

FINAL FILL MATERIAL PLACEMENT AGREEMENT

THIS AGREEMENT, made as of _____, 2011

Between the "Township": **Whitpain Township**
 960 Wentz Road
 Blue Bell, PA 19422

And the "Contractor": **Walsh Construction Company**
 333 Technology Drive
 Suite 205
 Canonsburg, PA 15317

For the "Project": **Placement and Grading of Fill at the Cook Tract, DeKalb Pike,**
 Whitpain Township, Montgomery County, Pennsylvania

In consideration of the sum of One Dollar (\$1.00), the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Township and Contractor hereby agree as follows:

ARTICLE 1. Background

1.1. On May 18, 2011, Contractor and Township entered into an agreement ("Preliminary Fill Placement Agreement") for the placement of fill material excavated by Contractor in association with the Pennsylvania Turnpike Northeast Extension Widening Project ("Turnpike Project") at the Township property known as the "Cook Tract" (which includes a property purchased from St. Helena's Church), located on Yost Road and DeKalb Pike, Whitpain Township, Montgomery County Pennsylvania, being Montgomery County Tax Parcel Numbers 66-00-01564-008 and 66-00-08515-005 (the "Premises").

1.2. The Preliminary Fill Placement Agreement contemplates the negotiation of a separate agreement ("Final Agreement") between Contractor and Township for the placement, grading and stabilization of additional fill material (the "Fill Project") as well as the construction and installation of athletic fields, roads, trails, parking areas, stormwater management facilities, landscaping, and related improvements ("Improvements") on the Premises by the Contractor (the "Park Project").

1.3. Township and Contractor desire to memorialize in writing the duties and obligations of the Contractor with regard to the transportation to, placement, grading and stabilization of the fill material placed of on the Premises (the Fill Project) as well as the construction and installation of the Improvements (the Park Project) covered by this Final Agreement.

ARTICLE 2. Scope of Agreement

2.1. Subject to the terms and conditions hereof, Contractor is hereby granted a revocable license to enter onto, and place only "Fill" material (defined for purposes of this Final Agreement as top soil, sub soil, and rock with no dimension exceeding 18 inches) at the Premises, which Fill has been excavated by Contractor in association with the Turnpike Project in accordance with the Contract Documents enumerated below.

2.2. In consideration of said license, Contractor hereby agrees to install and construct the park and sports field improvements in accordance with the Fully Engineered Park Plans and Exhibit "K" identified and described in Article 11 of this Final Agreement or as later modified by Agreement of the Parties (the "Improvements").

2.3. All Fill placed at the Premises shall be in strict accordance with the limitations set forth in paragraph 2.1 above and also with the environmental characteristics and description set forth in the Pennsylvania Department of Environmental Protection's Management of Fill Policy, attached hereto as Exhibit "A" (hereinafter "Clean Fill"). In addition, the Contractor shall, prior to the placement of any fill materials on the Premises, provide the Township with an industry standard, site-specific, Health, Safety and Environmental (HSE) Plan. At a minimum, the HSE Plan shall include detailed descriptions of the following: the Contractor's organizational structure; site characterization and job hazard analysis; site control; project safety training; personal safety equipment; signs, signals and barricades; first aid; placement, grading and compacting; and, dust suppression action plan for the entire time Contractor will be on the Premises working on either the Fill Project or the Park Project. Such HSE Plan shall be promptly reviewed by the Township and its consultants and shall be found satisfactory before the placement of any fill on the Premises shall be permitted. The HSE Plan shall be updated as necessary throughout the entire time the Contractor is on the Premises working on the Fill Project or the Park Project.

2.4. Contractor shall be solely responsible, at its own expense, for the transportation to, and placement and grading of the Fill material at, the Premises and said transportation, placement and grading shall be performed in accordance with the Contract Documents enumerated below and all applicable local, state and federal laws, ordinances, codes, regulations and rules.

2.5. Contractor shall place and grade the Fill material only in those areas specifically designated in the Contract Documents.

2.6. Prior to placement and grading of the Fill material in the areas designated in the Contract Documents, Contractor shall strip the topsoil in said areas and temporarily stockpile the topsoil for reuse. Upon completion of the grading of the Fill material, Contractor shall re-spread the topsoil (and import any additional topsoil necessary to meet the depth requirements shown on the Plans) in the disturbed areas to meet the requirements of the grading plan approved by Township as part of the Contract Documents. Contractor shall, at its own expense, import any topsoil and seed the areas required to temporarily and (following completion of the Project), permanently,

stabilize the areas disturbed by such disposal and grading activities to meet the requirements of the Contract Documents.

2.7. Contractor shall be solely responsible, at its own expense, to furnish and supply all materials, labor, construction equipment and tools necessary to transport to, and dispose and grade the Fill material at, the Premises and satisfy all conditions of all approvals and permits relating to the same.

2.8. Contractor shall be solely responsible, at its own expense, to implement and effectively maintain all erosion and sedimentation (E&S) controls (including dust suppression controls) and best management practices (BMPs) necessary in order to comply with the terms and conditions of (a) the Contract Documents; (b) all other approvals and permits relating to the transport, placement and grading of Fill material to and at the Premises; and (c) all applicable local, state and federal laws, ordinances, codes, regulations and rules. These responsibilities shall survive any termination of this Final Agreement.

2.9. Contractor acknowledges and agrees that the Township has not assumed, and shall not assume, any liability or responsibility for, nor supervise or control, the means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the transportation, placement, grading, dust suppression and stabilization of the Fill material at the Premises, and all of the same are solely the Contractor's responsibility.

2.10. Contractor shall pay for any and all inspection fees (including for the construction of the Improvements), other types of fees, and fines or penalties caused by the actions or omissions of the Contractor, its subcontractors, suppliers and all of their employees (hereinafter collectively referred to as the "Contractor's Agents") (including any costs or attorneys fees related thereto) and arising from this Final Agreement and charged by any government agency (including the Township) having jurisdiction over the transportation to, and placement and grading of the Fill Material at, the Premises. Contractor specifically agrees to completely indemnify and hold harmless the Township (including its Supervisors, staff, consultants and agents) from any and all liability or expense related to such fees, fines, penalties and costs (as defined above).

2.11. Contractor shall post financial security in a form approved by the Township to secure the proper disposition of the Fill Material on the Premises as well as the construction and installation of the Improvements in accordance with the terms of this Final Agreement.

ARTICLE 3. Contract Documents

3.1. The "Contract Documents" consist of this Final Agreement and the following, each of which is attached to this Final Agreement as the Exhibit listed below:

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|-----------|---|
| Exhibit A | Pennsylvania Department of Environmental Protection's Management of Fill Policy |
| Exhibit B | General Conditions for Placement of Fill Material at the Premises |

Exhibit C	Grading Plans approved by Township
Exhibit D	Grading Permit issued by Township, and any and all conditions thereto
Exhibit E	Erosion and Sediment Control Plans approved by the Montgomery County Conservation District
Exhibit F	NPDES Permit #PAG-02004611020 issued by the Pennsylvania Department of Environmental Protection (including the GP5 and GP7 relating to activities on the Premises), and any and all conditions provided for therein
Exhibit G	Intentionally Omitted
Exhibit H	Schematic Plans and Specifications for Improvements within the Park Project
Exhibit I	Collection Sample Layout Plan
Exhibit J	EPA RCRA Manual, SW-846
Exhibit K	List of Improvements with Estimated Costs
Exhibit L	The Fully Engineered Park Plans
Exhibit M	Nighttime Setback Line Plan
Exhibit N	Shop Drawings/Cut Sheets for Storm Sewer Materials, Sanitary Sewer Materials and Roadway/Parking Lot/Trail Materials
Exhibit O	Form for Certificate of Final Completion

3.2. The Contract Document shall also include any written modifications to this Final Agreement which are executed by both parties, including, but not limited to, any other plans and/or specifications or any other conditions attached hereto by written addendum.

ARTICLE 4. Payment Terms

4.1. It is the intent of the Contractor and Township that the Fill placed, graded and stabilized at the Premises shall be used for the construction and installation of the Improvements. Contractor's full and proper performance of the terms of this Final Agreement including the portions of the cost borne by the Contractor to construct and install the Improvements pursuant to the Contract Documents and in accordance with this Final Agreement, shall be deemed the consideration to be received by Township for the right of Contractor to place Fill Material on the Premises pursuant to this Final Agreement.

