

ATTACHMENT 2
COMMERCIAL TERMS OF BIOGAS UTILIZATION AGREEMENT AT
GREEN LANE LANDFILL SITE

Term: Twenty-five (25) years)

Commencement Date: January 1, 2011.

Option to Renew: Provided that THESI/OPPL is not in default under the Biogas Utilization Agreement, upon giving prior written notice not more than Eighteen (18) months and not less than Twelve (12) months before the expiry of the Term, THESI/OPPL shall have the option to extend the Biogas Utilization Agreement, subject to the Lease Agreement being concurrently extended, for one additional Ten (10) year period on the same terms and conditions, save and except that the variable royalty payment shall be renegotiated and mutually agreed upon by the parties.

Biogas Supply: The City shall deliver biogas (composed of landfill gas and digester gas, if the City builds a mixed waste facility at GLL) to the demarcation point six months prior to the commercial operations date of the cogeneration plant and THESI/OPPL shall accept the biogas at the demarcation point. Title and responsibility of the gas shall transfer from the City to THESI/OPPL at the demarcation point. THESI/OPPL shall use reasonable commercial efforts to utilize all the biogas supplied. Any biogas that THESI/OPPL can't utilize will be flared by the City.

The biogas supplied will meet the following parameters:

- oxygen concentration between 0% to 1.5% by volume; and
- methane concentration greater than 40% by volume.

The biogas collected by the City and supplied to THESI/OPPL, including the methane concentration of the biogas, shall be measured in one or more locations and recorded at the compressor plant for settlement purposes. THESI/OPPL shall accurately meter and record the gross electrical energy produced by the cogeneration plant and the generation plant.

Compressor Plant & Cogeneration Plant: THESI/OPPL will design, construct, own, continuously operate and maintain the compressor plant, the cogeneration plant and all associated infrastructure with an initial capacity of at least 9.5 MW. The compressor plant will be designed to accommodate the expansion of the generation plant. The City will have the ability to conduct tours at the compressor plant and the cogeneration plant on reasonable notice to THESI/OPPL.

Generation Plant: THESI/OPPL will design, construct, continuously operate, expand and maintain the generation plant capacity in a staged approach when there is sufficient biogas from GLL and subject to THESI/OPPL obtaining the appropriate environmental and interconnection permits. The City will have the ability to conduct tours at the generation plant on reasonable notice to THESI/OPPL.

Variable Royalty Payment: From the commencement date of the cogeneration plant, as determined by the Ontario Power Authority, THESI/OPPL shall pay a variable royalty payment based on the revenue percentage multiplied by the gross electrical revenue received by the THESI/OPPL for selling the electricity generated from the biogas supplied. The revenue percentage is determined by the amount of biogas supplied to the THESI/OPPL by the City as shown on the following table:

Table 1 - Revenue Percentage

Biogas Supplied Flowrate to THESI/OPPL (Average Monthly Flowrate)	Revenue Percentage (Average Biogas Methane Content >= 45%)	Revenue Percentage (Average Biogas Methane Content < 45%)
>100 SCMM [>3550 SCFM]	15%	14%
>65 SCMM [>2300 SCFM]	13%	13%
>40 SCMM [>1400 SCFM]	10%	10%
< /=40 SCMM [< /=1400 SCFM]	7%	7%

If either party believes, acting reasonably, that the economic viability of the Biogas Utilization Agreement has substantially changed due to the electrical revenue from the sale of electricity generated at the Generation Plant, which either has caused or will cause harm or provide an unfair benefit to either party, the parties can renegotiate the revenue percentage.

THESI/OPPL shall provide copies of statements from the sale of electricity to verify the variably royalty payment.

Methane Concentration: If the methane concentration of the biogas supplied falls below 40% concentration over a three month period, the parties will renegotiate the biogas utilization agreement.

Environmental Attributes: THESI/OPPL shall transfer and assign all environmental attributes or emission credits to the City that the THESI/OPPL is not required to provide to the OPA under the FIT Contract for the cogeneration plant. THESI/OPPL shall transfer and assign all environmental attributes or emission credits to the City that THESI/OPPL is not required to provide to any third party under any sale of electricity contract the THESI/OPPL enters into for the generation plant.

Permits, Licences and Approvals: THESI/OPPL shall be responsible, at its sole expense, for obtaining and maintaining any permits, licences and approvals necessary for the project. The City shall be responsible for maintaining any permits and licences necessary for the biogas collection system, flares, associated blowers and leachate/waste water treatment at GLL. If any of the work done on the Leased Premises by THESI/OPPL requires new permits or approvals or amendments to existing permits or approvals for GLL, THESI/OPPL shall be responsible for the cost and work with the City to obtain those permits or approvals.

