

EXHIBIT 1

Proposed

**Landfill Gas Purchase
Agreement**

THE FOLLOWING IS A PROPOSED LANDFILL GAS PURCHASE AGREEMENT WHICH SPECIFIES THE GENERAL TERMS AND CONDITIONS AND STANDARD REQUIREMENTS OF COUNTY CONTRACTS. PROPOSER SHALL IDENTIFY ANY OBJECTIONS TO AGREEMENT TERMS AND DETAIL ITS BASIS OF CONCERN OR PROPOSE ALTERNATE LANGUAGE WITH ITS INITIAL RESPONSE. THIS AGREEMENT MAY NEED TO BE MODIFIED BASED ON THE PROPOSER'S TECHNOLOGY AND OPTION SELECTED.

PROPOSED LANDFILL GAS PURCHASE AGREEMENT

THIS LANDFILL GAS PURCHASE AGREEMENT ("Agreement"), is made and entered into effect as of the last date that it is executed, by and between, _____, hereinafter referred to as the "Contractor" and County of Volusia, a political subdivision of the State of Florida, whose address is 123 West Indiana Avenue, DeLand, Florida 32720 hereinafter referred to as "County." The Contractor and the County are collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the County is authorized to construct, acquire, improve, maintain, and operate its Solid Waste Management Facilities in the County; and

WHEREAS, the County owns an active landfill gas ("LFG") collection system at the Tomoka Farms Road Landfill Facility located at 1990 Tomoka Farms Road, Port Orange, Florida where Class I and Class III wastes are permanently deposited in solid waste disposal units ("Landfill") pursuant to applicable federal, state, and local laws and regulations, which facilitates control of LFG migration and atmospheric emissions, including odors; and

WHEREAS, the County plans to construct subsequent expansions to the LFG Collection System and Contractor seeks to construct a Conversion System at the Landfill to process and market a Beneficial End-Use Product as Commercially Reasonable; and

WHEREAS, the County recognizes that the beneficial use of recovered LFG is of environmental and economic benefit to the County; and

WHEREAS, the County desires to enter into an agreement with the Contractor whereby the Contractor would make certain payments to the County for the use and rights to the LFG from the Landfill for sale to an Energy Customer and if feasible the use of Excess Gas for alternative use.

NOW, THEREFORE, in consideration of the premises and mutual promises and conditions contained herein, it is mutually agreed between the Parties as follows:

SECTION 1 - DEFINITIONS

Unless the context indicates otherwise, as used herein, the terms set forth below shall be defined as follows:

Access Area: Those certain areas on parcels of real property where an access road from Tomoka Farms Road to the Landfill is located, as more particularly described in Exhibit A – Conversion System Site Map hereto.

Applicable Law: Any and all applicable federal, state, county, municipal, and local laws, statutes, rules, regulations, ordinances, codes, restrictions, permitting requirements and any other governmental requirements or obligations of any kind or nature relating to or regulating the expansion, construction and management and operation of the Landfill.

Baseline Landfill Gas Amount: The minimum amount of LFG needed to operate the Conversion System.

Beneficial End-Use Product: Product(s) derived by the Contractor from the untreated LFG collected from the landfill which may include, but are not limited to: processed LFG, CNG or LNG derived from LFG, pipeline quality LFG, electric power, thermal energy, CO₂, any two or more of the foregoing, Renewable Energy Credits bundled with any of the foregoing, or other product(s) identified by the Contractor. The term shall include any marketable product derived from the Contractor's processing of LFG whether or not it is a product used to produce energy or heat. For the purpose of this Agreement, Beneficial End-Use Product shall not include the LFG needed for the processing and disposal of landfill leachate nor the flaring of LFG.

British Thermal Unit or BTU: The quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit, for example from 58.5 to 59.5 degrees Fahrenheit, under standard pressure of 30 inches of mercury at or near its point of maximum density. One BTU equals 252 calories, 778 foot-pounds, 1,055 joules, 2.931 10⁻⁴ kWh, or 0.293 watt-hours.

BTU per Cubic Foot: A measure of the heat available or released when one cubic foot of gas is burned. LFG has an expected value of 500 to 600 BTU per cubic foot.

Commercial Operations Date: The date when the Contractor first delivers a Beneficial End-Use Product to an Energy Customer and Leachate Processing and Disposal Facility begins operations or twenty-four (24) months from the Effective Date of this Agreement, whichever occurs first. Contractor shall provide a thirty (30) day notice to the County before Commercial Operations are to begin and shall provide notice to County of the official Commercial Operations Date promptly after it occurs.

Commercially Reasonable Efforts: Reasonable commercial practices for companies in the business of landfill operation, LFG collection, destruction, and/or conversion of LFG to Beneficial End-Use Product.

Condensate: The liquid formed from the condensing of the vapors that occurs during the collection, transportation, and processing of LFG.

Contractor: That person or entity, including employees, servants, partners, principals, agents, and assignees of the person or entity that has submitted a proposal to obtain business with the County

to provide the product and/or services set forth herein. Respondent becomes the Contractor at the time the Agreement is executed by all parties.

Contract Administrator: The Director of Purchasing and Contracts or designee shall serve as Contract Administrator. The Contract Administrator shall be responsible for addressing any concerns within the scope of the Agreement. Any changes to the resulting Agreement shall be done in writing and authorized by the Director of Purchasing and Contracts.

Contractor Improvements: Any demolition, alteration, addition, or improvement to the Conversion System Site (or other location at the Landfill to support Contractor's operations.) Contractor Improvements shall be governed by Exhibit D – Construction Phase Bonds and Insurance Requirements to this Agreement.

Conversion System: The Contractor's building or enclosure and equipment at the Landfill required for the processing and delivery of the Beneficial End-Use Product to the Energy Customer. The Conversion System may include, but is not limited to, Contractor's connection to the Delivery Point, compression equipment, an oil and gas cooler, a condensate knockout tank, scrub areas, generating equipment, treatment facilities, gas pipeline, condensate knockout/pump stations, and related facilities. However, the Contractor may elect to use such different technologies or equipment for the processing of LFG, the generation of electric power or other energy as Contractor, in its sole judgment, determines which would be better suited for the application. Where the context requires, "Conversion System" shall also mean any new or different technologies and equipment installed by the Contractor at the Conversion Site to convert LFG to Beneficial End Use Products. The County-owned Flare Stations, County's Blower Skid, and LFG Collection System are excluded from the Conversion System.

Conversion System Meter and Measuring Devices: The LFG flow meter and other equipment that shall measure and record the quantity and chemical composition (as listed in Section 3D) of LFG delivered from the County's LFG Collection System to the Contractor's Conversion System, which shall be placed by the Contractor at the Delivery Point and utilized by County for determining the amount of gas purchased by the Contractor and for regulatory requirements.

Conversion System Site: The location or locations within the Landfill where the Conversion System(s) is/are located.

County's Blower Skid: The equipment owned by the County and used to provide vacuum to the LFG Collection System to extract LFG from the Landfill. The unit from the manufacturer's nameplate is a Perennial Energy, Model No. GHS-400-60, Max Flow 4000 SCFM, Min. Flow 500 SCFM.

Day: A twenty-four (24) hour calendar day.

Delivery Point(s): The point of connection between the LFG Collection System and the Contractor's Conversion System at which the LFG passes through the Conversion System Meter. Ownership of the untreated LFG shall transfer from the County to the Contractor at the Delivery Point. See Exhibit B – Delivery Point Location Map with Meter Locations for a diagram of the

location of the Delivery Point. All meters shall be maintained and calibrated in accordance with the Agreement.

Emission Credits: Emission reduction or carbon credit emission payments, renewable energy certificates, or similar benefits that accrue from the Contractor's use of LFG from the Landfill but not including Renewable Energy Credits or Renewable Energy Tax Credits.

Energy Customer: The party or parties to which the Contractor will sell a Beneficial End-Use Product.

Environmental Laws: Any and all applicable federal, state, county, municipal and local laws, statutes, rules, regulations, ordinances, codes, restrictions, permitting requirements, licensing requirements and any other governmental requirements or obligations of any kind or nature relating to (i) environmental pollution, contamination or other impairment of any kind or nature, (ii) the construction, installation, repair, maintenance or operation of the LFG Collection System and/or (iii) any hazardous waste or other toxic substances of any nature, whether liquid, solid and/or gaseous, including, without limitation, smoke, vapor, fumes, soot, radiation, acids, alkalis, chemicals, wastes, by-products, and recycled materials. These Environmental Laws shall include, but not be limited to, the federal Solid Waste Disposal Act, the federal Clean Air Act, the federal Clean Water Act, the federal Resource Conservation and Recovery Act of 1976, the federal Comprehensive Environmental Responsibility Cleanup and Liability Act of 1980, all as amended from time to time, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Commission, regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect and all applicable local ordinances, rules, regulations and permitting or licensing requirements. This definition shall not be interpreted to include the laws relating primarily to health and safety such as the Occupational Safety & Health Association and similar state laws.

Excess Gas: The quantity of LFG received by Contractor in excess of the Baseline Landfill Gas Amount that may be alternatively be used in addition to the Beneficial End Use Products for other technologies or to meet County needs, e.g. leachate evaporation.

Flare Stations: The equipment and appurtenances owned by the County, used to incinerate LFG which are part of the LFG Collection System and not a part of the Conversion System. The Flare Stations are used to incinerate LFG in conformance with applicable federal, state, and local rules and regulations, and to control odors.

Flare Station Meter: LFG flow meter used to record the amount of LFG delivered to the Flare Stations for incineration of LFG.

Force Majeure: The occurrence of an event(s) beyond the control or reasonable anticipation of either party, including, but not limited to acts of God, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties. See Section 13 of this Agreement.

Heating Value: The amount of heat produced by the complete combustion of a unit quantity of fuel. The gross or higher heating value (HHV) is that which is obtained when all of the products of combustion are cooled to the temperature existing before combustion, the water vapor formed during combustion is condensed, and all the necessary corrections have been made. The net or lower heating value (LHV) is obtained by subtracting the latent heat of vaporization of the water vapor, formed by the combustion of the hydrogen in the fuel, from the gross or higher heating value.

Landfill: Tomoka Farms Road Landfill Facility located at 1990 Tomoka Farms Road, Port Orange, Florida, owned by the County, where Class I and Class III wastes are permanently deposited in solid waste disposal units.

Landfill Gas (LFG): Any and all gases resulting from the normal anaerobic decomposition of refuse material in the Landfill, consisting principally of methane, carbon dioxide, and traces of other constituent gases. The unit of measurement of LFG delivered hereunder shall be one standard cubic foot of LFG at a base temperature of 60°F and absolute pressure of 14.65 pounds per square inch and saturated water vapor. All fundamental constants, observations, records, and procedures involved in determining the quantity of LFG delivered hereunder shall be in accordance with the standards prescribed in Report No. 3 of the American Gas Association, as now in effect and from time to time amended or supplemented.

LFG Collection System or Wellfield: The County's network of LFG extraction wells and interconnecting pipes together with attendant valves, condensate sumps and pumps, monitoring devices, Flare Stations, blowers, and other related equipment installed to extract, collect, and transport LFG to the Delivery Point(s) and/or destroying LFG not utilized in the Conversion System.

LFG Purchase Agreement: This Agreement between the County and Contractor.

Leachate: The liquid that has passed through or emerged from solid waste and may contain soluble, suspended, or miscible materials.

Leachate Disposal ("LD") Meter: The LFG flow meter and other equipment that shall measure and record the quantity of LFG delivered to the Contractor's Leachate Processing and Disposal facility, which shall be placed by the Contractor.

