

# **AGREEMENT FOR PROFESSIONAL SERVICES**

*(BETWEEN OWNER AND ENGINEER)*

THIS IS AN AGREEMENT made as of March 28, 2016, between:

The Joint City of Peoria – County of Peoria Solid Waste Disposal Facility Board

hereinafter referred to as "OWNER" and Foth Infrastructure & Environment, LLC a Wisconsin corporation with its principal place of business in Green Bay, Wisconsin, hereinafter referred to as "ENGINEER."

WHEREAS the OWNER intends to utilize the ENGINEER's services for oversight and maintenance of Landfill No. 1 and oversight for the OWNER's Contract Operators at the facility, including those for Landfill No. 2, the Compost Facility, the Expansion Facility and Future Contract Operators hereinafter referred to as "PROJECT," and

WHEREAS the ENGINEER has the necessary personnel and facilities to provide the professional services described and,

WHEREAS the ENGINEER desires to contract with the OWNER, for the purpose of rendering professional services for the PROJECT.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, subject to the terms and conditions set forth below, on the reverse side, and/or attached hereof, the OWNER and the ENGINEER do hereby covenant and agree as follows:

## PART I - SERVICES

The ENGINEER agrees to provide routine services for the PROJECT, such as, attending monthly meetings, special waste reviews, non-special waste reviews, periodic special waste gate audits, permitting/ review/ assistance, budget assistance, contingency planning, groundwater data review & assessments, develop and submit Illinois Environmental Protection Agency (IEPA) annual reports, leachate collection system operation/maintenance, landfill gas and Clean Air Act/Greenhouse Gas consultation. The scope of work for basic services is:

### 1. General Compliance and Guidance

- a. Provide engineering services as an extension of City and County Staff, including,
  - i. Attend Committee Meetings of the Joint City of Peoria – County of Peoria Solid Waste Disposal Facility Board (OWNER);
  - ii. Attend other meetings as requested;
  - iii. Provide guidance and recommendations to the OWNER through written memoranda;
  - iv. Respond to tasks and requests as requested by the OWNER.
  - v. Provide quarterly updates on ENGINEER's progress towards meeting the OWNER's performance metrics.
- b. Review special waste applications forwarded by the Contract Operator, resolve questions, document and provide written recommendations to the OWNER.
- c. Assist Staff in preparation and evaluation of the budget.
- d. Conduct periodic inspections /observations of the Contract Operators regarding compliance with laws and regulations.

- e. Review permit applications and reports prepared by the Contract Operator, resolve issues with the Contract Operator by providing recommendations to the OWNER on decisions that require the OWNER's authorization.
  - f. Conduct periodic audits of the gate operations for Landfill No. 2, as they pertain to the receipt of special waste streams. Coordinate frequency of audits with the OWNER's schedule and need for information.
  - g. Conduct review of Construction Quality Assurance (CQA) for Contract Operator's repairs on Landfill No. 1 prior to submittal to IEPA.
  - h. Airspace Analysis Evaluation per Contract Operator, Waste Management Incorporated (WMI), Contract, due annually in August.
  - i. Boundary Monument Inspections, due annually in October (coordinate with Contract Operator).
  - j. Dam Owners Maintenance Certification, due annually on December 1.
  - k. Five Year Dam Inspection, due next in December 2018 (not part of the services of this Agreement period).
2. Clean Air Act Permit Program Reporting
- a. Maintain records and submit required compliance documentation and reports to United States Environmental Protection Agency (USEPA), Illinois Department of Natural Resources (IDNR), and IEPA (Division of Air and Bureau of Land) as required by each program/permit. Contract Operators maintain responsibility for compliance items not listed in this Agreement. Those items to be completed by the ENGINEER on behalf of the OWNER include to the following:
    - i. Clean Air Act Permit Program (CAAPP) Semi-Annual Startup, Shutdown and Malfunction Plan (SSMP) Report, due semi-annually on February 1 (Jul-Dec) and on August 1 (Jan-Jun).
    - ii. CAAPP Semi-Annual New Source Performance Standard (NSPS) Report, due on February 1 (Jul-Dec) and on August 1 (Jan-Jun).
    - iii. CAAPP Semi-Annual Air Monitoring Report, due on January 31 (Jul-Dec) and on July 31 (Jan-Jun).
    - iv. Provide information to Contract Operator for the submittal of CAAPP Annual Compliance Certification and Annual Air Emission Report due annually on May 1.
    - v. Greenhouse Gas Reporting via e-GGRT.
    - vi. Review and revise existing Greenhouse Gas Monitoring and Startup, Shutdown, Malfunction Plans as required for IEPA CAAPP Permit issued December 30, 2015.
3. Groundwater Support/Reporting
- a. Review groundwater monitoring data provided by Contract Operators.
  - b. Determine whether exceedances of groundwater quality standards have occurred per permit conditions and standards and Request Contract Operator to undertake confirmation procedures, when required.
  - c. Conduct groundwater assessments and develop suggested permit modifications for submittal to the IEPA, if necessary.
  - d. Submit regulatory submittals as required by facility permit and IEPA including:
    - i. Evaluation of the G04S, G02S, R10S corrective action measures.
    - ii. Annual groundwater elevation maps
    - iii. G26S Assessment Report for total and dissolved nitrate
    - iv. G15S Assessment Report for dissolved Chromium and Acetone.
4. Operation of Leachate and Landfill Gas Systems