Disposal of Effluent: Effluent consisting of only moisture and other constituents removed from the biogas and collected by THESI/OPPL in processing the biogas shall be returned to the City, if the effluent meets proper specifications, otherwise THESI/OPPL shall have to dispose of all effluent in accordance with proper environmental laws and regulations.

Operators of the Compressor and Generation Plant: THESI/OPPL will notify the City of any persons employed or retained by THESI/OPPL to operate the compressor plant and generation plant for the City's approval. The City will notify THESI/OPPL of any unacceptable behaviour at the Leased Premises and/or Green Lane Landfill and THESI/OPPL will take appropriate action to resolve the issue, including replacement of the person. THESI/OPPL shall be responsible for payment of all persons employed and for any and all damage caused by such persons.

Safety Protocols: The City and THESI/OPPL shall enter into operation protocols designed to coordinate the supply of the biogas with the operation of the GLL biogas collection system, the flares, the compressor plant, the cogeneration plant and the generation plant.

Option to Purchase: Upon the expiry or early termination of the Biogas Utilization Agreement, the City shall have the option to purchase all or part of that portion of the project that is not located on City-owned lands, including the cogeneration plant, the generation plant, if applicable, all pipelines, all contracts to sell electricity, all required permits, all associated agreements and all associated easements. The purchase price for the assets to be purchased will be the fair market value of the assets, to be negotiated and agreed upon by the parties and, failing such agreement, to be determined by arbitration.

Assignment: THESI/OPPL shall not assign the Biogas Utilization Agreement, without the City's consent, which may be unreasonably withheld. A transfer of control of THESI/OPPL will constitute an assignment.

Insurance: THESI/OPPL shall take out liability insurance in form and content satisfactory to the City, together with such other forms of insurance required by the City's Risk Management Division.

Performance Security: THESI/OPPL shall provide a letter of credit, in a form satisfactory to the Treasurer, or a certified cheque throughout the term of the Biogas Utilization Agreement. The amount of the letter of credit or certified cheque will be as follows:

- From the Commencement Date until the end of the first Operating Year, the amount of Five Hundred Thousand Dollars (\$500,000.00); and
- Commencing in the second Operating Year until the expiry of the Term or any extension thereof, the amount shall be adjusted at the beginning of each Operating Year so that the amount is equal to fifty per cent (50%) of the Variable Royalty Payment payable by THESI/OPPL during the immediately preceding Operating Year.

Release and Indemnity: The City shall not be liable whatsoever for any death, injury, loss of property, or damage to property located on the Leased Premises. THESI/OPPL shall fully indemnify and save harmless the City and shall release and forever discharge the City from any actions, claims, costs, damages, losses whatsoever, howsoever caused.

Dispute Resolution: The City and THESI/OPPL will agree to resolve disputes first by negotiation between the General Manager and senior executives of THESI/OPPL. If that fails, the dispute may be referred to arbitration on consent of all parties.

Early Termination: The Biogas Utilization Agreement is conditional upon the following, failing which the Biogas Utilization Agreement shall automatically terminate:

- 1) Execution by the Tenant and Ontario Power Authority of the FIT Contract, on or before December 31, 2010;
- 2) Issuance by Ontario Power Authority to the Tenant of the Notice to Proceed, on or before July 1, 2011;
- 3) Issuance by the Ministry of Environment to the Landlord of new or amended approval certificates for air and noise, if required, permitting the construction and operation of the Compressor Plant, on or before July 1, 2011;
- 4) Issuance by the Ministry of Environment to the Landlord of an amendment to the approval certificate for Green Lane Landfill, if required, permitting construction and operation of the Compressor Plant, the On-Site Biogas Pipeline and the Effluent Pipeline, on or before July 1, 2011;
- 5) Final and binding approval of the appropriate municipal authorities and/or the Ontario Municipal Board, as applicable, of any rezoning, site plan and/or minor

variance applications the Tenant may be required to submit in order to carry out the Project Work, on or before July 1, 2011; and

- 6) Execution (and registration on title, where applicable) by the Tenant and any necessary third parties of all leases, licenses, permits, easements, encroachment agreements, highway access or crossing agreements, and/or other agreements, as may be necessary, to permit the Tenant to construct and operate the Cogeneration Plant and the Off-site Biogas Pipeline, on or before July 1, 2011.

Documentation: The Biogas Utilization Agreement shall be on the City's standard form, to be prepared by the City Solicitor or her designate.