Item # 51

SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT: Landfill Gas Purchase Agreement

DEPARTMENT: Environmental Services DIVISION: Solid Waste Management

AUTHORIZED BY: Lisa Spriggs CONTACT: Ray Hooper and David Gregory EXT.

Agenda Date 11-07-2006 **Regular** ☒ **Consent** ☐ **Work Session** ☐ **Briefing** ☐
Public Hearing – 1:30 ☐ **Public Hearing – 7:00** ☐

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute Landfill Gas Purchase Agreement with Seminole Energy Systems, LLC.

BACKGROUND:

51. As directed at the December 20, 2005 BCC meeting, staff has completed negotiations for a landfill gas agreement with Landfill Energy Systems (dba Seminole Energy, LLC) and is presenting the attached agreement for approval. This contract was part of RFP-4255-05/TLR, Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project.

In its proposal, Seminole Energy offered the commitment to pay the County for all landfill gas delivered to the gas-to-energy plant in return for the right to use landfill gas as an energy source. Seminole Energy is committing to construct and operate a landfill gas-to-energy power plant on the site that will produce electricity. Seminole Energy will provide all of the plant, infrastructure, permits, and other resources needed to construct and operate the power plant and market the electricity.

Reviewed by:
Co Atty: 10-26-06
DFS:
Other: N/A
DCM:
CM:
File No. RFSP00

Some highlights of the negotiated agreement are:

- Seminole Energy will pay the County for all gas collected from the landfill and delivered to the plant.

- Seminole Energy will make the following payments to the County:
  - Initial payment - $50,000
  - Annual fee for right to use LFG - $25,000
  - Payment for LFG delivered - $0.25 per mmBTU
  - Payment for LFG delivered annually increased by the CPI.
  - Annual lease payment to use County's LFG flares - $10,000
  - Tax and emission credits – County will receive 50 percent of any emission or tax credits received by Seminole Energy.

- The agreement is not terminable for convenience by either party, but is terminable by default of the Contractor.

- Agreement is for a term of 20 years, with a re-calculation of the payment rate for LFG delivered in year 10, to reflect any changes in energy prices. A 20 year term was negotiated to allow Seminole Energy to amortize its significant investment over a longer term, allowing Seminole Energy to provide its higher proposed payments to the County.

- The County agrees to support 50 percent of any power line costs in excess of $1 million (capped at $3 million) through a reduction in the tax and emission credit share paid to the County.

- At the County's option, Seminole Energy may provide a contract technician to operate and maintain the County's gas well-field to assure optimal gas flow to the power plant (ensuring optimal operational and economical efficiencies).

The Agreement took significantly longer than anticipated to negotiate. Every proposer to RFP-4255 stated specific concerns about the draft Agreement included with the RFP. In the case of Seminole Energy, significant points requiring negotiation included contract term, insurance coverage, and termination for convenience. The results of the negotiations are: the contract term was set at 20 years (with a price adjustment to reflect any substantial energy price changes in year 10), insurance coverage requirements stayed the same (the County will reimburse Seminole Energy for environmental liability coverage through a reduction in the Annual Fee payment), and neither entity can terminate the agreement without cause. Additionally, the agreement was amended for Seminole Energy to offer to the County a contract landfill gas technician to assist with operation of the well field to assure optimum gas flows. Finally, Florida Power and Light (FPL) offered Seminole Energy a price to interconnect the power plant to its electrical distribution system that far exceeded County and Seminole Energy estimates. A condition describing a 50-50 cost sharing arrangement for interconnect costs over $1 million, capped at $3 million, was negotiated. Interconnect costs will be paid by Seminole Energy, and 50 percent of County

authorized costs will be reimbursed by the County through a reduction in the tax credit share paid by Seminole Energy to the County. Seminole Energy is still negotiating the interconnect with Florida Power and Light. At this time, the good faith estimate for the interconnect is $1,150,000, so Seminole County's potential obligation for this cost is $75,000.

The first year estimates of payment to the County under this agreement are:
Initial Payment (one time) $ 50,000.

Annual Fee	$ 25,000
Payment for LFG	133,500
Tax credit payments	261,000
Estimated annual payment	$419,000
Total first year payments	$469,000

This agreement creates a long-term program that will convert waste landfill gas into electricity, providing an environmental and economic benefit to the County.

The Fiscal Services/Purchasing and Contracts Division and Environment Services/Solid Waste Management Division recommend that the Board approve the project as negotiated and authorize the Chairman to execute the agreement as prepared by the County Attorney's Office.

LANDFILL GAS PURCHASE AGREEMENT

THIS LANDFILL GAS PURCHASE AGREEMENT ("Agreement"), made and entered into this _____ day of _____, 200__, by and between **SEMINOLE ENERGY, LLC**, a Florida Limited Liability Company, doing business at 29261 Wall Street, Wixom, Michigan 48393, hereinafter referred to as the "DEVELOPER" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771 hereinafter referred to as "COUNTY";

W I T N E S S E T H:

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

WHEREAS, the COUNTY has constructed an active landfill gas ("LFG") collection and flaring system at the Osceola Road Solid Waste Management Facility ("Landfill") in order to remain in compliance with applicable federal, state, and local laws and regulations, and to control landfill gas migration and atmospheric emissions, including odors; and

WHEREAS, the COUNTY plans to construct subsequent expansions to the LFG Management System; and

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

WHEREAS, the COUNTY desires to enter an Agreement with the DEVELOPER whereby the DEVELOPER would make certain payments to the COUNTY for the rights to and sale of LFG to a Buyer.

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:

(a) Beneficial End Use Product means products derived from LFG that may include, but are not limited to: processed LFG, pipeline quality LFG, electric power, thermal energy, CO_2, or any two or more of the foregoing. The use of such products shall result in a tangible financial gain for the COUNTY.

(b) British Thermal Unit (BTU) means 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, (gram), 778 foot-pounds, 1,055 joules, 2.931 10^{-4} kWh, or 0.293 watt hours.

(c) BTU per Cubic Foot means a measure of the heat available or released when one cubic foot of gas is burned. Landfill Gas has an expected value of 500 to 600 BTU per Cubic Foot.

(d) Buyer means the party or parties to which DEVELOPER will sell a Beneficial End Use Product derived from the recovery and/or processing of LFG.

(e) Commercial Operations means from the date when the DEVELOPER's LFG Utilization Facility begins deliveries of a Beneficial End Use Product to a Buyer.

(f) Commercial Quantities means an economically viable quantity of LFG (minimum of one (1) standard cubic feet per minute (scfm)) provided by the COUNTY at the Delivery Point pursuant to this Agreement.

(g) Condensate means the liquid formed from the condensing of the vapors that occurs during the collection, transportation, and processing of LFG.

(h) Day means a calendar day.

(i) Delivery Point(s) means the point(s) at which the LFG enters the DEVELOPER's header or connection piping for delivery to the DEVELOPER's LFG Utilization Facility. The point(s) are located at or near the COUNTY's Flare Station facilities.

(j) Flare Stations means the equipment and appurtenances used to incinerate LFG. The Flare Stations are used to incinerate LFG in conformance with applicable federal, state, and local rules and regulations, and to control odors. Under this Agreement, the DEVELOPER is obligated to maintain, repair, and operate the COUNTY's Flare Station(s) in such a manner as to incinerate any excess LFG not used for beneficial use, in order to control odors and to comply with all applicable regulatory requirements.

(k) Force Majeure means acts of God; winds, hurricanes, tornadoes, fires, epidemics, landslides, floods; strikes, lock-outs, acts of public enemies; insurrections; military action; war, whether or not it is declared; sabotage riots; civil disturbances; explosions; a change in law not due to improper conduct or to any negligent or intentional act or omission; or any cause or event, not reasonably within the control of the party claiming Force Majeure other than the financial inability of such party caused by factors other than any of the foregoing factors.

(l) Heating Value means 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.

(m) Landfill means the Osceola Road Solid Waste Management Facility located at 1930 Osceola Road, Geneva, Florida where Class I and Class III wastes are permanently deposited in solid waste disposal units.

(n) Landfill Gas (LFG) means any and all gases resulting from the decomposition of refuse material within the Landfill, consisting principally of methane, carbon dioxide and traces of other constituent gases.

(o) LFG Management System means the COUNTY operated network of LFG recovery wells and interconnecting pipes together with attendant valves, condensate sumps and pumps, monitoring devices and other related equipment installed for the purpose of extracting, collecting, and transporting LFG to the Delivery Point(s).

(p) LFG Purchase Agreement means this Agreement between the COUNTY and DEVELOPER for: the construction and operation of the DEVELOPER's LFG Utilization Facility, the connection to the Delivery Point(s) for the recovery and utilization of LFG, and the purchase of the LFG provided by the COUNTY at the Delivery Point(s).

(q) LFG Utilization Facility means the DEVELOPER's building or enclosure and equipment required for the processing and delivery of the Beneficial End Use Product to the Buyer, such equipment may include, but is not limited to, compression equipment, an oil and gas cooler, a condensate knockout tank, scrub areas, generating equipment, and related facilities.

(r) LFG Utilization Facility Site means an area located within the Landfill property upon which the DEVELOPER may access, install, and construct the LFG Utilization Facility. The LFG Utilization Facility Site shall be at a site mutually agreed to by the COUNTY and DEVELOPER.

(s) Leachate means the liquid that has passed through or emerged from solid waste and may contain soluble, suspended, or miscible materials.

(t) 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 LFG Utilization Facility 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 products, this term shall mean the metering facilities, pipelines, valves and any other equipment necessary to interconnect the LFG Utilization Facility with the transmission

or distribution pipelines or other facility of the electric utility, pipeline company, or other Buyer.

