

PROJECT:

**PROVISION OF A COMPREHENSIVE SOLID WASTE TREATMENT
SOLUTION FOR THE CITY OF ERBIL AND ITS SURROUNDINGS**

**TENDER DOCUMENTS VOLUME
3: SERVICES CONTRACT**

July 2017

SERVICE CONTRACT dated [date] BETWEEN

[KRG] whose Principal Office is at [location]; AND

[name of Contractor] (the "Contractor") a company incorporated under the laws of [country of incorporation] whose Principal Office is at [location].

WHEREAS:

- A. The KRG is responsible for the provision of a comprehensive solid waste treatment solution;
- B. The KRG has the jurisdiction to enter into the Contract pursuant to the Applicable Law;
- C. The Contractor responded to the Bidding Documents dated [date] and was selected as the recommended Contractor to enter into the Contract and to perform the Services set out in Technical Specifications (Volume 2 of the RFP);
- D. The Contractor has the corporate capacity and authority to enter into the Contract.

Now, therefore, in consideration of the promises and the mutual covenants of the Parties hereto, as set forth hereinafter, it is mutually agreed as follows:

1. Definitions

The following expressions have the following meanings wherever used in this Contract, unless the context otherwise requires:

- i. "APPLICABLE LAW" means the laws and other instruments having the force of law in the Kurdistan Regional Government as they may be issued and in force from time to time, including decrees of the Government.
- ii. "AUTHORISED OFFICER" means the person from time to time designated by the Contracting Authority to have the duties, rights and obligations outlined in clause 7.
- iii. "BANK GUARANTEE" means a guarantee from a bank for compensation to the KRG in the event that it must assume the obligations and/or duties of the Contractor in order to continue the services as defined by this Contract.
- iv. "COMMENCEMENT DATE" means the day when the Contractor starts providing the Services under clause 4.
- v. "CONTRACT" means this Services Agreement.
- vi. "CONTRACT DOCUMENTS" means the documents forming the Contract, as specified in clause 2(1).
- vii. "CONTRACTOR" means the Company that has signed the Contract and agreed to perform the Services.
- viii. "CONTRACT PRICE" means the sum or sums to be ascertained and paid in accordance with sub-clause 28(2).
- ix. "CONTRACTOR REPRESENTATIVE" means the person designated from time to time by the Contractor to have the duties, rights and obligations outlined in clause 8.
- x. "CONTRACTOR STAFF" means all personnel specifically designated by the Contractor's Representative to be responsible for delivering services under this Contract including labor, workshop mechanics, supervisors and administration staff.
- xi. "EQUIPMENT" means any consumables, equipment, materials, implements and plant or other things required or necessary for the Contractor to perform the Services.
- xii. "GOVERNMENT" means the Government of the Kurdistan Regional Government.

- xiii. "FINANCIAL PENALTIES" means penalties to be paid by the Contractor to the Ministry of Municipalities and Tourism, through adjustments in payments by the KRG to the Contractor or otherwise, upon issuance by the KRG of a default notice in accordance with clause 24.
- xiv. "FORCE MAJEURE EVENT" has the meaning set out in clause 19.
- xv. "[COUNTRY]" means the Kurdistan Regional Government.
- xvi. "LOCATION" means the place where the Services or any part thereof are to be performed by the Contractor or to which goods, equipment or materials are to be delivered or stored or where work is to be executed by the Contractor or where documents or records are held or stored by or on behalf of the Contractor in connection with the provision of the Services.
- xvii. "MONTH" means all the calendar days of the month.
- xxviii. "NOTICE" means either a rectification Notice, a default Notice, or a supplementary default Notice in accordance with clause 23.
- xix. "OPERATION PERIOD" means the period from the Commencement Date to and including the date of termination of the Contract.
- xx. "PARTY" means the KRG or the Contractor, as the case may be, and "PARTIES" means both of them.
- xxi. "PERFORMANCE SPECIFICATIONS" means the specifications that the Contractor is to follow as provided in the Technical Specifications (Volume 2 of the RFP).
- xxii. "PREMISES" means any land, building, and or structure, or portion thereof.
- xxiii. "REGULATORY FRAMEWORK" means any laws, regulations, decrees and policies officially developed and approved by the Government, for the purposes of regulating solid waste generation, collection, transport, recycling, reuse, treatment, and disposal. A reference to any laws, regulations, decrees or policies shall be deemed to include a reference to any amendment or re-enactment of the same.
- xxiv. "SCHEDULED DATE OF TERMINATION" means the scheduled date for expiry of the contract as described in clause 5 which is the date falling fifteen (15) years after the Commencement Date or as may be extended upon agreement of the Parties.
- xxv. "SERVICES" means the services to be performed by the Contractor as contemplated by this Contract and further described in Technical Specifications (Volume 2 of the RFP).
- xxvi. "SUBCONTRACT" means any contract between the Contractor and any party (other than the KRG or the Contractor's employees) for the performance of any part of the Services.
- xxvii. "SUBCONTRACTOR" means any party (other than the Contractor) to whom part of the Contract Work/ Services is subcontracted by the Main Contractor. "VARIATION" means any alteration to the Services in accordance with clause 6 "Contract Variation".
- xxviii. "WEEK" means 7 consecutive days starting on Monday and ending on the following Sunday.