- a. Operate and maintain the 90 acre leachate collection system, consisting of vertical extraction wells and a drainage system in compliance with the regulations.
  - b. Operate and maintain the 90 acre Gas Collection and Control System, consisting of 69 wells, and the Utility Flare Disposal System in compliance with the regulations.
  - c. Conduct and document monitoring activities required for the leachate and gas systems.
  - d. Provide maintenance items for the operation of the leachate and landfill gas collection system (i.e. blower belts, propane, flexible tubing, etc.)
  - e. ENGINEER has budgeted 65 hours and \$1,000 in expenses for unplanned and emergency repairs.
5. Liquid Management and Landfill Gas Systems Equipment and Replacement Materials
- a. Design improvements to gas collection system in the vicinity of landfill gas wells, T-1, T-2, T-3 and AA-1 to improve slope of piping, install new sump and purchase and install solar powered pumping system.
  - b. Foth will develop IEPA design submittal, construction bidding documents and IEPA completion report.
6. Off-site Leachate Disposal
- a. Coordinate pumping, transport and disposal (by others) of leachate from the Landfill No. 1 Condensate/Leachate Storage Tank as needed.
  - b. Submit Semi-Annual Pretreatment Report to Greater Peoria Sanitary District, due on January 20 (Jul-Dec) and July 20 (Jan-Jun).
7. Landfill No. 3 Expansion/Transition
- a. ENGINEER has budgeted 40 hours of support to provide OWNER services relating to Contract Operator transition, review of permit documents, and other services as requested by OWNER.

Additional services may be required and may be undertaken if directed by the OWNER with associated adjustment in compensation as negotiated between the OWNER and ENGINEER.

## PART II - COMPENSATION

AN INITIAL PAYMENT OF Zero Dollars (\$0.00) shall be made upon execution of this Agreement and credited to the OWNER's account at final payment.

Whereas the OWNER has elected to compensate the ENGINEER for services under Part I on an hourly rate and expenses basis, such compensation shall include payment for labor, direct expenses, and other compensation as follows:

### Payroll:

The hourly rates to be used for this item shall be determined by the ENGINEER'S payroll costs for these services plus 110%. Payroll costs means the salaries and wages paid to all ENGINEER'S, and any temporary employment service, personnel engaged directly on the services plus an additional 43 percent to cover the cost of customary and statutory benefits applicable thereto including sick leave, vacation and holiday pay plus unemployment, excise and payroll taxes and contributions for social security, workers' compensation insurance, retirement benefits, medical insurance benefits and incentive compensation. Where contract labor is used by the ENGINEER the payroll costs shall be adjusted to provide a comparable mark-up. The ENGINEER reserves the right to adjust the rate on a yearly basis.

### Direct Expenses:

Reimbursement of direct expenses incurred in connection with the PROJECT, including but not limited to the following:

- ◆ Reimbursable expenses +10% (e.g. expense of purchased services, lease of specialized equipment, subsistence and lodging, commercial transportation).
- ◆ Equipment and Standard Office/Communication per the attached 2015 Standard Resource Charge Sheet.
- ◆ Mileage at Foth Resource Charge Rates (such rate to be adjusted from time to time)
- ◆ Mileage for field vehicles at Foth Resource Charge Rates (such rate to be adjusted from time to time).
- ◆ Equipment costs (e.g. computers, automated survey instruments, CADD equipment, etc.).

The OWNER will reimburse the ENGINEER for taxes or levies (excluding Federal, State and Local income taxes) which may be assessed against the ENGINEER by the Federal Government or any State or political subdivision directly on services performed or on payments for services performed, by the ENGINEER and which taxes or levies the ENGINEER may be required to collect or pay.

The budget for basic services and estimated compensation for July 1, 2016 through June 30, 2017 are \$283,700. No services will be provided exceeding the estimated compensation amount without prior notice and OWNER approval. The budgeted services include:

◆ General Compliance and Guidance	\$ 65,500
◆ Clean Air Act Permit Program Reporting	\$ 23,500
◆ Groundwater Support/Reporting	\$ 33,000
◆ Operation of Leachate and Landfill Gas Systems	\$ 106,500
◆ Liquid Management and LFG Equipment	\$ 38,200
◆ Offsite Leachate Disposal	\$ 11,900
◆ Landfill No. 1 Final Cover Repairs	\$ 5,100

The budget for additional services, including Landfill Gas Development and Entrance Dam Improvements, and the compensation for those services, are not included basic services. The budget and authorization for additional services will be established by written OWNER approval.

Payments are due and payable thirty (30) days from the date of the ENGINEER's invoice.

### PART III - TIMETABLE

Services are to be provided in a timely manner and as requested by the OWNER.

### PART IV - SPECIAL CONDITIONS

Special Conditions are Subject to the attached Standard Conditions of Agreement (Form RSK001, Rev. 10/97) and Exhibit I for Environmental Services.

The ENGINEER agrees to be fully responsible for its actions performed under this Agreement, including any and all claims, losses, costs, attorney fees and all other damages resulting from any negligent act or omission of the ENGINEER or its officers, employees or agents while acting pursuant to this Agreement and for which it is found to be liable by a court of competent jurisdiction.

The ENGINEER will not knowingly provide review of special waste stream permit applications for which special waste engineering services has been provided by the firm. The OWNER will be advised when known if an applicant is a current client of the ENGINEER and the nature of services being provided to the client at the time of the permit review presentation.