Milestone Schedule: The schedule of milestones attached as Exhibit E to this Agreement.

Operation Plan: A written plan, updated as necessary to at all times reflect the most current operational guidelines utilized by the Contractor with respect to the operation of the Conversion System, Conversion System Site, on-site personnel management, and incidental and connected systems and procedures located at the Landfill arising from this Agreement.

Utility Interface: (i) In the case where LFG is used to generate electric power, this term shall mean the step-up transformer, metering facilities, protection circuitry, transmission lines, poles, and any other equipment necessary to interconnect the Conversion System with the grid of the

electric utility in whose franchise area the Landfill is located, or (ii) in the case where LFG is converted to other Beneficial End Use Products, this term shall mean the metering facilities, pipelines, valves and any other equipment necessary to interconnect the Conversion System with the transmission or distribution pipelines or other facilities of the electric utility, the pipeline company, container filling location, or other Energy Customer.

SECTION 2 – RIGHTS GRANTED TO CONTRACTOR

Subject to the limitations and other provisions of this Agreement, County hereby grants to Contractor the following:

- A. Landfill Gas. The right and license to connect to the LFG Collection System, process, sell and utilize the LFG that is generated from the Landfill and other contiguous landfill expansion areas and delivered to the Delivery Point(s) during the term of this Agreement. It shall be the Contractor's responsibility to connect to the LFG Collection System and, subject to Commercially Reasonable Efforts and the terms of this Agreement, utilize all LFG made available by the County for processing and sale as a Beneficial End-Use Product to an Energy Customer. Title to and risk of loss for the LFG shall pass to the Contractor at the Delivery Point(s).

County shall have the right to take or otherwise use Excess Gas not used by the Contractor, subject to the terms of this Agreement. Excess Gas shall be recovered in such a manner so as not to negatively impact or unreasonably interfere with the Contractor's operations or production and sales of Beneficial End Use Products. County and Contractor shall coordinate their efforts for Collection System work if the County installs or constructs any collection devices or performs maintenance to the LFG Collection System.

In the event County and Contractor cannot agree on the actions needed to comply with Applicable Law, the Contractor shall defer to County's sole reasonable discretion. Nothing herein shall alleviate the Contractor's responsibility for compliance with all Applicable Laws nor limit or reduce the liability of Contractor to County under any other section of this Agreement.

Except as specifically provided in this Agreement, County reserves all rights to use the surface and subsurface of the Landfill; however, County shall use its best Commercially Reasonable Efforts to minimize interference with the operations of the Conversion System or Systems.

- B. Site for Conversion System. County hereby licenses to Contractor and Contractor accepts from County the exclusive right to utilize the Conversion System Site and Leachate Processing and Disposal Facility Site during the term of this Agreement. The location of the Conversion System Site is depicted on the drawing incorporated into this Agreement as Exhibit A – Conversion System Site Map. Access to the Conversion System Site and Leachate Processing and Disposal Facility Site shall be by the established entranceway to the Landfill via the scale house. The County shall take appropriate steps to ensure that this access route to the Conversion System Site is available to the Contractor at all times (i.e.,

twenty-four (24) hours per day, seven (7) days per week). When utilizing this access route, the Contractor shall abide by all of the applicable policies and safety regulations of the County, which shall be provided by the County to the Contractor. Contractor shall have a continuous right of access to the Landfill sufficient for Contractor to conduct all the activities contemplated by this Agreement. County hereby covenants (i) that it has title to the Conversion System Site in fee, and (ii) that Contractor shall have exclusive use of the Conversion System Site during the term of this Agreement so long as Contractor is not in default of its obligations under this Agreement.

- C. Access. County will make available to the Contractor access to the Landfill for construction, installation, operation, and maintenance of the Contractor's Conversion System, Leachate Processing and Disposal Facility, transmission lines, pipelines, sewer, electric, water, and telephone lines that are necessary for the operation of the Conversion System. Such access shall be at locations that are reasonably determined by the Director of Solid Waste after consultation with Contractor. In determining the location of Contractor's access, the Director of Solid Waste shall first consider any conflict with County's operation of the Landfill, and then the convenience to Contractor.
- D. Excess Gas. County shall have the right to use all Excess Gas, provided, however, that Contractor shall always have the first right to the Baseline Landfill Gas Amount and if applicable, for use in the processing and disposal of landfill leachate. Contractor's obligation to evaluate the utilization of Excess Gas shall not arise except as provided in Section 4, F, (xvi) of this Agreement.

SECTION 3 - OBLIGATIONS OF COUNTY

- A. General Obligations. The County shall design, construct, upgrade, expand, operate, and maintain the LFG Collection System as needed to maintain compliance with all Applicable Laws. The County will consult with the Contractor on the placement and configuration of the LFG extraction wells and other equipment required to meet such regulations, in an effort to enhance the beneficial use of the LFG and the overall operation of the LFG Collection System. Final decisions on the design, construction, and operation of the LFG Collection System shall be at the sole discretion of the County.

Subject to these limitations and the other provisions of this Agreement, the County shall:

- i) Cooperate in the construction, development, and operation of the Landfill to enhance the production of LFG, when it is possible to do so while controlling odors and maintaining compliance with all Applicable Laws;
- ii) Not interfere with the Contractor's operation and maintenance of the Conversion System, provided Contractor is complying in all material respects with all Applicable Laws;
- iii) Instruct its independent contractors, agents, employees and invitees (including, without limitation, any persons, companies or other entities disposing of waste at

the Landfill) to avoid causing interference, disruption, or destruction of Contractor's property and operations;

- iv) Promptly repair, at its expense, major cracks, fissures, and erosion or physical changes in the Landfill, which have an adverse effect on the production of LFG or on the LFG Collection System in accordance with Applicable Laws;
- v) Comply with all Applicable Laws relating to or regulating the construction and operation of the Landfill;
- vi) Accept into County's leachate collection system all Condensate produced from processing LFG from Contractor, without cost to Contractor, provided, however, that any Condensate that is classified as "hazardous" under Applicable Law solely due to Contractor's actions shall be managed by Contractor;
- vii) Maintain consistent cover on the Landfill to meet current Applicable Law;
- viii) Cooperate with Contractor in connection with the rights granted to Contractor under this Agreement;
- ix) Operate and maintain County's Blower Skid in good operating condition in a prudent manner in accordance with the manufacturer's specifications and with good engineering practices in a manner consistent with that used by industry specialists providing similar services, so that if Contractor's Conversion System is not available to provide vacuum to the LFG Collection System, County's Blower Skid will provide the necessary vacuum; and
- x) Provide the Contractor notification of a scheduled full or partial shutdown of LFG flow to the Delivery Points part of the proper and necessary construction, expansion, installation, operation, repair, and maintenance of the LFG Collection System so that the Contractor may make preparations at the Conversion System for the shutdown. The Contractor also understands and agrees that shutdown of the LFG Collection System may result from unforeseen occurrences or Force Majeure such as electrical power failure or other conditions outside the control of the County in which case the County will make all reasonable efforts to return the LFG Collection System to full operation within a reasonable timeframe and will coordinate these efforts with the Contractor in a Commercially Reasonable manner. Scheduled or unforeseen shutdowns of the LFG Collection System will not be a reason for the Contractor to file any claims. All shutdowns of the LFG Collection System shall be performed in accordance with the Applicable Laws, including regulatory agency notifications, recordkeeping, and shut down time constraints as applicable.

B. Good Faith. County shall perform its obligations hereunder in good faith, acting reasonably and cooperating fully with the Contractor so that the Contractor can meet its responsibilities and obligation under this Agreement.

- C. Documents. As reasonably requested by Contractor, County shall:
- i) Allow Contractor to inspect, in accordance with Chapter 119, Florida Statutes, any documents in its possession regarding LFG production from the Landfill, the quantity, age, and type of refuse in the Landfill, tipping records, etc.; and
 - ii) Allow Contractor to inspect, in accordance with Chapter 119, Florida Statutes, any environmental information, environmental impact reports or studies, permits or permit applications, zoning information including variances or variance applications, and any other available data relating to the Landfill and County's or Contractor's activities contemplated in this Agreement, and allow Contractor to copy any such material or documents as may be in County's possession.
- D. LFG Quantity and Quality. Notwithstanding any portion of this Agreement to the contrary, Contractor expressly acknowledges that the County does not warrant or guarantee the rates of production, the chemical composition, or heating content of the LFG from the Landfill. Contractor is relying on its own calculations and evaluation.

SECTION 4 - OBLIGATIONS OF CONTRACTOR

- A. General Obligations. The operation of the Conversion System Leachate Processing and Disposal Facility, and any other activity of Contractor shall not interfere with the management and operational requirements of the Landfill, LFG Collection System, Leachate Collection/Treatment System, or Flare Station(s) except as specifically provided for in this Agreement.
- B. Conversion System. Contractor shall, at its sole expense, and subject to Commercial Reasonableness, finance, permit, design, install, construct, operate, replace, expand, upgrade, and maintain the Conversion System required for the processing and delivery of the Beneficial End-Use Product to the Energy Customer and the Leachate Processing and Disposal Facility for the processing and disposal of leachate. The Conversion System and Leachate Processing and Disposal Facility shall be constructed with the use of new materials and equipment. However, the Contractor may utilize existing electrical transformers and interconnections at its sole discretion. The design, installation, construction, operation, replacement, expansion, upgrade if any, and maintenance of such Conversion System and Leachate Processing and Disposal Facility shall be in accordance with all Applicable Laws, and industry standards. Contractor shall be responsible for conducting emissions tests on the Conversion System as required by the County's Title V permit.
- C. Utility Interface. If appropriate for the type of Beneficial End-Use Product produced, Contractor shall, at its sole expense, obtain property, easements, right-of-way's, permit, design, install, construct, operate, replace, expand, upgrade, and maintain the Utility Interface as required by the local regulatory agencies, the Energy Customer and/or local utility company in order to connect and deliver the Conversion System's Beneficial End-Use Product to the Energy Customer.

D. Material Provided by the Contractor. Contractor shall, at its sole expense, provide and install:

- i) Header piping, connection piping, valves, pipe supports, and any other auxiliary items from the Contractor's Conversion System and Leachate Processing and Disposal Facility to the Delivery Point[s];
- ii) Header piping, tees, valves, blind flanges, and any other auxiliary items from the Delivery Point(s) to connect to the County's LFG Collection System's header piping as depicted on Exhibit B – Delivery Point Location Map with Meter Locations;
- iii) Any needed blower booster(s) or blower(s) to manage the flow of LFG from the Delivery Point(s) to the Conversion System; and
- iv) Conversion System Meter and Measuring Devices for the County for the purpose of determining and recording both the quantity and chemical content of LFG (as listed in Section 3D) delivered to the Contractor.
- v) LD Meter for the County for the purpose of determining and recording the quantity of LFG delivered to the Contractor's Leachate Processing and Disposal facility.

E. Commercial Operations: Contractor shall begin sustained operation of its Conversion System resulting in the production of Beneficial End Use Products and Leachate Processing and Disposal Facility within twenty-four (24) months of the Effective Date of this Agreement. The Commercial Operations Date shall be deemed achieved twenty-four (24) months after the Effective Date regardless of whether commercial operations have actually begun and payment obligations will begin under Section 6 of this Agreement. Contractor may be considered in default for failure to commence commercial operations on or before twenty-four (24) months after the Effective Date. In addition, if Contractor fails to meet any milestone on the Milestone Schedule and does not make the payment to County specified in the Exhibit E - Milestone Schedule necessary to extend the milestone, County may terminate this Agreement on thirty (30) days' notice to Contractor, in which case, the Parties shall have no further liability to each other.