2. Interpretation of the Contract

1) Contract Documents

All documents forming part of the Contract, and all parts thereof, are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole. The following documents are incorporated by reference into this Contract shall be referred to as follows:

- a. Services Contract
- b. Package 1: Eligibility and Qualification
 - Appendix A – The Site
 - Appendix B – Tender Acknowledgment Form

- Appendix C – Bank Guarantee
- Appendix D – Performance Bond
- Appendix E – Eligibility and Qualification Form
- Appendix F – Insurance
- Appendix G – Anti-Collusion Affidavit
- Appendix H – CV Format Key Personnel
- Appendix I – Financial Proposal Form
- Appendix J – Site studies

- c. Package 2: Technical Proposal
- d. Package 3: Financial Proposal

2) Index and Headings

The index and headings to the clauses are inserted for convenience of reference only and are not part of the Contract and do not limit, alter or affect the meaning or operation of the Contract.

3) Singular or Plural

The singular shall include the plural and the plural shall include the singular except where the context otherwise requires.

4) Applicable Law

The Contract shall be interpreted in accordance with Applicable Law.

5) Language

All correspondence, documentation and discussion with respect to the Contract and the Services shall be in English, which shall be binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

6) Authorized Representative

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the KRG or the Contractor may be taken or executed by the following officials

For the KRG - [specify authorized representative] For the Contractor -
 [specify authorized representative]

7) Entire Agreement

This Contract constitutes the entire agreement between the KRG and the Contractor with respect to the subject matter of the Contract and supersedes all communications, negotiations, and agreements, whether written or oral, made by the Parties with respect thereto prior to the date of the Contract.

8) Notices

All notices, approvals, consents, instructions, certificates to be given under the Contract shall be in writing and shall be sent by personal delivery, courier, facsimile or email to the addresses for notice of the relevant Part as set out below:

KRG: [Contractor]

Mailing Address: [specify address]

Mailing Address: [specify address]

Facsimile: [specify fax number]

Facsimile: [specify fax number]

Email: [email address]

Email: [email address]

Any notice sent by facsimile or email shall be confirmed by the sender no later than 2 [two] days after dispatch by a notice sent by courier. Any notice sent by courier shall be deemed to have been delivered 10 [ten] days after dispatch. In providing the fact of dispatch it shall be sufficient to show that the envelope containing such notice was properly addressed, with proper payment for the courier, and conveyed to the courier service for transmission. Any notice delivered personally or sent by facsimile or email shall be deemed to have been delivered on the date of dispatch.

9) Liability

No review, approval or acknowledgement by the KRG shall relieve the Contractor from any liability or obligation under the Contract.

10) Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

11) Survival of obligations

Upon termination or expiration of the Contract all rights and obligations of the Parties hereunder shall cease, except clause 11(6), 35 and 36.

3. Effectiveness of the Contract

This Contract shall come into force and effect on the date of signature of this Contract by both Parties or such other date as the Parties may agree in writing.

4. Commencement of Services

(1) Within 45 [forty-five] days of the signature of the Contract, the Contractor shall submit to the KRG for approval the final Design-Build plan showing the general methods,

arrangements, order and timing for the Services, compliant with the draft Design-Build plan submitted by the Contractor as part of its bid for the Contract. The KRG shall review the Design-Build plan and inform the Contractor of its approval within 21 [twenty one] days of receipt of the final Design-Build plan. If the KRG fails to provide its approval within this period, then the Design-Build plan will be deemed to be approved. The Contractor shall deliver the Services in accordance with the approved final Design-Build plan as updated.

(2) Subject to the fulfillment of any conditions precedent as set out in clause 4(3), the Commencement Date shall be within 120 [one hundred and twenty] days following approval by the KRG of the final Design-Build plan.

(3) The following are conditions precedent to commencement of Services:

- a) Delivery to the KRG by the Contractor of the Performance Bond;
- b) Receipt by the Contractor of such approvals (including permits and licenses) as are required for the Contractor to perform the Services;
- c) Creation of an exhaustive list of inventories (site, equipment, buildings etc.) to be used by the Contractor to be able to perform the Services;

5. Scheduled Date of Termination

Unless terminated earlier pursuant to clause 21, the Contract shall expire and the Contractor shall terminate provision of Services on the Scheduled Date of Termination where the contractor will hand over the totality of the plant and equipment as per the inventory list listed in Clause 4(3) (c). The handover will also include all equipment acquired during the operations period maintained in both p.

6. Contract Variation

(1) The Authorized Officer shall be entitled to issue to the Contractor instructions in writing in relation to all or any of the following:

- a) to provide the Services or any part thereof in such manner as the Authorized Officer may reasonably require providing that a requirement to provide the Services to the Performance Specifications and Applicable Laws shall not be a Variation; and
- b) to vary permanently the Services or any part thereof.

