall be wholly the responsibility of the CITY. In the event of any arbitrage liabilities being incurred by the escrow account or by the COUNTY as a result of the escrow account, the CITY shall be responsible for payment of such arbitrage liability.

#### IV. TERMS OF AGREEMENT

This Agreement shall be in full force and effect from the date hereof and shall continue until the later of: the final certification of completion of the landfill remediation and closure or upon depletion of the escrow account/s so that no further funds are available for disbursement therein.

#### V. INDEMNIFICATION

- A. It is expressly understood and intended that CITY is only a recipient of grant funds and is not an agent of COUNTY.
- B. Subject to the monetary limits of Section 768.28, F.S., CITY shall defend, indemnify and hold harmless the COUNTY from any claim or damage for personal injuries or property damage, arising from the act, omission or performance or failure of performance of CITY or CITY's agents, contractors, servants and employees hereunder.

#### VI. PAYMENT SCHEDULE

- A. Subject to the limitations and requirements set forth in Section II, on-or before December 31, 2004, COUNTY will place a THIRTY-ONE MILLION TWENTY-SEVEN THOUSAND (\$31,027,000.00) grant payment in a COUNTY and CITY administered escrow account. This sum when combined with the amounts

previously paid to the CITY, shall be the entire financial participation of the COUNTY in the remediation of the site. In the event of a shortfall of funds, the CITY shall be wholly responsible to complete the cleanup and closure of the site.

#### VII. FORCE MAJEURE

Neither party hereto shall be liable for its failure to carry out its obligations under the Agreement during any period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations, but the obligations of the party relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period of said unexpected or uncontrollable event, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, to the other party, written notice of its assertion that a Force Majeure delay has commenced within ten (10) working days after such commencement, unless there exists good cause for failure to give such notice, in which event, failure to give such notice shall not prejudice any party's right to justify any non-performance as caused by Force Majeure unless the failure to give timely notice causes material prejudice to the other party. It is further agreed and stipulated that each party hereto shall make all reasonable efforts to carry out its obligations under this Agreement during any period when such party is rendered, unable, in whole or in part, by Force Majeure to carry out such obligations.

Force Majeure shall be defined as an act of God, epidemic, lightning, earthquake, fire, explosion, storm, hurricane, flood or similar occurrence, strike, and acts of a public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil

disturbance or similar occurrence, which has had or may be reasonably expected to have a material adverse effect on the rights or obligations under this Agreement, which by the exercise of due diligence the party relying thereon as justification for not performing any obligation under this Agreement shall not have been able to avoid, and which is not the result of willful or negligent action or omission of such party.

#### VIII. DEFAULT

A. Without limitation, the failure by the CITY to substantially fulfill any of its material obligations in accordance with this Agreement, unless such failures are justified by Force Majeure, shall constitute a "CITY event of default". If a City event of default should occur, the COUNTY shall have all of the following rights and remedies which it may exercise singly or in combination:

1. The right to declare that this Agreement together with all rights granted to CITY thereunder are terminated, effective upon such date as is designated by the COUNTY. Provided, however, an event of default shall be defined to consist of a default that shall occur by the default in performance of any of the covenants and conditions required herein to be kept and performed by CITY and provided that such default continues for a period of thirty (30) days after receipt of written notice from the COUNTY of said default. Notwithstanding the above, if the nature of the default is such that it cannot be cured in a period of thirty (30) days from the date of the default, and CITY commences reasonable efforts to cure such default no later than thirty (30) days after such notice, and such efforts are prosecuted to completion, to COUNTY's reasonable satisfaction, then it shall be deemed that no event of default shall have occurred under the provisions of this

paragraph. In such event, any and all funds remaining in the escrow account shall be paid over to the COUNTY and the COUNTY shall have no further responsibility to participate in the remediation and closure of the site.

2. Any and all rights provided under the laws of the State of Florida.

**B. County Event of Default**

Without limitation, the failure by the COUNTY to substantially fulfill any of its material obligations in accordance with this Agreement, unless such failures are justified by Force Majeure, shall constitute a "COUNTY event of default."

