

REQUEST FOR PROPOSALS

- 33. Approve ranking list and authorize negotiations for RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Land fill Gas Utilization Project with Landfill Energy Systems, Wixom, MI (Estimated Annual Revenue \$618,000.00).**

RFP-4255-05/TLR will provide a landfill gas purchase agreement with a qualified developer whereby the developer would make certain payments to the County for the rights to connect, recover, and beneficially utilize landfill gas (LFG) from the solid waste disposal areas at the Seminole County Osceola Road Solid Waste Management Facility.

The primary objective of the LFG Management System is to control LFG migration, emissions, and odors to strictly comply with all local, state, federal regulatory requirements and to generate revenue for the county.

This project was publicly advertised and the County received five (5) proposals from the following firms (listed in alphabetical order):

- Ameresco, Inc., Framingham, MA
- DTE Biomass Energy, Inc., Ann Arbor, MI
- Enpower Corp., San Ramon, CA
- G2 Energy FL, Atlanta, GA
- Landfill Energy Systems, Wixom, MI

The Evaluation Committee, which consisted of David Gregory, Project Manager, Solid Waste; Bob Briggs, Finance Manager, Environmental Services; John Cirello, Director Environmental Services; Kathryn Moore, MSBU Manager; Sally Sherman, Deputy County Manager; and Jeff Thompson, Principal Engineer, Planning Engineering, and Inspection, evaluated the proposals based on the following criterion:

1. Corporate Qualifications and Project Team Experience
2. Project Approach
3. Project Experience and References
4. Financial Proposal

The following three firms were short-listed and made presentations to the Committee:

1. Ameresco, Inc., Framingham, MA
2. G2 Energy FL, Atlanta, GA
3. Landfill Energy Systems, Wixom, MI

The final rankings were based on the following criteria:

1. Corporate Qualifications and Project Team Experience
2. Project Approach
3. Project Experience and References
4. Financial Proposal
5. Presentation

The Evaluation Committee recommends that the Board approve the following ranking and authorize negotiations with the top ranked firm to reach a mutually satisfactory contract.

1. Landfill Energy Systems, Wixom, MI
2. Ameresco, Inc., Framingham, MA
3. G2 Energy FL, Atlanta, GA

The final negotiated contract will be presented for the Board's approval at a future date. If negotiations with the top ranked firm fail, the Committee further recommends staff be allowed to proceed to negotiations with the second and third ranked firms (in sequence) until a satisfactory contractual agreement is reached. In any case, the final agreement will be brought back to the Board for approval.

B.C.C. - SEMINOLE COUNTY, FL

RFP TABULATION SHEET

RFP NUMBER: RFP-4255-05/TLR

RFP TITLE: Osceola Road Solid Waste
Management Facility Landfill Gas
Utilization Project

ALL RFP'S ACCEPTED BY SEMINOLE COUNTY ARE SUBJECT TO THE COUNTY'S TERMS AND CONDITIONS AND ANY AND ALL ADDITIONAL TERMS AND CONDITIONS SUBMITTED BY THE PROPOSERS ARE REJECTED AND SHALL HAVE NO FORCE AND EFFECT. RFP DOCUMENTS FROM THE CONSULTANTS LISTED HEREIN ARE THE ONLY RFP'S RECEIVED TIMELY AS OF THE ABOVE OPENING DATE AND TIME. ALL OTHER RFP DOCUMENTS SUBMITTED IN RESPONSE TO THIS SOLICITATION, IF ANY, ARE HEREBY REJECTED AS LATE.

PAGE: 1 of 1

DUE DATE: August 03, 2005 at 2:00PM.

Response 1	Response 2	Response 3	Response 4
Ameresco, Inc. 111 Speen St., Suite 410 Framingham, MA 01701 Michael T. Bakas, VP 800-866-2697 508-661-2201 Fx.	DTE Biomass Energy, Inc. 425 S. Main St., Suite 201 Ann Arbor, MI 48104 Curtis T. Ranger, President 800-216-3338 734-668-1541 Fx.	Enpower Corp. 2420 Camino Ramon #101 San Ramon, CA 94883 David J. Palumbo, Director 925-244-1100 925-244-1101 Fx.	G2 Energy Fl, LLC 645 Spalding Dr. Atlanta, GA 30328 Nicholas J. King, Managing Member 678-471-6282 770-668-0220 Fx.
Response 5			
Landfill Energy Systems 29261 Wall St. Wixom, MI 48393 Scott Salisbury, President 248-380-3920 248-380-2038 Fx.			

Evaluation Criteria:

Corporate Qualifications and Project Team Experience
Project Approach
Project Experience and References
Financial Proposal

TABULATED BY: T. Roberts, CPPB, SR. Contracts Analyst
EVALUATION MEETING: August 16, 2005 @ 2:00pm, Reflections Large Conference Room, 500 W. Lake Mary Blvd., Sanford, FL.
SHORTLISTED FIRMS (3 in alpha order): Ameresco, Inc.; G2 Energy Fl, LLC; and Landfill Energy Systems. Posted 8/16/05 P. Maley
INTERVIEWS/PRESENTATIONS: Nov. 09, 05 @ 1pm, Reflections Lg. Conference Rm., 500 W. Lake Mary Blvd., Sanford, FL (Posted 10/19/05)
RECOMMENDATION OF AWARD: Landfill Energy Systems
BCC Meeting 12/13/05

EVALUATION COMMITTEE MEETING OF 16 AUGUST 2005

EVALUATION RANKINGS

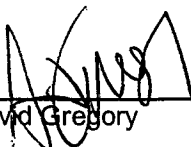
RFP-4255-05/TLR - Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project

	<u>J. Cirello</u>	<u>D. Gregory</u>	<u>S. Sherman</u>	<u>J. Thompson</u>	<u>B. Briggs</u>	<u>K. Moore</u>	<u>TOTAL POINTS</u>	<u>RANKING</u>
LANDFILL ENERGY SYSTEMS	2	3	1	1	1	1	9	1
AMERESCO, INC.	1	1	3	3	4	2	14	2
G2 ENERGY FL, LLC	3	2	5	5	2	3	20	3
DTE BIOMASS ENERGY, INC.	5	4	2	2	5	5	23	4
ENPOWER CORP.	4	5	4	4	3	4	24	5

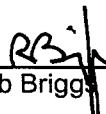
The Evaluation Committee agrees to short-list the following firms:

The three top ranked firms are short-listed and will be invited for presentations. They are Landfill Energy Systems, AMERESCO, Inc., and G2 Energy FL, LLC. While there is a clear break between the number two and number three ranked firms, the committee decided to include G2 Energy FL, LLC on the short-list because their projected financial return to the County was substantially greater than any other offer received. After considerable discussion, the committee concluded that the possibility a greater return warranted G2 an opportunity to explain their proposal.


It should be noted that this request for proposals was carefully structured to minimize the County's risk. Both the wording of the proposed agreement and the bid sheet's pricing structure were purposely designed to shift risk to the contractor. None of the proposals are acceptable as received since none completely complied with the County's requirements. Each proposed to increase the County's share of the risk through changes to the agreement and to the pricing arrangement. These deviations were significant enough that it was impossible to perform a traditional evaluation against pre-established criteria. Further, each offeror took a different approach in their proposal making meaningful comparisons between proposals difficult. Therefore the committee ranked and short-listed only those firms they felt had a reasonable chance of getting the award considering the County's objectives and the risk/return each firm presented. Presentations, discussions and negotiations will be held with the short-listed firms to determine which proposal will ultimately result in the best value to the County.