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

FOR ENGINEER:

Foth Infrastructure & Environment, LLC

By: 

Name (please print): Craig S. Gocker

Title: Client Team Leader

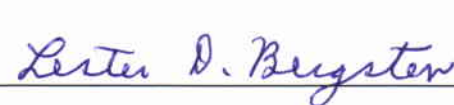
By: 

Name (please print): Daniel V. Bacehowski

Title: Senior Client Manager

FOR OWNER:

Joint City of Peoria-County of Peoria Solid Waste Disposal Facility Board

By: 

Name (please print): Lester D. Bergsten

Title: Landfill Committee Chairman

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

Name (please print): \_\_\_\_\_

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

# STANDARD CONDITIONS OF AGREEMENT

## SECTION 1 DESCRIPTION OF SERVICES

### 1.1 General

1.1.1 ENGINEER agrees to provide professional services for the PROJECT as more completely described in this Agreement and in Addenda to this Agreement.

1.1.2 ENGINEER agrees to provide all professional services within a reasonable period of time following the date of authorization to proceed by OWNER. If a special time schedule must be met for a PROJECT, it shall be specifically set forth by Addenda to this Agreement.

### 1.2 Pertaining To The ENGINEER'S Services

1.2.1 ENGINEER agrees to perform all services in a thorough and professional manner and to hold OWNER harmless from any liens for materials and labor furnished by ENGINEER in connection with his work.

1.2.2 ENGINEER agrees to maintain insurance for public liability, property damage, workmans compensation, and errors and omissions for services performed by ENGINEER on PROJECT. The foregoing insurance shall cover ENGINEER only.

1.2.3 ENGINEER intends to render his services under this Agreement in accordance with generally accepted professional practices for the intended use of the PROJECT and makes no warranty either express or implied.

1.2.4 ENGINEER reserves the right to enter into agreements with other design professionals for portions of the work included under this Agreement. Where this subagreement would represent a major portion of the design work, ENGINEER shall receive approval of OWNER for this subagreement.

1.2.5 All documents including, but not limited to, drawings, specifications, electronic media, or other media furnished by ENGINEER pursuant to this Agreement, are the instruments of his services in respect to the PROJECT. The ENGINEER grants to the OWNER a nonexclusive license for OWNER'S use of the documents on the PROJECT. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the PROJECT or on any other project. Any reuse without the specific written verification or adaptation by ENGINEER will be at OWNER'S sole risk and without liability or legal exposure to ENGINEER from all claims, damages, losses and expenses, including attorneys fees, arising out of or resulting therefrom. Any such verification, adaptation or reuse will entitle ENGINEER to further compensation to be agreed on by OWNER and ENGINEER.

1.2.6 When electronic data is to be furnished as a part of this agreement and/or addendum, ENGINEER will not be held liable for the completeness or correctness of the electronic media after an acceptance period of 30 days from delivery date. Hard copies of documents control over any variances between electronic media and hard copy.

During the 30 day Acceptance Period, any errors detected or problems with the media used, will be corrected by the ENGINEER as part of the basic agreement. Any changes requested after the Acceptance Period or a request for additional restored electronic files from archives will be considered additional services to be performed on a time and materials basis at the ENGINEER'S standard cost plus terms and conditions.

The ENGINEER makes no warranty as to the compatibility of data files beyond that specified in this Agreement.

The ENGINEER will take reasonable precautions to prevent the transmission of any virus, or other contamination with the exchange of electronic media, but the ENGINEER makes no assurances that those precautions are adequate to assure a contamination free transmission.

1.2.7 Whenever the OWNER elects to enter into any contract or agreement with any person or entity

other than ENGINEER for the performance of services on the PROJECT, ENGINEER will not be responsible for the acts or omissions of said persons or entity at the site or otherwise performing such services. This includes those parties for whom the ENGINEER is providing coordination. Neither the ENGINEER'S authority to act under the Contract Documents or under this Agreement nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER to the above, or any of their agents or employees or any other person performing any services for the OWNER.

1.2.8 ENGINEER has not been retained or compensated to provide design and construction review services relating to safety precautions or to means, methods, techniques, sequences, or procedures, all as may be required for any person or entity other than the ENGINEER to perform their work, including but not limited to shoring, scaffolding, underpinning, temporary retention of excavations and any erection methods or temporary bracing methods.

1.2.9 ENGINEER in no way undertakes to be responsible for any personal injury or property damage occurring to any person or entity arising out of the construction or subsequent operation of this PROJECT by an person or entity unless same shall be found to be the result of a design error. In spite of this if any claims shall be brought against ENGINEER of that nature, OWNER agrees to defend, indemnify and hold harmless ENGINEER from all claims, damages and expenses including attorneys fees arising out of such claim, which claim, damages and expenses are the result or attributable to the acts or omissions in whole or in part of any person or entity other than ENGINEER.

1.2.10 Original documents, notes, and the like, except those furnished to ENGINEER by OWNER, represent the ENGINEER'S cumulative knowledge and are, and shall remain, the property of ENGINEER and shall not constitute the work product of this Agreement.

1.2.11 It is hereby acknowledged that the ENGINEER has procured a professional liability insurance policy to protect it from certain claims, as more fully described therein.

OWNER shall indemnify ENGINEER against and hold ENGINEER harmless from all claims, damages and expenses, including attorney's fees arising out of or resulting from any claim not covered by ENGINEER'S professional liability insurance policy, including such claims, damages and expenses which arise out of the acts or omissions of ENGINEER.

