

**TRAIL ROAD AND NEPEAN LANDFILL SITE
GAS UTILIZATION LICENCE OF OCCUPATION AGREEMENT**

THIS AGREEMENT made as of the 15th day of SEPTEMBER, 2004.

BETWEEN:

**CITY OF OTTAWA
("THE CITY")**

OF THE FIRST PART

and

**ENERGY OTTAWA INC.
("ENERGY OTTAWA")**

OF THE SECOND PART

RECITALS

WHEREAS The City is the owner of the Landfill, more particularly described on the attached Schedule A;

AND WHEREAS on May 14, 2002 The City and Energy Ottawa entered into a Memorandum of Understanding and Confidentiality Agreement to provide facilities for the collection, burning and use of the gas generated by the Trail Road and Nepean Landfill Sites

AND WHEREAS The City and Energy Ottawa committed to replace this Memorandum with a definitive agreement;

NOW THEREFORE this Agreement witnesses that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual promises herein, the Parties agree as follows:

ARTICLE I

INTERPRETATION

1.1 Definitions

In this Agreement and in the recitals and schedules hereto, unless there is something in the subject matter or context inconsistent therewith, the following words, terms and expressions shall have the following meanings:

- (a) "Agreement", "this Agreement", "the Agreement", "hereto", "hereof", "herein", "hereby", "hereunder" and similar expressions mean or refer to this Agreement as amended from time to time and any indenture, agreement, or instrument supplemental or ancillary hereto or in implementation hereof, and the expressions "Article", "Section", "Subsection", "Paragraph" and "Subparagraph" followed by a number or letter, mean and refer to the

specified Article, Section, Subsection, Paragraph, or Subparagraph of this Agreement;

- (b) "Applicable Law" means all applicable relevant law, statutes, regulations, guidelines and policies having the force of law, official plans, zoning by-laws, development and site plan agreements, building codes, restrictive covenants and private permissions and consents and includes, without limitation all applicable federal, provincial, municipal and other laws, statutes, regulations, by-laws and codes, now or hereafter in existence having the force of law, including laws intended to protect the environment or relating to Hazardous Substances;
- (c) "Buffer Lands" means the area immediately adjacent to the Landfill, identified within the Landfill's Certificate of Approval and in more particular detail as set out on the attached Schedule A.
- (d) "Business Day" means any day, other than Saturday, Sunday or statutory holidays, on which the head office of The City is open;
- (e) "Certificate of Approval" means the official document issued by the Ministry of the Environment to The City for operation of its Landfill at the Trail Road and Nepean Landfill sites;
- (f) "The City" means the Corporation of City of Ottawa;
- (g) "Compressor Station" means the equipment which includes compression equipment, an oil and gas cooler, condensate knockout tank and related facilities required for the delivery of Gas to a purchaser; this Compressor Station is owned by Energy Ottawa;
- (h) "Condensate" means the liquid formed by the condensation of vapours generated during the collection, transportation, processing and pretreatment of Gas;
- (i) "Confidential Information" means materials, documents and information furnished to a party under this Agreement and designated in writing as confidential upon such furnishing (or which was developed jointly by the parties in relation to this Agreement and designated in writing by the parties as confidential), whether written or oral, tangible or intangible and in whatever form or medium provided; provided that the term Confidential Information shall not include information or data if (i) it was known by or already in the possession of the party receiving such information or data, without restriction, prior to its disclosure by the disclosing party, (ii) it is lawfully obtained by the receiving party from a third party without restriction, (iii) it is developed by the receiving party completely independent of any disclosure by a disclosing party, or (iv) it is ascertainable from a commercially available product;
- (j) "Contract Year" means each twelve (12) month period during the term of the Agreement, the first of which commences on the Date of Commissioning;
- (k) " Council" means the Council of City of Ottawa
- (l) "Date of Commissioning" means the date on which operation of the Project Facility is in full compliance with all laws and regulations after the completion of construction, completion of connection and synchronization to the IMO-controlled grid or a local distribution system, and completion of all commissioning tests , the date of which is to be confirmed to The City in writing by ENERGY OTTAWA;

- (m) "Emergencies" mean a sudden state of danger, or potential danger, that places the public, facility staff, plant site, gas collection system or plant site at risk of harm or damage;
- (n) "Environmental Attributes" means environment attributes resulting from or associated with the Project Facility, and includes without limitation: (i) any and all rights to, and benefits associated with, attributes of the Gas and reductions of emissions of the Gas; and (ii) any and all property or ownership rights relating to the nature of the energy source as may be defined and awarded through applicable regulatory or voluntary programs. Specific environmental attributes include ownership rights to emission credits, offsets, permits, allowances, quota, certificates, tags or similar environmental products or entitlements resulting from the Project Facility relating to CO₂, CH₄, and N₂O, particulate matter, NO_x, SO_x, and heavy metals (mercury, hexavalent chromium, inorganic cadmium, lead, nickel compounds), and the right to quantify and register these with competent authorities.
- (o) "Flare" means the equipment used to burn Gas in the Landfill and is considered a component of the Gas Collection System;
- (p) "Gas" means any and all gases resulting from the anaerobic decomposition of refuse material deposited in the Landfill consisting principally of methane, carbon dioxide and traces of other constituent gases;
- (q) "Gas Collection System" means the network of recovery wells and interconnecting pipes together with attendant valves, pumps, monitoring devices and other extraction related equipment installed on the Landfill for the purpose of extracting and recovering Gas and other Products;
- (r) "Deputy City Manager" means the Deputy City Manager, Public Works and Services;
- (s) "Governmental Entity" means (i) any multinational, federal, provincial, municipal, local or other governmental or public department, ministry, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision, agent, commission, board or authority of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;
- (t) "Hazardous Substance" means any contaminants, pollutants, dangerous substances, including Gas, asbestos, liquid wastes, industrial wastes, toxic substances, hazardous or toxic chemicals, hazardous wastes, hazardous materials or hazardous substances either in fact or as defined in or pursuant to any Applicable Laws;
- (u) "Landfill" means the Trail Road and Nepean Landfill Sites, and their respective Buffer Lands, located on the lands more particularly described as set out on the attached Schedule A;
- (v) "Permits" includes any permit, certificate, approval, registration and license issued by any Governmental Entity pursuant to any Applicable Laws;
- (w) "Person" means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or

other legal personal representative, regulatory body or agency, government or Governmental Entity however designated or constituted;

- (x) "Plans and Specifications" means both the preliminary and detailed plans and specifications for the Project Facility, and all changes from time to time, as prepared by ENERGY OTTAWA;
- (y) "Plant Site" means a parcel of land within the Landfill containing no more than 950 m² (square meters) in total in the approximate location as set out on the attached Schedule B, upon which the part of the Project Facility which generates electrical energy will be located;
- (z) "Products" means Gas and any other components or products recovered in association with Gas and such term includes excess gas, electricity and any other form of energy which is derived therefrom;
- (aa) "Project Facility" means all the machinery, equipment, fixtures and structures necessary or incidental to the extraction, collection, processing, treatment, storage, sale, utilization and transmission of Gas, Condensate and other Products for any purpose whatsoever including the production and sale of electrical energy, the production of steam; and, such term includes the Gas Collection System, Plant Site, Compressor Station, Flare and any natural gas line for the purpose of providing natural gas to the Project Facility as supplemental fuel;
- (bb) "Royalty" shall have the meaning ascribed to that term in Article 4; and
- (cc) "Term" shall have the meaning ascribed to that term in Article 3.