Section 2. Rights Granted to DEVELOPER. Subject to the limitations and other provisions of this Agreement, COUNTY hereby grants to DEVELOPER the following:

(a) Landfill Gas. The right and license to connect, process, sell, and utilize the LFG that is generated from the Landfill and other contiguous landfill expansion areas and delivered to the Buyer during the term of this Agreement. It shall be the DEVELOPER's responsibility to connect and utilize all LFG made available by the COUNTY for direct sale of the LFG as fuel or conversion of the LFG to a Beneficial End Use Product for sale to a Buyer. Title to and risk of loss for the LFG will pass to DEVELOPER at the Delivery Point(s). DEVELOPER shall have the exclusive right to claim any federal tax credits that may be associated with the recovery of LFG. DEVELOPER shall also have the exclusive right to claim and utilize any emission allowances and reduction credits that may be associated with LFG.

(b) Site for LFG Utilization Facility. In accordance with the provisions of this Agreement, the COUNTY will make available to DEVELOPER an area located within the Landfill property mutually agreeable to the COUNTY and DEVELOPER, by license, as required by DEVELOPER for construction of a LFG Utilization Facility and site improvements, commencing as of the effective date of this Agreement and terminating at the termination of this Agreement. COUNTY hereby covenants (i) that it has title to the LFG Utilization Facility Site in fee and (ii) that DEVELOPER shall have exclusive use of the LFG Utilization Facility Site during the term of this Agreement so long as DEVELOPER is not in default of its obligations under this Agreement.

(c) Access. COUNTY will make available to the DEVELOPER access to the LFG Utilization Facility Site for construction, installation, operation, and maintenance of the DEVELOPER's supplied facility equipment, transmission lines, sewer, electric, water, and telephone lines that are necessary for the operation of the facility.

Section 3. Obligations of COUNTY.

(a) Obligation. The COUNTY shall design, construct, upgrade, expand, operate, and maintain the LFG Management System and provide additional blowers and flares to the COUNTY's Flare Stations as needed to maintain compliance with federal and state regulations. The COUNTY will consult with the DEVELOPER 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 Management System. The DEVELOPER's comments shall not be binding on the COUNTY.

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

(1) cooperate in the construction, development, and operation of the Landfill so as to enhance the production of LFG, when it is possible to do so while controlling odors and maintaining compliance with all applicable regulations;

(2) not interfere with the DEVELOPER's operation and maintenance of the LFG Utilization Facility, providing DEVELOPER is complying with all applicable laws and regulations;

(3) instruct its independent contractors, agents and employees to avoid causing such interference, disruption, or destruction described above;

(4) promptly repair at its expense, major cracks, fissures, erosion or physical changes in the Landfill which have an adverse effect on the production of LFG or on the LFG Management System in accordance with applicable LFG regulations;

(5) comply with applicable federal, state and local laws, rules, ordinances and regulations relating to or regulating the construction and operation of the Landfill except for said responsibilities of the DEVELOPER as established under this Agreement; and

(6) maintain consistent cover on the Landfill to meet current federal and state requirements.

(b) Access to the DEVELOPER's Facilities. Access to the DEVELOPER's LFG Utilization Facility shall be by the established entranceway to the Landfill via the scalehouse. The COUNTY shall take appropriate steps to ensure that this access route to the LFG Utilization Facility is available to the DEVELOPER at all times (i.e., 24 hours per day, 7 days per week). When utilizing this access route, the DEVELOPER shall abide by all of the applicable policies and safety regulations of the COUNTY. In certain situations, the COUNTY may require access to the DEVELOPER's facilities. In such cases, the COUNTY will notify the DEVELOPER of the need to enter the DEVELOPER's premises.

(c) Documents. As reasonably requested by DEVELOPER, COUNTY shall:

(1) allow DEVELOPER 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

(2) allow DEVELOPER 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 DEVELOPER's activities contemplated in this Agreement, and allow DEVELOPER to copy any such material or documents as may be in COUNTY's possession.

(d) Good Faith. COUNTY shall perform its obligations hereunder in good faith, and acting reasonably, cooperate with DEVELOPER so that DEVELOPER can meet its responsibilities and obligation under this Agreement.

(e) Caveats. Notwithstanding any portion of this Agreement to the contrary, it is understood and agreed to by DEVELOPER that the COUNTY does not warrant or guarantee the rates of production, the chemical composition, or heating content of the LFG from the Landfill. DEVELOPER is relying on its own calculations and evaluation of the Landfill in this regard.

Section 4. Obligations of DEVELOPER.

(a) Obligations. The operation of the LFG Utilization Facility and any other activity of DEVELOPER shall not interfere with the management and operational requirements of the Landfill.

(b) LFG Utilization Facility. DEVELOPER shall, at its sole expense, permit, design, install, construct, operate, replace, expand, upgrade, and maintain the LFG Utilization Facility required for the processing and delivery of the Beneficial End Use Product to the Buyer. The design, installation, construction, operation, replacement, expansion, upgrade, if any, and maintenance of such LFG Utilization Facility shall be in accordance with federal, state, and local requirements, and industry standards.

(c) Delivery Point(s). DEVELOPER shall, at its sole expense, provide and install:

(1) Header piping, connection piping, valves, pipe supports, and any other auxiliary items from the DEVELOPER's LFG Utilization Facility to the Delivery Point(s).

(2) A tee, valve, and blind flange at the Delivery Point(s) for the purpose of connecting to the COUNTY's LFG Management System.

(3) Any needed blower booster(s) or blower(s) to manage the flow of LFG from the Delivery Point(s) to the LFG Utilization Facility.

(4) For the COUNTY's use, the DEVELOPER, at its own expense shall install, operate and maintain a flowmeter, gas chromatograph, and continuous recorder near the Delivery Point(s) for the purpose of determining the quantity and methane content of LFG delivered to the DEVELOPER. The COUNTY and DEVELOPER shall mutually select the final locations. Flow meter(s) shall be calibrated quarterly by the COUNTY's representative certified to perform such calibrations. The DEVELOPER may independently pay for calibration of the meter(s) by a third party certified to perform such calibrations with consent from the COUNTY. The DEVELOPER shall analyze the COUNTY's LFG daily for the content of methane and other constituents deemed necessary by the parties. Periodically, 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 DEVELOPER'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 DEVELOPER shall arrange for sampling by a mutually agreed upon third party laboratory. The COUNTY and the DEVELOPER shall share equally in the cost of the third party laboratory.

(d) Commercial Operations. DEVELOPER shall commence Commercial Operations within 18 months from the effective date of this Agreement.

(e) Operations. In addition to the following, DEVELOPER shall operate the LFG Utilization Facility in accordance with the Wellfield Maintenance Agreement of even date herewith attached hereto and incorporated herein as Exhibit "A". DEVELOPER shall:

(1) Operate the LFG Utilization Facility, COUNTY's Flare Station(s), and all associated DEVELOPER supplied equipment in a prudent manner in accordance with good engineering practices and in a manner consistent with that used by industry specialists providing similar services.

(2) Maintain the LFG Utilization Facility, COUNTY's Flare Station(s), and all associated DEVELOPER supplied equipment in good working order throughout the term of this Agreement.

(3) Repair the LFG Utilization Facility, COUNTY's Flare Station(s), and all associated DEVELOPER supplied equipment, as necessary, to restore normal operations and system redundancies to ensure compliance with the terms of this Agreement.

(4) Maximize the use of the available LFG from the COUNTY and sell and deliver Beneficial End Use Product to a Buyer.

(5) Maintain a constant and balanced draw from the COUNTY's LFG Management System in order for the COUNTY to maintain a balance of their system.

(6) Maintain air emission generated by the operations to any applicable standards or permits.

(7) Flare all LFG that may be available due to excess quantity, scheduled and unscheduled maintenance, or shut-off by Buyer. Meet permit requirements, control odors, operate, repair, and maintain the COUNTY's Flare Station(s).

(8) Control on-site odors from the DEVELOPER's facilities in order to control on-site and off-site impacts in accordance with applicable standards, ordinances, permits, rules and regulations.

(9) Maintain noise levels from the operation of the DEVELOPER's facilities at any point of the Landfill site boundary in accordance with Section 30.1302 of the COUNTY's Land Developement Code Regulations. The DEVELOPER shall not be responsible for the noise from the COUNTY's landfill operation.

(10) Control and dispose of all wastes generated from the DEVELOPER's facilities according to current environmental regulations, including gas condensate and waste cooling water.

(11) Comply with all applicable federal, state and local laws, rules, ordinances and regulations and any other said responsibilities of the DEVELOPER as established under this Agreement.

(12) Provide information to COUNTY, as necessary, for COUNTY to comply with New Source Performance Standards (NSPS) reporting requirements, or other regulatory reporting requirement.

(13) Comply with annual inspection and implement recommendations made by the COUNTY's consulting engineer on annual inspection of the flare and facility property.

(f) Good Faith. DEVELOPER shall perform its obligations hereunder in good faith and acting reasonably, cooperate fully with COUNTY so that COUNTY can meet its responsibilities and obligation under this Agreement. DEVELOPER shall comply with all laws and regulations applicable to the work being performed under this Agreement.

(g) Contract Review. DEVELOPER 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 LFG Utilization Facility during the term of this Agreement. Any such review, comment and approval will not be unreasonably withheld. The purpose of such review is to ensure that the facilities constructed on the COUNTY's property will not interfere with the COUNTY's operations, and will comply with all applicable laws (e.g., permitting, zoning, and environmental requirements), as well as the provisions of this Agreement. The COUNTY shall not have the right to review or approve any proprietary information, or to approve the detailed terms of DEVELOPER's contracts, but COUNTY may provide comments to DEVELOPER on such contract terms, and DEVELOPER agrees to make such changes as may be necessary to comply with COUNTY's requirements. If changes to these contracts are made, DEVELOPER will submit such changes to the COUNTY for review and COUNTY shall notify DEVELOPER 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, based on the design standards set forth in this Agreement and accompanied by a detailed explanation of the reasons for the rejection. COUNTY will also propose reasonable alternatives to DEVELOPER to eliminate the reasons for the rejection. COUNTY and DEVELOPER recognize that delays in the construction of these systems may delay

DEVELOPER's construction schedule. Therefore, COUNTY and DEVELOPER agree to exercise reasonable efforts to expedite the review and approval process. DEVELOPER will provide COUNTY with a complete set of "as built" plans for the DEVELOPER's LFG Utilization Facility. The review process described in this paragraph does not relieve the DEVELOPER of its obligations to obtain the required building permits and site plan review approval, or any other local, state or federal approvals required for the DEVELOPER's LFG Utilization Facility.