OWNER shall also indemnify ENGINEER against and hold ENGINEER harmless from all claims, damages and expenses, including attorney's fees which are beyond the liability limits of ENGINEER'S professional liability insurance policy, including such claims, damages and expenses which arise out of the act or omissions of ENGINEER.

Notwithstanding the above, ENGINEER and OWNER hereby acknowledge that ENGINEER'S professional liability insurance policy does not, nor does any other insurance policy reasonably obtainable by ENGINEER, protect ENGINEER from any claims, damages and expenses, including attorney's fees, arising out of or resulting from the ENGINEER'S acts or omissions relating to the investigation, deduction, abatement, materials or processes containing asbestos. Accordingly, OWNER agrees not to bring any claim whatsoever against ENGINEER, its principals, employees, agents and consultants if such work in any way involves the ENGINEER'S services for the investigation of or remedial work related to asbestos in the PROJECT. OWNER shall indemnify ENGINEER against and hold ENGINEER harmless from all claims, damages and expenses, including attorney's fees, arising out of or resulting from such acts or omissions.

### 1.3 Pertaining To The Owner

1.3.1 OWNER shall provide at OWNER'S expenses (unless ENGINEER has specifically included them in Addenda to this Agreement) and in such a

manner that ENGINEER may rely upon them in the performance of his services under this Agreement, all criteria, design, and construction standards including full information as to OWNER'S requirements for the PROJECT, including all document specifications. Such information may include but not be limited to:

a. A complete survey of the PROJECT site which shall include but not be limited to easements, right-of-way, encroachments, zoning and deed restrictions, existing buildings and improvements.

b. Soils data, laboratory tests, reports and inspections of samples, materials or other items, with appropriate professional interpretations.

c. Legal, accounting, financial and insurance counseling services necessary for the PROJECT including legal review of the Construction Contract Documents.

d. Permits and approvals from any authorities having jurisdiction over the PROJECT.

1.3.2 Designate a person authorized to act as OWNER'S representative. OWNER or his representative shall receive and examine documents submitted by ENGINEER and shall be empowered to interpret and define OWNER'S policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of ENGINEER'S services.

1.3.3 Guarantee full and free access for ENGINEER to enter upon all property required for the performance of ENGINEER'S services under this Agreement.

1.3.4 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any defect in the PROJECT or other event which may substantially affect ENGINEER'S performance of services under this Agreement.

## SECTION 2 COMPENSATION FOR SERVICES

### 2.1 General

2.1.1 OWNER shall compensate ENGINEER for services rendered under this Agreement. The method of compensation for said services shall be as set forth in Addenda to this Agreement.

2.1.2 Payments for Services are due when invoiced based on actual engineering services furnished unless another schedule of payments is agreed upon, by Addenda.

2.1.3 Where OWNER disputes some portion of the charges contained in ENGINEER'S bill for services, he shall make payment of that portion of the bill which is undisputed and shall notify ENGINEER in writing of the reason for his dispute. In no case may OWNER elect to withhold payment to ENGINEER of the entire amount due. This would constitute a failure to make payment.

2.1.4 If OWNER fails to make any payment due ENGINEER for services and expenses after receipt of ENGINEER'S bill therefore, the amounts due ENGINEER shall bear interest from invoice date at the rate set forth in this agreement, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the ENGINEER. In addition ENGINEER may, after giving ten (10) days written notice to OWNER, suspend services under this agreement until paid in full all amounts due under this agreement. In the event OWNER does not pay, or does not pay timely, ENGINEER shall be entitled to collect from OWNER all amounts due plus expenses, including but not limited to attorney fees, incurred by the ENGINEER in connection with collection efforts, in addition, the reasonable value of ENGINEER'S time spent in connection with collection efforts, computed at the ENGINEER'S prevailing fee schedule.

## SECTION 3 GENERAL PROVISIONS

### 3.1 General

3.1.1 This Agreement is the result of final negotiations between OWNER and ENGINEER and represents the entire and integrated agreement between

OWNER and ENGINEER for the PROJECT and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both OWNER and ENGINEER.

3.1.2 Neither party shall hold the other responsible for damages or delay in performance by acts of God, strikes, lockouts, accidents, or other events beyond the reasonable control of the other or the other's agents. However, when these delays require additional work to be performed by ENGINEER, ENGINEER shall be entitled to additional compensation at the prevailing "Per Diem Rates" or as otherwise agreed to between OWNER and ENGINEER.

3.1.3 This Agreement may be terminated by either party if the other party fails to fulfill its obligations under this Agreement through no fault of the terminating party. No such termination may be effected unless the other party is given not less than ten calendar days written notice of intent to terminate and an opportunity for correcting the default and for consultation with the terminating party before termination. In addition, OWNER may terminate this Agreement, in whole or in part, for cause (such as for legal or financial reasons, or major changes in the work or program requirements), and ENGINEER is given not less than ten (10) calendar days written notice and an opportunity for consultation before termination. If OWNER terminates as a result of ENGINEER'S default, any payment due ENGINEER at the time of termination may be adjusted to the extent of any additional cost the OWNER incurs due to ENGINEER'S default. If ENGINEER terminates as a result of OWNER default or the OWNER terminates for cause, ENGINEER shall be paid for services performed to the termination date including reimbursable expenses due plus termination expenses. Termination expenses are defined as expenses directly attributable to termination, plus 15% of the total compensation anticipated for the project to account for engineering rescheduling, adjustment, reassignment of personnel, and related indirect costs incurred due to termination. Upon receipt of the terminating action, ENGINEER shall promptly discontinue all services unless the notice directs otherwise, and upon receipt of final compensation make available to OWNER all appropriate documents prepared under the Agreement whether completed or in process.