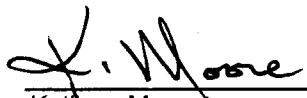
David Gregory



Bob Briggs



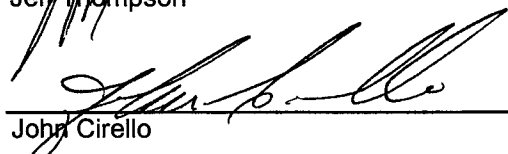
Sally Sherman



Kathryn Moore



Jeff Thompson



John Cirello

RFP-4255-05/TLR
Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project

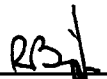
PRESENTATION RANKINGS

	<u>B. Briggs</u>	<u>J. Cirello</u>	<u>D. Gregory</u>	<u>K. Moore</u>	<u>S. Sherman</u>	<u>J. Thompson</u>	<u>TOTAL POINTS</u>	<u>RANKING</u>
AMERESCO, INC.	2	2	2	3		2	11	2
G2 ENERGY FL, LLC	3	3	3	2		3	14	3
LANDFILL ENERGY SYSTEMS	1	1	1	1		1	5	1

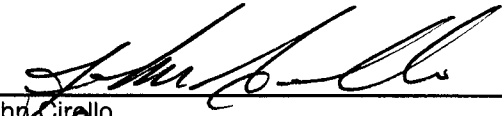
The Evaluation Committee recommends _____ for award of this project



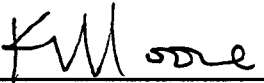
 David Gregory



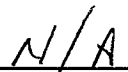
 Bob Briggs



 John Cirello



 Kathy Moore



 Sally Sherman



 Jeff Thompson

RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project

SUBMITTAL COMPANY NAME: Amesco

QUALIFICATION COMMITTEE MEMBER: Bob Bign

INSTRUCTIONS: Score each criterion from 1 to 100 based on the following general guidelines:
90 – 100 Outstanding, out-of-the-box, Innovative, Cost/Time Savings
80 – 89 Excellent, Very Good, Solid in all respects.
70 – 79 Good, No major weaknesses, Fully Acceptable as is
60 – 69 Marginal, Weak, Workable but needs clarifications
Below 60 Unacceptable, Needs major help to be acceptable

Describe strengths, weaknesses and deficiencies to support your assessment.

Criteria: Corporate Qualification and Team Experience (20%)

all 13 years, deep team, local exp. exp. w/ RST exp. help in printing

Score 88
(100-0)

Criteria: Project Approach (25%)

operated 1.07, 6 gens (jetcoater), pattern w/ FPL, repair phase one of
solar, reports print, then project and in exp. into modern today.

Score 80
(100-0)

Criteria: Experience with similar projects (20%)

Monte B, sub a has, all completed up to 1000000

Score 85
(100-0)

Criteria: Financial Qualifications (25%)

develop in conjunction w/ FPL, unclear explain as to credit & approach

Score 89
(100-0)

Criteria: Presentations and Q&A Response (10%)

Henry from looking w/ BFA the BFA was David's intent exp.

Score 83
(100-0)

Total Score: 425

RANKING 2

RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project

SUBMITTAL COMPANY NAME: G-2

QUALIFICATION COMMITTEE MEMBER: _____

INSTRUCTIONS: Score each criterion from 1 to 100 based on the following general guidelines:
90 – 100 Outstanding, out-of-the-box, Innovative, Cost/Time Savings
80 – 89 Excellent, Very Good, Solid in all respects.
70 – 79 Good, No major weaknesses, Fully Acceptable as is
60 – 69 Marginal, Weak, Workable but needs clarifications
Below 60 Unacceptable, Needs major help to be acceptable

Describe strengths, weaknesses and deficiencies to support your assessment.

Criteria: Corporate Qualification and Team Experience (20%)

G2, Ringier, SCS, Yoney, diverse but not cohesive

regard all
Criteria: Project Approach (25%) 15 year going to BSC ± 2 months up to 14 new Score 69
47% growth in supply of gas, agreement PK is signed, CRT technology (100-0)
1 year for construction completion

Criteria: Experience with similar projects (20%)

best of all the presenters, why didn't we pick them? It seems to have been successful
repeatedly. I will be successful and they deep enough to continue
at best or management. Score 65
(100-0)

Criteria: Financial Qualifications (25%)

rate escalation factor 47% sharing of all credits is proposed (2 cells = ± 125 K)
5 or 20 years 0.21.6M Score 80
3 bar schedule (100-0)

Criteria: Presentations and Q&A Response (10%)

examples: termination, full back when co. is no risk or no \$ invested, FNU produced by gas

covered by self Score 69
(100-0)

25% make for enlarged gas
10% make if limited by point of gas returned is paid to
gas also returned to SC.

Total Score: 353

RANKING 3

no danger of being up side & because agreement signed w/ PK.

RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project

SUBMITTAL COMPANY NAME: LES

QUALIFICATION COMMITTEE MEMBER: Bob Briggs

INSTRUCTIONS: Score each criterion from 1 to 100 based on the following general guidelines:

90 – 100 Outstanding, out-of-the-box, Innovative, Cost/Time Savings
80 – 89 Excellent, Very Good, Solid in all respects.
70 – 79 Good, No major weaknesses, Fully Acceptable as is
60 – 69 Marginal, Weak, Workable but needs clarifications
Below 60 Unacceptable, Needs major help to be acceptable

Describe strengths, weaknesses and deficiencies to support your assessment.

Criteria: Corporate Qualification and Team Experience (20%)

The team has worked as a unit since inception ± 15 years

Score 98
(100-0)

Criteria: Project Approach (25%)

Excellent explanation of project sizing, justification of costs, proposed design, and timeline

Score 95
(100-0)

Criteria: Experience with similar projects (20%)

This is their sole line of work, excellent history

Score 98
(100-0)

Criteria: Financial Qualifications (25%)

all parties done equally in any credits. Originally priced to be feasible w/o markup.

Score 95
(100-0)

Criteria: Presentations and Q&A Response (10%)

Score 98
(100-0)

Total Score: 484

RANKING 1

RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project

SUBMITTAL COMPANY NAME: Landfill Energy Systems

QUALIFICATION COMMITTEE MEMBER: David Gregory

Scott Salisbury
Scott Gathier
Bill Owens
Nichole Lafontaine
Sheila Miller

INSTRUCTIONS: Score each criterion from 1 to 100 based on the following general guidelines:

- 90 – 100 Outstanding, out-of-the-box, Innovative, Cost/Time Savings
- 80 – 89 Excellent, Very Good, Solid in all respects.
- 70 – 79 Good, No major weaknesses, Fully Acceptable as is
- 60 – 69 Marginal, Weak, Workable but needs clarifications
- Below 60 Unacceptable, Needs major help to be acceptable

Describe strengths, weaknesses and deficiencies to support your assessment.

Criteria: Corporate Qualification and Team Experience (20%)

LES inc. 1986, 24 proj. total 92MW. Team together 15 yrs

Score 92
(100-0)

18.4

Criteria: Project Approach (25%)

Cat 3520, generate electricity, 6 engine facility by Dec 31, 2006
split-tax block bldg. Have submitted interconnect request to FPL (at risk)
Commercial Q1 2007. Operator performs service on engines
Section 45 tax credits

Score 93
(100-0)

23.25

Criteria: Experience with similar projects (20%)

24 projects total

Score 92
(100-0)

18.4

Criteria: Financial Qualifications (25%)

Section 45 credits 1/2 value of initial agreement

Score 91
(100-0)

22.75

Criteria: Presentations and Q&A Response (10%)

3000 cfm for 6 engines
100% on credits, share 50/50

Score 92
(100-0)

9.2

\$0.25/mbtu gas
+ \$35,000 an'l gas right put on 6 engines
+ \$0.35/mbtu tax credit

Total Score: _____

RANKING #1

92

RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project

SUBMITTAL COMPANY NAME: Ameresco

Ben Hevner
Cinder Nugent

QUALIFICATION COMMITTEE MEMBER: David Gregory

INSTRUCTIONS: Score each criterion from 1 to 100 based on the following general guidelines:
90 – 100 Outstanding, out-of-the-box, Innovative, Cost/Time Savings
80 – 89 Excellent, Very Good, Solid in all respects.
70 – 79 Good, No major weaknesses, Fully Acceptable as is
60 – 69 Marginal, Weak, Workable but needs clarifications
Below 60 Unacceptable, Needs major help to be acceptable

Describe strengths, weaknesses and deficiencies to support your assessment.

