

CITY OF AUBURN



Memorial City Hall – 24 South Street – Auburn, New York – 13021

Request For Proposal (RFP)

Operation and Maintenance For The Landfill Gas Energy Facility

Proposals are due by 4:00 p.m., Friday, August 28, 2015
Department of Engineering Services
24 South Street
Auburn, NY 13021



Douglas A. Selby, City Manager
William H. Lupien, Jr., P.E., Superintendent of Engineering Services
Vicky Murphy, Director of Municipal Utilities

Prepared By: City of Auburn Department of Engineering Services (315) 255-4129, Fax: (315) 253-3243

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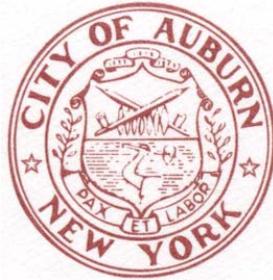
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1.0 Advertisement

Telephone: 315-255-4129
Fax: 315-253-3243



**CITY OF AUBURN
DEPARTMENT OF ENGINEERING SERVICES
Memorial City Hall
Third Floor, Engineering Department
24 South Street
Auburn, New York 13021**

REQUEST FOR PROPOSALS

Landfill Gas Energy Facility: Operation and Maintenance Contract for City of Auburn Department of Municipal Utilities

The City of Auburn Department of Engineering will receive and open proposals:
Friday, August 28, 2015 at 4:00 P.M.

An original, two (2) copies, and one electronic copy of all proposals are to be submitted to:

Attention: William H. Lupien, Jr., P.E.

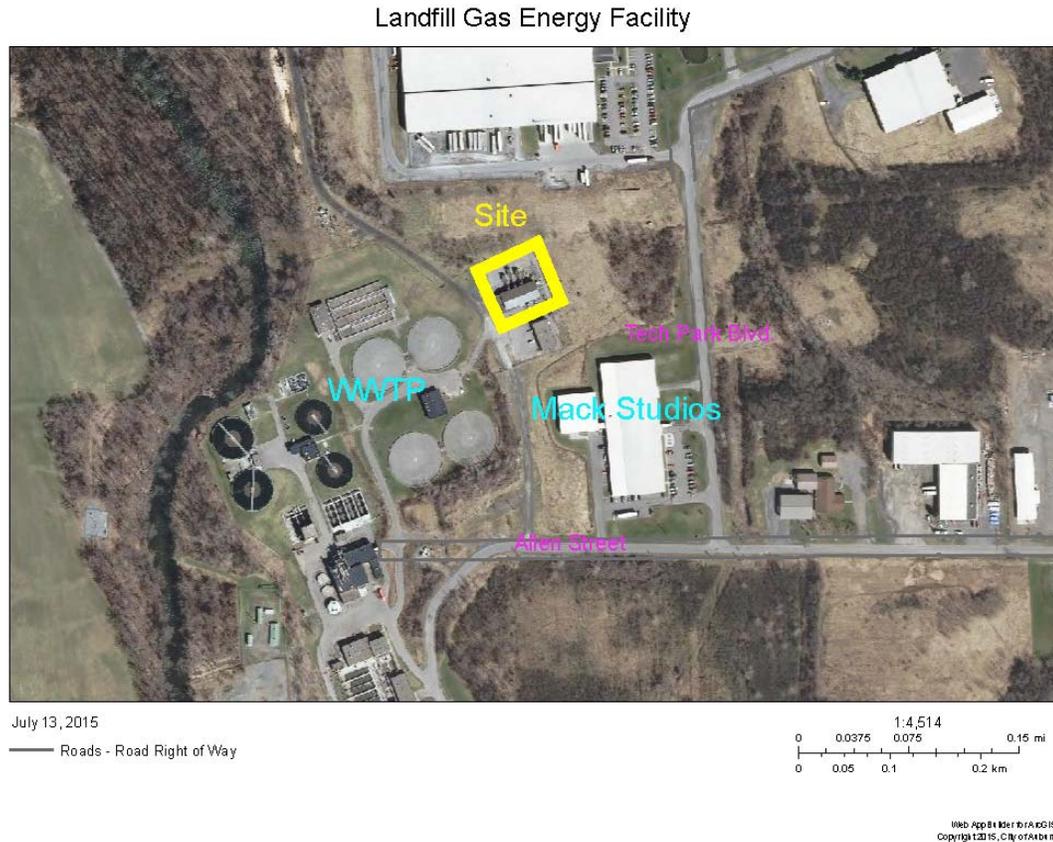
**City of Auburn
Department of Engineering Services
Memorial City Hall
24 South Street
Auburn, NY 13021
Phone: (315) 255-4129
Fax: (315) 253-3243
Email: wlupien@auburnny.gov**

ATTENTION: Failure to indicate "Proposal: Operation and Maintenance for Landfill Gas Energy Facility" on the outside of the submittal envelope might necessitate the premature opening of the Proposal which might compromise its confidentiality.

Additional paper or electronic copies of this RFP may be obtained by email or written request.

2.0 Introduction

The City of Auburn, New York, (“the City”) is looking to secure Firm to complete the operation and maintenance of the existing Landfill Gas Energy Facility (The Facility) located off Allen Street east of the City's Wastewater Treatment facility. See the site location map below:



The facility was commissioned in 2010 and was owned and run by CH-Auburn. Originally the facility was designed to produce a maximum of 3 MWh and housed 3 - 1000 kW Jenbacher Generator Sets. Upon commissioning the facility, it was found that the landfill facility could not produce a steady supply of methane gas to support continual 3 MWh generation. In April of 2014 the City of Auburn purchased the facility from CH-Auburn and purchased only two (2) of the Jenbacher Generators. Past generation indicates that the facility is only able to produce approximately 1 MWh or slightly above based on the current and projected landfill methane production. The table below represents past generation of the existing facility:

Description	Date	NYSEG Meter Reading (kWh)	Plant Meter Reading (kWh)	Generation Plant Load
Average	2015	793130	808413	34847
Low		607076	652000	30980
High		887634	914500	48000
Average	2014	872966	897933	38448
Low		554508	582100	28200
High		1162912	1178000	49300
Average	2013	839257	847917	33188
Low		676441	686000	27629
High		1063126	1081000	43177
Average	2012	1181733	1198500	39588
Low		796690	807000	28466
High		1547185	1574000	46827
Average	2011	866874	883083	39785
Low		786722	796000	35319
High		984157	994000	48887
Average	2010	1187844	1211455	45250
Low		972755	1011000	42378
High		1426634	1542000	47401

The City is currently seeking a qualified Contractor to provide Operation and Maintenance assistance in running the Landfill Gas Facility. Proposals shall contain the following information for comparison purposes:

- 1) Statement of Qualifications (3 pages max)
 - a. List of References (3 minimum)
 - b. Jenbacher Generation Operation & Maintenance Experience
 - c. Proof of NYISO Status
- 2) Proposal
 - a. Annual Operation and Maintenance Service Fee
 - b. Hourly schedule for additional mechanics for larger overhaul projects
- 3) Fully executed non-collusive form

3.0 Sample Agreement

Below is a sample agreement that would be required between the City of Auburn and Contractor. All items noted within shall be accounted for in the proposal.

OPERATION AND MANAGEMENT SERVICES AGREEMENT

This sets forth an Operation and Management Services Agreement ("**Agreement**"), effective as of the 1st day of **October 2015**, by and between The City of Auburn, a municipal corporation with its principal offices located at Memorial City Hall, 24 South Street, Auburn, New York 13021-3885 (the "**City**") and **Company Name and Address** ("**CONTRACTOR**"), (collectively the "**Parties**").

WHEREAS, the City owns the Landfill which generates Landfill Gas; and

WHEREAS, the City also owns the Electricity Project; and

WHEREAS, CONTRACTOR has special expertise in operating and managing electrical generation facilities similar to the Electricity Project and employs the skilled labor necessary for such purposes; and

WHEREAS, the City is desirous of availing itself of CONTRACTOR's expertise and services as an independent contractor retained to operate the Electricity Project on a day-to-day basis and to provide such other services as are hereinafter set forth; and

WHEREAS, CONTRACTOR is desirous of contracting with the City in order to operate the Electricity Project and to provide such other services as are hereinafter set forth, said services to be provided by and through its **Company Address** offices.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CONTRACTOR and the City agree as follows:

1. "**DEFINITIONS**"

"**Affiliate**" means any person, legal or commercial entity that controls, is controlled by, or is under common control by another person, legal or commercial entity. For purposes of this definition, a wholly owned subsidiary shall be considered an "Affiliate."

"**Base Rate**" shall equal **To Be Determined by Proposal** and 00/100 Dollars (**\$TBD**) per month.

"**Confidential Information**" means all written information exchanged between or among the Parties hereto and clearly marked or designated as confidential. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (i) information that is or becomes generally available to the public other than as a result of a disclosure by a Party in violation of this Agreement; (ii) information that was already known

by a Party on a non-confidential basis prior to this Agreement; (iii) information that becomes available to a Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to such Party; and (iv) information a Party is required to disclose in connection with any Legal Requirement or administrative or regulatory approval or filing process in connection with the conduct of its business. The fact that this Agreement has been executed and any terms set forth herein, except for the provisions set forth in Section 8, shall also be deemed Confidential Information and shall not be disclosed by either Party unless required by any Legal Requirement.

"Effective Date" is TBD - October 1, 2015.

"Electricity Project" a landfill gas to electricity generation facility at the Landfill, as well as related buildings and equipment and land including the plant, buildings, grounds, associated infrastructure, and ancillary equipment within the Electricity Project Site, the electrical generation equipment, engine generators, the gas scrubbing system and all piping, switchgear, wiring, emergency power generator and all other equipment directly related and incidental to the production of electricity at the Electricity Project. The Electricity Project does not include the Gas Collection System, nor does it include the flare or the Transmission Interconnect.

"Electricity Project Site" is that parcel of land at the Landfill more particularly described on Exhibit "A".

"Engine Generator Sets" or **"Engine Generator"** means two (2) each Jenbacher generation units, engine numbers 1217303 and 5800551, each rated at 1000 kw. At the time of this Agreement, the Electricity Project includes two (2) operational Jenbacher Generator Sets for a total current installed gross generating capacity of 2mw.

"Environmental Laws" are any and all existing and future federal, state, local and other governmental and quasi-governmental laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits issued with respect thereto, and other requirements of governmental and quasi-governmental authorities relating to human health, human safety or the environment or to any hazardous material including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as heretofore or hereafter amended from time to time, the Federal Clean Air Act, 42 U.S.C. § 7411 et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., and the Federal Clean Water Act, 33 U.S.C. § 1251 et seq., as heretofore or hereafter amended from time to time.

"Event(s) of Default" are defined in Section 11 of this Agreement.

"Force Majeure" is defined in Section 14.2(B) of this Agreement.

"Gas Collection System" means the existing system of gas collection wells, horizontal trenches, interconnecting pipes, valves, blowers, monitoring equipment, and all modifications, replacements, additions, and expansions thereto, all of which are owned and

controlled by the City for the extraction of Landfill Gas to be routed to the Electricity Project.

"Good Engineering Practices" are those practices, methods, acts and standards for safety and performance, as the same may evolve, that in the exercise of reasonable judgment in light of the acts known, or that in the exercise of due diligence, should have been known, at the time decision was made, would have been expected to accomplish the desired result in a manner consistent with reliability, safety, environmental protection, project economics and applicable Legal Requirements and that are generally accepted and prudent and in general use by owners or operators of facilities similar to the Electricity Project. The Parties expressly acknowledge that the CONTRACTOR's special expertise has enabled it to further maximize the output of equipment in the Electricity Projects which it currently manages. In CONTRACTOR's sole and reasonable judgment, during the course of its performance of the Services outlined in this Agreement, time proven current practices of CONTRACTOR shall be implemented where feasible and economically viable. Good Engineering Practices are not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, require the consideration of a spectrum of possible practices, methods or acts.

"Gross Generation" is the total production of kilowatt hours generated as measured on the electrical metering devices at the Electricity Project.

"Indemnified Party" means the Party being provided indemnification pursuant to Section 12 of this Agreement.

"Indemnifying Party" means the Party providing indemnification pursuant to Section 12 of this Agreement

"OEM Guidelines or Original Equipment Manufacturer Guidelines" are those guidelines and recommendations developed by the manufacturer of a product or equipment and/or industry guidelines.

"Landfill" the municipal solid waste landfill owned by the City and located in the City of Auburn.

"Landfill Gas" the combustible gas, including methane and other gaseous substances generated naturally as a byproduct of the decomposition of waste within the Landfill.

"Legal Requirement" means any administrative order, judicial order, constitution, law, ordinance, principle of common law, rule, regulation, statute or treaty of any governmental entity and/or independent system operator, including Permits, and Environmental Laws.

"NEISO" means the New England Independent System Operator.

"NYISO" means the New York Independent System Operator.

"Operation and Maintenance Records" are those records which reflect the history of maintenance performed (whether performed on Site or off Site) and the overall performance of the equipment used in the operation of the Electricity Project.

"Permits" include all authorizations from, permits and licenses issued by, consents and approvals of, filings with, notices from and registrations with, a governmental entity which are required or necessary for (i) the combustion of the Landfill Gas at the Electricity Project, (ii) the ownership, possession, operation, management, maintenance, or repair of the Electricity Project, including without limitation, the disposal of any waste products generated therein or thereby, or (iii) the performance by CONTRACTOR of any of its obligations under this Agreement, including without limitation, the Air Pollution Control Permit.

"RECs" are environmental attributes including renewable energy credits, emission credits, greenhouse tax credits or similar credits under any existing laws, statutes or regulations, or any similar program that is implemented in the future by any local, state, federal or international government authority that are associated with the Electricity Project's Gross Generation.

"Services" means the operation, management, maintenance, and repair of the Electricity Project performed by the CONTRACTOR hereunder, as more specifically set forth in Section 3 of this Agreement.

"Services Agreement" That Agreement made and entered into the 1st day of May 2013 by and between Innovative energy Systems, LLC (ARIA) and the City wherein the City retains ARIA to register the Electricity Project in the NYISO to enable the Facility to schedule its energy into the wholesale energy market, qualify the Electricity Project as a Qualified Clean Energy Facility to enable the Electricity Project to sell REC's into the Renewable Portfolio Standards (RPS) that are set by the participating States, schedule Electricity sales into the NYISO, the NEISO and other jurisdictions mutually agreed upon by the Parties, and negotiate and manage the sale of REC's generated through the production of Electricity at the Facility.

"Site" the Electricity Project Site.

"Statement" means the monthly report submitted by CONTRACTOR to the City for Services performed by CONTRACTOR during each month of the Term. The monthly Statement shall include a list of the amounts earned by CONTRACTOR pursuant to Section 5.4 and Section 5.5 and any amounts owing to either Party after an accounting of the generation revenue and expenses for the previous month. The Statement shall also include all reporting required under Section 3.1(D) and all other Sections of this Agreement.

"Term" means the period commencing on the Effective Date and expiring at the close of business **TBD (Minimum 365 - TBD)** consecutive days thereafter.

"Transmission Interconnect" means the point after which the 4160 bus switch gear cables are connected to the low side of the 4160 to 34.5kv step-up transformer.

2. **EFFECTIVE DATE AND TERM**

2.1 The Term shall commence on the Effective Date and shall continue for **TBD** thereafter. The Term shall expire on the close of business on the last day of the **TBD** day subsequent to Closing unless terminated earlier as set forth in this Agreement.

2.2 Upon mutual consent the Parties, may agree in writing to the extension of the Term of this Agreement. If CONTRACTOR does not intend to negotiate an extension of the Term it will endeavor to give the City at least three (3) months prior written notice thereof.

3. **OPERATION & MANAGEMENT SERVICES.**

3.1 Subject to the provisions set forth herein and the exclusions listed in Schedule 3.1C, CONTRACTOR shall provide the City with the Services set forth in this Section. Beginning on the Effective Date, and subject to the terms and conditions of this Agreement, CONTRACTOR shall conduct the day-to-day management, operation, maintenance, and repair of the Electricity Project, including but not limited to:

A. Maximize Electricity Production. CONTRACTOR shall be solely responsible for the generation of electricity at the Electricity Project. CONTRACTOR understands and agrees that the essence of this Agreement is to maximize electrical production within all applicable Legal Requirements and in accordance with Good Engineering Practices, subject to those limitations beyond its control, as more particularly set forth in this Agreement.

B. Labor and Materials. Subject to the provisions set forth hereinafter, including those set forth in Paragraph "C" below, CONTRACTOR shall provide and pay for (i) all labor, professional, supervisory and managerial personnel necessary to adequately and efficiently operate, manage, maintain and repair the Electricity Project, including payroll and related mandated and non-mandated fringe benefits, and (ii) all tooling necessary to operate, manage, maintain, and repair the Electricity Project. Unless the City notifies CONTRACTOR in writing that it intends to do the ordering, CONTRACTOR shall order all parts, materials and supplies (including oil), and perform any other Services specifically set forth in this Agreement. The Parties expressly acknowledge that while general maintenance of the building on the Electricity Project Site is included, structural and/or major repairs to the building is not included in the services to be provided by CONTRACTOR.

C. Engine Maintenance. Beginning on the Effective Date, and subject to the terms and conditions of this Agreement, CONTRACTOR shall provide regular and preventive maintenance and other services at and to the Electricity Project and all the components thereof including without limitation to the Engine Generator Sets in accordance with OEM guidelines, Good Engineering Practices as well as industry standards for landfill gas to electricity projects. The Parties expressly acknowledge that under this Agreement the CONTRACTOR shall not be required to perform the services described in Schedule 3.2 C.

For the purpose of clarity, the CONTRACTOR shall be responsible to perform all major repairs (e.g. top end overhauls, turbocharger replacement, inframe overhauls, etc.), provided, however, that CONTRACTOR will not perform any such major repairs without the express written consent of the City.

The Top End Overhaul shall be a replacement of the cylinder heads, cylinder head gaskets and seals. In addition, all valve train components and exhaust manifold will be thoroughly inspected with component replacements as necessary. The turbocharger replacement shall be the replacement of the turbocharger and associated gasket seals with a new or rebuilt turbocharger. The Inframe Overhaul shall encompass all of the aspects of a Top End Overhaul plus the replacement of the pistons, cylinder liners, piston rings, rod and main bearings unless CONTRACTOR and the City have a written agreement for additional parts replacement or reuse of parts if necessary.

D. Reports. CONTRACTOR will provide the City with the Statement, which shall detail the following Electricity Project information for the previous month:

1. the gross generation of the Electricity Project for the month;
2. the amount of power and RECs sold during the month and the dollar amount to be received therefore;
3. the dollar amount of revenues received for power and RECs;
4. a summary of all Services performed and the cost thereof if not included in the Minimum Monthly Payment;
5. all amounts expended in the operation of the Electricity Project including, but not limited to, the amounts spent on parts, supplies, oil etc.;
6. the amount of Landfill Gas consumed by the Electricity Project;
7. an engine hour summary;
8. an engine and plant downtime log;
9. the amount of Landfill Gas flow; and
10. any other applicable monitoring data;

In addition, and without any limitation to the foregoing, CONTRACTOR shall provide reasonable advance notice of any staffing changes at the Electricity Project and provide any additional information that is reasonably requested by the City from time to time.

E. Warranty Claims. CONTRACTOR shall promptly notify the City of any defect, real or perceived, or any other condition which may result in a warranty claim against any vendor of the Electricity Project, and will cooperate with the City in the preparation of any warranty claim.

F. Training. CONTRACTOR agrees that it will assist in training a City employee, designated by the City, to learn the management and day to day operations of the Electricity Project.

G. General Performance Standards.

1. CONTRACTOR shall perform the Services in a safe, prudent, efficient and careful manner and in accordance with (i) applicable vendor warranties; (ii) all applicable Legal Requirements; (iii) Good Engineering Practices; (iv) requirements of the Electricity Project; (v) safety requirements set forth in Schedule 3.1 G; (vi) Electricity Project Permits; (vii) applicable provisions of the Services Agreement; and (viii) this Agreement.
2. CONTRACTOR shall use all safe, reasonable, and practical efforts to maximize energy production, to optimize the useful life of the Electricity Project, and the related equipment, and to minimize the Electricity Project's downtime and costs. CONTRACTOR agrees to devote its time and effort to properly, diligently and effectively carry out its obligations under this Agreement and to perform such other duties as may be required under the provisions of this Agreement to effectively and efficiently operate, manage, and maintain the Electricity Project. CONTRACTOR shall make commercially reasonable efforts to run at least one of Engine Generator Sets on a blend of Landfill Gas and natural gas in such a manner that the Electricity produced by the Landfill Gas qualifies for REC sales in NEISO.
3. CONTRACTOR shall take reasonable actions necessary to protect life, health, safety or property of the Electricity Project and related buildings and equipment. CONTRACTOR shall be solely responsible for ensuring the safety of any employees, agents, subcontractors, or other persons that it employs at or invites to the Electricity Project.

Notwithstanding CONTRACTOR's guarantees set forth in this Agreement, CONTRACTOR shall not be responsible for engine failures resulting from (i) a failure of the quality or quantity of the fuel supply to the Engine Generator Set(s) from the Gas Collection System, unless caused by CONTRACTOR'S negligence or failure to perform its obligations under this Agreement, (ii) Jenbacher design defects in the Engine Generator Sets not otherwise prevented or remedied by operational and maintenance practices performed in the ordinary course of business pursuant to this Agreement; (iii) pre-existing conditions due to inadequate maintenance practices and improper application/installation of equipment; (iv) unavailability of utilities at the Electricity Project; (v) a Force Majeure event or; (vi) the City's negligence or failure to perform its duties under this Agreement.

32 **Exclusions.** The following obligations and expenses are specifically excluded from the Services provided by CONTRACTOR hereunder:

- A. legal services of the City;
- B. public relations for the Electricity Project, other than assisting with occasional Electricity Project tours upon reasonable request by the City;
- C. accounting services and preparation of tax returns for the Electricity Project or for the City;
- D. obtaining and maintaining insurance for the Electricity Project, except as specifically required in this Agreement;
- E. negotiations with regulatory agencies except expressly required by this Agreement and the Services Agreement except CONTRACTOR shall cooperate with the City as needed to further such negotiations;
- F. alteration of the capacity requirements of the Electricity Project;

- G. providing additional equipment beyond what is currently in place at the Electricity Project;
- H. the payment of property taxes and permit fees associated with the Electricity Project or the Electricity Project Site;
- I. utilities, phone lines, backup generators, and transmission line maintenance;
- J. treatment and/or disposal of condensate from the facility;
- K. fuel for backup generators and heaters;
- L. Electricity Project interconnect maintenance and repair;
- M. Purchasing of parts necessary for CONTRACTOR's performance of its obligations hereunder unless expressly required of CONTRACTOR in this Agreement; and
- N. The operation, maintenance and repair of the Gas Collection System which shall remain the responsibility of the City unless damage thereto is caused by the acts or omissions of CONTRACTOR.

3.3 **Access.** The City shall provide CONTRACTOR with unrestricted access to the Electricity Project Site and the Electricity Project at all times for the purposes of performing the Services. The City shall provide CONTRACTOR with access to (i) all Operation and Maintenance Records of the Electricity Project, (ii) prior to the Effective Date, current operators and/or managers of the Electricity Project, (iii) all electrical drawings, computer programs (including PLC programs) and (iv) any other information necessary for proper operation, maintenance and troubleshooting of the Electricity Project. CONTRACTOR agrees to abide by all reasonable security and safety measures necessary to ensure the security of the Electricity Project and Landfill.

4. **ADMINISTRATION OF ENERGY SALES**

CONTRACTOR shall coordinate all administrative services relating to the management of the energy produced by the Electricity Project.

5. **PAYMENT.**

5.1 **Base Rate.** In consideration of the Services to be performed by CONTRACTOR hereunder, CONTRACTOR shall receive a monthly payment equal to the Base Rate.

5.2 **Oil and Parts.** The amounts owing to CONTRACTOR pursuant to Section 5.1 hereof shall include all labor performed by CONTRACTOR in furtherance of its obligations hereunder, lubrication oil not to exceed \$30,000.00 per year but excludes parts necessary for the maintenance and repair of the Electricity Project and factory technician visits required to resolve onsite problems. With respect to parts, the City may enter into Material Stream Agreement with Northeast Energy Systems in which event all parts necessary for the operation and maintenance of the Electricity Project will be paid directly to Northeast Energy Systems. If the City does not enter into a Material Stream Agreement with Northeast Energy Systems, CONTRACTOR will purchase the necessary parts on behalf of the City and the City will reimburse CONTRACTOR for the cost thereof (including freight charges) plus a ten percent (10%) overhead markup which cost shall be included in the monthly Statement submitted to the City by CONTRACTOR pursuant to Section 5.3 hereof.

5.3 Monthly Statement. Within fifteen (15) days after the close of each month during the Term, CONTRACTOR shall provide the City with a Statement.

5.4 Administration of Energy Sales. Beginning with the Effective Date and continuing throughout the Term, all energy produced at the Electricity Project and sold pursuant to this Agreement shall be sold by, and in the name of, CONTRACTOR for the benefit of the City and all revenues received from such sales shall be received and accounted for by CONTRACTOR. CONTRACTOR shall deduct any amounts due pursuant to Section 5 hereof, and within five (5) business days of receipt of such revenue shall transmit the balance to the City by Automated Clearing House (ACH) payment or other means approved by the City, together with a Statement. All invoices for which CONTRACTOR requests or deducts reimbursement for certain costs incurred shall be attached with the Statement along with an explanation establishing the basis for such reimbursable costs for the month in question. In the event that CONTRACTOR pools the City's energy sales with other sellers it represents, the City shall receive its proper share of all pooled revenues.

Upon receipt of the Statement, the City shall examine the Statement and accompanying invoices to ensure that they have been calculated correctly, and shall promptly notify CONTRACTOR of any errors therein which the City in good faith believes have been made together with the facts providing the basis for such belief. CONTRACTOR will promptly review the City's complaint, and if any error is found, shall promptly correct the same. CONTRACTOR shall maintain complete information and records relative to all costs and all revenue derived from the Project, including but not limited to savings or revenues realized from sale of energy. The City shall have the right to inspect any and all of CONTRACTOR's records, financial and otherwise, related to the Project, at reasonable times and upon reasonable advance written notice to CONTRACTOR.

All sales of RECs shall be coordinated with ARIA and are subject to the separate Services Agreement.

5.5 Undisputed Amounts. All undisputed amounts owing under Section 5 of this Agreement hereof shall be due and payable ten (10) days after CONTRACTOR receives payment for energy sold.

5.6 Resolution of Disputes. If the City disputes the amount CONTRACTOR alleges to be owing, the Parties shall make a good faith effort to resolve such dispute. In the event the Parties cannot resolve such dispute, the disputed amounts shall be deposited into an account in the name of the City and CONTRACTOR at a bank mutually agreed upon by the Parties. Withdrawals from this account will require the written consent of both Parties, or an Order from a court of competent jurisdiction. The Parties shall then resolve the dispute pursuant to the dispute resolution provisions set forth in Section 14.3 hereof.

6. DEDICATION AND USE OF GAS.

6.1 Gas Dedication. Subject to the terms and conditions hereinafter set forth, the City agrees to exclusively dedicate to the Electricity Project all Landfill Gas recovered from the Landfill within its possession and control, up to the extent needed by CONTRACTOR to

operate the Electricity Project. The City agrees that it will take no action at any time that will in any way impede the flow of Landfill Gas to the Electricity Project unless such action is required by any applicable Legal Requirement or necessary to protect the health, safety or environment of the Landfill or the Gas Collection System.

6.2 Landfill Gas Flow. CONTRACTOR is hereby granted the right to regulate and control the flow of Landfill Gas entering the Electricity Project consistent with this Agreement, including discontinuing same at any time if, in the reasonable opinion of CONTRACTOR, the Landfill Gas adversely affects the operations of the Electricity Project.

6.3 Notification. The City shall promptly notify CONTRACTOR by telephone, and confirm by email, with regard to the existence of any material information which the City may obtain concerning any condition, occurrence or circumstances which could adversely affect the City's ability to deliver the quality and/or quantity of Landfill Gas necessary for the operation of the Electricity Project other than the natural depletion of Landfill Gas produced by the Landfill over time.

7. CONFIDENTIALITY.

7.1 Restrictive Covenant. Except as provided in this Section 7 of this Agreement, no Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the disclosing Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its Affiliates, attorneys, accountants, representatives, agents and employees who have a need to know related to this Agreement. If required by any Legal Requirement applicable to a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency, authority or entity, as required by the Legal Requirement, and a Party may disclose Confidential Information to accountants in connection with audits, provided however, to the extent permitted by law, such disclosing Party shall notify the other Party of the required disclosure, such that the non-disclosing Party may attempt (if such Party so chooses) to cause that court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

7.2 Injunctive Relief. CONTRACTOR and the City acknowledge that a breach of the requirements of this Section will cause the other immediate and irreparable harm and that the damages that the City or CONTRACTOR will suffer may be difficult or impossible to measure. Therefore, upon any actual or impending action which, in the City or CONTRACTOR's sole discretion, may cause a violation of this Section, the City or CONTRACTOR as the case may be will be entitled to seek the issuance of a restraining order, preliminary and permanent injunction, without bond, restraining or enjoining such action by CONTRACTOR or the City, or their agents, employees, contractors or subcontractors. This remedy will be in addition to, and not in limitation of, any other remedy which may otherwise be available to the City or CONTRACTOR under this Agreement, at law, or in equity.

8. **INSURANCE**

8.1 *Insurance Requirements.* The City agrees that it will carry all required insurances as it relates to the Electricity Project's operations, including comprehensive general, property damage, boiler machinery, and business interruption insurance with a waiting period of no more than 10 days, and such other insurance that is customary and reasonable for the owner of an Electricity Project. Without limitation to the aforementioned, the City agrees that it will procure, carry, pay (at its own expense) and maintain said insurance coverages with CONTRACTOR listed as an additional named insured. CONTRACTOR shall carry all required insurances customary and reasonable for a provider of operation and management services of an Electricity Project, as provided in Schedule 8.1. Without limitation to the aforementioned, CONTRACTOR agrees that it will procure, carry, pay (at its own expense) and maintain the insurance coverages set forth in Schedule 8.1 with the City listed as an additional named insured.

8.2 *Miscellaneous Insurance Requirements.* CONTRACTOR will not bring its employees onto the Electricity Project Site until the City receives acceptable certificates of insurance. At least upon the anniversary of the Effective Date or upon the City's request from time to time, CONTRACTOR shall provide the City with evidence, reasonably satisfactory to the City, of the insurance required hereunder. CONTRACTOR shall include in all insurance policies required hereunder provisions requiring the insurance carrier to give the City at least thirty (30) days' prior written notice of any cancellation or suspension of insurance coverage.

9. **TERMINATION.**

9.1 This Agreement may be terminated in the following manner:

- A. By either Party in accordance with the provisions of Section 14.2.
- B. By either Party upon the occurrence of an uncured Event of Default by the other Party.
- C. At any time by mutual written agreement of the Parties.
- D. By the City at any time upon forty-five (45) days prior written notice to CONTRACTOR, if the City determines in good faith, that the Electricity Project is no longer economically viable, or if the Electricity Project causes the City's finances to become significantly impaired.

9.2 *Rights and Obligations.* In the event of the termination of this Agreement for any reason including the expiration of the Term, CONTRACTOR, consistent with the provisions of this Agreement, shall ensure that the Electricity Project, related buildings and equipment are in good working order, and shall not remove any tools or equipment belonging to the City. CONTRACTOR agrees to fully cooperate with the City in the transition of the Services to a new CONTRACTOR. If this Agreement is not extended or renewed or is terminated for any reason, the City shall have the right, but not the obligation, to offer

employment, directly or indirectly, to any employee of the CONTRACTOR working at the Electricity Project.

10. **WARRANTIES AND REPRESENTATIONS**

10.1 Warranties and Representations of the CONTRACTOR. CONTRACTOR warrants and represents to the City as follows:

A. It is a [REDACTED] company, with an office in [REDACTED], which is duly qualified to do business and in good standing in the State of New York.

B. It has full power and authority to execute, deliver and perform its obligations under this Agreement;

C. The execution, delivery and performance of this Agreement by the CONTRACTOR have been duly and validly authorized by all necessary action on the part of the CONTRACTOR;

D. The execution and delivery of this Agreement by the CONTRACTOR and the performance of the terms, covenants and conditions contained herein will not violate the articles of organization or the operating agreement of CONTRACTOR, any federal, state or local laws, ordinances or regulations applicable to CONTRACTOR, or any order of a court or arbitrator, and will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which CONTRACTOR is bound; and

E. There are no actions, suits, claims, complaints, investigations or legal or administrative or arbitration proceedings pending or, to the CONTRACTOR'S knowledge, threatened, whether at law or in equity, whether civil or criminal in nature or whether before any court or before any federal, state or local governmental department, agency or instrumentality, against or affecting CONTRACTOR or its Affiliates, which if decided adversely to CONTRACTOR, or its Affiliates, would have a materially adverse effect on the consummation of the transactions under this Agreement and the CONTRACTOR'S performance hereunder.

10.2 Warranties and Representations of the City. The City warrants and represents to CONTRACTOR as follows:

A. It is a New York municipal corporation. It has full power, authority, and ability to execute, deliver and perform its obligations under this Agreement;

B. The execution, delivery and performance of this Agreement by the City has been duly and validly authorized by all necessary action on the part of the City;

C. The execution and delivery of this Agreement by the City and the performance of the terms, covenants and conditions contained herein will not violate any federal, state or local laws, ordinances or regulations applicable to the City or any order of a court or arbitrator, and

will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which the City is bound;

D. The City has full and exclusive authority to permit the utilization of the Landfill Gas in accordance with the terms of this Agreement and there are no federal, state or local laws, ordinances or regulations or any other restrictions or encumbrances which would prohibit the operation of the Electricity Project at the Electricity Project Site or the utilization of the Landfill Gas as set forth herein.

E. There are no actions, suits, claims, complaints, investigations or legal or administrative or arbitration proceedings pending or, to the City's knowledge, threatened, whether at law or in equity, whether civil or criminal in nature or whether before any court or before any federal, state or local governmental department, agency or instrumentality, against or affecting the City, which if decided adversely to the City, would have a materially adverse effect on the consummation of the transactions under this Agreement and CONTRACTOR's performance hereunder.

11. **EVENT(S) OF DEFAULT.** Subject to the last paragraph of this Section 11, each of the following events ("**Event(s) of Default**") if not cured within fifteen (15) days from the receipt of written notice from the non-defaulting Party shall be considered an Event of Default and shall allow the non-defaulting Party to seek the remedies available under this Agreement;

A. Failure of CONTRACTOR, to perform the Operation and Maintenance Services in accordance with and to the extent required by this Agreement;

B. Failure of the City or CONTRACTOR to pay any undisputed amount due pursuant to this Agreement;

C. Failure by either Party to timely observe or perform any other material covenant, agreement, obligation, term or condition required to be observed or performed under this Agreement;

D. A material breach of a warranty or representation;

E. The institution of a bankruptcy, receivership, insolvency, reorganization, or other similar proceedings against a Party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within sixty (60) days after being instituted;

F. The insolvency or making any assignment for the benefit of creditors by a Party, or any action taken by the members of CONTRACTOR or the Council of the City in furtherance of any of the above actions. However, nothing in this Section shall be interpreted to prohibit CONTRACTOR from making any assignment to its parent Company or to pledge its assets as security;

G. Failure to provide and keep in effect the insurance coverage required by this Agreement; and

H. The determination by the City in the exercise of its reasonable good faith judgment that CONTRACTOR has committed an act or acts which constitute (i) a crime; or (ii) fraud.

In the event that any of the Events of Defaults described in (A) through (H) above are not capable of being cured within the fifteen (15) day period through no fault of the defaulting Party and the defaulting Party proceeds with due diligence to cure said default, its time to do so shall be extended for a period of time during which such cure can reasonably be accomplished with due diligence and continuity.

12 **REMEDIES AND INDEMNIFICATION**

12.1 *CONTRACTOR Indemnity.* CONTRACTOR hereby agrees to indemnify, defend, save and hold harmless the City and its Affiliates and against, and to reimburse the City and its Affiliates for or in respect of any and all losses, damages, deficiencies, liabilities, claims, obligations, expenses, fines, penalties, litigations, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements, fees and expenses (excluding special, indirect, incidental, consequential or punitive damages, including loss of profits or revenues) and all out-of-pocket expenses, reasonable investigation expenses and reasonable fees and disbursements of accountants, other expert witnesses and counsel of any nature whatsoever, incurred or sustained by the City and its Affiliates arising out of, based upon, resulting from, or by reason of any claim (including third party claims) caused by (i) any breach or non-fulfillment of or failure to perform any of the material covenants, agreements, or undertakings of CONTRACTOR which are contained in or made pursuant to this Agreement, (ii) the breach of any of the warranties or representations of CONTRACTOR contained in this Agreement or, (ii) the negligent acts or omissions of CONTRACTOR or its employees.

12.2 *CONTRACTOR'S Limitation of Liability.* CONTRACTOR's liability to the City and its Affiliates shall be limited to direct, actual damages. CONTRACTOR shall not be liable for special, indirect, incidental, consequential or punitive damages, including loss of profits or revenues. The Parties further acknowledge that the cost of replacement power and the cost to replace renewable energy credits or lost revenues from the sale of renewable energy credits (whichever is greater) that is not recovered under the City's business interruption insurance are direct, actual damages. In no event, shall CONTRACTOR'S liability to the City for the cost of replacement power and the cost to replace renewable energy credits or lost revenues from the sale of renewable energy credits exceed \$100,000.

12.3 *City Indemnity.* The City hereby agrees to indemnify, defend, save and hold harmless the CONTRACTOR from and against, and to reimburse CONTRACTOR for or in respect of any and all losses, damages, deficiencies, liabilities, claims, obligations, expenses, fines, penalties, litigations, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements, fees and expenses (excluding special, indirect, incidental, consequential or punitive damages, including loss of profits or revenues) and all out-of-pocket expenses, reasonable investigation expenses and reasonable fees and disbursements of accountants, other expert witnesses and counsel of any nature whatsoever, incurred or sustained by

CONTRACTOR arising out of, based upon, resulting from, or by reason of any claim (including third party claims) caused by (i) any breach, or non-fulfillment of or failure to perform any of the material covenants, agreements, or undertakings of the City which are contained in or made pursuant to this Agreement or in the Schedules, (ii) the breach of any of the warranties or representations of the City contained in this Agreement or, (ii) the negligent acts or omissions of the City or its employees.

12.4. *City's Limitation of Liability.* The City's liability to CONTRACTOR shall be limited to direct, actual damages. The City shall not be liable for special, indirect, incidental, consequential or punitive damages.

12.5 *Binding Obligations.* The indemnification obligations of CONTRACTOR and the City under this Section shall inure to the benefit of the directors, officers, Affiliates, employees and elected or appointed officials of the Parties, their successors and assigns.

12.6 *Notice.* The Indemnified Party shall promptly notify the Indemnifying Party of the assertion of any claim, or the commencement of any action, suit or proceeding, including third party claims, in respect of which indemnity may be sought hereunder and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (except to the extent the Indemnifying Party has suffered material prejudice by such failure).

12.7 *Defense of Third Party Claims.* The Indemnifying Party shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within thirty (30) days of receipt of notice from the Indemnified Party of the commencement of or assertion of any claim, action, suit or proceeding by a third Party in respect of which indemnity may be sought hereunder (a "**Third-Party Claim**"), to assume the defense, control and/or the settlement of such Third-Party Claim with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party and the Indemnifying Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third-Party Claim that the other is defending, as provided in this Agreement.

12.8 *Settlement of Third Party Claims.* The Indemnifying Party, if it has assumed the defense of any Third-Party Claim as provided in this Agreement, shall not consent to a settlement of, or the entry of any judgment arising from any such Third-Party Claim, without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed) unless such settlement or judgment relates solely to monetary damages. The Indemnifying Party shall not, without the Indemnified Party's prior written consent, enter into any compromise or settlement that (i) commits the Indemnified Party to take, or to forbear to take, any action, or (ii) does not provide for a complete release and, if applicable, a third party covenant not to sue the Indemnified Party.

12.9 All lawsuits, or other legal proceedings instituted by an Indemnified Party in furtherance of this Section shall be instituted on the later of (i) two (2) years after the occurrence of the Event of Default giving rise to the claim, action, or suit, etc. or, (ii) two (2) years after the Indemnified Party has actual notice of the claim, action, or suit, etc., for which indemnification is sought.

13. **INDEPENDENT CONTRACTOR**

It is understood and agreed by the Parties that the City is not in any way associated or otherwise connected with the actual performance of this Agreement on the part of CONTRACTOR, nor as to the employment of labor and incurring of other expenses, that CONTRACTOR is an independent contractor in the performance of each and every part of this Agreement and is solely and personally liable for all labor and expenses in connection herewith, for any and all damages which may be occasioned on account of the operation of this Agreement, whether the same be for personal injuries or damages of any other kind. CONTRACTOR is an independent contractor and shall have exclusive control and direction of any persons retained by CONTRACTOR to perform the Services. CONTRACTOR shall determine the method, means and manner of performance. CONTRACTOR shall have the sole right and responsibility to hire, pay and discharge any and all employees or agents required and assumes full responsibility for the payment of all local, state and federal payroll and/or withholding taxes, contributions or taxes for unemployment insurance, old age, and other costs related to the employment of persons. No persons employed by CONTRACTOR are to be considered the employees of the City, and CONTRACTOR is not authorized or empowered to obligate or bind the City as to third parties in any manner whatsoever.

14. **MISCELLANEOUS.**

14.1 *Disclaimer of Joint Venture, Partnership, and Agency.* This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party 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 of representative of, or to otherwise bind, the other Party.

14.2 *Force Majeure.*

A. Neither Party shall be liable to the other for damages if such Party's performance is delayed or prevented due to an event of Force Majeure. In such event, the affected Party shall promptly notify the other of the event of Force Majeure and its likely duration. During the continuation of the Force Majeure event, the nonperforming Party shall (i) exercise commercially reasonable efforts to mitigate or limit damages to the performing Party; (ii) exercise commercially reasonable due diligence to overcome the Force Majeure event; (iii) to the extent it is able, continue to perform its obligations under this Agreement and; (iv) cause the suspension of performance to be of no greater scope and no longer duration than the Force Majeure event requires. In the event of a delay in either Party's performance of its obligation hereunder for more than one hundred eighty (180) consecutive days due to a Force Majeure Event, the other Party may terminate this Agreement within thirty (30) days after the expiration of the aforementioned one hundred eighty (180) day period.

B. "*Force Majeure*" shall mean any act, event or condition materially and adversely affecting the ability of CONTRACTOR or the City to perform or comply with any material

obligation, duty or agreement required under this Agreement, if such act, event, or condition is beyond the reasonable control of the nonperforming Party or its agents relying thereon, is not the result of the willful or negligent action, inaction or fault of the Party relying thereon, and the nonperforming Party has been unable to avoid or overcome the act, event or condition by the exercise of due diligence, and shall include without limitation: (i) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) an act of public enemy, war, blockage, insurrection, riot, general unrest or restraint of government and people, civil disturbance or disobedience, sabotage, act of terrorism or similar occurrence; (iii) a strike, work slowdown, or similar industrial or labor action; (iv) an order or judgment (including without limitation a temporary restraining order, temporary injunction, preliminary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body which prevents a Party's obligations as contemplated by this Agreement; (v) partial or entire failure of utilities and utility trips; (vi) failure of suppliers to meet contractual obligations or; (vii) adoption or change (including a change in interpretation or enforcement) of any federal, state or local law after the Effective Date preventing performance of or compliance with the obligations hereunder.

C. The Parties' obligations to make payments or indemnification(s) under this Agreement shall not be affected by a Force Majeure event.

14.3 Notices. All notices to be given to the City or CONTRACTOR, shall be in writing and delivered personally, or shall be mailed by U.S. Express, registered or certified mail, return receipt requested or an overnight service with receipt as follows:

CONTRACTOR:

With a copy to:

THE CITY: The City of Auburn
 Attention: City Manager
 Memorial City Hall
 24 South Street
 Auburn, New York 13021-3885

With a copy to: Corporation Counsel

14.4 Governing Law; Venue

A. This Agreement and any and all issues arising hereunder or relating hereto shall be governed and construed according to the laws of the State of New York without reference to its principles of conflicts of laws.

B. The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the County, State and/or Federal Courts located in the County of Cayuga and State of New York.

14.5 Entire Agreement. It is understood and agreed that all understandings and agreements heretofore had between the Parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement and contains all of the terms agreed upon between the Parties with respect to the subject matter hereof, and that the Agreement is entered into after full investigation, neither Party relying upon any statement or representation, not embodied in this Agreement, made by the other. The Schedules affixed hereto are incorporated herein and made a part of this Agreement.

14.6 Amendment. This Agreement may not be amended, modified or supplemented, except in a written instrument that is signed by both the City and CONTRACTOR.

14.7 Waiver. No waiver by either Party of any failure or refusal by the other Party to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

14.8 Severability; Modification Required By Law. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreement of the Parties herein set forth.

14.9 Headings. The headings of sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

14.10 Assignment and Subcontracting. The City has confidence in the representations and experience of CONTRACTOR, and CONTRACTOR agrees not to assign or subcontract the Services to be performed hereunder without the express written consent of the City which consent shall not be unreasonably withheld or delayed. In the event of a permitted assignment or subcontract, CONTRACTOR shall be fully responsible for the acts and omissions of its contractors and subcontractors and of persons either directly or indirectly employed by them, to the same extent as for its own acts and omissions or those of persons directly employed by it. CONTRACTOR's subcontracting of any Services under this Agreement shall not in any manner whatsoever relieve CONTRACTOR of any of its duties, obligations or liabilities under this Agreement. Nothing contained in this Agreement shall create any contractual relationship between any contractor or subcontractor and the City. This Agreement shall be binding upon the successors and assigns of the City and the permitted successors and assigns of CONTRACTOR. Notwithstanding anything herein to the contrary, the City agrees that CONTRACTOR may assign any of its rights, duties, or obligations under this Agreement as collateral security to any lenders providing financing to CONTRACTOR or any of its

Affiliates. In connection with any such collateral assignment, the City agrees to execute a consent agreement in favor of the lenders in customary form and substance provided that such terms are consistent with this Agreement and that lenders agree that it will not diminish, interfere, or disturb CONTRACTOR'S obligations and the City's rights under this Agreement.

14.11 Construction. This Agreement and its Schedules are the result of negotiations between the Parties and have been reviewed by each Party. Accordingly, this Agreement will be deemed to be the product of the Parties hereto and no ambiguity will be construed in favor of or against any Party.

14.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but together will constitute one and the same instrument.

14.13 Dispute Resolution Procedure: Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the parties cannot resolve a dispute by informal negotiations, the Parties agree to submit the dispute to nonbinding mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Syracuse, New York, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, venue for judicial enforcement shall be as provided in this Agreement. Notwithstanding the foregoing, injunctive or equitable relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

14.14 Access and Cooperation. It is expressly understood and agreed between the parties that the Electricity Project Site shall at all times be accessible to the City, subject to CONTRACTOR's safety and security protocols. The City agrees that it shall endeavor to access the Electricity Project Site in such a manner so as not to unreasonably interfere with the operations being conducted thereon.

14.15 Contractor Negative Covenants. CONTRACTOR agrees that it will not:

A. Create, or suffer the creation of, any lien or encumbrance on the Electricity Project or any portion thereof;

B. Take any action that would otherwise cause the City to (i) cease to have good and marketable title to the Electricity Project or, (ii) cease to have good and marketable title to the Landfill Gas being produced for the Electricity Project Site;

C. Except as herein set forth, make, enter into, execute, amend, modify or supplement any contract or agreement on behalf of or in the name of the City or hold itself out as having the authority to do so. Make or commit to make any expenditure or acquire any equipment, materials, assets or other items, except in accordance with this Agreement;

D. Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by the City;

E. Engage in any other transaction on behalf of the City or any other person that violates this Agreement.

14.16 City Negative Covenants. The City agrees that it will not:

A. Except as herein set forth, make, enter into, execute, amend, modify or supplement any contract or agreement on behalf of or in the name of CONTRACTOR or hold itself out as having the authority to do so. Make or commit to make any expenditure or acquire any equipment, materials, assets or other items, except in accordance with this Agreement;

B. Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by CONTRACTOR;

C. Engage in any other transaction on behalf of CONTRACTOR or any other person that violates this Agreement.

4.0 Non Collusive Form

Pursuant to Chapter 675, Laws of 1966

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certified as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition, and
4. The bidder herein has carefully examined the annexed form of contract and contract documents.

(Signature of Bidder & Seal)

STATE OF _____

COUNTY OF _____

CITY OF _____

SS:

Sworn to and Subscribed Before Me This _____ Day of _____, 20__.

(Notary Public)

5.0 Pre-Proposal Project Walk Thru

There will be a non-mandatory, pre-proposal project walk thru Wednesday, August 19, 2015 from 10:00 am - 11:00 am. This meeting will be held at the Landfill Gas Energy Facility and is open to all contractors interested in providing pricing for the Operation and Maintenance of the facility. Please RSVP with Seth Jensen, sjensen@auburnny.gov or 315-727-6502.

6.0 Deadline for Submission

An original, two (2) copies, and one electronic copy of all proposals are to be submitted to:

Attn: William H. Lupien, Jr., P.E.; Superintendent of Engineering Services

**City of Auburn
Department of Engineering Services
Memorial City Hall
24 South Street
Auburn, NY 13021
Attn: Seth Jensen, P.E.
Phone: (315) 255-4129
Fax: (315) 253-3243**

ATTENTION: Failure to indicate "Proposal: Operation and Maintenance for Landfill Gas Energy Facility" on the outside of the submittal envelope might necessitate the premature opening of the Proposal which might compromise its confidentiality.

Proposals are due no later than **4:00 p.m. local time on August 28, 2015** by mail or delivery. The proposals must be sealed in an envelope with the title of this RFP and the Respondent's name, address and telephone number clearly marked on the envelope.

The above deadline is firm as to the date and hour. The City will treat as ineligible for consideration any submission that is received after that deadline. All submissions become the property of the City and will not be returned.

7.0 Instructions for Submission of Inquiries

Questions and inquiries regarding the RFP will be accepted via email sjensen@auburnny.us (Seth Jensen) until 4:00 p.m. on 8/21/15 to allow for issuance of an addendum. All questions responded to by the City will be forwarded as an addenda to this RFP at least two (2) days prior to the date that submissions are due. Questions and inquiries shall be submitted to:

**City of Auburn
Department of Engineering Services
Memorial City Hall
24 South Street
Auburn, NY 13021**

**Attn: Seth N. Jensen, P.E.
Phone: (315) 255-4129
Fax: (315) 253-3243**