1.2 Interpretation Not Affected by Headings, Etc.

Grammatical variations of any terms defined herein shall have similar meanings; words importing the singular meaning shall include the plural and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa. The division of this Agreement into separate Articles, Sections, Subsections, Paragraphs, and Subparagraphs, and the insertion of headings and references are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties to this Agreement agree, subject to the provisions of Article 14 respecting dispute resolution, that the courts of the Province of Ontario will have exclusive jurisdiction to determine all disputes and claims arising between and among them.

1.4 Currency

Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful money of Canada.

1.5 Severability

In the event that any covenant, obligation, term, condition or provision of this Agreement shall be determined invalid, unlawful or unenforceable to any extent, such covenant, obligation, term, condition or provision shall be severed from the

remaining covenants, obligations, terms, conditions and provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law.

1.6 No Contra Proferentem

The Parties hereto acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement, and the Parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

1.7 Schedules

The following schedules are attached to this Agreement and incorporated herein:

- Schedule A - Legal Description of the Landfill Lands
- Schedule B - Legal Description and Sketch of Plant Site Lands
- Schedule C- Project Schedule

ARTICLE 2

GRANT

2.1 Grant of Rights to ENERGY OTTAWA

The City grants or shall cause to be granted to ENERGY OTTAWA, upon and subject to the terms, covenants, limitations and provisions set out in this Agreement the exclusive right to:

- (a) enter upon the Landfill and explore, test, drill, extract, collect, process, treat, store, sell and utilize all Gas situated in and generated by the Landfill, subject to Section 5.5;
- (b) construct, install, operate, inspect, maintain, repair and replace the Gas Collection System in and upon the Landfill; and, conduct all activities necessary and incidental thereto including the right to drill gas wells, install buried pipes and Flares and Condensate disposal lines to connect the Gas Collection System to the point in the Landfill designated by The City as the place for treatment of Condensate, and to operate associated gas collection equipment. Once installed, the Gas Collection System in and upon the Landfill will become the property of The City;
- (c) enter the Landfill for the purposes aforesaid and for the purposes of the construction, development, operation and use of the Gas and Project Facility and for the purpose of supplying and delivering gas, electricity, steam and other forms of energy generated at the Landfill to its customers;
- (d) any and all rights and benefits, financial or otherwise (including, without limitation, production, tax, Environmental Attributes and emission-related credits), that arise in respect, or as a result, of the Project Facility or Energy Ottawa's activities at the Landfill; and
- (e) an assignment and waiver of ownership to any Environmental Attributes from any third party that may claim ownership to any and all rights and benefits associated with, the reduction of Gas resulting from, or associated with, the Project Facility.

2.2 Option to Lease

(a) The City grants to Energy Ottawa an option to lease the Plant Site for the Term on a net, net basis for the purposes contemplated in this agreement. Such option shall be exercisable by the Energy Ottawa by written notice to The City at any time prior to the first anniversary of the date hereof. The lease shall provide for a nominal annual net rental, and shall otherwise be in a form acceptable to both parties acting reasonably. Energy Ottawa shall have the right at its own expense to register the lease or a notice of lease once such lease is entered into, against the Plant Site. Any such notice shall be in a form approved by The City acting reasonably.

(b) ENERGY OTTAWA shall be responsible for any and all expenses for:

- (i) Obtaining the legal description of the Plant Site;
- (ii) The preparation of documents, schedules, for the aforementioned lease; and
- (iii) The registration of the aforementioned lease against the Plant Site.

ARTICLE 3

TERM

3.1 Initial Term

The term of this Agreement shall commence on the date of signing of this Agreement and shall continue for a period of twenty (20) years from the Date of Commissioning, unless sooner terminated in accordance with the provisions of Article 13, and subject to renewal in accordance with Section 3.2.

3.2 Optional Renewal Terms

The City may, at its sole discretion, extend the term of this Agreement for two (2) additional five (5) year terms based on satisfactory service, performance and pricing for each previous and optional period. All of the terms, covenants and provisions of this Agreement shall apply to all such extended terms.

ARTICLE 4

FEES AND PAYMENTS

4.1 Amount of Royalty

(a) ENERGY OTTAWA shall pay to The City a royalty fee of five and one-half (5.5%) per cent (the "Royalty") of Energy Ottawa's gross annual receipts derived from the sale of Products and from any other benefits, such as those listed in Section 2.1 (d), associated with use of the Gas from the Landfill.

(b) Provided further, in the event that:

(i) ENERGY OTTAWA is unsuccessful in submitting its proposal to the Province of Ontario and therefore does not obtain a contract with the Province of Ontario;

(ii) ENERGY OTTAWA is successful in obtaining a contract with the Province of Ontario but subsequently, the contract with the Province of Ontario is terminated for any reason; or

(iii) ENERGY OTTAWA is successful in negotiating agreements with other parties for purchase of electricity generated from the Gas,

then, ENERGY OTTAWA must enter negotiations with The City to review the amount of the royalty fee for determining an increase in the Royalty to be paid to The City based on the increased market prices applicable.

(c) The procedure to determine any increase in the Royalty will be the one set out in Article 14.1 of this Agreement provided, however, that if The City and ENERGY OTTAWA are unable to agree to a new Royalty, then The City and ENERGY OTTAWA agree to proceed to final offer arbitration. The aforementioned term final offer arbitration means that, The City and ENERGY OTTAWA, each shall propose a new Royalty and an arbitrator, mutually chosen and accepted by both The City and ENERGY OTTAWA, shall choose the new Royalty to be paid to The City.

4.2 Payment of Royalty

(a) The Royalty shall be paid by ENERGY OTTAWA to The City quarterly, on or before the last day of April, July, October and January. The Royalty shall be based on the previous quarter's receipts derived from the total of revenues and other benefits produced, as provided by ENERGY OTTAWA.

(b) Royalty payments to The City shall be made either in cash, money order, bank draft, certified cheque or direct deposit. If ENERGY OTTAWA fails to pay any Royalty when due and payable, such unpaid amounts shall bear interest from the due date thereof to the date of payment at 1.5 per cent per month, compounded monthly (an effective annual rate of 19.56 per cent).

(c) Failure by ENERGY OTTAWA to pay The City the Royalty due, according to section 4.2(a), may result in the termination of the Agreement in accordance with Article 13.

4.3 ENERGY OTTAWA's Records

For the purpose of calculating the Royalty pursuant to Section 4.1, ENERGY OTTAWA shall submit to The City on or before the last day of each quarter during the Term a written statement signed by ENERGY OTTAWA and certified by the Director of Finance of ENERGY OTTAWA to be true and correct showing in reasonably accurate detail, the revenue from all sales of Products produced by the Project Facility.

4.4 Reports by ENERGY OTTAWA

ENERGY OTTAWA shall submit to The City on or before the one hundred and twentieth (120th) day following the end of each Contract Year during the Term a written statement (the "annual statement") signed by ENERGY OTTAWA and certified to be true and correct showing in reasonably accurate detail satisfactory in scope to The City the amount of gross receipts during the preceding twelve (12) month period.

4.5 The City's Right to Inspect

The City shall have the right, during the Term of the Agreement and for a period of eighteen (18) months after the end of the Term, through its duly authorized representative (including an independent chartered accountant), upon reasonable written notice to ENERGY OTTAWA and at its own cost, to inspect all the records of ENERGY OTTAWA that relate to receipts derived by ENERGY OTTAWA or payments to be received by The City from the sale of Products and receipt of other benefits, or records that otherwise relate to the performance of this Agreement, in order to verify the accuracy of the amount of quarterly Royalty payments to The City. ENERGY OTTAWA shall maintain and keep sufficiently complete and accurate books, accounts and records to permit verification and audits by The City relating to receipts derived by ENERGY OTTAWA or the above payments to be received by The City.

ARTICLE 5

THE CITY'S OBLIGATIONS

5.1 Ownership

The City shall retain ownership of the Landfill and shall continue to effect any and all Landfill Certificate of Approval requirements. The existing Gas Collection System shall form part of and be integrated into the Gas Collection System installed by ENERGY OTTAWA. The City shall be the owner of the Gas Collection System immediately upon installation by ENERGY OTTAWA in and upon the Landfill.

5.2 Cooperation

- (a) It is The City's intent to fully cooperate with ENERGY OTTAWA to effectively develop and utilize the Gas resource. However, The City will not warrant or guarantee any aspect of the Gas, quality or quantity, available to ENERGY OTTAWA at the Landfill. The City will cooperate with ENERGY OTTAWA to set up, balance and operate the Landfill Gas extraction system to optimize recovery of the Gas subject to the qualifications set out in this Section, and any regulatory requirements that are or may become applicable. Expansion of the Gas Collection System will be allowed only with The City's approval in areas where it does not impact, the Landfill Certificate of Approval requirements, or any future development of the Landfill.
- (b) The City will retain at all times, the full right to control odour and gas migration from the Landfill to the extent required by Applicable Law by modifying, the operation of the Gas Collection System, regardless of the impact on Landfill Gas volumes, methane content, contaminants, duration or other variables. The City shall not be responsible for any loss of Gas volumes, or for indirect or consequential damages including loss of profits, as a result of any such modification, or breakage or interruption arising from such modification of the Gas Collection System, unless the modification that results in the aforementioned breakage or interruption was caused by the willful misconduct or negligence of The City or its employees, contractors and agents.
- (c) Any approvals by The City shall not be deemed to be a representation by The City that the work, design drawings, specifications or other item being approved comply with the requirements of this Agreement.

5.3 Non-Interference

The City, its elected officials, officers, employees, contractors and agents shall not unreasonably interfere with ENERGY OTTAWA's construction, operation or maintenance of the Gas Collection System or the ability of ENERGY OTTAWA to collect Gas from the Landfill so long as ENERGY OTTAWA complies with the Agreement and all Applicable Laws.

5.4 Performance of Repairs

(a) Initial repairs required for the Gas Collection System, to improve the volume of gas collected for the purposes of both energy production and to meet health, safety and environmental requirements of landfill operation, will be conducted by ENERGY OTTAWA at its sole expense, up to an amount of two (2) million dollars, as needed to optimize the system. ENERGY OTTAWA will obtain approval of the design for modifications to the Gas Collection System from The City, prior to construction.

(b) Subject to Section 12.3, The City shall repair, in a timely fashion, major cracks, fissures, erosion and physical changes in the Landfill which adversely affect the production of Gas or the Gas Collection System unless the same were caused by ENERGY OTTAWA's activities in the Landfill in which event ENERGY OTTAWA shall be responsible for such immediate repairs at its sole expense.

5.5 Access

The City shall allow ENERGY OTTAWA, its officers, employees, contractors and agents, access to the Landfill twenty-four (24) hours a day, seven (7) days a week, during the Term for the purposes of enabling it to exercise its rights and perform its obligations under this Agreement, subject to reasonable restrictions to ensure the security of the Landfill and public safety. The City shall maintain existing roadways or alternatives within the Landfill for such purposes.

5.6 Inspection of Documents

The City shall:

- (a) cooperate with ENERGY OTTAWA in applying for and obtaining the Permits required by ENERGY OTTAWA to perform its obligations under this Agreement;
- (b) allow ENERGY OTTAWA to inspect any documents in its possession that relate to the quantity, type and location of refuse in the Landfill, tipping records and such other documents that are reasonably necessary for the performance by ENERGY OTTAWA of its obligations under this Agreement, subject to The City's obligations under Section 15.1; and
- (c) allow ENERGY OTTAWA to inspect any documents containing environmental information including environmental impact reports and studies, Permits, applications for Permits, zoning information including applications for variances, and any other available data relating to the Landfill and to the obligations to be performed by ENERGY OTTAWA under this Agreement, subject to The City's obligations under Section 15.1.

5.7 Degradation of Gas

Subject to Subsection 5.2(b) and except as may be required by any Applicable Laws, The City shall not, during the Term, take any action, or omit to take any

action, or allow any Person subject to the control of The City to take any action or omit to take any action, with respect to any portion of the Landfill which would, in any manner, unnecessarily reduce the quality, including but not limited to methane content, higher heating value and lower heating value, of the Gas, or which would remove the quantity of refuse and waste in place, or which would reduce the anaerobic conditions existing with respect to the Landfill, save and except any deterioration or reduction occurring as part of the natural degradation of the Landfill.

ARTICLE 6

ENERGY OTTAWA's OBLIGATIONS

6.1 Permits

ENERGY OTTAWA shall, at its sole cost and expense, be responsible for obtaining all required approvals and Permits relating to the Project Facility including related expenses and charges. Draft copies of all documents prepared to obtain the required approvals and Permits shall be provided to The City for comment, prior to submission to the approving agencies. Both parties shall endeavour to provide the required documents and respective comments to each other in a timely fashion.

6.2 Project Facility

ENERGY OTTAWA shall, at its sole cost and expense:

- (a) In accordance with the Project Schedule set out in Schedule C, prepare a conceptual design for the collection and utilization of Gas and other Products, prepare cost estimates and a project pro forma;
- (b) before commencing any work, design the Project Facility in accordance with good sound engineering practices, consistent with the practices used by consulting engineers that are specialists in designing such facilities, prepare detailed drawings, locations, plans and specifications of the Project Facility and all equipment which include a written non-proprietary description of the proposed procedures, methods, equipment and the location and use thereof proposed by ENERGY OTTAWA in connection with the operation and use of the Project Facility, submit them to The City for review and approval;
- (c) provide all the materials and services and perform all the work shown on the drawings and described in the specifications in a good workmanlike manner and in compliance with all Applicable Laws and this Agreement and provide The City with two (2) copies of the "as built" drawings and specifications for the Gas Collection System;
- (d) complete installation of the Gas Collection System in accordance with the Project Schedule as set out on the attached Schedule C, which may be amended with the consent of The City, such consent not to be unreasonably withheld;
- (e) develop, operate, maintain and repair the Project Facility during the Term in a good workmanlike manner, in accordance with good Gas recovery practices and in compliance with all Applicable Laws and this Agreement, including the preparation of such reports that may be required by any Governmental Entity at any time thereunder and from time to time replace component parts of the Project Facility as it becomes necessary or desirable

and use its commercially reasonable efforts to maximize the production of Products and the amount of Royalties at all times during the Term; and

- (f) during the Term of the Agreement, retain title as personal property to the Plant Site and all equipment thereon.

6.3 Maintenance and Operation of Gas Collection System

Notwithstanding that The City is the owner of the Gas Collection System in and upon the Landfill, ENERGY OTTAWA will be responsible for the maintenance and operation of the Gas Collection System at the Landfill, subject to Subsection 5.2(b). ENERGY OTTAWA is responsible for all maintenance, operating upgrades and replacement as required for the duration of the Agreement for the Gas Collection System and its components, unless such maintenance or replacement is required as a result of The City's actions, determined by ENERGY OTTAWA after consultation with The City, in which case the cost of said maintenance or replacement will be borne by The City. Should ENERGY OTTAWA and The City not agree on responsibility for maintenance, the matter may be resolved through alternative dispute resolution, as outlined in Section 14.1.

6.4 Performance of Repairs

ENERGY OTTAWA shall be responsible for immediate repairs, at its sole expense, of any major cracks, fissures, erosion and physical changes in the Landfill which are caused by ENERGY OTTAWA's activities in the Landfill.

6.5 ENERGY OTTAWA an Independent Contractor

ENERGY OTTAWA is an independent contractor and not a partner or agent of The City and neither Party is under any fiduciary duty, liability or obligation to the other except as herein expressly set out. All suppliers, contractors, agents and employees used by ENERGY OTTAWA in carrying out this Agreement shall be suppliers, contractors, agents and employees of ENERGY OTTAWA and not The City. ENERGY OTTAWA shall be liable to The City for the acts and omissions of its suppliers, contractors, agents and employees. Nothing contained herein shall create any contractual relationship between The City and any such supplier, contractor, agent or employee of ENERGY OTTAWA.

6.6 Security

Upon signing this Agreement, ENERGY OTTAWA shall provide to The City a Letter of Credit issued by a Chartered Bank of Canada in the amount of fifteen thousand dollars (\$15,000.00). If ENERGY OTTAWA is unable to finalize all of its necessary agreements, contracts and approvals within the initial twenty four (24) months of the Agreement, this security shall be due and payable to The City for its expenses, fees and lost revenue and, subject to section 13.4, this Agreement shall terminate and be of no further force or effect

6.7 Condition of the Landfill

ENERGY OTTAWA acknowledges that:

- (a) it has inspected the Landfill and is familiar with the physical attributes and condition thereof at the date of commencement of the Term;
- (b) The City has made no representations or warranties of any nature or kind with respect to the Landfill or to the type, quality or quantity of Gas in the Landfill, not expressly represented or warranted herein; and

- (c) The City shall not be liable for any latent or patent defects in the Landfill or for the existence of any other circumstance or condition not expressly represented or warranted herein.

6.8 Maintenance and Repair of Project Facility

ENERGY OTTAWA shall at its sole expense, maintain and keep the Project Facility and every part thereof, and all the parts of the Landfill occupied or used by ENERGY OTTAWA, its suppliers, contractors, servants, agents and employees for the purposes of the Project Facility, in good substantial repair and condition.

6.9 Processing of Gas

ENERGY OTTAWA shall accept all responsibility and liability with respect to any processing and clean up of the Gas. Should ENERGY OTTAWA wish to collect additional gases for its use, The City reserves the right of final approval for the design and construction of additional gas collection wells and headers, such approval not to be unreasonably withheld.

6.10 Right of Entry

The City and its officers, employees, contractors and agents shall have the right to enter all components of the Project Facility that are located on or in the Landfill during Emergencies and at all reasonable times upon reasonable notice to inspect the structures and the machinery, equipment and fixtures therein and to inspect such components, and in the event an inspection reveals that any maintenance work, repairs or replacements are necessary and required by this Agreement to be done by ENERGY OTTAWA, The City shall give ENERGY OTTAWA notice in writing and ENERGY OTTAWA shall, within fifteen (15) days after receipt thereof, or sooner if public safety is at risk, do such maintenance work or make the necessary repairs or replacements in a good and workmanlike manner and in accordance with all Applicable Laws and this Agreement. If ENERGY OTTAWA fails to make such repairs and/or replacements within such fifteen (15) day period or sooner, or if emergency repairs and/or replacements are necessary, The City, its officers, employees, contractors and agents may make such repairs and/or replacements and shall not be liable for any inconvenience, disturbance, loss of business or other damage resulting therefrom and ENERGY OTTAWA shall pay The City the cost thereof plus twenty (20) per cent for overhead and supervision. Any amounts owing to The City that remain unpaid thirty (30) days after delivery to ENERGY OTTAWA of a statement therefor shall bear interest at the rate of 1.5 per cent per month, compounded monthly (an effective annual rate of 19.56 per cent). Failure by ENERGY OTTAWA to conduct the appropriate maintenance, repairs and/or replacements, or to compensate The City for such actions taken, may be treated as a default under Article 13.

6.11 Modifications

Any modifications, changes and/or additions to the Project Facility during the Agreement Term, other than normal repair or replacement must be reviewed and authorized in writing by The City prior to implementation, such authorization not to be unreasonably withheld.

6.12 Utilities

If, at any time during the Term, ENERGY OTTAWA shall require a supply of water, gas, electricity, telephone or any other utility at the Landfill or the Plant Site to carry out its obligations under this Agreement, except as herein otherwise expressly

provided, ENERGY OTTAWA shall be responsible to provide the same and to pay the cost and expense thereof. If The City is able to share any of such services with ENERGY OTTAWA, ENERGY OTTAWA shall pay its proportionate share thereof and The City shall not be liable for any interruption or failure in such supply under any circumstances.

6.13 Air Emission Testing

ENERGY OTTAWA shall be responsible for conducting air emission testing that may be required for the Project Facility by Applicable Laws and the Certificate of Approval for the Project Facility, and is responsible for all associated costs. Any additional air emission testing requested by The City shall be at The City's own cost.

6.14 No Representations or Warranties by ENERGY OTTAWA

Subject to the covenants of ENERGY OTTAWA in this Section 6.14 and Section 5.4(a) but notwithstanding any other provisions to the contrary, ENERGY OTTAWA makes no representations, warranties or covenants that the Project Facility will alleviate or rectify any gas problems at the Landfill such as gas migration or gas odour, and (ii) The City acknowledges that, notwithstanding the construction of the Project Facility by ENERGY OTTAWA, The City shall remain responsible for Landfill Certificate of Approval requirements. ENERGY OTTAWA will, however, design and operate its Project Facility so as to ensure that Gas is flared using the existing Flare, or its replacement, during periods when electricity is not being generated, as needed for the City to meet health, safety and environmental obligations within its Certificate of Approval. If other gas management methods are required to be used beyond the existing or replacement Flare for The City to meet its Certificate of Approval requirements, such as, but not limited to, prolonged in-operation of the Project Facility, ENERGY OTTAWA shall resume electricity operation as soon as reasonably possible or make other reasonable arrangements to destroy excess gas volumes. Under no circumstances will Energy Ottawa's financial liability for addition to, or replacement of, the Gas Collection System exceed the commitment in Section 5.4 (a). /

ARTICLE 7

MUTUAL OBLIGATIONS

7.1 Mutual Cooperation

- (a) The Parties shall exchange information on a continuing basis, cooperate in planning and coordinating their activities hereunder, and in carrying out their respective obligations under all Applicable Laws and this Agreement.
- (b) Subject to any contract with the Province of Ontario, ENERGY OTTAWA and The City agree to work together to develop additional revenue opportunities for this gas utilization project. Such opportunities shall be subject to approval by Council.

7.2 Interests Retained by The City

Subject to Section 2.1, The City retains all right, title and interest in all materials, refuse, minerals, water, natural gas, Gas, and other items situated and existing in, under and upon the Landfill, including cell liners, leachate, the leachate collection system, and all materials removed from the Landfill during construction of the Project

Facility. The City will retain title to all Gas from the Landfill until it is consumed at the Plant Site.

7.3 Condensate

ENERGY OTTAWA shall be responsible for the proper handling and disposal of all Condensate in accordance with all Applicable Laws and this Agreement. So long as it complies therewith, ENERGY OTTAWA may use the Landfill's leachate collection system (the "System") to dispose of the Condensate, provided that, if The City incurs additional costs as a result of ENERGY OTTAWA's use of the System the Parties agree to apportion the costs of operating the System to reflect ENERGY OTTAWA's usage thereof, and if they are unable to agree upon such apportionment ENERGY OTTAWA shall arrange for disposal of the Condensate elsewhere, in accordance with all Applicable Laws.

ARTICLE 8

FINANCING

8.1 Responsibility of ENERGY OTTAWA

The financing of all capital and operating expenses throughout the Term of the Agreement is the sole responsibility of ENERGY OTTAWA. The City will not borrow money, guarantee any debt, or subsidize the operation of the Project Facility, other than as set out in this Agreement.

8.2 Construction Liens

ENERGY OTTAWA shall not permit any construction lien for work, labour, services or materials ordered by it or for the cost of which ENERGY OTTAWA may be in any way obligated, to attach to any part of the Project Facility or the Landfill, and whenever any such lien shall attach or a claim therefor or notice thereof shall be delivered to The City or be registered, ENERGY OTTAWA shall, within twenty (20) days after it receives notice thereof from The City, procure the discharge thereof by payment or by giving security or in such other manner as is or may be required or permitted by law.

8.3 Security Interest

ENERGY OTTAWA shall not permit any security interests or liens to attach to any part of the Project Facility in or upon the Landfill, and if any such security interest or lien shall attach or a claim therefor or notice thereof shall be delivered to The City or be registered, ENERGY OTTAWA shall, within twenty (20) days after it receives notice thereof from The City, procure the discharge thereof by payment or by giving security or in such other manner as is or may be required or permitted by law.

ARTICLE 9

INSURANCE

9.1 Insurance

During the term of this Agreement, ENERGY OTTAWA and each and every subcontractor is required to maintain in full force and effect and at its own expense, the following insurance coverage:

- (a) Comprehensive general liability insurance including bodily injury and death, personal injury, property damage including loss of use thereof, contractual liability, non-owned automobile liability, owners' and contractors' protective, products and completed operations and employers' liability, with coverage including the activities and operations conducted by ENERGY OTTAWA and those for whom ENERGY OTTAWA is responsible for in law. These policies will all:
 - (1) be written on an occurrence basis with coverage for any one occurrence or claim of at least Ten Million Dollars (\$10,000,000)
 - (2) name The City as additional insured
 - (3) contain a severability of interests clause and cross liability clauses and
 - (4) have a deductible amount of not greater than \$10,000 per incident or occurrence.
 ENERGY OTTAWA is responsible for payment of any loss or losses within the deductible;
- (b) Automobile liability coverage in an amount of not less than Three Million Dollars (\$3,000,000) for all vehicles used in the performance of this Agreement;
- (c) Professional Liability / Errors & Omissions Insurance in an amount of not less than One Million Dollars (\$1,000,000); and
- (d) "All risks" equipment insurance covering machinery and equipment at the Landfill and Plant Site used by ENERGY OTTAWA for the performance of the work under the Agreement, in a form acceptable to The City and shall not allow subrogation claims by the Insurer against The City.

All policies of insurance shall be:

- (1) written with an insurer licensed to do business in Ontario;
- (2) in form and content acceptable to The City acting reasonably;
- (3) be non-contributing with, and will apply only as primary and not excess to any other insurance available to The City except arising from the negligence or willful acts of the City and anyone they may be legally liable for; and
- (4) contain an undertaking by the insurers to notify The City in writing not less than thirty (30) days before any material change, cancellation, lapse, amendment restricting coverage or termination of the policies.

Before the commencement of any operations hereunder, ENERGY OTTAWA shall provide The City a certified true copy of the above policies or a Certificate of Insurance satisfactory to The City evidencing same.

Failure to provide the aforementioned insurance may result in the termination of the Agreement.

9.2 Workplace Safety and Insurance Board Coverage

- (a) ENERGY OTTAWA understands and agrees that it is not, nor is anyone hired by it, covered by The City under the *Workplace Safety and Insurance Act*, S.O. 1997, c.16, Sched. A, as amended, and ENERGY OTTAWA shall be responsible for and shall pay all dues and assessments payable under the *Workplace Safety and Insurance Act*, the *Employment Insurance Act*, S.C. 1996, c.23 or any act, whether Provincial or Federal, in respect of itself, its employees and operations, and shall furnish The City, if requested, with such satisfactory evidence that it has complied with the provisions of any such acts. The City is not the employer of ENERGY OTTAWA or its personnel under any circumstances whatsoever.

- (b) ENERGY OTTAWA shall, both prior to commencing work under the Agreement and within sixty (60) days of the expiration of the Agreement, submit a letter of good standing from the Workplace Safety and Insurance Board to The City that all assessments or compensation have been paid, and The City may, at any time during the performance, request a further declaration that all such assessments of compensation have been paid.

9.3 Occupational Health and Safety

- (a) Where this Agreement involves construction, ENERGY OTTAWA shall be designated as the constructor for the purposes of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended for this project and shall assume all of the responsibilities of the constructor as set out in that Act and its regulations.
 - (i) ENERGY OTTAWA acknowledges that they have read and understood the *Occupational Health and Safety Act*.
 - (ii) ENERGY OTTAWA covenants and agrees to observe strictly and faithfully the provisions of the *Occupational Health and Safety Act* and all regulations and rules promulgated thereunder.
 - (iii) ENERGY OTTAWA agrees to indemnify and save The City harmless for damages or fines arising from any breach or breaches of the *Occupational Health and Safety Act*.
 - (iv) ENERGY OTTAWA agrees to assume full responsibility for the compliance with the *Occupational Health and Safety Act*.
 - (v) ENERGY OTTAWA further acknowledges and agrees that any breach or breaches of the *Occupational Health and Safety Act* whether by ENERGY OTTAWA or any of its subcontractors may result in the immediate termination of this Agreement, in accordance with Article 13.
 - (vi) ENERGY OTTAWA shall allow access to the work site, on demand, to representatives of The City to inspect work sites to confirm compliance with the *Occupational Health and Safety Act*. The City does not assume any liability or risk for non-compliance by ENERGY OTTAWA with the *Occupational Health and Safety Act* by reason of such inspection.
 - (vii) ENERGY OTTAWA agrees that any damages or fines that may be assessed against The City by reason of a breach or breaches of the *Occupational Health and Safety Act* by ENERGY OTTAWA or any of its subcontractors will entitle The City to set-off the damages so assessed against any monies that The City may from time to time owe ENERGY OTTAWA under this Agreement.
- (b) ENERGY OTTAWA shall provide a list of all controlled hazardous materials or products containing hazardous materials as defined under the *Occupational Health and Safety Act*, all physical agents or devices or equipment producing or omitting physical agents and any substance, compound, product or physical agent that is deemed to be or contains a designated substance in accordance with the Workplace Hazardous Materials Information System (WHMIS) as defined under the *Occupational Health and Safety Act* and shall provide appropriate Material Safety Data Sheets for these substances used for the performance of the required work, prior to the performance of the work and ensure that same are kept current. A copy of the Material Safety Data Sheet is to be delivered with the goods.
- (c) Where hazardous materials, physical agents and/or designated substances are used in the performance of the required work, ENERGY OTTAWA shall

ensure that the specific requirements of the *Occupational Health and Safety Act* and associated regulations are complied with.

- (d) The City reserves the right to terminate this Agreement (in accordance with Article 13) without penalty for non-compliance with the terms set out in Article 9, health and safety regulations, the *Environmental Protection Act*, associated regulations and other Applicable Laws.
- (e) ENERGY OTTAWA shall perform the work so as to cause the public the least inconvenience possible. In particular, ENERGY OTTAWA shall not obstruct any street, thoroughfare or footwalk longer or to a greater extent than necessary.
- (f) ENERGY OTTAWA shall take all reasonable precautions necessary to ensure the safety of the workers and the general public, particularly children who may play in the area of work.

ARTICLE 10

REPRESENTATIONS AND WARRANTIES OF THE CITY

10.1 Ownership of Landfill

The City is the registered and beneficial owner of the Landfill and of all rights to the Gas. No person has any property or other interest that may derogate from the full use, exercise and enjoyment of ENERGY OTTAWA of the rights granted under this Agreement.

10.2 Limitations

Notwithstanding anything contained herein to the contrary, The City does not represent or warrant the composition, quality, quantity or merchantability of the Gas or its fitness for any particular purpose. ENERGY OTTAWA shall assume all risks associated therewith.

ARTICLE 11

REPRESENTATIONS AND WARRANTIES OF ENERGY OTTAWA

11.1 Good Standing

ENERGY OTTAWA is a corporation duly incorporated and organized, validly subsisting and in good standing under the laws of Ontario and has the corporate authority and holds all Permits necessary to enable it to carry on its business as now carried on by it and will have all Permits to carry out its obligations under this Agreement, and all of such Permits are or will be in good standing.

11.2 Authority

ENERGY OTTAWA has the power and authority to enter into and to perform its obligations under this Agreement and this Agreement constitutes a valid and binding obligation enforceable against it in accordance with its terms.

ARTICLE 12

INDEMNITIES

12.1 Indemnity by ENERGY OTTAWA

ENERGY OTTAWA shall indemnify and save harmless The City, its elected officials, officers, employees, contractors and agents from and against all claims, all costs and expenses including legal fees and disbursements (including all legal fees and disbursements in connection with any and all appeals) arising in any way out of the non-performance of the Agreement or as a result of the negligence or willful misconduct of ENERGY OTTAWA or its employees, contractors and agents. Without limiting the generality of the foregoing, such claims include:

- (a) all claims for personal injury or death;
- (b) all claims in respect of damage to real or personal property, including loss of use thereof, whether public or private, including but not limited to lands, buildings, structures, utilities, fences, trees, shrubs, sod, road, ditches, drains, litter containers, waste containers, casters, and/or containers;
- (c) all claims relating to any infringement of any right or privilege;
- (d) all claims relating to inventions, copyrights, trademarks, or patents and rights thereto used in doing the work; and
- (e) all claims relating to liens pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended.

12.2 Indemnity by The City

The City shall indemnify and save harmless ENERGY OTTAWA, its officers, employees, contractors and agents from and against all claims, all costs and expenses including legal fees and disbursements (including all legal fees and disbursements in connection with any and all appeals) arising in any way out of the non-performance of the Agreement or as a result of the negligence or willful misconduct of The City or its employees, contractors and agents. Without limiting the generality of the foregoing, such claims include:

- (a) all claims for personal injury or death;
- (b) all claims in respect of damage to real or personal property, including loss of use thereof, whether public or private, including but not limited to lands, buildings, structures, utilities, fences, trees, shrubs, sod, road, ditches, drains, litter containers, waste containers, casters, and/or containers; and
- (c) all claims relating to any infringement of any right or privilege.

12.3 Proviso

Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge that settlement is likely to occur in the Landfill during the Term, and they agree that The City shall not be liable to ENERGY OTTAWA for any claims by reason of, resulting from or arising in any manner whatsoever out of such settlement and that The City shall not be liable for any claims based on the quantity or quality of any Gas in the Landfill or related to the environment from which it is to be extracted unless caused by the negligence or wilful misconduct of the City or its employees. Furthermore, ENERGY OTTAWA shall not sue The City or any other Person whom

The City would be obligated to indemnify from or against any such claim, by reason of, resulting from or arising in any manner whatsoever out of the aforesaid or the settlement of waste or any other material in the Landfill at any time either before or after construction of the Project Facility unless caused by the negligence or wilful misconduct of the City or its employees.

12.4 Notice of Demand

The party hereunder entitled to indemnification in respect of any particular event (the "Indemnified Party") shall give the other party hereto (the "Indemnifier") written notice of any demand or potential demand for indemnification under the terms of this Agreement within fifteen (15) days from the date upon which such claim or other basis for the indemnification becomes known to the Indemnified Party.

ARTICLE 13

TERMINATION

13.1 Default

In the event that there is any inaccuracy in or breach by a Party (a "Defaulting Party") of any of the representations or warranties made by it in this Agreement, or if a Party shall be guilty of any breach or default in their performance of any of the covenants or other obligations which it is to perform or observe hereunder, the Party who is not in default may notify the Defaulting Party in writing setting out the facts relied upon as constituting such default. The Defaulting Party shall have fifteen (15) Business Days after receipt of such notice to cure the default. If it fails to do so, the Party who is not in default may terminate this Agreement by notice in writing to the Defaulting Party and this Agreement shall terminate at 5:00 p.m. on the thirtieth (30th) day after delivery of the notice. Provided that if the default is not a default in the payment of money and the default cannot be cured within fifteen (15) Business Days, the time for curing the default shall be extended for such commercially reasonable period of time that is necessary to cure such default. However, if the Defaulting Party is not diligently prosecuting the cure of such default, the Party who is not in default may terminate this Agreement as aforesaid and the Defaulting Party shall no longer have any further opportunity hereunder to cure such default. If a Party disputes the existence of a breach, the dispute may be referred to arbitration in accordance with Article 14 of this Agreement.

13.2 Legislative Mandate

If, during the Term of the Agreement, any laws are enacted that require The City to prepare and implement a plan respecting the design of facilities for the collection and for the burning or use of Gas which it cannot comply with on account of this Agreement, The City may forthwith terminate this Agreement by delivering notice of termination to ENERGY OTTAWA and set out in the notice particulars of such laws and the facts supporting its decision. If such laws permit, The City will provide ENERGY OTTAWA with the opportunity to provide the facilities that will be in compliance with such laws upon such terms as the Parties can agree upon.

13.3 Written Agreement of Parties

This Agreement may be terminated by written agreement of the Parties.

13.4 Survival on Termination

Notwithstanding termination of this Agreement pursuant to this Article 13, the rights

and obligations which have accrued or arisen hereunder prior to the time of such termination or which directly result from such termination shall continue and shall not be affected or prejudiced thereby and such rights and obligations including the provisions of Article 12 of this Agreement, shall survive such termination and shall apply, mutatis mutandis, to the Parties and to the Project Facility and Landfill.

13.5 Removal of Project Facility Upon Termination

ENERGY OTTAWA shall within six (6) months after termination of this Agreement, at its cost, remove all parts of the Project Facility constructed or installed by ENERGY OTTAWA that are located above ground on the Landfill, unless directed otherwise by The City, and shall leave in place all parts of the Project Facility that are located below ground on the Landfill. Forthwith after such removal ENERGY OTTAWA shall restore the surface of the Landfill that is affected by its activities to the same condition it was in at the commencement of the Term, excluding any settlement that may have occurred, and shall provide The City with a plan of the Landfill setting out the design and layout of the parts of the Project Facility that are left in place. Upon completion, the parts of the Project Facility that are left in place shall become the property of The City and ENERGY OTTAWA shall have no further responsibility therefor.

13.6 Accord and Satisfaction

No action taken by The City or receipt by The City of any payment which would have been authorized under this Agreement, after the effective date of termination of this Agreement, shall be construed to revive this Agreement or nullify such termination.

ARTICLE 14

DISPUTE RESOLUTION

14.1 Dispute Resolution

- (a) Any disputes related to this Agreement may be resolved utilizing an alternative dispute resolution by a mutually acceptable arbitrator to be chosen by The City and ENERGY OTTAWA with thirty (30) days after written notice by one of the Parties demanding binding arbitration. Neither one of the Parties may unreasonably withhold consent to the selection of an arbitrator. The City and ENERGY OTTAWA will share the cost of the arbitrator equally. By mutual agreement, however, The City and ENERGY OTTAWA may postpone arbitration until both Parties have completed some specified but limited discovery about the dispute. The Parties may also agree to replace arbitration with some other form of binding alternate dispute resolution procedure.
- (b) Any dispute which cannot be resolved between the Parties through negotiation or arbitration within two (2) months of the date of the initial demand for it by one of the Parties, may then be submitted to a court of competent jurisdiction in the Province of Ontario. The use of any alternate dispute resolution procedure will not be considered under the doctrine of laches, waiver or estoppel to affect adversely the rights of either Party. Nothing shall prevent either of the Parties from resorting to the judicial proceedings mentioned in this paragraph if (i) good faith efforts to attempt resolution of the dispute under these procedures have been unsuccessful, or (ii) interim relief from the court is necessary to prevent serious and irreparable injury to one of the Parties or others.

ARTICLE 15

GENERAL PROVISIONS

15.1 Confidentiality

Subject to The City's obligations under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, for a period continuing two (2) years after the termination of this Agreement, each party shall, except with the prior written consent of the other party:

- (a) not use or disclose to any other person or entity any Confidential Information disclosed by any party, except as necessary for the performance of their respective responsibilities under this Agreement; and
- (b) limit access to all Confidential Information disclosed by any party to such employees, agents, consultants, affiliates, lenders and advisors as have a direct need to know in connection with this Agreement.

15.2 Entire Agreement and Order of Precedence

The Parties agree that the provisions of the following documents shall hereafter govern and define their respective rights, liabilities, interests, powers and obligations as between themselves with respect to the subject matter hereof, and in the event of any inconsistency or conflict in the provisions of the documents, such provisions shall take precedence and govern in the following order, where applicable:

- (a) this Agreement;
- (b) The letter of credit of ENERGY OTTAWA.

15.3 Disclaimer of Partnership

The Parties disclaim any intention to create a partnership or to constitute either of them the agent of the other. Nothing in this Agreement shall bind the Parties or any of them as partners or agents nor, except as may be expressly provided in this Agreement, constitute any of them the agent of the other Party. No Party shall be, or by reason of any provision herein contained be deemed to be, the agent or legal representative of the other Party whether for purposes of this Agreement or otherwise, nor shall either Party have any power or authority to act for, or assume any obligations or responsibility on behalf of, the other Party.

15.4 Force Majeure

Neither Party shall be responsible for delays or non-performance of this Agreement resulting directly or indirectly from impediments beyond its reasonable control (other than financial inability), including without limitation, any delay caused by fire, strike, lockout, or other impediments beyond the reasonable control of such party and not caused by an act or omission of such party, provided in the event of such delay or non-performance, the party continues to act reasonably to resolve such delay or non-performance.

15.5 Notices

Any notice, direction, request or document required or permitted to be given by either Party to the other in writing shall be deemed to have been sufficiently and effectually given if delivered by hand or by prepaid registered mail at the addresses

provided for below during normal business hours, or sent by facsimile transmission to the number shown below.

ENERGY OTTAWA at: 1970 Merivale Road
Ottawa, Ontario K2G 6Y9

Attention: Mr. Marc Brule, Chief Operating Officer
Facsimile No.: (613) 225-0644

with copy to:

Attention: Mr. Greg Clarke, Director Energy Products and Services
Facsimile No.: (613) 225-0644

City of Ottawa at: 110 Laurier Avenue West, 3rd Floor
Ottawa, Ontario K1P 2J1

Attention: Ms. Rosemarie Leclair, Deputy City Manager
Facsimile No.: (613) 580-4768

with copies to:

Attention: Ms. Anne-Marie Fowler, Manager, Solid Waste
Facsimile No.: (613) 838-4388

or to such other address of a party as it shall specify to the other parties by written notice given in the manner aforesaid. Any such notice, direction, request, document or payment shall be deemed to have been given to and received by the party to whom it is addressed if:

- (a) delivered, on the date of delivery;
- (b) mailed, on the fifth day after the mailing thereof;
- (c) facsimile transmission before 5:00 p.m., on the date of facsimile transmission;
and
- (d) facsimile transmission after 5:00 p.m., on the date following facsimile transmission.

15.6 Waiver

No consent or waiver, expressed or implied, by a party to or of any breach or default by another party in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party hereunder. Failure on the part of a party to complain of any act or failure to act of another party or to declare another party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first-mentioned party of its rights hereunder.

15.7 Amendments

This Agreement may not be modified or amended except with the written consent of both Parties hereto.

15.8 Further Assurances

The Parties hereto agree that they will from time to time at the reasonable request of any of them execute and deliver such assignments, instruments, and conveyances and take such further action as may be required to accomplish the purposes of this Agreement.

15.9 Successors and Assigns / Assignment

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors, which shall mean any successor to either of the Parties in accordance with any legislation providing for same. Neither this Agreement nor any rights or obligations hereunder shall be assignable by any Party without the prior written consent of the other Party provided that such consent shall not be unreasonably or arbitrarily withheld.

15.10 Compliance With Laws

ENERGY OTTAWA shall comply with all Applicable Laws. If ENERGY OTTAWA discovers any provision in the Agreement that is contrary to or inconsistent with any laws or regulations, it shall forthwith report such provision and the nature of the inconsistency to The City in writing.

15.11 Enforcement

ENERGY OTTAWA acknowledges that The City, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement in accordance with section 444 of the *Municipal Act, 2001*, S.O. 2001, c.25.

15.12 Time

Time shall be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both ENERGY OTTAWA and The City, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement.

DATED at Ottawa, this 15th day of September, 2004.

Energy Ottawa Inc..

Per: J. Marc Brule c/s
Name: Marc Brule
Position: Chief Operating Officer

DATED at Ottawa, this day of , 2004.

APPROVED FOR EXECUTION

CITY OF OTTAWA


CITY SOLICITOR

Per: R.T. Leclair c/s
Name: R.T. Leclair
Position: Deputy City Manager,
Public Works & Services

**SCHEDULE A
LEGAL DESCRIPTION OF LANDFILL LANDS**

Nepean Landfill:

PIN 04592-0005(LT)
PT LT 9 CON 4 RF AS IN CR526253; EXCEPT PT 1 5R14685 & RD AS WIDENED;
SUBJECT TO CR 383044 NEPEAN

Trail Road Landfill:

PIN 04592-0002(LT)
PT LTS 7, 8, 9 & 10 CON 4 RF, PTS 1 TO 10 4R892; PT LTS 9 & 10 CON 4 RF, PTS 1 TO 3
4R1269; EXCEPT PTS 1, 2 & 3 5R13366 & PT LT 9 CON 4 RF, PT 1 5R14685 SUBJECT
TO CR383297 NEPEAN

BUFFER LANDS:

PIN 04592-0001 (LT)
PT LT 10 CON 4 RF, PTS 1, 2 & 3 4R758; SUBJECT TO CR382361, NEPEAN

PIN 04595-0037 (LT)
PT LT 11 CON 4 RF, PTS 1, 2, & 3 N480905 NEPEAN

PIN 04592-0099 (LT)
PT LT 8 CON 4 RF, PTS 1, 2, 3, 4 ON 4R7975 & PTS 4, 5, 6, 7 ON 4R8323. S/T
EASEMENTS IN FAVOUR OF THE HYDRO-ELECTRIC POWER COMMISSION OF
ONTARIO AS IN CR382358 AND CR382340; NEPEAN

PIN 04592-0009 (LT)
PT LT 7 & 8 CON 4 RF, PT 1 PLAN N532765 NEPEAN

PIN 04592-0004 (LT)
PT LT 9 CON 4 RF AS IN N645628 (SECONDLY); EXCEPT AS WIDENED NEPEAN

PIN 04592-0011 (LT)
E ½ LT 6 CON 4 RF; EXCEPT PT 1 PLAN N568144 SUBJECT TO CR382360 NEPEAN

PIN 04593-0111
PART OF LOT 10 CONCESSION 5 (RF), PART 1 PLAN 4R7991. FORMERLY NEPEAN,
NOW OTTAWA.

PIN 04593-0090
PT LOT 10, CON 5 RF, PT 1 PLAN 4R-8815, PT 3 PLAN 4R-7991 NEPEAN

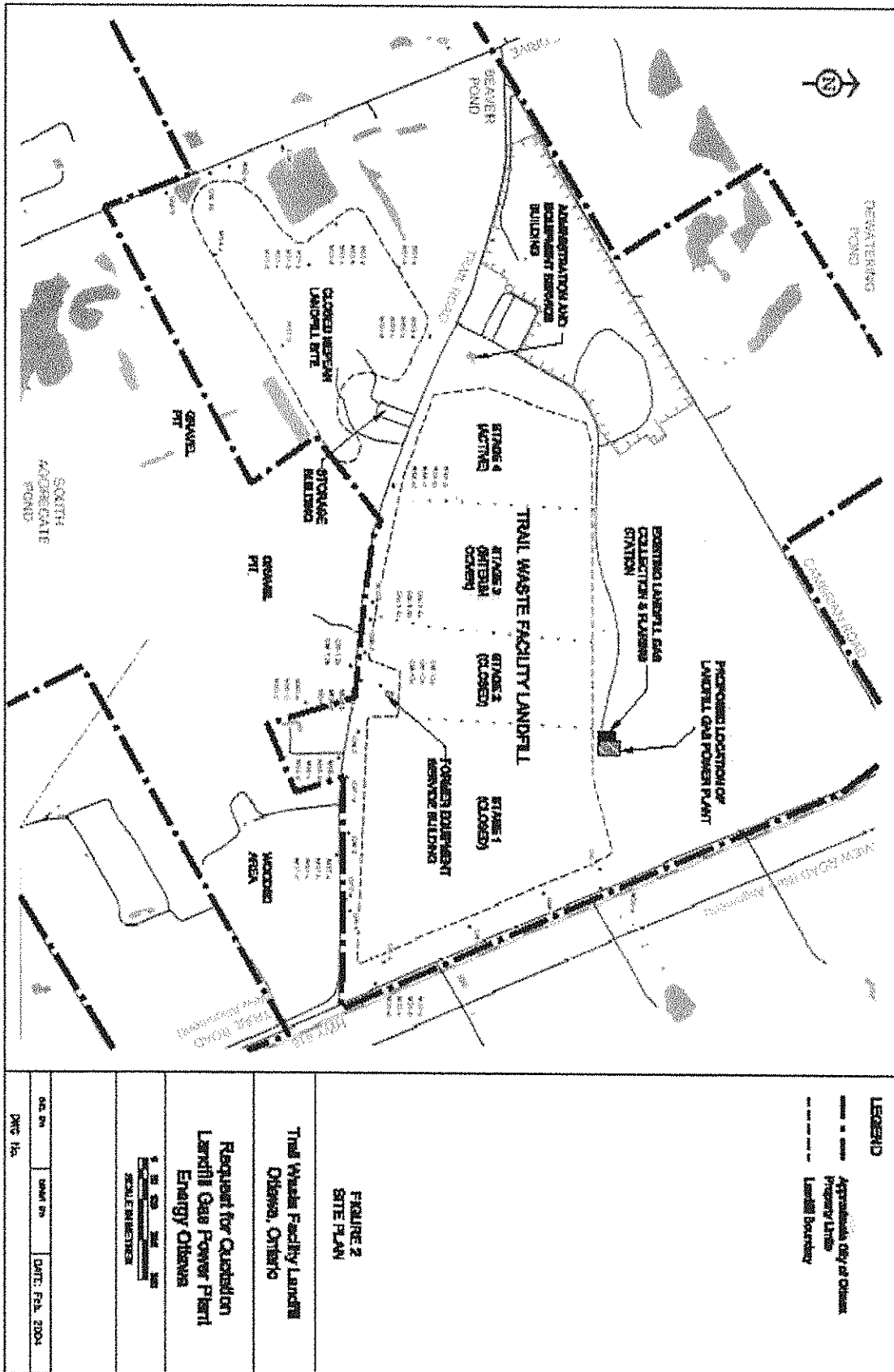
PIN 04593-0092
PART OF LOT 9, CONCESSION 5 (R.F.), PART 1 ON PLAN 4R10681, NEPEAN.
TOGETHER WITH RIGHTS, AS IN LT916939.

PIN 04593-0050
PT LT 10 CON 5 RF AS IN CR571174; EXCEPT RD AS WIDENED NEPEAN

PIN 04593-0054
PT LT 10 CON 5 RF AS IN N645628; EXCEPT RD AS WIDENED NEPEAN

PIN 04593-0056
PT LT 9 CON 5 RF, PTS 1 & 2 5R11476; S/T CR410336; EXCEPT RD AS WIDENED
NEPEAN.

**SCHEDULE B
LEGAL DESCRIPTION AND SKETCH OF PLANT SITE LANDS**



Nepean Landfill:
 PIN 04592-0005(LT)
 PT LT 9 CON 4 RF AS IN CR526253; EXCEPT PT 1 5R14685 & RD AS WIDENED;
 SUBJECT TO CR 383044 NEPEAN

Trail Road Landfill:
 PIN 04592-0002(LT)
 PT LTS 7, 8, 9 & 10 CON 4 RF, PTS 1 TO 10 4R892; PT LTS 9 & 10 CON 4 RF, PTS 1
 TO 3 4R1269; EXCEPT PTS 1, 2 & 3 5R13366 & PT LT 9 CON 4 RF, PT 1 5R14685
 SUBJECT TO CR383297 NEPEAN

SCHEDULE C PROJECT SCHEDULE

<u>Milestone Event</u>	<u>Milestone Date</u>
Finalization of the RES Contract*	January 31, 2005
1 Project and Site Approvals, Permitting**	October 1, 2005
2 Completion of Connection Assessments	October 1, 2005
3 Financial Closing	October 1, 2005
4 Equipment Order	October 1, 2005
5 Equipment Delivered	February 1, 2006
6 Commencement of Construction	October 1, 2005
7 Completion of Construction	December 1, 2006
8 Connection of facility to the transmission or distribution system	December 1, 2006
9 Date of Commissioning	January 31, 2007

*Per Provincial Contract RFP Article IV A ii. Schedule is contingent upon finalization of the Renewable Energy Supply Contract by this date.

**Includes eight month duration to allow for Ministry of Environment processing of Certificate of Approval (AIR) for the engines/generators