ARTICLE 5. Approvals and Permits

5.1. Prior to commencing any portion of the Project, Contractor shall be solely responsible to obtain, at its sole cost and expense, all necessary approvals and permits from all municipal, county, state and federal agencies having jurisdiction over the Premises for the placement of all Fill at the Premises and the completion of the entire Park Project. Contractor shall employ prompt, good faith, commercially reasonable efforts to obtain all of such approvals and permits as expeditiously as possible. Since the Township is the legal owner of the Premises, the Township agrees to be the technical applicant or permittee on any of such approvals or permits where the owner of the property is required to be so-named and the Township further agrees to fully cooperate and assist the Contractor in obtaining all such approvals and permittees, provided, however, that such assistance and cooperation from the Township shall be at no financial cost. It is the intention of the Parties hereto that all of the costs of such permits and approvals shall be the responsibility of the Contractor.

5.2. (a) If the Contractor is not able to obtain all necessary approvals and permits for the Fill Project, despite its good faith efforts to do so, within sixty (60) days of the date of this Final Agreement, then either Party may terminate this Final Agreement by written notice to the other delivered at any time prior to the date that all of such approvals and permits are actually received by the Contractor for the Fill Project. In the event of such termination, this Final Agreement shall become null and void and the Parties shall have no further obligation or liability hereunder and all financial security provided by the Contractor shall be promptly returned to the Contractor.

(b) Except in the situation described and provided for in subparagraph (d) below, if the Contractor begins the Fill Project and then, because of circumstances beyond Contractor's control (and the Contractor's good faith efforts to address such circumstances), the Contractor cannot complete the Fill Project pursuant to the terms of this Final Agreement, then the Parties hereto agree to immediately re-evaluate and redesign the Park Project based upon the amount of fill which has, to that point, been placed on the Premises and assuming a financial credit to the Township for work to be performed by the Contractor on the Park Project as follows: for 1 to 100,000 cubic yards of Fill placed, the Township is to be credited \$10.00 per cubic yard (less the value of the work completed to date on Exhibit "K" attached hereto); for 100,001 cubic yards to 200,000 cubic yards of Fill placed on the Premises, the Township is to be credited \$9.00 per cubic yard (less the value of the work completed to date on Exhibit "K" attached hereto); for 200,001 cubic yards to 300,000 cubic yards of Fill placed on the Premises, the Township is to be credited \$8.00 per cubic yard (less the value of the work completed to date on Exhibit "K" attached hereto); and if 300,001 or more cubic yards of Fill have been placed on the Premises, the Township shall be entitled to the full and complete construction of the entire Park Project as defined in this Final Agreement. The monetary credit to which the Township may be entitled under this paragraph may be utilized by the Township, in its sole discretion, for those portions of the Park Project deemed desirable by the Township which can be accomplished by the Contractor within the financial credit due the Township (but not exceeding that amount) and referring to the itemized valuation of work required for the Park Project as set forth in Exhibit "K" attached hereto. In the unlikely event that referral to this paragraph becomes necessary prior

to completion of the Fill Project, the Contractor and the Township agree to cooperate and work together in good faith to accomplish as much as the Park Project as can reasonably be completed for the financial credit due to the Township (for the placement of Fill by the Contractor on the Premises) under the credit formula provided for by this paragraph.

(c) If the Contractor begins the Fill Project, but because of circumstances beyond the Contractor's control (and which circumstances are also valid and acceptable reasons for delay of completion within the Contractor's agreement with the Pennsylvania Turnpike Commission for the completion of the Turnpike Project), the Contractor cannot complete the Fill Project in a timely manner under this Final Agreement then, upon the mutual agreement of the Parties, the Contractor and the Township shall proceed pursuant to the provisions of Paragraph 5.2 (b) above; or (ii) if either the Township or Contractor do not wish to proceed pursuant to Section 5.2(b), then the Contractor shall be extended such additional time as may be necessary (because of the circumstances causing the Contractor's delay) to complete the Fill Project. Unless the Parties agree otherwise, any additional time allowed the Contractor for the completion of the Fill Project by the Township shall not result in any additional length of time for the one year (after completion of the Fill Project) completion of the Park Project by the Contractor as contemplated by this Final Agreement. In the event the Township elects option (ii) above, the cost of the work to be completed under this Final Agreement will be adjusted for inflation in an equitable manner by the Parties.

(d) If the Contractor begins the Fill Project, but because of Court Orders resulting from litigation brought by third parties (other than USEPA, PADEP or PATC) the Fill Project on the Premises is stopped or materially delayed, then the Parties hereto agree to immediately re-evaluate and redesign the Park Project in good faith and based upon the amount of Fill which has, to that point, been placed on the Premises. The Parties shall thereafter proceed as set forth in subparagraph 5.2(b) above except the financial credit to which the Township shall be entitled under that subparagraph shall be \$5.00 per cubic yard (less the value of the work completed to date on Exhibit "K") of Fill placed on the Premises by the Contractor prior to the date of the stoppage or notice from the Contractor to the Township of "material delay" under this subparagraph.

(e) If the Parties proceed under subparagraphs (b), (c) or (d) of this article, they may mutually agree that the Turnpike Project will not be the sole source of Fill Material for the Park Project, but all of the criteria, testing and other limitations of this Final Agreement with regard to Fill Material shall remain applicable to fill material or top soil brought from any other location.

5.3. Contractor shall retain a competent engineering and environmental consulting firm to prepare and submit the necessary applications for approvals and permits required for the Park Project. Such engineering and environmental consulting firm shall be subject to the reasonable approval of Township.

5.4. Prior to the submission of any applications, and all associated plans and specifications related thereto, for approvals and/or permits for the placement and grading of the Fill material on the Premises and/or the construction or installation of the Improvements, to any government

agency having jurisdiction over the Premises or the Park Project, Contractor and its engineer and/or consultant shall submit said applications, plans and specifications for Township's reasonable review and approval. Prior to commencing any portion of the Park Project, Contractor shall submit copies of all of the approvals and permits necessary for the entire Park Project to Township. Upon Township's written approval of said approvals and permits, which approval shall not be unreasonably withheld, Contractor may commence the placement activities contemplated herein.

5.5. Contractor shall have exclusive and sole responsibility to ensure compliance with all terms and conditions set forth in the approvals and permits issued by municipal, county, state and federal agencies for the transportation, placement and grading of the Fill to and at the Premises and the construction of the Improvements, as well as for compliance with all applicable rules, codes, ordinances, laws and regulations relating to the transportation, placement and/or grading of the Fill and the construction of the Improvements.

ARTICLE 6. Placement Procedure

6.1. Prior to the transportation to, and placement of the Fill Material at the Premises, Contractor shall retain an environmental consultant to sample the material designated for excavation from the Turnpike Project and placement at the Premises in accordance with the procedure set forth in subparagraphs 6.1(a) through 6.1(f) below. If any additional or more stringent procedures are required at any time during the term of this Final Agreement by the USEPA, PADEP or PATC, and if such additional or more stringent procedures result in material additional costs to Contractor within the Fill Project or the Park Project, then Township and Contractor agree to equitably address the terms of this Final Agreement to account for such additional costs. If an equitable adjustment cannot be reached between the Township and the Contractor, the Parties agree to non-binding mediation under the Pennsylvania Mediation Act. If such mediation proves unsuccessful, the dispute shall thereafter be resolved by litigation or, if both parties agree, by binding arbitration.

(a) Contractor shall acquire samples collected in accordance with the Sample Location Layout Plan (attached hereto as Exhibit "I") and EPA RCRA Manual, SW-846 (attached hereto as Exhibit "J").

(b) At locations shown on the Sample Location Layout Plan, Contractor's consultant shall take four (4) individual samples for each 1000 cubic yards of Fill material designated for excavation. Individual samples may be taken in the same borehole, but at different elevations below the ground surface.

(c) The four (4) individual samples collected for each 1000 cubic yards of Fill material shall be field screened with a Photo Ionization Detector ("PID").

(d) Based on the field screening of samples with a PID, Contractor's consultant shall select from the four (4) individual samples collected for each 1000 cubic yards of Clean Fill material the one with the highest concentrations of VOCs, and submit said sample to an EPA

accredited laboratory to analyze and test the sample for VOCs in accordance with EPA Method 8260B.

