

**AMENDED AND RESTATED
LANDFILL GAS PURCHASE CONTRACT**

This Amended and Restated LANDFILL GAS PURCHASE CONTRACT ("Landfill Gas Purchase Contract" or "Contract") is made and entered into the 24th day of January, 2023 by and between BREVARD ENERGY, LLC, a Florida Limited Liability company, doing business at 1605 N Cedar Crest Blvd, Suite 509, Allentown, Pennsylvania 18104, hereinafter referred to as the "DEVELOPER" and BREVARD COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 hereinafter referred to as the "COUNTY".

WITNESSETH:

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

WHEREAS, the COUNTY has constructed an active landfill gas (LFG) collection and flaring system at the Central Disposal Facility (CDF) in order to remain in compliance with applicable federal, state, and local laws and regulations, and to control landfill gas migration and odor emissions;

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

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

WHEREAS, on December 19th 2006 the COUNTY entered into a "piggyback" agreement with the DEVELOPER, whereby the DEVELOPER pays the COUNTY for the rights to and sale of landfill gas for a beneficial use in accordance with the terms and conditions set out in that certain Landfill Gas Purchase Agreement approved by the Seminole County Board of County Commissioners dated November 21, 2006 (herein referred to as "Seminole Agreement") and as amended by the "piggyback" agreement;

WHEREAS, on November 13, 2007, the COUNTY and DEVELOPER entered into a Lease Agreement (the "Original Lease Agreement") allowing DEVELOPER to site its landfill gas to electricity project at the Central Disposal Facility;

WHEREAS, on January 13, 2009, the COUNTY and DEVELOPER entered into Addendum No. 1 Landfill Gas Purchase Agreement (the "First Addendum") under which the DEVELOPER pays the COUNTY for the use of the COUNTY's flares as a backup emissions control device in the event the landfill gas to energy plant cannot use all the gas delivered from the landfill;

WHEREAS, under the current Agreement, the term may be extended if and when the COUNTY adds additional LFG extraction wells in the Landfill and the DEVELOPER agrees

to expend additional capital funds to increase the capacity of its LFG Utilization Facility, provided the COUNTY and the DEVELOPER consent in writing to the extension;

WHEREAS, the COUNTY has added additional LFG extraction wells in the Landfill and the DEVELOPER has expended additional capital funds to increase the capacity of its LFG Utilization Facility with the proposed construction of a new pipeline quality LFG facility ("Pipeline LFG Facility") in addition to the existing electric engine facility ("Engine Facility") as part of the LFG Utilization Facility to provide additional tangible financial gain for the COUNTY, and the Engine Facility may be partially or fully converted to utilize natural gas to support the Pipeline LFG Facility;

WHEREAS, given the LFG quality requirements of the Pipeline LFG Facility, The COUNTY will allow DEVELOPER to work cooperatively in review of the design, replacement, expansion, and additions and operations of the LFG Management System;

WHEREAS, COUNTY and DEVELOPER are entering into an Amended and Restated Lease Contract ("Lease Contract") contemporaneously herewith to replace the Original Lease Agreement in order to facilitate DEVELOPER's continued use of Landfill Gas to generate products derived from LFG that may include, but are not limited to: processed LFG, pipeline quality LFG, electric power, thermal energy, CO₂, or any two or more of the foregoing (the "Intended Purpose"); and

WHEREAS, DEVELOPER is a for-profit corporation performing a function or service that promotes the public health, safety or welfare and could be provided by federal, state or local government; and

WHEREAS, this Amended and Restated Landfill Gas Purchase Contract will serve a public purpose, is in the best interest of the County, and the property will be used in a manner compatible with county purposes; and

WHEREAS, the COUNTY and the DEVELOPER wish to amend and restate the current Agreement in order to facilitate the Intended Purpose, including to amend the Term of the Contract and other modifications as set forth in this Landfill Gas Purchase Contract.

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

Section 1. Prior Agreements Amended and Replaced; Definitions.

This Amended and Restated Landfill Gas Purchase Contract supersedes and replaces all prior Agreements. The current Agreement is hereby amended and replaced with this Amended and Restated Gas Purchase Contract effective upon execution of this Landfill Gas Purchase Contract by both parties.

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

- A. Beneficial End Use Product means products derived from LFG that may include, but are not limited to: processed LFG, pipeline quality LFG, electric power, thermal

energy, CO₂, or any two or more of the foregoing. The use of such products shall result in a tangible financial gain for the COUNTY and the DEVELOPER.

- B. British Thermal Unit (BTU) means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit, for example from 58.5 to 59.5 degrees Fahrenheit, under standard pressure of 30 inches of mercury at or near its point of maximum density. One BTU equals 252 calories, (gram), 778 foot-pounds, 1,055 joules, 2.93110⁻⁴ kWh, or 0.293 watt hours.
- C. Dekatherm means one million BTU.
- D. BTU per Cubic Foot means a measure of the heat available or released when one cubic foot of gas is burned.
- E. Buyer means the party or parties to which DEVELOPER will sell a Beneficial End Use Product derived from the recovery and/or processing of LFG.
- F. CDF means the Central Disposal Facility (CDF) owned and operated by the COUNTY located at 2250 Adamson Road, Cocoa, Florida.
- G. Class I Solid Waste means solid waste that is not hazardous waste, and that is not prohibited from disposal in a lined landfill under Rule 62-701.300, F.A.C.
- H. Class III Solid Waste means yard trash, construction and demolition debris, processed tires, asbestos, carpet, cardboard, paper, glass, plastic, furniture other than appliances, or other materials approved by the Department, that are not expected to produce leachate that poses a threat to public health or the environment.
- I. Construction and demolition debris (C&D Debris) means discarded materials generally considered to be not water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, including such debris from construction of structures at a site remote from the construction or demolition project site.
- J. Commercial Operations means from the date when the DEVELOPER's LFG Utilization Facility begins deliveries of a Beneficial End Use Product to a Buyer.
- K. Commercial Quantities means an economically viable quantity of LFG (minimum of one (1) standard cubic feet per minute (scfm)) provided by the COUNTY at the Delivery Point pursuant to this Contract.
- L. CPI means Consumer Price Index - All Urban Consumers, US All Items, 1982-84 = 100, CPI Series 1.0. CUUR0000SA0.

- M. Condensate means the liquid formed from the condensing of the vapors that occurs during the collection, transportation, and processing of LFG.
- N. Day means a calendar day.
- O. Delivery Point(s) means the point(s) at which the LFG enters the DEVELOPER's header or connection piping for delivery to the DEVELOPER's LFG Utilization Facility. The point(s) are located at or near the COUNTY's Flare Station facilities.
- P. Blower and Flare Station means the equipment and appurtenances used to incinerate LFG. The Blower and Flare Station is used when the LFG Utilization Facility is down for maintenance or other reasons to incinerate LFG in compliance with applicable federal, state, and local rules and regulations, and to control odors. Under this Contract, the DEVELOPER is obligated to maintain, repair, and operate the COUNTY's Flare Station(s) in such a manner as to incinerate any excess LFG not used for beneficial use, in order to control odors and to comply with all applicable regulatory requirements.
- Q. Environmental Attributes means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable now or in the future to the use or destruction of Landfill Gas or the production of energy from Landfill Gas put through the LFG Utilization Facility. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of CO₂, methane (CH₄) and other greenhouse gases (GHGs); (3) tax credits or similar renewable energy attributes; (4) green tags and similar products; and (5) all other forms of subsidy or incentive allowed for by law and all related reporting rights.
- R. Environmental Claims means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of its business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including, without limitation, (i) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances or arising from alleged injury or threat of injury to human health

or the environment.

- S. Environmental Laws means any and all federal, state and local laws, statutes, ordinances, rules, regulations, permits, licenses, approvals, rules of common law and orders of courts or Governmental Authorities, relating to the protection of human health or occupational safety or the environment, now or hereafter in effect and in each case as amended from time to time, including, without limitation, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Substances.
- T. Effective Date. This Contract shall become effective upon the execution and delivery hereof by the parties hereto (the "Effective Date"). Until the effective date, this Contract shall be of no force or effect.
- U. Force Majeure means acts of God; winds, hurricanes, tornadoes, fires, epidemics, landslides, floods; strikes, lock-outs, acts of public enemies; insurrections; military action; war, whether or not it is declared; sabotage riots; civil disturbances; explosions; a change in law not due to improper conduct or to any negligent or intentional act or omission; or any cause or event, not reasonably within the control of the party claiming Force Majeure other than the financial inability of such party caused by factors other than any of the foregoing factors.
- V. Heating Value means the amount of heat produced by the complete combustion of a unit quantity of fuel. The gross or higher heating value (HHV) is that which is obtained when all of the products of combustion are cooled to the temperature existing before combustion, the water vapor formed during combustion is condensed, and all the necessary corrections have been made. The net or lower heating value (LHV) is obtained by subtracting the latent heat of vaporization of the water vapor, formed by the combustion of the hydrogen in the fuel, from the gross or higher heating value.
- W. Landfill means the area within the CDF where Class I, Class III and other municipal solid wastes are permanently deposited in approved permitted disposal areas. The Landfill is currently defined as the two disposal units within the CDF, and would include any future disposal units. The Slurry Wall Landfill (SWL) and the Southern Expansion Area (SEA) are the existing permitted, constructed, operated or planned disposal areas at CDF.
- X. Landfill Gas (LFG) means any and all gases resulting from the decomposition of refuse material within the Landfill, consisting principally of methane, carbon dioxide and traces of other non-methane organic compounds and constituent gases.
- Y. Lease Contract means the Amended and Restated real property Lease Contract between the DEVELOPER and COUNTY as incorporated by

reference and attached as Attachment B.

- Z. LFG Collection System means the COUNTY operated network of LFG recovery wells and interconnecting pipes together with attendant valves, condensate sumps and pumps, monitoring devices and other related equipment installed for the purpose of extracting, collecting, and transporting LFG to the Delivery Point(s).
- AA. LFG Purchase Contract means this Contract, and any subsequent Amendments, between the COUNTY and DEVELOPER for: the construction and operation of the DEVELOPER's LFG Utilization Facility, the connection to the Delivery Point(s) for the recovery and utilization of LFG, and the purchase of the LFG provided by the COUNTY at the Delivery Point(s).
- BB. LFG Utilization Facility ("LFGUF") means the DEVELOPER's on-site buildings or enclosure and the equipment required for processing and delivery of the Beneficial End Use Product to the Buyer, such equipment may include, but is not limited to, compression equipment, an oil and gas cooler, a condensate knockout tank, scrub areas, generating equipment, and related facilities.
- CC. LFG Utilization Facility Site means an area located within the CDF property upon which the DEVELOPER may access, install, and construct the LFG Utilization Facility. The LFG Utilization Facility Site shall be adjacent to the current Facility as agreed to by the COUNTY and DEVELOPER.
- DD. Leachate means the liquid that has passed through or emerged from solid waste and may contain soluble, suspended, or miscible materials.
- EE. Utility Interface (i) in the case where LFG is used to generate electric power, this term shall mean the step-up transformer, metering facilities, protection circuitry, transmission lines, poles, and any other equipment necessary to interconnect the LFG Utilization Facility with the grid of the electric utility in whose franchise area the Landfill is located, or (ii) in the case where LFG is converted to other beneficial products, this term shall mean the metering facilities, pipelines, valves and any other equipment necessary to interconnect the LFG Utilization Facility with the transmission or distribution pipelines or other facility of the electric utility, pipeline company, or other Buyer.

Section 2. Rights Granted to DEVELOPER

Subject to the limitations and other provisions of this Contract, and of the Lease, COUNTY hereby grants to DEVELOPER the following:

- A. Collected Landfill Gas. The right and license to connect, process, sell, and utilize the LFG that is collected from the Landfill and delivered by the COUNTY to the DEVELOPER at the Delivery Point(s) during the term of this

Contract. It shall be the DEVELOPER's responsibility to connect, collect, transmit, treat and utilize all LFG made available by the COUNTY for direct sale of the LFG as fuel or conversion of the LFG to a Beneficial End Use Product for sale to a third party. Title to and risk of loss for all the LFG will pass to DEVELOPER at the Delivery Point(s).

- B. DEVELOPER shall have the exclusive right to any Environmental Attributes that may be associated with the recovery of LFG. DEVELOPER shall also have the exclusive right to claim and utilize any current and future attributes, credits, emissions reductions, offsets, allowances and other benefits during the term of this Contract.
- C. Site Lease for LFG Utilization Facility. In accordance with the provisions of this Contract, the COUNTY will make available to DEVELOPER an additional area located adjacent to the current LFGUF, mutually agreeable to the COUNTY and DEVELOPER for construction of the expansion to the LFGUF. A Lease Contract commencing on of the effective date of this Amended and Restated Contract and terminating at the termination of this Contract will be executed between the DEVELOPER and the COUNTY. The new Lease Contract will include the existing site and the adjacent expansion area ("Leased Area"). DEVELOPER shall have exclusive use of the Leased Area for operation and maintenance of the LFGUF Site during the term of this Contract so long as DEVELOPER is not in default of its obligations under this Contract. The specific site area is defined in the Lease Contract between the Parties.
- D. Access. COUNTY will make available to the DEVELOPER access to the LFG Utilization Facility Site for construction, installation, operation, and maintenance of the DEVELOPER's supplied facility equipment, transmission lines, sewer, electric, water, and telephone lines that are necessary for the operation of the facility.

Section 3. Obligations of COUNTY.

- A. It is understood and agreed by the parties that COUNTY's primary obligation and purpose is the efficient management of the Landfill and all associated environmental control systems, and that the interests conveyed under Section 2 shall remain secondary to such landfill management. The operation of the Landfill Gas Utilization Facility shall not, therefore, unreasonably interfere with the management and regulatory requirements of the Landfill and associated environmental control systems.
- B. Subject to the remaining provisions of this Contract, COUNTY hereby reserves the following rights for itself:
 - 1) Notwithstanding any provisions to the contrary contained in this Contract but subject to DEVELOPER's right of termination and County's other duties under this Agreement, COUNTY shall be free at all times during the Term hereof to take any action COUNTY deems reasonably necessary or

desirable, in COUNTY's sole judgment, to comply with any Requirements of Law, Environmental Laws, regulation or permit or order of any other Governmental Authority without regard to the effect on the quantity or quality of LFG provided to DEVELOPER under this Agreement, provided (a) COUNTY shall provide notification of its intent to take action pursuant to Section 14 of this Contract prior to taking the action, if time permits such notification, and in any event shall provide DEVELOPER notice after and a summary of actions taken if such actions impact the rights or duties of DEVELOPER under this Agreement and (b) if such changes materially impact DEVELOPER's ability to perform under this Agreement and there is no mutually agreeable modification to this Agreement to resolve such impact, then DEVELOPER may terminate and such termination shall be considered a termination by DEVELOPER under Section 14 of this Contract and;

- 2) COUNTY and its agents shall have the right to inspect the LFGUF site with advance notice and at reasonable times, and in a reasonable manner, to confirm that DEVELOPER's operations remain in compliance with the requirements of this Contract.
- 3) From time to time in accordance with all environmental laws and regulations related to Landfill disposal operations, surface emission limitations and the CAA Title V Air Emission Permit for the Landfill, the COUNTY at its own expense will design, construct, upgrade, expand, operate, and maintain the LFG Collection System as needed to maintain compliance with federal and state regulations. The COUNTY will inform the DEVELOPER in advance of any pending construction for replacement, expansion, and additions and will coordinate with the DEVELOPER during temporary interruption of the LFG Collection System. Cooperation can include but not be limited to the DEVELOPER providing review comments for COUNTY's consideration on pending LFG Collection System design updates, construction of additional LFG extraction wells to control odors and reduce emissions, and install additional pipes and controls to transmit the LFG to the DEVELOPER at the Delivery Point(s).
- 4) DEVELOPER's on-site staff shall provide close communications with COUNTY's CDF operations staff on the operations of LFG extraction wells by COUNTY, especially during unplanned situation such as, but not limited to unexpected air intrusion into an LFG Collection System or plant shut downs.
- 5) Upon execution of this Contract by both parties and as part of working cooperatively with COUNTY on LFG Collection System expansions, the DEVELOPER agrees to pay for 50% of the cost of construction by a third-party contractor of all future LFG Collection System expansions at the Landfill during the term of this Contract, limited to \$5,000,000.00 over the term of this Contract. DEVELOPER also reserves the right, at its sole discretion, to make additional payments to the COUNTY above the payments required in this Contract, which will be used solely to offset the COUNTY's cost associated with mutually agreed to LFG Collection System improvements.

C. Subject to these limitations and the other provisions of this Contract, COUNTY shall:

- 1) Cooperate in the construction, development, and operation of the Landfill so as to enhance the production of LFG, when it is possible to do so while controlling odors and maintaining compliance with all applicable regulations and in accordance with this Contract;
- 2) Not interfere with the DEVELOPER's operation and maintenance of the LFGUF, providing DEVELOPER is complying with all applicable laws, regulations, or as otherwise required under this contract;
- 3) Instruct its independent developers, agents and employees to avoid causing such interference, disruption, or destruction described above;
- 4) Will repair at its expense, major cracks, fissures, erosion or unstable sideslope, and differential settlements in the Landfill which have an adverse effect on the production of LFG or on the LFG Collection System in accordance with applicable LFG surface emission regulations;
- 5) Comply with applicable federal, state and local laws, rules, ordinances and regulations relating to or regulating the construction and operation of the Landfill except for said responsibilities of the DEVELOPER as established under this Contract; and;
- 6) Allow connection to the on-site sewer pump station for disposal of condensate generated at the LFG Processing Facility.
- 7) Allow extension of the existing Landfill water main and fire protection water supply pipe be extended by the DEVELOPER to the Leased site. DEVELOPER will be responsible for the purchase and installation of a separate meter, including any applicable permitting or connection fees, and establish a separate account with the City of Cocoa Utilities for water usage.
- 8) Allow disposal of stormwater runoff from the Leased Area to be disposed in the Landfill's stormwater ponds, with the requirement that any runoff or discharge from the Leased Area meets surface water quality standards. An oil-water separator shall be required to be installed and maintained at the LFGUF prior to discharge to the Landfill stormwater management system.
- 9) Maintain consistent cover on the Landfill to meet current federal and state requirements
- 10) Provide to the DEVELOPER the historical and projected data for estimated solid waste disposal at CDF for the DEVELOPER to estimate the quantity of LFG that is anticipated to be generated or collected. The COUNTY is not providing any guaranty as to the quantity and quality of LFG that is generated or expected to be generated at the Landfill. The COUNTY will provide the developer an annual summary of solid waste quantities disposed at the

Landfill.

- D. Access to the DEVELOPER's Facilities. Access to the DEVELOPER's LFG Utilization Facility shall be by the established entranceway to the Landfill via the scale-house. The COUNTY shall take appropriate steps to ensure that this access route to the LFG Utilization Facility is available to the DEVELOPER at all times (i.e., 24 hours per day, 7 days per week). The Parties acknowledge that in the case of an emergency or Force Majeure event that access may be unavailable for a period of time. When utilizing this access route, the DEVELOPER shall abide by all of the applicable policies and safety regulations of the COUNTY. In certain situations, the COUNTY may require access to the DEVELOPER's facilities. In such cases, the COUNTY will notify the DEVELOPER of the need to enter the DEVELOPER's premises.
- E. Documents. As reasonably requested by DEVELOPER, COUNTY shall:
- 1) Allow DEVELOPER to inspect, in accordance with Chapter 119, Florida Statutes, available documents in its possession regarding LFG collection from the Landfill, the quantity, age, and type of refuse in the Landfill, tipping records, etc.; and
 - 2) Allow DEVELOPER to inspect, in accordance with Chapter 119, Florida Statutes, any environmental information, environmental impact reports or studies, permits or permit applications, zoning information including variances or variance applications., and any other available data relating to the Landfill and COUNTY's or DEVELOPER's activities contemplated in this Contract, and allow DEVELOPER to copy any such material or documents as may be in COUNTY's possession.
 - 3) The number of documents requested under this section shall be subject to the costs and fees of the production pursuant to Florida Statutes and Brevard County Policy.
- F. Good Faith. COUNTY and DEVELOPER shall perform their respective obligations hereunder in good faith, and acting reasonably, cooperate fully so that both parties can meet their responsibilities and obligation under this Contract. DEVELOPER shall comply with all laws and regulations applicable to the work being performed under this Contract.
- G. Caveats. Notwithstanding any portion of this Contract to the contrary, it is understood and agreed to by DEVELOPER that the COUNTY does not warrant or guarantee the rates of generation, collection efficiency, the chemical composition, economic value or marketability, or heating content of the LFG from the Landfill, DEVELOPER is relying on its own calculations and evaluation of the Landfill in this regard.

Section 4. Obligations of DEVELOPER

- A. DEVELOPER shall, at its sole expenses, design permit, construct, operate, maintain, and perform any upgrades to the LFGUF in order to receive the landfill gas from the COUNTY at the Delivery Point(s) and utilize the gas for beneficial use in compliance with the Federal, State and local regulatory laws.
- B. DEVELOPER shall, at its sole expense, operate and maintain the Blower and Flare Station, and make all future expansions with respect thereto, all in accordance with federal, state and industry standards, and in compliance with CDF Title V Air Emission Permit.
- C. DEVELOPER shall operate and maintain the LFGUF in a reasonably prudent manner, expand the capacity of the Facility as landfill gas generation increases in accordance with good engineering practice and in a manner consistent with that used by industry specialists providing similar services.
- D. The operation of the LFG Utilization Facility and any other activity of DEVELOPER shall not interfere with the management, construction and operational requirements of the CDF and the Landfill.
- E. Delivery Point(s). DEVELOPER shall, at its sole expense, provide and install:
 - 1) Header piping, connection piping, valves, pipe supports, and any other auxiliary items from the DEVELOPER's LFG Utilization Facility to the Delivery Point(s).
 - 2) A tee, valve, and blind flange at the Delivery Point(s) for the purpose of connecting to the COUNTY's LFG Collection System.
 - 3) Any needed blower booster(s) or blower(s), flare(s) to manage the flow of LFG to the Blower and Flare Station, and from the Delivery Point(s) to the LFG Utilization Facility.
 - 4) For the COUNTY's use, the DEVELOPER, at its own expense shall install, operate and maintain a flowmeter, gas chromatograph, and continuous recorder at the Delivery Point(s) for the purpose of determining the quantity and composition of LFG delivered to the DEVELOPER. The COUNTY and DEVELOPER shall mutually select the final locations. Flow meter(s) shall be calibrated quarterly by the DEVELOPER's representative certified to perform such calibrations and certified results be submitted to COUNTY promptly. The COUNTY may independently pay for calibration of the meter(s) by a third party certified to perform such calibrations to verify meter accuracy.
 - 5) On the first day of each month, the DEVELOPER shall submit to County a table showing total daily LFG flow, methane content, calculated MMBTU. The table shall indicate the total LFG flow to the DEVELOPER (LFGUF, Blower & Flare Station, and Pipeline LFG Processing Facility). The reports shall be

certified for accuracy by the DEVELOPER and shall be used to calculate compensation of the COUNTY in accordance with Section 6 of this Contract. a copy of the quarterly meter testing certification shall be included.

- F. Commercial Operations. DEVELOPER shall construct the additions to the existing LFGUF for treatment of the LFG to pipeline quality gas (Pipeline LFG Facility) including all associated underground pipelines in accordance with applicable standards, ordinances, permits, rules and regulations, The Pipeline LFG Facility may include an additional candlestick flare to destroy excess LFG not used directly by the Pipeline LFG Facility. DEVELOPER shall submit an air permit application to the regulatory agency within six (6) months of the Effective Date. The Pipeline LFG Facility shall commence Commercial Operations within 36 months from the effective date of this Landfill Gas Purchase Contract, unless (i) there are documented third party or COUNTY delays provided in writing by the DEVELOPER which will extend the schedule day for day, or (ii) the date is mutually extended, or (iii) DEVELOPER does not receive permits and funding approval. Should Commercial Operations of the Pipeline LFG Facility not commence within 36 months, unless extended under (i) or (ii) above, DEVELOPER shall continue use of the LFG for its Intended Purpose.
- G. Operations. DEVELOPER shall operate the LFGUF as follows:
- 1) Operate the LFGUF and all associated DEVELOPER supplied equipment in a prudent manner in accordance with good engineering practices and in a manner consistent with that used by industry specialists providing similar services.
 - 2) Maintain the LFG Utilization Facility and all associated DEVELOPER supplied equipment in good working order throughout the term of this Contract.
 - 3) Repair the LFG Utilization Facility and all associated DEVELOPER supplied equipment, as necessary, to restore normal operations and system redundancies to ensure compliance with the terms of this Contract.
 - 4) Operate and Maintain the COUNTY's Blower and Fare including all future expansions with respect thereto, all in accordance with the existing federal, state and local regulations and industry best practice standards.
 - 5) Maximize the use of the available LFG from the COUNTY and sell and deliver Beneficial End Use Product to a Buyer.
 - 6) Maintain a constant and balanced draw from the COUNTY's LFG Collection System in order for the COUNTY to maintain an effective vacuum to balance of the active LFG collection system.
 - 7) Maintain air emission generated by the operations to any applicable standards, federal and state law requirements and permits.

- 8) Flare all LFG that may be available due to excess quantity, scheduled and unscheduled maintenance, or shut-off by Buyer.
 - 9) Control on-site odors from the DEVELOPER's facilities in order to control on-site and off-site impacts in accordance with applicable standards, ordinances, permits, rules and regulations. Upon the request of the COUNTY, DEVELOPER shall make a reasonable effort to further reduce or limit odors and noise determined to have an offsite impact.
 - 10) Maintain noise levels from the operation of the DEVELOPER's facility at any point of the Landfill site boundary in accordance with Section 62-2271 of the COUNTY's Land Development Regulations. The DEVELOPER shall not be responsible for the noise from the COUNTY's landfill operations.
 - 11) Control and dispose of all wastes generated from the DEVELOPER's facilities according to current Federal, State, and local environmental regulations, including gas condensate and waste cooling water. Any contamination or other environmental condition, including clean-up actions or remediation work, resulting from DEVELOPER's operations, at the COUNTY's landfill, shall be DEVELOPER's responsibility.
 - 12) Comply with all applicable federal, state and local laws, rules, ordinances and regulations and any other said responsibilities of the DEVELOPER as established under this Contract.
 - 13) Provide information to COUNTY, as necessary, for COUNTY to comply with New Source Performance Standards (NSPS) reporting requirements, or other regulatory reporting requirement.
 - 14) Comply with annual inspection and implement recommendations made by the COUNTY's consulting engineer on annual inspection of the flare and facility property.
- H. Good Faith. DEVELOPER shall perform its obligations hereunder in good faith and acting reasonably, cooperate fully with COUNTY so that COUNTY can meet its responsibilities and obligation under this Contract. DEVELOPER shall comply with all laws and regulations applicable to the work being performed under this Contract.
- I. Drawings Review. DEVELOPER shall submit to COUNTY for review and comment plans, specifications and drawings for the procurement, installation and construction of the Pipeline LFG Facility. The purpose of such review is to ensure that the facilities constructed on the COUNTY's property will not interfere with the COUNTY's operations, and will comply with all applicable laws (e.g., permitting, zoning, and environmental requirements), as well as the provisions of this Contract. Following the development of the Pipeline LFG Facility, DEVELOPER will provide COUNTY with a complete set of "as built" plans for the Pipeline LFG Facility. The review process described in this paragraph does not relieve the DEVELOPER of its obligations to obtain the

required building permits and site plan review approval, or any other local, state or federal approvals required for the DEVELOPER's LFG Utilization Facility.

Neither the COUNTY's authority to review plans, specifications or drawings relating to the implementation of this Contract nor any comment made by the COUNTY in good faith in conjunction with such review and approval shall give rise to any duty or responsibility of COUNTY to DEVELOPER, any subcontractor, any supplier, or any other person or organization performing any of the work, or to any surety for any of them.

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

- J. Permits. DEVELOPER shall, at its own expense, prepare and file permit applications and diligently prosecute the processing of such permit applications for the purpose of obtaining all environmental and other permits which are required under applicable local, state, and federal laws and regulations for the construction, installation, and operation of the LFG Utilization Facility, associated electrical transmission lines, and/or steam, or LFG transmission pipelines, on and off-site. In connection therewith, the COUNTY agrees to make available to the DEVELOPER all known public records within the COUNTY's possession of environmental information reports, environmental impact reports, air impact assessment studies, copies of all environmental applications filed, and other available data relating to and used in connection with obtaining any environmental permits necessary for the installation and operation of any equipment or the conducting of any other activities at the Landfill.

Any permit modifications or applications that may affect existing COUNTY permits and/or require the COUNTY to attest or sign the applications shall be submitted to the COUNTY for review, comment, and concurrence prior to submission to the applicable regulatory agency. The DEVELOPER shall incorporate any comments from the COUNTY subsequent to final review by the COUNTY and re-submit to COUNTY for final approval, authorization, and signature.

- K. Laws and Regulations. The DEVELOPER must agree to abide by and conduct its programs and provide its services in compliance with the applicable provisions of

- Florida Worker's Compensation Statutes and Regulations, Florida Statutes, Chapter 440 and Florida Administrative Code (F.A.C), Rule 38F
- Florida Workplace Safety and Health Regulations, F.A.C - Rule 381
- Federal Civil Rights Act of 1866
- Federal Civil Rights Act of 1871
- Federal Equal Pay Act of 1963

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

The DEVELOPER is presumed to be familiar with all applicable federal, state and local laws, ordinances, code rules and regulations that may in any way affect the work. Ignorance on the part of the DEVELOPER will in no way relieve them of responsibility or transfer any liability to the COUNTY. The DEVELOPER shall indemnify the COUNTY for any fine or penalty caused by DEVELOPERS violation of a rule or law.

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

- 1) DEVELOPER's employee is on the site at the same time, or
- 2) DEVELOPER requests assistance from the COUNTY or a duly authorized representative, or
- 3) It is necessary for the COUNTY to collect samples from the discharges of the DEVELOPER's facility, or
- 4) A situation that requires immediate attention. The COUNTY will notify the DEVELOPER within 24 hours of entrance onto the DEVELOPER's site.

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

The DEVELOPER shall provide a key to the facility to the COUNTY which will be kept on site so that the COUNTY may access the Facility in the case of emergency.

M. Project Plan. The DEVELOPER must prepare and submit to the COUNTY a preliminary Project Plan for the LFGUF and Pipeline LFG Facility, during the construction process. The Plan will cover a number of aspects of the DEVELOPER's operations and will include at a minimum:

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

The Project Plan will be reviewed, finalized and accepted by the COUNTY prior to the startup of the LFG Utilization Facility. The DEVELOPER shall reasonably accommodate the COUNTY'S requests that may not be legally required, but would be in the best interests of the Parties. Once accepted by the COUNTY, the DEVELOPER is obligated to adhere to the Plan. Deviations from the plan are only permissible if they are made in writing to the COUNTY and accepted in writing by the COUNTY. Operations will commence after completion of the startup period and approval of the Project Plan by the COUNTY.

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

O. Transmission Line. Any off-site pipeline or transmission line to the Buyer's premises shall comply with and be included within the requirements and liabilities assumed by the DEVELOPER under this Contract. Any portion of the pipeline or transmission line on public right of way shall be clearly marked according to industry or governmental standards. The depth of the pipeline or transmission line shall comply with local permitting code and/ Federal or State law whichever is applicable.

P. Performance Bond or Other Financial Security Instrument. The DEVELOPER shall provide affidavit that a performance bond or other financial security instrument acceptable to the COUNTY, in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) is furnished to the COUNTY for the term of this Contract. The bond or other financial security instrument shall

be conditioned upon full performance of all obligations imposed upon the DEVELOPER by this Contract, without limitation. The bond shall be executed by a company licensed to do business as a qualified surety in the State of Florida and acceptable to the COUNTY. The specific terms of the performance bond or other financial security shall be subject to the prior approval of the County Attorney.

Section 5. Term and Effective Date.

- A. Contract Term. This Contract shall have a term ending on the date that is twenty-five (25) years after the date that both parties sign this Contract. DEVELOPER shall commence Commercial Operations of the Pipeline LFG Utilization Facility (as provided in writing by DEVELOPER), consistent with the provisions of this Contract.
- B. The County Manager shall have the authority to renew this Contract for an additional five (5) years. At least one year (365 days) prior to the expiration of this Contract, a request for renewal must be made by the DEVELOPER. Nothing in this language shall be construed to require renewal by the COUNTY.
- C. At the end of the term, this Contract shall terminate, unless extended by mutual written agreement of the COUNTY and DEVELOPER. The DEVELOPER shall provide written notice to COUNTY at least one year (365 days) prior to expiration of the term their intention not to extend this Contract. This will allow the COUNTY sufficient time to issue RFI and RFP for a new operator.

Section 6. Payment.

A. Expansion Payment

- 1) As part of working cooperatively with COUNTY on LFG Collection System expansions, the DEVELOPER agrees to pay for 50% of third-party contractor costs of all future LFG Collection System expansions at the Landfill during the term of this Contract. Payments will be made directly to the COUNTY as third-party contractor invoices for LFG Collection System expansion construction are received.
- 2) The total maximum payment to the COUNTY by the DEVELOPER for expansion of the LFG Collection System shall be Five Million dollars (\$5,000,000.00).

B. Prior to Commercial Operations of the Pipeline LFG Facility:

- 1) Payment for Right to and Use of LFG from the Landfill: DEVELOPER shall pay a fixed fee of Thirty-five Thousand and No/100 Dollars (\$35,000.00) per year, payable in equal monthly installments of Two Thousand Nine Hundred Sixteen and 67/100 Dollars (\$2,916.67). This payment shall cover an

exclusive right to and use of LFG from the Landfill and a license for the LFG Utilization Facility Site. This fee shall be adjusted by CPI on an annual basis, on the anniversary date of the Contract.

Payment for LFG Delivered: DEVELOPER shall pay a unit rate fee of \$0.25 per mmBTU, payable in monthly installments for the totaled LFG delivered to the DEVELOPER, by recording the total quantity of LFG delivered to the DEVELOPER on a monthly basis as determined by the flow meters at the Delivery Point(s). This unit rate fee shall be annually adjusted by the CPI on the anniversary date of the Contract.

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

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

where:

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

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

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

D = Factor of 1,000,000

C. Upon Commercial Operations of the Pipeline LFG Facility and until April 1, 2028:

- 1) Payment for Right to and Use of LFG from the Landfill: DEVELOPER shall pay a fixed fee of Thirty-five Thousand and No/100 Dollars (\$35,000.00) per year, payable in equal monthly installments of Two Thousand Nine Hundred Sixteen and 67/100 Dollars (\$2,916.67). This payment shall cover an exclusive right to and use of LFG from the Landfill and a license for the LFG Utilization Facility Site. This fee shall be adjusted by CPI on an annual basis, on the anniversary date of the Contract.
- 2) Payment for LFG Delivered: DEVELOPER shall pay a unit rate fee of \$0.3919 per mmBTU, payable in monthly installments for the total LFG delivered by the DEVELOPER in the preceding month, by recording the total quantity of LFG delivered to the DEVELOPER on a monthly basis as determined by the flow meters at the Delivery Point(s).

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

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

where:

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

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

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

D=Factor of 1,000,000

- D. **Beginning on April 1, 2028 through the end of the Term:**
- 1) Payment for Right to and Use of LFG from the Landfill: DEVELOPER shall pay a fixed fee of Thirty-five Thousand and No/100 Dollars (\$35,000.00) per year, payable in equal monthly installments of Two Thousand Nine Hundred Sixteen and 67/100 Dollars (\$2,916.67). This payment shall cover an exclusive right to and use of LFG from the Landfill and a license for the LFG Utilization Facility Site. This fee shall be adjusted by CPI on an annual basis, on the anniversary date of the Contract.
 - 2) Payment for LFG Delivered: DEVELOPER shall pay the COUNTY an amount equal to five percent (5%) of actual revenues received by DEVELOPER from the sale of Beneficial End Use Products, payable in monthly installments. The actual revenues are net of third-party costs (not to exceed 5% of gross revenue) associated with the sale and transportation of Beneficial End Use Products.
- E. **Payment Due Date:** All monies due to the COUNTY on a monthly payment basis shall be payable in arrears along with documentation of revenues receipts, monthly LFG quantities delivered to the DEVELOPER, and calculations of the monthly payment are due on or before the twenty-fifth (25th) day of the calendar month following the month in which DEVELOPER actually receives revenues from its sale of the Beneficial End Use Products converted from the LFG from the Landfill. The COUNTY shall have the right to inspect, copy, and audit during reasonable business hours the sales journal and any other pertinent books and records of the DEVELOPER relating to the calculations of the revenues upon which the payment of LFG delivered will be based or any other payment to the COUNTY. If the above indexes are not available for any reason, the parties shall mutually agree on the use of a replacement index or indexes.

Section 7. Financing.

COUNTY acknowledges that DEVELOPER may desire to finance some or all of the equipment or personal property required to undertake work to be performed under this Contract and hereby consents to any encumbrance or lien on the machinery, equipment, fixtures, and buildings that make up the LFG Utilization Facility and Utility Interface for the purpose of obtaining such financing, provided:

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

Under no circumstances shall DEVELOPER cause any mortgage or lien to exist on the COUNTY property, Landfill, access road, or LFG Utilization Facility Site, and no security

interests may be granted in any underground transmission lines, pipelines, or underground equipment or fixtures associated with the project.

Section 8. General Obligations.

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

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

- F. COUNTY's Landfill Gas Flare Station. The COUNTY currently owns one flare station at the CDF. The flare station is enclosed by a security fence and includes three (3) LFG Specialties Utility Flares with peripheral equipment (capacity 301-3014 scfm each of landfill gas at 30-50% methane content.) Also included are three all aluminum flame arresters, two (2) Gardner Denver/Lamson multistage centrifugal landfill gas blowers with 40 hp, 460 VAC, three phase motor (blower rated for 2083 SCFM @50 in. w.c. inlet vacuum and 10 in. w.c. discharge pressure; propane pilot assembly with automatic igniter system, automatic flare controller, blower motor controls, and condensate knockout tank.

LFG that is not used in a beneficial manner shall be incinerated at the COUNTY's Flare Station. When necessary the DEVELOPER shall operate the COUNTY's Flare Station to control odors and comply with all applicable regulatory requirements.

The DEVELOPER shall maintain, repair and replace the COUNTY's Flare Station in good working order throughout the term of the Contract. The COUNTY shall design, permit, construct and pay for any additional equipment or other improvements to the COUNTY's Flare Station(s) if such actions become necessary to ensure compliance with applicable regulations due to (i) a change in applicable laws or regulations, that occurs after the effective date of this Contract or (ii) an expansion of or other change in the COUNTY's LFG Management System. The COUNTY shall also be responsible for damages, fines or corrective action related to or required by any catastrophic failure of the COUNTY's Flare Station, not caused by any acts or omissions of DEVELOPER, their agents, or employees.

- G. Non Waiver.
- 1) The failure of either party to exercise any right shall not be considered a waiver of such right in the event of any further default or noncompliance.
 - 2) No action taken by COUNTY or DEVELOPER after the effective date of the termination of this Contract pursuant to Section 14 in accepting one or more payments from the other or undertaking any other activity which would have been authorized by this Contract but for its termination, shall be construed that this Contract is not terminated or as a waiver of the termination.
- H. Inspections. COUNTY has the right to conduct inspections of the DEVELOPER's facilities to verify operations compliance, environmental compliance, and compliance with applicable local, state, and federal

regulations and said responsibilities of this Contract.

Section 9. Limitations of Liability.

- A. Except as otherwise provided herein, COUNTY provides no warranties or guarantees, either expressed or implied, as to the amount or chemical composition of the LFG to be extracted and made available to the DEVELOPER at the Delivery Point(s) hereunder, including, but without limitation, any warranty of merchantability or fitness of the LFG for a particular purpose; provided, however, if the Landfill does not produce Commercial Quantities of LFG, DEVELOPER may terminate this Contract as provided in Section 14(d).
- B. Provided DEVELOPER is complying with applicable laws and regulations, DEVELOPER will be solely responsible for the determination of the suitability of the LFG to be used under this Contract for any and all purposes contemplated by DEVELOPER.
- C. With the exception of operation of the Flare Station and the LFG utilization facility as specified in Section 4 (e), nothing contained within this Contract shall be construed to mean that DEVELOPER has assumed any of the COUNTY's responsibilities to comply with any environmental laws and regulations, whether federal, state, or local.
- D. In no event shall DEVELOPER be liable to COUNTY with respect to any claims arising from the solid waste related operations of the Landfill which do not arise from the actions or omissions of the DEVELOPER.
- E. COUNTY shall not be liable for damages, including consequential damages, loss of revenues and/or lost profits, for COUNTY employees' entry on the LFG Utilization Facility Site at the Landfill pursuant to Section 4) L herein. Further, COUNTY shall not be liable for consequential damages, loss of revenues and/or lost profits for any reason whatsoever.
- F. DEVELOPER is liable for any fines and/or repair for any environmental damage due to the DEVELOPER's facilities construction and operations.
- G. Nothing contained in this Contract constitutes a waiver of the COUNTY's sovereign immunity or the limitations on liability contained in Section 768.28, Florida Statutes.

Section 10. Indemnification.

To the fullest extent permitted by Laws and Regulations, the DEVELOPER shall indemnify and hold harmless the COUNTY and the officers, directors, employees, agents and other consultants of the COUNTY from and against all claims, expenses, fines, penalties, losses and damages (including but not limited to all fees and charges of the DEVELOPER, engineers, architects, attorneys and other professionals) caused by, arising out of or resulting from the DEVELOPER's design and construction activities and/or operation of facilities, provided that any

such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease, death, or personal injury, or to property damage, including the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission of the DEVELOPER, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the services or anyone for whose acts any of them may be liable. The DEVELOPER agrees that it will pay the costs of the COUNTY's legal defense, including fees of attorneys as may be selected by the COUNTY and shall defend, satisfy, and pay any judgments which may be rendered against the COUNTY in connection with the above hold harmless agreement. The DEVELOPER acknowledges that specific consideration has been received for this hold harmless/indemnification provision.

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

Section 11. Insurance.

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

The DEVELOPER shall require each of its Subcontractors, if any, to procure and maintain, until completion of that Subcontractor's work, insurance of types and to the limits specified in Section A 1) through 5) inclusive below. It shall be the responsibility of the DEVELOPER to ensure that all its Subcontractors meet these requirements.

- A. Coverage. Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements.
- 1) Workers' Compensation: Coverage to apply for all employees at the STATUTORY limits in compliance with applicable state and federal laws. If any operations are to be undertaken on or about navigable waters, coverage must be included for the USA Longshoremen & Harbor Workers Act, and Jones Act. In addition, the policy must include EMPLOYERS LIABILITY for limits of Five Hundred Thousand and No/100 Dollars (\$500,000.00)/each accident; One Million and No/100 Dollars (\$1,000,000.00)/disease - policy limit; Five Hundred Thousand and No/100 Dollars (\$500,000.00)/disease - each employee, and a waiver of subrogation in favor of COUNTY, its agents, employees and officials.
 - 2) Commercial General Liability: Coverage must be afforded, under a per occurrence form policy, including Premises, Operations, Products and Completed Operations, Broad Form Property Damage Endorsement, and naming the COUNTY as an Additional Insured on the certificates of insurance. General Liability coverage shall be a minimum of Two Million and No/100 Dollars (\$2,000,000.00) for each occurrence for bodily injury/property damage, and at least Four Million and No/100 Dollars (\$4,000,000.00) in general liability aggregate coverage; Two Million and No/100 Dollars (\$2,000,000.00)/products-completed operations (aggregate); Fifty Thousand and No/100 Dollars (\$50,000.00)/fire damage legal; X-C-U shall be indicated as included. Limits may be satisfied with a combination of primary and umbrella/excess liability coverage subject to the approval of the County's Risk Management Office.

- 3) Business Auto Policy: Coverage must be afforded including coverage for all owned vehicles, hired/non-owned vehicles, with an Additional Named Insured Endorsement in favor of the COUNTY, for a combined single limit (bodily injury and property damage) of not less than One Million and No/100 Dollars (\$1,000,000.00).
- 4) Builder's Risk /Installation Floater: When this Contract includes construction of or additions to above ground buildings or structures, or installation of machinery or equipment, Builder's Risk, and/or Installation Floater coverage must be provided as follows:
 - a. All Risk Coverage - All risk Coverage on a completed value form shall provide primary, non-contributory coverage with a waiver of subrogation in favor of the COUNTY.
 - b. Amount of Insurance - one-hundred percent (100%) of the Project value of such addition(s), buildings(s), or structures(s), or machinery and equipment.
 - c. Waiver of Occupancy Clause or Warranty - Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the building(s), addition(s), or structure(s) will not be occupied by the COUNTY.
 - d. Maximum Deductible - Five Thousand and No/100 Dollars (\$5,000.00) each claim. Higher deductibles are permitted subject to COUNTY approval.
 - e. Additional Insured - The COUNTY must be included as an additional insured.
 - f. Notice of Cancellation and/or Restriction - The policy must be specifically endorsed to provide the COUNTY with thirty (30) days' notice of cancellation and/or restriction, except ten (10) days for non-payment of premium.
- 5) Pollution Liability Coverage: Pollution Liability insurance covering bodily injury and property damage in an amount not less than Five Million and No/1000 Dollars (\$5,000,000.00) per claim. The coverage shall apply to, but not be limited to, loss, damage, or injury to the COUNTY's premises and to all third-party claims, including remediation, as a result of pollution arising from DEVELOPER's use, operation and maintenance, as well as any design, construction, and/or installation.
- 6) Flood Insurance: When the buildings or structures are located within an identified special flood hazard area, flood insurance protecting the interest of the DEVELOPER and the COUNTY must be afforded for the lesser of the total insurable value of such buildings or structures, or the maximum amount of

flood insurance coverage available under the National Flood Insurance Program.

- B. **Certificates of Insurance.** Certificates of all insurance (COI) required from the DEVELOPER shall be filed with the COUNTY showing "Brevard County" as the Certificate Holder, before operations are commenced. The insurance indicated on the COI shall be subject to the COUNTY's approval for adequacy and protection. The insurer, as well as the DEVELOPER, shall be required to provide the COUNTY with thirty (30) days advance written notice of any cancellation or modification of coverage which shall be reflected on the COI, except ten (10) days for non-payment of premium. The COI will state the types of coverage provided, limits of liability, expiration dates, additional insured status, waiver of subrogation on the workers compensation policy, notice of cancellation requirement and shall be accompanied by the appropriate endorsement pages for review. The COUNTY shall be identified as an Additional Insured for each type of coverage required by Section A (2) through A (5) above. The required COI(s) may refer specifically to this Contract and the above sections in accordance with which such insurance is being furnished, and may state that such insurance is as required by such sections of this Contract.

In the event any policy or coverage is issued in a "claims made" form, the COI will show a retroactive date, which should be the same date as the Contract (original date if Contract is renewed) or prior and such policy or coverage shall be maintained for a period of four (4) years beyond the expiration or termination of this Contract.

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

Given the term of the Contract, the insurance requirements stated herein shall be subject to regular review by the County and subject to appropriate increase as may be commercially reasonably determined by the County.

Section 12. Removal and Restoration.

- A. Ownership of Equipment. Except as otherwise provided in this Contract, the LFG Utilization Facility and related equipment shall remain the personal property and/or responsibility of DEVELOPER (collectively "DEVELOPER's Equipment"), notwithstanding this method or mode of installation or attachment to the Landfill. Upon written request by DEVELOPER, COUNTY shall provide a waiver or estoppel certificate from COUNTY or any lessee operator of the Landfill, in a form satisfactory to DEVELOPER and COUNTY, acknowledging that DEVELOPER's Equipment is personal property owned by DEVELOPER subject to right of removal by DEVELOPER. Notwithstanding the above, however, no equipment shall be removed that will affect the operations of the COUNTY's Flare stations needed to remain in compliance with applicable federal, state, and local laws and regulations, and to control

landfill gas migration and atmospheric emissions, including odors. All equipment, fixtures, or improvements made for or purchased to maintain operation of the Flare Station shall remain the property of the COUNTY.

- B. Transfer of Ownership upon Expiration or Termination. Upon the expiration or termination of this Contract, at the COUNTY'S option, the below ground portions of the LFG Utilization Facility and the building shall become the personal property and responsibility of COUNTY. DEVELOPER shall have no further responsibility with respect to the below ground portions of the LFG Utilization Facility after DEVELOPER conveys title to such equipment, free and clear of any encumbrances, liens or security interest.
- C. Flare Station. The Flare Station shall be turned over to COUNTY operation and maintenance responsibilities in good working condition and able to maintain compliance with all applicable environmental regulatory requirements.
- D. Removal and Restoration Bond. Before starting and throughout the term of this Contract, DEVELOPER shall procure and maintain a bond or financial security instrument as provided in Section 4.n. In addition to other obligations of DEVELOPER, such bond or financial security instrument may be used to ensure the removal of the DEVELOPER's facilities and the restoration of the land upon the expiration or termination of this Contract.

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

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

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

Section 13. Force Majeure.

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

- A. The non-performing party, as soon as possible but no later than two (2) weeks after the occurrence of the cause of the Force Majeure, gives the other party written notice describing the particulars of the occurrence; and
- B. The suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; and
- C. No obligations of either party which arose prior to the occurrence causing the suspension of performance be excused as a result of the occurrence; and
- D. That the non-performing party endeavors to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

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

Section 14. Termination.

- A. DEVELOPER's Default. The failure of the DEVELOPER to comply with any provision of this Contract shall place the DEVELOPER in default. Prior to terminating the Contract, the COUNTY shall notify the DEVELOPER in writing. Notification shall make specific reference to the provision which gave rise to the default. The COUNTY shall provide the DEVELOPER thirty (30) days to propose a written remedy and schedule which shall set forth the specific time frame for curing default. The COUNTY shall approve or disapprove the

DEVELOPER's proposed remedy and schedule, which shall not be unreasonably withheld, delayed, or conditioned. If the COUNTY disapproves DEVELOPER's proposed remedy and schedule, the COUNTY may, at its sole option, direct the proposed remedy and schedule or provide DEVELOPER with ninety (90) days prior written notice of termination. In the event that the Premises is not used for the Intended Purpose or ceases to be used for the Intended Purpose, as stated in this Contract, this Contract shall immediately terminate following the notification and remedy procedure outlined above and the possession of the Premises shall immediately revert back to the County which shall thereafter have the right to re-enter and repossess the Premises.

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

- 1) The filing by or against DEVELOPER of a petition in bankruptcy or the complete cessation of the business operations of DEVELOPER;
- 2) Failure by DEVELOPER to pay the fees due the COUNTY pursuant to Section 6, Payment;
- 3) Failure by the DEVELOPER to operate the LFG Utilization Facility and all associated DEVELOPER supplied equipment in a prudent manner, in accordance with good engineering practices and in a manner consistent with that used by industry specialists providing similar services;
- 4) Failure by the DEVELOPER to maintain the LFG Utilization Facility and all associated DEVELOPER supplied equipment in good working order throughout the term of this Contract;
- 5) Failure to operate the system or to maintain compliance with environmental regulations and noise limitation and odor control requirements;
- 6) Failure to pay for any damages assessed to the DEVELOPER;
- 7) Failure to commence Commercial Operations or continue operations for the Intended Purpose within 36 months from the effective date of this Contract.

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

- B. Repeated Defaults by DEVELOPER. In the event that the DEVELOPER's record of performance shows that the DEVELOPER has frequently, regularly or repetitively defaulted in the performance of any of the material covenants and conditions required herein to be kept and performed by the DEVELOPER and regardless of whether the DEVELOPER has corrected each individual condition of default, the DEVELOPER may be deemed a "habitual violator"

and all of said defaults may be considered collectively to constitute a condition of default. The COUNTY may thereupon issue the DEVELOPER a final warning citing the circumstances therefore, and any single material default by the DEVELOPER within one (1) year after said warning shall be grounds for termination of this Contract. In the event of any such single subsequent default within one (1) year, the COUNTY may terminate this Contract upon the giving of written final notice to the DEVELOPER. The COUNTY's Solid Waste Management Director shall be the sole authority to determine and deem the DEVELOPER as a "habitual violator".

- C. COUNTY's Default. The failure of the COUNTY to comply with any provision of this Contract shall place the COUNTY in default. Prior to terminating the Contract, the DEVELOPER shall notify the COUNTY in writing. Notification shall make specific reference to the provision which gave rise to the default. The DEVELOPER shall provide the COUNTY thirty (30) days to propose a written remedy and schedule which shall set forth the specific timeframe for curing default. In the event of a default by the COUNTY, the COUNTY shall pay DEVELOPER an amount for capital expenditures for the LFG Utilization Facility consistent with Section 12(b) of the Contract, or the DEVELOPER may remove the above ground portion of the LFG Utilization Facility at the DEVELOPER's option.
- D. Termination for Insufficient Quantities of LFG. Should the DEVELOPER determine, following LFG Utilization Facility start-up, that LFG can no longer be reasonably recovered from the Landfill in Commercial Quantities or the LFG can no longer be provided with reasonable LFG Quality Specifications as required by the LFG Utilization Facility, DEVELOPER shall have the right to surrender and terminate this Contract including its rights to the LFG upon one hundred eighty (180) days prior written notice to COUNTY. In the event of such termination by the DEVELOPER:
- 1) The DEVELOPER shall continue to make payments to the COUNTY for the right to and use of the LFG in accordance with Section B(b), whichever is in effect at the time, for a six (6) month period following notification of termination;
 - 2) The DEVELOPER shall continue to make payments for any monies due to the COUNTY for the sale of the Beneficial End Use Product and any other monies required by the provisions of this Contract;
 - 3) The building and below ground portions of the LFG Utilization Facility on the Landfill shall become the personal property and responsibility of COUNTY at the end of the one hundred eighty (180) days period following notification of termination; and
 - 4) The DEVELOPER shall offer to sell the above-ground portions of the LFG Utilization Facility to the COUNTY in accordance with Section 12, Removal and Restoration.
- E. Facility Operation Following Termination. In the event of termination of the

Contract, the COUNTY may require the use of the DEVELOPER's employees. to operate and maintain the LFG processing equipment for a period of up to ninety (90) days. The costs for use of the DEVELOPER's employees will be negotiated between the COUNTY and the DEVELOPER.

Section 15. Damages and Administrative Charges.

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

- A. The COUNTY's Damages in the Event of Termination of DEVELOPER. If the COUNTY terminates this Contract because of a default by the DEVELOPER, the DEVELOPER shall be liable to the COUNTY for all actual damages incurred by the COUNTY as a result of DEVELOPER's default. The foregoing shall apply without regard to the COUNTY's rights pursuant to any Performance Bond or other financial security instrument.

- B. The COUNTY's Damages Due to the DEVELOPER's Failure to Repair and Maintain the LFG Utilization Facility. If at any time during the term of the Contract, the DEVELOPER fails or refuses to maintain the LFG Utilization Facility, the COUNTY shall have the right to take all necessary actions to place the facility in good repair (including but not limited to contracting with third parties) and the DEVELOPER shall pay the COUNTY all costs and expenses incurred by the COUNTY in placing the Project in good repair. At the sole option of the COUNTY, such costs and expenses may be added to any monies owed to COUNTY. The foregoing shall apply regardless of whether the COUNTY terminates the DEVELOPER and shall be in addition to any other damages for which the DEVELOPER may be liable pursuant to other sections of this Contract.

- C. The COUNTY's Damages Due to DEVELOPER's Failure to Comply with Environmental Regulations. If the DEVELOPER fails to comply with any applicable environmental regulations, the DEVELOPER shall pay to the COUNTY the following:
 - 1) All lawful fines, penalties, and forfeitures charged to the COUNTY by any governmental agency charged with enforcement of environmental laws and regulations or judicial orders.

 - 2) The actual costs, including, but not limited to, legal, administrative and any associated fees, incurred by the COUNTY as a result of the failure to comply with the environmental regulations including any costs incurred in investigating and remedying the conditions which led to the failure to comply with the environmental regulations.

- D. Administrative Charges. The parties acknowledge and agree that it is difficult or impossible to accurately determine the amount of damages that would, or

might, be incurred by the COUNTY due to those failures or circumstances described in this section of the Contract and for which the DEVELOPER would otherwise be liable. Accordingly, administrative charges may be assessed against the DEVELOPER for the following failures to comply with the Contract:

- 1) If DEVELOPER fails to operate and perform the system within permit and/or regulatory requirements or standards, the COUNTY shall give Notice to the DEVELOPER of the foregoing failure. If the DEVELOPER fails to remedy the foregoing failure within two (2) days of the Notice from the COUNTY, administrative charges in an amount equal to one hundred percent (100%) of the "daily average payment" to the COUNTY for the sale of the COUNTY's LFG shall be assessed against the DEVELOPER per day until such time as the COUNTY determines that the DEVELOPER has remedied the foregoing failure. The "daily average payment" shall be based on normal historical operating days for the six (6) month period immediately preceding the COUNTY's Notice.
- 2) If DEVELOPER fails to keep and utilize the LFG Utilization Facility at the levels of manpower and equipment necessary to adequately operate the system, the COUNTY shall give Notice to the DEVELOPER of the foregoing failure. If the DEVELOPER fails to remedy the foregoing failure within one (1) week of the Notice from the COUNTY, administrative charges in an amount equal to fifty percent (50%) of the "daily average payment" to the COUNTY for the sale of the COUNTY's LFG shall be assessed against the DEVELOPER per day until such time as the COUNTY determines that the DEVELOPER has remedied the foregoing failure. The "daily average payment" shall be based on normal historical operating days for the six (6) month period immediately preceding the COUNTY's Notice.
- 3) If DEVELOPER fails to supply information or reports required by the COUNTY and/or any regulatory agency within the timeframe agreed to by the COUNTY and/or regulatory agency, the COUNTY shall give Notice to the DEVELOPER of the foregoing failure. If the DEVELOPER fails to remedy the foregoing failure within one (1) day of the Notice from the COUNTY, administrative charges in the amount of Five Hundred and No/100 Dollars (\$500.00) per day shall be assessed against the DEVELOPER until such time as the COUNTY determines that the DEVELOPER has remedied the foregoing failure.
- 4) If the Developer's activities related to LFG Management violates any permit conditions that results in a fine by any regulatory agencies, the Developer shall compensate the County 100% of the costs of any fines, and the cost of legal and engineering assistance.

Section 16. Representations and Warranties.

- A. Warranties of COUNTY. COUNTY hereby agrees, warrants, and represents to DEVELOPER, as of the date of execution of this Contract, that:

- 1) The COUNTY has not entered into any other Contracts with respect to the LFG conveyed to DEVELOPER under this Contract or with respect to any of the other rights conveyed to DEVELOPER pursuant to Section 2 of this Contract. COUNTY warrants that DEVELOPER shall take the LFG free and clear of any liens or encumbrances. COUNTY hereby warrants to DEVELOPER that COUNTY has the title to the LFG Utilization Facility Site, access to the site, the Landfill, and the LFG.
 - 2) No part of the LFG project was financed by grants or subsidized energy financing and the energy credit was not claimed with respect to property used in such recovery Project.
 - 3) The execution and delivery of this Contract and related documents have been duly authorized, and constitute legal, valid, and binding obligations of the COUNTY which are enforceable in accordance with their terms and do not violate any law, rule or regulation.
 - 4) As of the effective date of this Contract, the solid waste that the COUNTY accepts for disposal within the solid waste disposal units is nonhazardous solid waste as defined by Chapter 62-701, F.A.C. COUNTY also covenants that during the term of the Contract, COUNTY will continue to accept only nonhazardous solid waste or material deemed nonhazardous in nature as defined by Chapter 62-701, F.A.C. and will not seek to modify permits and authorizations applicable to-the Landfill so as to enable the COUNTY to accept wastes other than nonhazardous solid waste or material deemed nonhazardous in nature as defined by Chapter 62-701, F.A.C.
- B. Warranties of DEVELOPER. DEVELOPER hereby agrees, warrants and represents to COUNTY, as of the date of execution of this Contract, that
- 1) DEVELOPER is a duly organized, validly existing entity in good standing under the laws of the State of Florida. DEVELOPER has all requisite corporate power to own its properties and to carry on the business that is now being conducted, to execute and deliver this Contract and to engage in the transactions contemplated in this Contract.
 - 2) The execution, delivery and performance by DEVELOPER of this Contract is within the corporate powers of DEVELOPER, have been duly authorized by all necessary corporate action, and do not violate any law, rule or regulation, or the terms of the articles of incorporation or bylaws of DEVELOPER.

Section 17. Assignment.

The COUNTY and DEVELOPER shall bind themselves and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Contract. Neither party hereto may sell, assign or transfer this Contract or any interest it may have hereunder, without prior written approval of the other party, such approval to be not unreasonably withheld, and provided that any such assignment shall not unduly interfere with the rights of the non-assigning party hereunder, and further provided that such assignee agrees

to be bound by the terms of this Contract to the same extent as assignor. In no event will assignment relieve the assignor of its obligations hereunder. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of COUNTY or DEVELOPER, nor shall it be construed as giving any right or benefit hereunder to anyone other than the COUNTY or the DEVELOPER.

Section 18. Notices.

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

To DEVELOPER:

Brevard Energy, LLC
1605 N Cedar Crest Blvd, Suite 509
Allentown, PA 18104
Email: AP@eppservice.com
Attn: President

To COUNTY:

Brevard County Solid Waste Management Department
Building A, Suite 118
2725 Judge Fran Jamieson Way
Viera, Florida 32940

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

Section 19. Taxes.

DEVELOPER shall, during the term of this Contract, pay or arrange for the payment of all general taxes that may be levied upon or assessed against the system, facilities, equipment, machinery and improvements constructed or installed by it in, on, or adjacent to the Landfill.

Section 20. Interest of Members of COUNTY and Others.

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

Section 21. Interest of DEVELOPER.

DEVELOPER covenants that it presently has no interest and shall not acquire an interest, direct or indirect, which shall conflict with the performances or services required to be

performed under this Contract. DEVELOPER further covenants that in the performance of this Contract, the DEVELOPER shall employ no person having any such interest.

Section 22. Covenant against Contingent Fees.

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

Section 23. Potential Conflicts of Interest.

DEVELOPER is specifically aware of, and concurs with, the public need for the COUNTY to prohibit any potential conflicts of interest that may arise as a result of the execution of this Contract. As a result, DEVELOPER has extensively reviewed all of its contracts, letters of agreement, and any other indication of commitment on its behalf to perform services for any client other than the COUNTY, which could in any way present the reasonable possibility of an actual conflict of interest with the COUNTY. As of the Effective Date of this Contract, DEVELOPER has no knowledge of any conflicts of interest.

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

- A. Direct supervision of DEVELOPER employees and agents under this Project shall be given by the designated Project Managers assigned to each specific Project.

Section 24. Records and Audits.

If federal funds are used for any work under this Contract, the Comptroller General of the United States, or any of his duly authorized representatives, shall have access to any books, documents, papers, and records of DEVELOPER which are directly pertinent to work performed under this Contract, for purposes of making audit, examination, excerpts, and transcription.

- A. In performance of this Contract, the DEVELOPER shall keep books, records, and accounts of all activities related to this Contract in compliance with generally accepted accounting procedures.
- B. All documents, papers, books, records and accounts made or received by the DEVELOPER in conjunction with this Contract, and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the COUNTY. The COUNTY or any of its duly authorized representatives reserves the right to audit the DEVELOPER's

records related to this Contract at any time during the prosecution of this Contract and for a period of one (1) year after final payment is made.

- C. All records or documents created by or provided to the DEVELOPER by the COUNTY in connection with this Contract are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the COUNTY in a format compatible with the technology systems of the COUNTY.
- D. Both Parties understand that Brevard County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes. The DEVELOPER agrees and understands that Florida has broad public records disclosure laws, and that any written communication with the DEVELOPER, to include emails, email addresses, a copy of this contract, and any supporting documentation are subject to public disclosure upon request, unless otherwise exempt or confidential under Florida Statute.
- E. "Public Records" are defined "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." (section 119.011(12), Florida Statutes).
- F. Pursuant to Florida Statute Chapter 119, generally, and 119.0701 specifically, if records created by the COUNTY or the DEVELOPER related to the performance of the services under this Contract do not fall under a specific exemption under Florida or federal law, the records - whether created or maintained by the DEVELOPER or the COUNTY must be provided to anyone making a public records request. It will be the DEVELOPER'S duty to identify any information in records created by the DEVELOPER which it deems is exempt under Florida or federal law and identify the statute number which requires the information be held exempt.
- G. Pursuant to Section 119.0701, a request to inspect or copy public records relating to this Contract must be made directly to the COUNTY. The DEVELOPER shall direct individuals requesting public records to the public records custodian listed below. If the COUNTY does not possess the requested records, the COUNTY shall immediately notify the DEVELOPER of the request and the DEVELOPER must provide the records to the COUNTY or allow the records to be inspected or copied within twenty-four (24) hours (not including weekends and legal holidays) of the request so the COUNTY can comply with the requirements of section 119.07, Florida Statutes. The DEVELOPER may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order AO-47, incorporated by this reference. A copy of AO-47 is available upon request from the COUNTY's public records custodian designated below.

- H. Should any person or entity make a public records request of the COUNTY which requires or would require the COUNTY to allow inspection or provide copies of records which the DEVELOPER maintains are exempt under the Public Records Law or otherwise confidential, it shall be the DEVELOPER'S obligation to provide the County within a reasonable time of notification by the COUNTY to the DEVELOPER of the records request, of the specific exemption or confidentiality provision to allow the COUNTY to comply with the requirements of section 119.07(1)(e) and (f), Florida Statutes.
- I. Should the COUNTY face any kind of legal action to require or enforce inspection or production of any records provided by the DEVELOPER to the COUNTY which the DEVELOPER maintains are exempt or confidential from such inspection/production as a public record, the DEVELOPER agrees to indemnify the COUNTY for all damages and expenses, including attorney's fees and costs. The DEVELOPER shall hire and compensate attorney(s) who shall represent the interests of the COUNTY as well as the DEVELOPER in defending such action. The DEVELOPER shall also pay any costs to defend such action and shall pay any costs and attorney's fees which may be awarded pursuant to Fla. Stat. 119.12.
- J. Should the DEVELOPER fail to provide the public records to the COUNTY within a reasonable time, the DEVELOPER may be subject to penalties under section 119.10, Florida Statutes, including civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties. The DEVELOPER's failure to comply with public records requests is considered a material breach of this Contract and grounds for termination.
- K. The DEVELOPER shall ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the DEVELOPER does not transfer the records to the COUNTY.
- L. Upon completion of the Contract, the DEVELOPER shall transfer, at no cost, to the COUNTY all public records in possession of the DEVELOPER or keep and maintain public records required by the COUNTY to perform the service. If the DEVELOPER transfers all public records to the COUNTY upon completion of the Contract, the DEVELOPER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the DEVELOPER keeps and maintains public records upon completion of the Contract, the DEVELOPER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY's custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.

IF DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT BREVARD COUNTY, MS. MIRANDA GUPPENBERGER, MIRANDA.GUPPENBERGER@BREVARDFL.GOV, 2725 JUDGE FRAN JAMIESON WAY, A 118, VIERA, FLORIDA 32940.

Section 25. Employment Eligibility Verification (E-Verify).

- A. The DEVELOPER shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the DEVELOPER during the term of the Contract. DEVELOPER shall provide acceptable evidence of their enrollment. Acceptable evidence shall include, but not be limited to, a copy of the fully executed E-Verify Memorandum of Understanding for the business.
- B. DEVELOPER shall expressly require any sub-DEVELOPERs performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the sub-DEVELOPER during the term of this Contract.
- C. DEVELOPER agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its sub-developers as provided above, and to make such records available to the COUNTY consistent with the terms of DEVELOPER's enrollment in the program. This includes maintaining a copy of proof of DEVELOPER's and any sub-developers' enrollment in the E-Verify Program.
- D. Compliance with the terms of this section is made an express condition of this Contract and the COUNTY may treat a failure to comply as a material breach of this Contract.
- E. A DEVELOPER who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-verify program, the DEVELOPER hires or employs a person who is not eligible for employment.
- F. Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

Section 26. Scrutinized Companies.

- A. DEVELOPER certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the COUNTY may immediately terminate this Contract at its sole option if the

DEVELOPER or its subcontractors are found to have submitted a false certification; or if DEVELOPER, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Contract.

- B. If this Contract is for more than one million dollars, DEVELOPER certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the COUNTY may immediately terminate this Contract at its sole option if DEVELOPER, its affiliates, or its subcontractors are found to have submitted a false certification; or if DEVELOPER, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of this Contract.
- C. DEVELOPER agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.
- D. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

Section 27. Equal Opportunity Employment.

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

Section 28. Claims for Services.

No claim for services rendered by DEVELOPER not specifically provided for in this Contract Will be honored by the COUNTY.

Section 29. Severability.

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

Section 30. Modifications or Amendments in Writing.

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

Section 31. General Provisions.

- A. Headings. The headings appearing in this Contract are intended for convenience and reference only, and are not to be considered in construing this Contract.
- B. Disclaimer of Joint Venture, Partnership and Agency. This Contract shall not be interpreted or construed as creating an association, joint venture or partnership between COUNTY and DEVELOPER or Buyer or to impose any partnership obligation or liability upon such parties. Neither COUNTY nor DEVELOPER or Buyer shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, another party.
- C. Governing Law and Waiver of Jury Trial. All questions with respect to the construction of this Contract and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of Florida. Venue shall be in Brevard County, Florida. The COUNTY and DEVELOPER agree to waive the right to jury trial. The DEVELOPER expressly waives removal of any claim or action arising under this Contract to federal court.
- D. Amendment to Contract. The COUNTY and DEVELOPER agree that this Contract sets forth the entire Contract between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, deleted, modified, superseded or otherwise altered, except by written amendment executed by the parties hereto. Such amendment(s) are not valid, binding and enforceable unless signed by the Board of County Commissioners or by a COUNTY representative duly authorized by the Board of County Commissioners.
- E. Successors and Assigns. All of the terms and provisions of this Contract shall be binding upon and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.
- F. DEVELOPER Right to Utilization Facility Design. It is acknowledged that the DEVELOPER and Buyer have or will have expended considerable time and expense in developing the design for the LFG Utilization Facility and associated electrical transmission, steam or LFG transmission lines, and, therefore, could consider such design to be proprietary.

- G. Remedies Not Exclusive. The remedies in this Contract are not exclusive and supplement any other remedies provided at law or in equity.

<Signature Page Follows>

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused this Landfill Gas Purchase Contract to be executed and delivered by their duly authorized officers or representatives as of the date first above written.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

Rachel M. Sadoff, Clerk

Rita Pritchett, Chair

As approved the by the Board on January 24, 2022

SEAL

Reviewed for legal form and content.



Justin E. Caron, Esq., Assistant County Attorney

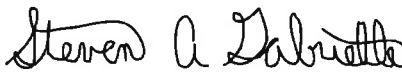
WITNESS:

BREVARD ENERGY LLC.



Signature

Dave Baran
Printed Name



Signature

Steven A. Gabrielle, Senior Vice President
Printed Name

ATTACHMENT A FEMA REQUIRED CONTRACT PROVISIONS

This Attachment A is provided for reference and only applies in the case of a FEMA declared emergency and there is a separate contract awarded by FEMA to the COUNTY or DEVELOPER. The term “contract” or “Contract” in this Attachment A does not refer to the Landfill Gas Purchase Contract or the Lease between the COUNTY and DEVELOPER.

This Attachment A is designed to help FEMA grant recipients and subrecipients navigate Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, including providing mandatory language and/or suggested language for each required contract provision.

1 TERMINATION OF THIS CONTRACT FOR CAUSE

Either party may terminate this contract for cause based upon the failure of the other party to comply with the terms and/or conditions of the contract, or failure to fulfill its performance obligations pursuant to this contract, provided that the non-defaulting party shall give the defaulting party written notice specifying the party’s default. If within thirty (30) days after receipt of such notice, the defaulting party shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the non-defaulting party may, at its option, place the defaulting party in default and the contract shall terminate on the date specified in such notice.

2 TERMINATION OF THIS CONTRACT FOR CONVENIENCE

Either party may terminate this Contract at any time by giving thirty (30) days written notice to the other party of such termination.

The CONTRACTOR shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

3 OWNERSHIP

If required by law, all records, reports, documents, or other material related to this contract and/or obtained or prepared by CONTRACTOR in connection with the performance of the services contracted for herein shall become the property of COUNTY, and shall, upon request, be returned by CONTRACTOR to COUNTY at CONTRACTOR's expense, at termination or expiration of this contract.

If required by law, all records, reports, documents and other material delivered or transmitted to CONTRACTOR by the COUNTY shall remain the property of the COUNTY and shall be returned by CONTRACTOR to the COUNTY at CONTRACTOR's expense, at termination or expiration of this contract.

4 PERFORMANCE BOND

CONTRACTOR shall provide a Performance Bond (Surety Bond) in the amount of Five Hundred Thousand dollars (\$500,000.00) to insure the successful performance under the terms and conditions of this Contract. The performance bond shall be written by a surety or insurance

company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by a Florida domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholder's surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Florida or owned by Florida residents and is licensed to write surety bonds.

No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Florida domiciled insurance company with an A-rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Florida.

The CONTRACTOR shall maintain the performance bond for the full term of this contract. Failure to comply shall be grounds for termination of this contract.

5 SUSPENSION OF CONTRACT

(1) COUNTY Suspension for Cause. The COUNTY may issue a written partial or full Stop Work Notice in the event CONTRACTOR fails to comply with or is negligent in performing any provision hereof. All performance shall immediately cease as per such notice and no further billable costs shall be incurred. The CONTRACTOR shall be entitled to payment for completed work and deliverables in progress, to the extent work has been performed satisfactorily prior to the Stop Work Notice.

(2) Contractor's Right to Stop Work. The CONTRACTOR may stop work only under the following circumstances:

- A. The Work is ordered temporarily discontinued by a court or other public authority;
- B. It is necessary to stop work in order to protect the safety of CONTRACTOR or third persons; or
- C. The COUNTY fails to pay CONTRACTOR when due any undisputed and adequately documented sum certified for payment by the COUNTY Project Manager. In such event, CONTRACTOR shall provide the COUNTY not less than seven (7) days prior written notice of its intention to stop work, except in emergency circumstances or when necessary to prevent injury to persons or property.

(3) Dispute Resolution.

- A. During the course of work. In the event any dispute arises during the course of the Work, CONTRACTOR shall fully perform the Work in accordance with the COUNTY's written instructions (or applicable law) and may claim additional compensation. CONTRACTOR is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for additional compensation,

schedule adjustment, or other dispute resolution to the COUNTY's Project Manager no later than fifteen (15) calendar days after the precipitating event. If not resolved by the Project Manager within five (5) business days, the Project Manager shall forward the request to the County Manager who shall issue a written decision within fifteen (15) calendar days of receipt. This determination shall constitute final action of the COUNTY and shall then be subject to judicial review upon completion of the Work. CONTRACTOR shall proceed with the Work in accordance with said determination. This shall not waive CONTRACTOR's position regarding the matter in dispute.

- B. Invoices. In the event the COUNTY rejects an invoice as improper, and the CONTRACTOR declines to modify the invoice, the CONTRACTOR must notify the COUNTY in writing within ten (10) calendar days of receipt of notice of rejection that the CONTRACTOR will not modify the invoice and state the reason(s) therefor. Within five (5) business days of receipt of such notice, if not informally resolved through discussion with the COUNTY Project Manager, the Project Manager shall forward the disputed invoice and the CONTRACTOR's written response to the County Manager. The matter shall then proceed as described in subsection A, above.

7 RIGHT TO AUDIT

The State Auditor General, State Division of Emergency Management, US DHS-OIG, FEMA, and Federal auditors or State internal auditors shall have the option to audit all accounts directly pertaining to the contract for a period of three (3) years from the date of final payment or as required by applicable State and Federal law. Records shall be made available during normal working hours, upon prior reasonable notice, for this purpose for three (3) years after final payment.

8 EQUAL EMPLOYMENT OPPORTUNITY

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's

essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

9 DAVIS-BACON ACT

(1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

(2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

(3) Additionally, contractors are required to pay wages not less than once a week.

10 COPELAND ANTI-KICKBACK ACT

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

11 CONTRACT WORK HOUR AND SAFETY STANDARDS ACT

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 11(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 11(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 11(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

12 CLEAN AIR ACT

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

13 FEDERAL WATER POLLUTION CONTROL ACT

(1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

14 CLEAN WATER ACT

The CONTRACTOR hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

15 ENERGY POLICY AND CONSERVATION ACT

The CONTRACTOR hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

16 DEBARMENT AND SUSPENSION

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the COUNTY. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

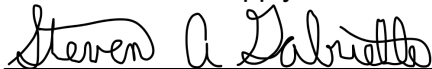
17 BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence

an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Certification for Contracts, Grants, Loans, and Cooperative Agreements The undersigned certifies, to the best of his or her knowledge and belief, that: No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

"The Contractor, Brevard Energy, LLC, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Steven A. Gabrielle, Senior Vice President
Name and Title of Contractor's Authorized Official

1/24/2023
Date

18 PROCUREMENT OF RECOVERED MATERIALS

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

19 ACCESS TO RECORDS

(1) The Contractor agrees to provide the State of Florida, the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the COUNTY and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

20 DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

21 COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

22 NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

23 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

VENDOR AGREES TO COMPLY WITH ALL APPLICATBLE FEDERAL, STATE, AND LOCAL LAWS, RULES, REFULATIONS, AND ORDINANCES. IT IS FURTHER ACKNOWLEDGED THAT VENDOR CERTIFIES COMPLIANCE WITH ALL PROVISIONS, LAWS, ACTS REGUALTIONS, ETC. AS SPECIFICALLY NOTED ABOVE

Company Name
Brevard Energy, LLC

Address

1605 N Cedar Crest Blvd, Ste 509, Allentown, PA 18104

Telephone 510-556-1873 Fax

Email Address sgabrielle@eppservice.com

Name and Title of Authorized Signature
Steven A. Gabrielle, Senior Vice President

Authorized Signature


ATTACHMENT B

LEASE CONTRACT