Neither the COUNTY's authority to review and approve 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 DEVELOPER, 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 DEVELOPER. Nothing in this Agreement shall be construed to eliminate the need for the DEVELOPER to comply with all applicable laws and regulations.

(h) Permits. DEVELOPER shall, at its own expense, prepare and file permit applications and diligently prosecute 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 LFG Utilization Facility, associated electrical transmission lines, and/or steam, or LFG transmission pipelines, on and off-site. In connection therewith, the COUNTY agrees to make available to the DEVELOPER 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 permit modifications or applications that may affect existing COUNTY permits and/or require the COUNTY to attest or sign the applications shall be submitted to the COUNTY for review and comment prior to submission to the applicable regulatory agency. The DEVELOPER shall incorporate any comments from the COUNTY subsequent to final review by the COUNTY and re-submit to COUNTY for final approval, authorization, and signature.

(i) Laws and Regulations. The DEVELOPER must agree to abide by and conduct its programs and provide its services in compliance with the applicable provisions of:

- Florida Worker's Compensation Statutes and Regulations, Florida Statutes, Chapter 440 and Florida Administrative Code (F.A.C), Rule 38F
- Florida Workplace Safety and Health Regulations, F.A.C - Rule 38I
- Federal Civil Rights Act of 1866

- Federal Civil Rights Act of 1871
- Federal Equal Pay Act of 1963
- Federal Civil Rights Act of 1964
- Federal Age Discrimination and Employment Acts of 1967
- Federal Rehabilitation Act of 1973
- Federal Americans with Disabilities Act of 1990
- Federal Civil Rights Act of 1991
- Florida Civil Right Act of 1992
- American National Standards Institute
- National Fire Protection Association
- Occupational Safety and Health Act, Code of Federal Regulation, Chapter 29, Parts 1910 and 1926, General Industry Standards and Construction Industry Standards, as amended, with particular attention to the Hazard Communications, Trenching and Shoring and Confined Space Entry Standards.
- All other applicable ordinances, statutes, laws and amendments thereto.

The DEVELOPER is presumed to 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 DEVELOPER will in no way relieve them of responsibility.

(j) Site Security. The LFG Utilization Facility Site shall be fenced and gated and locked during construction and operations. The fencing shall contain signage on each side, warning of any hazards and providing telephone numbers for notification of emergency situations. Employees of the COUNTY shall not be permitted on the LFG Utilization Facility Site, except in the event of an emergency or disaster, unless accompanied by an authorized employee of the DEVELOPER. Subject to the exemptions included in this subsection for entry onto the LFG Utilization Facility Site, the COUNTY's employees shall not enter the site unless:

(1) DEVELOPER's employee is on the site at the same time, or

(2) DEVELOPER requests assistance from the COUNTY or a duly authorized representative, or

(3) It is necessary for the COUNTY to collect samples from the discharges of the DEVELOPER's facility, or

(4) A situation that requires immediate attention. The COUNTY will notify the DEVELOPER within 24 hours of entrance onto the DEVELOPER's site.

The fencing, gating, and site security requirements of this subsection shall be limited to the DEVELOPER's LFG Utilization Facility Site.

(k) Project Plan. The DEVELOPER must prepare and submit to the COUNTY a preliminary Project Plan for the LFG Utilization Facility Project, during the construction

process. The Plan will cover a number of aspects of the DEVELOPER's operations and will include at a minimum:

- Testing requirements for startup of the LFG Utilization Facility;
- LFG Utilization Facility Operating Plan that demonstrates at a minimum the facility's ability to process the initial LFG flows (LFG available from the COUNTY at startup of the Facility) from the Landfill;
- Reporting requirements to governmental agencies for permits associated with the LFG Utilization Facility;
- Testing and monitoring procedures of the LFG Utilization Facility to assure compliance with permit conditions;
- An Emergency, Disaster and Safety Plan

The Project Plan will be finalized and accepted by the COUNTY prior to the startup of the LFG Utilization Facility. Once accepted by the COUNTY, the DEVELOPER is obligated to adhere to the Plan. Deviations from the 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 Project Plan by the COUNTY.

(l) Project Schedule. The DEVELOPER shall be responsible for developing and keeping current a project schedule for each of the elements of the LFG Utilization Facility construction which show: the sequence of project development, permitting, design, construction, startup, commencement of operations, system testing and monitoring, and reporting to governmental agencies. The COUNTY will review and accept the Project Schedule before any construction shall commence. The COUNTY will be informed of monthly progress and changes in the schedule by the DEVELOPER.

(m) Transmission Line. Any off-site pipeline or transmission line to the Buyer's premises shall comply with and be included within the requirements and liabilities assumed by the DEVELOPER under this Agreement. Any portion of the pipeline or transmission line on public right of way shall be clearly marked 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.

(n) Performance Bond or Other Financial Security Instrument. The DEVELOPER shall ensure that a performance bond or other financial security instrument 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. The bond or other financial security instrument shall be conditioned upon full performance of all obligations imposed upon the DEVELOPER by this Agreement, without limitation. The 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 performance bond or other financial security shall be subject to the prior approval of the COUNTY Attorney.

Section 5. Term.

(a) Agreement Term. This Agreement shall have a term of twenty (20) years which shall begin on the date when the DEVELOPER commences Commercial Operations of the LFG Utilization Facility, consistent with the provisions of this Agreement. At the end of the term, this Agreement shall terminate, unless extended by mutual written agreement of the COUNTY and DEVELOPER, provided that the party wishing to extend gives the other at least one hundred eighty (180) days written notice of such desire. The term of this Agreement also may be extended if and when the COUNTY adds additional LFG extraction wells in the Landfill and the DEVELOPER agrees to expend additional capital funds to increase the capacity of its LFG Utilization Facility, provided the COUNTY and the DEVELOPER consent in writing to the extension.

(b) Effective Date. This Agreement shall become effective on the date it is executed by a duly authorized representative of the COUNTY. Until the effective date, this Agreement shall be of no force or effect.

Section 6. Payment.

(a) Initial Payment for LFG Rights. DEVELOPER shall pay the COUNTY a lump sum of Fifty Thousand and No/100 Dollars ($50,000.00) within ninety (90) days of the effective date of this Agreement, or upon financing the LFG Utilization Facility, whichever comes first. This lump sum payment to the COUNTY shall constitute the DEVELOPER's payment for an exclusive right to and use of LFG from the Landfill.

(b) Payment for Right to and Use of LFG from the Landfill. DEVELOPER shall pay a fixed fee of Twenty-five Thousand and No/100 Dollars ($25,000.00) per year, payable in equal monthly installments of Two Thousand Eighty-three and 33/100 Dollars ($2,083.33). This payment shall cover an exclusive right to and use of LFG from the Landfill and a license for the LFG Utilization Facility Site. Payment is to commence when the DEVELOPER commences Commercial Operations of the LFG Utilization Facility. This fee shall be adjusted by an inflation factor, on an annual basis, on the anniversary date of the Agreement. The annual payment under this section is based on four (4) engines operating. The annual payment shall increase by Five Thousand and No/100 Dollars ($5,000.00) for each additional engine brought on line and the monthly payment shall be revised as additional engines are brought on line. The cost of the Environmental Impairment Insurance, upon approval by the COUNTY, and as described in Section 11(a) 6 shall be deducted from this payment.

(c) Payment for LFG Delivered. DEVELOPER shall pay a unit rate fee of $0.25 per mmBTU, payable in monthly installments for the totaled LFG delivered to the DEVELOPER, by recording the total quantity of LFG delivered to the DEVELOPER on a monthly basis as determined by the flow meters at the Delivery Point(s). This unit rate fee shall be annually adjusted by the adjustment factor of Consumer Price Index - All Urban Consumers, US All Items, 1982-84 = 100, CPI Series I.D. CUUR0000SAO on

the anniversary date of the Agreement. After the ten (10) year anniversary of the commercial operation of the LFG Utilization Facility, the price per mmBTU for LFG shall be adjusted as follows: the then current gas price shall be multiplied by the average price per Kw received by the LFG Utilization Facility received during its first year of operation divided by the average price per KW received by the LFG Utilization Facility during its first year of operation. The new price after the ten (10) year adjustment is subject to the annual adjustment described above.

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

$$mmBTU\ per\ billing\ period = \frac{AxBxC}{D}$$

where:

A = Totalized Landfill Gas flow recorded in the respective billing period.

B = Methane Content of Landfill Gas stated in a decimal percentage.

C = Constant Value of 1,012.32 BTU (HHV) per Cubic Foot

D = Factor of 1,000,000

(d) Lease Payment for the Use of the COUNTY's LFG Flare Station(s). DEVELOPER shall pay a fixed fee of Ten Thousand and No/100 Dollars ($10,000.00) per year, payable in twelve (12) equal monthly installments of Eight Hundred Thirty-three and 33/100 Dollars ($833.33). This payment shall cover the use of the COUNTY's Flare Station(s). In return, the DEVELOPER must maintain, repair, and operate the flare station(s) to meet all regulatory permit requirements and control odors.

(e) Payment Due Date. All monies due to the COUNTY on a monthly payment basis shall be payable in arrears along with documentation of revenues receipts, monthly LFG quantities delivered to the DEVELOPER, and calculations of the monthly payment are due on or before the twenty-fifth (25th) day of the calendar month following the month in which DEVELOPER actually receives revenues from its sale of the Beneficial End Use Products converted from the LFG from the Landfill. The COUNTY shall have the right to inspect, copy, and audit during reasonable business hours the sales journal and any other pertinent books and records of the DEVELOPER relating to the calculations of the revenues upon which the payment of LFG delivered will be based or any other payment to the COUNTY. If the above indexes are not available for any reason, the parties shall mutually agree on the use of a replacement index or indexes.