(e) The Contractor's consultant shall collect a composite of the four (4) samples collected for each 1000 cubic yards of material, and submit said composite sample to an EPA accredited laboratory to analyze and test the sample for the following parameters:

SVOCs, in accordance with EPA Method 8270D
Total 8 RCRA Metals, in accordance with EPA Method
6010C/7471B
Pesticides and Herbicides, in accordance with EPA Method 8081B
and 8151A
PCBs, in accordance with EPA Method 8082A

(f) If the test results reveal the existence of any constituents tested exceeding the limits in Table FP-1a and FP-1b in Pennsylvania Department of Environmental Protection's Management of Fill Policy (attached hereto as Exhibit "A") or are rejected for normal fill placement (by the PA Turnpike Commission or Pa DEP) for any other reason the Township shall have the right, in its sole discretion, to reject for placement, the Fill material in the general area of where the sample was taken.

6.2. Contractor shall be prohibited from placing at the Premises any material having the presence of constituents exceeding the limits in Table FP-1a and FP-1b. In addition, the Contractor agrees that it will not transport any material to the Premises which contains any materials where suspected contaminants or prohibited inclusions (such as trash, tree stumps or rocks exceeding 18 inches in any dimension) are visible. If any of these materials are discovered on the Premises in the areas where Fill Material is being deposited, or should the Township have reasonable cause to suspect that any Fill Material does not meet the requirements of this paragraph or paragraphs 2.1 or 2.3 above, Township may undertake additional sampling and testing of such material and the costs of such sampling and testing shall be immediately reimbursed to the Township from the Contractor in the event the materials are found not to meet the requirements of paragraphs 2.1, 2.3 or 6.2 of this Final Agreement. In addition, Contractor shall be required to remove any materials which are found not to meet the criteria established in this Final Agreement.

6.3. Prior to placing of any particular Fill material at the Premises, Contractor shall provide Township (or its selected consultants) with a copy of the laboratory test results and the plan showing the areas approved by the Turnpike Commission and DEP for excavation of material for placement, as confirmed through the testing described above (hereinafter the "Approved Fill Areas").

6.4. Contractor shall only transport to and place at Premises the Fill material excavated from the Approved Fill Areas. Contractor is strictly prohibited from transporting to and placing at the Premises any material that does not meet the description (see paragraph 2.1 above), classification and all requirements of Fill as described in this Final Agreement.

6.5. Contractor will excavate the material from the Approved Fill Areas and load the trucks for transport to, and placement at, the Premises.

6.6. Contractor's onsite representative at the Approved Fill Area will generate a manifest ticket, on a form approved by Facility Owner, for each truck load of Fill material proposed to be deposited on the Premises, identifying the estimated cubic yards of Fill material loaded in the truck, truck number and license, name of truck driver, and date, time and location the material was excavated from the Approved Fill Areas (hereinafter the "Approved Fill Manifest").

6.7.

(a) Contractor shall provide telephone notice (at least 24 hours in advance for week days and 72 hours in advance for weekends) to the Township's designated representative of all times during which Contractor intends to place fill on the Premises. Township, however, shall be under no obligation to have a representative at the Premises during all the periods of time that the Contractor is placing fill there. As long as the Contractor has provided the Township with proper notice of its intention to place fill on the Premises, Contractor may deposit or place fill on the Premises at any such times even if no Contractor's representative is present during all of such times. Specifically, when the Contractor has given proper notice to the Township of its intention to place fill on the Premises, but there is nevertheless no Township representative present on the Premises at such times, Contractor may still place fill, but shall otherwise follow all of the procedures in this section other than those involving the Township's representative. Whenever the Township's representative is present on the premises, however, Contractor shall follow the procedures set forth herein as they involve the Township's representative.

(b) The transporter of the Fill Material shall carry the Approved Fill Manifest to the Premises for each load of Fill Material transported to and placed at the Premises. Prior to unloading the Fill at the Premises, the transporter shall provide the Approved Fill Manifest to the Township's representative stationed at the Premises (if any), and the Township's representative shall sign off on each Approved Fill Manifest. If the Township's representative is present at the Premises, Contractor shall not permit any material to be unloaded at the Premises except in the presence of the Township's representative and not until the Township's representative has signed off on the Approved Fill Manifest. The reasonable compensation and costs for a representative of the Township (not exceeding \$20.00 per hour and a total compensation during the Fill Project of \$45,000.00) to be present during the placement of fill at the Premises (or for periodic inspections to compare the Approved Fill Manifests against the Fill actually deposited on the Premises) shall be billed to and borne entirely by the Contractor (subject, however, to the monetary limitations set forth herein). Township shall have recourse against the Financial Security being posted under paragraphs 11.8 and 11.9 below, if invoices for the agreed compensation and costs of the Township's representative have not been paid by Contractor within 30 days of the date of the invoice for same.

6.8. The Contractor shall maintain a copy of the Approved Fill Manifests and enter said manifests into a log which will be transmitted to the Township on a weekly basis.

6.9. The Contractor shall provide a copy of the log to its environmental consultant and the Township at regularly scheduled intervals for the purpose of having the consultant and the Township check the logs to ensure that material sent to Premises originated from the Approved Fill Areas. The environmental consultant will also visit the excavation areas on a weekly basis or more often as needed or required herein, for the purpose of inspecting the excavation of the Approved Fill Areas.

6.10. The Contractor shall ensure that only Approved Fill Material is being loaded in trucks for transport and placement at the Premises.

6.11. Contractor, at its sole expense, shall promptly remove from the Premises any material it or its subcontractors transported to and placed at the Premises that does not meet the classification and all requirements of Fill as set forth in this Final Agreement. This obligation to remove shall survive termination of this Final Agreement and shall continue in full force and effect for the period of time that any improper material placed at the Premises by Contractor is present at the Premises.

6.12. Contractor, at its sole expense, shall promptly correct all violations reported or noted by municipal, county, state or federal officials relating to the transportation, placement and/or grading of the Fill Material to and at the Premises and the construction of the Improvements within the Park Project, including without limitation, violations of the grading permit and/or NPDES permit. This obligation to correct shall survive termination of this Final Agreement and shall continue in full force and effect for the period of time that any improper material placed at the Premises by Contractor is present at the Premises.

6.13. The maximum allowable “lift” (increase in grade height) without full compaction of Fill Material, shall be 18 inches. In addition, no rocks larger than 3 inches in diameter shall be allowed within 3 feet of the final proposed grade of Fill Material before the placement of top soil as specified on the Fully Engineered Park Plans.

ARTICLE 7. Limitations on Access to the Premises and Use of Premises

7.1. Contractor and its subcontractors shall access and egress the Premises only at the access and egress points previously approved by the Whitpain Township Engineer and shown on the Grading Plans attached hereto as Exhibit "C" and the NPDES Permit attached hereto as Exhibit "F". Contractor agrees that construction vehicles and equipment shall not enter or leave the Premises from any other point of access nor access any other part of the Premises or any adjoining road without the express, written permission of the Township.

7.2. Contractor and its subcontractors shall transport the Fill to the Premises, and place, grade, and stabilize the Fill Material at the Premises (specifically including the suppression of airborne dust) in accordance with all applicable permits, approvals, laws and regulations and in such a manner as to cause minimum interference with any existing operations of Township at the Premises as well as the reasonable use and enjoyment of privately owned properties in the vicinity of the Premises.

7.3. Contractor and its subcontractors shall take all reasonably foreseeable and necessary and proper precautions to protect the Premises and all persons and personal property thereon as well as persons and personal property in the vicinity of the Premises, from damages or injuries arising from Contractor's operations.

7.4. Upon completion of the placement, grading, and stabilization of the Fill Material under this Final Agreement and the completion of the Improvements, Contractor shall remove all tools, equipment, materials and rubbish and shall restore all portions of the Premises (including roads, other paved surfaces, fencing, curbing and the like) to the condition in which they existed immediately prior to the Contractor's initial entry onto the Premises, except as expressly stated otherwise in the Contract Documents.

7.5. Contractor and its subcontractors, agents and employees shall take all reasonable actions to minimize interference with roads, streets, walks, driveways and adjacent properties and improvements and shall not obstruct or block roads, streets, walks, driveways and adjacent properties without the express written permission from the entities having the appropriate jurisdiction or the individuals affected.