If a COUNTY event of default should occur, the CITY shall have all of the following rights and remedies which it may exercise singly or in combination:

1. The right to declare that this Agreement together with all rights granted to COUNTY thereunder are terminated, effective upon such date as is designated by the CITY; provided, however, that an event of default shall be defined to consist of default that shall occur by the default of performance of any of the covenants and conditions required herein to be kept and performed by COUNTY and provided that such default continues for a period of thirty (30) days after receipt of written notice from the CITY of said default. Notwithstanding the above, if the nature of the default is such that it cannot be cured in a period of thirty (30) days from the date of the default, and COUNTY shall commence reasonable efforts to cure such default, no later than thirty (30) days after such notice, and such efforts are diligently prosecuted to completion to CITY's reasonable

satisfaction, then it shall be deemed that no event of default shall have occurred under the provisions of this subsection.

2. Any and all rights provided under the laws of the State of Florida.

#### IX. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The COUNTY and the CITY agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

#### X. ENTIRETY OF AGREEMENT

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto and their authorized representatives.

## XI. HEADINGS

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

## XII. RIGHTS OF OTHERS

Nothing in this Agreement expressed or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

## XIII. REPRESENTATIONS OF CITY

The CITY represents that (I) this Agreement has been duly authorized, executed and delivered by the CITY, and (II) it has the required power and authority to perform this Agreement.

## XIII. REPRESENTATIONS OF COUNTY

The COUNTY represents that (I) this Agreement has been duly authorized, executed and delivered by the Board of County Commissioners, as the governing body of the COUNTY, and (II) it has the required power and authority to perform this Agreement.

## XIV. WAIVER

There shall be no waiver of any right related to this Agreement unless in writing signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this Agreement.

XV. INVALIDITY OF PROVISIONS, SEVERABILITY

Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

XVI. INDEPENDENT CONTRACTOR

A. CITY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the COUNTY. CITY shall have control of the work performed hereunder in accordance with the terms of this Agreement and of all persons performing the same, and CITY shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors.

B. Nothing herein shall be construed as creating a partnership or joint venture between the COUNTY and the CITY. No person performing any of the work or services described hereunder on behalf of CITY shall be considered an officer, agent, servant or employee of the COUNTY, nor shall any such person be entitled to any benefits available or granted to employees of COUNTY.

XVII. INTERGOVERNMENTAL COOPERATION

CITY agrees that CITY shall not pursue a landfill remediation cost recovery action pursuant to CERCLA or RCRA or other Federal or State law against COUNTY and shall not include COUNTY as a potentially responsible party in CITY's cost recovery legal action pending as City of North Miami vs. A & E Construction Company, Case No. 95-0545 (U.S. Dist. Ct. S.D., FL.).

XVIII. NOTICE

Notices to CITY provided for herein shall be sufficient if sent by Federal Express or certified mail, return receipt requested, postage prepaid, addressed to:

City Manager  
City of North Miami  
776 N.E. 125th Street  
North Miami, FL 33161

with copy to:

City Attorney  
City of North Miami  
776 N.E. 125th Street  
North Miami, FL 33161

and notices to COUNTY, if sent by Federal Express or certified mail, return receipt requested, postage prepaid addressed to:

County Manager  
Miami-Dade County  
Stephen P. Clark Center  
111 N.W. 1st Street, 29th Floor  
Miami, FL 33128

with copy to:

County Attorney  
Miami-Dade County  
Stephen P. Clark Center  
111 N.W. 1st Street, 28th Floor  
Miami, FL 33128

Or such other respective address as the parties may designate to each other in writing from time to time.

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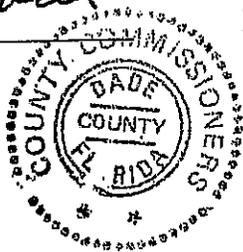
IN WITNESS WHEREOF, the parties hereto have set their hands and seals the  
day and year first above written.

ATTEST:

HARVEY RUVIN, CLERK

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

By: [Signature]  
DEPUTY CLERK



By: [Signature]  
GEORGE M. BURGESS  
COUNTY MANAGER

ATTEST:  
SIMON H. BLOOM, JR.