3.1.4 All claims, counter-claims, disputes and other matters in question between the parties hereto arising out of this Agreement shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association subject to the condition that the amount sought by the party initiating arbitration shall be less than \$25,000. The mechanics of initiating arbitration, picking arbitrators and setting up the hearing shall be conducted in accordance with the rules of the American Arbitration Association.

This arbitration provision shall not be applicable to claims where the presence of a party, who is not subject to this Agreement, would be necessary to a full and complete determination of the controversy, and in this respect, reference shall be made to the provisions of Section 803.03 of the Wisconsin Statutes and the cases decided thereunder.

No demand for arbitration shall be valid if made after the institution of civil suit or after the matter in question would be barred by the applicable Statute of Limitations.

3.1.5 The parties to this agreement, each acknowledging that he has a constitutional and statutory right to trial by jury, hereby waive this right in any action or proceeding of any kind or nature in any court to which they may both be parties arising out of this Agreement or the transaction associated with this Agreement regardless of the nature of the causes of action alleged.

3.1.6 Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the principal place of business of ENGINEER.

3.1.7 In the event any provisions of this Agreement or any subsequent Addendum shall be held

to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

## EXHIBIT I

### FOR ENVIRONMENTAL SERVICES

#### 4.1. RIGHT OF ENTRY

4.1.1. The Owner will provide for right of entry of Engineer's personnel, Engineer's consultants, and subcontractors and all necessary equipment, in order to complete the work.

While Engineer will take reasonable precautions to minimize damage to property, it is agreed that in the normal course of work, some damage will occur. Owner shall be responsible to repair or correct such damage.

#### 4.2. PROJECT SITE

4.2.1. In the prosecution of Engineer's work, Engineer will take reasonable precautions to avoid damage or injury to subterranean structures or utilities.

The Owner agrees to hold Engineer harmless for any damage to subterranean structures or utilities which are not called to the Engineer's attention and correctly shown on plans furnished to Engineer.

Engineer shall backfill all borings or excavations on completion of his work. Settlement of the backfill may occur and the Owner shall be responsible for filling holes as required. Engineer shall not be responsible for any such settlement.

4.2.2. Owner will make available to Engineer all information readily available to Owner regarding existing and proposed conditions of the site which will aid the Engineer in his investigation. The information shall include, but not be limited to plot plans, topographic surveys, hydrologic data, subterranean structures and utilities, and previous soil data including borings, field or laboratory tests, and written reports. Owner will immediately transmit to Engineer any new information which becomes available or any change in plans. Engineer shall not be liable to Owner for any incorrect advice, judgement or decision based on any inaccurate information furnished by Owner, his agents or his other consultants, and Owner will indemnify Engineer against claims, demands or liability to the extent arising out of or contributed to by such information. Engineer shall be entitled to rely upon all such information without re-performing any of the environmental/geotechnical work reflected in any reports, data or information so furnished and Owner warrants the accuracy and suitability of same.

4.2.3. Owner recognizes that commonly used exploration methods such as drilling bore holes and excavating trenches involve inherent risk of injury or damage which cannot be

avoided. Exploration methods may penetrate through an aquifer of contaminated fluid which may result in contamination of groundwater systems and wells. While backfilling and grouting are intended to provide seals against ongoing contamination, it is recognized that such seals may be imperfect. In recognition of the inherent risks of injury and damage to persons and the environment, the Owner agrees to hold harmless and indemnify Engineer for any claim whatsoever by Owner or third parties arising out of drilling, trenching, or related activities, including but not limited to attempts to backfill or grout trenches and borings.

#### 4.3. SAMPLE HANDLING AND RETENTION

4.3.1. Generally, test samples or specimens are consumed or substantially altered during the conduct of tests and Engineer, at Engineer's sole discretion will dispose (subject to the following) of any remaining residue immediately upon completion of tests.

##### A. NON-HAZARDOUS SAMPLES.

At Owner's written request, Engineer will maintain preservable test samples and specimens or the residue therefrom for 30 days after submission of Engineer's report, free of storage charges. After the initial 30 days and upon written request, Engineer will retain test specimens or samples for a mutually acceptable storage charge and period of time. Owner agrees that it will not hold Engineer responsible or liable for any loss of test specimens or samples retained in storage.

##### B. HAZARDOUS OR POTENTIALLY HAZARDOUS SAMPLES.

In the event that samples contain substances or constituents hazardous or detrimental to health, safety or the environment as defined by federal, state or local statutes, regulations, or ordinances, Engineer will, after completion of testing and at Owner's expense, (i) return such samples to Owner, or (ii) using a manifest signed by Owner as generator, Engineer will have such samples transported to a location selected by Owner for final disposal. Owner agrees to pay all costs associated with the storage, transport, and disposal of samples. Owner recognizes and agrees that Engineer is acting as a bailee and at no time assumes title to said waste.

#### 4.4. HAZARDOUS SUBSTANCES AND CONSTITUENTS

4.4.1. Owner agrees to advise Engineer upon execution of this Agreement of any hazardous substances or any condition existing in, on or near the site presenting a potential danger to

human health, the environment or equipment of which Owner has knowledge, information or belief. Owner agrees to provide to Engineer immediately and on a continuing basis any such information subsequently available to Owner. Engineer does not assume control of or responsibility for the site or the person in charge of the site, or undertake responsibility for reporting to any federal, state or local public agencies any conditions at the site that may present a potential danger to public health, safety or the environment. Owner does hereby agree to assume such control and responsibility, and further agrees to notify the appropriate federal, state or local public agencies as required by law or otherwise to disclose, in a timely manner, any information that may be necessary to prevent any danger to health, safety or the environment. In connection with hazardous waste, Owner agrees to the maximum extent permitted by law to defend, hold harmless and indemnify Engineer from and against any and all claims and liabilities resulting from:

(a) Owner's violation of any federal, state or local statute, regulation or ordinance relating to the disposal of hazardous substances or constituents;

(b) Owner's undertaking of or arrangement for the handling, removal, treatment, storage, transportation or disposal of hazardous substances or constituents found or identified at the site.

(c) Changed conditions or hazardous substances or constituents introduced at the site by Owner or third persons before, during or after the completion of services herein;

(d) Allegations that Engineer is a handler, generator, operator, treater or storer, transporter or disposer under the Resource Conservation and Recovery Act of 1976 as amended, or any other similar Federal, state or local statute, ordinance, regulation or law;

(e) Engineer's discovery of, or failure to discover hazardous substances or constituents on, in or under the site.

4.4.2. Engineer shall have no liability to Owner for detecting or failing to detect the presence of hazardous substances or constituents on, in or under the site.

#### 4.5. CONTAMINATED EQUIPMENT

4.5.1. Costs related to decontamination of equipment will be charged to the Owner in those instances where contact by substances encountered at the site requires



decontamination efforts beyond that routinely provided by the Engineer.

#### 4.6. UNFORESEEN OCCURRENCES

4.6.1. If, during the performance of services, any unforeseen hazardous substances or constituents or other unforeseen conditions or occurrences are encountered which, in Engineer's sole judgement significantly affect or may affect the services, the risk involved in providing the services or the recommended scope of services, Engineer will promptly notify Owner thereof. Subsequent to that notification, Engineer may:

- (a) If practicable, in Engineer's sole judgement, complete the original Scope of Services in accordance with the procedures originally intended in the Proposal;
- (b) Agree with Owner to modify the Scope of Services and the estimate of charges to include study of the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated herein; or
- (c) Terminate the services immediately and/or effective on the date specified by Engineer in writing.

4.6.2. Owner recognizes that the state of practice, particularly with respect to hazardous waste conditions, is changing and evolving. For example, the technology involved in the detection, removal and/or treatment of hazardous substances is constantly evolving and the interaction of soils and groundwater with hazardous substances is not fully understood at this time. While Engineer is required to perform in reasonable accordance with the standards set forth in effect at the time its services are performed, it is recognized that those standards may subsequently change because of improvements in the state of practice.

#### 4.7. OWNERSHIP OF DOCUMENTS

4.7.1. All field data, field notes, calculations, estimates, and other documents prepared by Engineer as instruments of service, shall remain the property of the Engineer. All published reports shall be and remain the property of the Owner.

4.7.2. Owner agrees that all reports and other work furnished to the Owner or his agents, will be used for the intended purpose and in the manner set forth in the reports or other work. If not so used, all such reports and other work will be returned upon demand and will not be used by the Owner for any purpose whatever.

4.7.3. Owner agrees that all reports and other work furnished to the Owner shall not be transmitted or furnished to other persons or entities without the Engineer's written consent. The Owner shall hold harmless and indemnify the Engineer from any claims, damages, costs or expenses arising out of the unauthorized transmittal of the Engineer's reports to any other person or entity.

4.7.4. Engineer will retain all pertinent records in accordance with Engineer's record retention program.

#### 4.8. CONFIDENTIALITY

4.8.1. Engineer shall hold confidential all business or technical information obtained from the Owner or its affiliates or generated in the performance of services under this Agreement. Engineer shall not disclose such information without the Owner's consent except to the extent required for (1) performance of services under this Agreement; (2) compliance with professional standards of conduct for preservation of public safety, health, and welfare; (3) compliance with any court order or other governmental directive; and/or (4) protection of Engineer against claims or liabilities arising from performance of services under this Agreement. Engineer's obligations hereunder shall not apply to information in the public domain or lawfully acquired on a non-confidential basis from others.

#### 4.9. LIMITATIONS OF INVESTIGATION

4.9.1. Soil, water and other geologic conditions can vary significantly between borings, groundwater wells, test pits, and surface outcrops. Owner recognizes that environmental, geologic and geotechnical conditions can vary from those encountered at the times and locations where data are obtained by Engineer, and that the limitation on available data results in some level of uncertainty with respect to the interpretation of these conditions, despite the use of due professional care.

4.9.2. Conditions revealed by excavation or drilling may be at variance with preliminary findings. If this occurs, the changed conditions must be evaluated by the Project Engineer and Geologist and the scope of work adjusted as required by alternate options recommended.

4.9.3. Reports prepared under this Agreement will be prepared under constraints of cost, time, and scope and reflect a limited investigation and analysis rather than a full, total, complete, or extensive investigation and analysis. Such reports become invalid with the passage of time due to changes and conditions in the property which result from natural processes or the works of man on this or adjacent properties. Changing standards and expanded knowledge may also cause reports to become invalid.