7.6. Contractor and its subcontractors, agents and employees shall, in accordance with all applicable plans, permits, approvals, laws and regulations, keep and maintain all roads, streets, walks, driveways, and other improvements located on the Premises, as well as properties in the reasonable vicinity of the Premises, reasonably free from dirt, dust, mud and debris originating from the placement, grading and construction activities described herein. Contractor shall not permit its own vehicles or the vehicles of its employees or subcontractors to deposit mud, stones or other debris from the Premises onto the existing public streets of the Township (without regard to whether such streets are owned and maintained by the Township, the county or the state). Contractor shall be responsible to promptly remove any such deposits and in the event that such deposits are not removed after receipt of written notice from Township to do so, Township shall have the right if not removed by the Contractor within 24 hours of receipt of the written notice to proceed to remove such deposits using its own personnel or private contractors and to obtain reimbursement for any applicable costs and expenses of such removal from the financial security being established under the provisions of this Final Agreement.

7.7. Contractor shall not store any materials upon any public streets or in any location not specifically permitted by the Plans. Fire hydrants on or adjacent to the Premises shall be kept accessible to fire apparatus at all times and no materials or obstructions shall be placed within fifteen feet (15') of any such hydrant. All storm drainage and sewer inlets shall be kept unobstructed at all times. Contractor shall maintain such barricades and warning lights or flares as are necessary during the course of construction to protect traffic and the public in general.

7.8. Contractor shall procure and be responsible for the compliance of all of its contractors, subcontractors and suppliers with all applicable Federal, State, County and Township statutes, ordinances, rules, regulations and the applicable provisions of this Final Agreement as may apply to any of the work on the Premises. Such compliance shall include, but not be limited to, the procuring of all necessary permits and licenses in connection with the work to be done and the

payment of all of the contributions, fees, premiums and taxes required by such laws, ordinances, rules and regulations.

7.9. Contractor's Agents shall collect and properly discard all waste material generated by Contractor's Agents and related to the Fill Project or the Park Project, such as paper, cartons, and the like, and shall prevent the same from being deposited, and then either thrown or blown upon the properties adjacent to the Premises or the Premises itself. Neither trash nor construction materials of any kind may be buried or burned anywhere on the Premises by Contractor's Agents. In addition, Contractor shall require that all contractors, subcontractors and material suppliers shall comply with the provisions of this paragraph. All Contractor's related rubbish and unused materials and tools shall be removed promptly from the Premises and, as work progresses, the Premises shall be cleaned and kept reasonably clean of any rubbish or refuse. If, 24 hours after the Contractor receives written notice from the Township, the Contractor or any of the contractors, subcontractors or material suppliers shall fail to comply with any of these conditions, the Township shall have the right to enter upon the Premises and perform such cleaning and placement with its own employees or with its contractors and the Township may charge the cost of such service to the financial security being established under the provisions of this Final Agreement.

7.10. Contractor shall provide and maintain (as necessary) properly secluded sanitary conveniences, in accordance with existing regulations of the Pennsylvania Department of Labor and Industry and the Pennsylvania Department of Public Health for the use of the workmen.

7.11. Contractor shall be responsible for compliance with the provisions of the Clean Water Act, 33 U.S.C. Sections 1251, *et. seq.*, regarding building, dredging or filling in areas which are or may be deemed to be wetlands within the jurisdiction of the U.S. Army Corps of Engineers or the Pennsylvania Department of Environmental Protection.

7.12. Contractor acknowledges that the placement of Fill Material on the Premises and the construction of the Improvements is primarily comprised of three different types of work:

- (a) The "Depositing" of Fill Material on the Premises;
- (b) The "Spreading" and "Compaction" of the previously deposited Fill Materials on the premises to obtain the basic, rough graded parameters and depth of Fill Materials on the Premises as shown on the Schematic Park Plans (as defined in Article II below); and
- (c) The fine grading and shaping of the previously deposited and spread Fill Material required for the "Park Improvement Construction" under the Fully Engineered Park Plans (as defined in Article II below).

7.13. Contractor further agrees to the location of the "Nighttime Setback Line" as depicted on the Plan attached hereto as Exhibit "M". Contractor and Facility Owner shall jointly agree on the best way to clearly mark and highlight the Nighttime Setback Line so that its location across

the Premises is apparent to the Contractor and its sub-contractors at all times of the day and night.

7.14. Contractor agrees that Fill Material may be Deposited (only in those locations shown on the Fill Project Plans, the Schematic Park Plans or the Fully Engineered Park Plans) on the eastern side of the Nighttime Setback Line between the hours of 6:00 A.M. to 4:30 A.M. the following morning, Monday through Thursday; 6:00 A.M. to 4:30 P.M. on Friday and Saturday; and no depositing of any kind shall be permitted on Sunday. On the western side of the Nighttime Setback Line, Depositing of Fill materials shall only be permitted between the hours of 6:00 A.M. and 9:00 P.M. Monday through Friday morning; 6:00 A.M. to 4:30 P.M. Friday and Saturday; and no Depositing shall be permitted on Sunday. In the event that the Contractor is completely prevented from depositing fill on the Premises by court order resulting from litigation brought by any person or entity (other than USEPA, PADEP or PATC) objecting to the Fill Project, the Improvements, or the Park Project, and such prohibition exists for a period of 20 days or more, Contractor shall, for the remainder to the Fill Project, be additionally permitted to deposit Fill Material on the eastern side of the Nighttime Setback Line from 4:30 P.M. on Friday to 4:30 A.M. on Saturday morning. Spreading and Compaction of Fill Materials shall be permitted on the two sides of the Nighttime Setback Line only from 6:00 A.M. to 9:00 P.M. Monday through Thursday; 6:00 A.M. to 4:30 P.M. Friday and Saturday; and no Spreading or Compaction shall be permitted on Sunday. Park Improvement Construction on the Premises (limited only to those areas, on both sides of the Nighttime Setback Line, shown to be disturbed on the Schematic Park Plans and the Fully Engineered Park Plans) shall be permitted only during the hours of 6:00 A.M. to 4:30 P.M. Monday through Saturday.

7.15. Contractor agrees to work with the Township to produce truck circulation plans reasonably satisfactory to both which shall minimize, to the maximum extent possible, the need for trucks depositing fill on the Premises to utilize their reverse gears and the accompanying noise of backup alarms. In addition, Contractor agrees to instruct all of its truck drivers depositing fill on the Premises to take all reasonably practical steps to minimize the noise of banging tailgates during the depositing of fill on the Premises.

7.16. To insure the compliance of the Contractor's Agents with:

- (a) The Fill Material restrictions of Article 6;
- (b) The dust suppression requirements of paragraph 2.8 and 7.2;
- (c) The hourly work restrictions of paragraph 7.14; and
- (d) The noise restrictions of paragraph 7.15;

Contractor agrees to deposit with the Township a Letter of Credit in the amount of \$25,000.00 to act as a "Penalty Escrow" pursuant to the terms of this paragraph. At the option of the Contractor, this Letter of Credit amount may be added to the amount of the Letter of Credit already required by paragraphs 11.8 and 11.9 below. Upon demonstration reasonably

satisfactory to a neutral third party to be agreed upon by the Contractor and the Township, that one of the Contractor's Agents has been guilty of materially violating one of the restrictions referenced in sub-paragraphs "a" through "d" above, the Contractor shall receive a written warning for the first violation of any of the restrictions (encompassed within one of the sub-paragraphs "a" through "d" above); shall forfeit or pay to the Township \$500.00 for a second violation of any restriction within one of the sub-paragraphs above; \$3,000.00 for a third violation of any restriction (within one of the paragraphs set forth above); and \$3,000.00 for any subsequent violation of such restrictions (within one sub-paragraph). In addition, for any subsequent violation of a restriction (i.e. more than 3 violations within a 3 month period) (within any of the sub-paragraphs set forth above), the Contractor shall, upon written direction received from the Township, stop work at the Premises until remedial measures to assure compliance with that restriction have been approved by the Township. Moreover, in the event that the Contractor is found to be guilty by the neutral third party of more than three material violations of the restrictions within any one of the sub-paragraphs set forth above and within a period of three months, the total compensation limitation for a Township representative at the Premises (see section 6.7(b)) shall be eliminated, and the Township shall be permitted to keep a representative at the Premises at all times that the Contractor's Agents are placing fill at the Premises and all of the costs and compensation of such representative (not to exceed \$20.00 per hour) shall be at the expense of the Contractor pursuant to paragraph 6.7. Contractor shall stop work at the Premises until remedial measures to assure compliance with that restriction have been approved by the Township.