(f) Tax and Emission Credits. If any federal, state, or local tax or emission credits become available, DEVELOPER shall pay a fee to the COUNTY for any tax or emission credits received by the DEVELOPER for the LFG Utilization Facility. The fee

shall be equal to fifty percent (50%) of any tax or emission credits received by the DEVELOPER in any one (1) year. The fee shall be payable in twelve (12) equal monthly installments. Payment shall commence the first month after the DEVELOPER receives tax or emission credits.

(g) Utility Interface Costs. The DEVELOPER is solely responsible to pay for all utility interface costs. The DEVELOPER shall exercise diligence to minimize its utility interface costs. The DEVELOPER shall present to the COUNTY for COUNTY acceptance documented utility interface cost information for costs associated with transmission lines, appurtenances and improvements required by Florida Power and Light (FPL) at FPL's Geneva substation to accept power from the LFG Utilization Facility. The COUNTY shall not unreasonably condition or withhold acceptance of the DEVELOPER's documented utility interface costs. The DEVELOPER may reduce its payment of Tax and Emission Credit fees due the COUNTY in an amount equal to one-half of the COUNTY accepted DEVELOPER's utility interface costs in excess of One Million and No/100 Dollars ($1,000,000.00). If one-half of the DEVELOPER's COUNTY accepted utility interface costs exceed one-year's Tax and Emission Credit fees due to COUNTY, the DEVELOPER may reduce its payment of Tax and Emission Credits for subsequent periods, not to exceed ten (10) years. The total reduction in tax credit fees paid to the COUNTY by the DEVELOPER shall be limited to no more than One Million Five Hundred Thousand and No/100 Dollars ($1,500,000.00)

Section 7. Financing. COUNTY acknowledges that DEVELOPER 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, fixtures, and buildings that make up the LFG Utilization Facility and Utility Interface for the purpose of obtaining such financing, provided:

(a) DEVELOPER 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 DEVELOPER from any liability or responsibility for the performance of its obligations under this Agreement.

Under no circumstances shall DEVELOPER cause any mortgage or lien to exist on the COUNTY property, Landfill, access road, or LFG Utilization Facility Site, and no security interests may be granted in any underground transmission lines, pipelines, or underground equipment or fixtures associated with the project.

Section 8. General Obligations.

(a) Planning and Expansion. DEVELOPER recognizes that future development of the COUNTY Landfill may include additional facilities. COUNTY and DEVELOPER 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 construction of LFG Management System and cover) shall at all times remain the property of COUNTY.

(c) Independent Contractor. In the performance of any activities pursuant to this Agreement, the DEVELOPER will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer, or associate of the COUNTY. The DEVELOPER shall be solely responsible for the means, methods, sequences, and procedures utilized by the DEVELOPER in the full performance of this Agreement. Neither the DEVELOPER nor any of its employees, officers, agents or any other individual directed to act on behalf of the DEVELOPER 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 DEVELOPER is responsible for the collection and removal of condensate from the DEVELOPER's condensate sumps, DEVELOPER's condensate knockout vessel(s) and the LFG Utilization Facility, and the proper handling and delivery of the condensate to the COUNTY's leachate collection system (leachate manhole) or leachate storage tanks. The DEVELOPER has no other right to discharge or dispose of any other materials 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 tanks. The COUNTY shall have the right to collect and test samples from the DEVELOPER's facilities before discharging into the COUNTY's facilities.

(e) Gas Migration and Emissions. DEVELOPER and COUNTY acknowledge that the primary objective of the LFG Management 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. DEVELOPER shall operate the LFG Utilization Facility in a manner that is conducive to this primary objective.

FURTHERMORE, the COUNTY is to provide all of the needed LFG Management System components and all replacement, expansions, and additions and the operation thereof to collect the LFG generated at the Landfill to the greatest extent possible so that (i) the operation of the Landfill will remain in compliance with applicable federal, state and local laws and regulations, and (ii) the operation of the Landfill will control LFG migration and odors.

(f) COUNTY's Landfill Gas Flare Station(s). The COUNTY currently operates two (2) flare stations, the Phase I flare station and the Phase II flare station. The Phase I flare station is enclosed by a security fence and includes a ten-inch (10") diameter utility flare skid with ancillaries, (10) HP air compressor, and condensate knockout/pump station CKP-1, which includes a pneumatic pump. The Phase II flare station is also enclosed by a security fence and includes a twelve-inch (12") diameter utility flare skid with ancillaries and 10 HP air compressor. Also included in the Phase II flare station but not enclosed in the fence is condensate knockout/pump station CKP-11, which includes a pneumatic pump.

LFG that is not used in a beneficial manner shall be incinerated at the COUNTY's Flare Station(s). At all times, the DEVELOPER shall maintain, repair, and operate the COUNTY's Flare Station(s) to control odors and comply with all applicable regulatory requirements. Failure for the DEVELOPER to meet these obligations may cause the DEVELOPER to be in default and be assessed damages and administrative charges as provided in Sections 14 and 15. The COUNTY shall not be held liable for any failures at the Flare Station(s) due to the DEVELOPER's acts or omissions.

The COUNTY shall design, permit, construct and pay for any additional equipment or other improvements to the COUNTY's Flare Station(s) that are necessary to ensure compliance with applicable regulations due to (i) a change in applicable laws or regulations that occurs after the effective date of this Agreement or (ii) an expansion of or other change in the COUNTY's LFG Management System. The COUNTY shall also be responsible for damages, fines or corrective action related to or required by any catastrophic failure of the COUNTY's Flare Station(s), provided that such failure is not caused by DEVELOPER's acts or omissions during DEVELOPER's maintenance, repair and operation of said Flare Station (s).

(g) Non Waiver.

(1) 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.

(2) No action taken by COUNTY or DEVELOPER 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 that this Agreement is not terminated or as a waiver of the termination.

(h) Inspections. COUNTY has the right to conduct inspections of the DEVELOPER's facilities to verify operations compliance, environmental compliance, and compliance with applicable local, state, and federal regulations and said responsibilities of this Agreement

Section 9. Limitations of Liability.

(a) Except as otherwise provided herein, COUNTY provides no warranties or guarantees, either expressed or implied, as to the amount or chemical composition of the LFG to be extracted and made available to the DEVELOPER 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 Commercial Quantities of LFG, DEVELOPER may terminate this Agreement as provided in Section 14(d).

(b) Provided DEVELOPER is complying with applicable laws and regulations, DEVELOPER will 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 DEVELOPER.

(c) Nothing contained within this Agreement shall be construed to mean that DEVELOPER has assumed any of COUNTY's responsibilities to comply with any environmental laws and regulations, whether federal, state, or local.

(d) In no event shall DEVELOPER be liable to COUNTY with respect to any claims arising from the ownership of the Landfill.

(e) COUNTY shall not be liable for damages, including consequential damages, loss of revenues and/or lost profits, for COUNTY employees' entry on the LFG Utilization Facility Site at the Landfill pursuant to Section 4(j) herein. Further, COUNTY shall not be liable for consequential damages, loss of revenues and/or lost profits for any reason whatsoever.

(f) DEVELOPER is liable for any fines and/or repair for any environmental damage due to the DEVELOPER's facilities construction and operations.

(g) Nothing contained in this Agreement constitutes a waiver of the COUNTY's sovereign immunity or the limitations on liability contained in Section 768.28, Florida Statutes.

Section 10. Indemnification. To the fullest extent permitted by Laws and Regulations, the selected DEVELOPER shall indemnify and hold harmless the COUNTY and the officers, directors, employees, agents and other consultants of the COUNTY from and against all claims, expenses, losses and damages (including but not limited to all fees and charges of the DEVELOPER, engineers, architects, attorneys and other professionals) caused by, arising out of or resulting from the performance of services, provided that any such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease, death, or personal injury, or to property damage, including the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission of the DEVELOPER, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of

the services or anyone for whose acts any of them may be liable. The DEVELOPER agrees that it will pay the costs of the COUNTY's legal defense, including fees of attorneys as may be selected by the COUNTY and shall defend, satisfy, and pay any judgments which may be rendered against the COUNTY in connection with the above hold harmless agreement. The DEVELOPER acknowledges that specific consideration has been received for this hold harmless/indemnification provision.

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

Section 11. Insurance. Before starting and throughout the Term of this Agreement, the DEVELOPER shall procure and maintain insurance of the types and to the limits specified in Section A below.

The DEVELOPER shall require each of its Subcontractors, if any, to procure and maintain, until completion of that Subcontractor's work, insurance of types and to the limits specified in Section A(i) through (v) inclusive below. It shall be the responsibility of the DEVELOPER to ensure that all its Subcontractors meet these requirements.

(a) Coverage. Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements.

(1) Workers' Compensation: Coverage to apply for all employees at the STATUTORY limits in compliance with applicable state and federal laws; if any operations are to be undertaken on or about navigable waters, coverage must be included for the USA Longshoremen & Harbor Workers Act, and Jones Act; in addition, the policy must include EMPLOYERS LIABILITY for limits of Five Hundred Thousand and No/100 Dollars ($500,000.00)/each accident; One Million and No/100 Dollars ($1,000,000.00)/disease - policy limit; Five Hundred Thousand and No/100 Dollars ($500,000.00)/disease - each employee, and a waiver of subrogation in favor of COUNTY, its agents, employees and officials.

(2) Commercial General Liability: Coverage must be afforded, under a per occurrence form policy, including Premise Operations, Independent Contractors, Products and Completed Operations, Broad Form Property Damage Endorsement, with a Hold Harmless and Named Additional Insured Endorsement in favor of the COUNTY for limits not less than Four Million and No/100 Dollars ($4,000,000.00)/general aggregate; Two Million and No/100 Dollars ($2,000,000.00)/products-completed operations (aggregate); Two Million and No/100 Dollars ($2,000,000.00)/personal injury and property damage liability; Two Million and No/100 Dollars ($2,000,000.00)/each occurrence; Fifty Thousand and No/100 Dollars ($50,000.00)/fire damage legal; Five Thousand and No/100 Dollars ($5,000.00)/medical payments.