4.9.4. The findings of all reports may be invalidated wholly or partially by changes beyond Engineer's control. Reports produced under this Agreement shall not be relied upon if there have been any changes in site conditions, regulations or standards.

Each such report should not be relied upon if there have been any changes in the field.

4.9.5. Engineer shall not specify construction procedures, manage or supervise construction, or implement or be responsible for health and safety procedures; shall not be responsible for the acts or omissions of contractors or other parties on the project; and shall not have control or charge of and shall not be responsible for construction means, methods, technique, sequences or procedures, or for safety precautions and programs. Engineer testing or observation of portions of the work of other parties on a project shall not relieve other parties from their responsibility for performing their work in

accordance with applicable plans, specifications, and safety requirements.

4.9.6. All reports issued in conjunction with the work represented by this Agreement are issued with the understanding that the reports are intended for use by Owner for informational purposes only and that no other use is permitted. Use of reports by persons, firms, agencies or entities other than Owner is expressly prohibited. Use of reports for any reason whatsoever other than as stated above requires the express, written authorization of Engineer.

4.9.7. Engineer's investigation shall be performed, within the limits and constraints prescribed by Owner, in a manner consistent with that level of care and skill ordinarily exercised under similar circumstances by other professional consultants practicing in this or similar localities. No other representations to Owner, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, professional advice or otherwise.

4.9.8. It is recognized that many desired or required results cannot be accomplished in an absolute sense, e.g., the detection and clean-up of all hazardous substances. Whenever a desired or required result cannot be accomplished in an absolute sense, in the Engineer's sole determination, the Engineer shall use due care in an attempt to accomplish the desired or required result but need not accomplish the result in an absolute sense.

4.9.9. Owner recognizes that installations in connection with hazardous waste sites, and sanitary landfill sites, monitoring projects and certain remedial action techniques and procedures may not perform in the field as anticipated by Owner, even if Engineer's services are performed in accordance with the level of care and skill ordinarily exercised by other professional consultants under similar circumstances.

4.9.10. THE LIABILITY OF ENGINEER, ITS AGENTS, EMPLOYEES AND SUBCONTRACTORS, FOR OWNER'S CLAIMS OF LOSS, INJURY, DEATH OR DAMAGE INCLUDING WITHOUT LIMITATION, OWNER'S CLAIMS OF CONTRIBUTION AND INDEMNIFICATION WITH RESPECT TO THIRD PARTY CLAIMS, SHALL NOT EXCEED, IN THE AGGREGATE UNDER THIS AGREEMENT:

1. THE LESSER OF \$50,000.00 OR ENGINEER'S FEE FOR CLAIMS OR LIABILITY ARISING OUT OF:

(a) ANY ENVIRONMENTAL POLLUTION OR CONTAMINATION, INCLUDING WITHOUT LIMITATION, ANY ACTUAL OR THREATENED RELEASE OF TOXIC, IRRITANT, POLLUTANT, OR WASTE GASES, LIQUIDS OR SOLID MATERIALS FOR WHICH ENGINEER HAS LEGAL LIABILITY; OR

(b) PROFESSIONAL NEGLIGENCE, INCLUDING ERRORS, OMISSIONS OR OTHER PROFESSIONAL ACTS, AND

INCLUDING UNINTENTIONAL BREACH OF CONTRACT; OR

2. THE TOTAL SUM OF \$1,000,000 FOR INJURY, LOSS OR DAMAGE CAUSED BY NEGLIGENCE, OR OTHER CAUSE FOR WHICH ENGINEER HAS ANY LEGAL LIABILITY, OTHER THAN AS DESCRIBED IN SUBPARAGRAPHS 1(A) AND (B) ABOVE.

IN NO EVENT SHALL ENGINEER BE LIABLE FOR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION, LOSS OF USE OR LOSS OF PROFITS, INCURRED BY OWNER OR ITS SUBSIDIARIES OR SUCCESSORS, REGARDLESS OF WHETHER SUCH CLAIM IS BASED UPON ALLEGED BREACH OF CONTRACT, STRICT LIABILITY, OR NEGLIGENT ACT OR OMISSION, WHETHER PROFESSIONAL OR NONPROFESSIONAL, BY ENGINEER OR ENGINEER'S EMPLOYEES, AGENTS OR SUBCONTRACTORS.

4.9.11. Owner shall, to the maximum extent permitted by law, save, defend, indemnify, and hold harmless or insure Engineer and its directors, officers, shareholders, employees, contractors, subcontractors, agents, or affiliates from and against any and all suits, actions, legal or administrative proceedings, claims, demands, fines, punitive damages, losses, costs, liabilities, interest, and attorneys' fees including any such fees and expenses incurred

in enforcing this indemnity, which result from, arise out of or are in any way connected with: (i) acts or omissions of Owner, Owner's employees, agents and subcontractors and their employees or agents; (ii) the release of any hazardous substance; or (iii) any generation, treatment or transport of waste materials.

To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of Engineer. Without limiting the generality of the foregoing, the above indemnification provision extends to claims against Engineer which arise out of, are related to, or are based upon, the actual or threatened dispersal, discharge, escape, release or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases or any other material, irritant, contamination or pollutant or in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface (a) soil, (b) water or water-course, (c) objects, or (d) any tangible or intangible matter, whether sudden or not. Such indemnification shall not apply to claims, damages, losses or expenses which are finally determined to result from willful or reckless disregard by Engineer of its obligations under this Agreement.

#### 4.10. MISCELLANEOUS

4.10.1. The Owner may not delegate, assign, or transfer his duties or interest in this Agreement without the Engineer's written consent.