(e) In the event that the Contractor's Agents have not had a violation of any of the restrictions within a specific sub-paragraph of "a" through "d" above for a period of three months, the penalty provisions of this Section shall be reset such that the next subsequent violation of any of the restrictions of that particular sub-paragraph shall be considered a first violation under the penalty provisions described above.

(f) In the event of a further violation of any of the restrictions within one of the sub-paragraphs "a" through "d" above, after the Township has approved remedial measures, Township shall be entitled to prohibit any further access to or work upon the Premises by the Contractor's Agents and may, at the Township's discretion, pursue all remedies available to the Township under this Final Agreement, whether in law or in equity and specifically including the procedure described in paragraph 5.2(b) above. Moreover, if, at any time, the total amount of the penalty escrow remaining secured by the Letter of Credit is reduced (through violations of the Contractor's Agents) to an amount less than \$10,000.00, Contractor shall immediately cause the Letter of Credit amount to be increased so as to reflect a penalty escrow of the original \$25,000.00 amount. Contractor's failure to cause the Letter of Credit to be increased to the original escrow amount, within 15 days of written notice from the Township to do so, shall constitute a Default under this Final Agreement and shall entitle the Township to pursue all remedies to which it is entitled under this Final Agreement whether in law or in equity.

7.17. Contractor expressly acknowledges the current existence on the Premises of the Whitpain Township Public Works compound, which includes several large cell towers leased by the Township to third party cellular telephone companies. Contractor agrees that all of its plans for

the Fill Project and the Park Project shall be designed to shield and protect the existing underground utilities, identified to the Contractor by the Township, which are connected to the Public Works compound and the cell towers. Contractor's plans for this protection shall be subject to the reasonable approval of the Township. In addition, Contractor expressly acknowledges that the Township and the third party cellular telephone operators (who are entitled to access the compound) shall at all times (during both the Fill Project and the Park Project) be provided reasonable, unobstructed access to the Public Works compound from DeKalb Pike (Route 202) in a location and manner acceptable to the Township and no less practical and efficient than the access to that compound which exists as of the date of the signing of this Agreement. Any damage caused by the Contractor's Agents to the existing underground utilities or access discussed in this paragraph shall be subject to the Indemnification obligations of the Contractor to the Township set forth elsewhere in this Agreement

ARTICLE 8. Contractor's Representations and Warranties. Contractor represents, warrants and certifies that the following are true and correct as of the date of this Final Agreement and will remain true and correct throughout the entire term of this Final Agreement:

8.1. That Contractor is a corporation, duly organized under the laws of the State of Illinois, and validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has all requisite power and authority to carry on its business as now conducted and as proposed to be conducted, to enter into and deliver this Final Agreement, and to carry out the terms hereof and thereof.

8.2. That Contractor is qualified and authorized to do business in the Commonwealth of Pennsylvania.

8.3. Contractor holds all authorizations, licenses, and permits, issued by any public or governmental regulatory body or by any third party required or advisable in connection with the conduct by it of its business and related activities as presently conducted and proposed to be conducted.

8.4. No action, proceeding, investigation or litigation is pending or threatened against Contractor which might have a material adverse affect on the financial condition or business operations of Contractor, or Contractor's ability to perform its obligations hereunder.

ARTICLE 9. Insurance

9.1. Contractor and all agents and/or subcontractors performing any of the work pursuant to this Final Agreement shall procure and maintain throughout the entire term of this Final Agreement the following coverages:

Comprehensive general liability insurance with minimum limits of liability, including but not limited to all Premises and Operations, Contractual Liability, Products Completed Operations Liability, Fire Legal

Liability, Explosion, Collapse and Underground Damage Liability, Broad Form Property Damage Liability, as well as coverage on all Contractor's mobile equipment (other than motor vehicles licensed for highway use) owned, hired or used in the performance of this Contract with limits not less than: \$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$2,000,000 general aggregate; \$2,000,000 products and completed operations; and \$1,000,000 personal and advertising.

Workers' Compensation and Occupational Disease Insurance at the statutory limits.

Employer's Liability Insurance with limits not less than: \$2,000,000 bodily injury by accident; \$2,000,000 bodily injury by disease (policy limit); and \$2,000,000 bodily injury by disease (each employee).

Automobile Liability Insurance, including Contractual Liability, covering all motor vehicles licensed for highway use and employed in the performance of this Contract, with limits not less than: \$2,000,000 bodily injury, personal injury & property damage combined each occurrence and general aggregate.

9.2. The foregoing descriptions of the insurance policies are not intended to be complete, or to alter or amend any provision of the actual policies. To the extent that the descriptions contained herein reduce coverage which might actually be afforded under the actual policies, the provisions of the actual policies shall govern.

9.3. In addition to the policies identified in section 9.1 of this Final Agreement, Contractor shall obtain and maintain, at its sole cost and expense, environmental pollution and liability insurance applicable to the Project at a limit no less than \$2,000,000 per Occurrence and \$2,000,000 general aggregate.

9.4. In the event Contractor and its subcontractors have or obtain insurance coverage in amounts in excess of those listed above, such additional limits shall benefit Facility Owner. It is to be understood that Facility Owner does not in any way represent that the insurance or the limits of insurance specified in these paragraphs are sufficient or adequate to protect Contractor's and its subcontractors' interests or liabilities, but are merely minimums.

9.5. Contractor shall provide to Township certificates of insurance of Contractor and its subcontractors acceptable to Township prior to the commencement of any activities at the Premises.

9.6. The coverages referred to above shall be primary and noncontributory over any other valid and collectable insurance. The certificate of insurance provided by Contractor and its subcontractors shall specifically set forth this primary endorsement.

9.7. The Comprehensive General Liability and Automobile Liability policies of Contractor and its subcontractors shall be endorsed to add, or shall have an existing blanket endorsement so as to add Township as an additional insured; and shall provide that the coverage afforded to Township as an additional insured will be primary and noncontributory to any other coverage available to it, and that no act or omission of Township shall invalidate the coverage. Such policies shall also provide that each may not be cancelled, allowed to expire or materially amended during the entire term of this Final Agreement, until all transportation to, placement, grading and stabilization of the Clean Fill material and the construction and installation of the Improvements is completed in accordance with the terms and conditions of this Final Agreement. The Contractor must, within two business days of receipt, forward to Township, by hand delivery, fax or email, all notices received from all insurance carriers providing insurance coverage under this Final Agreement which concern the proposed cancellation or termination of coverage of any insurance policies required hereunder.

9.8. The insurance requirements set forth herein shall not in any way limit Contractor's liability arising out of this Final Agreement, or otherwise, and shall survive the termination of this Final Agreement.

9.9. Contractor shall provide notice to Township of any losses which may reduce the limits of liability for any insurance provided for Township's benefit. Contractor will be required to replace any policy limits which are reduced due to any occurrences covered by such policies. Regardless of Contractor's notice to Township of such losses, Contractor will be required to maintain and continue in force all policy limits required herein for the term of this Final Agreement.

ARTICLE 10. Indemnity.

10.1. Contractor agrees to defend, indemnify, and hold harmless Township and its elected officials, employees, agents, officers, directors, invitees, partners, members and assigns, and successors in interest ("Indemnitees") from and against any and all claims, costs, liabilities, expenses (including reasonable attorneys' fees), losses, damages, demands, fines, penalties and causes of action to the extent caused by, arising out of, or relating to the actions or inactions of the Contractor's Agents and related to the transportation, placement and/or grading of the Fill Material to and at the Premises, and the negligence of the Contractor's Agents pertaining to the completion of the Improvements within the Park Project, including without limitation, injury or death to persons and damage to property.

10.2. Contractor agrees to defend, indemnify, and hold harmless the Indemnitees from and against any and all claims, costs, liabilities, expenses (including reasonable attorneys' fees), losses, damages, demands, fines, penalties and causes of action caused by, arising out of or relating to Contractor's or its subcontractors', agents', and/or employees' failure to comply with the terms of this Final Agreement, the Contract Documents, or any and all applicable rules,

10.3. codes, ordinances, laws and regulations relating to the transportation, placement and/or grading of the Fill Material to and at the Premises and the completion of the Improvements

within the Park Project, including without limitation, the failure to comply with any terms and conditions set forth in the approvals and permits issued by municipal, county, state and federal agencies.