Criteria: Corporate Qualification and Team Experience (20%)

30 yrs experience. Broad range energy co. Have brought all awarded projects on-line w/in 18 mo.

Score 90
(100-0)

18

Criteria: Project Approach (25%)

6.3 MW. 6 Jenbacher engines. FPL to buy power (JEA as back-up)
Separate title permit. Commit to milestones in agreement
Operational Jan 2007. Not committing to taking increasing gas
flow.

Score 90
(100-0)

22.5

Criteria: Experience with similar projects (20%)

A number of on-going projects described. Hevner worked on
Volusia Co. project

Score 90
(100-0)

18

Criteria: Financial Qualifications (25%)

Privately held co. ProForma based on discussions w/ FPL
Have strong credit, etc.

Score 90
(100-0)

22.5

Criteria: Presentations and Q&A Response (10%)

Will build project can build right now.

Score 85
(100-0)

8.5

0.34/mmbtu used
0.17/mmbtu for tax credit

Total Score: _____

89.5

RANKING #2

RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project

SUBMITTAL COMPANY NAME: GE Energy

QUALIFICATION COMMITTEE MEMBER: David Gregory

INSTRUCTIONS: Score each criterion from 1 to 100 based on the following general guidelines:

- 90 – 100 Outstanding, out-of-the-box, Innovative, Cost/Time Savings
- 80 – 89 Excellent, Very Good, Solid in all respects.
- 70 – 79 Good, No major weaknesses, Fully Acceptable as is
- 60 – 69 Marginal, Weak, Workable but needs clarifications
- Below 60 Unacceptable, Needs major help to be acceptable

Describe strengths, weaknesses and deficiencies to support your assessment.

Criteria: Corporate Qualification and Team Experience (20%)

Team members have extensive SCS-projections of LFG
GE as a company for 2 yrs.

Score 85
(100-0)

17

Criteria: Project Approach (25%)

Principal of firm dedicated to effort. 5 Cat 3520, adding generators as
gas increases. Wheel power to Progress Energy. Modular Units

FPL - can handle 12 MW now
*Point Guard system call Ringpower. PPP
10% year over year growth

Score 92
(100-0)

23

Criteria: Experience with similar projects (20%)

Each member of team has corporate/individual experience
w/ LFG projects

Score 85
(100-0)

17

1 engine = 1.6 MW

Criteria: Financial Qualifications (25%)

* 615 / mm BTU, growth of gas flow is same projections as
too much. Financed by Cat Financial. Signed agreement w/ FPL,
pending PLC.

Score 92
(100-0)

23

Criteria: Presentations and Q&A Response (10%)

Will commit to milestones

Score 85
(100-0)

8.5

Total Score: _____

88.5

RANKING #3

mm BTU

61.54 gas used

254 - gas available, but not used

104 - utility concern can't use gas beneficially

RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Landfill Gas
Utilization Project

SUBMITTAL COMPANY NAME: LES

QUALIFICATION COMMITTEE MEMBER: Moore, Kathy

INSTRUCTIONS: Score each criterion from 1 to 100 based on the following general guidelines:

90 – 100	Outstanding, out-of-the-box, Innovative, Cost/Time Savings
80 – 89	Excellent, Very Good, Solid in all respects.
70 – 79	Good, No major weaknesses, Fully Acceptable as is
60 – 69	Marginal, Weak, Workable but needs clarifications
Below 60	Unacceptable, Needs major help to be acceptable

Describe strengths, weaknesses and deficiencies to support your assessment.

Criteria: Corporate Qualification and Team Experience (20%)

Score ~~100~~ 95
(100-0)

Criteria: Project Approach (25%)

Score ~~100~~ 95
(100-0)

Criteria: Experience with similar projects (20%)

Score ~~92~~ 100
(100-0)

Criteria: Financial Qualifications (25%)

Score 90
(100-0)

Criteria: Presentations and Q&A Response (10%)

Score 90
(100-0)

Total Score: _____

RANKING 1

RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Landfill Gas
Utilization Project

SUBMITTAL COMPANY NAME: AMERESCO

QUALIFICATION COMMITTEE MEMBER: Moore, Kathy

INSTRUCTIONS: Score each criterion from 1 to 100 based on the following general guidelines:

90 – 100	Outstanding, out-of-the-box, Innovative, Cost/Time Savings
80 – 89	Excellent, Very Good, Solid in all respects.
70 – 79	Good, No major weaknesses, Fully Acceptable as is
60 – 69	Marginal, Weak, Workable but needs clarifications
Below 60	Unacceptable, Needs major help to be acceptable

Describe strengths, weaknesses and deficiencies to support your assessment.

Criteria: Corporate Qualification and Team Experience (20%)

Score ~~80~~ 75
(100-0)

Criteria: Project Approach (25%)

Score ~~75~~ 70
(100-0)

Criteria: Experience with similar projects (20%)

Score ~~80~~ 75
(100-0)

Criteria: Financial Qualifications (25%)

Score ~~75~~ 80
(100-0)

Criteria: Presentations and Q&A Response (10%)

Score 75
(100-0)

Total Score: _____

RANKING 3

RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project

SUBMITTAL COMPANY NAME: 62

QUALIFICATION COMMITTEE MEMBER: Moore, Kathy

INSTRUCTIONS: Score each criterion from 1 to 100 based on the following general guidelines:

90 – 100 Outstanding, out-of-the-box, Innovative, Cost/Time Savings
80 – 89 Excellent, Very Good, Solid in all respects.
70 – 79 Good, No major weaknesses, Fully Acceptable as is
60 – 69 Marginal, Weak, Workable but needs clarifications
Below 60 Unacceptable, Needs major help to be acceptable

Describe strengths, weaknesses and deficiencies to support your assessment.

Criteria: Corporate Qualification and Team Experience (20%)

Score 85
(100-0)

Criteria: Project Approach (25%)

Score ~~65~~ 80
(100-0)

Criteria: Experience with similar projects (20%)

Score ~~70~~ 65
(100-0)

Criteria: Financial Qualifications (25%)

Score ~~85~~ 70
(100-0)

Criteria: Presentations and Q&A Response (10%)

Score 85
(100-0)

Total Score: _____

RANKING 2

RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project

SUBMITTAL COMPANY NAME: LES

QUALIFICATION COMMITTEE MEMBER: JOHN CIRILLO

INSTRUCTIONS: Score each criterion from 1 to 100 based on the following general guidelines:

90 – 100 Outstanding, out-of-the-box, Innovative, Cost/Time Savings
80 – 89 Excellent, Very Good, Solid in all respects.
70 – 79 Good, No major weaknesses, Fully Acceptable as is
60 – 69 Marginal, Weak, Workable but needs clarifications
Below 60 Unacceptable, Needs major help to be acceptable

Describe strengths, weaknesses and deficiencies to support your assessment.

Criteria: Corporate Qualification and Team Experience (20%)

Very qualified 20 year experience
Numerous projects. Project team works together
over 15 years
Score 95
(100-0)

Criteria: Project Approach (25%)

Outstanding Approach with regard to growth
and Application of Technology
Score 95
(100-0)

Criteria: Experience with similar projects (20%)

Over 24 projects completed all landfill
gas since 1991
Score 95
(100-0)

Criteria: Financial Qualifications (25%)

Outstanding Financial capability, worth
over \$70M net
Score 95
(100-0)

Criteria: Presentations and Q&A Response (10%)

Outstanding maintenance and uptime of generation

Score 95
(100-0)

Total Score: _____

RANKING 1

RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project

SUBMITTAL COMPANY NAME: AMERESCO

QUALIFICATION COMMITTEE MEMBER: JOHN CIRIELLO

INSTRUCTIONS: Score each criterion from 1 to 100 based on the following general guidelines:

- 90 – 100 Outstanding, out-of-the-box, Innovative, Cost/Time Savings
- 80 – 89 Excellent, Very Good, Solid in all respects.
- 70 – 79 Good, No major weaknesses, Fully Acceptable as is
- 60 – 69 Marginal, Weak, Workable but needs clarifications
- Below 60 Unacceptable, Needs major help to be acceptable

Describe strengths, weaknesses and deficiencies to support your assessment.