F. Operations. Contractor shall use Commercially Reasonable Efforts to:

- i) Operate the Conversion System, and all associated Contractor supplied equipment in a prudent manner in accordance with the manufacturers' specifications and with good engineering practices in a manner consistent with that used by industry standards providing similar services;
- ii) Maintain the Conversion System and all associated Contractor supplied equipment in good working order throughout the term of this Agreement;

- iii) Repair the Conversion System and all associated Contractor supplied equipment, as necessary, to restore normal operations and system redundancies to ensure compliance with the terms of this Agreement and Applicable Law;
- iv) Maintain sufficient inventory of materials, supplies, and parts for scheduled and unscheduled maintenance or repair activities to reduce downtime for the Conversion System;
- v) Use Commercially Reasonable Efforts to maximize the use of the available LFG from the County for the generation of Beneficial End-Use Product to be sold to an Energy Customer;
- vi) Apply a vacuum and maintain a constant and balanced draw from the County's LFG Collection System in order for the County to maintain balance in its system within tolerances specified by the County. Subject to unplanned outages of the Conversion System, notify the County at least twenty-four (24) hours in advance of any increase or reduction in the draw rate that may affect the balance of the LFG Collection System and its operations;
- vii) Maintain air emissions generated by the Conversion System within any applicable standards or permit limitations;
- viii) Coordinate operations with the County when the County's Blower Skid will be required to provide vacuum to the LFG Collection System and deliver the LFG to the Flare Stations;
- ix) Control on-site odors from the Conversion System in order to control on-site and off-site impacts in accordance with applicable standards, ordinances, permits, rules, and regulations;
- x) Control noise levels from the operation of the Conversion System at any point of the Landfill site boundary in accordance with Section 50-476 of the County's Code of Ordinances. The Contractor shall not be responsible for the noise generated by the County's landfill operation;
- xi) Control and dispose of all wastes materials generated from the Contractor's facilities according to current environmental regulations and this Agreement, including but not limited to gas condensate, waste cooling water, used oils, and chemicals;
- xii) Off-site disposal of industrial wastewater, and contaminated and hazardous waste;
- xiii) Comply with all applicable federal, state and local laws, rules, ordinances, permits and regulations and any other responsibilities of the Contractor as established under this Agreement;

- xiv) Provide information to County, as necessary, for County to comply with its obligations under the New Source Performance Standards (NSPS) reporting requirements, Greenhouse Gas (GHG) Reporting requirements, or other regulatory reporting requirements;
- xv) Comply with annual inspection and implement reasonable recommendations related to compliance with this Section 4 made by the County's consulting engineer on the annual inspection of the facility property within ninety (90) days of notification of those recommendations;
- xvi) County and the Contractor agree that they shall coordinate their efforts to facilitate the County's ability to maintain the LFG Collection System in compliance with applicable law and regulations concerning LFG. If the County at any time determines that the emissions or regulatory operating parameters of LFG Collection System exceed allowable limits, County shall promptly notify the Contractor, and within twenty-four (24) hours, the County may adjust the flow to the Delivery Point, require the Contractor to increase the draw rate to the Conversion System as necessary to bring the LFG Collection System back into compliance, or County can supplement the vacuum using County's Blower Skid. This notification to the Contractor will only be made after attempt(s) by the County to make reasonable adjustments (e.g. opening up extraction wells, control valves, etc.) to the LFG Collection System; and
- xvii) Contractor and County shall monitor sustained increases in the amount of LFG produced by the Landfill. Contractor shall make Commercially Reasonable efforts to plan for and expand the capacity of its Conversion System to utilize the Excess Gas not being utilized. If the Contractor does not expand its Conversion System to utilize the Excess Gas as provided in this Agreement, the County may, at its sole discretion, utilize or allow a third party to utilize the Excess Gas without any obligation to Contractor financially or otherwise as long as said utilization does not compromise the Contractor's ability to perform its obligations under this Agreement. The unreasonable refusal of Contractor to expand its Conversion System may result in Contractor being considered in Default under the provisions of Section 14 of this Agreement. Upon Contractor's expansion of its Conversion System, the Contractor may be entitled to an extension of the Agreement Term as per Section 5, A.

G. County's Wellfield and Contractor's Operations. The Contractor understands and agrees that the County's Wellfield operations (including its Flare Station(s)) must meet FDEP permit requirements while optimizing the gas quality and quantity provided at the Delivery Point. Wellfield operations require daily monitoring, coordination, and cooperation with the Contractor. Both Wellfield and Contractor operations shall promote the healthy degradation of the waste so that optimum gas quality and quantity can be produced. Conversion System demand affects the vacuum on the Wellfield and shall not cause undue stress on the Wellfield resulting in subsurface fires, damage to the wellfield, liquid surging in the header pipes, and excess wellfield tuning (i.e. see-saw effect). Conversion System operation requires a balance between the volume of flow (i.e. vacuum) and maintaining

adequate gas quality. Increasing vacuum results in decreased gas quality and places undue stress on the wellfield. Therefore, if the Wellfield is to be maintained for optimum gas quality and providing a constant rate of fuel, the Conversion System must be maintained to provide a steady vacuum. The County has determined that the maximum vacuum that can be applied by the Conversion System, as measured at the Delivery Point, shall be no greater than 65 inches' water column. Contractor shall not have any liability to County for any issues in the LFG Collection System so long as Contractor has complied with County's limit. At any time that Contractor's Conversion System is not available, County shall provide all vacuum to the LFG Collection System.

- H. Good Faith. Contractor shall perform its obligations hereunder in good faith, acting reasonably and cooperating fully with the County so that the County can meet its responsibilities and obligation under this Agreement. Contractor shall comply with all laws and regulations applicable to the work being performed.

- I. Contract Review. Contractor shall submit to County for review, comment, and approval all contracts relating to the implementation of this Agreement including plans, specifications, and drawings for the procurement, installation, and construction of the Conversion System during the term of this Agreement. Any such review, comment, and approval will not be unreasonably withheld. County may provide comments to Contractor on contract terms, and Contractor agrees to make such changes as may be necessary to comply with County's requirements. If changes to these contracts are made, Contractor will submit such changes to the County for review and County shall notify Contractor in a reasonable time (such time in no event to exceed thirty (30) days) of its comments on such changes. Any recommendation of rejection shall be reasonable County and Contractor recognizes that delays in the review and approval of these documents may delay Contractor's construction schedule. Therefore, County and Contractor agree to exercise reasonable efforts to expedite the review and approval process. After the Conversion System has reached Commercial Operation, Contractor shall provide County with a complete set of "as-built" plans for the Conversion System. The review process described in this paragraph does not relieve the Contractor of any of its obligations under this Agreement, including, but not limited to, Contractor's duty to obtain the required building permits and site plan review approval, or any other local, state, or federal approvals required for the Conversion System, nor shall the review result in any allocation of fault to the County for failure to identify any deficiencies in documents reviewed.

Neither the County's authority to review and comment on the contracts relating to the implementation of this Agreement nor any decision made by the County in good faith in conjunction with such review and approval, shall give rise to any duty or responsibility of County to Contractor, any subcontractor, any supplier, or any other person or organization performing any of the work, or to any surety for any of them.

The County's actions pursuant to this section shall not create any vested rights for the Contractor. Nothing in this Agreement shall be construed to eliminate the need for the Contractor to comply with all applicable laws and regulations.

- J. Permits. Contractor shall, at its own expense, prepare and file permit applications and diligently execute the processing of such permit applications for the purpose of obtaining all environmental and other permits which are required under applicable local, state, and federal laws and regulations for the construction, installation, and operation of the Conversion System, Leachate Processing and Disposal Facility, associated Utility Interface, or other facilities related to the performance of this Agreement whether located on or off-site. In connection therewith, the County agrees to make available to the Contractor all known public records within the County's possession of environmental information reports, environmental impact reports, air impact assessment studies, copies of all environmental applications filed, and other available data relating to and used in connection with obtaining any environmental permits necessary for the installation and operation of any equipment or the conducting of any other activities at the Landfill.

Any results from emission testing, permit applications, and permit modifications shall be submitted to the County for review and approval prior to submission to the applicable regulatory agency. The Contractor shall incorporate any comments from the County subsequent to final review by the County and resubmit to County for final approval authorization and signature (if applicable). Contractor will keep the County informed regarding the status of all applications with regulatory agencies. All communications regarding permit compliance (verbal, emails, site visits, and meetings) with any regulatory agency must be documented in writing. The Contractor shall provide a detailed report to the County of all communications with such regulatory agencies and their representatives. Contractor shall give notice to County of any scheduled meetings with regulatory agencies, and allow the County the opportunity to attend such meetings. Any reporting made to the Contractor from any party regarding odor, methane migration, noise, groundwater or surface water pollution, soil contamination or other regulated related substances in each case from the Conversion System or Leachate Processing and Disposal Facility, must be reported to the County within twenty-four (24) hours after reporting to or discovered by the Contractor or as soon thereafter as possible. Any notice of violation from any regulatory body to the Contractor must be reported to the County within twenty-four (24) hours of its receipt by the Contractor.

See Section 8, H for additional information.

- K. Laws and Regulations. The Contractor shall abide by and conduct its programs and provide its services in compliance with the applicable provisions of all federal, state and local ordinances, statutes, laws and amendments thereto.

The Contractor shall be familiar with all applicable federal, state, and local laws, ordinances, code rules, and regulations that may in any way affect the work. Ignorance on the part of the Contractor shall in no way relieve Contractor of responsibility for compliance.

- L. Site Security. The Conversion System Site and Leachate Processing and Disposal Facility Site shall be fenced and gated during construction and operation and locked whenever Contractor personnel are not present. The fencing shall contain signage on each side,

warning of any hazards and providing telephone numbers for notification of emergency situations.

M. Operation Plan. The Contractor shall prepare and submit to the County a preliminary operation plan, prior to commencing operation of the Conversion System and Leachate Processing and Disposal Facility. The plan shall cover a number of aspects of the Contractor's operations and shall at a minimum:

- i) Testing requirements for the startup of the Conversion System and Leachate Processing and Disposal Facility;
- ii) A Conversion System and Leachate Processing and Disposal Facility operation plan that contains all aspects of the operation and maintenance requirements for both normal and emergency conditions;
- iii) Reporting requirements to governmental agencies for permits associated with the Conversion System Leachate Processing and Disposal Facility, and any other use of LFG;
- iv) Testing and monitoring procedures of the Conversion System and Leachate Processing and Disposal Facility to assure compliance with permit conditions;
- v) An Emergency, Disaster, and Safety Plan that addresses the safety and health needs for all on-site personnel for all aspects of the Contractor's operations;
- vi) Spill Prevention Control and Countermeasure (SPCC) Plan that addresses oil handling operations, spill prevention practices, discharge or drainage, controls, and the personnel, equipment, and resources at the Conversion System and Leachate Processing and Disposal Facility that are used to prevent spills from the facility; and
- vii) Procedures for the management of industrial wastewater and contaminated and hazardous materials including disposal locations.

The Operation Plan shall be finalized and accepted by the County prior to the startup of the Conversion System and Leachate Processing and Disposal Facility. Once accepted by the County, the Contractor is obligated to adhere to the Operation Plan. Deviations from the Operation Plan are only permissible if they are made in writing to the County and accepted in writing by the County. Operations will commence after completion of the startup period and approval of the Operation Plan by the County.

