



# DeKalb County Government

Manuel J. Maloof Center  
1300 Commerce Drive  
Decatur, Georgia 30030

## Agenda Item

File ID: 2017-0795

Substitute

11/14/2017

Public Hearing: YES  NO

Department: Public Works - Sanitation

### SUBJECT:

Commission District(s): Commission Districts 3 & 6

Lease Agreement with Conyers Renewable Power, LLC. Cost to County: Revenue Generating.

Information Contact: Tracy Hutchinson

Phone Number: 404.294.2177

### PURPOSE:

To enter into a 20 year Lease Agreement and Landfill Gas Rights Agreement with Conyers Renewable Power, LLC ("Conyers") whereby Conyers would operate and maintain the Landfill Gas to Electricity (LFGTE) Facility at the Seminole Road Landfill. Conyers has an existing Power Purchase Agreement with Georgia Power, which allows Conyers to sell renewable electricity to Georgia Power. Pursuant to the Lease and the Landfill Gas Rights Agreement, Conyers will make monthly royalty payments to the County and Conyers will perform upgrades and improvements to the LFGTE Facility. Approximately \$192,000,000 of these upgrade costs will be deducted from the County's royalty payment for the first 3 years.

### NEED/IMPACT:

Georgia Power terminated the Power Purchase Agreement with the County in July 2015. Since that time, the LFGTE Facility has been in long term storage and has not been in operation.

### FISCAL IMPACT:

Expected to be revenue generating.

### RECOMMENDATION:

To approve the Lease and Landfill Gas Rights Agreement and authorize the chief executive officer to execute all necessary documents in a form acceptable to the County Attorney or her designee.

STATE OF GEORGIA  
COUNTY OF DEKALB

LEASE AGREEMENT

THIS LEASE AGREEMENT, (hereinafter referred to as "Lease" or "Agreement" made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between DEKALB COUNTY, a political subdivision of the State of Georgia (hereinafter referred to as "Lessor" or "Landlord"), and CONYERS RENEWABLE POWER, LLC, a company organized and existing under the laws of the State of South Carolina, and duly authorized to transact business in Georgia, (hereinafter referred to as "Lessee" or "Tenant.")

WITNESSETH

WHEREAS, Landlord owns and operates the Seminole Road Landfill in Ellenwood, Georgia (the "Landfill"), and developed and operated a 3.2 megawatt (MW) landfill gas-to-energy facility (the "Facility") at the Landfill under a power purchase agreement with Georgia Power Company that is no longer in effect, and the Facility is currently decommissioned; and

WHEREAS, Landlord is willing to allow the landfill gas produced by the Landfill to be utilized to produce electricity via the Facility; and

WHEREAS, Lessee has entered into a Power Purchase Agreement with Georgia Power Company, having a term ending on May 31, 2037 (the "PPA"), with a contract capacity of 3.2 MW; and

WHEREAS, Lessee desires to utilize landfill gas produced by the Landfill and the Facility, pursuant to the terms of this Lease, for the purpose of fulfilling its obligations under the PPA with Georgia Power; and

WHEREAS, simultaneous with this Lease, the Parties are entering into a Landfill Gas Rights Agreement whereby Lessee will purchase the rights to landfill gas from the Landfill (the Landfill Gas Rights Agreement being attached hereto as **Exhibit A**);

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged Lessor and Lessee, intending to legally bind themselves and their respective successors and assigns, hereby covenant and agree as follows:

## I. LEASE OF PREMISES; USE AND EASEMENTS

A. Lessor does hereby lease to Lessee, and Lessee does hereby accept, subject to the terms, covenants and conditions and agreements hereinafter expressed, the Landfill Gas-to-Energy Facility (hereinafter referred to as the "Facility") and the real estate upon which the Facility is located as depicted on the attached site plan (**Exhibit B**), which are situated at the Seminole Road Landfill, 4203 Clevefont Road, Ellenwood, Georgia 30294 (all of which are referred to as the "Premises"). In more detail, the Facility shall include the building, two 1.6 MW Caterpillar 3520-C engines, associated landfill gas delivery piping from the delivery point, and electrical interconnect, controls and protective relays (the Facility being more particularly described on **Exhibit C**, attached hereto), together with all the improvements thereto. Lessee's Premises shall consist of the Facility, the real estate upon which the Facility is located as depicted on the attached site plan, rights-of-way, privileges, servitudes, appurtenances and advantages thereunto belonging or in any way appertaining, including, without limitation, the right to use portions of the Landfill property as may be necessary or desirable for the purpose of access, ingress and egress, as these appurtenances exist on the effective date of this Agreement.

B. The Premises shall be used for the production of energy utilizing landfill gas from the Seminole Road Landfill, and related purposes by Conyers Renewable Power pursuant to the PPA, and no other. The Premises shall not be used for any illegal purposes; nor in violation of any regulation of any governmental body, nor in any manner to create any nuisance or trespass; nor in any manner to vitiate the insurance or increase the rate of insurance on the Premises.

- (1) **Tenant Responsibilities**. Except for events of damage, destruction or casualty to the Premises (which are addressed in **Section B(2)**, throughout the Term, Tenant shall, at its sole cost and expense: both (i) maintain and preserve, in the same condition as exists on the Commencement Date, subject to normal and customary wear and tear (the "**Same Condition**"), and (ii) perform any and all repairs and replacements required in order to so maintain and preserve, in the Same Condition, the Premises and the fixtures and appurtenances therein (including, but not limited to, the Premises' plumbing and HVAC systems, all doors, overhead or otherwise, glass and levelers located in the Premises or otherwise available in the Property for Tenant's sole use; and excluding, however, only those specific components of the Premises for which Landlord is expressly responsible under **Section B(2)**). In addition to Tenant's obligations under (i) and (ii) above, Tenant shall also be responsible for all costs and expenses incurred to perform any recommissioning and optimization of the Facility, all repairs and replacements (whether structural or non-structural; interior or exterior; and ordinary or extraordinary), in and to the Premises and the facilities and systems thereof, if and to the extent that the need for such repairs or replacements arises directly or indirectly from any act (other than the use of the Premises for the production of energy utilizing landfill gas from the Seminole Road Landfill, and related purposes by Conyers Renewable Power pursuant to the PPA), omission, misuse, or neglect of any or all of Tenant, any of its subtenants, Tenant's Parties, or others entering into, or utilizing, all or any portion of the Premises for any reason or purpose whatsoever, including, but

not limited to (a) the performance or existence of any alterations, (b) the installation, use or operation of Tenant's personal property in the Premises; and (c) the moving of Tenant's personal property in or out of the Property (collectively, "**Tenant-Related Repairs**").

(2) **Landlord Responsibilities**. Landlord shall be responsible for operating and maintaining the Landfill's gas collection and distribution infrastructure. Landlord agrees to maintain the existing gas collection infrastructure at the Landfill in the same manner and condition as exists as of the commencement date of this Lease and as described in more detail in the Landfill Gas Rights Agreement. Landlord shall cause the following contracts and permits to remain in effect during the Initial Term and any subsequent renewal term, and, in Landlord's sole discretion, shall assign them to Tenant or otherwise arrange for authorization for Tenant to operate the Facility subject thereto:

- a. Air Permit for the Facility; and
- b. Any other contracts and permits necessary for the lawful operation of the Facility.

C. **No Representation by County**. Tenant agrees that Tenant is familiar with the condition of the Premises, and Tenant hereby accepts the foregoing on an "AS-IS," "WHERE-IS" basis. Tenant acknowledges that neither Landlord nor any representative of Landlord has made any representation as to the condition of the foregoing or the suitability of the foregoing for Tenant's intended use. Except as set forth in Section I.B.(2) above, Tenant represents and warrants that Tenant has made its own inspection of the foregoing. Landlord shall not be obligated to make any repairs, replacements or improvements (whether structural or otherwise) of any kind or nature to the foregoing in connection with, or in consideration of, this Lease. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT WITH RESPECT TO THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE FACILITY BEING LEASED HEREUNDER AND LESSEE CONTRACTS TO ACCEPT THE FACILITY "AS IS", "WHERE IS", AND "WITH ALL FAULTS", SUBJECT TO ANY PHYSICAL OR ENVIRONMENTAL CONDITION WHICH MAY EXIST, AND WITHOUT THE EXISTENCE OF AND RELIANCE ON ANY REPRESENTATION OR WARRANTY BY COUNTY. LESSEE HEREBY EXPRESSLY ACKNOWLEDGES AND CONTRACTS THAT: (A) LESSEE HAS OR WILL HAVE, PRIOR TO EXECUTION OF THIS AGREEMENT, THOROUGHLY INSPECTED AND EXAMINED THE FACILITY TO THE EXTENT DEEMED NECESSARY BY LESSEE IN ORDER TO ENABLE LESSEE TO EVALUATE THE LEASE OF THE PREMISES; AND (B) LESSEE IS RELYING SOLELY UPON SUCH INSPECTIONS EXAMINATION AND EVALUATION OF THE FACILITY BY LESSEE ON AN "AS IS", "WHERE IS", AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS, WARRANTIES, OR COVENANTS, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE FROM THE COUNTY.**

D. **Entry on Premises by the County**. In addition to the County's right to entry under any other provision of this Agreement, the County and its authorized representatives, contractors,

consultants, or other Governmental Entity may enter the Premises at reasonable times and upon providing Lessee reasonable notice for inspection and other reasonable purposes. Nothing herein shall create or imply any duty upon the County to make any repairs or do any work with respect to the Facility; any performance thereof by the County shall not constitute a waiver of Lessee's default in failing to perform the same.

E. **Not a Joint Venture.** Notwithstanding any other provision of this Agreement, the County is not for any purpose a partner or joint venturer of the Lessee in the construction of any improvements or the operation of the Facility or any business conducted on or at the Premises. The County shall not under any circumstances (other than the County's breach of this Agreement or the Landfill Gas Rights Agreement, and then only to the extent provided elsewhere in this Agreement or the Landfill Gas Rights Agreement) be responsible or obligated for any losses or liabilities of the Lessee. Neither the County nor the Lessee has any authority to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the other or to bind the other in any manner whatsoever except as expressly provided otherwise in this Agreement. The Tenant, its officers, agents, servants and employees shall not be entitled to any County employee benefits including, but not limited to social security, insurance, paid annual leave, sick leave, worker's compensation, free parking or retirement benefits. All services provided by Tenant shall be provided by employees of Tenant or its subcontractors and subject to supervision by Tenant. No officer or employee of Tenant or any subcontractor shall be deemed an officer or employee of the County. Personnel policies, tax responsibilities, social security payments, health insurance, employee benefits and other administrative policies, procedures or requirements applicable to services rendered under this rental agreement shall be those of the Tenant, not the County.

F. **Independent Contractor Status.** The Lessee, and its officers, agents, and employees, shall act in all matters relative to this Agreement as independent contractors, and not as agents or employees of the County.

G. **Reservation of Rights by County.** County reserves the right to use the Seminole Road Landfill for the County's lawful business purposes under this Agreement and for the transportation of County Waste and County Department Waste to the Seminole Road Landfill and other governmental purposes, including Vehicle access to the Seminole Road Landfill. Nothing contained herein shall constitute a limitation of the County's rights to act in its governmental capacity nor shall any act or omission by the County in its governmental capacity constitute a breach by the County under this Agreement.

H. **Transfers.** In the event of a sale or conveyance by Landlord of the Seminole Road Landfill, the same shall operate to release Landlord from any future liability for any of the covenants or conditions, express or implied, herein contained in favor of Tenant so long as Landlord's successor in interest agrees to accept all Landlord obligations under this Agreement and the Landfill Gas Rights Agreement, and in such event Tenant agrees to look solely to Landlord's successor in interest with respect thereto and agrees to attorn to such successor. Similarly, in the event of a sale or conveyance by Tenant of itself, and/or the Landfill Gas Rights Agreement and this Agreement, the same shall operate to release Tenant from any future liability for any of the covenants or conditions, express or implied, herein contained in favor of Landlord so long as Tenant's successor in interest agrees to accept all Tenant obligations under this

Agreement and the Landfill Gas Rights Agreement, and in such event Landlord agrees to look solely to Tenant's successor in interest with respect thereto and agrees to attorn to such successor

I. **Compliance with Laws**. Tenant shall, at its sole expense (regardless of the cost thereof), comply with all local, state and federal laws, rules, regulations and requirements now or hereafter in force and all judicial and administrative decisions in connection with the enforcement thereof (collectively, "Laws"), pertaining to either or both of the Premises and Tenant's use and occupancy thereof, and including, but not limited to, all Laws concerning or addressing matters of an environmental nature. If any license or permit is required for the conduct of Tenant's business in the Premises, Tenant, at its expense, shall procure such license prior to the Commencement Date, and shall maintain such license or permit in good standing throughout the Term. Tenant shall give prompt notice to Landlord of any written notice it receives of the alleged violation of any Law or requirement of any governmental or administrative authority with respect to either or both of the Premises and the use or occupation thereof.

J. **Hazardous Materials**. If, at any time or from time to time during the Term (or any extension thereof), any Hazardous Material (defined below) is generated, transported, stored, used, treated or disposed of at, to, from, on or in the Premises by, or as a result of any act or omission of, any or all of Tenant and any or all of Tenant's Parties (defined below): (i) Tenant shall, at its own cost, at all times comply (and cause all others to comply) with all Laws relating to Hazardous Materials, and Tenant shall further, at its own cost, obtain and maintain in full force and effect at all times all permits and other approvals required in connection therewith; (ii) Tenant shall promptly provide Landlord or Agent with complete copies of all communications, permits or agreements with, from or issued by any governmental authority or agency (federal, state or local) or any private entity relating in any way to the presence, release, threat of release, or placement of Hazardous Materials on or in the Premises or any portion of the Property, or the generation, transportation, storage, use, treatment, or disposal at, on, in or from the Premises, of any Hazardous Materials; (iii) Landlord, Agent and their respective agents and employees shall have the right consistent with Section I.D to either or both (x) enter the Premises and (y) conduct appropriate tests, at Tenant's expense, for the purposes of ascertaining Tenant's compliance with all applicable Laws or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of the Premises; and (iv) upon written request by Landlord no more frequently than once every three (3) years, Tenant shall cause to be performed, and shall provide Landlord with the results of, reasonably appropriate tests of air, water or soil to demonstrate that Tenant complies with all applicable Laws or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of the Premises. This Section J does not authorize the generation, transportation, storage, use, treatment or disposal of any Hazardous Materials at, to, from, on or in the Premises in contravention of this Section J. Tenant covenants to investigate, clean up and otherwise remediate, at Tenant's sole expense, any release of Hazardous Materials caused, contributed to, or created by any or all of (A) Tenant and (B) any or all of Tenant's officers, directors, members, managers, partners, invitees, agents, employees, contractors or representatives ("Tenant Parties") during the Term. Such investigation and remediation shall be performed only after Tenant has obtained Landlord's prior written consent; provided, however, that Tenant shall be entitled to respond (in a reasonably appropriate manner) immediately to an emergency without first obtaining such consent. All remediation shall be

performed in strict compliance with Laws and to the reasonable satisfaction of Landlord. Tenant shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Materials in any way connected to the Premises without first obtaining Landlord's written consent (which consent may be given or withheld in Landlord's sole, but reasonable, discretion) and affording Landlord the reasonable opportunity to participate in any such proceedings. As used herein, the term, "**Hazardous Materials**," shall mean any waste, material or substance (whether in the form of liquids, solids or gases, and whether or not airborne) that is or may be deemed to be or include a pesticide, petroleum, asbestos, polychlorinated biphenyl, radioactive material, urea formaldehyde or any other pollutant or contaminant that is or may be deemed to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious, or that presents a risk to public health or to the environment, and that is or becomes regulated by any Law, but in no event means the landfill gas delivered by Landlord to Tenant. The undertakings, covenants and obligations imposed on Tenant under this **Section J** shall survive the termination or expiration of this Lease.

K. **UTILITIES.** Tenant shall purchase all utility services and shall provide for scavenger, cleaning and extermination services. At Landlord's election or with Landlord's consent, (a) Tenant may pay the utility charges for the Premises directly to the utility or municipality providing such service, and in that event all charges shall be paid by Tenant before they become delinquent; and (b) Landlord may directly bill Tenant for its proportionate share of utility expenses when and as such expenses are incurred. Tenant shall be solely responsible for the repair and maintenance of any meters necessary in connection with such services. Tenant's use of electrical energy in the Premises shall not, at any time, exceed the capacity of either or all of (x) any of the electrical conductors and equipment in or otherwise servicing the Premises; (y) the HVAC systems of either or the Premises; and the requirements of the electric generation and associated equipment in the Facility.

## II. TERM

A. **Initial Term.** The initial term of this Lease shall commence on June 1, 2017, and shall expire upon the earlier of (i) 11:59 p.m. on May 31, 2037 (the "Expiration Date"), or (ii) the date this Agreement is terminated in accordance with the termination provisions of this Agreement.

B. **Renewal Term.** This Lease may be renewed by Lessee for up to four (4) successive one (1) year periods following the expiration of the initial term, upon the same terms and conditions as provided for in this Agreement.

C. **Termination by Either Party.** Either Landlord or Tenant may terminate this Agreement upon termination of the Landfill Gas Rights Agreement.

## III. FIXED RENTAL

A. The Tenant agrees to pay the County at such address or addresses as may be designated in writing from time to time by the County, the total fixed equal annual rental of One Dollar (\$1.00), for the use and rent of the Premises beginning on the execution date, and payable on the first day of January of each year during the Term.

#### IV. GEORGIA OPEN RECORDS ACT

A. Lessee shall comply with the applicable provisions of the Georgia Open Records Act, O.C.G.A. §50-18-70 *et seq.*

#### V. INSURANCE REQUIREMENTS

A. Tenant shall maintain in force during the life of this agreement or any extension or renewal thereof comprehensive General Liability Insurance, including contractual liability insurance, products and completed operations, personal and advertising injury, with limits of liability of not less than \$3,000,000 each occurrence for bodily injury and property damage. General Liability Insurance must be written on an "occurrence" form. Coverage shall apply as Primary and non-contributory with Waiver of Subrogation in favor of DeKalb County, Georgia and the County shall be named as an additional insured under such policy or policies of insurance. In addition, Tenant shall furnish to the County within thirty (30) days after execution of this rental agreement, a certificate or certificates evidencing such insurance coverage in companies doing business in Georgia and reasonably acceptable to the County. Certificates must be executed in accordance with the following provisions:

- (1) Certificates to contain policy number, policy limits, and policy expiration date of all policies issued in accordance with this rental agreement.
- (2) Certificates to contain the location and the operations to which the insurance applies.
- (3) Certificates are to be **issued** to:  
DeKalb County, Georgia  
The Maloof Center, Room 202, Purchasing & Contracting  
1300 Commerce Drive  
Decatur, Georgia 30030
- (4) An agreement that the policies certified will not be changed or canceled without thirty (30) days prior notice to the County, as evidenced by return receipts of registered or certified letters.
- (5) Prior to ten (10) days before the expiration of any such certificate, Tenant shall deliver to the County a certificate renewing or extending the terms for a period of at least one (1) year, or a certificate acceptable to the County evidencing the required insurance coverage.



Final Version

10.17.17

**IN WITNESS WHEREOF**, Landlord and Tenant have hereunto executed, signed, and delivered this agreement in triplicate the day, month, and year first above written; each of the said parties keeping one of the copies hereof.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

**CONYERS RENEWABLE POWER, LLC**

**DEKALB COUNTY, GEORGIA**

By: \_\_\_\_\_ (SEAL)

Signature

\_\_\_\_\_  
Name (Typed or Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal Tax I.D. Number

\_\_\_\_\_  
Date

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Notary Public (Seal)

My Commission Expires:

**APPROVED AS TO SUBSTANCE:**

\_\_\_\_\_  
Department Director

\_\_\_\_\_ **by Dir.**(SEAL)

MICHAEL L. THURMOND  
Chief Executive Officer  
DeKalb County, Georgia

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
BARBARA H. SANDERS-NORWOOD, CCC,  
CMC  
Clerk of the Chief Executive Officer  
and Board of Commissioners of  
DeKalb County, Georgia

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Notary Public (Seal)

My Commission Expires:

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Scott E. Hitch, Esq.

Nelson Mullins Riley & Scarborough LLP  
County Attorney Name (Typed or Printed)

**OTHER STIPULATIONS, PROVISIONS, COVENANTS, AGREEMENTS, TERMS AND  
CONDITIONS OF LEASE AGREEMENT**

**1. CONSTRUCTION & VENUE**

This lease shall be construed under the laws of the State of Georgia. This Agreement shall be deemed to have been made and performed in DeKalb County, Georgia. For the purposes of venue, all suits and causes of action arising out of this Agreement shall be brought in the courts of DeKalb County, Georgia.

**2. PARAGRAPH HEADINGS**

The brief paragraph headings following the numerals in this Agreement are for the purpose of convenience only and shall be completely disregarded in construing this Agreement.

**3. DEFINITIONS**

A. The word "Tenant" as used in this Agreement shall be construed to mean Tenants in all cases where there is more than one Tenant, and the necessary grammatical changes required to make the provisions hereof apply either to male or female, corporation, partnership or individuals, shall in all cases be assumed as though in each case fully expressed.

B. The word "Landlord" as used in this Agreement shall be construed to mean one who leases property to another and Landlord in all cases where there is more than one Landlord, and the necessary grammatical changes required to make the provisions hereof apply either to male or female, corporation, partnership or individuals, shall in all cases be assumed as though in each case fully expressed.

C. The word "Premises" as used in this Agreement shall include not only the particularly above described property but also all the improvements, tenements and appurtenances, thereunto belonging or in any wise appertaining.

D. Any and all references to the "Term" of the agreement contained within this Agreement shall include not only the original term but also any renewal or extension of the original term.

**4. TIME IS OF ESSENCE**

All time limits stated in this Agreement are of the essence of this Agreement.

**5. SERVICE OF NOTICE**

All notices, statements, demands, requests, consents, approvals, or authorizations, hereunder given by either party to the other shall be in writing and sent by registered or certified mail, postage prepaid, by overnight courier or by delivering the same in person to such party and addressed as follows:

Landlord: DeKalb County, Georgia  
Attention: Executive Assistant  
The Maloof Center  
1300 Commerce Drive  
Decatur, GA 30030

Tenant: Conyers Renewable Power  
c/o Bill Higgins, Esq.  
Graybill, Lansche & Vinzani, LLC  
2721 Devine Street  
Columbia, SC 29205

## **6. COVENANT OF TITLE AND QUIET ENJOYMENT**

Landlord covenants that Landlord is seized of the said Premises in fee simple absolute. Landlord agrees that the Tenant, upon paying the rents and keeping the stipulations, provisions, covenants, terms, agreements and conditions herein contained, shall lawfully, quietly and peacefully have, hold, use, possess, enjoy and occupy said Premises hereby rented for and during said term hereby granted, without any suit, hindrance, interruption, inconvenience, eviction, ejection or molestation by the Landlord or by any other person or persons whatsoever. If for any reason whatsoever, Tenant is deprived of its right to lawfully, quietly and peacefully have, hold, use, possess, enjoy and occupy said Premises hereby rented, with all improvements for and during said term hereby granted, without any suit, hindrance, interruption, inconvenience, eviction, ejection or molestation by the Landlord or by any other person or persons whatsoever, then this agreement may be immediately canceled and terminated at the option of the Tenant by giving the Landlord notice thereof. If the Landlord's title shall come into dispute or litigation, the Tenant may withhold payment of rents (without interest) until final adjudication or other settlement of such dispute or litigation.

## **7. CHANGE IN OWNERSHIP OF PREMISES**

No change or division in the ownership of the Premises, or of the rents payable hereunder, however accomplished, shall operate to enlarge the obligations or diminish the rights of the Tenant. Further, no change or division in ownership shall be binding on the Tenant for any purpose until the Tenant shall have furnished with a certified copy of the recorded instrument, or other legally authenticated written instrument, evidencing such change or division in ownership.

## **8. BINDING EFFECT ON HEIRS, ASSIGNS, ETC.**

Each of the stipulations, provisions, terms, conditions, covenants, agreements and obligations contained in this Agreement shall apply, extend to, be binding upon and inure to the benefit or detriment of each and every one of the heirs, legal representatives, devisees, legatees, next-of-kin, successors and assigns of the respective parties hereto. Whenever a reference to the parties hereto is made, such reference shall be deemed to include the heirs, legal representatives, devisees, legatees, next-of-kin, successors and assigns of Landlord, the

same as if in each case expressed.

**9. LANDLORD'S FAILURE TO DELIVER PREMISES AT COMMENCEMENT OF TERM**

Should the Landlord, for any reason whatsoever, be unable to deliver possession of the Premises to the Tenant at the commencement of the Term, this Agreement may be immediately canceled, terminated and declared null and void at the option of the Tenant by giving the Landlord notice thereof. Should the Tenant elect not to exercise the aforesaid option, then it is agreed by the parties hereto that there shall be a total abatement of rent during the period between the commencement of said term and the time the Landlord delivers possession of the Premises to the Tenant.

**10. DESTRUCTION OF OR DAMAGE TO PREMISES**

In the event the Premises, either prior to the commencement date of this Agreement or during the Term shall be so damaged, by any cause whatever, as to be rendered unfit for occupancy by the Tenant, and the Premises shall not thereafter be repaired by the Landlord at Landlord's expense with reasonable promptness and dispatch, then this Agreement may be immediately canceled and terminated at the option of the Tenant by giving the Landlord notice thereof, and rent (if any) shall be payable only to the date of such damage. Should the Premises, either prior to the commencement date of this Agreement or during the Term, be partially destroyed, by any cause whatsoever, but not rendered unfit for occupancy by Tenant, then the Landlord agrees that the Premises at the Landlord's expense and with reasonable promptness and dispatch, shall be repaired and restored to substantially the same condition as before the damage. In the event of a partial destruction of the Premises, there shall be fair abatement in the rent payable during the time such repairs or rebuilding are being made, such proportionate deduction of rent to be based upon the extent to which the making of such repairs or rebuilding shall interfere with the business carried on by the Tenant in the Premises. Full rental shall again commence after completion of the repairs and restoration of the Premises by the Landlord. In connection with the foregoing, it is agreed by the parties hereto that the Tenant's decision shall be controlling as to whether or not the Premises are fit or until for occupancy by the Tenant. Landlord agrees to notify Tenant within ten (10) days after such casualty as to whether Landlord intends to pursue reconstruction on a prompt basis.

**11. HOLDING OVER**

Any holding over, or continued use and/or occupancy by the Tenant, of the Premises after the expiration of this Agreement shall operate and be construed as a tenancy at will at the same monthly rate of rent set out above and under the same terms and conditions in force at the expiration of the Agreement.

**12. CONDEMNATION**

In the event, during the Term, the whole or any part of the Premises shall be appropriated or taken by any Municipal, County, State, Federal, or other authority for any public or quasi-public use through the exercise of the power of eminent domain or condemnation proceeding, or sold to the possessor of such power under the threat of its exercise, or if by reason of law, ordinance or by court decree, whether by consent or otherwise, the use of the premises by the Tenant for the purposes hereinabove referred to shall be prohibited, the Tenant shall have the right to immediately terminate this Agreement upon notice to the Landlord and the rent shall be paid only to the time when the Tenant surrenders possession of the Premises. When only a portion of the Premises are acquired for public or quasi-public use through the exercise of or under the threat of eminent domain or condemnation proceeding, the Tenant shall have an election as to whether it will terminate and cancel this Agreement at the time a portion of the Premises must be surrendered or whether it will remain in the Premises with remaining monthly rental payments reduced by an amount determined by the ratio of square feet thus acquired to the total square feet originally contained in the Premises. To exercise this election, the Tenant must notify the Landlord within twenty-five (25) days after it is ultimately determined what portion of the Premises will be taken under such proceeding. In the event the Tenant elects to remain on the Premises under the condition set forth above, the Landlord agrees to promptly make all necessary alterations and repairs which shall be required because of such partial acquisition. The rights of the Landlord shall in no way prejudice or interfere with any claim which the Tenant may have against the authority exercising the power of eminent domain or condemnation for damages, or otherwise, for destruction of or interference with the business of the Tenant in the demised premises.

**13. INTENTIONALLY OMITTED****14. INTENTIONALLY OMITTED****15. NO WAIVER**

No failure or delay of either party to exercise any right or power given it herein or to insist upon strict compliance by the other party with any obligation imposed on it herein, and no custom or practice of either party hereto at variance with any term hereof shall constitute a waiver or a modification of the terms hereof by such party of any right it has herein to demand strict compliance with the terms hereof by the other party. No officer, agent, or employee of Landlord has or shall have any authority to waive any provision of this lease

unless such waiver is expressly made in writing and signed by an authorized officer of Landlord.

**16. ABANDONMENT OF RENTED PREMISES**

During the term of this Agreement, Tenant agrees not to abandon or vacate the Premises without cause.

**17. WASTE AND NUISANCE**

Tenant shall not commit, or suffer to be committed any waste upon the said Premises, or any nuisance, or other act or thing which may disturb the enjoyment of any other Tenant, if there be any, in the building in which the Premises may be located.

**18. ASSIGNMENT AND SUBLETTING**

Except for any such rights expressly stated in this Agreement or the Landfill Gas Rights Agreement, Tenant shall not assign this Agreement, or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person to occupy or use the Premises, or any portion thereof, without the consent of Landlord first having been obtained, such consent not being unreasonably withheld, conditioned, or delayed. Any such assignment or subletting without such consent should be void, and shall, at the option of Landlord, on twenty (20) days' notice to Tenant, terminate this rental agreement. Consent to one assignment and/or subletting shall not destroy this provision, and all later assignments and/or subletting shall likewise be made only on prior consent of Landlord, which consent shall not unreasonably be withheld.

**19. EFFECT ON ASSIGNMENTS AND SUBLETTING WHEN TENANT SURRENDERS RENTAL PROPERTY**

The voluntary or other surrender of this Agreement by Tenant, or a cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing sublets or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such sublets or subtenancies.

**20. SURRENDER OF PREMISES**

At termination of this Agreement, Tenant shall surrender the Premises and keys thereof to Landlord in the same condition as at commencement of the term, natural wear and tear, damage by fire, acts of God, the elements, or other casualties, condemnation and/or appropriation and damage or defects arising from the negligence or default of the Landlord excepted.

**21. NON-BINDING EFFECT ON FUTURE GOVERNING AUTHORITIES, ETC.**

Nothing in this agreement shall be construed as binding on any future governing authorities of DeKalb County to create a debt beyond the year in which made or renewed as prohibited by Article IX, Section V, Paragraph I of the Constitution of Georgia of 1983.

**22. SEVERABILITY**

If any clause or provision of this Lease is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulations of any governmental body or entity, effective during its Term, the intention of the parties hereto is that the remaining parts of this Lease shall not be affected thereby.

**23. ENTIRE AGREEMENT**

This Lease Agreement, together with the Landfill Gas Rights Agreement, set forth all the provisions, agreements, conditions, covenants, terms and understandings between the parties relative to the Premises. There shall be no provisions, agreements, conditions, covenants, terms, understandings, representations or inducements either oral or written, between the parties other than are set forth. It is further understood and agreed that no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties herein unless reduced to writing and signed by all parties to this Agreement.

**24. COMPANY AUTHORITY**

Tenant agrees to execute the Certificate of Company/LLC Authority attached hereto as **Exhibit D**. The officials of the Tenant executing this Agreement are duly and properly in office and are fully authorized and empowered to execute the same for and on behalf of the Tenant. Tenant warrants that it has all requisite power and authority to enter into and perform its obligations under this rental agreement, and that the execution and delivery by the Tenant of this Agreement and the compliance by the Tenant with all of the provisions of this rental agreement (i) is within the purposes, powers, and authority of the Tenant; (ii) has been done in full compliance with applicable law and has been approved by the governing body of the Tenant and is legal and will not conflict with or constitute on the part of the Tenant a violation of or a breach of or a default under any indenture, mortgage, security deed, pledge, note, lease, loan, or installment sale agreement, contract, or other agreement or instrument to which the Tenant is a party or by which the Tenant is otherwise subject or bound, or any license, judgment, decree, law, statute, order, writ, injunction, demand, rule, or regulation of any court or governmental agency or body having jurisdiction over the Tenant; and (iii) has been duly authorized by all necessary action on the part of the Tenant. This Agreement is the valid, legal, binding and enforceable obligation of the Tenant.



Final Version

10.17.17

**Exhibit A – LANDFILL GAS RIGHTS AGREEMENT WITH ALL ATTACHMENTS  
THERETO**

## **LANDFILL GAS RIGHTS AGREEMENT**

DeKalb County, Georgia ("Seller") and Conyers Renewable Power, LLC ("Buyer") (together, the "Parties") hereby enter into and execute this Landfill Gas Rights Agreement as of November 13, 2017 ("Agreement").

### **Recitals**

Seller owns and operates the Seminole Road Landfill in Ellenwood, Georgia (the "Landfill"). Seller developed and operated a 3.2 megawatt (MW) landfill gas-to-energy facility (the "Facility") at the Landfill under a power purchase agreement with Georgia Power Company. This power purchase agreement has expired and the Facility is currently decommissioned. Seller is willing to allow the landfill gas ("LFG") produced by the Landfill to be utilized to produce electricity via the Facility.

On March 5, 2014, Buyer executed a Power Purchase Agreement with Georgia Power Company, as amended on December 1, 2014, with a contract term ending May 31, 2037 (the "PPA") and a contract capacity of 3.2 MW.

Simultaneous with this Agreement, the Parties are entering into a Lease Agreement whereby Buyer will lease the Premises (as defined in the Lease Agreement), including the Facility, from Seller.

Buyer desires to purchase, and Seller desires to sell, LFG extracted from the Landfill for the purpose of securing a long-term supply of fuel for the production of electricity by the Facility pursuant to the PPA.

### **TERMS AND CONDITIONS**

NOW, THEREFORE, for valuable consideration, the parties hereto agree as follows:

#### **ARTICLE 1.**

##### **Definitions**

The following words and terms shall have the meanings specified in this Article 1 when used in this Agreement, unless a different meaning is apparent from the context. The meanings specified are applicable to both the singular and the plural and to the masculine and feminine forms.

1.1. "Applicable Laws" means any and all applicable federal, state, county, municipal and local laws, statutes, rules, regulations, licenses, ordinances, judgments, orders, decrees, directives, guidelines or policies (to the extent mandatory), permits and other governmental and regulatory approvals, including, without limitation, the Title V Permit, the Landfill Permit, and any and all other environmental laws, or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Government Entity with jurisdiction over Seller, the Collection System, Buyer, the Facility, the Premises, the Landfill, or the performance of the work hereunder and the transactions contemplated hereunder.

1.2 "Collection System" means the fixtures, equipment and assets of Seller, whether owned or leased by Seller, that are used as of the Effective Date or in the future by Seller to extract and collect Landfill Gas from the Landfill up to and including the Delivery Point and including, without limitation, the wells, pipes, headers and gathering systems, flares, vacuum pipelines, blowers, condensate knockout vessels or systems, and all other fixtures, equipment and assets that are used for the purpose of collecting, producing, treating, or delivering or facilitating the collection, production, treatment, or delivery of Landfill Gas, as such exists as of the Effective Date or as the same is modified, expanded and replaced; but excluding in all cases the Facility or the Facility Equipment.

1.3 "Commercial Operation" is as defined in the PPA.

1.4 "Commercially Reasonable" means the degree to which a commercially reasonable party actively engaged in a business similar to the businesses of the parties to this Agreement would undertake an effort or activity under the same or similar circumstances including, but not limited to, the purchase, placement, and/or configuration of equipment capable of being accomplished in a reasonable period of time at a reasonable cost.

1.5 "Condensate" means any liquids that condense or otherwise separate from the Landfill Gas during collection, transporting or processing by the Collection System or the Facility.

1.6 "Confidential Information" means all data, information, reports or documents developed or collected by one party and provided or made available to the other party or its agents (i) in connection with the Landfill, the Collection System, and/or Seller's operations, or the Facility and/or Buyer's operations, or (ii) as a result of any of the rights granted to, or obligations undertaken by, either party pursuant to this Agreement, whether or not designated as confidential, but shall not include information to the extent such information (a) is in the public domain at the time of disclosure, or (b) following disclosure, becomes generally known or available through no action or omission on the part of the receiving party, or (c) is known, or becomes known, to the receiving party from a source other than the disclosing party or its representatives provided that disclosure by such source is not in breach of a confidentiality agreement with the disclosing party, or (d) is independently developed by the receiving party or its agents without reference to the originating party's Confidential Information.

1.7 "Delivery Point" means the designated interconnection point (i.e., flange) where Seller shall make available Landfill Gas to Buyer, which specific location is depicted in **Exhibit A**.

1.8 "Design Capacity" means the 3.2 megawatt nameplate capacity of the Facility, which for the purposes of this Agreement means the maximum rated output of the

Facility engines and/or turbines utilizing LFG from the Landfill under conditions specified by the manufacturer.

1.9 "Facility" is as defined in the Lease Agreement.

1.10 "Facility Requirements" means the amount and quantity of Landfill Gas needed by Buyer to operate the Facility at its Design Capacity.

1.11 "Effective Date" means the date designated in the preamble of this Agreement.

1.12 "Event of Default" means an occurrence of any of the events as set forth in Section 7.1 of this Agreement.

1.13 "Force Majeure " means any cause not reasonably within the control of and without any fault or negligence of the party claiming suspension of the performance of its duties hereunder and that by the exercise of reasonable diligence such party is unable to prevent or overcome, including, without limitation, acts of God, acts of war or conditions attributable to war, labor disputes, sudden actions of the elements, sabotage by third parties, civil commotion, weather events, enactment of statutes, laws, or regulations, and action by Government Entities, but not including, under any circumstances, financial inability to perform. For the purposes of this Agreement, the requirement that "Force Majeure" be a cause not within the control of the affected party that by the exercise of Commercially Reasonable diligence such party is unable to prevent or overcome shall apply to all of the above examples, but shall not require the settlement of strikes and lockouts by acceding to the demands of third parties directly or indirectly involved in such strikes or lockouts when such course is deemed inadvisable in the sole discretion of the party subject to such strikes or lockouts.

1.14 "Government Entity" means any court or tribunal in any jurisdiction or any federal, state, municipal, or other governmental body, agency, authority, department, commission, board, bureau or instrumentality.

1.15 "Initial Collection System Upgrades" shall be as defined and described in **Exhibit B**.

1.16 "Landfill " means the real property commonly known as the Seminole Road Landfill that is currently operated by Seller in Ellenwood, Georgia

1.17 "Landfill Gas" or "LFG" means gas generated from the decomposition of refuse and other solid wastes deposited in, or located on, the Landfill and collected by the Collection System.

1.18 "Landfill Permit" means that certain permit, as amended from time to time, for Seller to operate the Seminole Road Municipal Solid Waste Landfill, namely Permit No. 044-

050D (SL) issued by the Georgia Environmental Protection Division, Solid Waste Management Program.

1.19 "Lease Agreement" is that Lease Agreement dated as of the Effective Date under which Buyer, as Lessee, leases from Seller, as Lessor, the Premises.

1.20 "Losses" means any and all costs, losses, expenses, suits, actions, proceedings, damages, penalties, fines, and liabilities, including, without limitation, reasonable attorneys' fees, expert witness fees, litigation expenses, and court and other costs, whether taxable or not.

1.21 "MMBtu" means one million British Thermal Units.

1.22 "Monthly Statement" means a written statement setting forth the following with respect to the previous month: (i) the number of MMBTUs of Landfill Gas delivered to the Delivery Point; (ii) the calculation of the Royalty Payment; and (iii) any other information reasonably requested by Seller.

1.23 "Notice of Default" means written notice to the defaulting party specifying an Event of Default pursuant to Section 7.1 of this Agreement.

1.24 "Premises" is as is defined in the Lease Agreement.

1.25 "Power Purchase Agreement" or "PPA" is as defined in the Lease Agreement.

1.26 "Recipients" means consultants, agents, representatives, actual or potential financiers, or employees of the receiving party who (i) shall be obligated to keep Confidential Information confidential, and (ii) need access to such Confidential Information to assist the receiving party in the exercise of its rights and the performance of its obligations under this Agreement.

1.27 "Renewable Energy Credits/Certificates" means credits or certificates issued for the economic value of any benefit resulting from the generation of electricity from a renewable fuel source under Applicable Law.

1.28 "Royalty Payment" shall be as defined in Section 2.2 hereto.

1.29 "Tax or Taxes" means all taxes, fees or other assessments, including, but not limited to, income, excise, property, sales, franchise, intangible, withholding, social security and unemployment taxes imposed by any federal, state, local or foreign Government Entity, and any interest or penalties related thereto.

1.30 "Title V Permit" means that certain permit, namely Permit No. 4953-089-0299-V-02-0, issued and periodically renewed pursuant to the Clean Air Act by the Georgia

Environmental Protection Division, Air Protection Branch governing air emissions at the Landfill and the Facility, as referenced in the Lease Agreement.

## **ARTICLE 2. Purchase and Sale**

### 2.1 Purchase, Sale and Use of Landfill Gas.

(a) Purchase and Sale. Subject to the terms, conditions and limitations contained in this Agreement, Seller shall produce, deliver to the Delivery Point and sell to Buyer, and Buyer shall purchase from Seller, sufficient LFG to power the Facility at Design Capacity, except that during any Facility shutdown, Buyer shall have no obligation to receive, and Seller shall have no obligation to deliver, the LFG. For clarity, the Facility Requirements are provided in more detail in **Exhibit C** hereto.

(b) Priority of Buyer Requirements. Except for any flare turndown requirements, LFG shall be used first to satisfy Facility Requirements, and then for any other use of Seller. Seller shall not enter into any agreement, contract or other arrangement between Seller and any third party with respect to the use of LFG that may impede or interfere with the ability of the Facility to operate at Design Capacity, and to the extent that Seller nevertheless does so, notwithstanding any limitation on damages in this Agreement or the Lease Agreement, Seller shall be liable to Buyer for all damages suffered by Buyer as a result thereof.

### 2.2 Royalty Payment and Monthly Statement.

(a) Royalty Payment. In consideration for the Landfill Gas, Buyer shall pay to Seller the Royalty Payment that is based on PPA revenues, all of which is defined and described in **Exhibit D** hereto.

(b) Monthly Statement. Buyer shall provide to Seller the Monthly Statement on a monthly basis consistent with the timing of similar statements under the PPA. In the event of any dispute regarding the content of a Monthly Statement, the parties agree to provide any additional information reasonably requested and work in good faith to resolve such dispute. In addition, Buyer will provide Seller real-time Internet or dial-in access to data regarding the quantity and quality of the Landfill Gas received from Seller and processed at the Facility.

2.3 Amounts Payable. Any amounts payable by Buyer to Seller shall be paid with the delivery of the Monthly Statement. Any amounts payable under this Agreement that are not timely paid as set forth in this Agreement shall bear interest calculated from the date when due until such amounts are paid at one percent (1%) per annum above the fluctuating prime rate of interest announced publicly by The Wall Street Journal from time to time as

its reference rate. In no event shall the rate of interest charged hereunder exceed the maximum rate allowed by Applicable Law. In the event of any termination or expiration of this Agreement, any amounts owing and to be paid, or credits owing and to be provided, by Buyer to Seller pursuant to this Agreement prior to such termination or expiration shall be paid and/or provided (prorated where appropriate) within thirty (30) days of such termination or expiration.

#### 2.4 Credits/Benefits.

(a) Retained by Seller. Seller shall retain all rights to any tax, emission or other credits, certificates, or similar benefits with respect to any and all activities relating (1) to the operations or ownership of the Landfill, or (2) to the collection, processing, transportation, delivery, management or control of Landfill Gas prior to transfer of title to the Landfill Gas to Buyer at the Delivery Point, including, without limitation to any voluntary or mandated activities of Seller at the Landfill resulting in any carbon credits, greenhouse gas credits or similar credits or certificates or other economic benefits; provided further that, notwithstanding the foregoing, Seller shall be entitled to retain all rights to any tax, emission or other credits or certificates derived from or relating to flared Landfill Gas regardless of whether title to the Landfill Gas has technically passed to Buyer.

(b) Retained by Buyer. Buyer shall retain all rights to any tax, emission, or other credits, certificates, or similar benefits related to (1) the operation of the Facility and the sale of electricity generated therefrom, or (2) the processing of Landfill Gas from and after Buyer takes title thereto at the Delivery Point, including, but not limited to, Renewable Energy Credits/Certificates, carbon credits, greenhouse gas credits, or similar credits or certificates.

(c) Jointly Retained. To the extent any credits, certificates or similar benefits that do not exist as of the Effective Date come into existence, and the allocation of the benefit therefrom cannot be readily determined pursuant to the provisions of Sections 2.4(a) and (b) above, the benefit of such credits, certificates or similar benefits shall be shared equally by Seller and Buyer, unless otherwise mutually agreed by Seller and Buyer. Notwithstanding the foregoing, neither party shall claim credits or certificates under this Section 2.4(c) if obtaining such credits would require the other party to lose or reduce any of the credits or certificates referenced in Sections 2.4(a) or (b) above or require the party not receiving such credits or certificates to purchase, trade, or otherwise acquire credits or certificates related to the operation of the Landfill or of the Facility to comply with any mandatory scheme or system under which such credits or certificates could be obtained.

2.5 Priority of Operations. The Parties acknowledge that Seller's primary interest and obligation is the safe and efficient operation of the Landfill and the Collection System, in compliance with Applicable Laws, and that unless the Landfill Gas is of a certain quantity and quality meeting the Facility Requirements, the Facility will not produce electricity sufficient to satisfy the terms of the PPA. Seller and Buyer will work together in good faith

to attempt to minimize adverse impacts to the LFG quantity and quality and Buyer's operations resulting from Seller's primary interest and obligation. Specifically, the Parties agree that in the event of any action or event which in the reasonable judgment of Seller would (a) create a health or safety emergency at the Landfill or the Facility, (b) cause damage to the Facility (including any equipment), or (c) result in non-compliance of any Applicable Law, then Seller may cease delivery of Landfill Gas to Buyer, but only so long as is necessary to cure the foregoing condition. Seller shall provide notice to the Buyer in writing as soon as possible detailing the reason and anticipated duration of the cessation. At all times, the parties agree to engage in good faith discussions and make good faith efforts to find reasonable ways that LFG delivered to the Delivery Point meets the Facility Requirements.

**ARTICLE 3.**  
**Term, Termination and Representations and**  
**Warranties**

3.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date and, unless terminated in whole or part earlier as provided in this Agreement, shall continue and remain in full force through the later of May 31, 2037 or the last day in which the PPA remains in effect.

3.2 Buyer Representations. Buyer hereby represents and warrants to Seller as of the Effective Date as follows:

(a) Existence. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of South Carolina and is qualified to do business in the State of Georgia. Buyer has the power and lawful authority to enter into and perform its obligations under this Agreement and any other documents required by this Agreement to be delivered by Buyer.

(b) Authorization. The execution, delivery and performance by Buyer of and under this Agreement and any related agreements have been duly authorized by all necessary corporate action on its behalf, and do not and will not violate any provision of its organizational documents or result in a material breach of or constitute a material default under any agreement, indenture or instrument of which it is a party or by which it or its properties may be bound or affected.

(c) Litigation. There are no actions, suits, or proceedings pending or, to the best of Buyer's knowledge, threatened against Buyer or any of its properties before any Government Entity that, if determined adversely to it, would have a material adverse effect on the transactions contemplated by this Agreement.

(d) Execution. Buyer has duly executed and delivered this Agreement, and



(assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms.

3.3 Seller Representations. Seller hereby represents and warrants to Buyer as of the Effective Date as follows:

(a) Existence. Seller is a political subdivision of the State of Georgia and is qualified to do business in the State of Georgia. Seller has the power and lawful authority to enter into and perform its obligations under this Agreement and any other documents required by this Agreement to be delivered by Seller.

(b) Authorization. The execution, delivery, and performance by Seller of and under this Agreement and any related agreements have been duly authorized by all necessary corporate action on its behalf, and do not and will not violate any provision of its organizational documents or result in a material breach of or constitute a material default under any agreement, indenture or instrument of which it is a party or by which it or its properties may be bound or affected.

(c) Litigation. There are no actions, suits, or proceedings pending or, to the best of Seller's knowledge, threatened against Seller or any of its properties before any court or other Government Entity that, if determined adversely to Seller, would have a material adverse effect on the transactions contemplated by this Agreement.

(d) Execution. Seller has duly executed and delivered this Agreement, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms.

3.4 Representations and Warranties - General. Each party acknowledges that its representations and warranties as set forth above will be relied upon by the other in entering into and performing under this Agreement. The representations and warranties contained in this Article shall survive the expiration and termination of this Agreement.

#### **ARTICLE 4.**

##### **Delivery**

4.1 Delivery Point. LFG extracted from the Landfill and made available to Buyer pursuant to this Agreement shall be made available at the Delivery Point.

4.2 Title/Risk of Loss. Title to Landfill Gas extracted from the Landfill and made available to Buyer pursuant to this Agreement shall pass to and be absolutely vested in Buyer after passing through the Delivery Point and liability for and the risk of loss of such Landfill Gas shall follow title.

**ARTICLE 5.**  
**General Obligations, Warranties, and**  
**Covenants**

5.1 Maintenance of Collection System. Subject to the terms and conditions of Section 2.5, Seller shall, at its own expense maintain, operate, improve, expand and preserve the Collection System in conformity with the Title V permit and Landfill Permit, and Seller agrees to share with Buyer Seller's plans and proposed schedule for doing so. The parties agree that the collection system upgrades described in Exhibit B, including the Initial Collection System Upgrades, shall be performed so as to optimize the operation of the Collection System and the delivery of LFG to meet Facility Requirements. The parties may agree that Buyer provide funds for the Initial Collection System Upgrades. To the extent that Buyer makes such investment, the parties shall establish a schedule for repayment of such funds, either directly or as an offset to the Royalty Payment stream.

5.2 Permits and Approvals. Seller has already performed the necessary environmental impact studies, statements or reports, zoning and land use approvals, permits, licenses and utilities for the installation and construction of the Facility and shall assign to Buyer any rights therein that are needed for Buyer to operate the Facility in compliance with all Applicable Laws. Thereafter, Buyer shall operate the Facility to comply with all Applicable Laws. The parties agree to reasonably cooperate with the efforts of either party to comply with such requirements.

5.3 Recommissioning and Optimization of the Facility. Buyer shall identify and summarize in **Exhibit E** hereto the work that needs to be done to recommission and optimize the Facility and is responsible for seeing that such work is performed in a timely manner at Buyer's expense. Buyer shall receive the tax benefits (such as depreciation) for any capital investment it makes to Facility.

5.4 Buyer's Maintenance of the Facility. Buyer shall maintain, operate, and preserve the Facility consistent with the Lease Agreement, this Agreement, and all Applicable Laws. The Facility shall be maintained in accordance with Exhibit F attached hereto. The Buyer shall submit monthly reports showing what maintenance activities have been performed during the previous month.

5.5 Facility Shutdowns. Buyer agrees to provide Seller with no less than two (2) business days advance notice of any planned shutdown of the Facility for repair and maintenance purposes, and notice as soon as feasible of any emergency shutdown of the Facility or shutdown at the direction of Georgia Power Company or Government Entity. The parties shall reasonably coordinate repair and maintenance work on the Landfill, the Collection System and the Facility so as to minimize adverse impact under the PPA (including, but not limited to, avoiding shutdowns during the PPA peak power months of May through September).

5.6 Condensate. Buyer shall be permitted to dispose of Condensate produced at the Facility into Seller's leachate disposal system. Buyer shall not introduce to the Condensate any constituents or otherwise increase the quantity of any existing constituents that would result in Seller's noncompliance with any Applicable Laws with respect to disposal of the Condensate. Buyer shall take appropriate action to ensure that there is no spillage or unintended discharge of Condensate into the environment from the Facility.

5.7 Taxes. All Taxes now or hereafter imposed upon the production, severance, gathering, sale or delivery of Landfill Gas prior to the Delivery Point shall be paid by Seller. All Taxes now or hereafter imposed upon the production, severance, gathering, sale or delivery of Landfill Gas or electricity at and following the Delivery Point shall be paid by Buyer.

5.8 Inspection of Books and Records; Accounting. Each party hereto shall have the right to inspect, audit, copy and verify the books, charts and records of the other party pertaining to the operations and the transactions that are the subject matter of this Agreement, at the office of the other party where such records are maintained, during normal business hours upon five (5) business days' advance written notice. Each party agrees to keep its books and records of account so pertaining to this Agreement in accordance with generally accepted accounting principles and practices in the industry. If either party finds at any time within two (2) years after the date of any payment made hereunder that there has been an overpayment or underpayment to Seller or Buyer, the party finding the error shall notify the other party in writing as soon as reasonably practicable detailing the amount and explanation of the error. In the event of an underpayment to Seller, Buyer shall pay the amount due within fifteen (15) days after the receipt of the bill correcting such error, with interest in the manner provided in Section 2.3 of this Agreement applied from the date any such payment should have been made. In the event of an overpayment to Seller, Buyer may only offset such overpayment against future payments due to Seller hereunder, unless the Agreement has terminated, or there will not be sufficient future payments against which such overpayments may be offset, in which case, Seller shall pay the amount due to Buyer within fifteen (15) days after receipt of the bill correcting the error.

5.9 Metering. Buyer shall record daily measurements of LFG at the Delivery Point to determine, at a minimum, the methane and oxygen content of LFG delivered at the Delivery Point, as well as its temperature, pressure and flow using industry standard devices reasonably acceptable to Seller. Buyer shall calibrate the flow measuring devices at least once every twelve (12) months or more frequently as may be necessary to obtain accurate measurements.

## **ARTICLE 6.**

### **Insurance and Indemnification**

6.1 Insurance Coverage. At all times during the term of this Agreement, the parties shall, at their sole cost and expense, procure and maintain insurance consistent with their obligations hereunder hereto and shall cause each insurance policy obtained to provide that the

insurance company waives all right of recovery by way of subrogation against the other party or its affiliates in connection with any damage covered by any policy. Buyer shall maintain the insurance levels required by the Lease Agreement. Seller may, at its sole election, self-insure instead of procuring insurance. Any election by Seller to self-insure shall not diminish its obligations described in the first sentence of this Section 6.1; any such self-insurance shall be treated as if Seller actually carried a third-party policy or policies containing the required insurance; if Seller elects to self-insure and any casualty, loss, or claim occurs which would have been covered by a third-party policy but for the self-insurance, then Seller shall promptly make available an amount equal to the proceeds which would have been payable by the third-party insurer if Seller had not elected to self-insure; and the election by Seller to self-insure shall not reduce or diminish Seller's indemnification obligations as described in Section 6.2 below.

6.2 Indemnification. To the fullest extent permitted by Applicable Law in effect on the Effective Date of this Agreement, Buyer and Seller, each as indemnitor, shall indemnify and defend (as to third party claims only) the other against and hold the other and any Affiliate thereof and each of their respective Related Parties, harmless for, from, and against, any and all Losses, whether taxable or not, attributable to, arising out of and to the extent resulting from (i) the negligence (applying a comparative negligence standard with respect to any concurrent negligence between the parties hereto) of the applicable indemnitor, (ii) willful misconduct of the applicable indemnitor, (iii) the breach by the applicable indemnitor of any representations or warranties in this Agreement, or (iv) performance or nonperformance of any obligations under and pursuant to this Agreement, by the applicable indemnitor. The rights to indemnification set forth herein are not intended to be exclusive of any other right or remedy otherwise available. All rights hereunder shall be cumulative and in addition to all other rights and remedies. The obligations set forth in this Section shall survive the termination or expiration of this Agreement.

## **ARTICLE 7. Default and Damages**

7.1 Event of Default. The occurrence of any of the following events or conditions with respect to a party shall constitute an Event of Default under this Agreement:

- (a) Seller fails to receive from Buyer when due and payable any payment or amount due under this Agreement within ten (10) days after giving written notice to Buyer of the nonpayment.
- (b) A party's actions or inactions that result in a default under the PPA or Lease Agreement.
- (c) Either party becomes insolvent or unable to pay its debts when due; generally fails to pay its debts when due; files a petition in any bankruptcy, reorganization, winding up, or liquidation proceeding or other proceeding analogous in purpose or effect

relating to such party; applies for or consents to the appointment of a receiver, trustee, or other custodian for the bankruptcy, reorganization, winding up or liquidation of such party; makes an assignment for the benefit of creditors; or admits in writing that it is unable to pay its debts; or (ii) any other order or judgment is entered confirming the bankruptcy or insolvency of Buyer or Seller, or approving any reorganization, winding up or liquidation of Buyer or Seller or a substantial portion of its assets; or (iii) there is instituted against Buyer or Seller any bankruptcy, reorganization, winding up or liquidation proceeding, or other proceeding analogous in purpose or effect, and the same is not dismissed within (90) days after the institution thereof, or (iv) a receiver, trustee or other custodian is appointed for any part of the assets of Buyer or Seller.

(d) Failure of either party to satisfy and perform any of its other material obligations under this Agreement, and such failure is not cured to the other party's reasonable satisfaction within sixty (60) days after receipt of a Notice of Default specifying the nature of the failure.

7.2 Seller's Remedies. At any time after an Event of Default by Buyer has occurred and not been cured as provided in Section 7.1 of this Agreement, Seller may without obligation do any one or more of the following:

(a) Terminate this Agreement and/or the Lease Agreement and cease to deliver Landfill Gas to Buyer.

(b) Proceed to protect and enforce any or all its rights and remedies under this Agreement and/or the Lease Agreement, and if rights and remedies are not specified thereunder this Agreement, proceed to protect and enforce any and all rights and remedies available to it at law, in equity or by statute.

7.3 Buyer's Remedies. At any time after an Event of Default by Seller has occurred and not been cured as provided in Section 7.1 of this Agreement, Buyer may without obligation do any one or more of the following:

(a) Terminate this Agreement and/or the Lease Agreement and cease to purchase Landfill Gas from Seller.

(b) Remove any additions, improvements, equipment and fixtures or property of Buyer on the Premises that may be permitted under the Lease Agreement.

(c) Proceed to protect and enforce any or all of its rights and remedies under this Agreement and/or the Lease Agreement, and if rights and remedies are not specified thereunder, proceed to protect and enforce any and all rights and remedies available to it at law, in equity or by statute.

7.4 Early Termination. Notwithstanding anything herein to the contrary, if (i) any

Government Entity prohibits Buyer's use of Landfill Gas to produce electricity, or materially and adversely affects the economics of such generation of electricity by Buyer, or (ii) there occurs a change in Applicable Laws that materially and adversely affects Buyer's operations relating to this Agreement, or (iii) there is insufficient Landfill Gas (whether considering the quantity and/or quality of Landfill Gas) available to provide Buyer sufficient Landfill Gas to operate its engine/generator sets at the minimum availability percentage requirement in Section 14.1.12 of the PPA and Georgia Power Company has terminated the PPA pursuant to Section 14.1.12 of the PPA, Buyer may terminate this Agreement upon sixty (60) days written notice to Seller. Similarly, notwithstanding anything herein to the contrary, if (i) any Government Entity prohibits Seller's sale of Landfill Gas, or materially and adversely affects the economics of such sale of Landfill Gas, or (ii) there occurs a change in Applicable Laws that materially and adversely affects Seller's rights and operations relating to this Agreement, Seller may terminate this Agreement upon sixty (60) days written notice to Buyer.

#### **ARTICLE 8. Force Majeure**

8.1 If either party is rendered unable, wholly or in part, by the occurrence of an event of Force Majeure to carry out its obligations under this Agreement, that party shall give to the other party prompt written notice of the event, which notice shall include a description of the nature of the event, its cause and possible consequences, its direct impact on the party's inability to perform all or any part of its obligations under this Agreement, the expected duration of the event, and the steps being taken or proposed to be taken by the affected party to overcome the event; thereupon, the obligations of the party giving the notice shall be suspended (i) during, but no longer than, the continuance of the event, and (ii) only with respect to the party's specific obligations hereunder affected by the event; provided that if the event continues for more than one hundred eighty (180) consecutive days, the party that has not asserted the event of Force Majeure may terminate this Agreement, without liability to either party, upon giving written notice to the other party, except for any liabilities or obligations accruing to a party prior to the termination of this Agreement and those obligations that expressly survive the termination of this Agreement. The party claiming an event of Force Majeure shall promptly notify the other party of the termination of such event.

#### **ARTICLE 9. Miscellaneous**

9.1 Amendment. This Agreement may only be modified, amended, or supplemented by an instrument in writing executed by Buyer and Seller.

9.2 Governing Law; Venue; Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the state of Georgia. Any dispute shall be

brought exclusively in the state or federal courts located in Georgia. By execution and delivery of this Agreement, with respect to disputes, each of the parties knowingly, voluntarily and irrevocably: (a) consents, for itself and in respect of its property, to the exclusive jurisdiction of these courts; (b) waives any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may have from or to the bringing of the dispute in such jurisdiction; (c) waives any personal service of any summons, complaint or other process that may be made by any other means permitted by the State of Georgia; and (d) agrees that any party to this Agreement may file an original counterpart or a copy of this Section with any court as written evidence of the consents, waivers and agreements of the parties set forth in this Section.

9.3 Attorneys' Fees. If the parties resort to legal action for the enforcement or interpretation of this Agreement or for damages on account of a breach hereof, the prevailing party shall be entitled to an award of its fees and costs (whether taxable or not), including, without limitation, expert witness fees, all litigation related expenses, and reasonable attorneys' fees incurred in connection with such action, which award shall be made by the court, not a jury. In determining which party is the prevailing party, the term "prevailing party" means the net winner of the dispute, taking into account the claims pursued, the claims on which the pursuing party was successful, the amount of money sought, the amount of money awarded, and offsets or counterclaims pursued (successfully or unsuccessfully) by the other party.

9.4 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, by overnight courier or by delivering the same in person to such party. Notice shall be deemed given and effective the day personally delivered, the day after being sent by overnight courier, subject to signature verification, and three (3) business days after the deposit in the United States mail of a writing addressed and sent as provided below or when actually received, if earlier. Any party may change the address for notice by notifying the other parties of such change in accordance with this Section. Such notice shall be addressed as follows:

If to Buyer, addressed to it at:

Conyers Renewable Power  
c/o Bill Higgins, Esq.  
Graybill, Lansche & Vinzani, LLC  
2721 Devine Street  
Columbia, SC 29205

with copies to:

Daniel Rickenmann  
Conyers Renewable Power, LLC  
719 Holly Street Suite 100  
Columbia SC 29205

If to Seller, addressed to it at:

DeKalb County, Georgia  
Attention: Executive Assistant  
1300 Commerce Drive, 6<sup>th</sup> Floor  
Decatur, GA 30030  
with copies to:

DeKalb County, Georgia  
Attn: Director, Sanitation Division  
3720 Leroy Scott Drive  
Decatur, GA 30032

County Attorney  
DeKalb County Law Department  
1300 Commerce Drive, 5<sup>th</sup> Floor  
Decatur, GA 30030

In addition, the parties shall provide any required notices hereunder to any third parties that are contractually entitled to receive any such notices, such as, for example, a collateral assignee pursuant to this Agreement; provided, however, written notice must be provided of such collateral assignee.

9.5 Headings. Headings or captions herein are merely for convenience and are not a part of this Agreement and shall not in any way modify or affect the provisions of this Agreement.

9.6 No Waiver. No delay or omission to exercise any right or power shall be construed to be a waiver of any default or acquiescence therein or a waiver of any right or power, and every such right and power may be exercised from time to time and as often as may be deemed expedient. Either party's acceptance of any performance due hereunder that does not comply strictly with the terms hereof shall not be deemed to be waiver of any right of such party to strict performance by the other party. Acceptance of past due amounts or partial payments shall not constitute a waiver of full and timely payment of any sums due hereunder.

9.7 Facsimile Signatures; Counterparts. Facsimile or scanned signatures of parties hereto shall be acceptable for all purposes. This Agreement may be executed in two or more originals, facsimile or pdf counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

9.8 Severability. If any term or provision of this Agreement should be held invalid or unenforceable, the parties to this Agreement shall endeavor to replace such invalid terms or provisions by valid terms and provisions that correspond to the best of their original economic and general intentions. The invalidity or unenforceability of any term or provision hereof shall not be deemed to render the other terms or provisions hereof invalid or unenforceable.



9.9 Entire Agreement. This Agreement and the Lease Agreement constitute the entire agreement between Buyer and Seller relating to the subject matter hereof and supersede all prior written and oral agreements and understandings and all contemporaneous oral representations or warranties in connection therewith. Neither Buyer nor Seller have made and do not make any representations or warranties, expressed or implied, except as herein specifically set forth, and Buyer and Seller hereby expressly acknowledge that no such representations or warranties have been made by the other party.

9.10 Compliance With Laws. Each party to this Agreement shall comply with any and all Applicable Laws. Seller and Buyer shall timely make any necessary regulatory filings and make copies of such filings available to the other party.

9.11 Successors and Assigns.

(a) In General. This Agreement and all of the terms, conditions and limitations contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; provided, however, that except as otherwise provided herein, neither party hereto shall assign this Agreement nor any interest herein without first obtaining the written consent of the other party hereto, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Seller may assign all of its rights, duties and obligations hereunder to a third party purchaser of the Landfill without the consent of Buyer provided that any such purchaser agrees in a writing in form and substance reasonably satisfactory to Buyer to assume all of Seller 's duties and obligations hereunder, and Buyer may assign all of its rights, duties and obligations under this Agreement to a third party purchaser of (i) Buyer or (ii) substantially all of the assets of Buyer without the consent of Seller (provided that such purchaser agrees in writing in form and substance reasonably satisfactory to Seller to assume all of Buyer 's duties and obligations under this Agreement).

(b) Collateral Assignment. Notwithstanding Section 10.11(a) above, upon the giving of written notice to the other party, either party may assign this Agreement to a lender as collateral for financing purposes.

9.12 Interpretation. The terms and provisions of this Agreement are not to be construed more liberally in favor of, nor more strictly against, either party. To the extent the covenants of the parties under this Agreement create obligations that extend beyond the termination or expiration of this Agreement, the applicable provisions of this Agreement shall be deemed to survive such termination or expiration for the limited purpose of enforcing such covenants and obligations in accordance with the terms of this Agreement. All exhibits and schedules attached hereto are incorporated herein by this reference.

9.13 Further Assurances. The parties shall perform all such acts (including, without limitation, executing and delivering instruments and documents) as reasonably may be necessary to fully effectuate the intent and each and all of the purposes of this Agreement, including consents to any assignments, transfers, subleases, or easements permitted hereunder.

9.14 No Partnership. Nothing contained in this Agreement shall be construed to create any association, trust, partnership, or joint venture or impose a trust or partnership, duty, obligation, or liability or an agency relationship on, or with regard to, either party. Neither party hereto shall have the right to bind or obligate the other in any way or manner unless otherwise provided for herein.

#### 9.15 Confidential Information.

9.15.1 Except as required by Applicable Law, neither party shall, without the prior written consent of the disclosing party, disclose (regardless of the form of disclosure) any Confidential Information to any third parties other than the Recipients. The receiving party shall notify any Recipients of the confidential nature of the Confidential Information, and the receiving party hereby agrees to be responsible for any breach of the terms of this Section by any Recipients of Confidential Information from the receiving party. Notwithstanding the foregoing or anything to the contrary in this Agreement, Buyer acknowledges that this Agreement is subject to applicable provisions of the Georgia Open Records Act, O.C.G.A. §50-18-70 *et seq.*

9.15.2 If a party is legally required to disclose Confidential Information by Applicable Law, the receiving party shall make reasonable efforts to resist disclosure of such information, and shall provide prompt notice of any judicial or other governmental action or other Applicable Law requiring disclosure to the disclosing party, and the disclosing party shall be afforded the opportunity (consistent with the legal obligations of the receiving party) to exhaust all reasonable legal remedies to maintain the Confidential Information in confidence.

9.15.3 In the event that there is a breach by either party of the provisions of this Section, the disclosing party shall be entitled to seek a temporary and permanent injunction to restrain the receiving party from disclosing in whole or in part any Confidential Information, as prohibited hereunder, and the disclosing party shall be entitled to reimbursement for all costs and expenses, including reasonable attorney's fees, in connection therewith. Nothing in this Section shall be construed as prohibiting the disclosing party from pursuing such other remedies available to it for such breach including the recovery of damages from the receiving party.

9.15.4 Upon the expiration of the term or the earlier termination of this Agreement, each party shall, promptly upon request, return or cause to be returned to the other party (i) all Confidential Information then held by such or any of its agents, representatives or employees, and (ii) all information and documents then held by Buyer or any of its agents, representatives or employees related to the quantity, quality, components and elements of the Landfill Gas produced by the Landfill; provided that both parties may retain one copy of any documents retained solely for the purpose of compliance

with Applicable Law or document retention policies.

9.16 Third Party Beneficiaries. This Agreement is intended to be solely for the benefit of the parties hereto and their successors and permitted assignees and is not intended to and shall not confer any rights or benefits on any other third party not a signatory hereto, except as provided in this Agreement.

[Signatures are on the following page.]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement to be effective as of the Effective Date.

**BUYER:**

**SELLER:**

**CONYERS RENEWABLE POWER, LLC**

**DEKALB COUNTY, GEORGIA**

By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_ by Dir. (SEAL)

Signature

Michael L. Thurmond  
Chief Executive Officer  
DeKalb County, Georgia

\_\_\_\_\_  
Name (Typed or Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Federal Tax I.D. Number

\_\_\_\_\_  
Date

Signed, sealed and delivered in the presence of:

**ATTEST:**

\_\_\_\_\_  
(Seal)

Notary Public

\_\_\_\_\_  
BARBARA H. SANDERS-NORWOOD, CCC,  
CMC  
Clerk of the Chief Executive Officer  
and Board of Commissioners of  
DeKalb County, Georgia

My Commission Expires:

**APPROVED AS TO SUBSTANCE:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Department Director

\_\_\_\_\_  
Scott Hitch, Esq.

\_\_\_\_\_  
Outside Counsel Name (Typed or Printed)

**EXHIBIT A**

**Delivery Point**

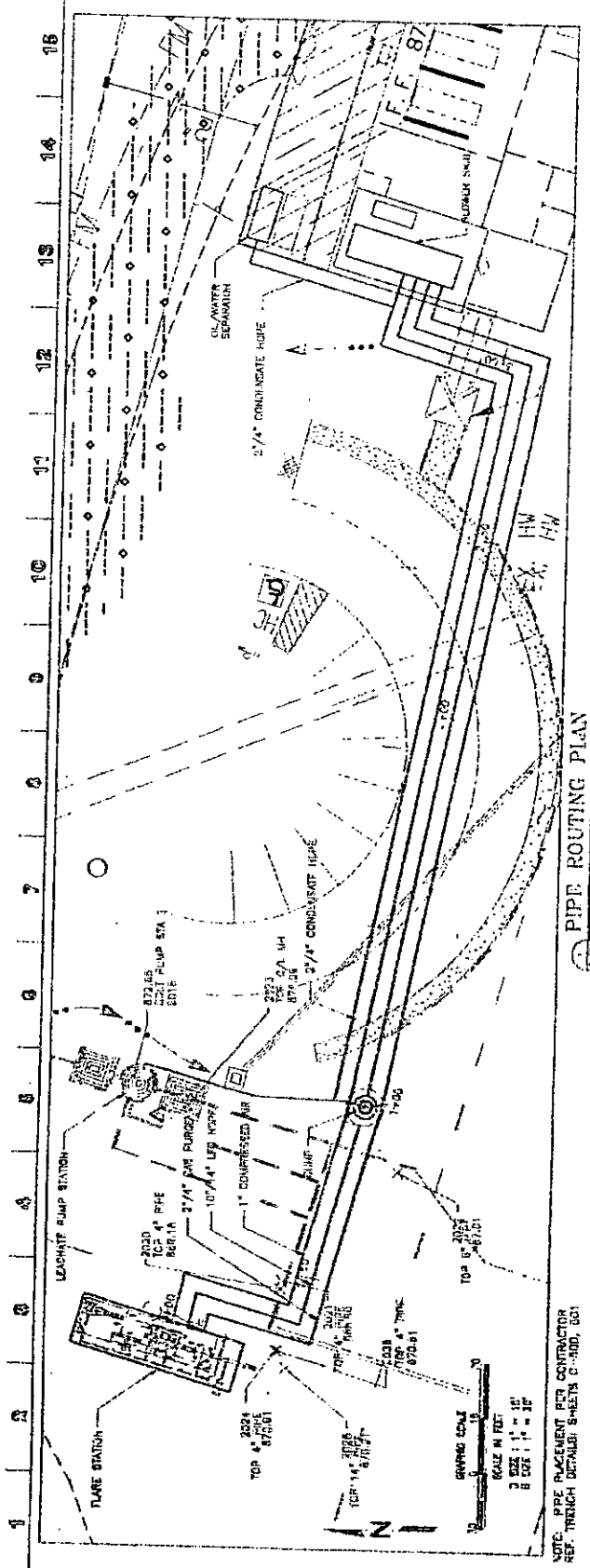
The Delivery Point is the point on the attached Exhibit A diagram where the LFG pipe enters the Facility.



NO.	REVISION	DATE
1	ISSUED FOR PERMIT	02/27/24
2	ISSUED FOR PERMIT	02/27/24
3	ISSUED FOR PERMIT	02/27/24
4	ISSUED FOR PERMIT	02/27/24
5	ISSUED FOR PERMIT	02/27/24
6	ISSUED FOR PERMIT	02/27/24
7	ISSUED FOR PERMIT	02/27/24
8	ISSUED FOR PERMIT	02/27/24
9	ISSUED FOR PERMIT	02/27/24
10	ISSUED FOR PERMIT	02/27/24
11	ISSUED FOR PERMIT	02/27/24
12	ISSUED FOR PERMIT	02/27/24
13	ISSUED FOR PERMIT	02/27/24
14	ISSUED FOR PERMIT	02/27/24
15	ISSUED FOR PERMIT	02/27/24
16	ISSUED FOR PERMIT	02/27/24

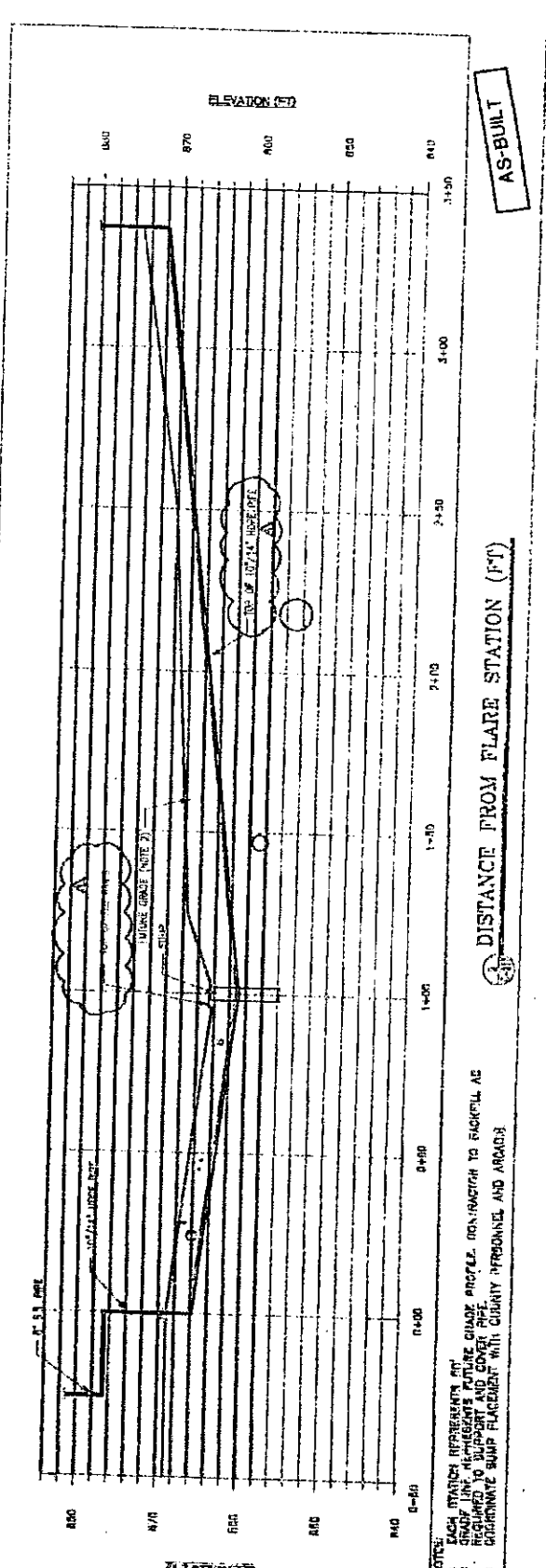
SHEET TITLE  
 BELOW GRADE  
 PIPE ROUTING PLAN  
 32MW GREEN ENERGY PROJECT  
 BENEVOLE ROAD LANDFILL  
 DISK # 1300  
 GEORGIA, 30030  
 DATE: 02/27/24  
 DRAWING NO: C-27  
 OF: 1

SCS ENERGY  
 1300 COMMERCE DRIVE  
 DISK # 1300  
 GEORGIA, 30030  
 DATE: 02/27/24  
 SCALE: AS SHOWN  
 DRAWING NO: C-27  
 OF: 1



PIPE ROUTING PLAN

NOTE: PIPE PLACEMENT REFER CONSTRUCTION REF. THROUGH DETAILS: SHEETS C-100D, C-101



AS-BUILT

DISTANCE FROM FLARE STATION (FT)

- NOTICE:
- EACH STATION REPRESENTS A 1' GRADY LINE. REPRESENTS FUTURE GRADE PROFILE. CONSTRUCTION TO BACKFILL AS REQUIRED TO SUPPORT AND COVER PIPE.
  - INDICATE THE LOCATION OF ALL UTILITY LINES AND STRUCTURES.
  - INDICATE THE LOCATION OF ALL EXISTING AND PROPOSED PIPING AND STRUCTURES.

**EXHIBIT B****COLLECTION SYSTEM UPGRADES****Initial Collection System Upgrades**

By June 30, 2018 Seller shall perform the creation of 29 collection wells at the Landfill and perform the upgrades as depicted or listed in Exhibit B.1 below, all of which are defined as the Initial Collection System Upgrades.

**Subsequent Collection System Upgrades**

During the term of this Agreement, Seller shall perform additional upgrades and well expansion sufficient to maintain the flow of LFG to the Facility sufficient to meet the Facility Requirements. Seller currently projects the additional upgrades and well expansion that are depicted or listed in Exhibit B.2 below. To the extent that the LFG flows to the Facility consistently drop below 1200 scfm (for clarity, any flow to the flare is not included in this total), Seller and Buyer shall meet together to discuss additional wellfield enhancements that may be needed to restore LFG flows to levels sufficient to meet the Facility Requirements.

**Gas Flows**

Minimum gas flows resulting from the above collection system upgrades are shown as Baseline Collected amounts on the Seminole Gas Curve that is represented in Exhibit B.3 below.

**Exhibit B.1** Initial Collection System Upgrades

**Exhibit B.2** (future upgrades and well expansion)

**Exhibit B.3** (gas flow estimates)

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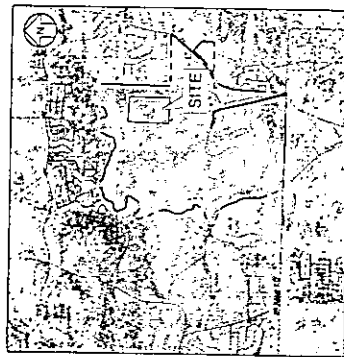
# Exhibit B.1





**INVITATION TO BID NO. XX-XXXXXX**  
**CONSTRUCTION DRAWINGS**  
**GAS COLLECTION AND CONTROL SYSTEM (GCCS) EXPANSION**  
**PHASE 3 UNIT 3**  
**SEMINOLE ROAD LANDFILL**  
**DEKALB COUNTY, GEORGIA**

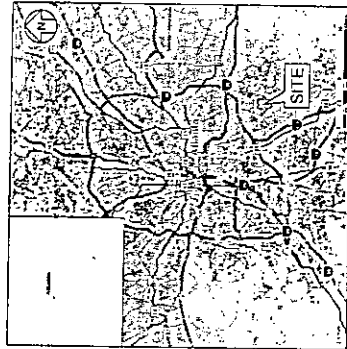
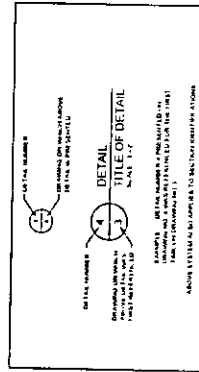
PROJECT NO. GD5409  
 JUNE 2017



VICINITY MAP  
NOT TO SCALE

**LIST OF DRAWINGS**

DRAWING NO.	DRAWING TITLE
1	COVER SHEET
2	EXISTING CONDITIONS
3	LANDFILL GAS COLLECTION PROPOSED (GENERAL PLAN)
4	LANDFILL GAS COLLECTION (TOP OF CELL)
5	18 IN. DI. GAS ACCUMULATORS (LANDFILL GAS)
6	PROPANE FILLER (LANDFILL GAS)
7	LATERAL PIPING (PHASE 3)
8	LATERAL PIPING (PHASE 3)
9	VALVES ON MAINS
10	GAS DETECTOR
11	GAS DETECTOR



LOCATION MAP  
NOT TO SCALE

PREPARED FOR:

**DEKALB COUNTY**  
 PUBLIC WORKS DEPARTMENT  
 SANITATION DIVISION SEMINOLE ROAD LANDFILL  
 4203 CLEVELAND ROAD  
 ELLENWOOD, GEORGIA 30294

OWNER:  
 TRACY HUTCHINSON  
 INTERIM DEPUTY DIRECTOR  
 404.713.2501

24 HOUR CONTACT:  
 ROGER YOUNG  
 SUPERINTENDENT  
 404.687.4018

PREPARED BY:

**Geosyntec**  
 CONSULTANTS

1255 ROBERTS BOULEVARD, NW, SUITE 200  
 KENNESAW, GEORGIA 30144-3694  
 TELEPHONE: 678.202.9500

COVER SHEET	
GCCS - PHASE 3 UNIT 3 EXPANSION	
SEMINOLE ROAD LANDFILL	
DEKALB COUNTY, GEORGIA	
DRAFT	
PROJECT NO.: GD5409 SHEET NO.: 11 TOTAL SHEETS: 11	DATE: 06/20/17 DRAWN BY: [Name] CHECKED BY: [Name] APPROVED BY: [Name]

DRAFT











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## Exhibit B.2

**Seminole Rd Landfill**  
**POTENTIAL - DRAFT - LFG Collection and Control System Expansion Projections**  
**Engineer's Construction Cost Estimate (2017 Dollars)**

GCCS Expansion Year	Pre-Expansion Flow (scfm)	Post-Expansion Flow (scfm)	Expansion Target Flow (scfm)	Additional Wells Required (Note 4,5)	Estimated Expansion Cost + Engineering (Note 1,2)	Cost + 10% Contingency	
2020	1,443	1,923	480	32	\$596,969.60	\$656,666.56	
2023	1,699	2,013	314	21	\$391,761.30	\$430,937.43	
2026	1,779	2,277	498	33	\$615,624.90	\$677,187.39	
2029	2,012	2,451	439	29	\$541,003.70	\$595,104.07	
2031	2,303	2,634	331	16	\$262,875.81	\$289,163.39	
2034	2,327	2,597	269	13	\$214,196.70	\$235,616.37	
2037	2,295	2,692	397	19	\$315,998.95	\$347,598.84	
			-	-	\$0.00	\$0.00	
				-	\$0.00	\$0.00	
				-	\$0.00	\$0.00	
				-	\$0.00	\$0.00	
				-	\$0.00	\$0.00	
				-	\$0.00	\$0.00	
				-	\$0.00	\$0.00	
<b>Total</b>					<b>164</b>	<b>\$2,938,430.96</b>	<b>\$3,232,274.06</b>

**Notes:**

- GCCS expansion estimate of \$40K/Acre = \$.918/sq.ft. (including pump @ \$5K)
- 17,671 x .918 = \$16,222 per well including infrastructure and engineering cost 15%
- 150' Well ROI = 17,671 sq.ft.
- Site average LFG production = .4scfm per ft. perforated pipe
- Site average perforated pipe per well 38.5'

**Seminole Rd Landfill**  
**BASELINE - DRAFT - LFG Collection and Control System Expansion Projections**  
**Engineer's Construction Cost Estimate (2017 Dollars)**

GCCS Expansion Year	Pre-Expansion Flow (scfm)	Post-Expansion Flow (scfm)	Expansion Target Flow (scfm)	Additional Wells Required (Note 4,5)	Estimated Expansion Cost + Engineering (Note 1,2)	Cost + 10% Contingency	
2020	1,443	1,666	223	15	\$279,829.50	\$307,812.45	
2023	1,472	1,667	195	13	\$242,518.90	\$266,770.79	
2026	1,473	1,676	203	14	\$261,174.20	\$287,291.62	
2029	1,481	1,665	184	12	\$223,863.60	\$246,249.96	
2031	1,565	1,704	139	7	\$110,716.19	\$121,787.81	
2034	1,506	1,616	110	5	\$87,171.71	\$95,888.89	
2037	1,427	1,578	151	7	\$120,030.81	\$132,033.89	
				-	\$0.00	\$0.00	
				-	\$0.00	\$0.00	
				-	\$0.00	\$0.00	
				-	\$0.00	\$0.00	
				-	\$0.00	\$0.00	
				-	\$0.00	\$0.00	
				-	\$0.00	\$0.00	
<b>Total</b>					<b>74</b>	<b>\$1,325,304.92</b>	<b>\$1,457,835.41</b>

**Notes:**

- GCCS expansion estimate of \$40K/Acre = \$.918/sq.ft. (including pump @ \$5K)
- 17,671 x .918 = \$16,222 per well including infrastructure and engineering cost 15%
- 150' Well ROI = 17,671 sq.ft.
- Site average LFG production = .4scfm per ft. perforated pipe
- Site average perforated pipe per well 38.5'



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## Exhibit B.3



**EXHIBIT C****FACILITY REQUIREMENTS****LFG Gas Quality**

Minimum methane content: 48% by volume (equivalent to 434 Btu/scf-LHV)

Maximum oxygen content: 2% by volume (average 1%)

Dewpoint: Saturated (no free water)

Minimum pressure: 6 p.s.i.g.

Maximum total sulfur content: 642 ppmv (as hydrogen sulfide)

Maximum halide content: 205 ppmv (as chlorine)

Maximum ammonia content: 63 ppmv

Maximum siloxane content: 8 ppmv (as silicon)

**LFG Gas Quantity****CAT G3520C-1200 RPM Fuel Requirement (at 100% Load)**

Nameplate Capacity per Engine	kW	1,600
-------------------------------	----	-------

Engine Power	bhp	2,233
--------------	-----	-------

Fuel Consumption	btu/bhp-hr	6,509
------------------	------------	-------

Fuel Consumption	btu/hr	14,534,597
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**Landfill Gas Requirement**

	48% Methane Content	50% Methane Content	Heat Rate 10,000
	btu/kWh		
	<u>@ 50% Methane</u>		
Methane Lower Heating Value (LHV) btu/scf	910	910	910
Methane Content of LFG	48%	50%	50%
LFG Lower Heating Value (LHV) btu/scf	437	455	455
<b>LFG Supply Requirement per engine scfm</b>	<b>555</b>	<b>532</b>	<b>586</b>
Gross Heat Rate (btu/kWh)	9,084	9,084	10,000

Direct Operating Experience 565 scfm per engine, 2 engines operating at Facility

Heat Rate Rule of Thumb 10,000 btu/kWh

**EXHIBIT D**

**ROYALTY PAYMENTS**

The royalty payment stream is generally depicted in the Exhibit D spreadsheet on a sliding scale from 70 percent generation to capacity to 100 percent generation to capacity. Actual royalty payments will depend on actual production from (and costs of) the Facility and net payments through the PPA.

**Royalty Payment to DeKalb County** \*NOTE: Initial projections assumed 2017 generation and PPA payments, no late PPA fees and no Conyers Interconnection Agreement

DeKalb County Seminole Road Landfill - Royalty Payment for Landfill Gas-to-Energy Facility												
Electric Generation at Capacity												
		2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017*
Calendar Days Per Year	(d)		365	365	365	365	365	365	366	365	365	365
Hours Per Calendar Year	(h)		8760	8760	8784	8,760	8,760	8,760	8,784	8,760	8,760	8760
Installed Capacity	(kW)	3,200										
Station Service (Parasitic/Auxiliary Load)	(%)											
Net Capacity	(kW)											
Plant Availability (per PPA)	(%)											
<b>Royalty Payment Up to 70% Capacity</b>												
		2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	
% of Capacity	(%)	70%										
Net Capacity	(kW)	2,240										
Net Generation	(MWh/yr)											
Revenue at 70% of Capacity	(\$/yr)											
Royalty at 70% Capacity	(%)											
Gross Royalty Payment Up to 70% Capacity	\$	73,398	74,866	76,453	77,891	79,449	81,038	82,755	84,312	85,998	87,718	
Initial costs spread over 3 years		64,400	64,000	64,000								
Final incentive payment amortized					16,000	16,000	16,000	16,000	16,000	16,000	16,000	
Net Royalty Payment at 70% Capacity	(\$/yr)	8,998	10,866	12,453	61,891	63,449	65,038	66,755	68,312	69,998	71,718	71,959
<b>Royalty Payment from 70% Capacity to 100% Capacity</b>												
Remaining Generation Potential	(MWh/yr)											
Remaining Potential Revenue	(\$/yr)											
Royalty % to DeKalb County	(%)											
Additional Royalty Payment at 100% Capacity		333,438	340,107	347,313	353,847	360,924	368,142	375,943	383,015	390,676	398,489	326,900
<b>Total Royalty Payment to DeKalb County</b>		<b>342,436</b>	<b>350,973</b>	<b>359,766</b>	<b>415,738</b>	<b>424,373</b>	<b>433,180</b>	<b>442,698</b>	<b>451,327</b>	<b>460,674</b>	<b>470,207</b>	<b>398,859</b>

DeKalb County Seminole Road Landfill - Royalty Payment for Landfill Gas-to-Energy Facility												
Electric Generation at Capacity												
		2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	Total
Calendar Days Per Year	(d)	366	365	365	365	366	365	365	365	366	365	
Hours Per Calendar Year	(h)	8,784	8,760	8,760	8,760	8,784	8,760	8,760	8,760	8,784	8,760	
Installed Capacity	(kW)											
Station Service (Parasitic/Auxiliary Load)	(%)											
Net Capacity	(kW)											
Plant Availability (per PPA)	(%)											
<b>Royalty Payment Up to 70% Capacity</b>												
		2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	
% of Capacity	(%)											
Net Capacity	(kW)											
Net Generation	(MWh/yr)											
Revenue at 70% of Capacity	(\$/yr)											
Royalty at 70% Capacity	(%)											
Gross Royalty Payment Up to 70% Capacity	\$	89,576	91,262	93,087	94,949	96,960	98,784	100,760	102,775	104,953	106,927	
Final incentive payment amortized	\$	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	
Final incentive payment											272,000	
Net Royalty Payment at 70% Capacity	(\$/yr)	73,576	75,262	77,087	78,949	80,960	82,784	84,760	86,775	88,953	362,927	1,663,470
<b>Royalty Payment from 70% Capacity to 100% Capacity</b>												
Remaining Generation Potential	(MWh/yr)											
Remaining Potential Revenue	(\$/yr)											
Royalty % to DeKalb County	(%)											
Additional Royalty Payment at 100% Capacity	(\$/yr)	406,933	414,588	422,880	431,338	440,477	448,764	457,739	466,894	476,786	485,756	8,430,949
<b>Total Royalty Payment to DeKalb County</b>		<b>480,509</b>	<b>489,850</b>	<b>499,967</b>	<b>510,287</b>	<b>521,437</b>	<b>531,548</b>	<b>542,499</b>	<b>553,669</b>	<b>565,739</b>	<b>848,683</b>	<b>10,094,419</b>

**EXHIBIT E****FACILITY REFURBISHMENT**

DeKalb County Seminole Road Landfill Green Energy Facility  
 Generation Facility Refurbishment Activities

**Building Improvements**

recondition roof intake fan assemblies  
 recondition roof inlet & exhaust fan motors  
 replace engine room LEL (methane) detector

**Landfill Gas Supply/Conditioning**

install and setup oxygen sensor at flare station or at the entry point of building  
 dehydration /chiller skid A/C service  
 replace dehydration /chiller skid circuit B internal disconnect  
 room methane sensor replace  
 gas skid replace blower/bearings and after cooler fan/bearings  
 Silica gel tanks and media: replace media  
 Tooling : replace all missing tooling Crank Case Ventilation replace assembly  
 SCADA : replace servers and operating system ,licensing, programing, CMMS/ODMS  
 Restore siloxane pretreatment system

**AT Gensets**

genset drying process  
 placing gensets back into service  
 replace all batteries  
 generator paralleling switchgear (SWGR) programming ,replace legacy hardware, replace monico  
 startup/commissioning generators, SWGR, and replace radiators  
 rep  
 replace engine crankcase ventilation system (CCV)  
 replace radiator core  
 replace raptor  
 replace wiring harness  
 recondition engine radiator cooling fan motor  
 engine total "major" overhaul  
 reseal generator gear front cover/housing  
 remove/reinstall doghouse & generator end  
 recondition/replace'/rewire generator  
 recondition/remove the corrosion on sensitive components on generator: rotor, stator and all associated  
 control components  
 replace consumable base stock  
 restock/replace spare parts

**ELECTRICAL:**

-Ferrous metal cabinet interface with generator neutral connection cables: box design mods , remail ,  
 installion , conductor re-routing  
 -600V wiring laying across the insulated portion of resistor grids: re-routing and properly securing wiring ,  
 replace terminal blocks  
 -125VDC battery bank replacement

11/13/17

- reconfigure to tap 125VDC to feed 24 VDC
- repair damaged 20 KV vacuum breaker
- repair SEL-351
- replace Multilin SR relays programming , set-up ,testing and commissioning
- generator isolation drawings: generator to gear connections
- system re-commissioning
- temp power during replacement of all of the above
- restore clean up equipment

**EXHIBIT F**  
**FACILITY MAINTENANCE**



## STANDARD SCOPE OF SERVICES

A twin Caterpillar G3520 genset 3.2-megawatt (MW) landfill gas-to-energy (LFGE) facility can be operated by one full-time operator with outside mechanic support. The operator typically works an 8-hour day, 5 days a week; with 24/7 callout with a 2-hour response time (4-hour minimum after midnight). The operational and routine maintenance activities conducted by the operator are presented below.

### Daily Activities

Daily operational activities should include:

1. Perform overall site walk-around inspection:
  - a. Genset & Switch Gear
  - b. Gas conditioning equipment
  - c. Building, fence and grounds, etc.
  
2. Inspect & monitor generation equipment:
  - a. Cooling system level check & radiator and fan operation
  - b. Engine oil level check, and adjust if needed
  - c. Air cleaner service indicator status
  - d. Engine breather inspection
  - e. Generator load check
  - f. Voltage and Hz check.
  
3. Inspect & monitor gas conditioning equipment:
  - a. Blower oil level check
  - b. Suction and outlet psi check
  - c. Condensate level / drain valve position
  - d. Gas analyzer reading / calibration.

NOTE: Operator should fill out & record daily inspection log and advise any oil leaks, vibrations, or unusual noises.

### Weekly Activities

Weekly operational activities should include:

1. Sweep & mop facility and any office/storage areas.
2. Wipe down engine and generator gear.
3. Clean and inspect gas skid (cooling fan core, blower oil level, gas analyzer, etc.).
4. Keep area around transformers clean and free of obstructions.
5. Check enclosure condition (doors, steps, lights. etc.).

6. Inspect radiator mounts & area around fans, keep clean & uncluttered.
7. Check perimeter fence & yard. Clean all debris.
8. Take bi-weekly engine oil samples, & record all files.
9. Document cylinder transformer voltages.
10. Document engine oil consumption.

### **1,000-Hour Inspection/Service**

Every 1,000 operational hours the operator should perform the following:

1. Replace engine oil filters.
2. Replace engine oil if needed (depending on oil sample results).
3. Replace spark plugs.
4. Adjust valves & bridges.
5. Ignition timing check/adjust
6. Inspect water pump & all valves and piping to radiator.
7. Inspect radiator condition and inspect coolant pipin3e

Inspect air inlet system, air cleaners, piping clamps, etc.

9. Inspect inlet gas piping, regulator, shut-off valves (operation & condition).
10. Inspect vibration damper, alternator, interior louvers, exhaust fans, generator coupling and vibration isolators.
11. Inspect after cooler & piping.
12. Inspect/repair interior lighting, safety equipment, and fire extinguishers.

### **2,000-Hour Inspection/Service**

Every 2,000 operational hours the operator should add the following activities to the above:

1. Grease generator bearings.
2. Grease exhaust fan & radiator fan bearings.
3. Perform complete service on gas skid, change blower oil, adjust belts, grease fan & blower bearings, check and test all safeties.
4. Generator vibration check.
5. Inspect stator leads and wiring.
6. Inspect all wiring and cabling in switchgear.
7. Clean and tighten battery cables and check electrolyte levels in batteries.
8. Inspect turbocharger.

### **Annual Inspection**

Every year, the operator should also take a cooling system sample.

**AGREEMENT**

**FOR**

**LANDFILL GAS-TO-ENERGY PLANT  
OPERATION AND MAINTENANCE SERVICES**

**BETWEEN**

**Conyers Renewable Power, LLC  
("Owner")**

**AND**

**ENERGYneering Solutions, Inc.  
("Operator")**

**October 31, 2017**

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**APPENDICES**

Appendix A	Insurance
Appendix B	Site Specific Definitions
Appendix C	Conforming Landfill Gas
Appendix D	Tools, Mobile Equipment, Spare Parts, Consumables
Appendix E	Major Maintenance Services Description, Budget, and Schedule
Appendix F	Plant Descriptions
Appendix G	Description of Non-Routine O&M Services
Appendix H	GCCS O&M Services
Appendix I	Base Operating Fees and Major Maintenance Costs

This Operation and Maintenance Agreement (this "O&M Agreement"), dated as of October 25, 2017 (the "Effective Date"), is entered into by and between Conyers Renewable Power, LLC ("Owner"), a limited liability company organized and existing under the laws of the State of South Carolina, and Energyneering Solutions Inc., a corporation organized and existing under the laws of the State of Oregon ("Operator").

- A. Owner has financed, purchased or leased, and will operate landfill gas-fueled power generation facilities ("Plant" or "Plants") at, the following Landfill Location ("Site"):
  - i The DeKalb County landfill site in DeKalb County, Georgia.
- B. Owner and/or its Affiliates will sell or cause to be sold, all of the Plant's net energy output in the form of electricity, capacity, renewable energy credits, and such other renewable attributes (collectively, "Products") recognized from time to time.
- C. Owner requires a qualified, competent and experienced operator to perform operations, Routine, Non-Routine, and Major Maintenance services on and about the Plants (the "Services").
- D. Operator has represented to Owner that it is qualified, competent and experienced in the operation and maintenance of facilities similar to the Plants, and Operator is willing to provide the Services on the terms and conditions set forth herein.
- E. Owner is willing to engage Operator to provide Services on the terms and conditions set forth herein.

THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

As used in the Agreement, the following terms shall have the indicated definitions:

"Accessories" shall mean, collectively, the special tools, equipment, parts and other materials required for unscheduled repairs resulting from a breakdown of the Plant that occurs due to Force Majeure or acts or omissions of Owner or third parties other than Operator, its employees, subcontractors or others acting on behalf of or under the control or supervision of Operator.

"Adjusting Event(s)" shall have the meaning set forth in Section 6.1.2.

"Administrative Procedures Manual" shall have the meaning set forth in Section 2.3.5.



“Affiliate” shall mean any corporation or other entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, another corporation or entity.

“Agreement” shall mean this Operation and Maintenance Agreement.

“Annual Operating Plan” shall mean the plan established for each Operating Year, as further described in Section 4.1.1, that sets forth the following anticipated events and activities: (i) Annual Performance Projection (ii) operations, repairs and capital improvements; (iii) routine and preventive maintenance; (iv) procurement, personnel and labor activities; (v) administrative activities; (vi) scheduled outages; (vii) scheduled overhaul of equipment; (viii) environmental monitoring and compliance; and (ix) all other work proposed to be undertaken by Operator during the Operating Year.

“Annual Performance Projection” shall mean, for any Operating Year, the estimated or forecasted annual production of the Plant, as agreed upon between Operator and Owner in the Annual Operating Plan for the given Operating Year, including projections for the following: (i) net electrical energy sales to the Utility as measured in kilowatt-hours (kWh); and (ii) average expected landfill gas flow (in standard cubic feet per minute) normalized to 50% methane content.

“Annual Generation Performance Guarantee” shall have the meaning ascribed to it, and will be applicable as specified in, Section 6.1.1. of the Agreement.

“Applicable Law” shall mean any law, ordinance, rule, regulation, permit and order of any Governmental Person, including the judicial or administrative interpretation thereof which is applicable to the Services, the Plants, the Sites, Operator, Landfill Operators and/or Owner.

“Bankruptcy” shall mean a situation in which: a party (i) shall commence a proceeding under federal, provincial, state or other bankruptcy, insolvency or reorganization law; (ii) has such a proceeding filed against it and fails to have such proceeding vacated within sixty (60) Days thereafter; (iii) admits the material allegations of any petition in bankruptcy filed against it; (iv) is adjudged bankrupt; (v) makes a general assignment for the benefit of its creditors, or admits in writing its inability to pay or generally fails to pay its debts as they mature or become due; or (vi) petitions or applies for or has appointed a trustee or other custodian, liquidator or receiver for all or any substantial part of such party’s assets which receiver is not discharged within sixty (60) Days after his appointment.

“Business Day” shall mean every day other than a Saturday, Sunday, or Federal Holiday.

“Change” shall mean any of the following that is proposed in writing by one party to the other: (i) a change in the then current Annual Operating Plan; (ii) a change in connection with the Services; (iii) a change made necessary to avoid injury to persons or property or to mitigate losses as a result of the occurrence or expected occurrence of an Emergency, except an Emergency arising from the acts or omissions of Operator, its employees, subcontractors or others acting on behalf of or under the control or supervision of Operator; or (iv) a change in the

scope of Services or the Operating Fee resulting from a Change in Law, change in Permit or governmental requirements/regulations, or a change in a Plant Agreement.

“Change in Law” shall mean amendments, modifications or changes in existing Applicable Law occurring after the Effective Date, including changes in the enforcement or application of Applicable Law, or the enactment of any new Applicable Law after the Effective Date.

“Change Order” shall mean the written approval of a proposed Change and the related Change Order Budget Statement by Operator and Owner as provided in Section 4.3.

“Change Order Budget Statement” shall mean the statement prepared by Operator pursuant to Section 4.3.2 with respect to a proposed Change setting forth in reasonable detail: (i) the direct cost or cost savings to Owner of the proposed Change; (ii) the time anticipated to implement the proposed Change; (iii) changes in the operating efficiency of the Plant; and (iv) any other material effect on the operation, maintenance or efficiency of the Plant or the provision of the Services.

“Commercial Operations Date” shall mean the date of “Commercial Operations” as declared by Owner.

“Commercial Operations” shall mean the date, as determined pursuant to Owner’s construction or acquisition agreement(s), and as notified by Owner to Operator, that the Plant is ready for continuous commercial operation, subject only to final or follow up testing that will not materially adversely affect Plant operations

“Conforming Landfill Gas” shall have the meaning set forth in the Appendix C.

“Consumables” shall mean lubricants, chemicals, fluids, oils, supplies, filters, and such other materials (other than Accessories, fuel, water, utilities and other items to be purchased by Owner hereunder) required for the operation and maintenance of the Plant in accordance with the terms hereof, including all scheduled and unscheduled maintenance.

“Damages” shall have the meaning set forth in Section 6.3.

“Day” or “Days” shall mean a calendar day or days.

“Default Rate” shall mean a rate per annum equal to the lesser of: (i) two (2) percentage points above the rate quoted in the Money Rates Article of the *Wall Street Journal* (or any successor publication or source thereto) from time to time as the “prime rate” or (ii) the maximum rate that can be charged under Applicable Law.

“Deferred Maintenance” shall mean maintenance not performed on a schedule or frequency consistent with any equipment manufacturer published recommendations, or, in the absence of such published recommendations, any maintenance schedule prepared by Operator, and approved by Owner, from time to time.

“Delivery Point” means the designated interconnection point (i.e., flange) where Landfill Owner shall make available landfill gas to Owner.

“Dispute” shall have the meaning set forth in Section 11.1.

“Effective Date” shall have the meaning set forth in the first paragraph of this Agreement.

“Emergency” shall mean any occurrence or possible occurrence which, in the reasonable judgment of Owner or Operator, as the case may be, requires immediate action and which constitutes a serious hazard to the safety of persons or property or which may materially interfere with the safe operation of the Plant or the operation of the Plant in compliance with Governmental Approvals or Applicable Law.

“Engine Generator Package” means the equipment having been installed at the Plant for purposes of producing electricity as set forth in Appendix F.

“EPA” shall mean the United States Environmental Protection Agency.

“Equipment Service Manual” shall be the manuals provided by the original equipment manufacturer of each major piece of equipment included in the Plant. For purposes of equipment manufactured by Caterpillar, Inc. or its affiliates, the term “Equipment Service Manual” shall include the original equipment manufacturer recommendations and manuals (such as the Caterpillar Application Guidelines, Operation and Maintenance Manuals, and related Service Bulletins), including operation and maintenance guidelines, scheduled oil sampling and coolant analysis as recommended by the manufacturer.

“Event of Default” shall have the meaning set forth in Section 7.2.

“Failure” shall mean the inability of the Plant infrastructure, the GCCS, the Plant, and equipment (including a Prime Mover), and components of the foregoing to perform prior to reaching the end of its Useful Life.

“Force Majeure” shall mean any act, event or occurrence that prevents or delays the affected Party from performing its obligations under this Agreement or from complying with any conditions required by the other Party under this Agreement, if such act, event or occurrence is unforeseeable and is beyond the reasonable control of the affected party, including, but not limited to: (i) acts of God; (ii) Changes in Law or the action or inaction of any Governmental Person; (iii) acts of war (whether or not declared), civil violence or disobedience, sabotage or insurrection; (iv) floods, hurricanes, monsoons, earthquakes, lightning, hail or other natural disasters; (v) explosions or fires; (vi) injunctions or other interference through action of a court; or (vii) strikes, lockouts, walkout or similar labor disturbance; (viii) forced curtailment of utility service; (ix) catastrophic equipment Failure not within control of the affected party; or (x) the fault, negligence, gross negligence, or willful misconduct of the other party or a third party not within the control of the affected party; provided, however, that an event of Force Majeure shall not include, among other things: (a) the inability of any party to meet its payment obligations (including major maintenance obligations as scheduled under this Agreement), including an inability to obtain financing for any respective obligations to be carried out hereunder; (b) the

economic hardship of either party or changes in market conditions; (c) any strike, lockout, walkout or similar labor disturbance limited to the affected party's personnel; (d) an event or occurrence which is directly due to the fault, negligence, gross negligence or willful misconduct of the affected party or a third party within the control of the affected party; or (e) an event or occurrence the affected party could have reasonably foreseen or overcome or avoided with the exercise of due diligence.

"Generator Interconnection Agreement" shall mean the interconnection agreement(s) between Owner and Utility or Utilities or parties contracting with Utility or Utilities, which agreement(s) shall be provided by Owner to Operator.

"GCCS" shall mean the gas collection and control system at the Landfill which generally constitutes the collective whole of the landfill gas wells, piping header systems, condensate collection systems, and blower/flare station at the Landfill.

"GCCS O&M Services" shall mean those Services for which Operator is responsible under the Plant Agreements that include the monitoring, adjustment, maintenance, and repairs of the GCCS at the Landfill as described in Appendix H.

"Governmental Approvals" shall mean any authorization, consent, approval, ruling, Permit, tariff, rate, certification, re-certification, exemption, filing, registration, contract, license, lease, easement, franchise, right-of-way or other right required by any Governmental Person or Applicable Law.

"Governmental Person" shall mean any federal, state, provincial, county, municipal or other governmental authority or any political subdivision thereof.

"Hazardous Substances" shall mean any pollutant, contaminant, waste, hydrocarbon product, or toxic, flammable, explosive or radioactive material or substance which is classified as hazardous under Applicable Law.

"Landfill Gas Purchase Agreement" shall have the meaning set forth in Appendix B.

"Landfill Operator" shall have the meaning set forth in Appendix B.

"Landfill Owner" shall have the meaning set forth in Appendix B.

"Lender" or "Lenders" shall mean the entity or entities providing to Owner or its Affiliates construction and/or term financing from time to time for any or all of the Plant.

"Loss Prevention and Security Manual" shall have the meaning set forth in Section 2.3.6.

"Manuals" shall mean, collectively, the Operation and Maintenance Manual, Equipment Service Manual(s), the Administrative Procedures Manual, the Loss Prevention and Security Manual, and the Safety Manual.

"Major Maintenance Services" shall have the meaning set forth in Section 2.5.

“Minimum Operating Fee” shall have the meaning set forth in Section 5.2.1.

“Monetary Default” shall have the meaning set forth in Section 7.2.

“Non-Routine O&M Services” shall have the meaning set forth in Section 2.4., and may also be referenced as Unplanned, or Unscheduled Services.

“Operating Fee” shall have the meaning set forth in Section 5.2.

“Operating Year” shall mean: (i) with respect to the first Operating Year, that period of time beginning on the Commercial Operations Date and ending on December 31, 2017, and (ii) with respect to subsequent Operating Years, each subsequent calendar year through the end of the Term.

“Operation and Maintenance Manual” shall have the meaning set forth in Section 2.3.6.

“Operator” shall mean ENERGYneering Solutions, Inc., (“ESI”) an Oregon corporation, and its permitted successors and assigns, in its role as Party to this Agreement.

“Operator Indemnified Parties” shall have the meaning set forth in Section 9.2.

“Operator Personnel” shall mean all management, supervisory, operations and maintenance personnel employed by Operator to perform the Services at the Sites.

“Operator’s Representative” shall mean the individual representative authorized to represent Operator on all matters concerning this Agreement as delineated in Section 2.3.20.

“Owner” shall mean Conyers Renewable Power, LLC, a South Carolina limited liability company, and its permitted successors and assigns.

“Owner-Hired Operators” shall mean any contractor, subcontractor, supplier, vendor, agent or representative hired or engaged by, or hired or engaged on behalf of, Owner or its representative, other than the Operator and subcontractors hired or engaged by Operator or any subcontractors directly or indirectly hired or engaged by subcontractors of Operator.

“Owner’s Representative” shall mean the individual representative authorized to represent Owner on all matters concerning this Agreement as delineated in Section 3.7.

“Payroll Costs” shall mean: (i) the wages and salaries; (ii) costs of Operator provided benefits; (iii) living expenses, (if applicable); (iv) relocation costs; and (v) general and administrative costs, incurred by Operator in its employment of the Operator Personnel but only insofar as such costs are incurred in connection with performance of the Services by Operator.

“Permits” shall mean all of the permits, licenses, certificates, rights, approvals and other similar requirements including Governmental Approvals: (i) with respect to Operator, necessary to perform the Services; and (ii) with respect to Owner, to build, own, operate and maintain the Plants and to perform its obligations hereunder.

“Plant” or “Plants” shall mean one, some, or all of the following landfill gas-fueled power generation facilities for which the Operator is providing Services under this Agreement: the DeKalb County Plant.

“Plant Agreements” shall mean, collectively: (i) this Agreement; (ii) the Power Purchase Agreement(s); (iii) the Landfill Gas Purchase Agreement(s); (iv) the Site Lease(s); (v) the Construction and/or Term Loan Agreements (collectively “Lender Agreements”), and (vi) the Permits.

“Point of Interconnection” shall mean Point of Interconnection between a Plant and a Utility distribution/transmission system, as specified in the Generator Interconnection Agreement between Owner and the Utility.

“Power Purchase Agreement(s)” shall mean the agreement(s) between Owner and Utility or Utilities or parties for the sale of electrical output, renewable energy attributes and/or any other Products from a Plant, which agreement(s) shall be provided by Owner to Operator.

“Pre-Operation Services” shall mean any Services provided by the Operator at the request of the Owner prior to the Commercial Operations or Effective Date, and for which Operator shall be compensated pursuant to the second paragraph of Section 5.1, provided, however, such Pre-Operation Services shall not include any Services provided pursuant to Article 2 hereunder, and for which Operator shall be entitled to receive the Services Compensation.

“Preventive Maintenance Program” shall have the meaning set forth in Section 2.3.5.

“Prime Mover” shall mean one or more Landfill Gas-fueled engine-generator sets located at a Plant.

“Prudent Operating Practices” shall mean those practices, methods, equipment, specifications, and standards of safety and performance, as are commonly used by third party operators of facilities similar in type and location to a Plant which, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, are considered good, safe and prudent practice in connection with the operation and maintenance of such facilities and which are conducted in a manner consistent with Applicable Laws, Governmental Approvals, manufacturers’ recommendations, reliability, safety, environmental protection, economy, and expedition.

“Purchase Agreement” shall mean any and all purchase orders and related documentation relating to Owner’s purchase of equipment.

“Records” shall have the meaning set forth in Section 4.2.5.

“Reimbursable Expenses” shall mean the reasonable, incremental direct costs and expenses incurred by Operator in the performance of Non-Routine O&M Services, non-routine GCCS services, Unscheduled Maintenance, and/or Repairs resulting from a breakdown, a Change to a Plant, the Plant Agreements, or Applicable Law, or as a result of Force Majeure, or acts or

omissions of Owner or third parties other than Operator, its employees, subcontractors or others acting on behalf of or under the control or supervision of Operator and other costs for which reimbursement is provided under this Agreement, which costs and expenses include, without limitation, the following: (i) the cost of Accessories; (ii) the costs associated with the importation, exportation and transportation of Accessories, (iii) the costs associated with outside consultants, subcontractors and other special services, (iv) the incremental costs of Operator Personnel; and (v) a fee of fifteen percent (15%) applied to the amounts set forth in subsections (i) through (iii) above (other than, in the case of clause (iii) in respect of outside consultants, subcontractors and special services contracted and paid directly by Owner); provided that Owner shall hold title to all Accessories, upon reimbursement of Operator by Owner.

"Required Supplies" shall mean all Consumables, together with the minimum level of other Supplies that Operator is required to maintain at the Plants at all times.

"Routine O&M Services" shall have the meaning set forth in Section 2.3., which may also be referenced as Planned, or Scheduled Services.

"Safety Manual" shall have the meaning set forth in Section 2.3.6.

"Scheduled Commercial Operation Date" shall mean date when care, custody, and control is transferred to the Owner.

"Services" shall mean all activities and services required to be performed by Operator under this Agreement as set forth in Article 2.

"Services Compensation" shall have the meaning set forth in Section 5.1.

"Site" or "Sites" shall mean one, some, or all of the solid waste disposal sites on which the Plants are located and that are owned and/or operated by their respective Landfill Owners.

"Site Lease" shall have the meaning set forth in Appendix B.

"Storage Facilities" shall mean suitable, accessible and secured dry areas for the storage of Accessories, Consumables and tools.

"Supplies" shall mean collectively (i) Consumables, and (ii) the special tools, equipment, parts and other materials required for Scheduled Maintenance and otherwise for the performance of the Services, and (iii) all tools, equipment, parts and other materials required for repairs resulting from a breakdown of the Plant that occurs due to acts or omissions of Operator, its employees, subcontractors or others acting on behalf of or under the control or supervision of Operator.

"Taxes" shall mean all levies, fees, charges, duties, tariffs and taxes, including sales taxes, value added taxes, ad valorem taxes, use taxes, excise taxes and stamp taxes, imposed by a Governmental Person on the provision of Services hereunder; but shall not include, among other things, taxes on income, payroll or other taxes imposed directly on a business or the privilege of doing business, which shall be borne by the respective Party upon which such tax is imposed.

“Term” shall have the meaning set forth in Section 7.1.

“Utility” shall have the meaning set forth in Appendix B.

“Useful Life” shall mean, the period of time one may reasonably expect to operate the Facility infrastructure, equipment, and/or components on a regular basis, based upon, but not limited to, operating hours, cycles, wear, compliance, or functionality as determined through supplier specifications, operating manuals, warranties, and/or operating experience,

## 1.2 Rules of Interpretation

Unless otherwise required by the context in which any term appears:

- a) capitalized terms used in this Agreement have the meanings specified in this Article 1, Appendix B, or as defined in the remainder of this Agreement;
- b) the singular shall include the plural;
- c) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits (if any) of this Agreement, as the same may be amended, modified, supplemented or replaced pursuant to the terms hereof from time-to-time hereunder;
- d) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns;
- e) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular Section or subsection of this Agreement;
- f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied;
- g) references to this Agreement shall include a reference to all appendices, annexes, schedules and Exhibits hereto, as the same may be amended, modified, supplemented or replaced pursuant to the terms hereof from time-to-time;
- h) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time-to-time;
- i) the use of the word “including” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” or “including, but not limited to,” and shall not be construed to mean that the examples given are an exclusive list of the topics covered;



- j) references to an Applicable Law shall mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time-to-time;
- k) where a Party's acceptance, approval, consent or concurrence is required in connection with any matter under this Agreement, such Party shall not unreasonably withhold, condition or delay such acceptance, approval, consent or concurrence, except as otherwise specifically provided herein; and
- l) where an Owner is entitled to review any third party document pursuant to this Agreement (e.g., O&M Manuals), such review is intended to solicit comments from Owner and not Owner's approval of such documents.

The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

## ARTICLE 2

### ENGAGEMENT OF OPERATOR AND DESCRIPTION OF SERVICES

#### 2.1 Engagement of Operator

Owner hereby engages Operator, and Operator hereby accepts such engagement, to operate and maintain each Plant and to perform the Services in accordance with this Agreement. Owner shall notify Landfill Operator of such engagement, and shall ensure that Operator has ingress, egress and general access to the Plants consistent with the terms of the Site Lease.

#### 2.2 Standards for Performance of Services

##### 2.2.1 Services

Operator shall perform the Services in all material respects, in accordance with: (i) the Manuals; (ii) the applicable Annual Operating Plan; (iii) Applicable Law, Governmental Approvals, Permits and Site safety rules and regulations; (iv) Prudent Operating Practices; (v) the requirements of all warranties and guarantees applicable to the Plant provided by or through the Owner, Operator, Owner-Hired-Operators, subcontractors, vendors, suppliers, manufacturers or others and timely given to Operator; and (vi) the applicable provisions of the Plant Agreements. Without limiting the foregoing, Operator shall use its commercially reasonable efforts to perform the Services in such manner so as to: (a) optimize the useful life of the Plant, (b) maximize the Plant's production of electricity, renewable energy credits, attributes, and other marketable products, (c) minimize the Plant downtime and disruption, and (d) avoid conditions in the operation, repair or maintenance of the Plant that would increase the risk of environmental degradation; provided, Operator will not be required to incur additional costs if such

efforts would exceed Prudent Operating Practices and the Services contemplated hereunder. Without limiting the foregoing, all Services performed with respect to equipment manufactured by Caterpillar, Inc. or its affiliates shall be accomplished using Caterpillar-manufactured parts, or approved equals, so long as such parts are reasonably available on the market. Notwithstanding anything contained in this Agreement, Operator is not guaranteeing that the Plant will meet any regulatory requirement (as such requirements may be modified from time to time) and Operator's liability hereunder will be accordingly limited.

#### 2.2.2 Personnel

Each Operator Personnel shall be qualified, trained, and licensed (to the extent required by Applicable Law) and experienced in the duties assigned and consistent with qualification and experience which are typical for personnel operating and maintaining facilities comparable to the Plant. Operator shall retain sole authority, control and responsibility with respect to Operator Personnel in connection with the performance of the Services. Operator shall comply with all Applicable Laws relating to labor and employment and shall exercise control over labor relations regarding its personnel in a reasonable manner consistent with the intent and purpose of this Agreement. Further, Operator shall comply with Owner's and/or Landfill Operator's published drug testing policy, as adopted from time to time and furnished to Operator, and shall apply the same policy to Operator's personnel deployed at the Plant; provided, the cost of such testing will be a reimbursable expense hereunder. Owner shall have the right in its sole discretion, with cause, to compel Operator to remove (but not terminate) any of Operator's personnel deployed at the Plant from the Plant and to replace such removed personnel with substitute qualified personnel.

#### 2.2.3 Subcontractors

Operator shall not employ any subcontractors to perform primary operational services, and/or any material repairs, without the prior written consent of Owner, which consent shall not be unreasonably withheld. The employment of any such subcontractors shall not diminish Operator's responsibilities hereunder. Without limiting the foregoing, Operator shall be responsible for all acts, omissions, materials provided by and workmanship of any subcontractors, and shall cause all subcontractors to comply with the same standards of care exercised by Operator's Personnel under this Agreement.

#### 2.2.4 Coordination and Communication

In accordance with the Administrative Procedures Manual, Operator and all of its employees, agents and subcontractors shall coordinate performance of the Services, including the scheduling and performance of maintenance and repairs, with the Landfill Operator, including the manager of the Site, and contractors of Owner and the Landfill Operator, and shall avoid, to the maximum extent possible, interfering with the Owner's and Landfill Operator's operations at the Site. Without limiting the foregoing, but in accordance with the Administrative Procedures Manual, Operator shall coordinate with

all Owner-Hired Operators and contractors of Landfill Operator who perform work at the Site, including, without limitation, the contractor(s) responsible for operations and maintenance of the landfill gas collection system. Operator shall promptly inform Owner and Landfill Operator of any communication received by Operator from any federal, state or local agencies or other persons or entities relating to the Site, Plant and/or the Services and shall promptly forward to Owner and Landfill Operator all written documents and correspondence received by Operator from such governmental entities or other persons relating to the Site, Plant and/or the Services. Operator shall reasonably cooperate with Owner in meeting its obligations under Section 3.10, including providing reasonably requested information required for obtaining and maintaining Permits.

### 2.3 Routine O&M Services

From the Effective Date and until expiration or termination of this Agreement, Operator shall perform, or cause to be performed, the following Routine O&M Services.

#### 2.3.1 Required Approvals

Prior to the Commercial Operation Date, Operator shall obtain, at its expense, all Governmental Approvals required to be in the name of Operator to allow it to do business in the jurisdictions in which the Services are to be performed and to perform the Services.

#### 2.3.2 Review of Plant Agreements

Prior to the Effective Date, Operator shall review the Plant Agreements. By execution of this Agreement Operator represents and acknowledges that the Operator requirements, obligations, and compensation incorporated in this Agreement are, from the Operator's perspective, consistent with the Plant Agreements.

#### 2.3.3 Governmental Approvals

Prior to the Commercial Operations Date and throughout the term of this Agreement, Operator shall cooperate with, and provide to Owner upon request, reasonable assistance in identifying, obtaining, maintaining, renewing and complying with all Permits which Owner is obligated to obtain, maintain and renew. If there is a Change in Law or a change in Governmental Approvals after the Effective Date pertaining to such Permits, Operator shall remain responsible for complying with the changed Applicable Laws and/or Governmental Approvals (to the extent practicable), subject to Operator's entitlement to a Change Order under this Agreement should such Change in Law or change in Government Approvals impose material additional costs on Operator in its performance of the Services.

#### 2.3.4 Training

Operator shall provide training to all Operator Personnel and subcontractors relating to the operation and maintenance of the Plant. On an ongoing basis throughout the term of

this Agreement, Operator shall conduct additional training of Operator Personnel and subcontractors as necessary or appropriate for new personnel and for refresher training.

2.3.5 Preventive Maintenance Program

Operator shall prepare and implement a preventive maintenance program ("Preventive Maintenance Program"). The Preventive Maintenance Program shall include the regular inspection, testing, calibration and servicing of the equipment and components comprising the Plant and shall conform to manufacturer's instructions, and Prudent Operating Practices.

2.3.6 Preparation of Manuals

Operator shall prepare and/or maintain Manuals for the Plant as follows:

(a) **Administrative Procedures Manual**

Within 60 days after the Effective Date (and through Updates, as necessary), Operator shall submit to Owner for approval an Administrative Procedures Manual ("Administrative Procedures Manual") providing such administrative information regarding Operator's procedures including: (i) the organization of Operator Personnel and their reporting requirements; (ii) correspondence and review procedures; (iii) limits of authority; (iv) procurement and contracting procedures; (v) accounting, bookkeeping and record keeping systems; (vi) personnel procedures; and (vii) procedures for the receipt and implementation of Owner issued directives relating to this Agreement and the Services. Operator will update this manual and other manuals as necessary to reflect changes in Applicable Law, regulatory requirements and changes under this Agreement, including changes in the Services provided (each such update, an "Update") and shall give prompt written notice to Owner of any revision to the Administrative Procedures Manual, accompanied by a revised manual or revision to the existing manual (each such update, an "Update").

(b) **Safety Manual and the Loss Prevention and Security Manual**

Within 60 days after the Effective Date (and through Updates, as necessary), Operator shall submit to the Owner for approval the Site safety manual (the "Safety Manual") and a manual describing the precautions and procedures to prevent or minimize losses, the actions to be taken in an emergency and the Plant's security procedures ("Loss Prevention and Security Manual").

(c) **Operation and Maintenance Manual**

Within 60 days after the Effective Date (and through Updates as necessary), Owner shall provide all Equipment Service Manuals, certifications, as-built drawings, specifications, submittals, and start-up sign-offs for the Plant and associated equipment as and when available. Operator shall, based on Owner supplied

documentation to date, prepare the Operation and Maintenance Manual for the Plant. Thereafter, Operator shall update such Operation and Maintenance Manual as necessary to reflect any other significant new information. The Operation and Maintenance Manual, including all updates thereto, shall meet and conform to Prudent Operating Practices, manufacturers' instructions, and operation and maintenance requirements and recommendations.

2.3.7 Day-to-Day Operations

As of the Effective Date, Operator shall have care, custody and control of the Plant and shall operate the Plant seven (7) Days per week, twenty-four (24) hours per Day. It is understood by the parties to this Agreement that the Plant will be unattended for certain periods. For the avoidance of doubt, Operator Personnel will not be present at the Plant twenty-four (24) hours per Day or every Day. Unattended operations, however, shall not relieve Operator of any of its obligations or responsibilities under this Agreement. In no event shall the Plant be unattended by Operator for longer than seventy-two (72) consecutive hours.

2.3.8 Warranty and Insurance Claim Notification

Operator shall notify Owner as soon as reasonably practicable (but in no event later than forty eight (48) hours) of any material defect, deferred maintenance, or deficiency in the Plant discovered by Operator. The prosecution of all warranty and insurance claims shall be controlled by the Owner. Owner shall not hold Operator responsible for any lost revenues, incremental operating expenses or equipment replacement costs that, subject to investigation, are deemed to be the result of a warranty or insurance claim associated with faulty or substandard equipment, materials or workmanship.

2.3.9 Visitor Log

Operator shall maintain a log of visitors or other outside personnel physically present at the Plant (other than Owner or Landfill Operator), and shall make available to Owner a copy of such log upon request.

2.3.10 Scheduled or Planned Minor Maintenance and Repairs

Operator shall be responsible for carrying out, scheduling, or causing to be carried out, all scheduled maintenance and repairs for the Plant that are not considered Major Maintenance Services under Section 2.5. All maintenance and repairs shall be conducted in accordance with the Manuals and the Preventive Maintenance Program, as applicable. Any outages and maintenance shutdowns shall be conducted in accordance with Permits, Governmental Approvals, and all Applicable Laws. Operator shall be responsible for the planning, scheduling, and management of all outage activities or other Plant downtime, and shall use its commercially reasonable efforts to schedule all outages and maintenance shutdowns to minimize expenses and any loss of revenues, and, as necessary, shall coordinate in advance of such activities with Owner and Landfill Operator.

### 2.3.11 Procurement and Inventories Tracking Program

Operator shall develop, prepare and implement an inventory control and tracking system for Supplies for the Plant. As of the Effective Date and throughout the term of this Agreement, Operator shall purchase and procure all Supplies required to carry out the Routine O&M Services and which are necessary for the safe and effective operation and maintenance of the Plant. Supplies procured for the Plant shall be of a quality equal to or better than, those materials and parts originally stocked, used or installed in the Plant, and in all cases, equal to or better quality than Supplies recommended by the equipment manufacturers. Operator shall ensure that an inventory of Supplies is maintained at the Site in sufficient quantity to ensure that delays resulting from shortages shall be avoided or minimized to the maximum extent practicable. As a guideline, such inventory shall be in accordance with the dictates of experience and Prudent Operating Practices and shall be subject to such reasonable modifications as are consistent with Prudent Operating Practices and the operating experience of Operator.

### 2.3.12 Consumables

Operator shall be responsible for the monitoring, testing, inspection, replacement, and disposal of Plant Consumables. Insofar that the time intervals between such activities are consistent with Prudent Operating Practices, such Consumables will be provided as a part of the Routine O&M Services, and within the reasonable discretion of Operator. To the extent that the intervals between such activities differ materially from those recognized by Prudent Operating and Industry Practice, and insofar that modifying such intervals cannot be attributable to the acts or omissions of Operator, its employees, subcontractors or others acting on behalf of or under the control or supervision of Operator, Operator shall so advise Owner, and such incremental Consumables shall be considered Non-Routine O&M Services. Operator shall submit to Owner billing for Reimbursable Expenses in an amount proportional to the incremental increase in Consumables utilized during the period.

### 2.3.13 Shutdown Notification

Operator shall notify Owner of unscheduled outages, Emergencies or unscheduled maintenance resulting in shutdowns as soon as practicable, but in no event later than twenty four (24) hours after the occurrence thereof, and shall periodically advise Owner of the status of restoring the Plant to normal operations. Operator shall notify all parties required to receive notice of outages pursuant to the Plant Agreements.

### 2.3.14 Recordkeeping

Operator shall maintain accurate and complete operating records, maintenance reports, and metering data for the Plant. Operator shall cooperate with Owner's accountants and auditors in the preparation of Owner's periodic financial statements and reports.

### 2.3.15 Routine Hazardous Waste Disposal

Operator shall, at Owner's direction and control and as Owner's agent, dispose of solid and liquid waste and Hazardous Substances generated by or located at the Plant in accordance with Applicable Law, so long as the presence of such Hazardous Substances at the Site is a direct result of the Operator's performance of the Routine O&M Services or the Major Maintenance Services, and provided that disposal of such Hazardous Substances does not require special considerations inconsistent with those practices commonly used by third party operators of facilities similar in type to the Plant such as those considerations, including registration and process, associated with the federally regulated Resource Conservation and Recovery Act. For the avoidance of doubt, any Hazardous Waste Disposal costs associated with Operator's Non-Routine Services, and/or Services requested by Owner, shall be cost components of such Services, and billed separately as Reimbursable Expenses.

### 2.3.16 Safety

Operator shall review copies of all applicable rules and regulations for the Site (which, for the avoidance of doubt, shall include the active Landfill, together with all adjacent real property under the control of the Landfill Owner and Operator) which are related to fire, safety, health and environmental protection. Operator shall abide by, and shall cause its employees, agents, and any subcontractors it employs to abide by, all such rules and regulations as well as any and all of Operator's own safety programs. Operator shall conduct its operations of the Plant in such a manner as to minimize the risk of bodily harm or damage to property consistent with Prudent Operating Practices. Without limiting the foregoing, Operator shall:

- (a) maintain accurate accident and injury reports;
- (b) train its employees in safety practices and requirements;
- (c) maintain a supply of suitable safety equipment and enforce the use of such equipment by its employees, subcontractors and visitors;
- (d) make regular safety inspections of the Plant;
- (e) conduct Annual safety tests and calibration procedures for Plant safety monitoring and/or sensing equipment, or as otherwise required by the Manuals associated with such equipment;
- (f) instruct its employees and subcontractors in the proper use and disposal of Hazardous Materials and comply with all Applicable Laws pertaining to the same; and
- (g) comply with the applicable Occupational Safety and Health Act, as amended from time to time, provided however, that Owner shall be responsible for the cost of any noncompliance in the Plant, including but not limited to, all buildings, equipment and other improvements that comprise the Facility, as constructed, except to the extent such non-compliance is caused by the direct actions or omissions of Operator, or any third party under Operator's control or direction.

### 2.3.17 Security

Operator shall initiate and maintain reasonable security precautions and programs, based on Owner supplied facility provisions, to protect the Plant against vandalism, theft, arson, or other similar actions; provided that, except in the case of an Emergency, all such precautions and programs shall be subject to the Owner's prior written approval. Any security for the Site provided by Landfill Operator shall not relieve Operator or Owner of their respective responsibilities and obligations under this paragraph. Notwithstanding the foregoing, Operator will not be responsible for any losses through theft or otherwise, unless the same occurs due to the act or omission of Operator, its employees, subcontractors or others acting on its behalf or under the control or supervision of Operator.

### 2.3.18 Environmental Monitoring and Compliance

Operator shall perform and be responsible for environmental monitoring, testing and reporting relating to the Plant and GCCS (if applicable under the provisions of Sections 2.3.22 and Appendix G) as required under any Governmental Approvals and/or Applicable Law, including, without limitation, monitoring, testing and reporting required by any rules, orders, regulations or other requirements of the local Lead Enforcement Agency (LEA) and/or the EPA. In addition to the reporting requirement under Section 4.2.6, Operator shall promptly notify Owner of any Failure of any portion of the Plant to meet the air emissions permit requirements, and Operator shall promptly work to correct such deficiencies (at Owner's cost as a Reimbursable Expense), including, if requested by Owner, shutdown of the Plant, unless such Failure is due to Operator's failure to provide the Services hereunder to the standards required hereunder. If there is a Change in Law or a change in Governmental Approvals after the Effective Date pertaining to environmental monitoring, testing and reporting relating to the Plant, Operator shall remain responsible for complying with the changed Applicable Laws and/or Governmental Approvals (to the extent practicable, and solely as relates to environmental monitoring, testing and reporting), subject to Operator's entitlement to a Change Order under this Agreement should such Change in Law or change in Government Approvals impose additional costs on Operator in its performance of the Services.

### 2.3.19 Access

At all times during the Term, Owner, Lender, Landfill Operator and their respective employees, agents and representatives shall have access to the Plant, with reasonable prior notice, provided that such access shall not interfere with Operator's ability to perform the Services and provided further that such access shall be consistent with the terms of the Site Lease. Any party requesting access will provide to the Operator reasonable advance notice of such requested access in order for Operator to ensure a safe environment, and that 'Operator Personnel and the relevant records are available.' Owner also shall have access to all documents, materials, records, and accounts relating to Plant operations for purposes of inspection and review.



2.3.20 Operator's Insurance

Operator shall, by the Effective Date, obtain and maintain the insurance required to be obtained and maintained by Operator pursuant to Article 8.

2.3.21 Operator's Representative

Operator shall designate a representative (the "Operator's Representative") which shall be authorized to act on behalf of Operator in all respects to this Agreement and with whom Owner may consult at all reasonable times. Whenever this Agreement requires or provides for the approval, consent or some other action of Operator, Owner may rely upon the approval, consent or other action of Operator's Representative. Operator may change Operator's Representative at any time upon written notice to Owner.

2.3.22 GCCS O&M Services

In the event that the GCCS for the Landfill is included in the Plant description of Appendix F, Operator shall be responsible for carrying out or causing to be carried out, the Routine O&M Services described as a part of the GCCS O&M Services as outlined in Appendix H.

2.3.23 Reporting

Operator shall be responsible for meeting the reporting requirements of Section 4.2 as a part of the Routine O&M Services.

2.4 Non-Routine O&M Services

From the Effective Date and until expiration or termination of this Agreement, Operator shall perform, or cause to be performed, certain Non-Routine O&M Services for the Plant. Such Non-Routine O&M Services will be considered Reimbursable Expenses, and subject to the reimbursement provisions as defined in Section 5.4. Throughout the term of this Agreement, Owner acknowledges that Operator shall, from time to time, perform certain Non-Routine O&M Services as described in this Section 2.4. So long as Operator is performing under the terms of this Agreement, in no event shall Owner undertake the performance of Non-Routine Maintenance Services with a party other than Operator without first obtaining Operator's written permission.

2.4.1 Warranty and Insurance Claim Assistance

Operator shall provide to Owner reasonable assistance in the investigation and preparation of any claims made to any insurance carrier for payments of claims, liabilities or losses in connection with the Plant or operations covered by such insurance. Notwithstanding the foregoing, any incremental costs incurred by Operator in the course of providing such assistance (e.g. Travel, Lodging, Engagement of 3<sup>rd</sup> Party Experts, Laboratory Analysis, etc.) will be reimbursed by Owner as Reimbursable Expenses under this Agreement.

#### 2.4.2 Unscheduled or Unplanned Maintenance and Repairs

Operator shall be responsible for carrying out or causing to be carried out, unscheduled maintenance and repairs for the Plant as a part of the Non-Routine O&M Services. All unscheduled maintenance and repairs shall be conducted in accordance with the Manuals, as applicable. Any outages and maintenance shutdowns shall be conducted in accordance with Permits, Governmental Approvals, and all Applicable Laws. As reasonably practicable for unscheduled maintenance and repairs, Operator shall be responsible for the planning, scheduling, and management of all outage activities or other Plant downtime, and shall use its commercially reasonable efforts to schedule all outages and maintenance shutdowns to minimize expenses and any loss of revenues, and shall, if necessary, coordinate such activities in advance with Owner and Landfill Operator.

#### 2.4.3 Coordination with Utility

Operator, at the request of Owner, shall assist Owner in matters relating to the Power Purchase Agreement and Generator Interconnection Agreement, including review and confirmation of readings on Plant billing meters, confirmation of applicable invoices, provision of relevant production information, and preparation of Plant generation schedules (to the extent requested by Owner or the Utility).

#### 2.4.4 Non-Routine Hazardous Waste Disposal

For all solid and liquid waste and Hazardous Substances generated by or located at the Plant, the presence of which at the Site is not associated with the Operator's performance of the Routine O&M Services and Major Maintenance Services, Operator shall, at Owner's direction and control and as Owner's agent, dispose of such Hazardous Substances in accordance with Applicable Law. Such disposal shall be a Reimbursable Expense under this Agreement. This shall include, as applicable, those considerations for Hazardous Substances, including registration and process, associated with the federally regulated Resource Conservation and Recovery Act.

#### 2.4.5 Safety Equipment Repairs, Maintenance, or Upgrades

In the event that repairs, maintenance, or upgrades to facility safety equipment are required due to a Change in Law, obsolescence of the equipment or materials, malfunction not directly attributable to Operator error or misuse, or such other reason not associated with the Routine O&M Services for such safety equipment, Operator shall perform such repairs, maintenance, or upgrades to facility safety equipment as Non-Routine O&M Services. Operator shall make best commercial efforts to perform such Services in a timely and efficient manner so as to ensure Site safety and maintain compliance with Applicable Law.

#### 2.4.6 Non-Routine Spare Parts Inventory

In the interest of maintaining a reasonable level of preparedness for unanticipated Failure or repairs, throughout the term of this Agreement Operator shall purchase, procure, and

maintain an inventory of select spare parts and Supplies for Non-Routine O&M Services. As a guideline, such inventory shall be in accordance with the dictates of experience and Prudent Operating Practices and shall be subject to such reasonable modifications as are consistent with Prudent Operating Practices and the operating experience of Operator. All costs associated with the procurement of significant spare parts, which for purposes of this Agreement shall refer to those spare parts costing more than five thousand dollars (\$5,000) per unit, and Supplies for Non-Routine O&M Services will be considered Reimbursable Expenses. Such costs will be requested by Operator and approved by Owner prior to the Operator's procurement of such materials. Inventory tracking, quality, and quantity of spare parts and Supplies for Non-Routine Services will be conducted in accordance with Section 2.3.11.

2.4.7 Other Non-Routine O&M Services

Operator shall be responsible for carrying out or causing to be carried out all other Non-Routine O&M Services as described in Appendix G.

2.4.8 Non-Routine GCCS O&M Services

In the event that the GCCS for the Landfill is included in the Plant description of Appendix F, Operator shall be responsible for carrying out or causing to be carried out, the Non-Routine GCCS O&M Services described as a part of the GCCS O&M Services in Appendix H.

2.5 Major Maintenance Services

From the Effective Date and until expiration or termination of this Agreement, Operator shall be responsible for carrying out, scheduling, or causing to be carried out, all Major Maintenance Services for the Plant. All Major Maintenance Services shall be conducted in accordance with the Preventive Maintenance Program, as applicable. Such Major Maintenance Services will include the following activities:

2.5.1 Major Maintenance Service Activities

The activities that constitute Major Maintenance Service Activities are described in Appendices E and I.

2.5.2 Scheduling/Notification of Major Maintenance Shutdowns

Operator shall establish scheduled Major Maintenance Service Activities in its Annual Operating Plan, and shall confirm such Activities by notification to Owner and Landfill Operator not less than fifteen (15) days in advance of scheduled Major Maintenance Service activities, and shall coordinate scheduling as provided in Section 2.2.4. Any outages and maintenance shutdowns shall be conducted in accordance with Permits, Governmental Approvals, and all Applicable Laws. Operator shall be responsible for the planning, scheduling, and management of all outage activities or other Plant downtime, and shall use its commercially reasonable efforts to schedule all outages and maintenance

shutdowns to minimize expenses and any loss of revenues. During scheduled Major Maintenance Service activities, Operator shall periodically advise Owner of the status of restoring the Plant to normal operations. Operator shall notify all parties required to receive notice of outages pursuant to the Plant Agreements.

### 2.5.3 Adjustments to Major Maintenance Schedule

In accordance with the dictates of experience, Prudent Operating Practices, and in carrying out the standards of performance outlined in Section 2.2.1, Operator may from time to time deem it necessary or desirable to make adjustments in the Major Maintenance Schedule set forth in Appendix E. In such event, Operator shall notify Owner of its recommendations, including reasonable justification for such proposed change in the Major Maintenance Services schedule in Appendix E. Owner hereby agrees to good faith consideration of Operator's recommended changes to the Major Maintenance Services schedule, the approval of which shall not be unreasonably withheld or delayed. Such approval will include the Operator's submission to Owner of a Revised Major Maintenance Schedule, incorporating the changes associated with such recommendations. In the event that Operator provides Owner with recommended adjustments to the Major Maintenance Schedule, and Owner elects to defer such Major Maintenance, Operator shall be relieved of any obligations under this Agreement associated with reduced Plant production (as dictated by Prudent Operating Practice) or Failures of the Plant that could reasonably be attributed to Owner's elected Deferred Major Maintenance.

### 2.6 Emergency

In the event of an Emergency, Operator shall take such action as may be reasonably necessary to prevent, avoid or mitigate any injury to individuals, damage or loss to property and shall, as soon as practicable, but in no event greater than twenty four (24) hours after Operator first becomes aware of the Emergency, report to Owner any such incident, including Operator's response thereto. Operator shall perform Emergency services in strict accordance with all manufacturer's instructions and Owner's reasonable instructions, if any, with respect to each item of equipment or other component of the Plant. In the event Operator determines, in its reasonable discretion, that the scope of services and costs required to respond to an Emergency will be significant, Operator shall take only such action as is necessary to secure the condition and ensure that no hazard or endangerment remains and, thereafter, shall implement such services only upon authorization by Owner in accordance with a written Change Order under Section 4.3, which shall not be unreasonably withheld or delayed.

## ARTICLE 3

### OBLIGATIONS OF OWNER

#### 3.1 General

Owner shall furnish to Operator, at Owner's expense, the information, services, materials and other items required under this Agreement, including but not limited to, those items described in this Article 3. All such items shall be made available at such times and in such manner as may be required for the timely, expeditious and orderly performance by Operator of the Services.

### 3.2 Information

Within five (5) Days of its actual receipt thereof (but in no event later than the Effective Date), Owner shall provide to Operator complete copies of all technical, operational and other Plant related information, including the Plant Agreements, in the possession, or under the control, of Owner. Operator shall not be responsible for any default hereunder resulting from Owner's failure to provide such information.

### 3.3 Access

From the Effective Date, Owner shall provide Operator with access to the Site, consistent with the terms of the Plant Agreements and the Site Lease, subject to A) Operator's compliance with all safety and other requirements of Sections 2.3.6 and 2.3.16 and B) such access shall not interfere unreasonably with Owner's or Landfill Operator's operations at the Site.

### 3.4 Care, Custody and Control

On the Effective Date of this Agreement, Owner shall transfer to Operator care, custody and control of the Plant.

### 3.5 Sale of Electricity

Owner shall be responsible for the billing for and collection of electricity revenues and other Products under the Power Purchase Agreements and such other Product Purchase Agreements (as applicable) based upon the electrical production information provided by Utility.

### 3.6 Owner's Representative

Within thirty (30) Days after the Effective Date, Owner shall designate a representative (the "Owner's Representative") who shall be authorized to act on behalf of Owner in all respects to this Agreement and with whom Operator may consult at all reasonable times. Whenever this Agreement requires or provides for the approval, consent or some other action of Owner, Operator may rely on the approval, consent or other action of Owner's Representative. Owner may change Owner's Representative at any time upon written notice to Operator.

### 3.7 Fuels and Utilities

Owner shall provide or cause to be provided and directly pay for all landfill gas (or such other substitute fuel; excepting engine oil and other Consumables which are provided as part of Routine O&M Services), purchased electricity, water (potable and process), sewage, telecommunication, high speed internet, refuse disposal, and all other utilities and utilities charges used by the Plant, as well as the cost incurred in connection with the contracting for the

disposal of any Hazardous Substances generated in the normal course of operations of the Plant. Should Owner elect, Operator will manage and pay for all non-royalty related utilities, to be submitted to the Owner as a Reimbursable Expense for reimbursement on a monthly basis.

### 3.8 Owner's Insurance

Owner shall, by the Effective Date, obtain and maintain the insurance required to be obtained and maintained by Owner pursuant to Article 8.

### 3.9 Permits

Owner shall be responsible for the cost of obtaining, developing, maintaining, and renewing all compliance documents, plans, and Permits necessary for: (i) Owner's conduct of business in the jurisdictions in which the Plant and Site are located, (ii) the ownership, operation and maintenance of the Plant and the Site, and (iii) environmental compliance with Applicable Law, with Operator's support and cooperation as provided in Sections 2.3.3 and 2.3.18. Owner will take all actions reasonably required of Owner to continuously obtain and maintain such documents, plans and Permits and, as necessary, to allow Operator to meet its testing and regulatory obligations hereunder.

### 3.10 Compliance with Applicable Law

Owner shall perform its obligations under this Agreement in accordance with Applicable Law and the Permits.

### 3.11 Hazardous Waste Disposal

Owner shall be responsible for, but the Operator shall arrange for, the disposal of Hazardous Waste generated by or at the Plant or Facility. Such disposal shall be performed in a safe manner and in accordance with Applicable Law, and any subcontractor hired to dispose of such wastes shall be competent, insured, and licensed in accordance with Applicable Law. As necessary, Owner will obtain the applicable site EPA ID or other ID as required by State law for such disposal.

### 3.12 Control/SCADA/Remote Monitoring Software and Licensing

Owner shall provide all communication, SCADA, and Control software, licensing, access passwords, access codes, logic, and development code to allow ongoing maintenance and updates as required to support operations during the term of this Agreement. If not provided, update currency, licensing, and required programming modifications will be performed by Operator and treated as a Reimbursable Expense under this Agreement. Owner shall be responsible for all direct costs associated with equipment control system(s), plc(s), and SCADA system licensing, currency, and updates. Operator will manage, as a routine service, the timing, maintenance, and condition of the foregoing systems, and be compensated through the Operating Fee. Replacement, updates, or upgrades to software and hardware will be considered Non-Routine Reimbursable Expenses.

Owner acknowledges and agrees that a functional SCADA system and high speed internet connection capable of remote monitoring and set point control, historical and real time trending, and automatic report generation must be available at the Plant in order for Operator to comply with the terms of this Agreement. To the extent such SCADA and high speed internet connections are not available at the Plant at the Effective Date, Owner will undertake the installation thereof. Operator will, upon Owner's request, assist Owner in obtaining a functional SCADA system to satisfy the foregoing requirements. Such Operator Assistance will be billed as a Reimbursable Expense pursuant to the terms of this Agreement

### 3.13 Coordination and Communication

Owner, its employees, agents and subcontractors shall reasonably cooperate and communicate with Operator in meeting its obligations under this Agreement.

### 3.14 Deferred Maintenance

Prior to the Effective Date, Owner and Operator will agree on a reasonable Deferred Maintenance budget (if required), based on equipment condition at the Effective Date. Such Deferred Maintenance Budget will be taken into consideration in Operator's computation of its initial annual Major Maintenance Services Budget.

### 3.15 Electrical Compliance and Safety

As of the Effective Date, Owner shall confirm and provide documentation of current NETA (National Electrical Testing Association) testing, and facility safety, results and compliance. If current proof of testing and compliance are not available as of the Effective Date, the Operator will undertake the testing, and if required, repair services, both as a Reimbursable Expense.

As may be required from time-to-time throughout the term of the Agreement, Operator will maintain and perform any specific insurance related testing requirements, and be compensated as a Reimbursable Expense.

### 3.16 Environmental Reporting Documentation

On or before the Commercial Operations Date, or the Effective Date (as applicable), Owner shall provide all previously existing Environmental Reporting documentation based on permit conditions, associated compliance, and Subject to 4.2.6. If not available or incomplete, Operator will complete the required documentation, and be compensated as a Reimbursable Expense.

### 3.17 Base Stock Consumables, Tooling, Safety Supplies

As of the effective date, Owner to supply or caused to be supplied through the Operator a base stock of consumables (engine oil, coolant, spark plugs), tooling (hand and specialty), and safety supplies (eye wash, LOTO station, hearing protection, AED). These materials will be managed, maintained, and replenished through the contract period as part of the Routine Services.

**ARTICLE 4****PROCEDURES, PLANS AND REPORTING****4.1 Annual Operating Plan****4.1.1 Adoption**

At least sixty (60) Days following the Commercial Operations Date, or Effective Date (as applicable) and at least sixty (60) Days before the start of each Operating Year thereafter, Operator shall prepare and submit to Owner a proposed Annual Operating Plan for the Plant. The proposed Annual Operating Plan shall set forth, among other things, the Annual Performance Projection, the Operating Fee budget applicable to the upcoming Operating Year, plans and schedules for Major Maintenance Services and other maintenance, and any Change Order Budget Statement, including any capital improvements budget for the upcoming Operating Year, if applicable. Owner shall promptly review Operator's proposed Annual Operating Plan and may, upon written notice to Operator, propose changes, additions, deletions and modifications thereto. To the extent any changes are requested by Owner and approved by Operator, the proposed Annual Operating Plan for the Plant, as modified, shall be adopted. In the event Operator does not agree with certain of Owner's proposed changes, then the parties shall meet and work in good faith to agree upon an Annual Operating Plan for the Plant. Once the parties are in agreement, copies of the Annual Operating Plan shall be approved in writing by both parties. Once approved, the Annual Operating Plan for the Plant shall remain in effect throughout the applicable Operating Year, subject to such Change, revision, amendment and updating as may be proposed by either party and agreed to in writing by the other party in accordance with Section 4.3.

**4.1.2 Failure to Agree Upon Annual Operating Plan**

If the parties cannot reach agreement on the Annual Operating Plan for the Plant for an Operating Year by the start of such Operating Year, then, until such time as agreement is reached or the dispute is resolved, the Annual Operating Plan for the Plant for such Operating Year shall be the same as the Annual Operating Plan for the prior Operating Year, subject to adjustment as required for the safe operation of the Plant and as required under the applicable Plant Agreements. If the parties have not reached an agreement on the Annual Operating Plan for the Plant for an Operating Year within ninety (90) Days after the start of such Operating Year, then Operator's proposed Annual Operating Plan will be adopted, subject to the Operating Fee required under Section 5.2 hereof, and retaining all Change Order provisions regarding additional costs and expenses being requested of or imposed upon Operator at the direction of Owner. In the event the parties cannot agree on an Operating Plan for a given year, Operator shall remain obligated to perform the Operating Services under the Agreement, but shall be relieved of any responsibility for the Annual Generation Performance Guarantee, Major Maintenance Services, and non-routine or unscheduled maintenance and repairs, until such time that an Annual Operating Plan is approved.



## 4.2 Accounts and Reports

From and after the Effective Date, Operator shall furnish, or cause to be furnished, to Owner the following reports:

### 4.2.1 Daily Operating Reports (Automated through SCADA)

By noon of each Business Day, Operator shall submit to Owner by e-mail the following information from the previous Day, or multiple Days if no daily reports were provided over weekends or holidays; (i) genset runtime (in hours), (ii) genset electricity production (kWh, gross and net), (iii) average Landfill Gas ("LFG") percent Methane (%CH<sub>4</sub>). Operator may arrange for this information to be automatically provided to Owner through the plant SCADA system.

### 4.2.2 Outage Reports

Within twenty-four hours after the occurrence of any unscheduled outage or Emergency at the Plant, provided such outage or Emergency is expected to have a duration longer than twenty-four hours or if such outage or Emergency is expected to negatively affect the performance of the Plant thereafter, Operator will provide notification to Owner via e-mail describing the outage or Emergency, any known causes, and expected duration. Thereafter Operator will use commercially reasonable efforts to keep Owner informed of Operator's efforts to overcome, minimize or resolve such outage or Emergency.

### 4.2.3 Monthly Reports

Within ten (15) Days after the end of each calendar month, Operator shall submit to Owner: (i) a monthly report in reasonable detail covering activities conducted during such calendar month with respect to operations and maintenance of the Plant (including information regarding safety incidents, power generation, fuel consumption, unscheduled maintenance and repairs, forced outages, and any material operating problems encountered by Operator together with the remedial actions planned by Operator), and a summary of major activities planned and/or changes in operations expected over the next calendar month with respect to the Plant; (ii) a statement setting forth all of the Reimbursable Expenses paid or incurred during the month, which statement shall: (a) itemize in reasonable detail the computation of such amounts, and (b) provide a summary of the Reimbursable Expenses incurred for the specific month and the year to date total and any budget deviations indicated; (iii) any notices or any other reports or documents Owner as required to provide pursuant to the Plant Agreements, Governmental Approvals or Applicable Law (iv) regulatory compliance issues active or resolved in the current month or expected in the next three months; and (vi) as applicable, monthly reports required under the GCCS O&M Services of Appendix H.

### 4.2.4 Operating Year Reports

Within Sixty (60) Days after the end of each Operating Year, Operator shall submit to Owner: (i) a summary report covering the performance of the Plant and operation and

maintenance activities conducted during the previous Operating Year with respect to the Plant including information regarding: (a) trending analysis of all data included in the monthly reports submitted per section 4.2.3, (b) total electricity generation (kWh, gross and net); (c) capacity factor (%); (d) total consumption of fuel (SCF and MMBtu); (e) average annual heat rate (Btu-HHV/kWh); (f) capital improvements made; (g) maintenance; (h) conformance or non-conformance with the Annual Operating Plan for such Operating Year; (i) any material operation or other problems (including outages and Emergencies) encountered by Operator along with the remedial actions planned; (j) a summary report of major activities planned or changes in operations expected over the next Operating Year; (k) a statement setting forth all Reimbursable Expenses paid or incurred, and any deviations from the Change Order Budget Statement; (l) any updates to the Major Maintenance Budget and Schedule of Appendix E pursuant to the terms and conditions of Section 2.5.3; (m) as applicable, any change in Operator's published rates for Non-Routine O&M Services and Reimbursable Expenses for the upcoming year; and (n) as applicable, annual reports required under the GCCS O&M Services of Appendix H.

#### 4.2.5 Documents and Records

Operator shall maintain and keep current all Manuals prepared or furnished by or through Owner, Operator, vendors, suppliers, manufacturers, or others. Operator shall maintain a file documenting all operations, maintenance and monitoring activities and maintenance histories.

#### 4.2.6 Environmental Reporting

Environmental monitoring and reporting will be based on Owner supplied plan documentation including, but not limited to; NESHAP Regulation, Hazardous Material Business Plan, Storm Water Management Plan, Spill Prevention Control and Countermeasure Plan (SPCC), Title V permit, and Start-up Shutdown and Malfunction (SSM) Plan. Any environmental monitoring or testing reports relating to the Plant required under Governmental Approvals, Applicable Law and/or Plant Agreements shall be prepared in draft by Operator and submitted to Owner at least ten (10) Business Days prior to the required submittal date. Owner shall review and comment on such reports within five (5) Business Days after receipt and Operator shall revise (in accordance with Owner's comments) and transmit such reports in final form to Owner within two (2) Business Days thereafter. All final reports shall be submitted to the applicable agencies by Owner.

### 4.3 Changes

#### 4.3.1 Proposal of a Change

The parties recognize that Changes may be required during the term of the Agreement. Each of Owner and Operator may, by a written notice to the other party, propose a

Change. The written notice shall describe the proposed Change in reasonable detail and the reasons therefore.

#### 4.3.2 Change Order Budget Statement

The written notice of a Change proposed by Operator shall be accompanied by a Change Order Budget Statement. Upon notification by Operator of any proposed Change from Owner, Operator shall use its commercially reasonable efforts to prepare and submit to Owner a Change Order Budget Statement with respect to such Owner-proposed Change within fifteen (15) Days of the receipt of Owner's proposed Change. No proposed Change shall be implemented until a Change Order has been executed by both parties approving the Change and the related Change Order Budget Statement; provided, however, that Operator shall be entitled to implement a proposed Change without the prior approval of Owner if such change is required due to an Emergency, provided that to the extent an Emergency arises out of or results from the acts or omissions of Operator, its employees, subcontractors or others acting on behalf of or under the control or supervision of Operator, costs associated with a Change due to such Emergency shall be borne by Operator.

#### 4.3.3 Agreement on Change Order

Owner and Operator shall diligently and in good faith endeavor to reach agreement upon any proposed Change and the related Change Order Budget Statement: (i) within thirty (30) Days after the date of the receipt by Owner of a proposed Change and related Change Order Budget Statement from Operator or (ii) within forty-five (45) Days after the date of the receipt of a proposed Change from Owner and thirty (30) Days after the date of receipt of the related Change Order Budget Statement from Operator, whichever is earlier. If a Change is required as a result of an Emergency, then Operator shall provide to Owner, as soon as practicable, notice of such Change, together with a statement describing the Emergency. Within seven (7) Days of completion of a Change due to an Emergency, Operator shall provide Owner with a Change Order and a Change Order Budget Statement. If Owner believes that an Emergency did not exist or that the Emergency arose from or was related to the acts or omissions of Operator, its employees, subcontractors or others acting on behalf of or under the control or supervision of Operator, then Owner shall have the right to dispute the Change. If Owner and Operator do not agree as to the resolution of such dispute, then either party may submit the dispute for resolution in accordance with Article 11.

#### 4.3.4 Other Plant Agreements

If Owner: (i) identifies any other agreement impacting the ownership or operation of the Plant and wants such agreement to be included as a Plant Agreement for purposes of this Agreement, or (ii) amends a Plant Agreement, then Owner shall provide a copy of such agreement or amendment to Operator to enable Operator to determine whether such agreement or amendment will cause any changes to the Services or the costs of performing the addition to the Services. If Operator makes such a determination, the

treatment of such agreement as a Plant Agreement or the amendment of the Plant Agreement, as the case may be, shall be deemed to be a Change proposed by Owner for purposes of this Section 4.3.

## ARTICLE 5

### COMPENSATION AND PAYMENT

#### 5.1 Payments to Operator

As compensation to Operator for the performance of the Services, Owner shall pay Operator in the manner and at the times specified in this Article 5, the Operating Fee and Reimbursable Expenses (collectively, "Services Compensation").

#### 5.2 Operating Fee

Owner shall pay to the Operator, on a monthly basis, an "Operating Fee". The Operating Fee, inclusive of any applicable tax, shall be on a per kilowatt hour basis ("kWh") produced and delivered to the Point of Interconnection with Annual Escalation (per calendar year) on a percent basis. The initial Operating Fee rate and Annual Escalation rate for each Plant shall be as described in Appendix I. The Operating Fee shall cover the Routine O&M Services. The Operating Fee shall exclude Reimbursable Expenses, Non-Routine O&M Services, costs arising from Force Majeure, and costs arising from Emergencies. In addition to payment of the Operating Fee, Owner shall pay to the Operator Reimbursable Expenses incurred by Operator as set forth herein, including, without limitation, in Section 5.4, and except as otherwise set forth in Section 14.5. Such Reimbursable Expenses are in addition to payments by Owner to Operator of the Operating Fee payable hereunder.

##### 5.2.1 Minimum Operating Fee

Notwithstanding anything contained herein to the contrary, and excepting conditions of Force Majeure, Operator's failure to perform its duties and obligations under this Agreement, and/or Operator's negligence, neglect, or willful misconduct, Owner agrees to pay to Operator minimum compensation for each monthly operating period, equal to 70% of the Annual Performance Projection (in kWh) divided by 12 and calculated at the applicable rate for each Plant, as described in Appendix I to this Agreement (the "Minimum Operating Fee"). For purposes of applying the Minimum Operating Fee, Plant performance comparisons with the Annual Performance Projection will be assessed on a quarterly basis. In the event that an Annual Performance Projection has not been agreed upon as a part of the Annual Operating Plan, the Minimum Operating Fee shall be equal to the Minimum Operating Fee as calculated for the previous Operating Year.

#### 5.3 Overhaul Fee

An Overhaul Fee for each year of the Agreement is specified in Appendix E, and separately funded through an Owner-controlled Major Maintenance Account. Defined Overhaul Work is limited to the Prime Mover(s) and includes: Top-End, In-Frame, and Major Overhaul, as well as turbocharger replacement, all as described in Appendix E. Published rates for each annual Major Maintenance Service activity are provided in Appendix I and, as seen in Appendix E, Annual Escalation (per calendar year) on a percent basis will be applied for each activity. Overhaul work is to be completed based on operational indicators as defined through manufacturer service manuals, industry experience, and Prudent Operating Practices. The budget, schedule and associated costs are provided in Appendix E and may be adjusted from time to time pursuant to Section 2.5.3. Operator will issue to Owner a Purchase Order for all parts, materials, consumables, and labor, to be incurred in preparation to perform the Overhaul Work, not less than 30 days prior to commencing such Work. The remaining cost of the Work shall be due upon completion of the Overhaul work, pursuant to the terms of this Agreement.

#### 5.4 Non-Routine O&M Services Compensation and Payment

All Non-Routine O&M Services as described in Section 2.4 and Appendix G shall be considered Reimbursable Expenses and shall be billed monthly at Operator's published rates. Within thirty (30) Days following the end of any month in which Operator performs Non-Routine O&M Services, unscheduled maintenance, or repairs resulting from a breakdown or Change to the Plant, the Plant Agreements, or Applicable Law that occurs due to Force Majeure or acts or omissions of Owner or third parties other than Operator, its employees, subcontractors or others acting on behalf of or under the control or supervision of Operator. Operator shall submit to Owner an estimated cost of Reimbursable Expenses for each month, if any, and a corresponding invoice for all Reimbursable Expenses incurred by Operator during such month. In no event shall Operator be entitled to be paid for any Reimbursable Expenses without an approved Change Order except for: (a) Reimbursable Expenses less than twenty-five thousand dollars (\$25,000) incurred by Operator in connection with an Emergency pursuant to Section 2.6; or (b) those Non-Routine O&M Services not directly attributable to an Emergency that constitute Reimbursable Expenses, including labor and materials, of less than five thousand dollars (\$5,000) for all Non-Routine O&M Services in a single month. In the case of both the preceding exceptions, Operator shall retroactively, but not as a pre-requisite for payment, execute a Change Order with the Owner pursuant to Section 4.3. Costs associated with any Non-Routine O&M Services or unscheduled repairs resulting from a breakdown of the Plant that occurs due to the act or omission of Operator, its employees, subcontractors or others acting on behalf of or under the control or supervision of Operator shall be borne by Operator and shall not be included in Reimbursable Expenses.

#### 5.5 Accounting and Audit Rights

Operator shall keep and maintain, in accordance with generally accepted accounting principles consistently applied, books, records, accounts and other documents ("Records") sufficient to reflect accurately and completely all Reimbursable Expenses. Operator shall keep and preserve the Records for a period of at least three (3) years from and after the close of the Operating Year in which such costs were incurred. Owner shall be entitled to conduct a subsequent audit of all Reimbursable Expenses incurred by Operator and paid by Owner hereunder, together with any

supporting documentation, for a period of one (1) year from and after the end of the Operating Year in which the invoice was submitted to Owner. Once an audit has been completed, Owner and its assignees shall not be entitled to audit rights for the same Operating Year or Operating Years that were the basis of the previous audit, unless the need to re-audit any previously audited year is due to the intentional misrepresentation of Operator.

#### 5.6 Payment

Commencing upon the Effective Date, the Operating Fee, Overhaul Fee, and any Reimbursable Expenses shall be payable on or before the twentieth (20<sup>th</sup>) business day following the receipt of Operator's reasonably detailed invoice for such Services. It is anticipated that the initial Operating fees may represent a partial month depending upon the actual date of Commercial Operation, and/or the Effective Date.

Owner shall make all payments in accordance with Appendix I- Operating Fees. Any payment either made or withheld by Owner pursuant to the terms of this Agreement does not relieve Operator of any responsibility or liability for properly performing all Services in accordance with this Agreement, and the degree of professional care, prudence and skill required hereunder. In addition, such payments either made or withheld do not relieve Operator from its indemnification obligations and/or any other terms or conditions of this Agreement.

#### 5.7 Interest

Any amount owed to one party hereunder by the other party for more than fifteen (15) Days after the date such amount is due shall accrue interest at the Default Rate for each Day from the due date; provided, for the first two late payment only in any consecutive twelve month period, the party owing the money will be entitled to notice of the failure to pay and the right to provide payment within five (5) business days of receipt of such notice without penalty or interest. Such accrual of interest shall take place automatically, and no failure or delay of either party to invoice the other for such interest shall be deemed a waiver of the right to collect such interest.

#### 5.8 Disputed Payments

If Owner disputes in good faith any amounts included in any invoice provided to Owner by Operator, Owner shall give written notice to Operator of each such disputed amount and shall otherwise pay the full amount of such invoice that is not in dispute. Owner and Operator shall endeavor diligently and in good faith to resolve any such disputes in accordance with Article 11. Owner shall also have the right to withhold from payments due Operator a reasonable amount to resolve claims made against Owner by a third party as a result of or in connection with Operator's performance of the Services upon presentation of reasonable evidence of the validity of such claims. Owner shall also have the right to set off against amounts due Operator any amounts owing by Operator to Owner. If any dispute is settled in Operator's favor, Operator shall include the settled amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item, plus any accrued interest related thereto. Owner shall not be deemed to be in breach of this Agreement by reason of reasonably withholding any payment pursuant to any provision of this Agreement or Applicable Law. In no event shall any interest be

due and payable by Owner to Operator on any sums which Owner is authorized to withhold or retain pursuant to this Agreement or otherwise unless a dispute is settled in Operator's favor and interest is determined to be payable.

5.9 Currency

All payments required to be made by Owner under this Agreement shall be in United States dollars.

**ARTICLE 6**

**GUARANTEES, BONUS AND PENALTIES**

6.1 Performance Guarantees

Operator guarantees that the Plant will be capable of achieving all the following performance specifications throughout the Term of this Agreement.

6.1.1 Annual Generation Performance Guarantee.

Except as otherwise specifically provided herein, including, without limitation, Section 2.2.1 and the other provisions of this Section 6.1.1, Operator guarantees that during each Operating Year, the Plant shall produce energy, in the form of net energy sales (in kilowatt-hours) to the utility, in an amount not less than Eighty-Five Percent (85%) of the Annual Performance Projection (the "Annual Generation Performance Guarantee"). If Operator fails to satisfy the Annual Generation Performance Guarantee in any Operating Year, such failure shall be cured and the Annual Generation Performance Guarantee shall be deemed satisfied for such Operating Year if (a) in the first one hundred twenty (120) days of the following Operating Year (the "Performance Guarantee Cure Period") Operator meets the pro rata equivalent of the Annual Generation Performance Guarantee, and (b) Operator satisfies the Annual Generation Performance Guarantee in such following Operating Year. Notwithstanding the foregoing, Operator shall have the aforementioned ability to cure only once during the Term. In the event that Operator fails to meet the Annual Generation Performance Guarantee for any Operating Year and thereafter fails to cure such failure as described above, Owner may, on 90-days written notice to Operator, terminate this Agreement, which termination right is not subject to Section 7.3.

6.1.2 Adjustments to Annual Generation Performance Guarantee

Notwithstanding subsection 6.1.1 above, the Annual Generation Performance Guarantee shall be adjusted by the number of projected kilowatt-hours (kWh) associated with those operating hours during the applicable Operating Year that the Operator was either (i) unable to produce electrical output, or (ii) obligated to produce electrical output at a reduced rate, solely due to any of the following (each an "Adjusting Event"):

- (a) Actions or omissions by Owner, including any nonperformance of its obligations hereunder, or under any other Plant Agreement, that affect such generation;
- (b) Actions or omissions by any third party not under the control, supervision, or acting on behalf of, the Operator;
- (c) The occurrence of a Force Majeure event;
- (d) The unavailability of sufficient Quantity or Quality of Conforming LFG (To the extent that the Quantity or Quality of Conforming LFG available to the Facility differs materially from that agreed to in the Annual Operating Plan and Appendix C, and such difference is not attributable to Operator's performance, negligence or neglect, Operator's Annual Generation Performance Guarantee shall be reduced proportionately as a result of such reduction);
- (e) The occurrence of a Non-Routine Failure of the Plant, the GCCS, equipment (including a Prime Mover), or components of the foregoing (not otherwise characterized as a Force Majeure Event) that results in a shutdown or reduction in performance of the Plant provided that such Non-Routine Failure is not directly attributable to actions or omissions by Operator, its employees, subcontractors or others acting on behalf of or under the control or supervision of Operator;
- (f) Insufficient Plant performance capabilities or availability of Prime Movers, including in the initial design and construction of the Plant, that requires correction, including non-compliance with OSHA, Permits, or Applicable Law, and/or any defects in the Plant or the Equipment unrelated to Operator's failure to provide the Services hereunder;
- (g) Changes in law or other requirements, including changes in Applicable Law, Governments Approvals and Permits, that prevent or delay operation of the Plant and/or availability of Prime Movers until such changes are complied with or that require additional costs and Owner fails to pay such additional costs; or
- (h) A Utility interconnection Failure not reasonably within the control of the Operator, including without limitation a denial or termination of interconnection by the utility.

## 6.2 Penalties, Fines and Assessments

Operator shall be responsible for and shall indemnify, defend and hold harmless Owner, Landfill Operator, Landfill Owner, their Affiliates and their respective employees, agents and subcontractors from and against any and all fines, penalties, fees or assessments ("Damages") suffered or incurred to the extent the Damages arise from or relate to any failure of Operator, its employees, agents and/or subcontractors to comply with or causing Owner not to comply with Permits, Project Agreements, Applicable Law or Governmental Approvals (other than Governmental Approvals that establish pollutant emissions limits). To the extent Owner becomes obligated under any Permit, Applicable Law or Approvals to pay any Damages as a result of Operator's failure to comply with any Permit, Applicable Law or Approvals, then First



Party shall pay Second Party or any applicable governmental entity or agency, as agreed upon by the parties at the time, the full amount of such Damages when due; provided, however, Operator shall not be required to pay such Damages to the extent Operator's failure to comply is a result of Force Majeure, supply (or lack of supply) by Owner of landfill gas that does not meet the definition of Conforming Landfill Gas, or to the extent the Damages are imposed as a result of the acts or omissions of Owner, Landfill Owner, Landfill Operator, Utility, third parties other than Operator, its employees, subcontractors or others acting on behalf of or under the control or supervision of Operator, or their agents or employees. Notwithstanding the foregoing, Operator will not be responsible for Damages caused by Adjusting Events.

## ARTICLE 7

### TERM AND TERMINATION

#### 7.1 Term

The term of this Agreement (the "Term") shall begin on the Effective Date and, unless earlier terminated in accordance with this Agreement, shall be for an initial term of ten (10) years, or for such longer term as the parties may agree, pursuant to a written extension hereof. Unless prior written notice is given by Owner or Operator as set forth below, the Term shall automatically renew for successive five (5) year periods after the initial term. Owner or Operator may, in its respective sole discretion, terminate this Agreement at the end of the Term, including any extension thereof, by delivering written notice to the other party at least sixty (60) days prior to the expiration of the Term. Except as the parties may otherwise agree, the Operating Fee and Overhaul Fees applicable during any extension of the initial Term shall be subject to the Annual Escalation rates published in Appendix I. The renewal rate shall be not less than the operative escalated rate payable in the terminal contract year, unless both parties agree to an adjustment.

#### 7.2 Event of Default

Any of the following events shall constitute an Event of Default: (i) the Bankruptcy of a party; (ii) a party violates or allows a violation of any Permit, Governmental Approval, or Applicable Law applicable to the Services or the Plant, which violation has or may reasonably expect to have a material adverse effect on the non-defaulting party or the operations of any Plant or Site; (iii) a party breaches a material obligation or warranty under this Agreement, including, without limitation, by failure to maintain insurance; and, (iv) the failure of a Party to pay any amount owing hereunder when due (a "Monetary Default").

#### 7.3 Termination by Either Party

Upon the occurrence of an Event of Default other than Bankruptcy or a Monetary Default, the non-defaulting party may terminate this Agreement upon thirty (30) Days' written notice to the defaulting party if and only if the defaulting party does not cure such default within thirty (30) Days after the date of the receipt of the default notice; provided, however, that (a) this 30-day cure period shall not be added to the 120-day Performance Guaranty Cure Period referenced in Section 6.1.1., and (b) if such default cannot reasonably be cured within such thirty (30) Days

and the defaulting party shall have commenced to cure such default within said period and shall thereafter proceed with reasonable diligence and good faith to cure such default, then for such longer period of time (but not more than ninety (90) Days) as shall be necessary to accomplish such cure with all reasonable diligence (so long as such extended period will not cause an immediate material adverse effect on any Plant or the non-defaulting party; provided, further, that the occurrence of any such immediate material adverse effect shall terminate the extended period); provided, upon a Monetary Default, a Party may terminate this Agreement immediately; provided, notwithstanding the foregoing the defaulting Party in such case, will be entitled to notice and the opportunity to cure the first two (2) defaults only in any consecutive twelve (12) months period by paying any amounts owing hereunder within five (5) business days after receipt of notice of such payment default. Upon the occurrence of Bankruptcy of either party, the non-defaulting party may terminate this Agreement immediately upon giving written notice to the defaulting party. If any of the Plant Agreements (specifically, the Landfill Gas Purchase and Sale Agreement or the Power Purchase Agreement) is terminated prior to initiation of the Work by Operator, Owner may terminate this Agreement without compensation upon giving written notice to Operator.

#### 7.3.1 Termination for Convenience Provision

In addition to the termination rights granted to the respective Parties herein, either Party shall have the right to terminate this Agreement for Convenience at any time in its sole discretion, and upon ninety (90) days prior written notice. Such Termination for Convenience shall require the terminating party to pay to the non-terminating party a one-time payment, the calculation of which shall be as follows:

- (i) \$100,000 per Prime Mover operating at each terminated site, which aggregate amount shall be calculated as follows (the "Termination Payment"):
  - (A) 100%, if the termination occurs in the first year of this Agreement;
  - (B) 80%, if the termination occurs in the second year of this Agreement;
  - (C) 60%, if the termination occurs in the third year of this Agreement;
  - (D) 40%, if the termination occurs in the fourth year of this Agreement;  
and
  - (E) 20%, if the termination occurs in the fifth year of this Agreement.

#### 7.3.2 Owner Termination Upon Sale Provision

In the event Owner sells or transfers all or a controlling interest in the equity of any or all of the Plants for which Operator provides Services under this Agreement, this Agreement shall be either (i) assigned to the Buyer of the Plant(s) as a part of the sale or transfer of controlling interest in the equity, or (ii) Terminated at the request of the Buyer of the Plant(s). In the event that the Buyer of the Plant(s) request to Terminate the Agreement, Operator shall be entitled to the Termination Payment from Owner to Operator as

described in Section 7.3.1, or as otherwise negotiated in good faith between Owner and Operator.

### 7.3.3 Additional Operator Termination Rights

In the event that either (i) the Owner is unable to provide Conforming Landfill Gas (or substitute natural gas satisfying the Minimum Acceptable Gas Conditions set forth on Appendix C) for a continuous period of more than 6 months, or (ii) the Operator is obligated under the terms of the Agreement to continually perform the Services at the Minimum Operating Fee for a continuous period of more than 6 months, Operator shall have the right to Terminate the Agreement subject to the notification timelines described in Section 7.3.

### 7.4 Condition of Plant at End of Term

Upon expiration or termination of this Agreement, Operator shall, if applicable, remove the Operator Personnel from the Plant and shall leave the Plant in the same condition as on the Effective Date, normal wear and tear, and any other degradation associated with the occurrence of events of Force Majeure, or Deferred Maintenance, for which Operator or any subcontractor of Operator is not responsible, excepted. All Accessories, Required Supplies and Consumables and any other items furnished as initial spare parts, base stock, or as a Reimbursable Expense and for which Owner has paid will remain at the Plant and will become or remain the property of Owner. Owner also shall directly assume and become liable for any contracts or obligations that Operator may have undertaken with third parties in connection with the performance of the Services, to the extent such contracts and obligations are assignable, and if assignment is requested by Owner.

### 7.5 Obligations upon Expiration or Termination

Upon expiration or termination of this Agreement for any reason, the parties hereto shall reasonably cooperate in the transfer of the operations of the Plant to Owner, or to a replacement operator of the Plant as designated by Owner. Without limiting the foregoing, if requested by Owner, Operator shall provide Owner and the replacement operator with information and data necessary for the safe and efficient operation and maintenance of the Plant. In addition, Operator shall deliver to Owner all books, records, accounts, software used for plant operations, and Manuals received or developed by Operator relating to the Plant pursuant to this Agreement. Owner will also reimburse Operator for all Work (including Reimbursable Expenses) performed or incurred prior to the Termination Date.

## ARTICLE 8

### INSURANCE AND BONDING

#### 8.1 Coordination of Insurance

Owner and Operator agree to obtain on or before the Effective Date, and to maintain in effect during the Term, policies of insurance of the type and in the amounts as specified in Appendix A (“Insurance”), including the deductibles required therein. Operator shall cause Owner and any Lender identified by Owner to be named as additional insured on its policies.

8.2 Certificates and Proof of Loss

On or before the required date for the Insurance to be provided hereunder, each party shall furnish certificates of insurance to the other party evidencing the Insurance required of such party pursuant to this Agreement. The party maintaining the Insurance policy hereunder shall make all proofs of loss under each such policy and shall take all other action reasonably required to ensure collection of the maximum insurable benefits from insurers for any loss under any such policy.

8.3 No Limitation on Liability

The provision of any Insurance hereunder shall not be construed to limit the liability of any party to the other party under this Agreement.

**ARTICLE 9**

**INDEMNIFICATION**

9.1 By Operator

To the maximum extent permitted by law, and subject to the limitations as set forth in Article 10, Operator shall indemnify, defend and hold harmless Owner and its Affiliates, the Landfill Owner, Landfill Operator and their respective shareholders, members, managers, officers, directors, employees, representatives and agents (collectively “Owner Indemnified Parties”), from and against any and all suits, actions, liabilities, legal proceedings, claims, demands, losses, costs and expenses of whatsoever kind or character, including reasonable attorneys’ fees and expenses, for injury to or death of any person (including, but not limited to, injury or death to employees, agents and/or subcontractors of Operator) or loss of or damage to any property, including loss of use, arising directly or indirectly out of or contributed to, in whole or part, by: (i) any breach of any of the representations, warranties, terms, covenants, provisions and/or conditions of this Agreement or violation of any Permit, Project Agreement, Applicable Law or Governmental Approvals by Operator, its employees, agents and/or subcontractors; or (ii) any negligent acts or omissions or willful misconduct by Operator or anyone acting on Operator’s behalf (other than an Owner Indemnified Party or Owner Operator). Notwithstanding the foregoing, the Operator will not be liable for any Damages caused by Adjusting Events.

9.2 By Owner

To the maximum extent permitted by law, and subject to the limitations as set forth in Article 10, Owner shall indemnify, defend and hold harmless Operator and its Affiliates, its shareholders, members, managers, officers, directors, employees, agents and representatives (collectively

“Operator Indemnified Parties”), from and against any and all suits, actions, liabilities, legal proceedings, claims, demands, losses, costs and expenses of whatsoever kind or character, including reasonable attorneys’ fees and expenses, for injury to or death of any person (including, but not limited to, injury or death to employees, agents and/or subcontractors of Owner) or loss of or damage to any property, including loss of use, arising directly or indirectly out of or contributed to, in whole or part, by: (i) any breach of any of the representations, warranties, terms, covenants, provisions and/or conditions of this Agreement or violation of any Permit, Project Agreement, Applicable Law or Governmental Approvals by Owner, its employees, agents and/or Owner Operators or (ii) any negligent acts or omissions or willful misconduct by Owner or anyone acting on Owner’s behalf (other than Operator or an Operator Indemnified Party) or (iii) any liability in connection with Owner’s transportation and disposal of Hazardous Substances. Notwithstanding the foregoing, the Owner will not be liable for any Damages caused by Adjusting Events.

### 9.3 Survival

This Article 9 shall survive termination of this Agreement.

## ARTICLE 10

### LIMITATION OF LIABILITIES OF THE PARTIES

#### 10.1 No Consequential Damages

Except to the limited extent expressly set forth in this Agreement, neither party nor its shareholders, members, managers, officers, directors, principals, agents, lenders, contractors, subcontractors, vendors, employees or related or Affiliated entities shall be liable to the other hereunder for any punitive, consequential, special, incidental or indirect loss or damage or attorneys’ fees associated therewith. The parties further agree that the waivers and the disclaimers of liability, indemnities, releases from liability and limitations on liability expressed in this Agreement shall survive the termination or expiration and shall apply (whether in contract, equity, tort, statute or otherwise) even in the event of the fault, negligence (including the sole negligence), strict liability or breach of warranty of the party indemnified, released or whose liabilities are limited, and shall extend to the officers, directors, principals, agents, contractors, subcontractors, vendors, employees or related or Affiliated entities of such party.

## ARTICLE 11

### DISPUTE RESOLUTION

#### 11.1 Good Faith Negotiation

The Parties shall attempt in good faith to resolve any dispute arising out of, relating to or in connection with this Agreement (“Dispute”) in accordance with this Article 11. The Parties’ obligation to resolve Disputes pursuant to this Article 11 shall survive the termination of this Agreement. Nothing set forth in this Article 11 affects any right of Owner to terminate this Agreement as provided in Section 7.3, and Owner may terminate this Agreement thereunder without affecting any claim arising hereunder or the application of this Article 11 to resolution of such claim.

### 11.2 Notice

The Parties shall promptly seek to resolve any Dispute by negotiations between senior executives of the Parties who have authority to settle such Dispute. When a Party believes there is a Dispute under this Agreement, that Party shall give the other Party or Parties, as the case may be, written notice of the Dispute. Within ten (10) Days after the date of such notice, the receiving Party shall submit to the other a written response. The notice and response shall include a statement of such Party’s position and a summary of the evidence and arguments supporting its position, and the name and title of the executive who shall represent that Party. The designated executives shall meet at a mutually acceptable time and place within ten (10) Business Days after the date of the notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the Dispute. If a Party’s designated executive intends to be accompanied to a meeting by an attorney, the other Party shall be given at least three (3) Business Days’ notice of such intention and may be accompanied by an attorney.

### 11.3 Arbitration

If the Dispute has not been resolved within thirty (30) Days after the date of the notice given pursuant to Section 11.1 or if any Party fails or refuses to participate in the negotiations described in Section 11.2, the Dispute may, if both Parties agree in writing, be finally settled by non-binding arbitration conducted expeditiously in accordance with the then-current Rules of Practice and Procedure for the arbitration of commercial disputes of the American Arbitration Association or any successor thereto (“AAA”), by one independent and impartial arbitrator selected by the AAA. The place of arbitration shall be Atlanta, Georgia. The arbitrator shall apply the substantive law of the state of Georgia, exclusive of its conflict of law rules. The arbitrator is empowered to award only damages (plus arbitration costs and attorneys’ and experts’ fees and interest to the prevailing party) and liquidated damages as provided under this Agreement, and shall not be permitted to award, and each Party hereby irrevocably waives, any damages in excess of such compensatory damages (including attorneys’ and experts’ fees and interest), including a waiver of any indirect, consequential, exemplary or punitive or multiple damages. The arbitrator also is empowered to render decisions declaratory of the Party’s respective rights and obligations under this Agreement. Absent agreement to proceed to arbitration, the parties may pursue all available remedies at law and in equity.

Notwithstanding anything contained herein, a party may instead elect to bring a legal action to collect any amounts owing that party hereunder if the amount owing is due and payable and not contested by the other party.

#### 11.4 Deadline Extension

All deadlines specified in this Article 11 may be extended by mutual written agreement of the Parties.

#### 11.5 Continued Performance

Each Party agrees to continue to perform its obligations under this Agreement, including the timely payment of all amounts due hereunder, pending final resolution of any Dispute.

## ARTICLE 12

### CONFIDENTIALITY

#### 12.1 Nondisclosure

Each party agrees to not disclose to third parties any information regarding the business affairs, finances, terms of this Agreement, technology or processes of the other party (including, without limitation, the Plant) without the express written consent of the nondisclosing party. This restriction shall not apply to information that: (i) was already in the possession of the receiving party prior to receipt from the disclosing party; (ii) now or hereafter becomes a part of the public domain through no fault of the receiving party; (iii) is hereafter furnished to the receiving party by third parties without restriction on disclosure; or (iv) is independently developed by the recipient party without the benefit of the disclosing party's information. Each party will release, indemnify and hold harmless the other party from any and all liability arising from its improper use or dissemination of the other party's information protected hereunder.

#### 12.2 Permitted Disclosure

If a party is required by law to disclose information that is otherwise required to be maintained in confidence pursuant to Section 12.1, or where disclosure is required in connection with (i) any subpoena or order related to any administrative, regulatory, legislative or other governmental proceedings, including, without limitation, such proceedings involving the assertion of any claim or defense involving a party or (ii) the enforcement or interpretation of this Agreement pursuant to Section 11, it may make disclosure notwithstanding the provisions of Section 12.1; provided, however, that the disclosing party shall promptly notify the nondisclosing party of the requirement and the terms prior to the submission and shall cooperate to the maximum extent practicable at the nondisclosing party's expense to minimize the disclosure of the information. The nondisclosing party shall use its reasonable efforts to obtain proprietary or confidential treatment of such information by the third party to whom the information is disclosed, and will, to the extent such remedies are available, seek protective orders limiting the dissemination and use of the information. This Agreement does not alter the rights of either party to challenge any law requiring the disclosure.

#### 12.3 Term

The obligations of the parties pursuant to this Article 12 shall remain in full force and effect for a period of two (2) years after the date of the expiration or termination of this Agreement.

## ARTICLE 13

### REPRESENTATIONS AND WARRANTIES

#### 13.1 Operator Represents, Warrants and Covenants

##### 13.1.1 Performance

Operator has expertise in operations and maintenance of systems similar to the Plant and shall perform the Services in accordance with generally accepted professional practices in its fields of specialty and with skill and care commensurate with such expertise. Operator has the ability and the necessary equipment to perform the Services in compliance with all Applicable Laws, government standards, regulations and guidelines and the conditions, practices, means, methods, operations or processes used or proposed to be used in performance of the Services will provide a safe place of employment.

##### 13.1.2 Compliance with Laws

Operator and its employees, agents, representatives and subcontractors are and shall at all times during the performance of the Services remain in compliance with all Applicable Laws and Governmental Approvals, including without limitation, those related to wages, hours, fair employment practices, anti-discrimination, safety and working conditions, and environmental protection, subject to obtaining a Change Order for any material change in such compliance requirements.

##### 13.1.3 Claims

There are no outstanding claims, suits or proceedings or other service projects which would in any way conflict with Operator's or its employees' performance of the obligations set forth herein. Operator shall promptly notify Owner if any such claim, suit or proceeding is instituted against Operator.

##### 13.1.4 Errors or Omissions

Operator is responsible for any negligent errors or omissions committed by itself and any of its agents, employees or subcontractors and Operator shall be responsible for and shall bear all reasonable costs and expenditures of any corrective action required to be taken by Owner as a result of any such errors or omissions.

##### 13.1.5 Supervision



Operator shall at all times maintain good order among its employees, agents and subcontractors who perform the Services and shall confine such employees, agents and subcontractors and its equipment to those portions of the Site where the Services are to be performed, to roads leading to and from the Site and to any other area Owner may approve in advance, and from time to time.

13.1.6 Taxes

Operator shall have full and exclusive liability for the payment of any and all taxes and contributions for unemployment insurance or benefits, retirement benefits, pensions, annuities or similar benefits which may now or hereafter be imposed by law or collective bargaining agreements with respect to any person performing the Services on Operator's behalf.

13.1.7 Knowledge; No Reliance

Operator understands the location of the Plant, general nature and scope of the Services, the character of equipment and facilities needed, and has familiarized itself with the general and local conditions to the extent necessary to perform the Services, and Operator will not rely on any representation or promise of Owner, prior to or after the Effective Date, except those provided in writing by Owner, if any.

13.1.8 Restoration

In the event damage occurs to the property of Owner as a result of performance, or a lack of performance of the Services by Operator or the employees, agents or subcontractors it employs, Operator shall take all reasonable steps to timely restore such property to its original condition, with the exception of normal wear and tear.

13.2 Owner Represents, Warrants and Covenants

13.2.1 Claims

There are no outstanding claims, suits or proceedings or other service projects that would in any way conflict with Owner's performance of its obligations set forth herein. Owner shall promptly notify Operator if any such claim, suit or proceeding is instituted against Owner.

13.2.2 Errors or Omissions

Owner is responsible for any negligent errors or omissions committed by itself and any of its agents, employees or subcontractors and Owner shall be responsible for and shall bear all reasonable costs and expenditures of any corrective action required to be taken by Operator as a result of any such errors or omissions.

13.2.3 Access.

Owner will ensure that the Site Lease, Site License, or such similar agreements allow Operator sufficient access to the Plant at all times necessary to allow Operator to perform its obligations hereunder.

13.2.4 Payment Obligation

Owner has and will continue to have during the Term hereof the financial ability to make the payments required under this Agreement.

**ARTICLE 14**

**MISCELLANEOUS PROVISIONS**

14.1 Assignments

14.1.1 Assignment Generally.

Neither party may assign this Agreement without the prior written approval of the other, which shall not be unreasonably withheld, conditioned or delayed.

14.1.2 Collateral Assignment.

Notwithstanding anything in this Agreement (including, without limitation, Section 4.1.1) to the contrary, upon the giving of written notice to the other party, either party may assign this Agreement as collateral for financing from one or more lenders or the security agent of such lender(s) ("Collateral Assignee") pursuant to a form of collateral assignment reasonably acceptable to the non-assigning party; provided that the party requesting the collateral assignment shall pay the reasonable costs and expenses of the non-assigning party relating to the review and negotiation of a mutually acceptable form of collateral assignment. Any collateral assignment hereunder shall acknowledge the right, but not the obligation, of the Collateral Assignee or its permitted assignee under the collateral assignment to take all actions and exercise all rights of the assigning party in accordance with this Agreement, to have itself or its permitted assignee substituted for the assigning party under this Agreement, or to sell, assign, transfer or otherwise dispose of this Agreement (or a portion thereof relating to less than all the Plants) to a permitted assignee; provided that, at a minimum, any subsequent sale, assignment, or transfer of this Agreement to any third party other than Collateral Assignee shall be subject to the same limitations and restrictions on transfer and assignment as set forth in paragraph 14.1.1 above, and provided that no such sale, transfer or assignment shall be made unless all obligations of the assigning party hereunder are current or are brought current at the time of such sale, transfer or assignment. Neither party shall terminate this Agreement or any of its obligations hereunder as the result of any default of the other party under this Agreement until after notice of such default is given by the party claiming the default to the Collateral Assignee and the expiration of any cure periods provided for in this Agreement, which cure periods shall begin to run from the time notice is given to the Collateral Assignee. Any process, stay or injunction issued by any governmental

authority or pursuant to any bankruptcy or insolvency proceeding involving a party that would prohibit the Collateral Assignee from exercising such cure rights shall extend such cure periods for the period of such prohibition and if this Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the assigning party, the non-assigning party will, at the request of the Collateral Assignee, enter into a new agreement with Collateral Assignee or a permitted assignee thereof having terms no less favorable to the non-assigning party than the terms of this Agreement; provided that any obligations of the assigning party that were outstanding at the time of any such bankruptcy or insolvency proceeding are paid in full or brought current, as the case may be, at the time any such new agreement is entered into (without taking into account the effect of any such bankruptcy or insolvency proceedings).

#### 14.2 Access

Subject to Article 12, Owner, Landfill Owner, Landfill Operator, the Lender and their respective representatives shall at all reasonable times have access to the Plant, all Plant operations and any documents, materials, records and accounts relating to the Plant operations for purposes of inspection and review; provided, such party will use reasonable efforts to provide the Operator advance notice of such requested access so Operator can ensure Operator Personnel and the relevant records are available. During any such period of access of the Plant, Owner, Landfill Owner, Landfill Operator and their respective representatives and invitees, including the Lender and its representatives, shall comply with all of Operator's safety and security procedures, and Owner, Landfill Owner, Landfill Operator, the Lender and their respective representatives shall conduct such inspection and reviews in such a manner as to not unreasonably interfere with Operator's performance of the Services and Operator shall not be liable for any damages to the Plant and/or Operator occasioned from such access.

#### 14.3 Independent Operator

Except as expressly set forth herein, Operator shall be an independent contractor with respect to the performance of the Services. This Agreement is not intended to create, and shall not be construed to create, between Owner and Operator a relationship of employer-employee, master-servant, agency, partnership or joint venture.

#### 14.4 Not for the Benefit of Third Parties

Notwithstanding any provision in this Agreement to the contrary, this Agreement and each and every provision hereof is for the exclusive benefit of Owner and Operator and is not for the benefit of any third party, either as intended or incidental beneficiary.

#### 14.5 Force Majeure

In the event that either party is rendered unable, by reason of an event of Force Majeure, to perform, wholly or in part, any obligation or commitment set forth in this Agreement, then, provided such party gives prompt written notice describing the particulars of such event, including the nature of the occurrence and its expected duration, and continues to furnish weekly reports with respect thereto during the period of the Force Majeure, and works diligently to

minimize and overcome the effects of such Force Majeure, the obligations of the affected party shall be suspended to the extent and for the period of such Force Majeure condition; provided however, that (i) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure and (ii) the party whose performance is being excused shall use its reasonable efforts to perform its obligations hereunder and use its reasonable efforts to remedy its inability to perform as soon as practicable. The Force Majeure event will not excuse either party from making payments to the other party otherwise due under this Agreement. Notwithstanding the foregoing, there shall be no payment or compensation of any kind to Operator, including payment for any Services or delay-related expenses, for any period during which Operator is not performing its obligations under this Agreement, including during any delay caused by Force Majeure.

Notwithstanding the foregoing, in the event that the Operator is prevented from providing all or a portion of the Services for a continuous period of not less than thirty (30) days as a result of a Force Majeure Event, and it is reasonably expected that the Operator will not be able to resume full performance of the Services within an additional thirty (30) days, Owner shall be entitled to require the Operator to reduce the scope of the Services, including the suspension of all Services (if possible without adversely affecting the security or maintenance of the Plant), commencing as and from the date notified by Owner until such time as the Operator can demonstrate to the reasonable satisfaction of Owner that the Operator is able to resume full performance of the Services, but in no event later than twelve (12) months from the date notified by Owner. During any period when the scope of Services is reduced (but not suspended) pursuant to the foregoing sentence, the obligation of Owner to pay the Operating Fee pursuant to Section 5.2 shall be reduced proportionately to take account of the level of Services that the Operator is actually performing. Such reduction in Services, and associated compensation, shall be reasonably negotiated and agreed upon in writing between the parties. Notwithstanding the foregoing, and assuming a reduction (and not suspension) of Services, the parties hereto contemplate that the Operating Fee would not be reduced below the Minimum Operating Fee as defined herein. In the event of a suspension of Operations due to a Force Majeure Event, the Minimum Operating Fee will be payable, unless the parties negotiate an alternative fee structure for Services provided through such an event.

#### 14.6 Amendments

No change, amendment or modification of this Agreement shall be valid or binding upon the parties unless such change, amendment or modification shall be in writing and duly executed by the parties.

#### 14.7 Survival

Notwithstanding any provisions contained herein to the contrary, Sections 7.4, 7.5, and 14.11 and Articles 9, 10, 11 and 12 shall survive in full force the expiration or termination of this Agreement, together with such provisions that are by their nature expected to survive the termination of this Agreement, as are necessary to interpret this Agreement, to enforce such obligations and such provisions as are necessary to enforce rights or obligations that have arisen

prior to termination, but have not been fully performed as of termination, such as payment of any amounts owing a Party hereunder.

14.8 No Waiver

Any delay, waiver or omission by any party to exercise any right or power, including requiring compliance with any of its terms during the Term, shall not be construed or deemed to be a waiver by such party of any subsequent breach or default of the same or other terms, provisions or covenants.

14.9 Notices

Any notice, demand, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the party giving such notice and shall be by hand delivery, overnight courier, e-mail, or facsimile to the other parties at such addresses as set forth below.

If delivered to Owner:

Conyers Renewable Power, LLC  
c/o First Generation Energy, LLC  
3920 Forest Drive, Suite D  
Columbia, South Carolina 29204  
Attention: Daniel Rickenmann  
Title: Manager  
Telephone: 803-920-9541  
Facsimile: 803-252-2007  
E-mail: daniel@firstgenenergy.com

If delivered to Operator:

ENERGYneering Solutions, Inc.  
15820 Barclay Drive  
Sisters, Oregon 97759  
Attention: Benny Benson, PE  
President  
Telephone: 541-549-8766 (ext. 201)  
Facsimile: 541-549-1901  
E-mail: bbenson@energyneeringsolutions.com

Each party shall have the right to change the place to which notice shall be sent or delivered by similar notice sent in like manner to the other party. Without limiting any other means by which a party may be able to prove that a notice has been received by the other party, a notice shall be

deemed to be duly received: (i) if sent by hand, the date when left with a responsible person at the address of the recipient; (ii) if sent by overnight courier, the next business day; or (iii) if sent by e-mail or facsimile, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number. Each party agrees at all times to maintain a United States street address to which delivery can be made and a United States facsimile number and an e-mail address to which notice can be sent.

#### 14.10 General Representations and Warranties

Each party represents and warrants to the other party that: (i) such party has the full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby; (ii) the execution and delivery of this Agreement by such party and the carrying out by such party of the transactions contemplated hereby have been duly authorized by all requisite corporate action and this agreement has been duly executed and delivered by such party and constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity; (iii) no authorization, consent, approval or order of, notice to or registration, qualification, declaration or filing with any Governmental Person is required for the execution, delivery and performance by such party of this Agreement or the carrying out by such party of the transactions contemplated hereby, other than regulatory and similar approvals needed with respect to the operation of the Plant; and (iv) none of the execution, delivery and performance by such party of this Agreement, the compliance with the terms and provisions hereof, and the carrying out of the transactions contemplated hereby, conflict with or result in a breach or violation of any of the terms, conditions or provisions of any law in existence on the Effective Date of such party in existence on the Effective Date, or any applicable order, writ, injunction, judgment or decree of any court or Governmental Person against such party or by which it or any of its properties is bound, or any loan agreement or instrument to which such party is a party or by which it or any of its properties is bound or constitutes a default thereunder or will result in the imposition of any lien, mortgage or other encumbrance upon any of its properties.

#### 14.11 No Liens

Operator shall not create, permit or suffer to exist any liens or encumbrances on the Plant or the Site arising from the Services performed hereunder. At all times and upon completion of the Services, Operator shall furnish Owner with satisfactory written evidence that there are no unpaid claims for work or materials furnished at the Site which could constitute the basis for any liens against the property of Owner. If any claim or lien is filed against the Plant, Owner, Landfill Operator or Landfill Owner, or their respective officers, directors, employees, subcontractors and/or agents caused by Operator's failure to comply with the preceding sentence, then Owner may at its option (and without any liability being attributed to Owner) withhold further payment to Operator under this Agreement and/or avail itself of such other remedies against Operator as it may have at law, in equity or pursuant to the terms and conditions of this Agreement. Operator shall be solely responsible for the payment of all costs and expenses

regarding the removal and satisfaction of record of all liens filed and arising from the Services performed hereunder. The obligations on the part of Operator hereunder shall be in addition to but not in limitation of Operator's indemnification obligations provided in Article 9 of this Agreement.

#### 14.12 Counterparts

This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed an original instrument as against any party who has signed it. This Agreement will become effective when duly executed and delivered by each Party hereto. Counterpart signature pages to this Agreement may be delivered by facsimile or other electronic delivery (*i.e.*, by email of a PDF signature page) and each such counterpart signature page will constitute an original for all purposes.

#### 14.13 Governing Law

This Agreement is to be governed under the laws of the State of Georgia without giving effect to the conflicts of law principles thereof. Venue for any action brought pursuant to or in connection with this Agreement shall be in the appropriate state or federal court located in DeKalb County, Georgia.

#### 14.14 Severability

If any provision of this Agreement becomes or is declared to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith; and, provided further, if such provision can instead be revised to realize the benefits expected by the Parties, such provision will instead be revised.

#### 14.15 Captions

The captions contained in this Agreement are inserted only as a matter of convenience and for reference only, and in no way define, describe, limit or otherwise affect the scope, meaning or intent of this Agreement or any provision.

#### 14.16 Exhibits

All exhibits or appendices attached hereto shall be considered a part hereof as though fully set forth herein.

#### 14.17 Entire Agreement

This Agreement contains the full and complete understanding of the parties relating to the subject matter hereof as of the date hereof, and supersedes any and all prior negotiations, agreements and representations made or dated thereto. There are no oral understandings, terms or conditions and

neither party has relied upon any representation, express or implied, not contained in this Agreement.

14.18 Conflicting Provisions

In the event of any conflict between this document and any exhibit or appendix, the terms and provisions of this document, as amended from time to time, shall control. In the event of any conflict among the appendices, the appendix of latest date shall control.

14.19 Successors and Assigns

The terms and provisions of this Agreement and the respective rights and obligations hereunder of Operator and Owner shall be binding upon, and inure to the benefit of, their respective permitted successors and assigns.

14.20 Standard of Reasonableness

Except as expressly stated to be within the sole discretion of any party, all consents or approvals required of either party shall not be unreasonably withheld or delayed, nor shall any acts or requests of a party be unreasonable in light of the surrounding facts and circumstances.

14.21 Use of English Language

All documents and written correspondence and information exchanged by the parties, including all manuals to be provided to or by Operator hereunder, shall be in the English language. Any translations into a non-English language requested by a party shall be made at the sole expense of the requesting party.

14.22 Joint Effort

Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not be construed severely against one of the parties than against the other.

14.23 Currency

Unless otherwise specified herein, any references to dollars (\$) in this Agreement shall refer to the currency of the United States of America.

14.24 Remedies and Rights Not Exclusive

No remedies or rights conferred upon Owner by this Agreement are intended to be exclusive of any remedy or right provided by law, but each shall be cumulative and shall be in addition to every other remedy or right given hereunder or now or hereafter existing at law or in equity (including but not limited to the remedy of specific performance).

14.25 Conditions Precedent

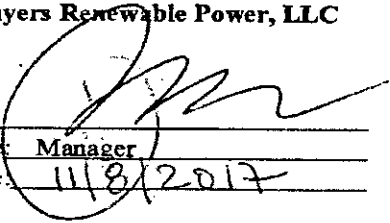


Anything to the contrary contained in this Agreement notwithstanding, Owner and Operator acknowledge and agree that this Agreement (other than this Section 14.25) shall become effective only upon Owner (i) entering into a lease agreement and a landfill gas rights agreement with the Landfill Owner, and (ii) obtaining all other third-party approvals, consents, and agreements (including without limitation the Generator Interconnection Agreement) necessary or desirable for the recommissioning and proper operation of the Plant. Owner shall give Operator written notice of the effectiveness of this Agreement. If the remainder of this Agreement shall not have become effective on or before December 31, 2017 and Operator received written notice thereof, this Agreement shall automatically terminate.

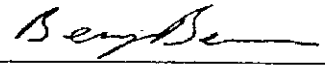
[THIS SPACE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties have executed this Operation and Maintenance Agreement through their duly authorized officers or representatives.

**Conyers Renewable Power, LLC**

By:   
Title: Manager  
Date: 11/8/2017

**ENERGYneering Solutions, Inc.**

By:   
Title: President  
Date: October 31, 2017

## APPENDIX A

### INSURANCE

All capitalized terms not otherwise defined in this Appendix A shall have the meaning given to such terms in the Agreement.

#### A. Operator's Insurance

Upon the commencement of the Services provided for in Section 2 of the Agreement, Operator shall maintain or cause to be maintained in full force and effect the following insurance:

1. Commercial Automobile Liability insurance covering all owned, leased and non-owned vehicles used in connection with the Scope with limits of: \$1,000,000 combined single limit per accident for bodily injury and property damage. The policy must include coverage for bodily injury, death and property damage arising out of ownership, maintenance or use of any motorized vehicle on or off the site of the Project, and Contractual Liability coverage. If hauling of hazardous waste is part of the Scope, Automobile Liability Insurance with a \$1,000,000 combined single limit per occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles, and include MCS 90 endorsement and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile).
2. Workers' Compensation Insurance as required by Applicable Law and employer's Liability Insurance in an amount of not less than \$1,000,000 per occurrence, providing statutory benefits and including an all states' endorsement and USL&H overages (if any exposure exists), covering loss resulting from injury, sickness, disability or death of the employees of Operator. In respect of Employer's Liability Insurance, there shall be no occupational disease exclusion. Deductibles are not to exceed five hundred thousand dollars (\$500,000) per loss.
3. Commercial General Liability Insurance as follows:
  - a) Operator shall insure against liability to third parties for any loss or damage, death or bodily injury which may occur to any physical property or to any person, which may arise out of the performance of the Services. This insurance shall have limits of not less than \$5,000,000 per occurrence and \$5,000,000 general aggregate with a maximum deductible of \$25,000. The insurance shall be on an occurrence form and coverage's provided under such insurance shall include, but not be limited to, Premises/Operations, Contractual Liability, Broad Form Property Damage, Products/ Completed Operations, and Operator's Protective Liability. Operator agrees to provide insurance coverage that shall be primary to any insurance carried or maintained by Owner, for injuries and damages to the extent of Operator's indemnity obligation under Article 9 of this Agreement. The Comprehensive

or Commercial Liability Insurance policy shall also include a cross-liability and severability of interest clause.

- b) Operator shall ensure that its Commercial General Liability coverages do not exclude claims or losses based on or arising from the handling, use or release of any Hazardous Material or pollutant.
4. Professional Errors and Omissions Liability Insurance. Operator shall maintain professional errors and omissions liability insurance with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

All insurance shall name Owner as additional insured and shall be carried with companies in good standing with the Georgia Office of Insurance and Safety Fire Commission and have a rating issued by A.M. Best & Company of at least "A- VIII."

All insurance to comply as needed with existing Site and Plant Agreements.

## APPENDIX B

### SITE SPECIFIC DEFINITIONS

All capitalized terms not otherwise defined in this Appendix B shall have the meaning given to such terms in the Agreement.

#### A. Site Specific Definitions and Contextual Interpretation

The scope of the Agreement may encompass Services for multiple Plants. As such all capitalized terms defined in Article 1 and this Appendix B, when used within the Agreement, are to be considered contextually in reference to each specific Plant or Site. All references in the singular, when under consideration for a specific Plant or Site, are to refer to either the following Site Specific Definitions or the specific defined terms under Article 1 of the Agreement as such terms relate to the specific Plant or Site under consideration.

##### 1. DeKalb County Plant Definitions

“Landfill Gas Purchase Agreement” shall mean that certain Landfill Gas Purchase and Sale Agreement dated as of \_\_\_\_\_ between Landfill Operator and Owner.

“Landfill Operator” shall mean \_\_\_\_\_.

“Landfill Owner” shall mean DeKalb County, GA.

“DeKalb County Plant” shall mean the equipment and infrastructure specifically outlined in Appendix F, related equipment and systems as necessary for a complete power plant capable of using positive pressure, Conforming Landfill Gas and delivering high voltage electricity to the Point of Interconnection.

“Site Lease” shall mean that certain Site Lease dated \_\_\_\_\_ between Landfill Operator and Owner.

“Utility” shall mean \_\_\_\_\_ Utility or such other party to which the Owner or an entity contracting with Owner has agreed to sell energy, capacity and/or renewable attributes under a Power Purchase Agreement and/or with which Owner has executed a Generator Interconnection Agreement.

**APPENDIX C****CONFORMING LANDFILL GAS**

The Owner is responsible for providing Conforming Landfill Gas to the Delivery Point which meets the "Minimum Acceptable Gas Conditions" described in this Appendix C and as agreed upon annually in the Annual Operating Plan. If, for purposes of satisfying the Annual Performance Projection, the Annual Performance Guarantee, or other provisions of the Agreement directly affected by the conformity or non-conformity of landfill gas, the quantity and quality of the landfill gas available for use by the Plant is at or above the Minimum Acceptable Gas Conditions, the Operator will be responsible for meeting the energy output and permitted emission guarantees. The Operator will be relieved of such obligations for the period of time during which the Minimum Acceptable Gas Conditions are not satisfied, including a reasonable period of time thereafter to restore the Facility to normal operations after conforming gas conditions are restored.

For purposes of this Agreement, Conforming Landfill Gas that meets the Minimum Acceptable Gas Conditions shall mean the following for each site:

<b>Site</b>	<b>Parameter Description</b>	<b>Boundary Description</b>	<b>Unit of Measure</b>	<b>Minimum Standard</b>
All Sites	Methane Content	Minimum	% by volume	45
All Sites	Oxygen Content	Maximum	% by volume	2.5
All Sites	Total Reduced Sulfur (CS <sub>2</sub> , H <sub>2</sub> S, COS, mercaptans, & DMS)	Maximum	ppmv (parts per million on a volume basis)	300
All Sites	Total Organic Silicon (siloxanes)	Maximum	µg/BTU	2.0
All Sites	Flow	Minimum	SCFM (Standard Cubic Feet per Minute) @ 50% Methane	Per Annual Performance Projection

**APPENDIX D**

**TOOLS, MOBILE EQUIPMENT, SPARE PARTS, CONSUMABLES**

Following is a list of Owner Supplied Equipment to be Operator maintained and returned to Owner upon completion of the contract.

**DeKalb County Plant - OWNER SUPPLIED EQUIPMENT**

**TOOLS:**

- 1) ??

**MOBILE EQUIPMENT:**

- 1) Forklift.- ??
- 2) Manlift.- ??

**MAJOR SPARE PARTS:**

- 1) Centrifugal Blower.- ??

Following is a list of Operator Supplied Equipment at each Site, to be retained by Operator upon termination of the Agreement.

- 1) All spare parts that are not listed above as Owner Supplied Equipment,
- 2) All consumables in excess of Base Stock.

**APPENDIX E**

**MAJOR MAINTENANCE SERVICES DESCRIPTION, BUDGET, AND SCHEDULE**

A. Major Maintenance Services Description

Major Maintenance Services are limited to the following specific activities as budgeted and scheduled for in this Appendix E:

- 1) Top End Overhaul
- 2) Turbo Replacement
- 3) In-Frame Overhaul
- 4) Major Overhaul

B. Major Maintenance Services Budget and Schedule

The following Major Maintenance Budget and Schedule is supplied for planning and reference. Actual maintenance timing will be subject to equipment service indicators and may vary from the attached schedule.

See also Appendix I hereto.



## APPENDIX F

### PLANT DESCRIPTION

The Plants consist of the following major equipment and accessory Balance of Plant equipment.

#### DEKALB COUNTY PLANT DESCRIPTION

- 1) Genset: 2 x Caterpillar G3520; each rated at 1600 kWh
- 2) ISO Switchgear, 4160V
- 3) PEI Blower Skid Package
- 4) ??

**APPENDIX G****DESCRIPTION OF NON-ROUTINE O&M SERVICES**

All capitalized terms shall have the meaning given to such terms in the Agreement.

In addition to those Non-Routine O&M Services specifically outlined in Section 2.4 of the Agreement, the following shall be considered Non-Routine O&M Services:

1. Labor and materials associated with remedying unscheduled equipment Failures. This encompasses all equipment replacement, repair, or adjustment that is not specifically identified in the Manuals (CAT3520 or BOP equipment) as a regularly replaced part. Example equipment Failures considered under the Non-Routine O&M Services will include, but not be limited to:
  - a. Detonation sensor Failure
  - b. Temperature/Pressure transmitter Failure
  - c. Pressure relief valve Failure
  - d. Motor Failures for both engine/generator and balance of Plant equipment
  - e. Equipment housing Failures
  - f. Equipment/Piping support Failures
  - g. Piping or Tank leaks
  - h. Electrical equipment Failure including: switchgear, breakers, transformers, PLC/controls equipment, SCADA system, and motor control center
  - i. Facility infrastructure (Building, Roadway, Sewer, Water, Drainage, ...)
2. Facility modifications and/or upgrades constituting a change in original Plant design plans and requiring capital expenditures (material or labor) to complete. This includes but is not limited to: changes in piping configurations, changes in equipment specifications, additions to the Plant, GCCS expansion, and equipment re-arrangements.
3. Safety related upgrades or replacements (equipment supply or modification) and/or testing to comply with OSHA safety regulations. As of the Effective Date, Owner will supply Operator with a Plant that meets all OSHA safety guidelines with regards to safety equipment, fall hazards, hazardous material handling, etc.
4. Preventative maintenance for electrical equipment. This includes, but is not limited to, preventative maintenance for: switchgear, breakers, transformers, PLC/controls equipment, SCADA system, motor control center, grounding systems, lightning protection systems, and electrical panels. This includes all safety related reporting/monitoring such as arc flash reporting, IR testing, transformer testing, of any additional insurance related requirements.
5. Engineering consulting support including design review, compliance review, site trips, facility modification design, or other.
6. All Major Maintenance Services as defined in the Agreement
7. Leak monitoring of piping in the Plant.
8. Transformer oil sampling at more frequent intervals than that dictated by Prudent Operating Practices (typically annual).

9. Equipment replacement, not including Consumables, for equipment that has reached the end of its Useful Life, or expected life cycle.
10. Power scheduling with the Utility on behalf of Owner.
11. Increased costs in Consumables or those certain engine manufacturer supplied parts used by Operator in the carrying out of the Major Maintenance Services that constitute an increase in cost of more than seven and a half percent (7.5%) from the Operator's scheduled pricing for the year of such increase. To the extent that such an event occurs, Owner and Operator shall in good faith negotiate modifications to the Major Maintenance Budget and Schedule of Appendix E pursuant to the terms of Section 2.5.3 of the Agreement.
12. Costs or fees associated with software updates, maintenance, or licensing.
13. Materials and labor associated with remedying inaccurate or out of date environmental monitoring and compliance plans whose shortcoming cannot be directly attributable to the act or omission of Operator, its employees, subcontractors or others acting on behalf of or under the control or supervision of Operator.
14. Materials and labor associated with the cleaning, upgrade, replacement, repair, or modification of those aesthetic components of the Facility that are immaterial to the Plant's: (a) production of electricity, renewable energy credits, attributes, or other marketable products, or (b) safety. This shall include but not be limited to the cleaning, upgrade, replacement, repair, or modification of: the building envelope (including electrical and mechanical systems not required for primary Power Production), fencing, painting, pavement, storm water management systems, domestic water and sewer systems, security systems, landscaping, or other functional and aesthetic components of the Facility.
15. Non-Routine GCCS O&M Services as described in Appendix H.
16. Repairs and/or upgrades to the Plant and Prime Movers that, despite the Services provided herein, do not meet the requirements of Applicable Law, the Permits, the Plant Agreements, or this Agreement.

**APPENDIX H**  
**GCCS O&M SERVICES**

[Reserved] Not Applicable

## APPENDIX I

## BASE OPERATING FEES AND MAJOR MAINTENANCE COSTS

All payments by Owner to Operator for the Services shall be in accordance with Section 5.6 of this Agreement and this Appendix I.

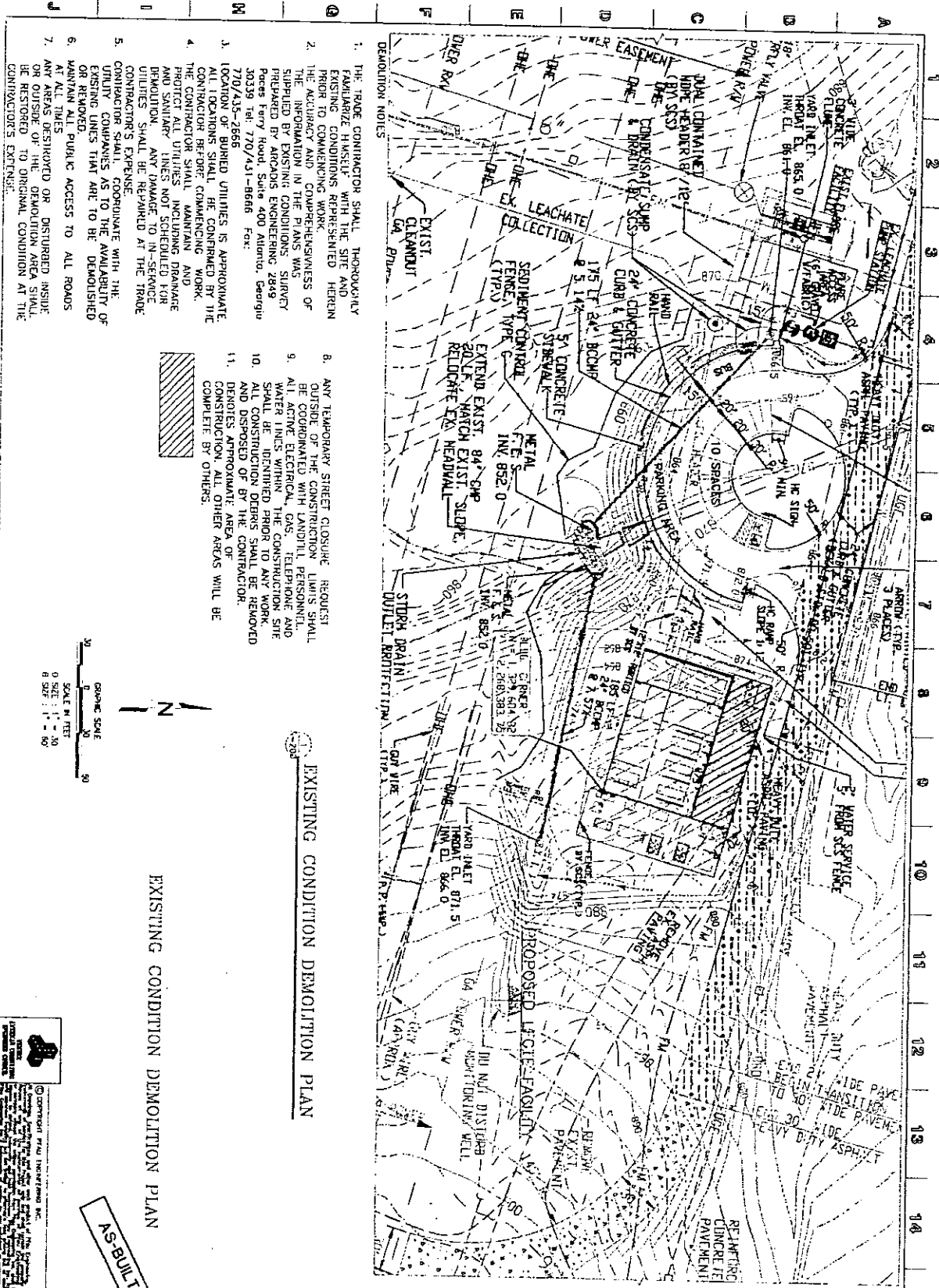
The following table contains the 2017 base Operating Fee (in US dollars) and Annual Escalation rates, as defined in the Agreement, for each site.

	<b>2017 Operating Fee Rate</b>	<b>Annual Escalation Rate</b>
<b>DeKalb County Plant</b>	2.37 ¢/kWh	2%

The following table contains the 2017 baseline costs (in US dollars) for Major Maintenance Service activities along with the Annual Escalation Rate for Major Maintenance Services. In any given year the cost for a given activity will be as listed below and adjusted for Annual Escalation based on the year in which the activities are performed. The costs for Major Maintenance Services in the table below shall apply to all facilities covered under this Agreement and is to be read in conjunction with Appendix E. Costs include a maximum core failure rate of 50%.

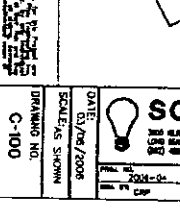
	<b>2017 Baseline Cost (per Prime Mover)</b>	<b>Annual Escalation Rate</b>
<b>Top-End Overhaul</b>	\$83,200	2%
<b>Turbo Replacement</b>	\$56,900	2%
<b>In-Frame Overhaul</b>	\$156,000	2%
<b>Major Overhaul</b>	\$296,500	2%

**Exhibit B Lease Site Plan**



- DEMOLITION NOTES
1. THE TRADE CONTRACTOR SHALL THOROUGHLY FAMILIARIZE HIMSELF WITH THE SITE AND EXISTING CONDITIONS REPRESENTED HEREIN PRIOR TO COMMENCING WORK.
  2. THE ACCURACY AND COMPREHENSIVENESS OF THE INFORMATION IN THE PLANS WAS SUPPLIED BY EXISTING CONDITIONS SURVEY PREPARED BY ARCADIS ENGINEERING 2849 Peaces Ferry Road, Suite 400 Atlanta, Georgia 30339 Tel: 770/451-8666 Fax: 770/455-2666
  3. LOCATION OF BURIED UTILITIES IS APPROXIMATE. ALL LOCATIONS SHALL BE CONFIRMED BY THE CONTRACTOR BEFORE COMMENCING WORK.
  4. THE CONTRACTOR SHALL MAINTAIN AND PROTECT ALL UTILITIES INCLUDING DRAINAGE DEMOLITION AREAS TO REMAIN TO IN-SERVICE UTILITIES SHALL BE REPAIRED AT THE TRADE CONTRACTOR'S EXPENSE.
  5. CONTRACTOR SHALL MAINTAIN WITH THE UTILITY COMPANIES AS TO THE AVAILABILITY OF EXISTING LINES THAT ARE TO BE DEMOLISHED OR REMOVED.
  6. MAINTAIN ALL PUBLIC ACCESS TO ALL ROADS AT ALL TIMES.
  7. ANY AREAS DESTROYED OR DISTURBED INSIDE OR OUTSIDE OF THE DEMOLITION AREA SHALL BE RESTORED TO ORIGINAL CONDITION AT THE CONTRACTOR'S EXPENSE.

8. ANY TEMPORARY STREET CLOSURE REQUEST OUTSIDE OF THE CONSTRUCTION LIMITS SHALL BE COORDINATED WITH LANDFILL PERSONNEL.
9. WATER, ELECTRICAL, GAS, TELEPHONE AND ALL CONSTRUCTION DEBRIS SHALL BE REMOVED AND DISPOSED OF BY THE CONTRACTOR.
10. DENOTES APPROXIMATE AREA OF CONSTRUCTION. ALL OTHER AREAS WILL BE COMPLETE BY OTHERS.



EXISTING CONDITION DEMOLITION PLAN

AS-BUILT

**SCS ENERGY**  
 1000 Peachtree Street, N.E.  
 Atlanta, GA 30309  
 Tel: 404.525.1000  
 Fax: 404.525.1001  
 www.scsenergy.com

**DEKALB COUNTY GOVERNMENT**  
 1800 COMMERCE DRIVE  
 DECATUR  
 GEORGIA, 30030

NO.	REVISION	DATE
1	FOR APPROVAL	04/14/07
2	DEKALB COUNTY COMMENT	04/18/07
3	REVISED MECH AND LOC	05/13/07
4	ISSUED FOR PERMIT	06/06/07
5	AS-BUILT	02/28/07

**PFAU ENGINEERING INC.**  
 STRUCTURAL/CIVIL  
 ENGINEERING  
 28 Lundy Road, Decatur  
 Georgia 30030  
 (770) 451-8666  
 www.pfaue.com

**DEKALB COUNTY**  
 ENGINEERING DEPARTMENT  
 1800 COMMERCE DRIVE  
 DECATUR, GA 30030  
 TEL: 404.525.1000  
 FAX: 404.525.1001

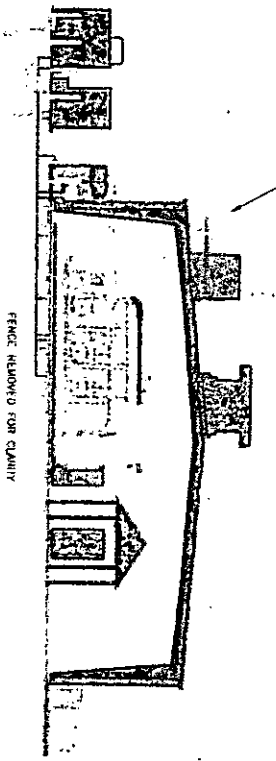
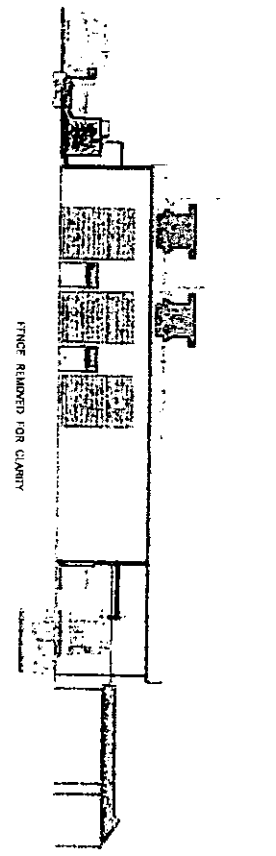
**PROJECT TITLE**  
 3.2MW GREEN ENERGY PROJECT  
 BENHOLE ROAD LANDFILL

**SHEET TITLE**  
 EXISTING CONDITION/DEMO PLAN

**DATE**  
 02/28/07

**SCALE**  
 1" = 30'

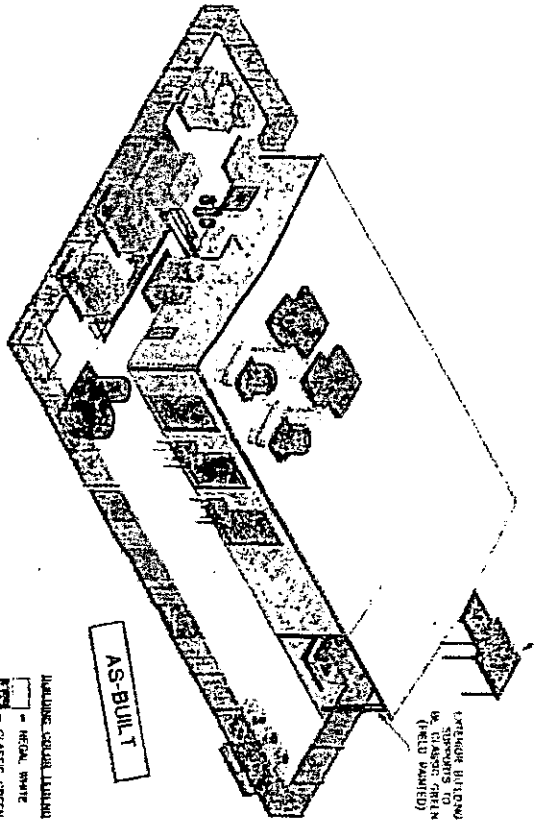
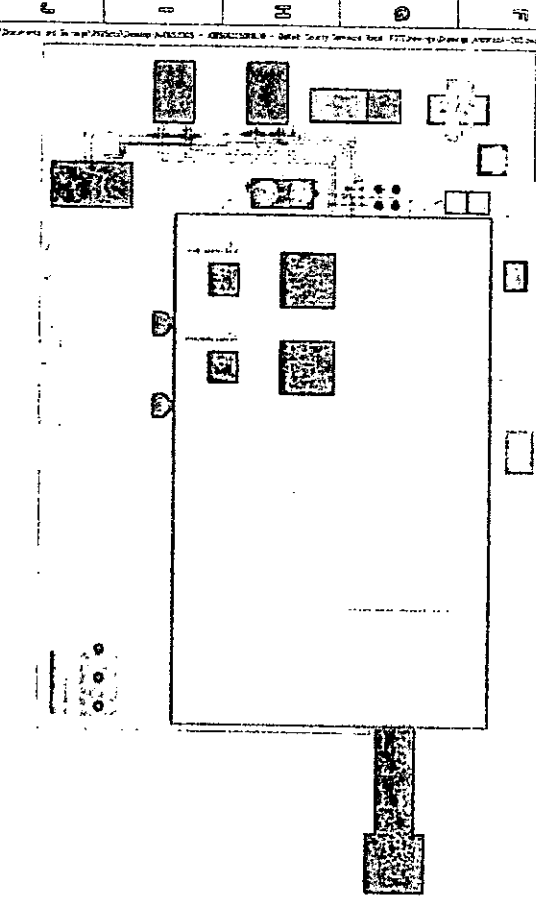
- NOTES:
1. MOTORS, SWITCHGEAR, TRANSFORMERS, STORAGE VESSELS, AND OTHER EQUIPMENT ARE TO BE STANDARD FACTORY COLORS
  2. WATER STORAGE TANKS TO BE BLACK
  3. FENCE TO BE GREEN COLOR PER ORANGE WHITE, POSTS AND SLATS.



SIGNS TO BE UNPAINTED 204 S.S.

COLORS OF PORTLAND AND MATERIALS TO BE IDENTICAL

APPROXIMATE PAINTING TO BE CLASSIC GREEN (FIELD MARKED)



LANDING COLOR LABELS:  
 - RED, WHITE  
 - CLASSIC GREEN

**SCS ENERGY**

DATE: 7/1/2008  
 SCALE: N/A  
 DRAWING NO: A-203

DEKALB COUNTY GOVERNMENT  
 1300 COMMERCE DRIVE  
 DECATUR  
 GEORGIA, 30030

SHEET TITLE	NO.	REVISION	DATE
FACILITY EXTERIOR COLOR PLAN			
PROJECT TITLE			
SLAMM GREEN ENERGY PROJECT			
SEMINOLE ROAD LANDFILL			

NO.	REVISION	DATE
1	ISSUED FOR REVIEW	7/1/08
2	AS-BUILT	8/20/08





**Exhibit C – Power Facility Description**

## SECTION 1

### FACILITY DESCRIPTION

The generation facility is designed to produce 3.2MW (gross output) of electricity from two landfill gas (LFG) fueled internal combustion engines. LFG is generated by the decomposition of organic matter in the landfill. LFG is composed of approximately 50 percent methane (CH<sub>4</sub>) and 50 percent carbon dioxide (CO<sub>2</sub>), although the methane concentration can vary between 45 to 55 percent, depending upon the operating characteristics of the landfill. LFG is extracted from the landfill by DeKalb County's (County's) gas collection and handling system.

The facility can be divided into three main categories of equipment: power generation, LFG processing and supply, and support services.

Power generation equipment consists of:

- Caterpillar (CAT) G3520C generator sets;
- CAT/ISO paralleling switchgear;
- 5MVA step up transformer;
- 5KVA station transformer;
- 27KV switchgear; and
- Pole-mounted gang switch.

LFG processing and supply equipment consists of:

- LFG Specialties gas booster skid and flare (County-operated and maintained);
- Perennial Energy, Inc. (PEI) gas handling skid (GHS);
- Point of use LFG filters; and
- Siloxane removal media (silica gel) -- engine #1 only.

Support services include:

- Engine jacket water and aftercooler radiators;
- Roof-mounted ventilation equipment;
- Clean and waste oil storage;
- Clean and waste coolant storage;

- HVAC equipment; and
- Plant supervisory, control and data acquisition (SCADA) system.

Operations, maintenance, and troubleshooting information for the equipment can be found in Volume II of this manual and the respective equipment manufacturers' manuals.

**Exhibit D – Certificate of Company/LLC Authority**

The undersigned represents that he is duly and properly in office and is fully authorized and empowered by Conyers Renewable Power, LLC, a South Carolina limited liability company (“Tenant”) to execute the above agreement for and on behalf of the Tenant. Tenant warrants that it has all requisite power and authority to enter into and perform its obligations under this lease agreement, and that the execution and delivery by the Tenant of this Agreement and the compliance by the Tenant with all of the provisions of this lease agreement (i) is within the purposes, powers, and authority of the Tenant; (ii) has been done in full compliance with applicable law and has been approved by the governing body of the Tenant and is legal and will not conflict with or constitute on the part of the Tenant a violation of or a breach of or a default under any indenture, mortgage, security deed, pledge, note, lease, loan, or installment sale agreement, contract, or other agreement or instrument to which the Tenant is a party or by which the Tenant is otherwise subject or bound, or any license, judgment, decree, law, statute, order, writ, injunction, demand, rule, or regulation of any court or governmental agency or body having jurisdiction over the Tenant; and (iii) has been duly authorized by all necessary action on the part of the Tenant. This Agreement is the valid, legal, binding and enforceable obligation of the Tenant.

**CONYERS RENEWABLE POWER, LLC**

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

\_\_\_\_\_

Name (Typed or Printed)

\_\_\_\_\_

Title

\_\_\_\_\_

Date

**ARTICLE 5.**  
**General Obligations, Warranties, and**  
**Covenants**

5.1 Maintenance of Collection System. Subject to the terms and conditions of Section 2.5, Seller shall, at its own expense maintain, operate, improve, expand and preserve the Collection System in conformity with the Title V permit and Landfill Permit, and Seller agrees to share with Buyer Seller's plans and proposed schedule for doing so. The parties agree that the collection system upgrades described in Exhibit B, including the Initial Collection System Upgrades, shall be performed so as to optimize the operation of the Collection System and the delivery of LFG to meet Facility Requirements. The parties may agree that Buyer provide funds for the Initial Collection System Upgrades. To the extent that Buyer makes such investment, the parties shall establish a schedule for repayment of such funds, either directly or as an offset to the Royalty Payment stream.

5.2 Permits and Approvals. Seller has already performed the necessary environmental impact studies, statements or reports, zoning and land use approvals, permits, licenses and utilities for the installation and construction of the Facility and shall assign to Buyer any rights therein that are needed for Buyer to operate the Facility in compliance with all Applicable Laws. Thereafter, Buyer shall operate the Facility to comply with all Applicable Laws. The parties agree to reasonably cooperate with the efforts of either party to comply with such requirements.

5.3 Recommissioning and Optimization of the Facility. Buyer shall identify and summarize in **Exhibit E** hereto the work that needs to be done to recommission and optimize the Facility and is responsible for seeing that such work is performed in a timely manner at Buyer's expense. Buyer shall receive the tax benefits (such as depreciation) for any capital investment it makes to Facility.

5.4 Buyer's Maintenance of the Facility. Buyer shall maintain, operate, and preserve the Facility consistent with the Lease Agreement, this Agreement, and all Applicable Laws. The Facility shall be maintained in accordance with Exhibit F attached hereto. The Buyer shall submit monthly reports showing what maintenance activities have been performed during the previous month.

5.4.5 Facility Shutdowns. Buyer agrees to provide Seller with no less than two (2) business days advance notice of any planned shutdown of the Facility for repair and maintenance purposes, and notice as soon as feasible of any emergency shutdown of the Facility or shutdown at the direction of Georgia Power Company or Government Entity. The parties shall reasonably coordinate repair and maintenance work on the Landfill, the Collection System and the Facility so as to minimize adverse impact under the PPA (including, but not limited to, avoiding shutdowns during the PPA peak power months of

**EXHIBIT F**

**FACILITY MAINTENANCE**

## STANDARD SCOPE OF SERVICES

A twin Caterpillar G3520 genset 3.2-megawatt (MW) landfill gas-to-energy (LFGE) facility can be operated by one full-time operator with outside mechanic support. The operator typically works an 8-hour day, 5 days a week; with 24/7 callout with a 2-hour response time (4-hour minimum after midnight). The operational and routine maintenance activities conducted by the operator are presented below.

### Daily Activities

Daily operational activities should include:

1. Perform overall site walk-around inspection:
  - a. Genset & Switch Gear
  - b. Gas conditioning equipment
  - c. Building, fence and grounds, etc.
  
2. Inspect & monitor generation equipment:
  - a. Cooling system level check & radiator and fan operation
  - b. Engine oil level check, and adjust if needed
  - c. Air cleaner service indicator status
  - d. Engine breather inspection
  - e. Generator load check
  - f. Voltage and Hz check.
  
3. Inspect & monitor gas conditioning equipment:
  - a. Blower oil level check
  - b. Suction and outlet psi check
  - c. Condensate level / drain valve position
  - d. Gas analyzer reading / calibration.

NOTE: Operator should fill out & record daily inspection log and advise any oil leaks, vibrations, or unusual noises.

### Weekly Activities

Weekly operational activities should include:

1. Sweep & mop facility and any office/storage areas.
2. Wipe down engine and generator gear.
3. Clean and inspect gas skid (cooling fan core, blower oil level, gas analyzer, etc.).
4. Keep area around transformers clean and free of obstructions.
5. Check enclosure condition (doors, steps, lights, etc.).

6. Inspect radiator mounts & area around fans, keep clean & uncluttered.
7. Check perimeter fence & yard. Clean all debris.
8. Take bi-weekly engine oil samples, & record all files.
9. Document cylinder transformer voltages.
10. Document engine oil consumption.

### **1,000-Hour Inspection/Service**

Every 1,000 operational hours the operator should perform the following:

1. Replace engine oil filters.
2. Replace engine oil if needed (depending on oil sample results).
3. Replace spark plugs.
4. Adjust valves & bridges.
5. Ignition timing check/adjust
6. Inspect water pump & all valves and piping to radiator.
7. Inspect radiator condition and inspect coolant pipin3e

Inspect air inlet system, air cleaners, piping clamps, etc.

9. Inspect inlet gas piping, regulator, shut-off valves (operation & condition).
10. Inspect vibration damper, alternator, interior louvers, exhaust fans, generator coupling and vibration isolators.
11. Inspect after cooler & piping.
12. Inspect/repair interior lighting, safety equipment, and fire extinguishers.

### **2,000-Hour Inspection/Service**

Every 2,000 operational hours the operator should add the following activities to the above:

1. Grease generator bearings.
2. Grease exhaust fan & radiator fan bearings.
3. Perform complete service on gas skid, change blower oil, adjust belts, grease fan & blower bearings, check and test all safeties.
4. Generator vibration check.
5. Inspect stator leads and wiring.
6. Inspect all wiring and cabling in switchgear.
7. Clean and tighten battery cables and check electrolyte levels in batteries.
8. Inspect turbocharger.

### **Annual Inspection**

Every year, the operator should also take a cooling system sample.



**AGREEMENT**

**FOR**

**LANDFILL GAS-TO-ENERGY PLANT  
OPERATION AND MAINTENANCE SERVICES**

**BETWEEN**

**Conyers Renewable Power, LLC  
("Owner")**

**AND**

**ENERGYneering Solutions, Inc.  
("Operator")**

October 31, 2017