Criteria: Corporate Qualification and Team Experience (20%)

QUALIFIED, SOLID IN ALL ASPECTS, TEAM
HAS LONG HISTORY OF OPERATIONS 30 YEARS EXPERIENCE Score 85
(100-0)

Criteria: Project Approach (25%)

PROJECT APPROACH IS MODULAR, DID NOT SPEAK
TO MAINTENANCE PROBLEMS Score 80
(100-0)

Criteria: Experience with similar projects (20%)

EXPERIENCE IS OUTSTANDING MANY PROJECTS
OVER MANY YEARS Score 95
(100-0)

Criteria: Financial Qualifications (25%)

FINANCIAL QUALIFICATIONS ARE OUTSTANDING
\$222 MILLION IN ASSETS, 31 MILLION CASH ON HAND Score 95
(100-0)

Criteria: Presentations and Q&A Response (10%)

VERY GOOD. ON QUESTIONS BUT LIMITED ON
COMMITMENT FOR PERFORMANCE Score 80
(100-0)

Total Score: _____

RANKING 2.

RFP-4255-05/TLR – Osceola Road Solid Waste Management Facility Landfill Gas Utilization Project

SUBMITTAL COMPANY NAME: G-2 Fenwick

QUALIFICATION COMMITTEE MEMBER: JOHN CIRIELLO

INSTRUCTIONS: Score each criterion from 1 to 100 based on the following general guidelines:

- 90 – 100 Outstanding, out-of-the-box, Innovative, Cost/Time Savings
- 80 – 89 Excellent, Very Good, Solid in all respects.
- 70 – 79 Good, No major weaknesses, Fully Acceptable as is
- 60 – 69 Marginal, Weak, Workable but needs clarifications
- Below 60 Unacceptable, Needs major help to be acceptable

Describe strengths, weaknesses and deficiencies to support your assessment.

Criteria: Corporate Qualification and Team Experience (20%)

NO TEAM EXPERIENCE, MANY OF INDIVIDUAL EXPERIENCE

Score 60
(100-0)

Criteria: Project Approach (25%)

PROJECT APPROACH IS MODULAR BUT UNFORTUNATELY SKY'S THE LIMIT DID NOT SPEAK TO AIR PERMIT OR TO THE PROJECT AHEAD.

Score 70
(100-0)

Criteria: Experience with similar projects (20%)

HAD NO SIMILAR PROJECTS TO COMPARA ON LOOK TO ONLY TOGETHER FOR THIS PROJECT

Score 60
(100-0)

Criteria: Financial Qualifications (25%)

STATES FINANCIAL STRENGTH IS CATASTROPHIC FINANCIAL DID NOT STATE COMMITMENT ONLY A LLC PARTNER.

Score 70
(100-0)

Criteria: Presentations and Q&A Response (10%)

ANSWERS TO QUESTIONS WERE GOOD BUT NOT

COMPLETE GIVE THE DATA FOR THE WAY
WERE.

Score 70
(100-0)

Total Score: _____

RANKING 3

**SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS
REQUEST FOR PROPOSALS (RFP)
Osceola Road Solid Waste Management Facility
Landfill Gas Utilization Project**

Background

The Osceola Road Solid Waste Management Facility ("Landfill") is owned by Seminole County and is operated by the Seminole County Solid Waste Management Division. The landfill is located in Geneva, Florida, in the northeast corner of Seminole County.

The landfill is the only disposal facility in the County that provides disposal for Class I wastes. The facility includes a 240 acre permitted disposal area. The facility includes a slurry wall landfill, operational areas, lakes, and ditches for the required stormwater management system and on-site access roads. It has been in operation since 1972. When permitted in the late 1980's, the landfill was designed with three major phases of development, and many of the documents available for the landfill refer to these original three development phases. The Landfill is currently being developed in accordance with a differing comprehensive phasing/development plan approved by the State of Florida Department of Environmental Protection (FDEP) in early 2003. The plan describes the landfill's sequential phased development for an anticipated remaining life in excess of 45 years. The original three phases of development are no longer to be followed in the future, although references to the original three phases still may appear within this document and other landfill-related documents.

In 1999, the County installed the initial Landfill Gas Collection System in what was at the time known as the Phase I of the landfill, which included 38 gas extraction wells, three (3) gas extraction trench risers, corresponding header piping, condensate management devices, and a 2,145 scfm flare skid. An expansion to the system was constructed in 2001 with the addition of nine (9) gas extraction wells in what was then known as Phase II - Cell 1A. This expansion also included 12" header piping that linked Phase I and Phase II of the landfill. A segment of this piping has since been disconnected due to the installation of a Citizens Disposal Area. In 2002, four (4) gas extraction wells were installed in Phase II - Cell 1B. The system was expanded again in 2003 and included the installation of 14 wells into Phase II -Cell 2A, corresponding header piping and condensate management, a piping connection between Phase I and Phase II, and a 3,000 scfm flare skid. Another expansion of the gas system consisting of 12 gas extraction wells in Phase II - Cell 2B of the landfill is scheduled for the summer of 2004. After completion of the next scheduled expansion, the system will include a total of 77 gas extraction wells, three (3) gas extraction trench risers, header piping, condensate management devices including air compressors located at each of the flare stations, and two (2) flare stations located in the separate phases of the landfill, respectively.

The County is presently collecting and flaring approximately 2,000 cubic feet per minute of landfill gas from the gas extraction wells and trenches described above. The County provides no warranties or guarantees, either expressed or implied, as to the amount, or chemical composition, of the LFG to be made available to the Developer, including, but without limitation, any warranty of merchantability or fitness of the LFG for a particular purpose.

Scope of Services

The Seminole County Board of County Commissioners (the "County") is seeking written proposals from qualified Developers to recover energy or otherwise beneficially utilize landfill gas (LFG) from the solid waste disposal areas at the Seminole County Osceola Road Solid Waste Management Facility (the "Landfill"). The County desires to enter into a Landfill Gas Purchase Agreement (the "Agreement") with the successful Developer whereby the Developer would make certain payments to the County for the rights to connect, recover, and beneficially utilize LFG from the landfill.

The primary objective of the LFG Management System is and will continue to be to control LFG migration, emissions, and odors to strictly comply with all local, state, and federal regulatory requirements. The Agreement between the County and Developer obligates the Developer to maximize the beneficial utilization of LFG from the County's LFG Management System and allows the County to find the Developer in default of the Agreement for failing to meet its obligations. The County recognizes that the beneficial use of the LFG is of economic benefit to the County.

The County has prepared a Landfill Gas Purchase Agreement ("Agreement") that addresses the terms and conditions in which the County intends to enter into an agreement with the Developer. Following the Board's approval of the recommended award(s), negotiations will begin using the Agreement (Attachment A) as the basis for negotiations. The County fully expects to enter into the Agreement without modification unless the Developer has taken exception to the terms and conditions of the Agreement to be addressed as part of their proposal. In such cases, as part of the submitted proposal, the Developer must provide alternate language, which modifies any such terms or conditions to a form that is acceptable to the Developer. This modified language will be assessed for any additional risk to the County and will be made a part of the Developer's proposal and evaluation. If awarded the contract, the Developer must be willing to execute the modified Agreement without further exception. Negotiations will be used to resolve any remaining minor issues regarding the technical or administrative aspects of the project. If for any reason a contract cannot be negotiated with a recommended Developer within sixty (60) days after notification of award, the County may terminate contract negotiations and open negotiations with the next Developer whose proposal appears most favorable to the County.