The Contractor shall, from time to time, and as the County recommends, modify the Operation Plan to incorporate necessary revisions to ensure all aspects of the Contractor's operations are adequately addressed to protect the health and safety of all site personnel. The County's review and approvals shall not be construed to eliminate the need for the

Contractor to comply with all applicable laws and regulations and the Contractor is solely responsible for the health and safety of its site personnel.

- N. Project Schedule. The Contractor shall be responsible for developing and keeping current a project schedule for each of the elements of the Conversion System and Leachate Processing and Disposal Facility construction which show: the sequence of project development, permitting, design, construction, startup, and commencement of operations, system testing and monitoring, and reporting to governmental agencies. Contractor shall promptly notify the County as to monthly progress and changes in the schedule.

- O. Transmission Line. Any Beneficial End-Use Product that requires connection to an off-site pipeline or transmission line to the Energy Customer's premises shall comply with and be included within the requirements and liabilities assumed by the Contractor under this Agreement. Any portion of the pipeline or transmission line on public right-of-way shall be clearly marked and buried according to industry or governmental standards. The depth of the pipeline or transmission line shall comply with local permitting code and/or State law whichever is applicable.

- P. Meters and Measuring Devices. The Contractor shall purchase, install, and calibrate a Conversion System Meter and Measuring Devices along with recorders to determine and record the quantity and chemical concentration of the LFG specified under Section 3, D of this document for the County at the Delivery Point location. These devices are to be used for the purpose of recording and determining both the quantity and content of LFG delivered to the Contractor, for determining County's greenhouse gas reporting, determining whether the LFG meets the specifications set forth in this Agreement, and used in calculating payments. Upon installation and testing, ownership and operations of the Conversion System Meter and Measuring Devices shall transfer from the Contractor to the County. Unless otherwise mutually agreed by the County and Contractor, the meter(s) and measuring devices shall be located as depicted on Exhibit B – Delivery Point Location Map with Meter Locations. The County will maintain two (2) meters which include the Conversion System Meter, and the Flare Meter, collectively called the "County Meters," along with the Measuring Devices are to be read and operated by the County. The County Meters and Measuring Devices shall be maintained and calibrated at the County's expense at intervals recommended by manufacturer's specifications, unless required sooner by a regulatory agency, by individuals certified or qualified to perform such calibrations. Contractor's payment obligation pursuant to Sections 6, A and 6, B shall be based upon the information derived from the Conversion System Meter and Measuring Devices (installed and maintained by the County). The installation and operation of these County Meters and Measuring Devices do not preclude the Contractor from installing a meter and measuring devices at their Conversion System and Leachate Processing and Disposal Facility.

The Contractor shall also purchase, install, and calibrate a LD Meter and recorder to determine and record the quantity of the LFG delivered to the Leachate Processing and Disposal facility before the Delivery Point location. The Contractor shall also record and

provide to the County the amount of leachate processed and disposed of off-site including the disposal location.

The Contractor may independently pay for calibration of the meter(s) and measuring devices by a third-party certified to perform such calibrations with consent from the County. If the meter and/or measuring devices are sent off-site for calibration, the Contractor shall pay for calibrated temporary replacement devices to allow for continuous flow measurement and concentration measurements. At intervals agreed to by the parties, the Contractor shall analyze the County's LFG for the content specified under Section 3, D and other constituents deemed necessary by the parties. The County may independently arrange and pay for the sampling and analysis of the gas by an appropriately certified laboratory. If the County's and the Contractor's analysis differ by less than ten percent (10%), the results shall be averaged for purposes of this section. If the results differ by more than ten percent (10%), the County and the Contractor shall arrange for sampling by a mutually agreed-upon third-party laboratory. The County and the Contractor shall share equally in the cost of the third-party laboratory.

Q. Construction Phase Payment/Performance Bond

Contractor shall furnish a Construction Payment/Performance Bond, prior to performing any work under the Agreement in an amount equal to the total value of the project including any amendments or change orders made thereto pursuant to the order or other documentation executed by the parties, in strict accordance with Florida Statute, §255.05. Failing to do so, shall constitute a material breach of this Agreement. The Construction Payment/Performance Bond shall be secured from or countersigned by an agency or surety company recognized in good standing and authorized to do business in the State of Florida. For this project, two (2) sets of bonds will be required: one (1) set for construction phase services and one (1) set for post construction phase services.

Simultaneously with the delivery of the executed Agreement to the County, a Respondent to whom an Agreement has been awarded shall deliver to the County, the executed and recorded Construction Payment/Performance Bond on the prescribed form, in an amount of one hundred percent (100%) of the Agreement price of the accepted proposal as security for the faithful performance of this Agreement and the payment of all persons performing labor or furnishing materials in connection therewith. The Construction Payment/Performance Bond shall have as the surety thereon only such surety company or companies as are authorized to write bonds of such character and amount under the laws of the State of Florida and with a resident agent in Florida. The Attorney-in-Fact or other officer who signs payment/performance bonds for a surety company must record with such bonds a certified copy of his Power-of Attorney authorizing him/her to do so.

R. Post-Construction Phase Payment/Performance Bond

The Contractor shall ensure that an executed and recorded Post-Construction Payment/Performance Bond, guaranty, or other financial security instrument including a cash deposit or letter of credit acceptable to the County, in the amount of Two Hundred Thousand and No/100 Dollars (\$200,000.00) is furnished to the County for the term of

this Agreement upon the County's determination of substantial completion. The Post-Construction Payment/Performance Bond or other financial security instrument shall be conditioned upon full performance of all obligations imposed upon the Contractor by this Agreement, without limitation. The Post-Construction Payment/Performance Bond shall be executed by a company licensed to do business as a qualified surety in the State of Florida and acceptable to the County. The specific terms of the Post-Construction Payment/Performance Bond, cash deposit, letter of credit, guaranty, or other financial security shall be subject to the prior approval of the County Attorney. The Post-Construction Phase Payment/Performance Bond requirements and insurance requirements are separate and are in addition to the Construction Phase Payment/Performance Bond and insurance requirements for the project construction.

SECTION 5 - TERM

- A. Effective Date. This Agreement shall become effective on the date it is executed by both Parties. Until the Effective Date, this Agreement shall be of no force or effect.
- B. Construction Phase Agreement Term. This phase shall have a term not to exceed twenty-four (24) months beginning on the effective date of this Agreement.
- C. Post-Construction Phase Agreement Term. This phase shall have a term of twenty (20) years, which shall begin on the date the Notice to Proceed is issued and the Contractor commences Commercial Operations consistent with the provisions of this Agreement. At the end of this Phase, this Agreement shall terminate, unless extended by mutual written agreement of the County and Contractor, provided that the Party wishing to extend gives the other at least twelve (12) months written notice of such desire before the end of this Phase term or unless otherwise agreed in writing. The term of this Phase of this Agreement also may be extended if and when the County adds additional LFG extraction wells in the Landfill and the Contractor agrees to expend additional capital funds to increase the capacity of its Conversion System, provided the County and the Contractor consent in writing to the extension.

SECTION 6 – PAYMENT

- A. Unit Rate Fee. Contractor shall pay for the amount of LFG delivered by the County based on a Unit Rate Fee basis for all gas recorded at the Conversion System Meter. The basis for payment to the County is detailed below:
 - i) Unit Rate Fee. Payment based upon a Unit Rate Fee will be calculated for the totaled LFG delivered to the Contractor on a monthly basis. The monthly payment will be determined by recording the quantity of LFG delivered to the Conversion System Meter during the payment period, calculating the corresponding MMBtu for the period (see below), then multiplying by the Unit Rate Fee of \$_____ per MMBtu. Contractor will escalate components of compensation based on the Index Pricing described in Section 6A. ii), Index Pricing. Payment shall commence when the Contractor commences Commercial Operations.

Calculation of mmBTU for the billing period is by the following method:

$$MMBtu \text{ per billing period} = \frac{A \times B \times C}{D}$$

where:

- A = Totalized LFG flow recorded in cubic feet in the respective billing period;
- B = Methane Content of Landfill Gas stated in a decimal percentage (Ex.: .50 for a 50% methane concentration);
- C = Constant Value of 1,012 BTU (HHV) per Cubic Foot; and
- D = Factor of 1,000,000.

ii) Index Pricing

Future year compensation will be adjusted annually from the initial Agreement year price based on the annual average spot price (\$/mmBtu) at the Florida Gas Transmission Zone 3 Hub (FGT Z3). The data source is published by Natural Gas Intelligence (“NGI”) at:

https://www.naturalgasintel.com/data/data_products/weekly?location_id=SLAFGTZ3®ion_id=southeast

A change to the unit pricing will be adjusted on a calendar year basis in January based on the following:

$$Price_{2021} = Price_{2020} \times Escalation \text{ Factor}$$

Where;

$$Escalation \text{ Factor} = \frac{(Annual \text{ Average } FGT \text{ Z3 } Price)_{2021}}{(Annual \text{ Average } FGT \text{ Z3 } Price)_{2020}}$$

The new price will remain in effect for the entire calendar year. In the event of a decreasing escalation factor, the new price shall not be less than the original Agreement price. This applies to the entire Agreement duration. If this escalation index is no longer published, an alternative index will be determined by mutual Agreement.

- E. Payment and Reporting Due Date. By no later than the twenty-fifth (25th) calendar day of each quarter, Contractor shall pay the County the Total Quarterly Payment and furnish the County a verified statement covering the immediately preceding quarter, showing all calculations mentioned above on the Payment Form along with a corresponding backup of expenses incurred and collected revenues received for review by the County. The County will review the statement and may verify the quantities and pricing used in the calculations. If the County disagrees with the calculations, the County will notify the Contractor to discuss if a corresponding adjustment of the payment is required.

A Sample Payment Form shall be prepared by the Parties showing the typical calculations determining the payment, as attached as an Exhibit C to this Agreement.

Contractor covenants and agrees to keep books and records in a manner consistent with generally accepted accounting principles, and all such books and records shall be available for inspection, not more than Annually, by County and its agents, upon ten (10) days notice to Contractor, during regular business hours, to inspect, examine and take notes, extracts, and memoranda from the books and records. Contractor agrees to cooperate fully and aid in any examination or audit, but such inspection shall not unreasonably interfere with Contractor's operations. In the event that there shall be any difference between the Unit Rate Fee as reported and computed by Contractor upon any examination or audit, Contractor shall pay such further sum immediately upon demand. Such books and records shall be retained by Contractor for at least five (5) years after the end of the year covered thereby. The obligation to retain records shall survive the termination or expiration of this Agreement.

The County shall have the right to inspect, copy, and audit during reasonable business hours the accounts receivable and payable, ledgers, bank records and any other pertinent books and records of the Contractor relating to the calculations of the revenues upon which any payment to the County are based under the terms of this Agreement.

- F. Tax and Emission Credits. If any federal, state, or local tax or emission credits become available to Contractor after the Effective Date of this Agreement, including, but not limited to, Voluntary Emission Reduction or Carbon Credit payments, renewable energy certificates, emission reduction credits, investment tax credits, production tax credits, or similar credits which accrue from the Contractor's use of the LFG from the Landfill, Contractor shall pay a fee to the County for any tax or emission credits that are received by the Contractor for the Conversion System. The fee shall be equal to fifty percent (50%) of any tax and/or emission credits received by the Contractor in any one (1) year. The fee shall be payable in twelve (12) equal monthly installments. Payment shall commence the first month after Contractor receives any tax or emission credits.