(3) Business Auto Policy: Coverage must be afforded including coverage for all owned vehicles, hired/non-owned vehicles, with an Additional Named Insured Endorsement in favor of the COUNTY, for a combined single limit (bodily injury and property damage) of not less than One Million and No/100 Dollars

($1,000,000.00)/combined single limit (bodily limits; injury/property damage); personal injury protection/statutory One Million and No/100 Dollars ($1,000,000.00) /uninsured/underinsured motorist: One Million and No/100 Dollars ($1,000,000.00)/hired /non-owned auto liability.

(4) Builder's Risk /Installation Floater: When this Agreement includes construction of or additions to above ground buildings or structures, or installation of machinery or equipment, Builder's Risk, and/or Installation Floater coverage must be provided as follows:

(i) All Risk Coverage - All risk Coverage on a completed value form shall provide primary, non-contributory coverage with a waiver of subrogation in favor of the COUNTY.

(ii) Amount of Insurance – one-hundred percent (100%) of the completed value of such addition(s), buildings(s), or structures(s), or machinery and equipment.

(iii) Waiver of Occupancy Clause or Warranty - Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the building(s), addition(s), or structure(s) will not be occupied by the COUNTY.

(iv) Maximum Deductible – Five Thousand and No/100 Dollars ($5,000.00) each claim. Higher deductibles are permitted subject to COUNTY approval.

(v) Additional Named Insured - The COUNTY must be included as an additional named insured.

(vi) Notice of Cancellation and/or Restriction - The policy must be specifically endorsed to provide the COUNTY with thirty (30) days' notice of cancellation and/or restriction.

(vii) Flood Insurance - When the buildings or structures are located within an identified special flood hazard area, flood insurance protecting the interest of the DEVELOPER and the COUNTY must be afforded for the lesser of the total insurable value of such buildings or structures, or the maximum amount of flood insurance coverage available under the National Flood Insurance Program.

OR

(5) Property Insurance Coverage: When construction of any above ground building or structure, or installation of machinery or equipment is complete, coverage must be provided as follows:

(i) All Risk Coverage - All Risk Coverage on a completed value form shall provide primary, non-contributory coverage with a waiver of subrogation in favor of the COUNTY.

(ii) Amount of Insurance – one-hundred (100%) of the "replacement cost value."

(iii) Maximum Deductible – Five Thousand and No/100 Dollars ($5,000.00) each claim. Higher deductibles are permitted subject to COUNTY approval.

(iv) Additional Named Insured - The COUNTY must be included as an additional named insured.

(v) Notice of Cancellation and/or Restriction - The policy must be specifically endorsed to provide the COUNTY with thirty (30) days' notice of cancellation.

(vi) Flood Insurance - When the buildings or structures are located within an identified special flood hazard area, flood insurance protecting the interest of the Contractor must be afforded for the lesser of the total insurable value of such buildings or structures, or the maximum amount of flood insurance coverage available under the National Flood Insurance Program.

(6) Environmental Impairment Insurance: Coverage shall be provided and maintained as a separate policy for One Million Dollars and No/100 Dollars ($1,000,000.00) per occurrence; Two Million Dollars and No/100 Dollars ($2,000,000) aggregate.

(7) Business Interruption: Coverage shall be maintained in an amount sufficient to cover COUNTY's loss of revenues or consequential damages for the period of time it would take to repair or replace the damage or loss that caused said loss or damage.

(b) Waiver of Subrogation/Cause of Action. DEVELOPER agrees to waive any rights of recovery against the COUNTY for damage or loss to DEVELOPER's property or other assets, and for any loss of revenue or consequential damages, howsoever caused, and agrees to require appropriate waivers of subrogation from its insurance companies.

(c) Certificates of Insurance. Certificates of all insurance required from the DEVELOPER shall be filed with the COUNTY as the Certificate Holder, before operations are commenced. The insurance indicated on the Certificate shall be subject to its approval for adequacy and protection. The certificate will state the types of coverage provided, limits of liability, and expiration dates. The COUNTY shall be identified as an Additional Named Insured for each type of coverage required by Section A (2) through A (6) above. The required certificates of insurance may refer specifically to this Agreement and the above sections in accordance with which such insurance is being furnished, and may state that such insurance is as required by such sections of this Agreement.

The DEVELOPER shall provide a Certificate of Insurance to the COUNTY with a thirty (30) days' notice of cancellation. In addition, the COUNTY will be shown as Additional Named Insured, with a Hold Harmless Agreement in favor of the COUNTY, where applicable. The certificate should also indicate if coverage is provided under a "claims made" or "per occurrence" form. If any coverage is provided under a claims made form, the certificate will show a retroactive date, which should be the same date as the Agreement (original date if Agreement is renewed) or prior.

If the initial insurance expires prior to the completion of the work, renewal certificates and/or required copies of policies shall be furnished thirty (30) days prior to the date of their expiration.

Section 12. Removal and Restoration.

(a) Ownership of Equipment. Except as otherwise provided in this Agreement, the LFG Utilization Facility and related equipment shall remain the personal property and/or responsibility of DEVELOPER (collectively "DEVELOPER's Equipment"), notwithstanding the method or mode of installation or attachment to the Landfill. Upon written request by DEVELOPER, COUNTY shall provide a waiver or estoppel certificate from COUNTY or any lessee operator of the Landfill, in a form satisfactory to DEVELOPER and COUNTY, acknowledging that DEVELOPER's Equipment is personal property owned by DEVELOPER subject to right of removal by DEVELOPER. Notwithstanding the above, however, no equipment shall be removed that will affect the operations of the COUNTY's Flare Stations needed to remain in compliance with applicable federal, state, and local laws and regulations, and to control landfill gas 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 LFG Utilization Facility and the building shall become the personal property and responsibility of COUNTY. DEVELOPER shall have no further responsibility with respect to the below ground portions of the LFG Utilization Facility after DEVELOPER conveys title to such equipment, free and clear of any encumbrances, liens or security interest.

Notwithstanding the above, within thirty (30) days after the expiration or termination of this Agreement, DEVELOPER shall offer to sell the above-ground portions of the LFG Utilization Facility including any DEVELOPER owned transmission equipment to COUNTY for an amount equal to the Fair Market Value as determined hereinbelow. COUNTY shall have ninety (90) days to accept or reject such offer, in all or in part, and notify DEVELOPER of its decision. Should COUNTY purchase some or all of the above-ground portions of the LFG Utilization Facility including any DEVELOPER owned transmission equipment, DEVELOPER will convey title to COUNTY free and clear from any and all liens and security interests. All property to be conveyed by DEVELOPER under this subsection must be in good operating condition. In determining the Fair Market Value, the cost of repairs shall be deducted from the purchase price. If the COUNTY chooses not to purchase the LFG Utilization Facility, within ninety (90) days, the DEVELOPER shall, at its sole expense, remove all LFG Utilization Facility and any associated transmission equipment except for the building from the Landfill and return the LFG Utilization Facility Site to its original condition.

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

For purposes of this Agreement, the Fair Market Value (FMV) of any equipment shall be determined by means of an appraisal by persons professionally qualified to make appraisals of industrial equipment as follows: (i) DEVELOPER shall appoint an appraiser who shall estimate the FMV as of the time indicated and provide a written determination of the FMV to both DEVELOPER 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 DEVELOPER; (iii) if COUNTY's appraiser's estimate of the FMV is within fifteen percent (15%) of DEVELOPER'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 DEVELOPER's appraiser's estimate by more than fifteen percent (15%), then the COUNTY and the DEVELOPER 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.

(c) Removal and Restoration Bond. Before starting and throughout the term of this Agreement, DEVELOPER shall procure and maintain a bond or financial security instrument under forms acceptable and approved by the COUNTY to ensure the removal of the DEVELOPER's facilities and the restoration of the land upon the

expiration or termination of this Agreement. The amount of the bond or financial security instrument shall be Fifty Thousand and No/100 Dollars ($50,000.00).

Section 13. Force Majeure. If by reason of Force Majeure either party is unable to carry out, either in whole or in part, its obligations herein contained, such party shall not be deemed in default during the continuation of such inability, provided that:

(a) The non-performing party, as soon as possible but no later than two (2) weeks after the occurrence of the cause of the Force Majeure, gives the other party written notice describing the particulars of the occurrence; and

(b) The suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; and

(c) No obligations of either party which arose prior to the occurrence causing the suspension of performance be excused as a result of the occurrence; and

(d) That the non-performing party endeavors to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

Neither party shall be required to settle strikes, lockouts, or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in its judgment, not in its best interest. The fee required to be paid by DEVELOPER set forth in Section 6(b) shall not apply, and DEVELOPER shall be relieved of its obligation therefrom, so long as an event of Force Majeure has occurred and is continuing.

Section 14. Termination.

(a) DEVELOPER's Default. The failure of the DEVELOPER to comply with any provision of this Agreement shall place the DEVELOPER in default. Prior to terminating the Agreement, the COUNTY shall notify the DEVELOPER in writing. Notification shall make specific reference to the provision which gave rise to the default. The COUNTY shall provide the DEVELOPER thirty (30) days to propose a written remedy and schedule which shall set forth the specific time frame for curing default. The COUNTY shall approve or disapprove the DEVELOPER's proposed remedy and schedule, which shall not be unreasonably withheld, delayed, or conditioned. If the COUNTY disapproves DEVELOPER's proposed remedy and schedule, the COUNTY may, at its sole option, direct the proposed remedy and schedule or provide DEVELOPER with ninety (90) days prior written notice of termination.