4.10.2. Phase I Site Assessments shall not include sample collection or analysis. It is not intended that the Phase I investigation shall determine the presence or absence of asbestos, or ascertain the contents of drums and/or barrels.

4.10.3. Phase I & II Site Assessments are not intended to include the following types of field activities:

1. Entry into confined spaces such as manholes, trenches, tanks, etc.
2. Entry into close proximity to live electrical equipment such as electrical wiring, transformers, etc.

4.10.4. Phase II Site Assessments shall not include asbestos sampling and analysis by Engineer. If asbestos sampling and analysis is required as part of this site assessment, the Owner shall contract directly with an entity to complete the asbestos sampling and analysis.

4.10.5. The terms and conditions of this Exhibit I shall supersede and replace any inconsistent printed terms and conditions of the Standard Agreement for Professional Services Between Owner and Engineer.

4.10.6. The Owner shall provide all legal services necessary for the project including, but not limited to necessary counseling regarding compliance with federal and state environmental regulations.

**Foth Environment Division  
2016 Standard Labor Rate Schedule\***

Classification	Hourly Rate	
Director/Principal	\$145.00	-
Senior Project Manager	\$135.00	-
Senior Consultant	\$130.00	-
Project Manager	\$105.00	-
Lead Engineer	\$110.00	-
Project Engineer	\$90.00	-
Engineer	\$85.00	-
Lead Scientist	\$110.00	-
Project Scientist	\$80.00	-
Scientist	\$70.00	-
Project Designer/Technician	\$75.00	-
Technician/CADD	\$60.00	-
GIS Specialist	\$95.00	-
Lead Admin. Assist./Work Plan Coordinator	\$60.00	-
Administrative Assistant	\$50.00	-
Clerical	\$45.00	-

**INVOICING PROCEDURES**

- 1) All personnel are billed portal-to-portal for required travel.
- 2) All testimony or direct mediation work, including depositions; trial testimony; mediation meetings or presentations; public meetings; public hearings; standby time, deposition, pre-trial preparation; and other litigation/mediation services will be billed with a separate Litigation/Mediation Fee Schedule.
- 3) Expedited deliverables requested by the client that require overtime work will be billed at one and one-half times the hourly billing rate for the overtime hours worked. Prior notice of this surcharge will be given.
- 4) Foth Infrastructure and Environment, LLC. reserves the right to periodically modify this schedule, as appropriate.

\* Do not provide this fee schedule or copies of the fee schedule to other parties without prior approval of Foth Infrastructure and Environment, LLC.

**Foth Environment Division  
2015 Standard Resource Charges\***

<b>Item</b>	<b>Cost basis</b>	<b>Std charge</b>
<b>Computer Usage<sup>(1)</sup></b>		
AutoCAD/Intergraph	Cost/Usage	\$15.00/hr
High End Software	Cost/Usage	\$15.00 - 30.00/hr
<b>Standard Office/Communication Expenses<sup>(2)</sup></b>		
Photocopies, Fax, Phone, Scans, Postage	Equipment/Material	1% of labor
<b>Travel</b>		
Automobile Travel	Mileage	\$0.65/mi <sup>(3)</sup>
Public Transportation		Cost + 10%
Subsistence and Lodging		Cost + 10%
Survey Vehicles	Mileage	\$0.92/mi <sup>(4)</sup>
<b>CADD Plotting/Drawing Reproduction</b>		
Bond (black & white)	Equipment/Labor/Material	\$0.35/sq ft
Bond (color)	Equipment/Labor/Material	\$1.25/sq ft
<b>Equipment</b>		
GEM 2000 Landfill Gas Monitor	Equipment/Material	\$350/day
TVA 1000 Thermoanemometer	Equipment/Material	\$300/day
GPS Survey	Equipment	\$350/day
Equipped Landfill Vehicle, includes ATV, Depth to Leachate Gauge, small generator, small air compressor, batteries and purge pump	Equipment	\$100/day
Other	Equipment	Standard Resource Charge or Rental + Shipping + 10%
<b>Subconsultants (drilling, laboratory, etc.)</b>		Cost + 10% <sup>(5)</sup>
<b>Outside Printing Costs</b>		Cost + 10%
<b>Specialty Mailing Services</b>		Cost + 10%
<b>Miscellaneous</b>		Cost + 10%

**Notes:** The cost of specific technical equipment and employee travel expenses needed on projects is in addition to the above hourly rates. This list is not all inclusive but represents the most common resource charges applied to Foth projects.

- (1) Computer Usage fee is designed to cover the following: 1) maintaining computer systems and software and other technology.
- (2) Communication fee is designed to cover Foth's costs for the following: 1) all telephone and long distance charges, except for extended long distance calls or conference calls; 2) all charges associated with facsimile sending and receiving; 3) all standard postal and shipping charges, except express mail; and 4) all normal copying and other reproduction costs, except for major or outside reproduction costs.
- (3) Mileage rates are subject to change based on Federal Government Standards.
- (4) Mileage rates are subject to change based on economic conditions.
- (5) If requested, Foth shall procure and coordinate the services of independent laboratories, subconsultants, drilling contractor, etc. The cost of the independent services shall be passed on directly to the owner with a surcharge of 10 percent to cover the processing of expenses.

\* Do not provide this fee schedule or copies of the fee schedule to other parties without prior approval of Foth Infrastructure and Environment, LLC.