Nothing in this RFP may be interpreted as binding the County to enter into an Agreement for the construction and operation of a LFG Utilization Facility or the sale of LFG to the Developer or Buyer.

Developer's Requirements

The Developer's requirements are generally discussed below and further defined in the Agreement. Requirements of the Developer include, but are not limited to:

- 1) Determining the most viable market for the beneficial use of the landfill's LFG;
- 2) Contracting with a Buyer for the Beneficial End Use Product;
- 3) Designing, permitting, building, expanding, operating, repairing, replacing, and maintaining a LFG Utilization Facility and Utility Interface in accordance with the terms of the Agreement, all existing regulations and permits, and safe construction practices;
- 4) Connecting to the County's Flare Station(s) at the Delivery Point(s), installing flowmeter/recorders, and maintaining a constant and balanced draw from the County's LFG Management System;
- 5) Maximizing use of collected LFG and utilizing recovered gas for beneficial use;
- 6) Meeting permit requirements, controlling odors, operating, repairing, and maintaining the County's Flare station(s). Flaring any LFG that may be available due to excess quantity, scheduled and unscheduled maintenance, or shut off by Buyer; and
- 7) Making initial and monthly payment(s) to the County for use of the County's LFG as defined in the Agreement.

The Developer will obtain exclusive rights to connect, recover, and beneficially use and/or sell LFG from the Landfill in exchange for certain payments to Seminole County in accordance with the Agreement as amended and agreed to by both parties.

The Developer is required to provide a LFG Utilization Facility to connect to the County's LFG Management System. The LFG Utilization Facility is to convert the collected LFG to a Beneficial End Use Product. The proposed location of the LFG Utilization Facility and the County's Delivery Point(s) which is the Developer's tie-in or connection points to the County's LFG Management System are shown on the site plan presented in Attachment B.

The Developer shall be responsible for all development activities necessary for completion of a fully integrated and operating LFG Utilization Facility in accordance with the schedule provided herein. Work to be conducted by the Developer will include, but not be limited to, the following:

- Submitting a Project Development Plan including the type of recovery system and Buyer of the Beneficial End Use Product;

- Siting near the County's Leachate Storage Tanks or a mutually agreeable location and permitting a LFG Utilization Facility and Utility Interface;
- Designing, constructing, and initiating a LFG Utilization Facility and Utility Interface;
- Obtaining all required permits and permit modifications, for constructing and operating the LFG Utilization Facility and Utility Interface;
- Providing, installing, and maintaining flowmeter(s) and continuous recorder(s);
- Operating and maintaining the LFG Utilization Facility to maximize the use of the County's collected LFG following the commencement of operation;
- Providing all labor, equipment and materials for the development, permitting expansion, operation, maintenance, repair, and replacement of the LFG Utilization Facility;
- Operating and Maintaining the Utility Interface and County's Flare Station(s); and
- Flaring of any excess LFG in accordance with all applicable permits.

The County has tentatively designated approximately one acre of land adjacent to the County's Leachate Storage Tanks for the Developer's LFG Utilization Facility. The Developer will be solely responsible for all costs associated with preparing, submitting, and obtaining all necessary development permits including any zoning, wetlands, and/or land use permits required for siting, constructing, and accessing the LFG Utilization Facility on the approved site. The Developer will be solely responsible for all costs associated with obtaining easements, rights-of-way, and permits necessary for the Beneficial End Use Product delivery, transmission, and/or connection to offsite utilities.

The Developer shall be responsible for meeting all environmental and transportation regulations applicable to the construction and operation of the LFG Utilization Facility and Utility Interface.

The Developer shall be responsible for designing a LFG Utilization Facility that converts the LFG collected from the landfill to a Beneficial End Use Product. The County will review the design for compatibility with the existing and future landfill activities and operations.

The Developer shall be responsible for facility construction to commence as soon as practicable after necessary permitting and financing have been arranged. The Developer must furnish or procure all services, labor, equipment and materials necessary to construct and complete the LFG Utilization Facility in its entirety and in full working order within 18 months of the Effective Date of the Agreement.

The Developer must prepare and submit to the County a preliminary Project Plan for the LFG Utilization Facility Project, during the construction process. The Project Plan will be finalized and accepted by the County prior to the startup of the LFG Utilization Facility. Operations will commence after completion of the startup period and approval of the Project Plan by the County.

The Developer shall be responsible for developing and keeping current a project schedule of the LFG Utilization Facility construction as required in the Agreement. The County will be informed of monthly progress and changes in the schedule by the Developer.

Before submitting a proposal, each Developer shall make all investigations and examinations necessary to learn the conditions and requirements that may influence the performance of the services requested and the Agreement. Failure to make such investigations and examinations shall not relieve successful Developers from the obligation to comply, in every detail, with all the provisions and requirements of the awarded Agreement, nor shall it be a basis for any claim whatsoever for alteration in any condition of the awarded contract.

Proposal Format

Each Developer shall submit a proposal with the following sections individually tabbed and indexed. Limit the proposal to 50 pages. Any photographs, maps, diagrams, charts, or other non-text contents, which provide information about the Developer, will be included in the page count.

The following sections are required for proposals submittals:

1. **Cover Page:** This page should provide the County RFP Number, Date, RFP Title, company name, address, telephone and fax number.
2. **Transmittal Letter:** This letter should summarize the Developer's commitment to the project, list the Beneficial Use Product, identify the potential Buyer, and mention whether an agreement exists between the Developer and the Buyer for the product.
3. **Corporate Qualifications and Project Team Experience:** This section should demonstrate the Developer's overall technical expertise and experience in landfill gas recovery and end use in the type of technology proposed by the Developer. All Developers must provide the following information regarding qualification and experience. Proposals from Developers that do not meet the minimum requirements of this RFP will not be considered.
 - a. Supply a brief description of the business entity submitting the proposal, including history and name of Parent Corporation, if applicable. The description of corporate background and experience must include details of the background of

the company, total number of employees, total audited annual gross and net revenues for the most recent fiscal year, and significant resources and details of corporate experience relevant to the proposed project.

b. Demonstrate experience with and thorough understanding of the following:

- Landfill gas testing and recoverable quantities estimation;
- Landfill gas recovery and utilization systems engineering, construction and operation;
- Landfill gas processing;
- Establishing markets or uses for recovered landfill gas or the products of its conversion to beneficial use; and
- Applicable environmental regulations.

c. All Proposals must contain a brief Statement of Organization that contains the following:

- Name of organization/firm, in full, and principal business address;
- Principal contact person, address, and phone number;
- If a partnership or joint-venture, names, addresses, and titles of all partners;
- Names of parent organizations for all joint-venture, managing or general partners;
- If a corporation, names, addresses and titles of officers with authority to sign in the name of the corporation; and
- If a corporation, date and state of incorporation.

d. Provide brief resumes of no fewer than 4 and no more than 10 key employees, specialists, and individual consultants anticipated for this project. Resumes for the persons responsible for the project functions listed below must be submitted. The Developer must provide reasonable assurance that the identified personnel will be available to work on the proposed project.

- Project Management (and a key contact person, if different)
- Project Financing, Financial and Markets Analyses
- Environmental Review
- Permitting
- Facility Design
- Facility Construction and Start-up
- Current Operations
- Records and Administration

Each resume shall include at least the following information:

- Name and title
- Firm
- Total years experience

- Years of experience with LFG utilization projects
 - Education
 - Applicable specialty and demonstrated experience
 - Project assignment
- f. Provide an organization chart and describe the organization structure for the project that indicates the relationship between all proposed project staff as well as lines of communication with Seminole County project staff. For each person, show their firm, company or organization. Attach to this chart a narrative detailing the lines of communication and responsibilities of team members in each phase of the project presented below.
- g. It is understood that responses to the RFP may require teaming arrangements (e.g., partnership, joint venture, etc.) between Developers and/or Buyers to enhance the technical and/or financial viability of the project. The County requires the Developer, within the RFP response, to provide a description of the teaming arrangement and a clear statement specifying which of the team members will be the prime Developer. The County will only contract with a single Developer for the services. This Developer will be responsible for the complete fiscal, administrative, legal, and managerial responsibility for the delivery of the required services. A listing of the major portions of the design, construction, or operation of the proposed facility that will be subcontracted, and degree of involvement of the subcontractors within their specified areas, must also be included within this RFP response.