10.4. For any claims against Township by an employee of Contractor or its subcontractors, or anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable, the indemnity obligation shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or its subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. Contractor expressly waives its right to assert against Township any immunities or defenses that it may have under such acts and laws.

10.5. Contractor's indemnification obligations hereunder shall extend to any claims occurring after this Final Agreement is terminated as well as while it is in force, and shall continue until all claims, actions, demands or matters that are covered under the indemnification provision herein are fully and finally adjudicated or barred by the applicable statute of limitation laws.

10.6. The indemnity provisions identified herein are specifically intended to survive termination of this Final Agreement.

10.7. The Township shall hold the Contractor harmless from the condition of all existing material on the Premises as of the date of this Agreement and the Township shall have the lead role in defending against litigation brought by any person or entity (other than USEPA, PADEP or PATC) objecting to the Fill Project, the Improvements, or the Park Project.

ARTICLE 11. **Improvements.**

11.1. In consideration for the license to place the Fill Material on the Premises pursuant to this Final Agreement, Contractor has agreed to construct and install the Improvements, which include without limitation, athletic fields, parking areas, roads, driveways, trails, dog park, irrigation systems, future building slab, screened area for portable toilets, utilities, protection systems (from heavy equipment traffic) for existing underground utilities to Whitpain Township's Public Works and cell tower compound on the Premises), underground rain tanks, storm sewers, fencing, landscaping and related improvements, more particularly illustrated on schematic plans prepared by Hibbeln Engineering, dated _____, 2011, last revised _____, 2011, consisting of _____ () sheets, (all of which are collectively referred to as the "Schematic Park Plans"). A complete set of the Schematic Park Plans is attached hereto as Exhibit "H" and expressly made a part hereof. A list of the Improvements (as well as the estimated costs of completing each) is attached hereto as Exhibit "K" and also expressly made a part hereof. Contractor agrees that all of the costs and expenses of outside (3rd Party) consulting firms, related to the preparation of the Schematic Park Plans shall be at the sole expense of the Contractor, however, it is agreed that Contractor's obligation for the costs and expenses of preparing these Plans shall not exceed the amount set forth on Exhibit "K" attached hereto. In addition, as soon as is reasonably practical, _____ shall complete (at the sole expense of Contractor, however, it is agreed that

Contractor's obligation for such expense shall not exceed the amount set forth on Exhibit "K" attached hereto for such category of expense) detailed, full engineered versions of the Park Plans which, when completed and approved by Township and Contractor, shall be attached hereto as Exhibit "L" and expressly deemed a part hereof (the "Fully Engineered Park Plans"). The parties shall also revise Exhibit "K" (the list of the park improvements) to reflect any differences in the Improvements or their costs which are indicated on the Fully Engineered Park Plans. Finally, the Contractor shall also prepare (and submit to the Township for its reasonable approval) detailed shop drawings/cut sheets for storm sewer materials, sanitary sewer materials and roadway/parking lot/trail materials and the approved shop drawings/cut sheets shall (upon approval) be attached to this agreement as Exhibit "N" and shall be deemed an expressly intended part of this Agreement. The scope of the Park Project is as set forth in Exhibit "K" attached to this Final Agreement and also includes items which are generally considered incidental to the items set forth in Exhibit "K". Specifically excluded from this Final Agreement (unless the parties otherwise agree in writing) are: furnishing and installing playground equipment, border and mulch; any Bituminous Concrete Base Course, (BCBC); sod; and any re-seeding of areas damaged by third parties before the original seeding had been fully established.

11.2. As an integral part of the placement, grading, and stabilization of the Fill material at the Premises, Contractor shall complete, at its sole cost and expense, the Improvements in accordance with the Fully Engineered Park Plans. Unless otherwise agreed to in writing by the Contractor and the Township, or if the Contractor is "substantially delayed" on the Turnpike Project, the Fill Project shall be completed by December 31, 2012 and the Improvements within the Park Project shall be completed by Contractor by December 31, 2013. For purposes of the preceding sentence, the term "substantially delayed" shall mean delay caused by events or conditions beyond the reasonable control of the Contractor which are valid and acceptable reasons for delay under the Contractor's agreement with the PATC for the Turnpike Project. For the purposes of completing the Improvements, Township hereby grants to Contractor a temporary construction easement over the Premises, solely for the completion of the Improvements, beginning on the date of the execution of this Final Agreement and ending on December 31, 2013. The failure of the Township to immediately notify Contractor that it is in default of this Final Agreement for failure to complete the Improvements within the time period provided herein shall not constitute a waiver by the Township of its right to declare Contractor in default for failure to timely complete the Improvements in the future.

11.3. The Improvements shall be constructed in strict accordance with the Plans, as well as all applicable laws, ordinances, rules regulations and requirements and specifications of Township, the Pennsylvania Department of Transportation, the Pennsylvania Department of Environmental Protection, and all other duly constituted public authorities which shall have jurisdiction over the Premises and/or the installation, construction, supply or maintenance of any of the Improvements.

11.4. The Township shall have the right, at any time, to have an engineering firm of its selection inspect any of the work to be performed on the Premises and all such inspections may be made by the Township (through its own employees or consultants) to confirm that the Improvements have been and are being constructed in compliance with the Plans, the Contract

Documents, applicable law, and this Final Agreement. The cost of such inspections shall be billed to Contractor and such invoices shall be immediately due and payable upon receipt. The hourly charge for such inspections shall not exceed \$50.00 per hour and the total charges for such inspections for which the Contractor shall be responsible shall not exceed \$45,000.00. Township shall have recourse against the Financial Security being posted under paragraphs 11.8 and 11.9 below, if invoices for the agreed inspection fees have not been paid by Contractor within 30 days of the date of the invoice.

11.5. With regard to the construction and installation of any sidewalks, curbing, driveways, parking areas and cartways shown on the Plans, no wearing course paving shall be permitted between October 15 and April 15 without prior written approval of the Whitpain Township Engineer. No installation of binder course paving on any roadway shall be permitted between November 15 and March 15 of any year without prior written approval of the Whitpain Township Engineer.

11.6. Contractor shall construct storm drainage as shown on the Park Plans in order to adequately drain the Premises of surface waters. In the event that at any time during the construction period, it is determined by the Whitpain Township Engineer, upon visual inspection of the operation of such storm water drainage and detention system, that the system as designed is inadequate or ineffective, in whole or in part, the Contractor shall make all changes necessary to the storm drainage system to adequately and appropriately drain the Premises of surface waters. Any such changes in the storm water drainage system for the Tract shall be reviewed and approved by the Whitpain Township Engineer.

11.7. All swale and retention basin construction required by the Plans to be done by Contractor on the Premises shall be done in accordance with any construction schedules required by the Park Plans or any associated permits, approvals, laws or regulations, but in all events prior to the construction or erection of any structures which will create water runoff intended to be controlled by any such swale or retention basin. The construction of such swales or basins shall be done simultaneously with and in conjunction with the construction of other required improvements of the Project so that there can be a stabilization process before the erection and construction of any structures.

11.8. Contractor and Township agree that the estimated cost of the Improvements is as set forth on Exhibit "K" attached hereto. In order to secure the construction of the Improvements in accordance with the Plans and all other agreements between the parties set forth herein (including the Maintenance obligation set forth in paragraph 12.1 below), Contractor agrees to deliver to the Township a Performance Bond in the total amount shown on Exhibit "K" or \$3,000,000.00, whichever is less. Such Performance Bond shall be issued by a surety authorized to do business in the Commonwealth of Pennsylvania and such surety shall have a rating and financial statement reasonably satisfactory to Township. In addition, the language of the Performance Bond shall be reasonably satisfactory to the Township's attorneys. Such Performance Bond shall be conditioned upon the complete and satisfactory performance of all obligation of the Contractor under this Final Agreement.