(2) The valuation of Variations shall be ascertained by the Authorized Officer in accordance with the following provisions:

- a) Where the Variation is of a similar character to and is executed under similar conditions to the Services, the prices for the work contained in the Financial Proposal (Package 3) shall determine the valuation.
- b) Where the Variation is not of a similar character to, and is not executed under similar conditions to the Services, the valuation shall be the fair price having due regard where applicable to the prices contained in the Financial Proposal (Package 3).

(3) The Contractor shall not make any Variation without an instruction from the Authorized Officer.

(4) Variation of the terms and conditions of this Contract, including any Variation of the scope of the Services or of the unit prices, may only be made by written agreement between the Parties.

7. Authorized Officer

- (1) The Authorized Officer shall by notice provide the Contractor with all information, instructions and decisions of the KRG made under the provisions of the Contract. All information, instructions and decisions from the Authorized Officer shall be as if from the KRG and shall commit the KRG.
- (2) The Authorized Officer may from time to time delegate any of his responsibilities to any nominated deputy and withdraw any such delegation. The terms of such delegation shall be the subject of prior notification to the Contractor. Information, instructions and decisions from any nominated deputy acting within the terms of his delegated authority shall be as if from the Authorized Officer.
- (3) The Authorized Officer and any person authorized by the Authorized Officer shall have access at all reasonable times to the Contractor's Location and the Contractor shall afford every facility for and every assistance in obtaining the right of access. The Authorized Officer shall co-ordinate with the Contractor the access requirements to the Location.
- (4) Only the Authorized Officer or his nominated deputy is authorized to receive on behalf of the Ministry of Municipalities and Tourism, notifications, information and decisions of the Contractor under the provisions of the Contract.
- (5) The KRG shall have the right to change the Authorized Officer at any time at its sole discretion and shall notify the Contractor in accordance with clause 2(8).
- (6) Instructions, information and decisions from anyone other than the Authorized Officer or any nominated deputy acting within the terms of his delegated authority shall have no contractual force or validity even if they are written on the KRG notepaper.

8. Contractor Representative

- (1) The Contractor Representative shall have the right to commit the Contractor to any course of action within the rights of the Contractor under the provisions of the Contract and shall notify the KRG of all information and decisions of the Contractor under the provisions of the Contract. All information and decisions from the Contractor Representative shall be as if from the Contractor and shall commit the Contractor.
- (2) The Contractor Representative may from time to time delegate any of his responsibilities to any nominated deputy and withdraw any such delegation. The terms of any such delegation shall be the subject of prior agreement by both parties. Information and decisions from any such nominated deputy acting within the terms of his delegated authority shall be as if from the Contractor Representative.
- (3) Only the Contractor Representative or his nominated deputy is authorized to receive, on behalf of the Contractor, notifications, information and decisions of the KRG made under the provisions of the Contract and notification to the Contractor Representative shall be deemed to be notification to the Contractor.
- (4) The Contractor Representative shall not be replaced without notifying the Ministry of Municipalities and Tourism.

9. The Responsibility of the Contractor to Inform Itself

The Contractor agrees that the Contractor has visited the Location before tendering and has satisfied itself as to the nature of the Services, including but not limited to the supervision, Services and all labor, materials and equipment required for the performance of Services and the correctness and sufficiency of the rates and prices stated in the Contract Price. Any failure by the Contractor to take account of matters which affect the Services

shall not relieve the Contractor from its obligations under the Contract, nor entitle it to claim against the KRG.

10. Responsibility of the Contractor to Inform the Ministry of Municipalities and Tourism

- (1) The Contractor shall notify the KRG as soon as possible of all items which in the opinion of the Contractor appear to be deficiencies, omissions, contradictions or ambiguities or conflicts with applicable law in the Contract. The Authorized Officer will review these items and issue the necessary instructions before the Contractor proceeds with any part of the Services affected.
- (2) The Contractor shall notify the KRG immediately whenever accidents or incidents occur. The Contractor shall also notify the KRG of any other incidents arising out of the performance of the Contract which might affect the interests or other operations of the Ministry of Municipalities and Tourism, or others.
- (3) The Contractor shall notify the KRG immediately of any impending or actual stoppages of Services, industrial disputes or other matters affecting or likely to affect the performance of the Contract or lead to a delay in the time schedule referred to in clause 16 hereof.
- (4) In the event of the Contractor being unable to perform the Services or any part thereof, the Contractor shall immediately inform the Authorized Officer giving details of the circumstances, reasons and likely duration and action taken to rectify the situation. Nothing in this condition shall in any way alter, modify, relieve or in any way vary the Contractor's obligation to provide the Services.
- (5) The Contractor shall keep the KRG informed of the progress of the Services via a regular monthly reports with formats and structures of the report to be decided in consultation with MOMT