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

(1) the filing by or against DEVELOPER of a petition in bankruptcy or the complete cessation of the business operations of DEVELOPER;

(2) failure by DEVELOPER to pay the fees due the COUNTY pursuant to Section 6, Payment;

(3) failure by the DEVELOPER to operate the LFG Utilization Facility, the COUNTY's Flare Station(s), and all associated DEVELOPER supplied equipment in a prudent manner, in accordance with good engineering practices and in a manner consistent with that used by industry specialists providing similar services;

(4) failure by the DEVELOPER to maintain the LFG Utilization Facility, the COUNTY's Flare Station(s), and all associated DEVELOPER supplied equipment in good working order throughout the term of this Agreement;

(5) failure to operate the system or to maintain compliance with environmental regulations and noise limitation and odor control requirements;

(6) failure to pay for any damages assessed to the DEVELOPER;

(7) failure to commence Commercial Operations within eighteen (18) months from the effective date of this Agreement.

In the event of a default by the DEVELOPER, the building and below ground portions of the LFG Utilization Facility at the Landfill shall become the personal property and responsibility of COUNTY, and the DEVELOPER shall offer to sell the above ground portions of the LFG Utilization Facility to the COUNTY in accordance with Section 12, Removal and Restoration.

(b) Repeated Defaults by DEVELOPER. In the event that the DEVELOPER's record of performance shows that the DEVELOPER has frequently, regularly or repetitively defaulted in the performance of any of the material covenants and conditions required herein to be kept and performed by the DEVELOPER and regardless of whether the DEVELOPER has corrected each individual condition of default, the DEVELOPER may be deemed a "habitual violator" and all of said defaults may be considered collectively to constitute a condition of default. The COUNTY may thereupon issue the DEVELOPER a final warning citing the circumstances therefor, and any single material default by the DEVELOPER within one (1) year after said warning shall be grounds for termination of this Agreement. In the event of any such single subsequent default within one (1) year, the COUNTY may terminate this Agreement upon the giving of written final notice to the DEVELOPER. The COUNTY's Environmental Services Director shall be the sole authority to determine and deem the DEVELOPER as a "habitual violator".

(c) COUNTY's Default. The failure of the COUNTY to comply with any provision of this Agreement shall place the COUNTY in default. Prior to terminating the Agreement, the DEVELOPER shall notify the COUNTY in writing. Notification shall make specific reference to the provision which gave rise to the default. The

DEVELOPER shall provide the COUNTY thirty (30) days to propose a written remedy and schedule which shall set forth the specific timeframe for curing default. In the event of a default by the COUNTY, the COUNTY shall pay DEVELOPER an amount for capital expenditures for the LFG Utilization Facility consistent with Section 12(b) of the Agreement, or the DEVELOPER may remove the above ground portion of the LFG Utilization Facility at the DEVELOPER's option.

(d) Termination for Insufficient Quantities of LFG. Should the DEVELOPER determine, following LFG Utilization Facility start-up, that LFG can no longer be reasonably recovered from the Landfill in Commercial Quantities, DEVELOPER 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 DEVELOPER:

(1) the DEVELOPER shall continue to make payments to the COUNTY for the right to and use of the LFG in accordance with Section 6(b), whichever is in effect at the time, for a six (6) month period following notification of termination;

(2) the DEVELOPER shall continue to make payments for any monies due to the COUNTY for the sale of the Beneficial End Use Product and any other monies required by the provisions of this Agreement;

(3) the building and below ground portions of the LFG Utilization Facility on the Landfill 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

(4) the DEVELOPER shall offer to sell the above-ground portions of the LFG Utilization Facility to the COUNTY in accordance with Section 12, Removal and Restoration.

(f) Facility Operation Following Termination. In the event of termination of the Agreement, the COUNTY may require the use of the DEVELOPER's employees to operate and maintain the LFG processing equipment for a period of up to ninety (90) days. The costs for use of the DEVELOPER's employees will be negotiated between the COUNTY and the DEVELOPER.

Section 15. Damages and Administrative Charges. Except where otherwise specifically provided, the measure of damages to be paid by the DEVELOPER to the COUNTY due to any failure by the DEVELOPER 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 DEVELOPER. If the COUNTY terminates this Agreement because of a default by the DEVELOPER, the DEVELOPER shall be liable to the COUNTY for all actual damages incurred by the

COUNTY as a result of DEVELOPER's default. The foregoing shall apply without regard to the COUNTY's rights pursuant to any Performance Bond or other financial security instrument.

(b) The COUNTY's Damages Due to the DEVELOPER's Failure to Repair and Maintain the LFG Utilization Facility. If at any time during the term of the Agreement, the DEVELOPER fails or refuses to maintain the LFG Utilization Facility, 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 DEVELOPER 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 apply regardless of whether the COUNTY terminates the DEVELOPER and shall be in addition to any other damages for which the DEVELOPER may be liable pursuant to other sections of this Agreement.

(c) The COUNTY's Damages Due to DEVELOPER's Failure to Comply with Environmental Regulations. If the DEVELOPER fails to comply with any applicable environmental regulations, the DEVELOPER shall pay to the COUNTY the following:

(1) 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.

(2) 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) Administrative Charges. The parties acknowledge and agree that it is difficult or impossible to accurately determine the amount of damages that would, or might, be incurred by the COUNTY due to those failures or circumstances described in this section of the Agreement and for which the DEVELOPER would otherwise be liable. Accordingly, administrative charges may be assessed against the DEVELOPER for the following failures to comply with the Agreement:

(1) If DEVELOPER fails to operate and perform the system within permit and/or regulatory requirements or standards, the COUNTY shall give Notice to the DEVELOPER of the foregoing failure. If the DEVELOPER fails to remedy the foregoing failure within two (2) days of the Notice from the COUNTY, administrative charges in an amount equal to fifty percent (50%) of the "daily average payment" to the COUNTY for the sale of the COUNTY's LFG shall be assessed against the DEVELOPER per day until such time as the COUNTY determines that the DEVELOPER has remedied the foregoing failure. The "daily average payment" shall be

based on normal historical operating days for the six (6) month period immediately preceding the COUNTY's Notice.

(2) If DEVELOPER fails to keep and utilize the LFG Utilization Facility at the levels of manpower and equipment necessary to adequately operate the system, the COUNTY shall give Notice to the DEVELOPER of the foregoing failure. If the DEVELOPER fails to remedy the foregoing failure within one (1) week of the Notice from the COUNTY, administrative charges in an amount equal to fifty percent (50%) of the "daily average payment" to the COUNTY for the sale of the COUNTY's LFG shall be assessed against the DEVELOPER per day until such time as the COUNTY determines that the DEVELOPER has remedied the foregoing failure. The "daily average payment" shall be based on normal historical operating days for the six (6) month period immediately preceding the COUNTY's Notice.

(3) If DEVELOPER fails to supply information or reports required by the COUNTY and/or any regulatory agency within the timeframe agreed to by the COUNTY and/or regulatory agency, the COUNTY shall give Notice to the DEVELOPER of the foregoing failure. If the DEVELOPER fails to remedy the foregoing failure within one (1) day of the Notice from the COUNTY, administrative charges in the amount of One Hundred and No/100 Dollars ($100.00) per day shall be assessed against the DEVELOPER until such time as the COUNTY determines that the DEVELOPER has remedied the foregoing failure.

(4) If DEVELOPER fails to maintain, repair, and operate the COUNTY's Flare Station(s) at the levels necessary to adequately operate and maintain the system and meet environmental permit requirements, the COUNTY shall give Notice to the DEVELOPER of the foregoing failure. If the DEVELOPER fails to remedy the foregoing failure within two (2) days of the Notice from the COUNTY, administrative charges in the amount of One Hundred and No/100 Dollars ($100.00) per day shall be assessed against the DEVELOPER until such time as the COUNTY determines that the DEVELOPER has remedied the foregoing failure.

Section 16. Representations and Warranties.

(a) Warranties of COUNTY. COUNTY hereby agrees, warrants, and represents to DEVELOPER, as of the date of execution of this Agreement, that:

(1) The COUNTY has not entered into any other agreements with respect to the LFG conveyed to DEVELOPER under this Agreement or with respect to any of the other rights conveyed to DEVELOPER pursuant to Section 2 of this Agreement. COUNTY warrants that DEVELOPER shall take the LFG free and clear of any liens or encumbrances. COUNTY hereby warrants to DEVELOPER that COUNTY has the title to the LFG Utilization Facility Site, access to the site, the Landfill, and the LFG.

(2) 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 such recovery Project.

(3) 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.

(4) As of the effective date of this Agreement, the solid waste that the COUNTY accepts for disposal within the solid waste disposal units is nonhazardous solid waste as defined by Chapter 62-701, F.A.C. COUNTY also covenants that during the term of the Agreement, COUNTY will continue to accept only nonhazardous solid waste or material deemed nonhazardous 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 nonhazardous solid waste or material deemed nonhazardous in nature as defined by Chapter 62-701, F.A.C.

B. Warranties of DEVELOPER. DEVELOPER hereby agrees, warrants and represents to COUNTY, as of the date of execution of this Agreement, that

(1) DEVELOPER is a duly organized, validly existing entity in good standing under the laws of the State of Florida. DEVELOPER 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.

(2) The execution, delivery and performance by DEVELOPER of this Agreement is within the corporate powers of DEVELOPER, 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 DEVELOPER.

Section 17. Assignment. The COUNTY and DEVELOPER shall bind themselves and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement. Neither party hereto may sell, assign or transfer this Agreement or any interest it may have hereunder, without prior written approval of the other party, such approval to be not unreasonably withheld, and provided that any such assignment shall not unduly interfere with the rights of the non-assigning party hereunder, and further provided that such assignee agrees to be bound by the terms of this Agreement to the same extent as assignor. In no event will assignment relieve the assignor of its obligations hereunder. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of COUNTY or DEVELOPER, nor shall it be construed as giving any right or benefit hereunder to anyone other than the COUNTY or the DEVELOPER.

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 DEVELOPER:

Seminole Energy, LLC
29261 Wall Street
Wixom, MI 48393

To COUNTY:

Seminole County
Seminole County Services Building
1101 East 1st Street
Sanford, Florida 32771

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

Section 19. Taxes. DEVELOPER shall, during the term of this Agreement, pay or arrange for the payment of all general taxes that may be levied upon or assessed against the system, facilities, equipment, machinery and improvements constructed or installed by it in, on, or adjacent to the Landfill. To the extent permissible by law, COUNTY shall recognize DEVELOPER's Equipment as an environmental pollution control system as defined under applicable tax laws and, therefore, shall be free from state sales taxes as provided by state statues.

Section 20. Interest of Members of COUNTY and Others. No officers, members, or employees of the COUNTY, no member of its governing body, no other public official of the governing body of the locality or localities in which services for the facilities under this Agreement are to be carried out, who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this Project, shall participate in any decision relating to this Agreement which affects their personal interest, or have any personal interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 21. Interest of DEVELOPER. DEVELOPER covenants that it presently has no interest and shall not acquire an interest, direct or indirect, which shall conflict with the performances or services required to be performed under this Agreement. DEVELOPER further covenants that in the performance of this Agreement, the DEVELOPER shall employ no person having any such interest.

Section 22. Covenant against Contingent Fees. DEVELOPER warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for DEVELOPER, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for DEVELOPER, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this section, the COUNTY shall have the right, but not the duty, to terminate this Agreement without liability, and, at its discretion, to deduct from the Agreement such price, or otherwise recover the full amount of such fee, commission, percentage, gift or other consideration.

Section 23. Potential Conflicts of Interest. DEVELOPER is specifically aware of, and concurs with, the public need for the COUNTY to prohibit any potential conflicts of interest that may arise as a result of the execution of this Agreement. As a result, DEVELOPER has extensively reviewed all of its contracts, letters of agreement, and any other indication of commitment on its behalf to perform services for any client other than Seminole COUNTY, which could in any way present the reasonable possibility of an actual conflict of interest with Seminole COUNTY. DEVELOPER has cataloged such contracts, and has attached a list thereof to this Agreement, as Exhibit A, which is hereby incorporated herein by this reference.

In view of the potential of this Agreement being a long-term contractual relationship between the parties, DEVELOPER specifically agrees to comply with the following organizational requirements in performing its services under this Agreement:

(a) Direct supervision of DEVELOPER employees and agents under this Project shall be given by BILL OWEN, and the designated Project Managers assigned to each specific Project.

(b) DEVELOPER specifically warrants and agrees that any and all information, concepts, policies and regulations relating to the Project under this Agreement shall be held by DEVELOPER in strict confidentiality within DEVELOPER's Project Team, except as may be affected by Chapter 119, Florida Statutes. No dissemination of any such information by DEVELOPER shall be made until after clear written authorization to do so has been granted by the COUNTY, except as may be otherwise required by law or directed by Court Orders and except for disclosures to DEVELOPER's legal counsel or accountants. Notice of such disclosures permitted hereunder shall be immediately given to the COUNTY.

Section 24. Records and Audits. 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 DEVELOPER which are directly pertinent to work performed under this Agreement, for purposes of making audit, examination, excerpts, and transcriptions.

The COUNTY and its auditors shall be entitled to audit the books and records of the DEVELOPER to the extent that such books and records relate to the performance of this Agreement. DEVELOPER agrees to maintain such records and accounts including all books, documents, papers, financial records and other evidences pertaining to work performed under this Agreement. Said records shall be made available at its office at all reasonable times during the term of this Agreement, and for three (3) years from the date of final payment under this Agreement, for audit or inspection by the COUNTY, or any of its duly authorized representatives, unless a shorter period is authorized by the COUNTY in writing.

Section 25. Equal Opportunity Employment. DEVELOPER agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfers; recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Section 26. Claims for Services. No claim for services rendered by DEVELOPER not specifically provided for in this Agreement will be honored by the COUNTY.

Section 27. Severability. If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 28. Modifications or Amendments in Writing. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties with the same formality as herewith.

Section 29. 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 as creating an association, joint venture or partnership between COUNTY and DEVELOPER or Buyer or to impose any partnership obligation or liability upon such parties. Neither COUNTY nor DEVELOPER or Buyer 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. All questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of Florida. Venue shall be in Seminole COUNTY, Florida.

(d) Amendment to Agreement. The COUNTY and DEVELOPER 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.

(e) Successors and Assigns. 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.

(f) DEVELOPER Right to Utilization Facility Design. It is acknowledged that the DEVELOPER and Buyer have or will have expended considerable time and expense in developing the design for the LFG Utilization Facility 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 DEVELOPER and Buyer.

(g) Remedies Not Exclusive. The remedies in this Agreement are not exclusive and supplement any other remedies provided at law or in equity.

(h) Order of Precedence. In resolving inconsistencies among two (2) or more components of this Agreement, precedence shall be given in the following order:

(1) Agreement
(2) COUNTY's RFP Document
(3) DEVELOPER's Proposal

SIGNATURE BLOCK BEGINS ON PAGE 33

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first above written.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By:_____
, Chairman

_____
MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

Date:_____

For the use and reliance of Seminole County only. Approved as to form and legal sufficiency.

As authorized for execution by the Board of County Commissioners at its _____, 200__, regular meeting.

_____
County Attorney

SIGNATURE BLOCK CONTINUES ON PAGE 34

ATTEST:

SEMINOLE ENERGY L.L.C., a Florida limited liability company

By: Michigan Cogeneration Systems, Inc.
Its managing partner

Secretary,

By: , President

(CORPORATE SEAL)

Date: 10-23-06

STATE OF Michigan
COUNTY OF Oakland

I HEREBY CERTIFY that, on this 23rd day of October, 2006, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Scott D. Salisbury, and Sheila A. Miller, as President and Secretary, respectively, of Michigan Cogeneration Systems, Inc., Managing Partner of Seminole Energy, L.L.C., a Florida limited liability company organized under the laws of the State of Florida, who are personally known to me or who have produced Driver License as identification. They acknowledged before me that they executed the foregoing instrument as such officers in the name and on behalf of the corporation, and that they also affixed thereto the official seal of the corporation.

Print Name Jo Alice Monroy
Notary Public in and for the County
and State Aforementioned
My commission expires: April 1, 2008

SED/sb
10/20/06
Attachment:
Exhibit A – Wellfield Maintenance Agreement
P:\USERS\SDIETRICH\ENVIRONMENTAL SVCS\LANDFILL GAS PURCHASE AGREEMENT.DOC

EXHIBIT A

WELLFIELD MAINTENANCE AGREEMENT

THIS WELLFIELD MAINTENANCE AGREEMENT (Maintenance Agreement), made and entered into this _____ day of _____, 200__, by and between **SEMINOLE ENERGY, LLC,** a Florida Limited Liability Company, doing business at 29261 Wall Street, Wixom, Michigan 48393, hereinafter referred to as the "DEVELOPER" and **SEMINOLE COUNTY,** a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771 hereinafter referred to as "COUNTY";

Section 1. Implementation and Definitions.

The COUNTY may choose, at its sole option, for DEVELOPER to provide well field maintenance services as described hereunder. The COUNTY shall notify DEVELOPER of its intent to exercise this option at least ninety (90) days prior to the commencement of Commercial Operation of the Landfill Gas Utilization Facility.

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

1.1 Landfill Gas (LFG) means any and all gases resulting from the decomposition of refuse material within the Landfill, consisting principally of methane, carbon dioxide and traces of other constituent gases.

1.2 LFG Management System means the COUNTY operated network of LFG recovery wells and interconnecting pipes together with attendant valves, condensate sumps and pumps, monitoring devices and other related equipment installed for the purpose of extracting, collecting, and transporting LFG to the Delivery Point(s).

1.3 LFG Utilization Facility means the DEVELOPER's building or enclosure and equipment required for the processing and delivery of the Beneficial End Use Product to the Buyer, such equipment may include, but is not limited to, compression equipment, an oil and gas cooler, a condensate knockout tank, scrub areas, generating equipment, and related facilities.

Section 2. Term and Termination.

A. Term. The initial term of this Maintenance Agreement shall be for three (3) years from the start of Commercial Operations by DEVELOPER at the LFG Utilization Facility. Thereafter, this Maintenance Agreement shall continue for succeeding periods of one (1) year each, terminable upon written notice by either DEVELOPER or COUNTY to the other not less than one hundred eighty (180) days before the end of the then current term.

B. Termination for Cause. In the event that a party determines that the other party has committed a material default, the party shall give detailed written notice thereof to the other party in such reasonable detail as to enable the other party to investigate and respond. The other party shall be entitled to cure any such default or alleged default within ninety (90) days after receipt of said notice or demonstrate that all reasonable efforts have been made to cure the event of default if an actual cure cannot be completed within the ninety (90) days. If a material default event is not cured pursuant to this Section, the non-defaulting party may elect to terminate this Maintenance Agreement as a result of a material default by the other party.

Section 3. Services Provided by Developer.

A. Operation Services. DEVELOPER shall supply all services necessary to maintain the LFG Management Systems in good operating condition and suitable for its intended purpose. DEVELOPER shall provide, at a minimum, one (1) full-time employee, hereinafter referred to as the Operator at the LFG Utilization Facility. When not physically present at the LFG Utilization Facility, an Operator shall be available on call twenty-four (24) hours a day, seven (7) days a week to ensure that the LFG Utilization Facility operates in compliance with all applicable regulatory requirements as necessary to provide for satisfactory electrical output and the Landfill Gas Purchase Agreement of even date herewith to which this Agreement is appended.

During the term of the Maintenance Agreement, the DEVELOPER shall provide services described herein Monday through Friday, 8:00 AM to 5:00 PM, excluding legal holidays. The DEVELOPER shall further provide Emergency Services twenty-four (24) hours per day, seven (7) days a week on an on-call basis with a response time not greater than one half hour. The labor rates set forth in the Maintenance Agreement were formulated using eight (8) hour normal business days. DEVELOPER shall make its best efforts to schedule major maintenance during off-peak times and seasons.