11.9. In partial consideration for the Township's agreement to accept the Performance Bond as financial security for the proper completion of Contractor's obligations under this Final Agreement (including the Maintenance obligation set forth in paragraph 12.1 below), Contractor also agrees to deposit with Township a Letter of Credit in a form and with language satisfactory to the Township Solicitor. The Letter of Credit shall be issued by a federally insured financial institution authorized to do business in the Commonwealth of Pennsylvania and must be presentable at an office of such financial institution located within the five county, metropolitan Philadelphia area. The Letter of Credit shall be irrevocable until at least December 31, 2013 (or the end of the Maintenance period under paragraph 12 below, whichever is later) and shall contain "evergreen" language providing that it cannot be revoked or cancelled without at least sixty days prior, written notice to the Township (with a copy to the Township Solicitor). The Letter of Credit shall be in the minimum face amount of \$250,000.00 and shall be callable by the Township upon written representation to the issuer (with a copy to the Contractor) that the Township requires the funds secured by the Letter of Credit in order to litigate the Township's entitlement to some or all of the Performance Bond proceeds which secure the Contractor's performance under this Final Agreement. Upon receipt of the Letter of Credit monies from the issuer, Township agrees to place such funds in a separate account and to keep detailed records of the costs and fees (specifically including attorney's fees) incurred in any litigation to collect some or all of the proceeds of the Performance Bond provided for in paragraph 11.8. At the conclusion of such litigation, Township shall promptly return to the Contractor the unspent portion of the Letter of Credit proceeds. Any dispute as to whether the Contractor is in default of this Final Agreement or whether the Township has properly followed the procedure to collect the proceeds of the Performance Bond shall in no way limit the Township's recourse against the Letter of Credit. In lieu of providing a cash fund for the Penalty Escrow described in paragraph 7.16 above, Contractor may increase the amount of this Letter of Credit by the required amount of the Penalty Escrow and Township shall also have recourse against the Letter of Credit for penalties assessed against the Contractor and not paid within 30 days pursuant to paragraph 7.16 above by the neutral third party to the extent of the unpaid penalty.

11.10. As the Contractor completes the various segments or categories of the Improvements, it may certify to the Whitpain Township Engineer that such Improvements have been completed in accordance with the terms of this Final Agreement and the Park Plans. The Engineer (and/or such independent consulting engineer or engineers as the Engineer shall designate) shall inspect the segment, segments or categories of Improvements which the Contractor alleges have been completed. If the Engineer shall determine that the said Improvements have been completed in accordance with this Final Agreement and the Plans, the Engineer shall certify that portion of the total Performance Bond which is appropriate for release. No amount proposed to be reduced from the Performance Bond by the Contractor shall exceed ninety percent (90%) of the value of the Improvements alleged to have been completed nor shall such reduction result in the reduction of the total Performance Bond remaining to an amount less than one hundred ten percent (110%) of the work remaining to be completed. Following written certification of the Engineer, the Township shall, at the request of the Contractor, issue a letter to the surety which issued the Performance Bond authorizing the reduction of the Performance Bond in the amount certified by the Engineer. If at any time during the work, the Engineer reasonably believes that the funds necessary to complete the Improvements are in excess of the amount then reflected in the

Performance Bond, the Engineer shall so notify the Contractor and the surety which issued the Performance Bond, and the Contractor shall immediately take such steps as may be necessary to increase the amount of the Performance Bond by such additional sum as is determined by the Engineer to be needed to complete the Improvements. In lieu of increasing the Performance Bond under such circumstances, the Engineer may require that any amounts then due to be reduced (or thereafter requested to be reduced) from the Performance Bond to reflect completed Improvements shall continue to be held in the Performance Bond so that at all relevant times the Performance Bond shall be in an amount of at least one hundred ten percent (110%) of the financial security necessary to complete the Improvements. For purposes of this paragraph, all references to the “Engineer” in this paragraph shall mean references to the Whitpain Township Engineer.

11.11. In the event that Contractor requires more than the time specified in Subsection 11.2 above to complete the Improvements, the Township may, if it is obligated to agree or otherwise decides to agree to an extension of time to complete the Improvements, require the Performance Bond to be increased to an amount representing one hundred ten percent (110%) of the cost of completing the Improvements as re-established at that time. The Township shall be under no obligation to notify Contractor that the date of completion has expired. Contractor shall have the sole obligation of requesting, in writing, an extension of time to complete the Improvements.

11.12. The Improvements shall not be deemed to be completed until Township accepts by resolution a Certificate of Substantial Completion (a form for this Certificate is attached hereto as Exhibit “O”) issued by the Whitpain Township Engineer certifying that the Improvements have been satisfactorily completed in accordance with the terms of this Final Agreement. This Certificate of Final Completion shall be signed by the Contractor, the Township and the Whitpain Township Engineer.

For purposes of this Final Agreement, the term “Substantial Completion” shall be the stage in the progress of the construction of the Improvements when

(a) The Improvements are sufficiently completed in accordance with the Plans and all relevant contract documents so that the Township can occupy or utilize the Improvements for their intended purposes; and

(b) All material items on any punchlist prepared by the Township’s Engineer (or consulting engineer) have been completed to the reasonable satisfaction of such engineer.

11.13. Upon Substantial Completion of all of the Improvements, and the further completion of all punchlists issued from the Township’s engineering representative, and acceptance of the Improvements by Resolution of the Township, Township shall release the Performance Bond and Letter of Credit to the Contractor subject to the maintenance obligations set forth in Article 12 below.

ARTICLE 12. Maintenance Period.

12.1. Contractor acknowledges and agrees that it shall post a Maintenance Bond (including all of the requirements for the issuer, the terms, etc. are required for the Performance Bond in paragraph 11.8 above) to secure the structural integrity of the Improvements, as well as the functioning of those Improvements in accordance with the design and specifications as depicted on the Fully Engineered Park Plans. This posting of a Maintenance Bond shall be for a period not to exceed twelve (12) months from the date of the Township's Resolution accepting the certificate of Substantial Completion. Contractor and Township agree that simultaneously with the Township's issuance of a Certificate of Substantial Completion, Contractor will supply Township with the Maintenance Bond in an amount not to exceed \$450,000.00. The condition of the Maintenance Bond shall be that the Contractor shall, for the period of twelve (12) months as defined above, repair the Improvements and construct and make good and replace all materials, equipment and work, not conforming to the Fully Engineered Park Plans and all relevant Contract Documents and remedy all material defects in materials, equipment and workmanship, including material shrinkage, material settlement and other unreasonable faults of any kind whatsoever not in conformance with the Plans or Contract Documents, and entirely at Contractor's own expense. Specifically excluded, however, from this maintenance obligation shall be: normal wear and tear, vandalism; abuse; or damage by others. Contractor shall also not be obligated to provide watering, mowing or re-seeding of lawn or field areas (except as caused by the Contractor's actions or inactions or the failure of the seed provided by the Contractor to properly germinate); emptying of trash containers; removal of snow; utility bills or other similar activities or costs associated with the use of the Park Project by the Township or by the public.

12.2. In case the Contractor shall fail or refuse to repair or correct defective materials, equipment or workmanship as required in paragraph 12.1 above, Contractor agrees that the Township shall have the right to make or cause to be made good or replace all materials, equipment and workmanship not conforming with the Fully Engineered Park Plans or other Contract Documents, and remedy all material defects in materials, equipment and workmanship as well as material shrinkage, material settlement or other faults of any kind whatsoever arising therefrom which arise during the twelve (12) month Maintenance Period and as to which the Township has provided Contractor with written notice within the twelve (12) month Maintenance Period. Such defective material, equipment and workmanship shall specifically be deemed to exclude the consequences of normal wear and tear; vandalism; abuse; and damage by others. In the event that the Township should exercise and give effect to such rights, the Contractor shall be liable hereunder to pay and indemnify the Township upon completion, the final cost thereof to the Township, including but not limited to engineering, legal and any associated costs, together with any direct damages, which the Township may sustain as a result of the failure of the Contractor to carry out and execute all of the provisions of this Final Agreement.

ARTICLE 13. Default / Remedies.

13.1. The following shall constitute a Default of Contractor hereunder: (1) if Contractor materially violates or materially fails to comply with the terms of the Contract Documents, and

the same continues beyond any applicable notice and cure period contained in the Contract Documents, or for a period of ten (10) days after delivery of written notice of such violation or failure from Township to Contractor, whichever is greater; or (2) Contractor repeatedly or materially violates the terms of any law, ordinance, rule, regulation, permit, approval or governmental consent relating to the transportation, placement and grading of the Fill material to and at the Premises, including without limitation, violations of the grading permit and/or NPDES permit; or (3) Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code, has an involuntary petition filed against it which remains undischarged after a period of sixty (60) days, has a receiver appointed, or files for dissolution or otherwise is dissolved; or (4) if any permit or approval necessary for the completion of the Project, through the fault of the Contractor, expires or is terminated or revoked and is not reinstated within thirty (30) days; or (5) Contractor is otherwise in breach of any material provision of this Final Agreement and the same continues for a period of ten (10) days after delivery of written notice from Township to Contractor.