4. Project Approach

Each Proposal must contain the Developer's approach to the Project. A discussion of the technical development and implementation of the proposed project shall be submitted as part of the response. The description shall provide sufficient detail to demonstrate the Developer's understanding of the issues and constraints associated with the project's development and implementation.

- a. Describe the processes that are proposed to be used to convert LFG to a Beneficial End Use Product in sufficient detail. Include:
- Description of the end use product.
 - Identify any existing or contingent agreement with the Buyer.
 - Description of all functional equipment units and capacities. (for this project, the County requires all new equipment.)
 - Conversion efficiencies and LFG utilization flow rate, including a demonstration of the ability of the proposed design to maximize the utilization of the LFG.
 - Process flow diagram.
 - Description of the flexibility of proposed facility site, configuration, and approach to energy conversion, to handle future LFG flows.

b. Site Selection and Building.

Present the preferred location for siting the LFG Utilization Facility. Demonstrate ownership or effective control of any portions of the LFG Utilization Facility and associated pipelines or transmission facilities that are not on landfill property. Whether on County landfill property or not, discuss type of building proposed, show a draft floor plan illustrating equipment layout, and draft building elevation plan. In addition, a discussion is required on the ambient noise control as part of the building design and the provisions for future expansion of the facility.

c. Environmental Mitigation.

All proposals shall contain preliminary indications of the construction and operating impacts on the surrounding environment, including wetland impacts, and the methods that will be used to mitigate these impacts.

d. Community Impacts.

The proposal shall discuss the intended procedures and/or additional features needed to minimize impacts to the nearby residents due to noise, odor, dust, and visible impacts.

e. Required Permits.

Provide a listing of the new permits or permit modifications anticipated to be required for construction and operation of the LFG Utilization Facility and associated items. Include the cognizant permitting agency and lead time expected for each permit. Permits are to be procured at the Developer's sole expense unless otherwise stated in the Agreement.

5. Project Experience and References

a. All Developers shall provide a listing of all LFG utilization projects for which they have been the principal developer. This listing may include projects currently operating, under construction, or under negotiation.

b. All Developers must submit a minimum of three references for currently operating landfill gas utilization projects that were completed by the Developer, Key Employees of the Developer, or subcontractors to the Developer, one of which will have commenced operation within the past five years. These projects shall be successfully operating projects providing net positive revenues to the landfill owner. The format for each reference should be:

- Project name and location
- Landfill owner's name, address, phone number and point of contact
- Landfill operator's name, address, phone number and point of contact, if different from owner
- Type of LFG utilization process and equipment used

- Design input flow rates of LFG (average SCFM) and mass heat flow (B.t.u./hr)
- Output product and design quantity of output per unit time (SCFM, B.t.u., kWh, lbs, etc.)
- Actual average input LFG flow rates over the life of the project
- Actual product output (in SCFM gas, kW, lbs. steam, etc.), average over the past year or period of operation if less than 12 months
- Purchaser of final product, including contact person and telephone number, if any. If none, state what was done with the product, who used it, and how.

6. Financial Proposal

a. The Developer shall finance or provide the financing for the development of the LFG Utilization Facility and Utility Interface and any other work proposed by the Developer. Proposals shall include a specific statement of intent to provide financing for the above scope of work. Source of financing also should be included, along with a letter of commitment from that source. If the Developer expects any preconditions on financing, specifically concerning impact of facilities ownership structure, payment guarantees contingent to project failure, etc. or under any other circumstances, these shall be identified in this section and fully explained.

b. Markets.

Each Proposal shall identify the entity(ies) which will be the Buyers of the Beneficial End Use Product(s) and any conditions to be levied by the entity before final acceptance of the product(s). Demonstrate that the proposed end user has an interest in the product (i.e. letter of commitment).

c. Payments to County.

Payments to the County shall be as specified in the Landfill Gas Purchase Agreement. A Statement of Terms Sheet form has been provided in Attachment C for the Developer to fill out and submit to the County as part of the RFP response. In addition, describe the structure of the payments to the County and any changes to the pricing and/or conditions submitted on the Statement of Terms Sheet form. Include assumptions used and breakdown of the annual payments including the following information, as appropriate:

- Anticipated LFG collection and utilization rates.
- Anticipated B.T.U. content of collected LFG.
- Assumed conversion rates.
- Initial equipment sizes/capacity and expected size/capacity of equipment for any expected expansion during the term of the Agreement,
- Annual revenue generation over the term of the Agreement.

Information regarding annual payments to the County should address initial operation, as well as operations of future facilities during the term of the Agreement.

d. *Contract Term Commitment.*

It is the County's intent to contract with the Developer for a term of at least 10 years which will begin when the Developer begins Commercial Operations. This term may be extended by mutual written agreement as provided by the Agreement. The Developer's proposal shall indicate a willingness to commit to this length of term and include any conditions (i.e.: economic, financial, operational, etc.) under which the Developer may require the County to excuse them from contract commitments or to agree to an assignment of the Developer's obligations to a third party.

e. *Federal Tax and Emission Reduction Credits.*

The County recognizes the value to the project of Federal Tax and Emission Reduction Credits and/or any other applicable tax legislation, if and when it becomes available during the term of the Agreement. The County intends to have that value incorporated into the project. The County also recognizes that the Developer will have exclusive rights to the Tax and Emission Reduction Credits, however, proposals shall provide a statement of Developer's intent to take advantage of such credits and how the Developer intends to apply this benefit to the County in the future. Include a discussion of Developer's understanding of minimum project requirements for recovering the credits and define in detail the method proposed by the Developer to meet these minimum requirements. If the method proposed includes the involvement of third parties, identify parties by name and give contact name(s) and telephone numbers. If Developer plans to require partnership or other involvement by the County to allow for receipt of credits, specifically state so and identify the County's proposed level of involvement.

f. *Bonds or Other Financial Security Instrument.*

The Developer shall demonstrate the ability to provide the required bonds by including in its response to the RFP a statement from a bonding company their willingness to furnish a removal and restoration bond and a performance bond or other financial security instrument for the Developer, in an amount equal to the estimated cost of facilities to be installed, constructed, operated and maintained pursuant to the Agreement. The bond shall be conditioned upon full performance of all obligations imposed upon the Developer by this Agreement including, without limitation, delivery and installation of necessary equipment, in-warranty service, and extended service. 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.

g. *Insurance.*

The Developer shall demonstrate the ability to provide the required insurance by including in its response to the RFP a certificate of insurance (COI) for the proposed project or unqualified commitment letter from the Developer's insurer for the insurance coverages designated in the Agreement.

h. *Indemnification.*

The Developer shall submit an unqualified statement in their response concerning their ability and willingness to protect, defend, indemnify, save, and hold the County harmless as designated in the Agreement.

Evaluation Criteria:

Each Proposal will be reviewed independently by each of the Selection Committee members using the following criteria:

- | | |
|---|-----------|
| 1. Corporate Qualifications and Project Team Experience | 20 points |
| 2. Project Approach | 30 points |
| 3. Project Experience and References | 20 points |
| 4. Financial Proposal | 30 points |

References will be scored based on answers received from at least three clients on the Client Evaluation Score Sheet. Client references must be for completed work on landfill gas recovery projects that are similar to the scope of services sought by this RFP. Only one reviewer will contact any given reference. Respondents should notify their references that they will be contacted by a representative of Seminole County.

Each member of the Selection Committee will rank the prospective Developers. The Selection Committee may determine a short list of the most highly qualified Developers.