SECTION 7 – FINANCING – NO LEASEHOLD INTEREST

County acknowledges that Contractor may desire to finance some or all of the equipment or personal property required to undertake work to be performed under this Agreement and hereby consents to any encumbrance or lien on the machinery, equipment, and fixtures that make up the Conversion System and Utility Interface for the purpose of obtaining such financing, provided:

- A. Contractor shall give County notice of the existence of such encumbrance or lien together with the name and address of the holder of such encumbrance or lien, and a copy of the encumbrance or lien.
- B. That the existence of such encumbrance or lien shall not relieve Contractor from any liability or responsibility for the performance of its obligations under this Agreement.

Under no circumstances shall Contractor cause any mortgage or lien to exist on the County's real property. No security interests may be granted in any underground transmission lines, pipelines, or underground equipment or fixtures.

No leasehold interest in real property is created by this Agreement. Contractor shall be a licensee, whose presence on County property is incidental to and contingent upon the performance of this Agreement.

SECTION 8 - GENERAL OBLIGATIONS

- A. Planning and Expansion. Contractor recognizes that future development of the County Landfill may include additional facilities. County and Contractor agree to exchange information on a regular basis for planning and coordination of all activities to promote the safe and orderly development and operation of the Landfill.
- B. Interests Retained by County. All materials, minerals, water, natural gas, and other items existing in, on, or under the Landfill (including, but not limited to: the refuse, cell liners, leachate, condensate, and waste spoilage removed from Landfill during the construction of LFG Collection System and cover) shall at all times remain the property of the County.
- C. Independent Contractor. In the performance of any activities pursuant to this Agreement, the Contractor shall be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer, or representative of the County. The Contractor shall be solely responsible for the means, methods, sequences, and procedures utilized by the Contractor in the full performance of this Agreement. Neither the Contractor nor any of its employees, officers, agents or any other individual directed to act on behalf of the Contractor for any act related to the Agreement shall represent, act, purport to act, or be deemed to be the agent, representative, employee or servant of the County.
- D. Condensate. The Contractor shall be responsible for the collection and removal of condensate from the Contractor's condensate sumps, Contractor's condensate knockout vessel(s) and the Conversion System, and the proper handling and delivery of the condensate to the County's leachate collection system (leachate manhole or cleanout) or leachate storage facilities. The Contractor has no other right to discharge or dispose of any materials other than the condensate to the County's facilities unless approved in advance and in writing. County is responsible for the proper handling and disposal of all condensate from the time it is received at the County's leachate collection system or leachate storage facilities. The County shall have the right to collect and test samples from the Contractor's facilities before discharging into the County's facilities.
- E. Gas Migration and Emissions. Contractor and County acknowledge that the primary objective of the LFG Collection System is and will continue to be to control LFG migration, emissions, and odors, in order to meet all local, state, and federal regulatory requirements and the requirements of existing and future landfill permits. Contractor shall operate the Conversion System in a manner that is conducive to this primary objective and County shall operate the LFG Collection System and the County's Blower Skid in such a

manner that is conducive to this primary objective. County shall be responsible for the control of migration of LFG from the Landfill up to the Delivery Point. Contractor shall be responsible for the leakage of LFG, condensate, etc. from the Conversion System occurring from the Delivery Point and beyond.

F. Non-Waiver.

- i) The failure of either party to exercise any right shall not be considered a waiver of such right in the event of any further default or noncompliance.
- ii) No action taken by County or Contractor after the effective date of the termination of this Agreement pursuant to Section 14 in accepting one or more payments from the other or undertaking any other activity which would have been authorized by this Agreement but for its termination, shall be construed to mean that this Agreement is not terminated or as a waiver of the termination.

G. Inspections. County has the right to conduct inspections upon reasonable notice of the Contractor's facilities to verify operations compliance, environmental compliance, and compliance with Applicable Laws and said responsibilities of this Agreement.

H. Compliance Cooperation. County acknowledges that it is County's responsibility to comply with Applicable Law, including, without limitation, Environmental Laws, in connection with the management and operation of the Landfill (including, without limitation, the LFG Collection System and the leachate treatment facility. Specifically, as follows:

- i) County shall be solely responsible for the control and containment of the migration of LFG up to and including the Delivery Point.
- ii) County shall be responsible for all GHG reporting to the State of Florida. To assist County in making any GHG reports, Contractor will timely provide data from the Conversion System to County at no cost. Additionally, Contractor agrees to provide any information and records that would aid County in meeting its obligation to make GHG reports to the State of Florida. Contractor agrees to provide the requested information at no cost to County, provided the request is reasonable.
- iii) County shall be responsible for all reporting to the State of Florida with respect to leachate processing, treatment and management. Contractor will timely provide data from the Leachate Processing and Disposal Facility to County at no cost. Additionally, Contractor agrees to provide any information and records that would aid County in meeting its obligation to make reports to the State of Florida. Contractor agrees to provide the requested information at no cost to County, provided the request is reasonable.

SECTION 9 - LIMITATIONS OF LIABILITY

- A. Except as otherwise provided herein, County provides no warranties or guarantees, either expressed or implied, as to the quantity or chemical composition of the LFG to be extracted and made available to the Contractor at the Delivery Point(s) hereunder, including, but without limitation, any warranty of merchantability or fitness of the LFG for a particular purpose; provided, however, if the Landfill does not produce sufficient quantities of LFG for Contractor to operate in a Commercially Reasonable manner, Contractor may terminate this Agreement as provided in Section 14.3.
- B. Provided Contractor is complying with Applicable Laws, Contractor shall be solely responsible for the determination of the suitability of the LFG to be used under this Agreement for any and all purposes contemplated by Contractor.
- C. In no event shall Contractor be liable to County with respect to any claims arising from the ownership of the Landfill except and to the extent said claims arise from the acts or omissions of Contractor.
- D. County shall not be liable for consequential damages, i.e. indirect or special damages, including loss of revenues or lost profits, for any reason, including, but not limited to if the County determines that the Conversion System Site fails to meet Commercially Reasonable purposes.
- E. Contractor is liable to the County for any fines and/or necessary repair costs incurred by the County to the extent caused by the Contractor.

SECTION 10 - INDEMNIFICATION

- A. Indemnification by Contractor. Contractor shall, at its own expense, indemnify, defend, and hold harmless County and its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys, and employees from and against all claims, damages, losses and expenses including reasonable attorney's fees to the extent (i) caused by the negligence, recklessness, or intentionally wrongful conduct, act or omission of Contractor or any Contractor agents, subcontractors, employees, or customers, or (ii) arising or growing out of or in any way connected with the use, operation, ownership, performance, non-performance, management, and control of any work or services hereunder or the use of County property under this Agreement, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of Contractor or its agents, servants, employees or customers, or anyone employed by them, or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Agreement.

- B. Indemnification by County. County shall, at its own expense, indemnify, defend, and hold harmless Contractor and its successors in interest, officers, agents, attorneys, and employees from and against all claims, damages, losses and expenses including reasonable attorney's fees to the extent (i) caused by the negligence, recklessness, or intentionally wrongful conduct, act or omission of County or any County agents, servants, employees, or customers, or (ii) arising or growing out of or in any way connected with the use, operation, ownership, performance, non-performance, management, and control of the Landfill, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of County or its agents, servants, employees or customers, or anyone employed by them, or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Agreement, except as limited by Section 10, C below.

In all claims against County or any of its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys, and employees by any employee of Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable that are subject to Section 10, no indemnification obligation shall be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor, or any Agent of Contractor under Florida's Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

- C. Sovereign Immunity. County expressly retains all rights, benefits, and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes.

Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of County beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of County for damages regardless of the number or nature of claims in tort, equity or contract shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against County, which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

The provisions of this Section 10 shall survive the termination of this Agreement.

SECTION 11 - INSURANCE

11.1 Required Types of Insurance

The Contractor or shall purchase and maintain at its own expense, during the term of this Agreement the following types and amounts of insurance with limits no less than those shown below, in the form and from companies satisfactory to the County:

DURING THE CONSTRUCTION PHASE:

TYPE OF INSURANCE		
WORKERS COMPENSATION <input checked="" type="checkbox"/> Waiver of Subrogation <input type="checkbox"/> Longshore & Harbor Workers' Act, Jones Act, & Maritime Coverage Endorsement	Florida Statutory Coverage	
COMMERCIAL GENERAL LIABILITY - Broad form <input checked="" type="checkbox"/> Occurrence Basis <input checked="" type="checkbox"/> Blanket Contractual Liability <input checked="" type="checkbox"/> County Additional Insured <input type="checkbox"/> County Additional Named Insured <input checked="" type="checkbox"/> Waiver of Subrogation <input type="checkbox"/> Independent Contractors <input type="checkbox"/> Blanket additional insured endorsement <input type="checkbox"/> Project specific <input type="checkbox"/> Location specific <input checked="" type="checkbox"/> XCU <input type="checkbox"/>	EACH OCCURRENCE	\$ 1,000,000
	GENERAL AGGREGATE	\$ 2,000,000
	Premises-Operations	\$ 1,000,000
	Products & Completed Ops	\$1,000,000
	Personal & Adv Inj.	\$1,000,000
	Fire Damage	\$
		\$
AUTO LIABILITY <input checked="" type="checkbox"/> Any Auto <input checked="" type="checkbox"/> Broadened Pollution Liability Endorsement CA 99 48 <input type="checkbox"/> MCS 90 <input type="checkbox"/> County Additional Insured <input type="checkbox"/>	Combined Single Limit	\$ 1,000,000
	Bodily Injury (Per person)	\$
	Bodily Injury (Per accident)	\$
	Property Damage (Per Accident)	\$
<i>Note: If contractor does not own any vehicles, Contractor shall have coverage symbol 8 (Hired Autos) and coverage symbol 9 (Non-Owned Autos).</i>		
EXCESS LIABILITY <input checked="" type="checkbox"/> Umbrella Form (Follow Form Basis) <input checked="" type="checkbox"/> County Additional Insured <input type="checkbox"/> County Additional Named Insured <input type="checkbox"/> Project Specific <input type="checkbox"/> Location Specific <input type="checkbox"/>	\$ 1,000,000 per Occurrence/Aggregate	
<i>Note: If County cannot be added as additional insured, then policy shall be endorsed to provide additional insured status if required on the primary policy.</i>		
<input checked="" type="checkbox"/> CONTRACTORS POLLUTION LIABILITY <input checked="" type="checkbox"/> County Additional Insured	\$2,000,000/Occurrence	
	\$4,000,000/Aggregate	
<input checked="" type="checkbox"/> PROFESSIONAL LIABILITY	\$1,000,000	
BUILDER'S RISK <input checked="" type="checkbox"/> County as Additional Loss Payee <input checked="" type="checkbox"/> All-Risk <input checked="" type="checkbox"/> Wind, Hail, Named Storm <input type="checkbox"/> Flood if in 100 yr Flood Plane	Project Cost	
CANCELLATION: Thirty (30) days written notice of cancellation is required to the Certificate Holder:		
Certificate Holder: County of Volusia Purchasing & Contracts Division 123 W. Indiana Avenue, Room 302 DeLand, FL 32720 ATTN: Inga Fegley		

DURING THE POST CONSTRUCTION PHASE:

TYPE OF INSURANCE															
WORKERS COMPENSATION <input checked="" type="checkbox"/> Waiver of Subrogation <input type="checkbox"/> Longshore & Harbor Workers' Act, Jones Act, & Maritime Coverage Endorsement	Florida Statutory Coverage														
COMMERCIAL GENERAL LIABILITY - Broad form <input checked="" type="checkbox"/> Occurrence Basis <input checked="" type="checkbox"/> Blanket Contractual Liability <input checked="" type="checkbox"/> County Additional Insured <input type="checkbox"/> County Additional Named Insured <input checked="" type="checkbox"/> Waiver of Subrogation <input type="checkbox"/> Independent Contractors <input type="checkbox"/> Blanket additional insured endorsement <input type="checkbox"/> Project specific <input type="checkbox"/> Location specific <input checked="" type="checkbox"/> XCU <input type="checkbox"/>	<table border="1"> <tr> <td>EACH OCCURRENCE</td> <td>\$ 1,000,000</td> </tr> <tr> <td>GENERAL AGGREGATE</td> <td>\$ 2,000,000</td> </tr> <tr> <td>Premises-Operations</td> <td>\$ 1,000,000</td> </tr> <tr> <td>Products & Completed Ops</td> <td>\$1,000,000</td> </tr> <tr> <td>Personal & Adv Inj.</td> <td>\$1,000,000</td> </tr> <tr> <td>Fire Damage</td> <td>\$</td> </tr> <tr> <td></td> <td>\$</td> </tr> </table>	EACH OCCURRENCE	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	Premises-Operations	\$ 1,000,000	Products & Completed Ops	\$1,000,000	Personal & Adv Inj.	\$1,000,000	Fire Damage	\$		\$
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	Fire Damage	\$													
	\$														
AUTO LIABILITY <input checked="" type="checkbox"/> Any Auto <input checked="" type="checkbox"/> Broadened Pollution Liability Endorsement CA 99 48 <input type="checkbox"/> MCS 90 <input type="checkbox"/> County Additional Insured <input type="checkbox"/>	<table border="1"> <tr> <td>Combined Single Limit</td> <td>\$ 1,000,000</td> </tr> <tr> <td>Bodily Injury (Per person)</td> <td>\$</td> </tr> <tr> <td>Bodily Injury (Per accident)</td> <td>\$</td> </tr> <tr> <td>Property Damage (Per Accident)</td> <td>\$</td> </tr> </table>	Combined Single Limit	\$ 1,000,000	Bodily Injury (Per person)	\$	Bodily Injury (Per accident)	\$	Property Damage (Per Accident)	\$						
	Combined Single Limit	\$ 1,000,000													
	Bodily Injury (Per person)	\$													
	Bodily Injury (Per accident)	\$													
Property Damage (Per Accident)	\$														
<i>Note: If contractor does not own any vehicles, Contractor shall have coverage symbol 8 (Hired Autos) and coverage symbol 9 (Non-Owned Autos).</i>															
EXCESS LIABILITY <input checked="" type="checkbox"/> Umbrella Form (Follow Form Basis) <input checked="" type="checkbox"/> County Additional Insured <input type="checkbox"/> County Additional Named Insured <input type="checkbox"/> Project Specific <input type="checkbox"/> Location Specific <input type="checkbox"/>	\$ 1,000,000 per Occurrence/Aggregate														
<i>Note: If County cannot be added as additional insured, then policy shall be endorsed to provide additional insured status if required on the primary policy.</i>															
<input checked="" type="checkbox"/> POLLUTION LIABILITY <input checked="" type="checkbox"/> County Additional Insured	\$2,000,000/Occurrence \$4,000,000/Aggregate														
PROPERTY INSURANCE <input checked="" type="checkbox"/> County as Loss Payee <input checked="" type="checkbox"/> All-Risk <input checked="" type="checkbox"/> Wind, Hail, Named Storm <input type="checkbox"/> Flood if in 100 yr Flood Plane	Value of structure and equipment														
CANCELLATION: Thirty (30) days written notice of cancellation is required to the Certificate Holder:															
Certificate Holder: County of Volusia Purchasing & Contracts Division 123 W. Indiana Avenue, Room 302 DeLand, FL 32720 ATTN: <u>Inga Fegley</u>															

The County reserves the right to require additional insurance, if necessary, based on specific proposals received in response to this solicitation.

- A. Minimum underlying coverages shall include Commercial General Liability, Automobile Liability, and Workers' Compensation/Employer's Liability. (Umbrella liability limit will not be required to be carried by Subcontractors.)

(If the services provided require the disposal of any hazardous or non-hazardous materials off the job site, the disposal site operator must furnish a certificate of insurance for Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this contract).

- B. Umbrella or Excess Liability policies may be used to obtain the total limits of liability required to meet the required limits of coverage stated above. Evidence of such coverage should clearly demonstrate the underlying coverages/policies that are included.

- C. Workers' Compensation Insurance. Workers' Compensation insurance is required for all employees of the Contractor, employed or hired to perform or provide work or services under this Agreement or that is in any way connected with work or services performed under this Contract, without exclusion for any class of employee, and shall comply fully with the Florida Workers' Compensation Law (Chapter 440, Florida Statutes, Workers' Compensation Insurance) and include Employers' Liability Insurance with limits no less than the statutory amount shown above per occurrence.

1. Contractor and its Subcontractors, or any associated or subsidiary company doing work on County property or under this Agreement must be named in the Workers' Compensation coverage or provide proof of their own Workers' Compensation coverage, without exclusion of any class of employee, and with a minimum of the statutory limits per occurrence for Employer's liability coverage. Further, if the Contractor's Subcontractors fail to obtain Workers' Compensation insurance and a claim is made against the County by the uncovered employee of said Subcontractor of the Contractor, the Contractor shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney's fees and costs arising under said employee(s) Workers' Compensation insurance claim(s).

- D. Commercial General Liability Insurance. Commercial General Liability insurance, with a limit of not less than the amounts shown above with an aggregate limit and per occurrence basis, including coverage for the Contractor's operations, independent Contractors, Subcontractors and "broad form" property damage coverages protecting itself, its employees, agents, Contractors or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, products liability/completed operations

including what is commonly known as groups A, B, and C (libel, false arrest, slander). Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Contractor or by any of its Subcontractors arising from work or services performed under this Agreement. Public liability coverage shall include either blanket contractual insurance or a designated contractual liability coverage endorsement, indicating expressly the Contractor's contract to indemnify, defend and hold harmless the County as provided in this Agreement. The commercial general liability policy shall be endorsed to include the County as an additional insured. The commercial general liability policy shall provide exclusive coverage for the location or project site where the work or services are to be performed under this Agreement. In the alternative, the commercial general liability policy shall be endorsed to provide the designated aggregate per location endorsement or equivalent on a form approved or requested by the County Risk Manager.

- E. Excess/Umbrella Liability. The Contractor shall obtain an excess liability policy in addition to the scheduled underlying policies (commercial general liability, business auto liability, professional, and employers' liability) with a limit of no less than the amount shown above. This insurance shall name the County as an additional insured and include either blanket contractual or a designated contract contractual coverage endorsement, indicating expressly the Contractor's agreement to hold the County harmless. The excess/umbrella liability policy shall provide exclusive coverage for the location or project site where the work or services are to be performed under this Agreement. In the alternative, the excess/umbrella liability policy shall be endorsed to provide the designated aggregate per location endorsement or equivalent on a form approved or requested by the County Risk Manager.
- F. Motor Vehicle Liability. The Contractor shall secure and maintain during the term of this Contract, motor vehicle coverage in the split limit amounts of no less than the amounts shown above per person, per occurrence for bodily injury and for property damage or a combined single limit of the amount shown above **with "Any Auto", Coverage Symbol 1, providing coverage for all autos operated regardless of ownership and** protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle.
- G. Professional Liability. The Contractor shall ensure that it secures and maintains, during the term of this Contract, Professional Liability insurance with limits of no less than the amount shown above in respect only to the project(s) contemplated by this Agreement. Such policy shall cover all the Contractor's or its Subcontractor's professional liabilities whether occasioned by the Contractor or its Subcontractors or their agents or employees and broad enough to include errors and omissions specific to Contractor's professional liability for direct and contingent design errors and Architect's/Engineers professional liability with no exclusions for design-build work.

1. If the Contractor fails to secure and maintain the professional liability insurance coverage required herein, the Contractor shall be liable to the County and agrees to indemnify, defend, and hold harmless the County against all claims, actions, losses or damages that would have been covered by such insurance.
2. The Contractor must maintain a retroactive date prior to or equal to the effective date of this Agreement. The Contractor shall purchase a Supplemental Extended Reporting Period (“SERP”) with a minimum reporting period of not less than three (3) years in the event a Subcontractor’s policy is canceled, not renewed, switched to occurrence form, or any other event which requires a purchase of SERP to cover a gap in insurance for claims which may arise under or related to this Agreement. The Contractor’s purchase of the SERP shall not relieve the Contractor of the obligation to provide replacement coverage. In addition, the Contractor shall require that the Subcontractor’s carrier immediately inform the Contractor, the County of Volusia’s Risk Management Division, and the Purchasing and Contracts Division of any contractual obligations that may alter its professional liability coverage under this Agreement.

H. Pollution Liability. The Contractor shall obtain and maintain a pollution liability insurance policy with a limit of liability of no less than the amount(s) shown above on a per occurrence/aggregate basis for any work or services performed under this Agreement including but not limited to environmental/pollution related services, including but not limited to, testing, design, consulting, analysis, other consulting work (whether self-performed or subcontracted), discharge, dispersal, release, seepage, migration or escape of smoke, vapors, soot fumes, acids, alkalis, toxic chemicals, liquid or gasses, waste materials, irritants, contaminants, pollutants into or upon land, atmosphere or any watercourse or body of water (including groundwater at or under or emanating arising from work or services performed under this Contract) and for all above-ground storage tanks, in-ground storage tanks, and other potentially hazardous materials, insuring the Contractor’s liability for bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death, property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arise from Contractor’s operation, and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by the Contractor. The County shall be named as additional insured.

I. Coverages for professional and pollution liability shall be provided on an occurrence form or a claims-made form with a retroactive date equal to at least the first date of this Agreement and with a three (3) year reporting option beyond the

expiration date of this Agreement including any amendments to the Agreement term. County shall be included as an additional named insured under the pollution liability insurance policy.

- J. Builders' Risk. Contractor shall provide and maintain during the term of this Agreement until Substantial Completion All-Risk Property Insurance (also known as "Builders' Risk Insurance" and referred to herein as "BRI"). The minimum protection afforded under said BRI shall be the full replacement cost of the construction of the Project. County shall be an Additional Insured and Loss Payee under the BRI policy. The BRI policy shall contain a waiver of subrogation in favor of all insured parties. Contractor shall provide County with a certificate of insurance evidencing the maintenance of the BRI policy and providing that the insurer shall endeavor to notify the County thirty days prior to the cancellation of the policy. The cost of the BRI premiums and any deductibles that may become payable in connection with the BRI shall be reimbursable to the Contractor as Cost of the Work and shall be invoiced and payable at the time the first application for payment after such cost is incurred. Any increases to the contract, by amendment or otherwise, shall include an additional adjustment to cover additional BRI costs, which shall be invoiced and payable at the time the first application for payment after such cost is incurred. Extensions of time, as permitted by this Agreement may result in additional BRI costs for which the Contractor shall be reimbursed.
- K. Primary and Excess Coverage. Any insurance required may be provided by primary and excess insurance policies.

11.2 Insurance Requirements

- A. General Insurance Requirements:
1. All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of **A-** in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.
 2. Approval by County of any policy of insurance shall not relieve Contractor from its responsibility to maintain the insurance coverage required herein for the performance of Work or Services by the Contractor or its Subcontractors for the entire term of this Agreement and for much longer periods of time as may be required under other clauses of this Agreement.
 3. Waiver of Subrogation. The Contractor hereby waives all rights against the County and its Subcontractors to the extent of the risk coverage by any insurance policy required hereunder for damages by reason of any claim, demand, suit, or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of this Agreement. The Contractor shall require similar waivers from all its

Subcontractors. This provision applies to all policies of insurance required under this Agreement (including Workers' Compensation, and general liability).

4. County Not Liable for Paying Deductibles. For all insurance required by Contractor, the County shall not be responsible or liable for paying deductibles for any claim arising out of or related to the Contractor's business or any Subcontractor performing Work or Services on behalf of the Contractor or for the Contractor's benefit under this Agreement.
5. Cancellation Notices. During the term of this Agreement, Contractor shall be responsible for promptly advising and providing County of Volusia's Risk Management Division and the Purchasing and Contracts Division with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under this Agreement within two (2) business days of receipt of such notice or change.
6. For any on-site Work performed by or on behalf of Contractor on County property, the County shall be named as an additional insured or additional named insured subject to review and determination by County's Risk Manager on all policies required under this Agreement except professional liability and workers compensation.
7. Deductibles. Contractors that maintain and administer self-insured retention or a large deductible program exceeding the insurance requirements listed in this solicitation using a formal program to fund either program should have submitted an exception in accordance with Section 3.9, Questions, Exceptions, and Addenda Concerning RFP #18-P-16IF to have been considered during the solicitation process.

The request must include a summary of the program's design, funding method, and the program's supporting financial information. If additional information is necessary, the County will request more specific information, which must be provided by the Contractor. The County's Risk Manager will review the information submitted and determine whether the program is acceptable to the County.

Contractor with no formal risk management program in place to manage and fund deductibles or self-insured retentions may not be considered. Subject to County approval, Contractor may obtain a letter of credit in the amount equivalent to the deductible, which shall remain in effect during the term of the Agreement at no additional cost to the County.

11.3 Proof of Insurance

- A. The Contractor shall be required to furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard, and the expiration dates.
- B. The Contractor shall furnish proof of insurance acceptable to the County prior to or at the time of execution of this Agreement and the Contractor shall not commence Work or provide any Service until the Contractor has obtained all the insurance required under this Agreement and such insurance has been filed with and approved by the County. Upon request from the County, the Contractor shall furnish copies of the following types of insurance policies and any changes or amendments thereto, immediately, to the County and County's Risk Management and Purchasing and Contracts Divisions prior to the commencement of any contractual obligations. This Agreement may be terminated by the County, without penalty or expense to County if at any time during the term of this Agreement proof of any insurance required hereunder is not provided to the County.
- C. All certificates of insurance shall clearly indicate that the Contractor has obtained insurance of the type, amount, and classification required by this Article. No Work or Services by Contractor or its Subcontractors shall be commenced until County has approved these policies or certificates of insurance. Further, the Contractor agrees that the County shall make no payments pursuant to the terms of this Agreement until all required proof or evidence of insurance has been provided to the County. This Contractor may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.
- D. The Contractor shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of this Agreement. In the event such insurance lapses, the County expressly reserves the right to renew the insurance policies at the Contractor's expense or terminate this Agreement but County has no obligation to renew any policies.

The provisions of this Article shall survive the cancellation or termination of this Agreement.

SECTION 12 - REMOVAL AND RESTORATION

- A. Ownership of Equipment. Except as otherwise provided in this Agreement, the Conversion System , Leachate Processing and Disposal Facility, and related equipment shall remain the personal property and/or responsibility of Contractor, notwithstanding the method or mode of installation or attachment to the Landfill. Upon written request by Contractor, County shall provide a waiver or estoppel certificate from County or any lessee operator of the Landfill, in a form satisfactory to Contractor and County, acknowledging that the Conversion System and Leachate Processing and Disposal Facility is personal property owned by Contractor subject to right of removal by Contractor. Notwithstanding the above,

however, no equipment shall be removed that will affect the operations of the Flare Stations or leachate treatment plant needed in order to remain in compliance with Applicable Laws, and to control LFG migration and atmospheric emissions, including odors.

- B. Transfer of Ownership upon Expiration or Termination. Upon the expiration or termination of this Agreement, the below ground portions of the Conversion System, Leachate Processing and Disposal Facility, the building, and if owned by and transferable by Contractor, the Utility Interface shall become the personal property and responsibility of the County. Contractor shall have no further responsibility with respect to the below ground portions of the Conversion System, Leachate Processing and Disposal Facility, and Utility Interface after Contractor conveys title to such equipment, free and clear of any encumbrances, liens or security interest.

In addition to the above, within ninety (90) days after the expiration or termination of this Agreement, County shall have the option to purchase the above-ground portions of the Conversion System Leachate Processing and Disposal Facility, including any Contractor owned transmission equipment and the Energy Sales Agreement for an amount equal to the Fair Market Value as determined herein below. If County elects to exercise its option, it will give Contractor written notice that it intends to purchase, all or part of the Conversion System and/or Leachate Processing and Disposal Facility. Should County purchase some or all of the above-ground portions of the Conversion System and/or Leachate Processing and Disposal Facility, including any Contractor owned transmission equipment and the Energy Sales Agreement, Contractor shall convey title to County free and clear from any and all liens and security interests. All property to be conveyed by Contractor under this subsection must be in good operating condition. In determining the Fair Market Value, the County shall deduct the cost, as determined by the appraiser, of repairs required to restore the facilities to good working conditions from the purchase price. If the County chooses not to purchase the Conversion System and/or Leachate Processing and Disposal Facility, within ninety (90) days the Contractor shall, at its sole expense, remove all Conversion System, Leachate Processing and Disposal Facility, and any associated transmission equipment except for the building from the Landfill and return the Conversion System Site Leachate Processing and Disposal Facility Site beyond the confines of the building to its original condition unless otherwise agreed in writing. In addition, the County shall have the right upon termination to assume the interconnect agreements for any utility improvements (transmission pipelines, water, sewer, and power) installed by Contractor.

Nothing in this Section 12 shall be construed to create any obligation on the County to buy any portions of the Conversion System. Should Contractor fail to remove any portion of the Conversion System and Leachate Processing and Disposal Facility as required under this Section 12, such property shall be deemed abandoned and shall become the property of the County. Should the County incur costs associated with the removal of abandoned equipment and/or site restoration associated with such abandonment, the Contractor shall be liable for such cost. This liability shall expire twelve (12) months after the abandonment if the County has not notified the Contractor in writing that site clean-up has been completed or is underway including the actual or an estimated cost of such cleanup.

For purposes of this Agreement, the Fair Market Value (FMV) of the Conversion System and Leachate Processing and Disposal Facility shall be determined by means of an appraisal by persons professionally qualified to make appraisals of industrial equipment as follows: (i) Contractor shall appoint an appraiser who shall estimate the FMV as of the time indicated and provide a written determination of the FMV to both Contractor and the County; (ii) County shall appoint its own appraiser to provide a second estimate of the FMV, which shall be provided in writing to both County and Contractor; (iii) if County's appraiser's estimate of the FMV is within fifteen percent (15%) of Contractor's appraiser's estimate of the FMV, the FMV shall be deemed to be the average of the two appraisals; (iv) if the County's appraiser's estimate of the FMV differs from the Contractor's appraiser's estimate by more than fifteen percent (15%), then the County and the Contractor shall select a third appraiser, and the FMV shall be deemed to be average of the three (3) appraisals. Each party shall bear their respective costs of undertaking the first two (2) appraisals required by this paragraph. The parties shall share equally in the cost of the third appraisal.

In the event that County, elects not to exercise its option to purchase all or part of the Conversion System and/or the Leachate Processing and Disposal Facility, Contractor shall within six (6) months after said expiration or termination a) remove such above-ground property if (i) Contractor notifies the County of its intention to remove such above-ground property or (ii) County requests that such above-ground property be removed, and b) clean up any contamination of the Conversion Site and/or Leachate Processing and Disposal Facility Site caused by Contractor. In the event of a dispute as to the source of the contamination, reasonable exploratory costs to determine the source of the contamination shall be borne by the party ultimately determined to be responsible for the contamination. The County shall have the right to assume the interconnect agreements for any utility improvements (water, sewer, and power) installed by Contractor.

SECTION 13 - FORCE MAJEURE

- A. Neither party shall be liable for any failure or delay in the performance of its obligations under the Agreement to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Agreement, acts of God, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, equipment breakdowns assuming recommended maintenance has been followed, inability to procure materials or services despite Commercially Reasonable Efforts, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the Parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the Parties further agree that:
- B. Upon the occurrence of Force Majeure Event, the affected Party shall be excused from any further performance of those obligations under this Agreement that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-

performing Party continues to use Commercially Reasonable Efforts to recommence performance whenever and to whatever extent possible without delay.

- C. Upon the occurrence of a Force Majeure Event, the affected party shall notify the other Party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the Party's performance of its obligations and duties pursuant to this Agreement. Such notice shall be delivered or otherwise communicated to the other Party within two (2) business days following the failure or delay caused by the Force Majeure Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the affected Party from providing notice within such time period.
- D. In the event of a Force Majeure Event, the time for performance by the Parties under the applicable statement of work shall be extended for a period of time equal to the time lost by reason of such cause.

SECTION 14 - TERMINATION

- A. Contractor's Default. Unless exclusively caused by acts of the County, the failure of the Contractor to comply with any provision of this Agreement shall place the Contractor in default. Prior to terminating the Agreement, the County shall notify the Contractor in writing of such failure. Notification shall make specific reference to the provision which gave rise to the default. The County shall provide the Contractor thirty (30) days written notice to cure a default. The County shall, using Commercially Reasonable practices, approve or disapprove the Contractor's proposed remedy and schedule without unreasonable delay. If the County disapproves Contractor's proposed remedy and schedule, the County may, at its sole option, direct a remedy and schedule or provide Contractor with ninety (90) days prior written notice of termination.

Events of default by Contractor warranting termination by County shall include, but not be limited to, one or more of the following:

- i) the filing by or against Contractor of a petition in bankruptcy or the complete cessation of the business operations of Contractor;
- ii) failure by Contractor to pay the fees when due the County pursuant to Section 6, Payment;
- iii) failure by the Contractor to operate the Conversion System and all associated Contractor supplied equipment in a prudent manner, in accordance with good engineering practices and in a manner consistent with that used by industry standards providing similar services and in compliance of Applicable Laws;
- iv) failure by the Contractor to maintain the Conversion System and all associated Contractor supplied equipment in good working order throughout the term of this Agreement;

- v) failure to operate the system or to maintain compliance with environmental regulations and noise limitation and odor control requirements; and
- vi) failure to pay for any damages assessed to the Contractor.

B. Termination for Insufficient Quantities of LFG. Should the Contractor determine, following Conversion System start-up, that LFG can no longer be reasonably recovered from the Landfill, Contractor shall have the right to surrender and terminate this Agreement including its rights to the LFG upon one hundred eighty (180) days prior written notice to County. In the event of such termination by the Contractor:

- i) The Contractor shall continue to make payments to the County in accordance with Section 6, for a six (6) month period following notification of termination;
- ii) The Contractor shall continue to make payments for any monies due to the County for the sale of the Beneficial End-Use Product beyond the six (6) month period following notification if payments would otherwise be due on account of Royalty Payment calculations;
- iii) The building, below ground portions of the Conversion System, Leachate Processing and Disposal Facility, and the on-site Utility Interface shall become the personal property and responsibility of County at the end of the one hundred eighty (180) days period following notification of termination; and
- iv) The Contractor shall offer to sell the above-ground portions of the Conversion System and/or the Leachate Processing and Disposal Facility to the County in accordance with Section 12, Removal and Restoration.