11. Contractor's Obligations

- (1) During the Operating Period the Contractor shall perform the Services in accordance with the Performance Specifications and the Contract and with due care and diligence.
- (2) The Contractor shall comply with the Applicable Law and shall ensure that Contractor Staff and its Subcontractors comply with the Applicable Law.
- (3) Should the Contractor require any further instruction or information in connection with the performance of the Services, the Contractor shall make a written request for the same to the Authorized Officer.
- (4) The Contractor shall at all times during the Contract period allow the Authorized Officer, and such persons as may from time to time be nominated by the Authorized Officer, access to:
 - a) All Locations for the purpose of inspecting work being performed pursuant to the provision of the Services.
 - b) Equipment used or proposed to be used in connection with the performance of the Services for the purpose of ensuring that such Equipment meets the requirements of the Performance Specification and relevant statutory requirements, including the Contractor Authority's Equipment.
- (5) The Contractor shall submit to the KRG a monthly report of all the executed Services.
- (6) The Contractor shall keep confidential and shall not, without the written consent of the Ministry of Municipalities and Tourism, divulge to any third party any documents, data or other information arising

directly or indirectly from the performance of Services under the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding this clause 11(6), the Contractor may furnish to its Subcontractors such documents, data and other information to the extent required for the Subcontractors to perform their work under the Contract, in which event the Contractor shall obtain from such Subcontractors an undertaking of confidentiality similar to that imposed on the Contractor under this clause 11(6).

12. Subcontracts

- (1) The Contractor shall ensure that the rights of the KRG and the requirements in the Contract regarding Subcontractors are effectively provided for in any Subcontract.
- (2) The Contractor shall not Subcontract the whole or the majority of the Services.
- (3) In the event of assigning a subcontractor for a part of the Services, the Subcontractor shall only be responsible to the Contractor, who shall in turn be responsible to the KRG.
- (4) The Contractor shall be responsible for all work, acts, defaults and breaches of duty of any Subcontractor or its employees or agents as fully as if they were the work, acts, defaults or breaches of duty of the Contractor.
- (5) The Contractor agrees that it shall furnish to the Ministry of Municipalities and Tourism, if requested, satisfactory evidence that all Subcontractors (including suppliers to the Contractor) have been paid on time and in full for work done or goods supplied in connection with the performance of the Services.
- (6) If such satisfactory evidence is not supplied, assuming all payments for such past services have been settled by the KRG in due time, then the KRG shall not be bound to make any further payment to the Contractor for that part of the Services until it is supplied.

13. Personnel of the Contractor and Subcontractors

- (1) The Contractor shall ensure that all Contractor Staff employed under the Contract are at all times properly and sufficiently qualified, trained, competent, careful, skilled, honest, experienced, instructed and supervised, as the case may be, with regard to the Services and in particular:
 - a) The task or tasks to be performed by such person;
 - b) All relevant provisions of the Contract and the Performance Specifications;
 - c) All Applicable Laws and relevant policies, rules, procedures and standards of the Ministry of Municipalities and Tourism;
 - d) All relevant rules, procedures and statutory requirements concerning health and safety at work;
 - e) Fire risks and fire precautions;
 - f) The need to maintain the highest standards of hygiene, courtesy and consideration; and
 - g) The need to recognize situations which may involve any actual or potential danger of personal injury to any person at any Location or with any Equipment and, where possible, without personal risk, to make safe such situations, and forthwith to report such situations to the Authorized Officer.
- (2) All supervisory personnel of the Contractor and any Subcontractor shall be able to read, write and communicate fluently in the language specified in clause 2(5) and shall be able to directly communicate in the language of the personnel they are supervising.
- (3) The Contractor shall make its own arrangements for the engagement of personnel, local or otherwise, and save in so far as the Contract otherwise provides, for their transport, housing, maintenance, payment,

board and lodging.

(4) The Contractor shall at its own cost forthwith replace any of its employees or agents or any Subcontractor or procure the replacement of any person employed by any Subcontractor, whom the KRG, in its reasonable discretion, considers to be incompetent, to have acted in a manner prejudicial to the Ministry of Municipalities and Tourism's best interests, to have failed to comply with the Ministry of Municipalities and Tourism's safety or other rules or regulations, to have produced sub- standard work. Such replacement can only be justified after giving the Contractor a written notice allowing him to rectify such matters within 14 [fourteen] days.

(5) The Contractor shall ensure that all employees of the Contractor and any Subcontractor engaged on the Contract are in possession of a valid work permit for the duration of the Contract.

(6) The Contractor agrees that it shall furnish to the KRG, if requested, satisfactory evidence that the Contractor's personnel who are engaged in the Services have been paid on time and in full for their wages and for any other payments required by law to be paid to them.

14. Control and Supervision of Contractor's Employees

(1) The Contractor shall provide and maintain an office and shall notify the KRG of its location. The Contractor's office shall be staffed by the Contractor with competent and responsible persons and shall be open during regular working days between 8:00 a.m. and 4:30 p.m. One telephone/fax line shall be provided by the Contractor to be used primarily for communication between the Contractor and the Ministry of Municipalities and Tourism.

(2) The Contractor shall appoint a Contractor Representative to act on behalf of the Contractor for all purposes connected with the Contract. Any notice, information, instruction or other communication given or made to the Contractor Representative shall be deemed to have been given or made to the Contractor.

(3) The Contractor shall forthwith give notice in writing to the Authorized Officer of the identity, home address and telephone numbers of the person appointed as Contractor Representative and of any subsequent appointment.

(4) The Contractor shall forthwith give notice in writing to the Authorized Officer of the identity, address and telephone numbers of any person authorized to act for any period as deputy for the Contractor Representative and when such deputy ceases to be so authorized.

(5) The Contractor shall ensure that the Contractor Representative, or a competent deputy, duly authorized by the Contractor to act on its behalf, is available to meet the Authorized Officer or the Authorized Officer's representative at all reasonable times during which the Services is provided.

(6) The Contractor Representative shall inform the Authorized Officer promptly of and confirm, in writing, any instances of activity or omission on the part of the KRG which prevent or hinder, or which may prevent or hinder the Contractor from complying with the Contract. The provision of information under this Condition shall not in any way release or excuse the Contractor from any of its obligations under the Contract.

(7) The Contractor shall provide a sufficient number of supervisors to ensure that the Contractor Staff engaged in and about the provision of the Services are at all times adequately supervised and properly perform their duties to the Performance Specifications and Applicable Laws and with due care and diligence.

(8) The Contractor shall ensure that its employees perform their duties in an orderly and manner having regard to the nature of the duties being performed by them.

(9) The Contractor shall ensure that when requested to do so any employee of the Contractor shall disclose his/her identify and status as an employee of the Contractor and shall not avoid so doing.

(10) The Contractor shall require its employees at all times while engaged in the provision of the Services to be properly and presentably dressed in appropriate uniforms or work wear, including personal protective equipment such as, but not limited to, overalls, protective footwear and gloves to the satisfaction of the KRG. Such uniforms and personal protective equipment to be worn by the Contractor's employees shall be provided, maintained and replaced as necessary by the Contractor.

15. Staff and Operational Records

(1) The Contractor shall maintain current, accurate and adequate records of all employees who are or who are to be engaged in connection with the provision of the Services. These records shall be kept at the appropriate location and shall include employee attendances and shall differentiate between those engaged as operatives and those exercising supervision. These records shall be open for inspection by the Authorized Officer or his/her representative at all reasonable times, and a copy of these records shall be provided to the Authorized Officer or the Authorized Officer's representative if so requested.

(2) The Contractor shall prepare a schedule of routine operations for each Location which shall be available for reference by the Authorized Officer or his/her representative and for the Contractor's employees. The Contractor shall provide a copy of the schedule to the Authorized Officer or his/her representative.

(3) The Contractor shall maintain current and accurate records of all work carried out in the provision of the Services. These records shall be open for inspection by the Authorized Officer or his/her representative at all reasonable times.

(4) The Contractor shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions, or levies of any kind, related to or arising out of the employment of any person by the Contractor and shall fully and promptly indemnify the KRG in respect of any liability of the KRG thereof.

16. Schedule

The Contractor shall be responsible at all times for scheduling, monthly reporting, forecasting and independently controlling progress to achieve the expeditious and efficient performance of the Services in accordance with the Contract.

17. Gratuities

The Contractor shall not, whether itself, or by any person employed by it to provide the Services, solicit or accept any gratuity, tip or any form of money or reward, collection, or charge for any part of the Services other than charges properly approved by the KRG in accordance with the provisions of the Contract.

18. Equipment

(1) The Contractor shall provide all Equipment necessary for the provision of the Services.

(2) The Contractor shall be responsible for the security, maintenance repair and replacement of all Equipment used by the Contractor in connection with the provision of the Service as detailed in the Operations and Maintenance Plan which is to be developed by the plant manager and shared with KRG. The KRG shall be under no liability in respect thereof.

19. Force Majeure

- (1) A Force Majeure Event shall mean an event beyond the reasonable control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the said Party is unable to avoid, including without limiting the generality of the foregoing, war (declared or undeclared), insurrection, acts of terrorism, natural and physical disasters, maritime disasters, nationalization, confiscation or requisitioning under order of the Government, boycotts or strikes other than strikes limited to the workforce of, or provided by, the Contractor and/or Subcontractors.
- (2) A Force Majeure Event shall not include the following:
 - a) breakdown of any item of Equipment used by the Contractor or any Subcontractor;
 - b) Contractual commitment made by the Contractor or any Subcontractor to third parties which limits the ability of the Contractor or any Subcontractor to perform the Services;
 - c) Inclement weather.
- (3) Should either Party be delayed in performing the Contract by a Force Majeure Event, that Party shall notify the other Party immediately giving the full particulars thereof, shall use its best efforts to remedy the situation as soon as possible and shall notify the other Party of the steps being taken to remedy the situation.
- (4) The affected Party issuing a notice under clause 19(3) shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant Force Majeure Event continues and to the extent that that Party's performance is prevented, hindered or delayed.
- (5) The Party or Parties affected by the Force Majeure Event shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract.
- (6) Should the Contractor be delayed in the performance of the Services by an event which the Contractor considers is a Force Majeure Event and the Contractor is unable to avoid or prevent such delay by any reasonable effort within 7 [seven] days of such event, the Contractor shall request in writing that the KRG initiates the procedure for a Variation. If the KRG agrees that the event is a Force Majeure Event, then, as soon as practicable the KRG shall authorize a Variation. Such Variation shall also reimburse the Contractor for such extra costs as the Contractor unavoidably incurs by reason of such Force Majeure Event.