Those Developers on the short list may be requested to give presentations to the Selection Committee. Following all presentations and Committee deliberations, the Committee may recommend one or more Developers to the Board of County Commissioners for contract award or further negotiations.

Attachment C

Form A

Statement of Terms Sheet

(Sheet 1 of 2)

Proposer's Company Name: _____ Date: _____

The Proposer is required to complete this Form A and submit it as part of the Proposer's response to this RFP. Additional sheets may be submitted that discuss and provide the basis of the pricing (fixed or variable), any changes in equipment sizes, assumptions, etc. Developer shall assume an annual inflation rate of 2 percent.

1. Initial Payment for LFG Rights: \$ _____
2. Payment for Right to and Use of LFG from the Landfill: \$ _____ per month.
3. Payment for LFG Delivered: \$ _____ per mmBTU and method and frequency or index to adjust the rate, if any _____

4. Lease Payment for the Use of the County's LFG Flare Station(s): \$ _____ per month.
5. Percent of Tax and Emission Credit Benefits to be Shared with County: _____%.
6. Initial Size of Processing Equipment: _____. (i.e. MW Capacity for the initial construction and operation. Additional information may be provided on the next page).
7. Minimum Amount of LFG to Become Economically Viable as defined under Commercial Quantities in the Agreement: _____ scfm.

Evaluation of Pricing Terms

The County will evaluate the Proposer's pricing terms on the "Statement of Terms Sheet" submitted by each Proposer. The impact of the pricing terms shall be evaluated for the full term of the Agreement, based upon the pricing values submitted by each Proposer. This evaluation will be used to assist the Selection Committee in its evaluation and comparison of each proposal in addition to other items provided by the Proposer on the Statement of Terms Sheet. The assumptions to be used in the analysis are as follows:

1. The Initial Payment of LFG Rights will be the Proposer's one time payment in the year of the Effective Date of the Agreement, which is assumed to be the year 2005.
2. The monthly Payment for the Rights to and Use of Landfill Gas will be multiplied by 12 for the first year of the Term of this Agreement, which is expected to be 2006. The annualized value will then be inflated at 2% per year for each respective year for the term of the Agreement.
3. Payment for LFG Delivered will be determined using a fixed dollar per mmBTU provided by the Proposer over the term of the Agreement. The fixed dollar per mmBTU will then be multiplied by a) the methane content, multiplied by b) the annualized landfill gas quantity ($\text{scfm} \times 60 \times 24 \times 365$) at the Delivery Point(s), multiplied by c) a constant factor of 1012.32, and then divided by d) 1,000,000. The initial gas projections to be used in this analysis will be at 2,500 scfm in the year 2006 with a BTU value based on a 52% concentration of methane. The amount of LFG purchased will be assumed to increase at a rate of 10% per year for the term of the Agreement.
4. The monthly Lease Payment for Use of LFG Flare Station(s) will be multiplied by 12 for the respective year and used every year for the term of this Agreement.

The total payments for each item will be subtotaled for each year, and a total number will be determined by summing the subtotals for all of the years included within the term of the Agreement, for a total Agreement Value to the County. The potential tax credit saving revenues will not be used in this analysis, but will be utilized and assessed along with other items included within the Statement of Terms Sheet, as part of the Selection Committee's evaluation of each proposal.

The County has the right to modify the above methodology to be used in the evaluation and comparison of the proposals. The numbers assumed in this analysis are for use in the evaluation of the pricing terms in the proposals only. 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).

DRAFT

LANDFILL GAS PURCHASE AGREEMENT

THIS LANDFILL GAS PURCHASE AGREEMENT ("Agreement"), made and entered into this day of _____, 20__ by and between _____, a _____ Corporation doing business at _____, hereinafter referred to as the "Developer" and Seminole County, Florida, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County";

WITNESSETH:

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

WHEREAS, the County 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, CO₂, or any two or more of the foregoing. The use of such products shall result in a tangible financial gain for Seminole 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 _____ 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 County's Flare Stations are used to incinerate LFG in conformance with applicable federal, state, and local rules and regulations, and to control odors.
- 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 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 and recovering LFG and transporting it to the County's Delivery Point(s).

Flare Stations?

- 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 County's 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 provide 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. If the Developer is unable or unwilling to use part or all of the LFG for a Beneficial End Use Product, the County may use the LFG for its own purposes.
- 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 and 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, and expand 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:

- i) 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;
 - ii) not interfere with the Developer's operation and maintenance of the LFG Utilization Facility, providing Developer is complying with all applicable laws and regulations;
 - iii) instruct its independent contractors, agents and employees to avoid causing such interference, disruption, or destruction described above;
 - iv) 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 or County's Flare Stations in accordance with applicable LFG regulations;
 - v) 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
 - vi) 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:

- i) allow Developer to inspect any documents in its possession regarding LFG production from the Landfill, the quantity, age, and type of refuse in the Landfill, tipping records, etc.; and
 - ii) allow Developer to inspect 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, 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:
 - i) Header piping, connection piping, valves, pipe supports, and any other auxiliary items from the Developer's LFG Utilization Facility to the Delivery Point(s).
 - ii) A tee, valve, and blind flange at the Delivery Point(s) for the purpose of connecting to the County's LFG Management System.
 - iii) Any needed blower booster(s) or blower(s) to manage the flow of LFG from the Delivery Point(s) to the LFG Utilization Facility.
 - iv) For the County's use, 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 deem 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 10 percent, the results shall be averaged for purposes of this section. If the results differ by more than 10 percent, 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. Developer shall:

- LFG Mgmt System*
- i) 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.
 - ii) 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.
 - iii) Maximize the use of the available LFG from the County and sell and deliver Beneficial End Use Product to a Buyer.
 - iv) 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.
 - v) Maintain air emission generated by the operations to any applicable standards or permits.
 - vi) 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).
 - vii) 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.
 - viii) 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 Development Code Regulations. The Developer shall not be responsible for the noise from the County's landfill operation.
 - ix) Control and dispose of all wastes generated from the Developer's facilities according to current environmental regulations, including gas condensate and waste cooling water.
 - x) 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.
 - xi) Provide information to County, as necessary, for County to comply with NSPS reporting requirements.
 - xii) 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 and comment 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 and comment 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 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 accept contracts relating to the implementation of this Agreement nor any decision made by the County in good faith in conjunction with such review and acceptance 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 required 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 Workman'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:

- i) Developer's employee is on the site at the same time, or
- ii) Developer requests assistance from the County or a duly authorized representative, or
- iii) It is necessary for the County to collect samples from the discharges of the Developer's facility, or

- iv) 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 furnish a performance bond or other financial security instrument acceptable to the County, in an amount equal to the estimated cost of facilities to be installed, constructed, operated and maintained pursuant to 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 including, without limitation, delivery and installation of necessary equipment, in-warranty service, and extended service. 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 ten (10) 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 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 twenty-five thousand dollars (\$25,000) within 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. This lump sum payment will be refunded if the County chooses to terminate the Agreement for convenience in accordance to Section 14D within the first year of the effective date of this Agreement.
- B. Payment for Right to and Use of LFG from the Landfill. Developer shall pay a fixed fee of _____ dollars (\$ _____) per year, payable in 12 equal monthly installments of \$ _____. 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.
- C. Payment for LFG Delivered. Developer shall pay a unit rate fee of _____ dollars (\$ _____) 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 _____ index on the anniversary date of the Agreement.

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

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

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 _____ dollars (\$ _____) per year, payable in 12 equal monthly installments of \$ _____. 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. Tax and Emission Credits. If any federal, state, or local tax and/or emission credits become available, Developer shall pay a fee to the County for any tax or emission credits that are received by the Developer for the LFG Utilization Facility. The fee shall be equal to 50 percent of any tax or emission credits received by the Developer in any one year, divided by 12. The fee shall be payable in equal monthly installments. Payment shall commence the first month when the Developer receives any tax or emission credit.
- F. 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.
- G. Calculation of the Inflation Factor. The annual inflation factor is to be derived each year from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, pursuant to Rule 62-701.630(4)(b)(2), F.A.C.
- To calculate the current inflation factor, divide the latest published annual Deflator by the Deflator for the previous year. The current year inflation factor may be obtained from the following website:

<http://www.dep.state.fl.us/waste/categories/swfr/default.htm> .