SECTION 15 - DAMAGES AND ADMINISTRATIVE CHARGES

Except where otherwise specifically provided, the measure of damages to be paid by the Contractor to the County due to any failure by the Contractor to meet any of its obligations under this Agreement shall be the actual damages incurred by the County. Said damages shall include, but shall not be limited to, the following damages:

- A. The County's Damages in the Event of Termination of Contractor. If the County terminates this Agreement because of a default by the Contractor, the Contractor shall be liable to the County for all actual damages incurred, supported by written documentation, by the County as a result of Contractor's default. The foregoing shall apply without regard to the County's rights pursuant to any Performance Bond or other financial security instrument, provided that the County shall not be entitled to a double recovery for the same damage.
- B. The County's Damages Due to the Contractor's Failure to Repair and Maintain the Conversion System and Utility Interface. If at any time during the term of the Agreement, the Contractor fails or refuses to maintain the Conversion System and Utility Interface, the County shall have the right to take all necessary actions to place the facility in good repair

(including but not limited to contracting with third parties) and the Contractor shall pay the County all costs and expenses incurred by the County in placing the Project in good repair. At the sole option of the County, such costs and expenses may be added to any monies owed to County. The foregoing shall be in addition to any other damages for which the Contractor may be liable pursuant to other sections of this Agreement.

C. The County's Damages Due to Contractor's Failure to Comply with Environmental Regulations. If the Contractor fails to comply with any applicable environmental regulations to meet Title V and NSPS regulations for the Contractor's facility and the Landfill, the Contractor shall promptly pay to the County the following:

- i) All lawful fines, penalties, and forfeitures charged to the County by any governmental agency charged with enforcement of environmental laws and regulations or judicial orders; and
- ii) The actual costs, including, but not limited to, legal, administrative and any associated fees, incurred by the County as a result of the failure to comply with the environmental regulations including any costs incurred in investigating and remedying the conditions which led to the failure to comply with the environmental regulations.

D. The Contractor's Damages Due to the County's Failure to Comply with Environmental Regulations. If the County fails to comply with any applicable environmental regulations to meet Title V and NSPS regulations for the Landfill, the County shall promptly pay to the Contractor or appropriate regulator the following:

- i) All lawful fines, penalties, and forfeitures charged to the Contractor by any governmental agency charged with enforcement of environmental laws and regulations or judicial orders; and
- ii) The actual costs, including, but not limited to, legal, administrative and any associated fees, incurred by the Contractor as a result of the failure to comply with the environmental regulations including any costs incurred in investigating and remedying the conditions which led to the failure to comply with the environmental regulations.

SECTION 16 - REPRESENTATIONS AND WARRANTIES

A. Warranties of County. County hereby agrees, warrants, and represents to Contractor, as of the date of execution of this Agreement, that:

- i) The County has not entered into any other agreements with respect to the LFG conveyed to Contractor under this Agreement or with respect to any of the other rights conveyed to Contractor pursuant to Section 2 of this Agreement. County warrants that Contractor shall take the LFG free and clear of any liens or

encumbrances. County hereby warrants to Contractor that County has the title to the Conversion System Site, access to the site, the Landfill, and the LFG;

- ii) No part of the LFG project was financed by grants or subsidized energy financing and the energy credit was not claimed with respect to property used in any such recovery project;
- iii) The execution and delivery of this Agreement and related documents have been duly authorized, and constitute legal, valid, and binding obligations of the County which are enforceable in accordance with their terms and do not violate any law, rule or regulation; and
- iv) As of the effective date of this Agreement, the solid waste that the County accepts for disposal within the solid waste disposal units is non-hazardous solid waste as defined by Chapter 62-701, Florida Administrative Code (F.A.C.). County also covenants that during the term of the Agreement, County will continue to accept only non-hazardous solid waste or material deemed non-hazardous in nature as defined by Chapter 62-701, F.A.C. and will not seek to modify permits and authorizations applicable to the Landfill so as to enable the County to accept wastes other than non-hazardous solid waste or material deemed non-hazardous in nature as defined by Chapter 62-701, F.A.C.

B. Warranties of Contractor. Contractor hereby agrees, warrants and represents to County, as of the date of execution of this Agreement, that:

- i) Contractor is a duly organized, validly existing entity in good standing under the laws of the State of Florida. Contractor has all requisite corporate power to own its properties and to carry on the business that is now being conducted, to execute and deliver this Agreement and to engage in the transactions contemplated in this Agreement; and
- ii) The execution, delivery, and performance by Contractor of this Agreement are within the corporate powers of Contractor, have been duly authorized by all necessary corporate action, and do not violate any law, rule or regulation, or the terms of the articles of incorporation or bylaws of Contractor.

SECTION 17 – ASSIGNMENT & FIRST RIGHT OF REFUSAL

A. Contractor may not assign or otherwise convey Contractor's rights and/or obligations under this Agreement without obtaining County's prior written consent, which consent County may withhold, limit, and/or condition in County's sole discretion. Any consent by the County under this Section shall be by written amendment to the Agreement in a form and substance specified by the County in its sole discretion. If Contractor desires to assign or otherwise convey its rights and/or obligations under this Contract, Contractor no less than thirty (30) days prior to the assignment's proposed effective date, provide County with a written request for County's consent.

- B. Any assignment without the County’s consent is deemed void.
- C. Nothing herein shall preclude the right of the County to waive its rights under this Section 17 but no waiver shall be granted by the County without amendment to the Agreement.
- D. Prior to offering Contractor’s Conversion System and any related personal property, contract rights, associated government credits, Beneficial End-Use Product sales contracts or any other assets of value arising from this Agreement to a third-party during the term of this Agreement, Contractor shall first provide the County the opportunity to purchase the assets at fair market value, which shall be determined in the same manner as described in Section 12, B.

SECTION 18 - NOTICES

Any notice to be given under this Agreement shall be in writing and shall be deemed to have been properly given and received (i) when delivered in person to the authorized representative of the party to whom the notice is addressed, or (ii) on the date received as indicated on the prepaid certified or registered receipt when sent by prepaid mail, return receipt requested, to the party to be notified at the address indicated as follows:

To Contractor: _____

With Copies: _____

To County: Solid Waste Director
 Volusia County Solid Waste Division
 1990 Tomoka Farms Rd
 Port Orange, FL 32128

With Copies: County Attorney
 123 West Indiana Avenue
 DeLand, FL 32720

Either Party may change such representative or address under this Agreement by providing written notice to the other Party.

SECTION 19 - TAXES

Each Party shall, during the term of this Agreement, pay or arrange for the payment of all taxes that may be levied upon or assessed against the systems, facilities, equipment, machinery, and improvements constructed or installed by it in, on, or adjacent to the Landfill. To the extent permissible by Applicable Law, County shall recognize Contractor's Equipment as an environmental pollution control system as defined under applicable tax laws and, therefore, may be free from state sales taxes as provided by state statutes.

SECTION 20 - INTEREST OF CONTRACTOR

The Contractor covenants and agrees that it will not, either directly or indirectly, contract for or accept a contract for the performance of any work or service with any individual, business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the County; and the Contractor shall employ no person having any such interest.

SECTION 21 - COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

Neither Contractor, nor any parent or subsidiary corporation has employed or retained any company or persons, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that they have not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, County shall have the right to terminate the Agreement at its discretion without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

SECTION 22 - RECORDS AND AUDITS

In addition to the other requirements of this Agreement, if federal funds are used for any work under this Agreement, the Comptroller General of the United States, or any of his duly authorized representatives, shall have access to any books, documents, papers, and records of Contractor which are directly pertinent to work performed under this Agreement, for purposes of making audit, examination, excerpts, and transcriptions.

SECTION 23 - EQUAL OPPORTUNITY EMPLOYMENT & DBE PROGRAM

Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, disability, age, or genetic information. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, sex, national origin, disability, age, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The County Council has adopted policies that assure and encourage the full participation of Disadvantaged Business Enterprises (DBE) in the provision of goods and services. The County

encourages joint ventures between majority-owned firms and qualified disadvantaged / minority / women-owned firms.

SECTION 24 - SEVERABILITY

If any provision of this Agreement shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Agreement shall remain in full force and effect unless County or Contractor elect to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final. Notwithstanding any other portion of this Section 24, prior to terminating this Agreement, the Parties shall endeavor in good faith to substitute an enforceable provision that, to the maximum extent possible under Applicable Law, preserves the original intentions and economic positions of the Parties.

SECTION 25 – ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties. There are no understandings or agreements related hereto other than those which are expressed herein, and all prior negotiations, agreements, and understandings, whether oral or written, are superseded by this Agreement, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the Parties hereto.

SECTION 26 - GENERAL PROVISIONS

- A. Headings. The headings appearing in this Agreement are intended for convenience and reference only, and are not to be considered in construing this Agreement.
- B. Disclaimer of Joint Venture, Partnership, and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between County and Contractor or Energy Customer or to impose any partnership obligation or liability upon such Parties. Neither County nor Contractor or Energy Customer shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, another Party.
- C. Governing Law. This Agreement shall be governed by the laws of the State of Florida and the Code of Ordinances of the County of Volusia, Florida.
- D. All legal proceedings brought in connection with this Agreement may only be brought in a state court located in the State of Florida unless the cause of action is only cognizable in federal court. Venue in state court shall be exclusively in Volusia County, Florida. Venue in federal court shall be exclusively in the United States District Court, Middle District of Florida, Orlando Division. Each Party hereby agrees to submit to the personal jurisdiction

of those courts for any lawsuits filed there against such Party arising under or in connection with this Agreement.

- E. Amendment to Agreement. The County and Contractor agree that this Agreement sets forth the entire agreement between the Parties and that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, deleted, modified, superseded or otherwise altered, except by written amendment executed by the Parties hereto. Such amendment(s) are not valid, binding and enforceable unless signed by the Board of County Commissioners or by a County representative duly authorized by the Board of County Commissioners.
- F. Successors and Assigns. Subject to the limitations set forth in Section 17, all of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the Parties hereto and their respective successors and permitted assigns.
- G. Contractor Right to Conversion System Design. It is acknowledged that the Contractor and Energy Customer have or will have expended considerable time and expense in developing the design for the Conversion System and associated electrical transmission, steam, or LFG transmission lines, and, therefore, could consider such design to be proprietary. The County agrees on behalf of itself and its agents and representatives to maintain the proprietary nature of the design by not constructing like facilities without the written approval of the Contractor and Energy Customer.
- H. Remedies Not Exclusive. The remedies in this Agreement are not exclusive and supplement any other remedies provided at law or in equity.

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IN WITNESS WHEREOF, the Parties have made and executed this Landfill Gas Purchase Agreement, the day and year below written.

CONTRACTOR: _____

(SEAL)

BY: _____
(Signature)

BY: _____
Corporate Officer Name & Title

Date: _____

ATTEST: _____ Date: _____

COUNTY OF VOLUSIA

(SEAL)

COUNTY COUNCIL
VOLUSIA COUNTY, FLORIDA

By: _____
Ed Kelley
County Chair

ATTEST:

By: _____
George Recktenwald
County Manager

Date: _____

County Council Approval Date: _____

- Exhibit A Conversion System Site Map
- Exhibit B Delivery Point Location Map with Meter Locations
- Exhibit C Sample Payment Form
- Exhibit D Construction Phase Bonds and Insurance Requirements
- Exhibit E Schedule of Milestones
- Exhibit F New Source Performance Standards (NSPS)
- Exhibit G Scope of Services/Solicitation
- Exhibit H Proposal dated _____
- Exhibit I Proposal Extension Acceptance Letter dated _____