CITY OF NORTH MIAMI

By: [Signature]  
CITY CLERK  
*Deputy*

By: [Signature]  
CLARENCE PATTERSON  
CITY MANAGER

Approved for Legal Sufficiency

[Signature] 3.19.04  
JOHN DELLA GLORIA  
CITY ATTORNEY

Approved by County Attorney as to form and legal sufficiency:

[Signature]  
ASSISTANT COUNTY ATTORNEY

**Charles W. DeSanti**  
**Receiver for the Courts, Biscayne Landing Asset**  
c/o Kitson & Partners, LLC  
4500 PGA Boulevard, Suite 400  
Palm Beach Gardens, Florida 33418

April 7, 2011

VIA ELECTRONIC AND CERTIFIED MAIL

Russell Benford, City Manager  
City of North Miami  
776 125<sup>th</sup> Street  
North Miami, Florida 33161

John Razzolini  
CH2M HILL  
1000 Abernathy Road, Suite 1600  
Atlanta, Georgia 30328

Thomas McSweeney  
CH2M HILL  
201 Alhambra Circle, Suite 600  
Coral Gables, Florida 33134-5107

RE: Biscayne Landing -- MUNISPORT LANDFILL GROUNDWATER REMEDIATION  
SYSTEM DESIGN-BUILD CONTRACT ("Contract"); Discharge of Receiver (Charles  
W. DeSanti)

Dear Mr. Benford, Mr. Razzolini & Mr. McSweeney:

As you both know, by Court Order, dated March 31, 2011, Charles W. DeSanti is being discharged as Receiver for the Biscayne Landing Project as of April 13, 2011. Also, on March 31, 2011, the Court issued a companion Order which deemed the Ground Lease between the City of North Miami ("City") and Biscayne Landing, LLC, terminated as of March 31, 2011. Copies of both those orders are attached for your reference.

Paragraph 12.1, subpart (iii) of the Contract provides as follows:

*"... Vendor shall continue to perform its obligations hereunder notwithstanding:*

*(iii) the termination of the Ground Lease or Munisport Agreement following any default by BLLC thereunder (in which event, pursuant to the letter of intent provided for in Section 2.2.13 hereof, the City shall automatically become the Vendee hereunder without the necessity of any act, instrument or deed.)"*

On September 10, 2010, the City issued its Letter of Intent, a copy of which is attached for your reference. That Letter of Intent indicated the City's intent to continue the Contract if the Ground Lease is terminated.

Russell Benford, John Razzolini & Thomas McSweeney  
April 7, 2011  
Page 2

Paragraph 12.1 of the Contract also provides that:

*It is expressly understood by the parties signing this Contract, the Receiver has been appointed by the Court in the Foreclosure Action, and the Receiver's obligations as the Initial Vendee hereunder will terminate completely upon the earlier of the Court entered order of dismissal of the Receiver, the Initial Vendee's assignment of this Contract to a Successor Ground Lessee or the City's termination of the Ground Lease or Munisport Agreement. No obligations of the Receiver hereunder shall survive such terminations or assignment.*

**Therefore, in light of the attached Court Orders and the express provisions of the Contract, the Receiver's obligation under the Contract effectively ceased as of March 31, 2011, Pursuant to the City's Letter of Intent, the City will continue with the groundwater remediation efforts. If either party deems further documentation is required to position the City as successor Vendee under the Contract, the Receiver will cooperate (without representation or warranty) to the extent possible. Please note that Charles W. DeSanti can no longer sign as Receiver after April 13, 2011.**

As an update, Draw #12 under the County/City Grant Program was approved by the Receiver's office and forwarded to the City for processing on March 28, 2011. The Receiver's office has no further obligation as to Draw #12.

We wish both parties the best. We are confident that the City will find the CH2M Hill and ES Consultants teams very competent and diligent in their continued efforts. We encourage the parties to get together as soon as possible for a full briefing on the status of the groundwater remediation permitting and design efforts.

Sincerely,



Richard De Lotto  
Office of the Receiver for the Biscayne Landing Project

Enclosures

Cc: Lynn Whitfield, City of North Miami (via e-mail only, without enclosures)  
Theodore Stotzer, Biscayne Landing Management, LLC (via e-mail only, without enclosures)  
Eduardo Smith, ES Consultants (via e-mail only, without enclosures)  
Charles W. DeSanti, Receiver, Biscayne Landing Project (via e-mail only, without enclosures)  
Peter Hoelzle, TriMont Real Estate Advisors (via e-mail only, without enclosures)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

WELLS FARGO BANK, N.A., AS  
TRUSTEE FOR THE CREDIT SUISSE  
FIRST BOSTON MORTGAGE  
SECURITIES CORP., COMMERCIAL  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2007-TFL2,

CASE NO.: 09-64005 CA 10

Plaintiff,

vs.

BISCAYNE LANDING, LLC, a Florida  
limited liability company, *et al.*,

Defendants.

---

**ORDER GRANTING RECEIVER'S EMERGENCY MOTION TO  
TERMINATE RECEIVERSHIP AS OF MARCH 31, 2011**

**THIS CAUSE** came before the Court on March 31, 2011 at 1:30 p.m., upon the Receiver's *Emergency* Motion to Terminate Receivership as of March 31, 2011 (the "Receiver's Motion"). The Court, having reviewed the Receiver's Motion, being advised that all parties have received notice of this hearing, having heard no objection, and being otherwise advised in the premises, does hereby

**ORDER AND ADJUDGED** that the Receiver's Motion is **GRANTED** as follows:

1. As of April 13, 2011 (the "Termination Date"), The Receiver, Charles W. DeSanti, shall be deemed forever discharged and released from any and all obligations, duties, responsibilities and liabilities imposed upon him by that certain Agreed Order Appointing Receivership entered by this Court on September 2, 2009 (the "Receivership Order"), except only that he shall maintain a duty to file a Final Report as expressly stated and defined in paragraph 2 of this Order. Additionally, as of the Termination Date, except as expressly stated in

this Order, the Receiver is forever discharged and released from any and all obligations, duties, responsibilities, and liabilities in anyway related to Biscayne Landing, LLC, the underlying property which is the subject of this lawsuit, and the administration of this receivership.

2. Receiver shall file a final report which shall include a final accounting (the "Final Report") with the Court within thirty (30) days from **the Termination Date**. All other parties to this action shall have ten (10) days from the date the Receiver files the Final Report to file an objection to the Receiver's Final Report. A copy of any filed objection(s) shall be sent to counsel for the Receiver, by e-mail to [angela.lipscomb@akerman.com](mailto:angela.lipscomb@akerman.com) and by U.S. mail to Akerman Senterfitt, c/o Angela M. Lipscomb, Esq., 350 East Las Olas Blvd., Suite 1600, Fort Lauderdale, FL 33301. Absent objection to Receiver's Final Report, the surety on the Receiver's Bond No. 21BSBFM4140 will be discharged and terminated, the Receiver's Bond No. 21BSBFM4140 will be cancelled, and the liability of the surety on the Receiver's Bond No. 21BSBFM4140 will be terminated without further Order of Court. The Receiver shall notice any objections timely filed with the Court and served upon counsel for the Receiver, for hearing upon the Court's regularly scheduled motion calendar.

3. From any funds or assets currently held by the Receiver, the Receiver is hereby authorized to pay all operating expenses and professional fees incurred on or before March 31, 2011 (including any such operating expenses or professional fees incurred but not yet billed), all expenses incurred by the Receiver and his professionals in the preparation of the Final Report and related to the review and resolution of any objections to the Final Report, and any reasonable expenses related to the "wind down" of the receivership, including, but not limited to, communications with the Plaintiff regarding the Leasehold Property and the assignment of rights as set forth in paragraph 5 of this Order. Absent timely objection to the Receiver's Final Report

6

or the resolution of objections to same by the Court, the Receiver shall wire to Plaintiff any and all remaining funds provided by Plaintiff to Receiver during the Receivership including, but not limited to, any amounts remaining from the approximately \$25,000 residual operating balance, after expenses as outlined in this paragraph are paid. Such funds shall be wired to:

KeyBank, Cleveland, OH  
ABA: 041001039  
Account Name: KCM Payment Clearing  
Account No.: 359951013036  
Reference: Loan 01-0037378

- 4/3. The Receiver shall take all necessary and appropriate steps to turnover possession and control of the Leasehold Property to the City of North Miami on or before April 13, 2011 (the Termination Date). The City of North Miami shall pay the operating expenses and professional fees incurred by the Receiver in connection with the Leasehold Property from April 1, 2011 through the Termination Date, April 13, 2011. During that period, the Receiver shall limit his expenses to reasonable operating expenses, including management and professional fees, necessary to preserve, protect and maintain the Leasehold Property, including, but not limited to, its approvals and permits, as well as expenses related to life safety issues and security at the Leasehold Property. The City of North Miami shall also be responsible for all fees and expenses incurred by the Receiver and his professionals in order to transition possession and control of the Leasehold Property to the City of North Miami. The Receiver currently estimates that the reasonable operating costs which are likely to be incurred between April 1, 2011 and April 13, 2011 are \$50,000. This amount shall be funded by the City of North Miami no later than 5 p.m. on April 4, 2011.

5/4. The City of North Miami and Lender shall cooperate with the Receiver in the orderly transition of the Leasehold Property from the Receiver to the City of North Miami. Nothing contained in this Order shall be construed to preclude the City of North Miami from entering into a separate and independent contract with the Receiver, Kitson & Partners (or its affiliates) to manage the Leasehold Property subsequent to the termination of the receivership.

6/5. No later than Monday, April 4, 2011, Receiver is hereby directed to assign any and all rights, title or interest that Receiver may have in any pending tax appeals relating to the 2009 real estate taxes on the Leasehold Property, including any tax rebates or tax refunds, to Plaintiff, without representation or warranty. The Miami Dade Tax Collector's Office is hereby instructed to pay any such 2009 tax refunds or tax rebates to KeyBank, as Plaintiff's Master Servicer. If payment is by check, payment must be made payable to KeyBank, and must be sent to: KeyBank, as Plaintiff's Master Servicer, Reference: Loan 01-0037378, c/o Peter B. Hoelzle, TriMont Real Estate Advisors, 3424 Peachtree Road NE, Suite 220, Atlanta, GA 30326. If payment is by wire transfer, funds should be wired to:

KeyBank, Cleveland, OH  
ABA: 041001039  
Account Name: KCM Payment Clearing  
Account No.: 359951013036  
Reference: Loan 01-0037378

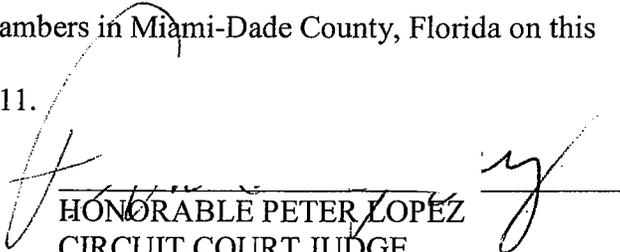
Plaintiff is hereby vested with the right and authority to prosecute any pending tax appeals relating to the 2009 real estate taxes for the Leasehold Property and to make any and all decisions relating to same.

7/6. The Receiver shall not take any affirmative action to cancel or dispense with any insurance policy currently in existence on the Leasehold Property. Plaintiff has paid the

insurance premiums on the insurance policies currently in existence; however, the Plaintiff shall not be responsible for payment of any renewals.

8/7. The Court shall retain jurisdiction to enforce the terms of this Order.

**DONE AND ORDERED** in Chambers in Miami-Dade County, Florida on this  
31 day of March, 2011.

  
HONORABLE PETER LOPEZ  
CIRCUIT COURT JUDGE

**CONFORMED COPY**

**MAR 31 2011**

**PETER R. LOPEZ  
CIRCUIT COURT JUDGE**

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup> JUDICIAL CIRCUIT, IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

WELLS FARGO BANK, N.A., AS  
TRUSTEE FOR THE REGISTERED  
HOLDERS OF THE CREDIT SUISSE  
FIRST BOSTON MORTGAGE  
SECURITIES CORP., COMMERCIAL  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2007-TFL2,

GENERAL JURISDICTION DIVISION

CASE NO.: 09-64005-CA-10

Plaintiff,

vs.

BISCAYNE LANDING, LLC, a Florida  
limited liability company, et al.

Defendants.

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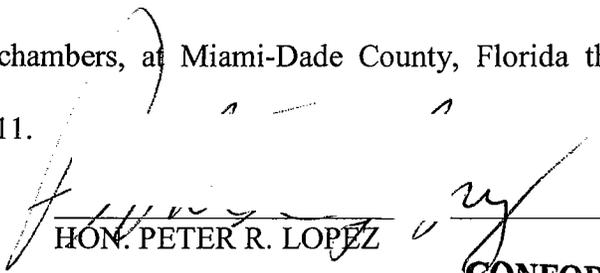
**ORDER GRANTING CITY OF NORTH MIAMI'S MOTION TO AUTHORIZE  
THE RECEIVER TO  
TURNOVER POSSESSION OF LEASEHOLD PROPERTY**

**THIS CAUSE** came before the Court on March 31, 2011 on the City of North Miami's Motion to Authorize the Receiver to Turnover Possession of Leasehold Property. The Court having considered the Motion and being otherwise advised in the premises, it is hereby **ORDERED** and **ADJUDGED** that the City of North Miami's Motion to Authorize the Receiver to Turnover Possession of Leasehold Property is **GRANTED**. The Ground Lease dated June 27, 2008 by and between the Defendant Biscayne Landing, LLC and the City of North Miami is terminated as of March 31, 2011. The Receiver shall take all necessary and appropriate steps to turnover possession and control of the Leasehold Property to the City of North Miami on or before April 13, 2011. The City of North Miami and the Lender shall cooperate with the Receiver to ensure the orderly transition of the Leasehold Property to the City of North Miami. The City of

North Miami shall be responsible for expenses incurred by the Receiver from April 1, 2011 through April 13, 2011 as set forth in the Agreed Order Granting Receiver's Emergency Motion to Terminate Receivership as of March 31, 2011, dated March 31, 2011.

The terms of this Order shall not be construed to limit or preclude in any way the Plaintiff from pursuing any claims, if any, that it may have against the City of North Miami or any other persons or entities nor shall this Order be construed as a determination that any such claims exist.

**DONE AND ORDERED**, in chambers, at Miami-Dade County, Florida this  
31 day of March, 2011.

  
HON. PETER R. LOPEZ

cc: All Counsel of Record  
3963/101/323583.1

**CONFORMED COPY**

**MAR 31 2011**

PETER R. LOPEZ  
CIRCUIT COURT JUDGE



September 10, 2010

John Razzolini  
CH2M HILL  
1000 Abernathy Road  
Suite 1600  
Atlanta, Ga. 30328

Re: **Letter of Intent**  
**Biscayne Landing- Design Build Remediation Contract**

Dear Mr. Razzolini:

I am the City Manager for the City of North Miami, Florida. The City of North Miami is the owner of a certain parcel of land commonly known as "Munisport Landfill" or Biscayne Landing. Through our City Attorney, V. Lynn Whitfield, we have reviewed the proposed Munisport Landfill Groundwater Remediation System Design-Build Contract between Charles W. DeSanti, Court Appointed Receiver for the Biscayne Landing Project and CH2M HILL Engineers, Inc.

In the event the current ground lease on the parcel is terminated for any reason and possession and development rights revert to the City of North Miami, it is the City's intent to continue the Munisport Landfill Groundwater Remediation System Design-Build Contract with CH2M HILL Engineers, Inc. under the terms and agreement as currently set forth and approved by the court.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Benford", with a long horizontal flourish extending to the right.

Russell Benford  
City Manager

RB:mp

c: **Charles W. DeSanti**  
Court-Appointed Receiver  
Kitson & Partners  
4500 PGA Boulevard, Suite 400  
Palm Beach Gardens, FL 33418