Implicit Price Deflator data is published by the U.S. Department of Commerce, Bureau of Economic Analysis on their website:

<http://www.bea.doc.gov> .

Calculation: $\text{New Price} = \text{InflationFactor} \times \text{Current Price}$

If the above indexes are not available for any reason, the parties shall mutually agree on the use of a replacement index or indexes.

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 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 Developer shall maintain, repair, and operate the County's Flare Station(s) to control odors and comply with all applicable regulatory requirements. However, 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. The Developer shall use its best efforts to ensure that all of the LFG delivered to the Delivery Point(s) are converted to a Beneficial End Use Product and sold to a Buyer. LFG that is not used in a beneficial manner shall be incinerated in a flare.

- G. Non Waiver.

- i) The failure of either party to exercise any right shall not be considered a waiver of such right in the event of any further default or noncompliance.
- ii) No action taken by County or 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 14E.

- 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 4I 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 there from, and (2) is caused in whole or in part by any negligent 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 his subcontractors 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 his subcontractors meet these requirements.

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

- i) 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 \$100,000/each accident; \$500,000/disease - policy limit; \$100,000/disease - each employee, and a waiver of subrogation in favor of County, its agents, employees and officials.
- ii) 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 \$4,000,000/general aggregate; \$2,000,000/products-completed operations (aggregate); \$2,000,000/personal injury and property damage liability; \$2,000,000/each occurrence; \$50,000/fire damage legal; \$5,000/medical payments.
- iii) 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 \$1,000,000/combined single limit (bodily limits; injury/property damage); personal injury protection/statutory \$1,000,000 /uninsured/underinsured motorist: \$1,000,000/hired/non-owned auto liability.

AND

- iv) 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:
 - a) 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.
 - b) Amount of Insurance - 100% of the completed value of such addition(s), buildings(s), or structures(s), or machinery and equipment.
 - c) 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.
 - d) Maximum Deductible - \$5,000 each claim. Higher deductibles are permitted subject to County approval.
 - e) Additional Named Insured - The County must be included as an additional named insured.

- f) 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.
- g) 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

- v) 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:
 - a) 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.
 - b) Amount of Insurance - 100% of the "replacement cost value."
 - c) Maximum Deductible - \$5,000 each claim. Higher deductibles are permitted subject to County approval.
 - d) Additional Named Insured - The County must be included as an additional named insured.
 - e) Notice of Cancellation and/or Restriction - The policy must be specifically endorsed to provide the County with thirty (30) days' notice of cancellation.
 - f) 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.
- vi) Environmental Impairment Insurance: Coverage shall be provided and maintained as a separate policy for \$1,000,000 per occurrence; \$5,000,000 aggregate.
- vii) 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 Seminole County Board of County Commissioners 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. Seminole County Board of County Commissioners shall be identified as an Additional Named Insured for each type of coverage required by Section A (ii) through A (vi) 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 Seminole County Board of County Commissioners 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. However, no equipment shall be removed that will affect the operations of the County's Flare Stations 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.
- 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 below) for equipment less depreciation in accordance with the Depreciation Schedule to be developed under Section 14D, Termination for Convenience by the County. 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. The County shall deduct the cost of repairs required to restore said property to working condition 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 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 appraisals. Each party shall bear their respective costs of undertaking the first two 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 must be equal to 100% of the estimated value of the restoration.

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 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 Sections 6B 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. 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. The County's Environmental Services Director is authorized to provide such written notice of termination on behalf of the County.

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

- i) the filing by or against Developer of a petition in bankruptcy or the complete cessation of the business operations of Developer;
- ii) failure to pay the fees when due pursuant to Section 6, Payment;
- iii) 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;
- iv) 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;
- v) failure to operate the system or to maintain compliance with environmental regulations and noise limitation and odor control requirements;
- vi) failure to pay for any damages assessed to the Developer;
- vii) failure to convert eighty-five percent (85%) (based on a twelve (12) month rolling average) of the LFG delivered by the County to the Delivery Point(s) or the design flow rate of the LFG Utilization Facility, whichever is less, to a Beneficial End Use Product; and
- viii) failure to commence Commercial Operations within 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 therefore, and any single material default by the Developer within one year after said warning shall be grounds for termination of this Agreement. In the event of any such single subsequent default within one 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 LFG Utilization Facility, less depreciation in accordance with the Depreciation Schedule to be developed under Section 14D.
- D. Termination for Convenience by County. Should the County choose to exercise its right to terminate this Agreement without cause, the County shall give the Developer 180 days written notice and will pay the Developer an amount equal to one hundred and twenty-five percent (125%) of the FMV of the Developer's Equipment . The FMV of the equipment shall be determined in accordance with the procedure set forth in paragraph 12 B. above.. A specific equipment and facility list, agreeable to both County and Developer, shall be set forth by the County and Developer in a written amendment to this Agreement executed by the County and the Developer at the time of completion and startup of the LFG Utilization Facility. The County may not terminate this Agreement for Convenience for a period of five (5) years following the date when the Developer commences Commercial Operations of the LFG Utilization Facility.
- E. Termination for Convenience by Developer. Should the Developer determine, following LFG Utilization Facility start-up, that LFG can no longer be reasonably recovered from the Landfill in Commercial Quantities, then Developer shall have the right to surrender and terminate this Agreement including its rights to the LFG. In the event of such termination by the Developer:
- i) the Developer shall continue to make payments to the County for the right to and use of the LFG in accordance with Section 6B, whichever is in effect at the time, for a six (6) month period following notification of termination;
 - ii) 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;

- iii) the building and below ground portions of the LFG Utilization Facility on the Landfill shall become the personal property and responsibility of County; and
- iv) 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 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 the Performance Bonds 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 to 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:
 - i. All lawful fines, penalties, and forfeitures charged to the County by any governmental agency charged with enforcement of environmental laws and regulations or judicial orders.
 - ii. The actual costs 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:

Attorney fees

- i. 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 the amount equal to 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 6-month period immediately preceding the County's notice.
- ii. 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 the amount equal to 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 6-month period immediately preceding the County's notice.
- iii. 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 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.
- iv. 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 one (1) day of the Notice from the County, administrative charges in the amount of One Hundred 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:
- i) 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.
 - ii) No part of the LFG project was financed by grants or subsidized energy financing and the energy credit was not claimed with respect to property used in such recovery project.

- iii) The execution and delivery of this Agreement and related documents have been duly authorized, and constitute legal, valid, and binding obligations of the County which are enforceable in accordance with their terms and do not violate any law, rule or regulation.
- iv) As of the effective date of this Agreement, the solid waste that the County accepts for disposal within the solid waste disposal units is 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

- i) Developer is a duly organized, validly existing entity and 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.
- ii) 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 the other 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:

To County: Solid Waste Manager
Seminole County
1101 East 1st Street
Sanford, Florida 32779

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 statutes.

SECTION 20 - INTEREST OF MEMBERS OF COUNTY AND OTHERS

No officers, members, 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 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 that 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 Attachment "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 _____, 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 Seminole 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 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 to create 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 or more components of this Agreement, precedence shall be given in the following order:

- i) Agreement
- ii) County's RFP Document
- iii) Developer's Proposal

DRAFT

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
OF SEMINOLE COUNTY, FLORIDA

_____, Chairman

As approved by the Board on _____

ATTEST for Developer:

DEVELOPER

(Corporate Seal)

I hereby certify that _____ personally appeared before me and
executed the foregoing instrument as the _____ of
_____ on behalf of said corporation. Witness my hand and seal this _____ day of
_____ 20__.

NOTARY PUBLIC

My Commission Expires: