

CONTRACT COVERSHEET

NOTE: Shaded areas are for County Executive review.

Res 443
Significant

| DEPARTMENT Public Works, Highway & Transportation | CONTRACT/ADDENDUM #: 17240 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|--------------------------|--|----------|---|--|---|-------------------------------------|-----|--------------------------|--------------------------|----------|--------------------------|--------------------------|-----------|--------------------------|--------------------------|-------------------|--------------------------|--------------------------|----------------------|--------------------------|--------------------------|---------------|--------------------------|--------------------------|--------|--------------------------|
| 1. This contract, grant or addendum: <input checked="" type="checkbox"/> AWARDS <input type="checkbox"/> ACCEPTS | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 30%;">Contract</th> <th style="width: 40%;">If Addendum, please include original contract number</th> <th style="width: 30%;">Addendum</th> </tr> <tr> <td style="text-align: center;">↓</td> <td></td> <td style="text-align: center;">↓</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>POS</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Co Lesse</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Co Lessor</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Intergovernmental</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Purchase of Property</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Property Sale</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Other:</td> <td><input type="checkbox"/></td> </tr> </table> | Contract | If Addendum, please include original contract number | Addendum | ↓ | | ↓ | <input checked="" type="checkbox"/> | POS | <input type="checkbox"/> | <input type="checkbox"/> | Co Lesse | <input type="checkbox"/> | <input type="checkbox"/> | Co Lessor | <input type="checkbox"/> | <input type="checkbox"/> | Intergovernmental | <input type="checkbox"/> | <input type="checkbox"/> | Purchase of Property | <input type="checkbox"/> | <input type="checkbox"/> | Property Sale | <input type="checkbox"/> | <input type="checkbox"/> | Other: | <input type="checkbox"/> |
| Contract | If Addendum, please include original contract number | Addendum | | | | | | | | | | | | | | | | | | | | | | | | | | |
| ↓ | | ↓ | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> | POS | <input type="checkbox"/> | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Co Lesse | <input type="checkbox"/> | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Co Lessor | <input type="checkbox"/> | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Intergovernmental | <input type="checkbox"/> | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Purchase of Property | <input type="checkbox"/> | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Property Sale | <input type="checkbox"/> | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Other: | <input type="checkbox"/> | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. This contract is discretionary <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. Term of Contract or Addendum: From: 1/1/15 To: 1/1/18 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. Amount of Contract or Addendum \$382,000.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. Purpose: AWARD OF CONTRACT FOR LAB SCALE OPERATION OF A RENEWABLE ENERGY PROJECT LOCATED AT DANE COUNTY LANDFILL #2 THAT RECOVERS AND GENERATES REVENUE FROM THE SALE OF CARBON DIOXIDE AND NITROGEN | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. Vendor or Funding Source: Dane County | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. MUNIS Vendor Code: 24838 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. Bid/RFP Number: Bid Waiver - 2014 RES-443 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9. If grant: Funds Positions? <input type="checkbox"/> YES <input type="checkbox"/> NO Will require on-going or matching funds? <input type="checkbox"/> YES <input type="checkbox"/> NO | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10. Are funds included in the budget? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 11. Account No. & Amount, Org. & Obj. <u>SWRODFLD 57214</u> Amount \$ <u>382,000.00</u> Account No. & Amount, Org. & Obj. _____ Amount \$ _____ Account No. & Amount, Org. & Obj. _____ Amount \$ _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 12. Is a resolution needed: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If "YES," please attach a copy of the Resolution. If Resolution has already been approved by the County Board, Resolution No. & date of adoption <u>2014 RES-443</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 13. Does Domestic Partner equal benefits requirement apply? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 14. Director's Approval <i>[Signature]</i> | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

CONTRACT REVIEW/APPROVALS

VENDOR

| Initials | Ftnt | Date In | Date Out |
|-------------------------------|------|-----------------|-----------------|
| <i>MJ</i> Received | | <u>12-30-14</u> | |
| <i>CA</i> Controller | | | <u>12/30/14</u> |
| <i>CB</i> Corporation Counsel | | <u>1/2/15</u> | <u>1/2/15</u> |
| <i>CB</i> Risk Management | | <u>1/2/15</u> | <u>1/2/15</u> |
| <i>AP</i> ADA Coordinator | | <u>1/2/15</u> | <u>1/2/15</u> |
| <i>PP</i> Purchasing Agent | | <u>1/2/15</u> | <u>1/2/15</u> |
| _____ County Executive | | | |

| |
|--|
| Vendor Name & Address Heat Recovery & Remediation Technology, Inc. 2986 Roidt Dr Stoughton, WI 53589 |
| Contact Person Jay Jatkar |
| Phone No. 630-234-8533 |
| E-mail Address jjatkar@msn.com |

Footnotes:


1. _____
2. _____

| |
|--|
| Return To: Name/Title: <u>Holly Rasmussen / Clerk-Typist III</u> Dept.: <u>Public Works</u> Phone: <u>266-5953</u> Mail Address: <u>1919 Alliant Energy Center Way</u> E-mail: <u>rasmussen.holly@countyofdane.com</u> <u>Madison, WI</u> |
|--|

CERTIFICATION

The attached contract: *(Check as many as apply)*


- conforms to Dane County's standard Purchase of Services Agreement form in all respects
- conforms to Dane County's standard Purchase of Services Agreement form with modifications and is accompanied by a revision copy¹
- is a non-standard contract which has been reviewed or developed by corporation counsel which has not been changed since that review/development
- is a non-standard contract previously reviewed or developed by corporation counsel which has been changed since that review/development; it is accompanied by a revision copy¹
- is a non-standard contract not previously reviewed by corporation counsel; it is accompanied by a revision copy
- contains non-standard/indemnification language which has been reviewed or developed by risk management and which has not been changed since that review/development
- contains non-standard insurance/indemnification language which has been changed since review/development or which has not been previously seen by risk management; it is accompanied by a revision copy
- contains non-standard affirmative action/equal opportunity language which has been reviewed or developed by contract compliance and which has not been changed since that review/development
- contains non-standard affirmative action/equal opportunity language which has been changed since the earlier review/development by contract compliance or which has not been previously seen by contract compliance; it is accompanied by a revision copy¹

Date: 12/30/14 Signed: 
 Telephone Number: 266-4039 Print Name: Gerald J. Mandli

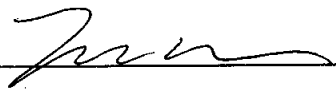
MAJOR CONTRACTS REVIEW (DCO Sect. 25.20) This review applies only to contracts which both exceed \$100,000 in disbursements or receipts and which require county board review and approval.

EXECUTIVE SUMMARY *(Attach additional pages, if needed).*

1. **Department Head** Contract is in the best interest of the County.
 Describe any deviations from the standard contracting process and any changes to the standard Purchase of Services Form Agreement.

Date: 12/30/14 Signature: 

2. **Director of Administration** Contract is in the best interest of the County.
 Comments:

Date: 1/2/15 Signature: 

3. **Corporation Counsel** Contract is in the best interest of the County.
 Comments:

Date: 1/2/15 Signature: 

¹A revision copy is a copy of the contract which shows the changes from the standard contract or previously revised/developed contract my means of overstrikes (indicating deletions from the standard language) and underlining (showing additions to the standard language).

COUNTY OF DANE
ARCHITECTURAL / ENGINEERING PROFESSIONAL SERVICES AGREEMENT
TABLE OF CONTENTS

TABLE OF CONTENTS
SIGNATURE PAGE

| ARTICLES: | PAGE |
|---|-------------|
| 1. ARTICLE 1: SCOPE OF AGREEMENT | 1 |
| 2. ARTICLE 2: SCOPE OF THE SERVICES TO BE PROVIDED..... | 2 |
| 2.A. LAB SCALE OPERATION OF A RENEWABLE ENERGY PROJECT LOCATED AT THE DANE COUNTY RODEFELD #2 LANDFILL IN MADISON, WI THAT RECOVERS CARBON DIOXIDE AND NITROGEN, AND GENERATES REVENUE FROM THE SALE OF CARBON DIOXIDE AND NITROGEN | |
| 3. ARTICLE 3: COUNTY'S RESPONSIBILITIES..... | 5 |
| 4. ARTICLE 4: COMPENSATION | 6 |
| 5. ARTICLE 5: TERMINATION OF AGREEMENT | 8 |
| 6. ARTICLE 6: OWNERSHIP OF DOCUMENTS | 8 |
| 7. ARTICLE 7: CONFIDENTIALITY | 8 |
| 8. ARTICLE 8: LIABILITY- HOLD HARMLESS AND INDEMNIFICATION | 9 |
| 9. ARTICLE 9: PROFESSIONAL LIABILITY INSURANCE | 9 |
| 10. ARTICLE 10: OTHER INSURANCE | 9 |
| 11. ARTICLE 11: MISCELLANEOUS PROVISIONS..... | 9 |
| 12. ARTICLE 12: NONDISCRIMINATION IN EMPLOYMENT..... | 11 |
| ATTACHMENT A:..... | A-1 |

COUNTY OF DANE

ARCHITECTURAL / ENGINEERING PROFESSIONAL SERVICES AGREEMENT

SIGNATURE PAGE

Date: _____

Project No.: [No.] 12240

Agreement No.: _____

THIS AGREEMENT is between the County of Dane, by its Department of Public Works, hereinafter referred to as "COUNTY", and Heat Recovery & Remediation, Technology, Inc., 2986 Roidt Drive, Stoughton, WI 53589, hereinafter called the "ENGINEER".

WITNESSETH

WHEREAS, COUNTY proposes securing architectural / engineering services for a project described as follows:

Lab Scale Operation of A Renewable Energy Project Located at the Dane County Rodefild #2 Landfill in Madison, WI that Recovers Carbon Dioxide and Nitrogen, and Generates Revenue From the Sale of Carbon Dioxide and Nitrogen ("Project")

WHEREAS, COUNTY deems it advisable to engage the services of the ENGINEER to furnish professional services in connection with this Project, and


WHEREAS, COUNTY has authority to engage such services, and

WHEREAS, the ENGINEER represents that it is in compliance with the applicable Wisconsin Statutes relating to the registration of architects and professional engineers and designers, and has agreed to furnish professional services for COUNTY,

NOW, THEREFORE, in consideration of the premises and to their mutual and dependent agreements, the parties hereto agree as set forth in the following pages, which are annexed hereto and made a part hereof.

IN WITNESS WHEREOF, COUNTY and the ENGINEER have executed this Agreement as of the above date.

Heat Recovery & Remediation Technology, Inc.

 12-29-14
Signature Date

Jay Jatkar
Name

President & CEO
Title

61-1656061
Federal Employer Identification Number (FEIN)

COUNTY OF DANE

Joseph T. Parisi, County Executive Date

Scott McDonell, County Clerk Date

1. ARTICLE 1: SCOPE OF AGREEMENT

- 1.A. This Agreement between COUNTY and the person or firm, duly licensed under the laws and in accordance with the regulations of the State of Wisconsin, hereinafter referred to as the "ENGINEER" shall be governed by the following Terms and Conditions.
- 1.B. The ENGINEER shall provide technical and professional services under this Agreement. The Terms and Conditions of this Agreement shall apply to modifications made to this Agreement and shall apply to both the services rendered in the creation of the design and to the additional services called for in carrying out the design.
- 1.C. The ENGINEER shall serve as the professional technical advisor and consultant to COUNTY in matters arising out of or incidental to the performance of this Agreement and in that capacity, the ENGINEER shall not have a contractual duty or responsibility to any other person or party or individual regarding the services under this Agreement, except as that duty may arise under the laws of the State of Wisconsin. The ENGINEER is not an agent of the COUNTY within the meaning of s. 893.80 or 895.46, Wis. Stats.
- 1.D. Professional services performed or furnished under this Agreement shall be based on the care and skill ordinarily used by members of the profession involved, who practice under the authority of and who are governed by the license issued under the Wisconsin Statutes and the Wisconsin Administrative Code. The standard of care for architectural and engineering services under this Agreement shall include designing the plant and machinery for the recovery of carbon dioxide and nitrogen, which includes all equipment that comply with all applicable building and safety codes.
- 1.E. By accepting this Agreement, the ENGINEER represents possession of the necessary skill and other qualifications to perform work under this Agreement and is familiar with the practices in the locality where such services and work shall be performed.
- 1.F. The ENGINEER shall be professionally responsible for work performed under this Agreement. Upon written approval of COUNTY, the ENGINEER may subcontract work to an approved consultant under this Agreement, to the specific extent authorized by COUNTY. The authorization to subcontract shall not relieve the ENGINEER of professional or contractual responsibility for any work performed or delivered under this Agreement. The authorization to subcontract shall not be construed to create any contractual relationship between COUNTY and such consultant.
- 1.G. Subcontracts for services under this Agreement shall provide that work performed under such subcontract, shall be subject to provisions of this Agreement and shall also provide that any professional duty or responsibility pertaining thereto shall be accomplished to the benefit of COUNTY. Upon request, an electronic copy of each such subcontract for which COUNTY approval is granted shall be furnished to COUNTY.
- 1.H. In the performance of this Agreement, the ENGINEER shall become familiar with and perform such services in accordance with the Scope of Work set forth in this document.

2. ARTICLE 2: SCOPE OF THE SERVICES TO BE PROVIDED

2.A. General.

- 2.A.1) a. The Term of this Agreement shall be effective as of January 1, 2015, and expire on January 1, 2018.
- 2.A.2) ENGINEER shall provide the following services in furtherance of the Project in each of the following phases:
 - 2.A.2) a. Phase 1: Treatment of Carbon Dioxide (CO₂) and Methane Gas (CH₄) From Landfill Gas
 - 2.A.2) b. Phase 2: Treatment of CO₂ and Nitrogen (N₂) from CAT Engines Exhaust Gas
- 2.A.3) ENGINEER will provide the necessary personnel for the installation, implementation and standardization of the Project. ENGINEER shall also provide the necessary personnel to train COUNTY's employees on operating the Project, and to continue consulting with COUNTY after the standardization of the Project. ENGINEER will further provide the necessary personnel for the marketing and sales services of the Project during the Term.
- 2.A.4) An assigned COUNTY Public Works Project Manager will be the ENGINEER's contact in securing COUNTY direction regarding the Project, for arranging any necessary meetings with COUNTY, other County Departments, or state agencies and obtaining any approvals required to complete the Project. All notices required under this Agreement shall be directed to the assigned COUNTY Public Works Project Manager.
 - 2.A.4) a. The assigned COUNTY Public Works Project Manager for the Project is: John Welch, P. E., Solid Waste Manager, 1919 Alliant Energy Center Way Madison, WI 53713 (608) 267-8815
- 2.A.5) The ENGINEER shall facilitate a site investigation for the purpose of identifying conditions at the site, which might adversely affect the achievement of the Project.
- 2.A.6) The term "written" or "in writing" may be either electronic or hard copy documentation, unless otherwise stated in this Agreement.
- 2.A.7) Upon completion of the Project, this Agreement does not obligate the COUNTY to enter into any other agreement or proceed with any other relationship or transaction with ENGINEER.

2.B. Phase 1: Treatment of CO₂ and CH₄ From Landfill Gas

- 2.B.1) ENGINEER has selected the equipment required for the Project. The required equipment is attached hereto as Attachment A, Exhibit 1 ("Equipment").
 - 2.B.1) a. ENGINEER shall purchase and order the Equipment on behalf of the COUNTY. Once delivered and accepted by COUNTY, COUNTY shall retain ownership of such Equipment.

- 2.B.1) b. During the Term of the Agreement, ENGINEER warrants that the Equipment shall be free from defects in material and workmanship and shall conform to the Agreement specifications.
- 2.B.1) b.(1) If any portion of the Equipment fails to meet the foregoing warranties, ENGINEER shall either (1) repair any defective component of the Equipment; or (2) furnish any necessary repaired or replacement parts, or (3) redo any faulty installation of the Equipment.
- 2.B.1) c. Within ninety (90) days of purchasing and ordering the Equipment, ENGINEER shall install the Equipment at Dane County Landfill Site #2, Rodefild Landfill which is located at 7102 U.S.H. 12 & 18 in the City of Madison, Wisconsin ("DCLF") according to the specifications and designs for Phase 1, attached here to as Attachment A, Exhibit 2 of this Agreement.
- 2.B.2) An initial sixty (60) day "Test Period" will begin following the installation of the equipment. During the Test Period:
- 2.B.2) a. ENGINEER will monitor the processing of 15 cubic feet per minute (CFM) of gases from DCLF wells to separate CO₂ and CH₄. The processing of the landfill gas will be in accordance with the design specifications set forth in Attachment A, Exhibit 2.
- 2.B.2) b. ENGINEER will also record critical variables of the process, including but not limited to temperature, pressure and sublimation rate, and will determine the optimal values. All readings taken will be analyzed by ENGINEER until such optimal values are achieved.
- 2.B.2) c. ENGINEER will conduct the operation for eight (8) to twelve (12) hours a day during this time period until critical variables are stabilized.
- 2.B.2) d. ENGINEER will ensure that the CH₄ that is separated from the gases is sent to the CAT engines for combustion.
- 2.B.2) e. ENGINEER will oversee the CO₂ capture as "dry ice," and submit the "dry ice" to an unaffiliated licensed and accredited laboratory to determine its quality. The "dry ice" will be stored in the recovery kettles at a temperature of negative 110 degrees Fahrenheit for future distribution.
- 2.B.2) f. At the conclusion of the Test Period, COUNTY, in its sole discretion, will determine whether to continue with the Project.
- 2.B.3) Following COUNTY's written authorization to continue with the Project, ENGINEER shall conduct a forty-five (45) day "Trial Operation." During the Trial Operation:
- 2.B.3) a. ENGINEER shall continue to monitor the processing of landfill gases to separate the CO₂ and CH₄ to ensure that it meets optimal standards.
- 2.B.3) b. ENGINEER shall conduct the operation on a twenty-four (24) hour, seven (7) days a week basis.
- 2.B.3) c. ENGINEER shall train COUNTY's employees on how to run the process to separate CO₂ and CH₄ and store the CO₂ for eventual distribution.

- 2.B.4) ENGINEER agrees to provide a report to COUNTY after the conclusion of the Trial Operation. The report shall set forth the number of CFM (including the calculation methods and assumptions) of CO₂ and N₂ that was recovered from the landfill gas, the number of pounds of CO₂ and N₂ that was available for sale, and the number of pounds of CO₂ and N₂ that was sold during Phase 1 and the price per pound.
- 2.B.5) At the conclusion of the Trial Operation, COUNTY, in its sole discretion, will determine whether to continue with the Project.
- 2.B.6) Following COUNTY's written authorization to continue with the Project, ENGINEER shall cease processing the landfill gases, and begin preparing the equipment for use in Phase 2.

2.C. Phase 2: Treatment of CO₂ and Nitrogen (N₂) from CAT Engines Exhaust Gas

- 2.C.1) ENGINEER shall disconnect the Equipment used in Phase 1, and make the necessary connections to the Phase 2 Equipment.
 - 2.C.1) a. The Equipment will be attached to the CAT Engines located at DCLF according to the specifications and designs for Phase 2 attached hereto as Attachment A, Exhibit 3.
- 2.C.2) The Phase 2 operation will run for an initial sixty (60) day "Evaluation Period." During the Evaluation Period:
 - 2.C.2) a. ENGINEER will process 22.5 CFM of exhaust gas from a CAT engine to recover CO₂ and N₂ in a manner set forth in Attachment A, Exhibit 3 of this Agreement.
 - 2.C.2) b. Once CO₂ and N₂ are separated, ENGINEER will store the CO₂ as dry ice in its recovery kettles and N₂ will be stored in the Nitrogen Recovery Kettle for future distribution. During this process, ENGINEER will also remove Formaldehyde from the gas as much as possible by use of water and resin.
- 2.C.3) ENGINEER agrees to provide a report to COUNTY after the conclusion of Phase 2. The report shall set forth the number of CFM(including the calculation methods and assumptions) of CO₂ and N₂ that was recovered from the CAT engines exhaust gas, the number of pounds of CO₂ and N₂ that was available for sale, the number of pounds of CO₂ and N₂ that was sold during Phase 2 and the price per pound.
- 2.C.4) At the conclusion of the Evaluation Period, COUNTY will notify ENGINEER in writing whether to continue Phase 2 operations and whether COUNTY desires to purchase additional equipment to restart Phase 1 operations. A list of such equipment is attached hereto as Attachment A, Exhibit 4 ("Additional Equipment").
 - 2.C.4) a. If COUNTY decides to purchase Additional Equipment, ENGINEER shall purchase such equipment within one-hundred and twenty (120) days of COUNTY's written notification.

- 2.C.4) b. ENGINEER agrees to install the Additional Equipment within one-hundred and twenty (120) days of purchase, and to monitor that the Additional Equipment is operating appropriately.
- 2.C.5) After the conclusion of Phase 2, ENGINEER agrees to continue monitoring the Project and providing support and maintenance of the Project for the remaining duration of the Term at no additional cost.
 - 2.C.5) a. ENGINEER agrees to provide a report no later than December 31 of each Term year. The report shall set forth the number of CFM (including the calculation methods and assumptions of CO₂ and N₂ that was recovered from the CAT engines exhaust gas and landfill gas, the number of pounds of CO₂ and N₂ that was available for sale, the number of pounds of CO₂ and N₂ that was sold during the year and the price per pound.
- 2.D. ENGINEER agrees to provide COUNTY with a detailed marketing and sales study that identifies potential consumers of the recovered CO₂, N₂, and formaldehyde, determines the appropriate pricing for the recovered gases for each potential consumer, and estimates the cost of delivery and personnel in order to distribute the recovered gases to each consumer ("Study"). ENGINEER agrees to complete the Study within six (6) months of the start of the Test Period.
- 2.E. ENGINEER further agrees to actively market the recovered CO₂, N₂ and throughout the Term. If ENGINEER identifies a potential consumer that desires to purchase the recovered CO₂, N₂, ENGINEER will immediately notify COUNTY. Upon notification by ENGINEER, COUNTY agrees to work with the potential consumer on formalizing an agreement.
 - 2.E.1) a. ENGINEER understands it does not possess any authority to bind the COUNTY to an agreement with a potential consumer. ENGINEER further agrees not to negotiate any terms of such an agreement without COUNTY's written pre-authorization.
 - 2.E.1) b. As set forth in Article 4.G, ENGINEER agrees that all revenue generated from the sales of the recovered CO₂ and N₂ shall be remitted to COUNTY until the Guaranteed Revenue Amount is achieved.

3. ARTICLE 3: COUNTY'S RESPONSIBILITIES

- 3.A. COUNTY will determine the project scope for which the professional design services are required and will fully cooperate in achieving completion of that work.
- 3.B. COUNTY will establish an internal operating procedure for timely and proper performance of any COUNTY duty required to fulfill the needs of the project.
- 3.C. COUNTY will provide available information regarding the requirements for the project, which set forth COUNTY's objectives for program, schedule and overall budget. COUNTY will make available to the ENGINEER data known to COUNTY or requested by the ENGINEER, which may be needed for the fulfillment of the professional responsibility of the ENGINEER. This data may include, but is not limited to, prints of existing buildings or record drawings and COUNTY standards and guides. Such

documents will be the most recent and accurate available. The use of any such data by the ENGINEER shall be without contractual or legal significance unless otherwise established elsewhere in this Agreement. However, providing of documents by COUNTY shall not relieve the ENGINEER from the responsibility for conducting a field survey to verify existing conditions as specified herein.

- 3.D. COUNTY will communicate to the ENGINEER the format of the documents required to be submitted.
- 3.E. COUNTY will examine documents submitted by the ENGINEER and will render decisions regarding them promptly, to avoid unreasonable delay in the progress and sequence of the ENGINEER's work.
- 3.F. Unless otherwise specified in this Agreement, COUNTY will arrange for services of a testing laboratory to furnish structural, chemical, mechanical and other laboratory tests, inspections and reports as required by law or deemed necessary by COUNTY.
- 3.G. COUNTY will provide the following:
 - 3.G.1) An HDPE/PVC connection from the main landfill gas line to ENGINEER's processing Equipment.
 - 3.G.2) Connection piping to return the recovered CH₄ to the landfill gas energy combustion (CAT engines) system.
 - 3.G.3) One main electrical box to connect to ENGINEER's Equipment.
 - 3.G.4) A minimum 20'x30' shed or space inside of the CAT engine building to process 15 CFM of landfill gas.
 - 3.G.5) A connection from the engine exhaust side to the Equipment required for processing the exhaust gases in Phase 2.
 - 3.G.6) An electrical connection to the chiller.
- 3.H. COUNTY will provide ENGINEER with reasonable access to DCLF during regular business hours and after-regular business hours. ENGINEER will ensure that the security of the DCLF is maintained whenever it accesses the DCLF for purposes of the Project.
- 3.I. If COUNTY decides to continue with the Project after the conclusion of Phase 2, County shall be responsible for its operation for the remainder of the Term.

4. ARTICLE 4: COMPENSATION

- 4.A. ENGINEER fees for basic services will be compensated by COUNTY in accordance with the Terms and Conditions of this Agreement as follows:
 - 4.A.1) \$107,800.00 for the purchase of the Equipment to be paid upon contract award.
 - 4.A.2) \$32,800.00 to be paid upon the installation of the Equipment.
 - 4.A.3) \$32,500.00 to be paid upon the successful completion of the 60 day Test Period, as determined by COUNTY in its sole discretion,

- 4.A.4) \$27,500.00 to be paid upon the successful completion of the 45 day Trial Operation
- 4.A.5) \$75,000.00 to be paid upon COUNTY's written notification to ENGINEER to purchase Additional Equipment to restart Phase 1 operations
- 4.A.6) \$21,800 to be paid upon ENGINEER's installation of the Additional Equipment and its successful operation.
- 4.A.7) \$20,000 to be paid upon COUNTY's written approval to begin Phase 2 operations
- 4.A.8) \$20,000 to be paid upon COUNTY's receipt and acceptance of ENGINEER's Study.
- 4.A.9) \$44,600, to be paid upon the successful completion of the Evaluation Period for Phase 2, as determined by COUNTY in its sole discretion .
- 4.B. Payments shall be due thirty (30) calendar days following the date of ENGINEER's invoice.
- 4.C. The Maximum Cost of the Project under this Agreement shall not exceed \$382,000.
- 4.D. If Project is terminated by COUNTY for the reasons set forth in Section 5.B, COUNTY may require that ENGINEER remove the Equipment and reimburse COUNTY in the amount of \$40,000. Once removed, the Equipment will be owned by ENGINEER for ultimate disposal.
- 4.E. An ENGINEER whose work is found deficient or fails to conform to the requirements set forth in the Agreement, is not entitled to further payments, until corrected to the satisfaction of COUNTY.
- 4.F. If the Project is suspended due to County Board action for insufficient funding for more than three (3) months in whole or in part, the ENGINEER will be paid fees for services performed prior to receipt of written notice from COUNTY of the suspension, together with Reimbursable Expenses then due and reasonable expenses resulting from this suspension, as approved by COUNTY. If the project is resumed after being suspended for more than three (3) months, the ENGINEER's compensation will be subject to renegotiation.
- 4.G. ENGINEER agrees that COUNTY is entitled to all revenue generated as the result of ENGINEER's work to the sell the recovered CO₂ and N₂ until the cost and expenses of the Project are recovered in full ("Guaranteed Revenue Amount.")
 - 4.G.1) The Guaranteed Revenue Amount for Year 1 of the Term is \$382,000,
 - 4.G.2) The Guaranteed Revenue Amount for Year 2 of the Term is \$141,860.
 - 4.G.3) The Guaranteed Revenue Amount for Year 3 is \$141,800.
 - 4.G.4) If the Project fails to generate revenue in an amount equal to the Guaranteed Revenue Amount in any given year, the difference between the revenue amount generated in such a year and the Guaranteed Revenue Amount of that year shall be rolled over and added to the subsequent year's Guaranteed Revenue Amount.

- 4.G.5) If ENGINEER's work to sell recovered CO₂ and N₂ results in revenue greater than the Guaranteed Revenue Amount in any given year ("Profit Amount"), COUNTY agrees to pay ENGINEER 12% of the Profit Amount.

5. ARTICLE 5: TERMINATION OF AGREEMENT

- 5.A. This Agreement may be terminated by COUNTY without cause upon one-hundred twenty (120) calendar days written notice to the ENGINEER. In the event of termination, the ENGINEER will be paid fees for services performed to termination date, reimbursable expenses then due, and termination expenses as approved by COUNTY. Work performed prior to the date of termination shall be in accordance with the terms and conditions of this Agreement. Upon termination, the results of such work shall immediately be turned over to the COUNTY Project Manager and is a condition precedent to further payment by COUNTY.
- 5.B. COUNTY may immediately terminate the Agreement for cause upon written notice to ENGINEER. For the purposes of this section, "cause" shall mean (1) COUNTY's determination that the Project has failed to successfully complete either the 60 day Test Period or 45 day Trial Operation during Phase 1; (2) equipment failure resulting in the inability to separate the CO₂ and N₂ from the CH₄; (3) a negative determination by the Wisconsin Department of Natural Resources regarding any air permit required for COUNTY's landfill operations that is attributable to the performance of the Equipment; (4) violation of any State, Federal or local law, or failure by PROVIDER to comply with any applicable States and Federal service standards, as expressed by applicable statutes, rules and regulations

6. ARTICLE 6: OWNERSHIP OF DOCUMENTS

- 6.A. All proprietary information, including patented or patent pending designs, drawings, specifications, renderings, models, scale details, approved copies of shop drawings and other such documents prepared by the ENGINEER ("Intellectual Property") or any consultant pursuant to this Agreement shall remain the property of ENGINEER. ENGINEER hereby grants the COUNTY a non-exclusive license to use the Intellectual Property under this Agreement.
- 6.B. Documents prepared under this Agreement may be used by COUNTY for informational purposes without additional compensation to the ENGINEER.
- 6.C. Specifications and isolated, detail drawings inherent to the architectural / engineering design of the project, whether provided by the COUNTY or generated by the ENGINEER, shall be available for future use by the parties to this Agreement and other parties, each at their own risk.

7. ARTICLE 7: CONFIDENTIALITY

- 7.A. The exhibits attached to Attachment A of this Agreement constitute Intellectual Property in the form of patented or patent-pending designs as well as trade secrets. Accordingly, such exhibits shall be treated as confidential by ENGINEER and COUNTY, and not disclosed under Wisconsin's Open Records Law. COUNTY shall (i.) provide to ENGINEER written notice of any request or other action by a third party under the Wisconsin's Open Record Laws, for release, access, or other disclosure thereof; (ii.) provide to ENGINEER a reasonable opportunity to respond to and/or oppose such action in the appropriate forum and (iii.) take such steps as are permitted under the Wisconsin Open Record Laws to assert in response to such action any exemptions or other

protections available under thereunder to prevent, restrict and/or control the public release, access and or disclosure of the exhibits.

- 7.B. If COUNTY determines a disclosure of the exhibits is required, COUNTY shall provide ENGINEER with ten (10) days prior written notice of such disclosure . Further COUNTY will disclose only such information as is required and only to the entity that requires the disclosure. It will otherwise maintain the confidentiality to the fullest extent possible.

8. ARTICLE 8: LIABILITY- HOLD HARMLESS AND INDEMNIFICATION

- 8.A. ENGINEER shall indemnify, hold harmless and defend COUNTY, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which COUNTY, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of ENGINEER furnishing the services required to be provided under this Agreement, provided, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused or resulting from the acts or omissions of COUNTY, its agencies, boards, commissions, officers, employees or representatives. The obligations of ENGINEER under this paragraph shall survive the expiration or termination of this Agreement.

9. ARTICLE 9: PROFESSIONAL LIABILITY INSURANCE

- 9.A. The ENGINEER and its consultants retained under the terms of this Agreement shall procure and maintain professional liability insurance providing for payment of the insured's liability for errors, omissions or negligent acts arising out of the performance of the professional services required under this Agreement. The ENGINEER shall provide up-to-date, accurate professional liability information on the AE's Data Record, including amount of insurance, deductible, carrier and expiration date of coverage. Upon request by COUNTY, the ENGINEER shall furnish COUNTY with a Certificate of Insurance showing the type, amount, deductible, effective date and date of expiration of such policy. Such certificate shall also contain substantially the following statement: "The insurance covered by this certificate shall not be canceled, the coverage changed or reduced by endorsement, by the insurance company, except after thirty (30) calendar days written notice has been received by COUNTY." The ENGINEER shall not cancel or materially alter this coverage without prior written approval by COUNTY. The ENGINEER shall be responsible for consultants maintaining professional liability insurance during the life of their Agreement.

10. ARTICLE 10: OTHER INSURANCE

- 10.A. The ENGINEER and its consultants retained under terms of this Agreement shall:
- 10.A.1) Maintain Worker's Compensation Insurance as required by Wisconsin State Statutes.
- 10.A.2) Procure and maintain during the life of this Agreement, and until one year after the completion of this Agreement, Commercial General Liability Insurance, including Products and Completed Operations for all claims that might occur in carrying out the Agreement. Minimum coverage shall be \$1,000,000 per

occurrence, \$1,000,000 general aggregate, combined single limit for bodily injury, personal injury, and property damage. Such coverage shall be of the "occurrence" type form and shall include the employees of the ENGINEER as insureds.

10.A.3) Procure and maintain Commercial Automobile Liability Insurance for all owned vehicles that are used in carrying out the Agreement. Minimum coverage shall be \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

10.A.4) Provide an insurance certificate indicating the above Commercial Liability Insurance and property damage coverage, countersigned by an insurer licensed to do business in Wisconsin, covering and maintained for the period of the Agreement. Upon request by COUNTY, the insurance certificate is to be presented on or before execution of the Agreement.

11. ARTICLE 11: MISCELLANEOUS PROVISIONS

11.A. ENGINEER warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this Agreement on its behalf are authorized to do so.

11.B. Legal Relations. The ENGINEER shall comply with and observe federal and state laws and regulations and local zoning ordinances applicable to this project and in effect on the date of this Agreement.

11.C. Approvals or Inspections. None of the approvals or inspections performed by COUNTY shall be construed or implied to relieve the ENGINEER from any duty or responsibility it has for its professional performance, unless COUNTY formally assumes such responsibility in writing from COUNTY so stating that the responsibility has been assumed.

11.D. Successors, Subrogees and Assigns. COUNTY and ENGINEER each bind themselves, their partners, successors, subrogees, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, subrogees, assigns and legal representatives of such other party with respect to covenants of this Agreement.

11.E. Claims. The ENGINEER's project manager will meet with COUNTY's Project Manager to attempt to resolve claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof. Issues not settled are to be presented in writing to the COUNTY Assistant Public Works Director for review and resolution. The decision of the Assistant Public Works Director shall be final. Work shall progress during the period of any dispute or claim. Unless specifically agreed between the parties, venue will be in Dane County, Wisconsin.

11.F. Amendment of Agreement. This Agreement may be amended in writing by both COUNTY and ENGINEER.

11.G. Open Records. The technology set forth in the design referenced within Attachment 1 of this Agreement relate to patented or patent-pending intellectual property. Accordingly, any references relating to such information shall be treated as confidential by COUNTY and ENGINEER, and not disclosed under Wisconsin's Open Records Law. If a disclosure of such information is required by a government order, court of law, other federal or state laws, the disclosing party shall provide the other with ten (10) days prior written notice of such disclosure. Further a disclosing party will disclose only such information as is

required and only to the entity that requires the disclosure. It will otherwise maintain the confidentiality to the fullest extent possible.

- 11.H. It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling. Venue for any legal proceedings shall be in the Dane County Circuit Court.
- 11.I. This Agreement is intended to be an agreement solely between the parties hereto and for their benefit only. No part of this Agreement shall be construed to add to, supplement, amend, abridge or repeal existing duties, rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
- 11.J. The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof. The parties expressly agree that this Agreement shall not be amended in any fashion except in writing, executed by both parties.

12. ARTICLE 12: NONDISCRIMINATION IN EMPLOYMENT

12.A. During the term of this Agreement, ENGINEER agrees not to discriminate on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs against any person, whether a recipient of services (actual or potential) or an employee or applicant for employment. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any other form of compensation or level of service(s). ENGINEER agrees to post in conspicuous places, available to all employees, service recipients and applicants for employment and services, notices setting forth the provisions of this paragraph. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth additional bases, and exceptions shall be permitted only to the extent allowable in state or federal law.

12.B. Civil Rights Compliance:

12.B.1) If ENGINEER has twenty (20) or more employees and receives \$20,000 in annual contracts with COUNTY, the ENGINEER shall submit to COUNTY a current Civil Rights Compliance Plan (CRC) for Meeting Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981 and Americans with Disabilities Act (ADA) of 1990. ENGINEER shall also file an Affirmative Action (AA) Plan with COUNTY in accordance with the requirements of Chapter 19 of the Dane County Code of Ordinances. ENGINEER shall submit a copy of its discrimination complaint form with its CRC/AA Plan. The CRC/AA Plan must be submitted prior to the effective date of this Agreement and failure to do so by said date shall constitute grounds for immediate termination of this Agreement by COUNTY. If an approved plan has been received during the previous calendar year, a plan update is acceptable. The plan may cover a two-year period. If ENGINEER has less than twenty (20) employees, but receives more than \$20,000 from the COUNTY in annual

contracts, it may be required to submit a CRC Action Plan to correct any problems discovered as the result of a complaint investigation or other Civil Rights Compliance monitoring efforts set forth herein below. If ENGINEER submits a CRC/AA Plan to a Department of Workforce Development Division or to a Department of Health and Family Services Division that covers the services purchased by COUNTY, a verification of acceptance by the State of ENGINEER's Plan is sufficient.

12.B.2) ENGINEER agrees to comply with the COUNTY's civil rights compliance policies and procedures. ENGINEER agrees to comply with civil rights monitoring reviews performed by the COUNTY, including the examination of records and relevant files maintained by the ENGINEER. ENGINEER agrees to furnish all information and reports required by the COUNTY as they relate to affirmative action and non-discrimination. ENGINEER further agrees to cooperate with COUNTY in developing, implementing, and monitoring corrective action plans that result from any reviews.

12.B.3) ENGINEER shall post the Equal Opportunity Policy, the name of ENGINEER's designated Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, applicants for employment and employees. The complaint process will be according to COUNTY's policies and procedures and made available in languages and formats understandable to applicants, clients and employees. ENGINEER shall supply to COUNTY's Contract Compliance Officer upon request a summary document of all client complaints related to perceived discrimination in service delivery. These documents shall include names of the involved persons, nature of the complaints, and a description of any attempts made to achieve complaint resolution.

12.C. Domestic Partner Equal Benefits:

12.C.1) ENGINEER agrees to provide the same economic benefits to all of its employees with domestic partners as it does to employees with spouses or the cash equivalent if such a benefit cannot reasonably be provided. The ENGINEER agrees to make available for County inspection the ENGINEER's payroll records relating to employees providing services on or under this Agreement or subcontract. If any payroll records of ENGINEER contain any false, misleading or fraudulent information, or if a ENGINEER fails to comply with the provisions of s. 25.016, D. C. Ordinances, the Contract Compliance Officer may withhold payments on the Agreement; terminate, cancel or suspend the Agreement in whole or in part; or, after a due process hearing, deny the contractor the right to participate in bidding on future County contracts for a period of one (1) year after the first violation is found and for a period of three (3) years after a second or subsequent violation is found.

ATTACHMENT A

The following Exhibits contain confidential proprietary information, and any request to release such information should be treated in accordance with Article 7 of this Agreement.