20. Responsibility for the Services

- (1) The Contractor shall perform the Services in accordance with the Performance Specifications and the Contract and with all due diligence and care and shall ensure that the Services and facilities, materials and Equipment used to produce or incorporated into the Services shall be fit for their intended purpose and of good quality and workmanship.
- (2) In the event of any breach of clause 20(1) herein the Contractor shall be responsible at its cost for the correction of any defective Services.
- (3) In the event of a breach of clause 20(1) herein then the KRG shall notify the Contractor of the breach. Upon receipt of such notification from the KRG the Contractor shall within 14 [fourteen] days carry out the Contractor's responsibilities.

21. Termination

(1) The KRG may terminate this Contract before the Scheduled Date of Termination, by not less than 120 (one hundred and twenty) days' written notice of early termination to the Contractor, to be given after the occurrence of any of the events specified in paragraphs (a) through (f) of this clause 21 and 120 [one hundred and twenty] days' in the case of the event referred to in (g):

- a) if the Contractor fails to perform any of its material obligations under the Contract;
- b) if the Contractor become insolvent or bankrupt;
- c) if the Contractor assigns or subcontracts any right or interest hereunder other than in accordance with the Contract and such assignment or subcontracting may have a material impact on the Contractor's ability to perform the Services in accordance with the Contract;
- d) if the Contractor does not maintain a Performance Bond in accordance with clause 35;
- e) if the Contractor, in the judgment of the Ministry of Municipalities and Tourism, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause:

"corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution.

"fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract and includes collusive practice among Contractor (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels.

- f) if, as the result of a Force Majeure Event, the Contractor is unable to perform all or a portion of the Services for a period of not less than 60 [sixty] days; or
- g) if the Ministry of Municipalities and Tourism, in its sole discretion, decides to terminate this Contract.

(2) The Contractor may terminate this Contract before the regular date of termination, by not less than 90 [ninety] days' written notice to the KRG, such notice to be given after the occurrence of any of the events specified in paragraphs (a) or (b) of this clause 21(2):

- a) if the KRG fails to pay any monies due to the Contractor pursuant to this Contract and not subject to dispute pursuant to clause 36 within 30 [thirty] days after receiving written notice from the Contractor that such payment is overdue; or
- b) if, as the result of Force Majeure, the Contractor is unable to perform a material portion of the Services for a period of not less than 60 [sixty] days.

(3) In case of early termination pursuant to paragraph (g) of Clause 21(1) or paragraph (a) of Clause 21(1), the KRG shall be liable for the full cost of all capital expenditures not fully depreciated at the date of early termination, remaining leases, rentals, equipment depreciation, and repatriation of the Contractor's workforce and demobilization.

(4) Upon early termination of this Contract pursuant to clauses 21(1) or 21(2), the Ministry of Municipalities and Tourism shall make the following payments to the Contractor:

- a) remuneration pursuant to clause 30 for Services satisfactorily performed prior to the effective date of early termination;
- b) except in the case of early termination pursuant to paragraphs (a), (b), (c), (d) or (e) of clause 21(1), reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract;

22. Recovery of Sums Due to the Ministry of Municipalities and Tourism

Whenever any sum of money is recoverable from or payable by the Contractor to the KRG under the Contract this sum may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this Contract.

23. Defaults in Performance of Service

- (1) At any time after the Commencement Date the Authorized Officer may investigate each case where the Contractor has failed to properly perform the Services in accordance with the Performance Specifications. Where the Authorized Officer is satisfied that in any particular case the Contractor has failed to perform the Services completely in accordance with the Performance Specifications he shall be entitled to issue to the Contractor a notice instructing the Contractor to remedy the failure within a reasonable period of time (Rectification Notice).
- (2) Each Rectification Notice will require the Contractor to remedy the Service deficiency the defined period as indicated in the Performance Specifications.
- (3) Without prejudice to the generality of the foregoing, the types of failure to provide Services for which notices may be issued are described in the Performances Specifications.
- (4) The time periods during which the Contractor is to remedy such deficiencies shall be as set out in the Performances Specifications.
- (5) Each Notice may refer to one or more than one elemental Service deficiency, each of which shall be rectified by the Contractor.
- (6) All Notices shall be recorded and used by the Authorized Officer in determining the Contractor’s overall Services performance and shall also be used in determining Financial Penalties as set in the Performances Specifications.
- (7) During the first year immediately following the Commencement Date no Rectification Notices shall be issued by the Ministry of Municipalities and Tourism.

24. Financial Penalties

In the event the Contractor fails as a result of any act or omission by it (other than as a consequence of the breach of this Contract by the KRG or a Force Majeure Event) to meet the Performances Specifications, the Contractor shall be liable to pay the KRG the applicable financial penalties as specified in the Performances Specifications.

The amount of Financial Penalties applied during the Contract period shall be limited to 10 [ten] percent of the Contract Value.

Table 1: Performance specifications and financial penalties

Activities Undertaken by Contractor	Financial Penalties
1. Completion of the construction of the first cell of the sanitary landfill within 9 months from the date of contract signature	\$ 5,000 (five thousand dollars) per day of delay

2. Completion of the construction of the sorting plant and procurement of the related equipment within 9 months of contract signature	\$ 3,000 (three thousand dollars) per day of delay
3. Completion of the construction of the composting plant within 9 months of contract signature	\$ 3,000 (three thousand dollars) per day of delay
4. Achieving a recovery rate of recyclables less than 10% during the first 2 years of operating the sorting plant	\$5 (five dollars) per ton for every ton below 10% recovery target
5. Achieving a recovery rate of recyclables less than 12% for years 3,4 and 5 of operating the sorting plant	\$5 (five dollars) per ton for every ton below 12% recovery target
6. Achieving a recovery rate of recyclables less than 15% for years 6,7,8,9 and 10 of operating the sorting plant	\$5 (five dollars) per ton for every ton below 15% recovery target
7. Achieving a recovery rate of recyclables less than 18% for years 10,11,12,13,14 and 15 of operating the sorting plant	\$5 (five dollars) per ton for every ton below 18% recovery target
8. Achieving a recovery rate of recyclables less than 20% for years 16, 17, 18, 19 and 20 of operating the sorting plant	\$5 (five dollars) per ton for every ton below 20% recovery target
9. Landfill diversion rate of 40% during the first 2 years of operating the landfill	\$8 (eight dollars) per ton
10. Landfill diversion rate of 42% during years 3,4 and 5 of operating the landfill	\$8 (eight dollars) per ton
11. Landfill diversion rate of 45% during years 6, 7, 8, 9 and 10 of operating the landfill	\$8 (eight dollars) per ton
12. Landfill diversion rate of 48% during years 11, 12, 13, 14 and 15 of operating the landfill	\$8 (eight dollars) per ton
13. Landfill diversion rate of 50% during years 16, 17, 18, 19 and 20 of operating the landfill	\$8 (eight dollars) per ton
14. Meeting the compost quality criteria listed in section 6	\$3 (three dollars) per ton of final compost product

25. Contract Payment

(1) For the performance of the Services, the KRG shall pay to the Contractor monthly remuneration, at the times and in the manner specified in clause 28 hereof.

(2) All Equipment, personnel, leases and other cost elements necessary for the Contractor to be able to perform the Services in accordance with the Contract shall be at the Contractor's cost and deemed to be included in the Contract Price.

26. Taxes

- (1) The Contractor shall in respect of this Contract assume full and exclusive liability for payment of all taxes, duties, levies, charges and contributions of any nature that are from time to time imposed by either:
 - a) the Government; or
 - b) any other fiscal or other authority whatsoever, in respect of:
 - i. employees or agents of the Contractor and its Subcontractors (whether or not such taxes, duties, levies, charges and contributions are measured by wages, salaries and/or other remuneration); and
 - ii. The gains of the Contractor and its Subcontractors arising directly or indirectly out of the performance of the Services.
- (2) The Contractor shall, and shall cause its Subcontractors to report and pay all such taxes, duties, levies, charges and contributions directly to the appropriate authorities and otherwise comply with any applicable laws and regulations.
- (3) The Contractor hereby covenants and undertakes to defend, indemnify and hold harmless the KRG from any and all claims, suits, costs, liabilities, judgments, fines, penalties, demands, loss or damage including any and all expenses, disbursements, costs, legal fees, sums and amounts which the KRG suffers, incurs or is put to resulting from, or in any way connected with, any assessment or imposition, for which the Contractor is liable.

27. Changes in Applicable Laws and Regulations

If, 28 [twenty eight] days after the Contractor's contract signature, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Contractor, then the remuneration and reimbursable expenses otherwise payable to the Contractor under this Contract shall be increased or decreased as agreed between the Parties, and corresponding adjustments shall be made to the amounts referred to in clause 28(2), as the case may be. In the event that the Parties are unable to agree on the size of the adjustment, then this will be resolved pursuant to clause 36.

28. Terms of Payment

- (1) The Contractor remuneration shall include all costs incurred by the Contractor in carrying out the Services described in the Technical Specifications (Volume 2 of the RFP). Except as provided in clauses 26 and 27, the remuneration may only be increased above the amounts stated in clause 28(2) if the Parties have agreed to additional payments in accordance with clause 6.
- (2) The indicative Contract Price shall be a lump sum and is calculated as 180 months multiplied by the monthly payment in accordance with the Financial Proposal (Package 3 of the proposal). The actual monthly payments will be based on real quantity treated multiplied by the gate fee as specified in Appendix I of the RFP.
- (3) The Contractor shall submit invoices for each calendar month of operation as indicated in the Financial Proposal (Package 3 of the proposal).
- (4) Invoices shall be submitted by the Contractor within 1 [one] working week from the completion of the month.
- (5) Only original invoices will be accepted for payment. If the original invoice is lost in transit or mislaid, a certified true copy of such invoice signed by the Contractor Representative shall be submitted.

(6) If the KRG finds the invoice so submitted to be correctly prepared, adequately supported and in conformity with the requirements of the Contract, then the KRG shall within 30 [thirty] days of receipt of the invoice in question remit the invoiced amount into the bank account nominated by the Contractor.

(7) In the event of the KRG disputing any item of any invoice submitted by the Contractor, the KRG shall within 14 [fourteen] days notify to the Contractor the item in dispute and shall specify its reasons for dispute. Payment in respect of such item in dispute shall be withheld until settlement of the dispute but all undisputed items of such invoice shall be paid in accordance with clause 28(6) herein.

(8) From any sum due to the Contractor under the Contract, the KRG may deduct the amount of any sum which it in good faith regards as being owed by the Contractor to the KRG under the Contract or otherwise.

(9) Insofar as the Contract or any part thereof is cost reimbursable the Contract Price shall constitute the only income of the Contractor in connection with the Contract which inter alia implies that it shall not accept any trade commission, discount allowance or indirect payment or other consideration in connection with the Contract, without notifying and accounting for same to the KRG.

29. Ownership

Risk in and the care and custody of any or all part of the Services and all Equipment shall remain with the Contractor throughout the duration of the Contract. At the scheduled date of termination, the custody of all Equipment used in the Provision of Services shall move to KRG.

30. Limitation of Liability of the Contractor and the KRG

(1) The KRG on the one hand and the Contractor on the other hand shall in no event be liable one to the other for, and hereby give an indemnity one to the other against, indirect losses (including consequential losses), and loss of revenue, profit or anticipated profit arising out of or in connection with this Contract except to the extent of any agreed liquidated damages provided for in the Contract and except for any monies due in accordance with any clause that may be included in this Contract.

(2) The Contractor shall include provisions in all Subcontracts to ensure that all Subcontractors comply with the provisions of clause 30(1) herein.

31. Responsibilities and Indemnities

(1) Subject to clause 31(2), the Contractor shall indemnify and hold harmless the KRG and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property, arising in connection with the Contractor's performance of the Services and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Contacting Authority, its contractors, employees, officers or agents.

(2) Subject to clause 31(1), the KRG shall indemnify and hold harmless the Contractor and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including

attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property, arising in connection with the Contract and by reason of the negligence of the KRG or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Contactor, its contractors, employees, officers or agents.

32. Insurance

The Contractor (a) shall take out and maintain at their own cost but on terms and conditions approved by the Ministry of Municipalities and Tourism, insurance against the risks, and for the coverage, as specified in Appendix F of the Instructions to Bidders (Volume 1 of the RFP); and (b) at the Ministry of Municipalities and Tourism's request, shall provide evidence to the KRG showing that such insurance has been taken out and maintained and that the current premiums have been paid.

33. Permits, Laws and Regulations

(1) The Contractor shall abide by and comply with Applicable Law of any governmental or regulatory body having jurisdiction over the Services.

(2) The Contractor shall obtain and (if required by law) renew such licenses and permits from the responsible Authorities as are necessary for the Contractor to perform the Services, to do business and employ persons, and shall obtain all temporary permits and authorizations required by any applicable law, rules or regulations.

(3) All costs of complying with all applicable laws, rules and regulations and obtaining authorities, approvals, licenses, permits, for performance of the Services shall be for the account of the Contractor.

(4) All operations necessary for the performance of the Contract shall be carried on so far as compliance with the requirements of the Contract permits so as not to interfere unnecessarily or improperly with the convenience of the public or the access to, public or private roads and footpaths to or of properties. The Contractor hereby indemnifies the KRG against all claims, demands, proceedings, damages costs, charges and expenses whatever arising in relation to any of the aforesaid matters in so far as the Contractor is responsible for such interference.

34. Customs Clearance/ Duties

The Contractor shall be responsible at its own cost for obtaining Government consent and customs clearance requisite to the import of all Equipment and other things provided by the Contractor, for incorporation into, or performance of, the Services including, but not limited to, all costs related to payment of import duties and levies and all other costs whatsoever.

35. Performance Bond

(1) The Contractor shall provide the KRG with a Performance Bond in the format attached in Appendix D of the Instructions to Bidders (Volume 1 of the RFP) prior to the Commencement Date. The KRG shall not be obliged to make any payments to the Contractor under the Contract until it has received a Performance Bond in compliance with this clause.

(2) The Performance Bond will be for the value of 2% of the Contract Value from a locally registered Bank to ensure that the Contractor shall perform all of its obligations and liabilities contained in, and in accordance

with the Contract.

- (3) The Contractor shall obtain and provide to the KRG such Performance Bond within 14 [fourteen] days of contract signature date.
- (4) The financial institution providing such Performance Bond subject shall be subject to approval of KRG.
- (5) The KRG will only make a claim under the Performance Bond if the Contractor fails to perform any of its obligations or to fulfill any liability arising out of, or in connection with the Contract.
- (6) The Performance Bond shall be governed by and construed in accordance with Applicable Law.

36. Settlement of Disputes

- (1) The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- (2) If any dispute arises between the KRG and the Contractor in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be settled in the courts of the Kurdistan Regional Government.

IN WITNESS THEREOF the Parties hereto have executed this Contract the Day and year before written.

SIGNED BY THE [KRG] REPRESENTED BY Signature:

Name: _____

Position: _____

WITNESSED BY

Signature: _____

Name: _____

Position: _____

and

SIGNED BY [CONTRACTOR] REPRESENTED BY

Signature: _____

Name: _____

Position: _____

WITNESSED BY

Signature: _____

Name: _____

Position: _____