13.2. Upon the occurrence of a Default of Contractor hereunder, Township shall have the right to (1) immediately terminate this Final Agreement, in which event, upon the effective date of the termination, Contractor shall immediately cease the placement of all Fill Material on the Premises, complete the grading of all Fill Material already on the Premises in accordance with the Contract Documents (including paragraph 5.2(b) of this Final Agreement) and permanently stabilize all disturbed areas in accordance with the Contract Documents or as required by all entities having jurisdiction over such disturbed areas, (2) commence an action for damages, (3) take any and all steps necessary to collect the Performance Bond or draw on the Letter of Credit, and (4) exercise any and all other rights and remedies available at law or at equity. All of said remedies of Township may be executed cumulatively and concurrently.

13.3. In addition to the foregoing, if the Default of Contractor results from the failure to complete the Improvements in accordance with the terms of this Final Agreement, Township may, at its option, elect to complete the Improvements, and in order to pay for the cost of the same, take all action necessary to immediately obtain the funds available under the Performance Bond and shall have the right to call the Letter of Credit under the circumstances set forth in paragraph 11.9 above. In such event, the surety issuing the Performance Bond and the financial institution issuing the Letter of Credit (if applicable) shall immediately make the remainder of the Performance Bond and the Letter of Credit available to the Township. If the proceeds of the Performance Bond are insufficient to pay the cost of securing the full performance of Contractor's obligations under this Final Agreement (and particularly of installing or making repairs or corrections to the Improvements), the Township may, at its option, institute appropriate legal or equitable action to recover the monies necessary to complete the remainder of the Contractor's obligations hereunder. In all cases, the Contractor shall be responsible for one hundred percent (100%) of the costs of the installation of the Improvements plus all related expenses including such reasonable attorney's fees as may be incurred by the Township in enforcing any of the provisions of this Final Agreement against the Contractor.

ARTICLE 14. NOTICES

14.1 All notices or other communications required to be given under the terms of this Final Agreement shall be in writing and shall be sent certified mail, postage pre-paid, addressed as follows:

(a) If to the Township, addressed to:

Whitpain Township
960 Wentz Road
Blue Bell, PA 19422
(Attention Township Manager)

With a copy to:

James J. Garrity, Esquire,
Blue Bell Executive Campus,
460 Norristown Road, Suite 110,
Blue Bell, PA 19422-2323.

(b) If to the Contractor, addressed to

Walsh Construction Company
1257 DeKalb Pike
Blue Bell, PA 19422
Attn: Brian Neckerman

With a copy to:

Walsh Construction Company
929 West Adams Street
Chicago, IL 60607
Attn: Gary Lemna

or to such other address or addresses and to the attention of such other person or persons as either of the parties may notify the other in accordance with the provisions of this Final Agreement.

ARTICLE 15. Miscellaneous

15.1. Neither Contractor nor its subcontractors, consultants, agents, nor any person employed by any of them shall be deemed to be Township's employees, servants, or agents in any respect. Nothing in this Final Agreement shall be construed as creating a joint venture or partnership between Facility Owner and Contractor.

15.2. This Final Agreement shall not be assignable by Contractor without Township's prior written consent. Township shall have the right to assign this Contract to any type of park or

recreation authority created by Township (if any) for the management and operation of the Premises in the future without the consent of Contractor.

15.3. No waiver by either party of any breach of any of the covenants or conditions herein contained shall be construed as a waiver of any succeeding breach of the same or of any other covenant or condition.

15.4. This Final Agreement represents the entire agreement between Township and Contractor and supersedes any prior written or oral representations. This Final Agreement cannot be modified by oral agreements, and shall be modified only by a writing signed by both parties.

15.5. In the event that any term, provision or part of this Final Agreement is held to be illegal, invalid or unenforceable under law, regulations, ruling, order or ordinance of any federal, state or local government to which this Final Agreement is subject, such term or provision, or part thereof, shall be deemed severed from this Final Agreement and the remaining terms and provisions shall remain unaffected thereby.

15.6. This Final Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to conflict of laws principles. Subject to the specific, non-binding mediation provisions set forth herein, Contractor agrees to proper venue in and submits to the jurisdiction of the Montgomery County Court of Common Pleas with regard to the resolution of any dispute arising in any way under the terms of this Final Agreement.

15.7. Captions used in this Final Agreement are not part of this Final Agreement and are for convenience of reference only and shall not affect the meaning or construction of any of its provisions.

15.8. This Final Agreement shall be binding upon Contractor, Township and their respective successors and assigns. However, any attempted assignment of this Final Agreement shall be subject to the requirements set forth herein.

15.9. All time periods, wherever mentioned herein, shall be of the essence in this Final Agreement.

15.10. Each party and their respective legal counsel have actively participated in the negotiation and drafting of this Final Agreement, and in the event of any ambiguity or mistake contained herein, or any dispute among the parties with respect to any provisions hereof, no provision of this Final Agreement shall be construed against any of the parties solely on the basis that such party or its counsel was the drafter thereof.

15.11. Contractor acknowledges that this is a public contract, accessible by the public under the Pennsylvania Right-to-Know Law, 65 P.S. §67.101 et seq. (the "Right to Know Law"). Contractor agrees that it will, when requested by Facility Owner, cooperate with Township in complying with the Right to Know Law, and any other similar laws, in complying with requests for public records made under such laws. Contractor's cooperation shall include, but not necessarily be limited to, prompt communication with Township regarding the existence of a

record, the length of the record and other information requested by Township, adherence to the fee schedule issued by Township for any costs associated with producing or providing access to the record and promptly providing access to or copies of the record. If Contractor fails to cooperate with Township in response to a request for a public record, then Contractor shall indemnify Township for any and all costs incurred, including attorneys' fees of Township, as well as any costs, including any attorneys' fees of the requester, fines or other penalties imposed upon Township by a court of competent jurisdiction relating to Contractor's failure to cooperate with Township.

15.12. Contractor and Township mutually waive consequential damages against the other.

IN WITNESS WHEREOF, each party hereto has caused this Final Agreement to be duly executed under seal and the day and year first above written.

TOWNSHIP:
WHITPAIN TOWNSHIP

By: _____

Attest: _____

CONTRACTOR:
WALSH CONSTRUCTION COMPANY

By: _____

Attest: _____

record, the length of the record and other information requested by Township, adherence to the fee schedule issued by Township for any costs associated with producing or providing access to the record and promptly providing access to or copies of the record. If Contractor fails to cooperate with Township in response to a request for a public record, then Contractor shall indemnify Township for any and all costs incurred, including attorneys' fees of Township, as well as any costs, including any attorneys' fees of the requester, fines or other penalties imposed upon Township by a court of competent jurisdiction relating to Contractor's failure to cooperate with Township.

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**TOWNSHIP:
WHITPAIN TOWNSHIP**

By: _____

Attest: _____

**CONTRACTOR:
WALSHE CONSTRUCTION COMPANY**

By: _____

Attest: _____

EXHIBIT A

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S
MANAGEMENT OF FILL POLICY

EXHIBIT B

GENERAL CONDITIONS FOR DISPOSAL OF FILL AT THE PREMISES

EXHIBIT C
GRADING PLANS APPROVED BY TOWNSHIP

EXHIBIT D

GRADING PERMIT ISSUED BY TOWNSHIP, AND ANY AND ALL CONDITIONS
THERE TO

EXHIBIT E

EROSION AND SEDIMENT CONTROL PLANS APPROVED BY THE MONTGOMERY
COUNTY CONSERVATION DISTRICT

EXHIBIT F

NPDES PERMIT ISSUED BY THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND ANY AND ALL CONDITIONS THERETO

EXHIBIT G
INTENTIONALLY OMITTED

EXHIBIT H

SCHEMATIC PLANS AND SPECIFICATIONS FOR IMPROVEMENTS
WITHIN THE PARK PROJECT

EXHIBIT I
COLLECTION SAMPLE LAYOUT PLAN

EXHIBIT J

EPA RCRA MANUAL, SW-846

EXHIBIT K

LIST OF IMPROVEMENTS WITH ESTIMATED COSTS

EXHIBIT L
THE FULLY ENGINEERED PARK PLANS

EXHIBIT M

THE NIGHTTIME SETBACK LINE PLAN