1. Routine Maintenance Services. DEVELOPER shall furnish all labor and supervision necessary for the normal daily operation of the LFG Management System at the LFG Utilization Facility. Such operation services shall include, but are not limited to:

   (a) Providing sufficient competent, trained personnel to carry out the services set forth hereunder;

   (b) Diagnosing and correcting various adverse operating conditions;

(c) Inspecting all LFG Management System components and other appurtenant equipment for correct operation, safety and defects to determine whether repair, replacement, or enhancement of any part of the LFG Utilization System is necessary;

(d) Maintaining date log and readings and preparing monthly production reports;

(e) Conducting regular operational checks and equipment tests;

(f) Maintaining operation records, current drawings, instruction books and system manuals;

(g) Making recommendations concerning equipment needed to be upgraded or enhanced to improve LFG Utilization System operation;

(h) Providing twenty-four (24) hours, seven (7) days a week on-call maintenance services to ensure that the LFG Utilization Facility and the LFG Maintenance System shall be inoperative for the minimum amount of time possible; and;

(i) Conducting routine operation and maintenance at scheduled intervals within the context of an overall preventative maintenance program to include performance recommendations required by equipment manufacturers. These tasks shall focus on meeting applicable permit and environmental requirements and optimizing gas recovery consistent with the collection and sale of landfill gas.

2. Non-routine Unscheduled Emergency Services. DEVELOPER shall furnish all labor and supervision necessary for non-routine unscheduled emergency services including events requiring immediate response. Response to the urgent nature of these items is such that they cannot be scheduled. DEVELOPER shall respond to these conditions as appropriate. Such services shall include, but are not limited to:

(a) Repairing main header line breaks resulting in no gas flow to the blower/flare station or excessive atmosphere infiltration;

(b) A significantly reduced gas flow rate requiring excavation or reconstruction of gas lines; and

(c) Surging vacuum requiring excavation or reconstruction of a gas line.

3. Extraction Wells. The DEVELOPER shall furnish all labor and supervision necessary to check the LFG Management System extraction wells a minimum of once each month. Problems such as damaged or deteriorated monitoring ports shall be corrected during the check. The repair of broken valves and replacement of torn flex hoses by DEVELOPER shall be part of routine operation and maintenance services. In conjunction with the extraction well monitoring, DEVELOPER shall conduct a general inspection of the LFG Management System components noting problem areas and required actions. At each extraction well, the following shall be measured, observed and recorded:

(a) Landfill gas flow;

(b) Landfill gas composition (methane, carbon dioxide, oxygen and balance gas);

(c) Well head pressure;

(d) Header gas pressure;

(e) Well head gas temperature;

(f) Well head piping and well bore seal condition at the landfill surface; and

(g) Adjustment shall be made at each well as required to maintain system balance, gas quality and permit compliance.

4. Monthly Review, Organizing and Reporting. DEVELOPER shall prepare and submit a monthly report to COUNTY summarizing the activities performed, the project data collected during the period, a status update on the LFG Management System including any abnormalities, needed repairs, system adjustments and recommendations. DEVELOPER shall also submit to COUNTY copies of daily logs of completed activities and review and confirm compliance with permit operating conditions, including record-keeping requirements. Developer shall maintain data in a computer database to

facilitate organized storage, permit ready access to information and enhance interpretation, such as the tracking of long-term trends.

5. Minor Repairs, including Emergency Call-outs. DEVELOPER shall perform any minor repairs including, but not limited to, re-coupling or replacement of flex-hose, and closing a valve necessary to maintain operations of the LFG Management System. Written notification of any minor repair or emergency call out shall be provided by DEVELOPER to the COUNTY within twenty-four (24) hours of occurrence.

B. Non-Routine LFG Management System Maintenance. COUNTY may contract at additional expense for DEVELOPER to furnish all labor and supervision necessary for the following non-routine services:

Non-Routine Scheduled Maintenance. These services shall consist of corrective repair or maintenance work identified during routine visits and include items such as, but not limited to, major header pipe realignment, resetting of pipe supports, repair of lateral lines, installation of replacement extraction wells and cleaning flame arrestor. Non-routine scheduled maintenance is essential for proper system operation; however, said maintenance shall be scheduled to allow for prior procurement of materials, equipment, scheduling, or personnel and shall be performed at COUNTY's expense, subject to notification to and authorization by the COUNTY.

C. General Provisions. DEVELOPER agrees to conduct all work in a good and workmanlike manner and in accord with procedures and methods generally used in the industry on similar systems. DEVELOPER shall conduct all services hereunder with reasonable diligence and care. All materials and supplies used in fulfillment of this Maintenance Agreement shall, unless otherwise specified, be of first quality. DEVELOPER shall maintain full and complete books and records of all its activities under this Maintenance Agreement.

(e) Employment Regulations. DEVELOPER shall, as part of this Maintenance Agreement comply with applicable Federal, State and local laws, statutes, rules, regulations and ordinances, including, without limitations, all fair employment practices.

Section 4. Compensation.

A. Wellfield Operations. As compensation for the services provided by DEVELOPER in accordance with Section 3(A) herein, the COUNTY agrees to pay DEVELOPER the monthly fee of THREE THOUSAND AND NO/100 DOLLARS ($3,000.00).

B. Payment. DEVELOPER shall invoice COUNTY at the beginning of each month, or as soon thereafter as invoices can be prepared, for the services performed during the prior month. Upon receipt of all required documentation, COUNTY shall pay each invoice in compliance with the Seminole County Purchasing Code requirements.

C. Annual Adjustment. The rate of compensation payable to the DEVELOPER shall be adjusted annually, on January 1st of each year to reflect changes in the cost of living. The adjustment shall be based on the following:

50% = Change in Producer Price Index Series ID WPUSOP3000
50% = Change in Consumer Price Index Series ID CUUR0000SAO

Section 5. Equal Opportunity Employment. DEVELOPER agrees that it will not discriminate against any employee or applicant for employment for work under this Maintenance Agreement because of race, color, religion, sex, age, national origin, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfers; recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Section 6. Claims for Services. No claim for services rendered by DEVELOPER not specifically provided for in this Maintenance Agreement will be honored by the COUNTY.

Section 7. Modifications or Amendments in Writing. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties with the same formality as herewith.

Section 8. Notices. Any notice to be given under this Maintenance 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 DEVELOPER:

Seminole Energy, LLC
29261 Wall Street
Wixom, MI 48393

To COUNTY:

Seminole County
Seminole County Services Building
1101 East 1st Street
Sanford, Florida 32771

Section 9. Assignment. The COUNTY and DEVELOPER shall bind themselves and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Maintenance Agreement. Neither party hereto may sell, assign or transfer this Maintenance Agreement or any interest it may have hereunder, without prior written approval of the other party, such approval to be not unreasonably withheld, and provided that any such assignment shall not unduly interfere with the rights of the non-assigning party hereunder, and further provided that such assignee agrees to be bound by the terms of this Maintenance Agreement to the same extent as assignor. In no event will assignment relieve the assignor of its obligations hereunder. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of COUNTY or DEVELOPER, nor shall it be construed as giving any right or benefit hereunder to anyone other than the COUNTY or the DEVELOPER.

Section 10. Governing Law. All questions with respect to the construction of this Maintenance Agreement and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of Florida. Venue shall be in Seminole COUNTY, Florida.

Section 11. Remedies Not Exclusive. The remedies in this Maintenance Agreement are not exclusive and supplement any other remedies provided at law or in equity.

Section 12. Independent Contractor. In the performance of any activities pursuant to this Maintenance Agreement, the DEVELOPER will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer, or associate of the COUNTY. The DEVELOPER shall be solely responsible for the means, methods, sequences, and procedures utilized by the DEVELOPER in the full performance of this Maintenance Agreement. Neither the DEVELOPER nor any of its employees, officers, agents or any other individual directed to act on behalf of the DEVELOPER for any act related to the Maintenance Agreement shall represent, act, purport to act, or be deemed to be the agent, representative, employee or servant of the COUNTY.

Section 13. Indemnification. To the fullest extent permitted by laws and regulations, the DEVELOPER shall indemnify and hold harmless the COUNTY and the officers, directors, employees, agents and other consultants of the COUNTY from and against all claims, expenses, losses and damages (including but not limited to all fees and charges of the DEVELOPER, engineers, architects, attorneys and other professionals) caused by, arising out of or resulting from the performance of services hereunder, provided that any such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease, death, or personal injury, or to property damage, including the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission of the DEVELOPER, any

subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the services or anyone for whose acts any of them may be liable. The DEVELOPER agrees that it will pay the costs of the COUNTY's legal defense, including fees of attorneys as may be selected by the COUNTY and shall defend, satisfy, and pay any judgments which may be rendered against the COUNTY in connection with the above hold harmless agreement. The DEVELOPER acknowledges that specific consideration has been received for this hold harmless/indemnification provision. The provisions of this Section 13 shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first above written.

ATTEST:

MARYANNE MORSE

Clerk to the Board of
County Commissioners of
Seminole County, Florida.

For the use and reliance of
Seminole County only. Ap-
Proved as to form and legal
Sufficiency.

County Attorney

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: _____
, Chairman

Date: _____

As authorized for execution by the Board of County commissioners at its _____ 200__, regular meeting.

SIGNATURE BLOCK CONTINUES ON PAGE 9

ATTEST:

SEMINOLE ENERGY L.L.C., a Florida limited liability company

By: Michigan Cogeneration Systems, Inc.
Its managing partner

_____ By: _____
Secretary, , President

(CORPORATE SEAL) Date: _____

STATE OF _____
COUNTY OF _____

I HEREBY CERTIFY that, on this _____ day of _____, 200___, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared _____, and _____, as President and Secretary, respectively, of Michigan Cogeneration Systems, Inc., Managing Partner of Seminole Energy, L.L.C., a Florida limited liability company organized under the laws of the State of Florida, who are personally known to me or who have produced _____ as identification. They acknowledged before me that they executed the foregoing instrument as such officers in the name and on behalf of the corporation, and that they also affixed thereto the official seal of the corporation.

_____
Print Name _____
Notary Public in and for the County and State Aforementioned
My commission expires: _____

SED/sb
10/24/06

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