

AN ORDINANCE 2010-01-21-0072

**AUTHORIZING A LEASE AGREEMENT WITH GREENFIELD ENERGY, LLC TO COLLECT AND UTILIZE LANDFILL GAS FROM THE NELSON GARDENS LANDFILL, LOCATED IN CITY COUNCIL DISTRICT 4, TO GENERATE AND SELL ENERGY AND PROVIDING FOR A MINIMUM OF \$12,000.00 IN ANNUAL REVENUE TO THE CITY.**

\* \* \* \* \*

**WHEREAS**, landfill gas consists primarily of carbon dioxide and methane, which is produced by bacteria from the anaerobic decomposition of organic wastes inside landfills; methane gas is not toxic, but is flammable; currently, the methane gas at the Nelson Gardens Landfill is collected through wells and flared; and

**WHEREAS**, the purpose of this project is to recover the methane gas resource by capturing and converting the gas into an energy source or using the gas as fuel to produce electricity that could be sold through a power purchase agreement, a type of project encouraged by the Environmental Protection Agency and referred to as a Beneficial Reuse Project, and while the Solid Waste Management Department is pursuing this contract primarily in an effort to better utilize this currently flared gas, they will receive lease payments or royalties from the sale of energy and will benefit from capital improvements to the landfill facilities; and

**WHEREAS**, a Request for Proposal for a Landfill Gas Beneficial Reuse Project was issued by the Solid Waste Management Department and, of the responses received and evaluated, the evaluation committee selected Greenfield Energy, LLC as the most qualified respondent; and

**WHEREAS**, this Ordinance authorizes the selection of Greenfield Energy, LLC and the execution of a landfill gas lease agreement; Greenfield will be granted rights to extract methane gas for use in a beneficial reuse project; additional projects such as photovoltaic and wind power generation may also be allowed; a period of 240 days is allowed to test the landfill and determine the economic feasibility of generating and selling energy produced from the gas; if the project is not feasible, then the contract will terminate; if the project is feasible, the City will receive a monthly lease payment of \$1,000.00, or five percent (5%) of the gross revenues from the sale of energy, whichever is greater; the City will incur no costs, will retain control over the Landfill, and the term of the agreement shall be for ten years, with two optional five-year extensions;  
**NOW THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** Greenfield Energy, LLC is hereby selected for the Nelson Gardens Landfill Gas Beneficial Reuse Project 2009 to provide services for the City of San Antonio as the most qualified respondent to the Request for Proposal. A copy of the Agreement and Request for Proposal is attached and incorporated herein verbatim for all purposes as **Attachment I**.

**SECTION 2.** The City Manager, or her designee, or the Director, Solid Waste Management Department, or his designee, is hereby authorized to take all actions necessary to negotiate and

execute a Professional Service Agreement for the Nelson Gardens Landfill Gas Beneficial Reuse Project 2009, between the City of San Antonio and Greenfield Energy, LLC, for an initial term of ten years with options in the City's favor for two additional five-year terms.

**SECTION 3.** The City will incur no costs as a result of this agreement. Should the methane recovery project prove successful following the 240 day testing period, the City will receive a monthly lease payment of \$1,000.00, or five percent (5%) of the gross revenues from the sale of energy, whichever is greater, per annual term of the agreement.

**SECTION 4.** Funds generated by this ordinance will be deposited into Fund 55001000, Internal Order 255000000006, General Ledger 4410930.

**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 6.** This ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED AND APPROVED** this 21st day of January, 2010.



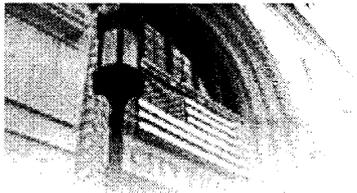
**JULIAN CASTRO**

ATTEST:

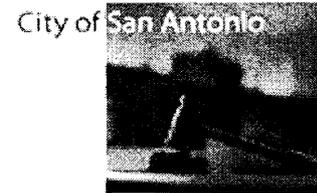
  
City Clerk

APPROVED AS TO FORM:

  
for City Attorney



Request for  
**COUNCIL**  
ACTION



### Agenda Voting Results - 39

<b>Name:</b>	39						
<b>Date:</b>	01/21/2010						
<b>Time:</b>	05:12:36 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a lease agreement with Greenfield Energy, LLC (Greenfield) to collect and utilize landfill gas from the Nelson Gardens Landfill, located in City Council District 4, to generate and sell energy and providing for a minimum of \$12,000.00 in annual revenue to the City. [Peter Zaroni, Interim Assistant City Manager; David W. McCary, Director, Solid Waste Management]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x			x	
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

**AGREEMENT BETWEEN THE CITY OF SAN ANTONIO  
AND  
GREENFIELD ENERGY, LLC  
FOR  
PROFESSIONAL SERVICES AGREEMENT FOR NELSON GARDENS LANDFILL  
GAS BENEFICIAL REUSE PROJECT 2009**

**STATE OF TEXAS  
COUNTY OF BEXAR**

This agreement (hereinafter referred to as the "Agreement"), made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas acting by and through its City Manager (hereinafter referred to as "City"), and

Greenfield Energy, LLC  
225 Greenfield Parkway, Suite 102  
Liverpool, NY 13088

a Limited Liability Corporation chartered under the laws of the State of New York (hereinafter referred to as "Greenfield"), said Agreement being executed by the City pursuant to Ordinance No. 2010-01-21-\_\_\_\_\_, passed and approved by the City Council on January 21, 2010.

Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, a Request for Proposal for Nelson Gardens Landfill Gas Beneficial Reuse Project 2009, issued by the City on September 9, 2009;
2. Exhibit II, Addendum I, dated September 30, 2009 (Questions and Responses);
3. Copy of enabling Ordinance No. 2010-01-21-\_\_\_\_\_

**Referenced Documents:** Further, Greenfield's response to the RFP and its addendum are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

**Conflict:** The RFP and its addendum govern Greenfield's response; this Integration Agreement governs both the RFP and response; the Enabling Ordinance governs all in case of conflict.

This agreement supersedes any previous agreement or understanding of the parties, whether written or oral.

As authorized by the RFP and the Ordinance, City shall receive a monthly payment of \$1,000.00 or five percent (5%) of gross revenue from the sale of energy, whichever amount is greater, per annual term of the agreement. Further, this contract does not commit or obligate the City in any way to compensate Greenfield for any activity performed by Greenfield under this contract.

**Work Start Date:** Work shall start immediately upon instruction to Greenfield from the Solid Waste Management Department, but no sooner than January 22, 2010, for the 240 day testing

period and the performance of various City projects described in the RFP's scope of services or the contract documents identified above.

**Annual Term of Performance and Termination Date:** The term of this agreement is for ten (10) years, starting after the completion of the testing period; the City shall have the sole discretion to renew this agreement with all current terms and conditions for two (2) additional five (5) year terms, if Landfill Gas is produced in Paying Quantities at the time of renewal. The primary ten year term of this Agreement shall commence on a date certain to be determined by the parties but no later than the end of the 240 day period for Pre-Contract Execution Testing and Project Development (the testing period) as specified in Exhibit I, section II (2), and shall terminate ten years after that date. The term of this agreement may be extended for two (2) optional five-year terms to be effected and executed at the discretion of the City through the Director of the Solid Waste Management Department contingent upon approval by the City Council.

**Agreed, Consented to, and Executed this \_\_\_ day of January 2010.**

**GREENFIELD ENERGY, LLC**

BY: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

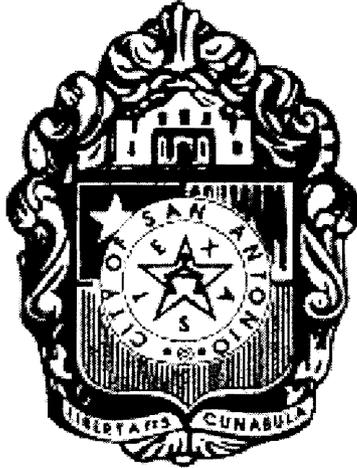
**CITY OF SAN ANTONIO**

BY: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_  
CITY MANAGER, or her designee

APPROVED AS TO FORM:  
Office of the City Attorney  
Michael Bernard, City Attorney

By: \_\_\_\_\_  
Assistant City Attorney

CITY OF SAN ANTONIO  
Solid Waste Management Department



REQUEST FOR PROPOSAL  
("RFP")  
for  
Nelson Gardens Landfill Gas Beneficial Reuse Project 2009  
(RFP 09-045-JW)  
Issued: September 12, 2009  
Proposals Due: October 12, 2009

**The contract that may be awarded as a result of this solicitation is designated as High-Profile.**

**Notice Regarding Prohibition on Political Contributions for Individuals and Entities Seeking High-Profile Contracts.** City Code Article VII, §2-309, prohibits the following individuals from making a political contribution to any city councilmember or candidate or political action committee that that supports or opposes a city councilmember or candidate from the 10<sup>th</sup> business day after this RFP is released until 30 calendar days after the contract has been awarded:

1. any individual seeking a high-profile contract;
2. any owner or officer of an entity seeking a high-profile contract;
3. the legal signatory of the high-profile contract
4. any attorney, lobbyist or consultant hired or retained to assist the individual or entity in seeking a high-profile contract;
5. the spouse of any of the persons listed in 1, 2, and 3 above.

Any legal signatories for a proposed high-risk contract must be identified within the response to this solicitation, if the identity of the signatory will be different from the individual submitting the response.

**A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution has been made by any of these individuals during the "black out" period.**

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## **I. BACKGROUND**

The City of San Antonio, Solid Waste Management Department ("City") seeks Proposals from qualified firms ("Respondents") interested in providing the services as described in this RFP.

The City is seeking proposals from Respondents to develop and operate a landfill gas to energy project utilizing the landfill gas produced by the Nelson Gardens Landfill ("Landfill"), Texas Commission on Environmental Quality (TCEQ) Permit 1237, located in Bexar County, San Antonio, Texas. Additional background information regarding the Landfill's operation and history may be available. Specific data included with this RFP includes: Boring Log Summary (Exhibit 1) and Permit Modification Application (Exhibit 2). The City is the owner and operator of the site beginning in the 1970s. Nelson Gardens Landfill is a closed municipal solid waste landfill, currently under post-closure care as defined by state and federal regulations. The landfill operated from 1978 and closed in September 1993. The exact amount of waste in place is unknown, however, estimates describe the waste in place at 30,492,000 cubic yards compacted at around 750 pounds per cubic yard. The landfilled area is approximately 277 acres and the average waste depth is approximately 75 feet. The facility accepted an average of 3,500 tons of waste per day.

Beginning in the late 1980s, private firms expressed interest in a landfill gas beneficial reuse project, which led to the installation of a methane collection and flaring system in 1997. Construction of a high-btu gas plant was initiated, but halted in about 1997. Remnants of this high-btu gas plant are currently still located at the Landfill. These remnants include concrete foundations, pipe and pipe racks, a compressor, storage vessels, other miscellaneous items and a metal building. The City has ownership of the building and equipment.

The existing gas collection system is in need of improvement. The well-head assemblies may require upgrading to facilitate adjustments in gas flow. Additionally, due to the age of the system there may be leaks and obstructed wells resulting in decreased methane at the flare.

Currently, the City maintains site cover requirements and monitors groundwater impact and methane migration at the Landfill, including the collection and transfer of landfill gas to a flare system to reduce migration. During the term of this agreement, the Respondent shall upgrade and maintain the existing landfill gas collection system, collect gas from the Landfill, ensure no gas migration occurs from the Landfill to adjacent properties, resolve and rectify any environmental and/or regulatory issues related to landfill gas migration and sell the energy produced from the landfill gas.

Respondents interested in performing these services must submit a proposal in accordance with the following minimum requirements contained in this document. Responses must follow the order and sequence as set out in Section V, Proposal Requirements, of this document. The contract documents consist of this RFP, any addenda, amendments or written adjustments thereto; the Consultant's response, and the Integration Agreement comprising all such writings. The enabling Ordinance shall govern over all contract documents.

Prior to execution of a contract, the City will allow a 240-day pre-contract testing period for the successful Respondent to evaluate the feasibility of a landfill gas-to-energy project at this site. The successful Respondent will be responsible for all costs incurred during this time.

## II. SCOPE OF SERVICES

### 1. General Scope of Services

The successful Respondent shall operate a gas collection system at the Nelson Gardens Landfill and utilize the collected landfill gas for a beneficial reuse project. The beneficial reuse project shall be at the successful Respondent's discretion, subject to approval by the City, and may consist of high-btu gas, low-btu gas, gas to electricity, or any other project. Federal tax credits, grants, or other incentives may be used by the successful Respondent as they develop their beneficial reuse project.

All costs associated with development and operation of this beneficial reuse project shall be the responsibility of the Respondent. Additionally, the entire Landfill site must remain in compliance with all federal and state rules and regulations. The successful Respondent shall operate their beneficial reuse project within all federal and state rules and regulations, as well as provide all resources and pay all costs associated with environmental compliance in relation to landfill gas generated at this site.

### 2. Pre-Contract Execution Testing and Project Development

After conditional selection of the successful Respondent, but prior to execution of the contract, the City will grant access to the successful Respondent to evaluate, collect data, determine heat value, flow rate, landfill composition, gas life, etc. During this time, the successful Respondent may test the landfill site for the benefit of the successful Respondent to determine feasibility of a beneficial reuse project. The successful Respondent will be responsible for all cost incurred during this time. All reports and data generated from this testing shall be provided to the City. All activities performed by the Respondent, including drilling, shall conform to state, federal and local rules and regulations. The Respondent shall use reasonable care and diligence and shall perform all work in an accepted industry manner.

This Pre-Contract Execution Testing and Project Development period shall begin from the date notified in a written letter and shall expire 240 calendar days later. This time period is being provided to assist the Respondent in evaluating and determining the feasibility of this project. Should this testing determine that a beneficial reuse project cannot be completed under terms stipulated in the RFP; the Respondent may withdraw without recourse by the City for failure to execute the contract.

A small storage tank used for the collection of condensate and leachate is located at the Landfill. This tank is piped into the Sanitary Sewer and may be used for the disposal of liquid waste obtained during the testing process. Any waste unearthed during this process must be disposed of properly by the Respondent at a Type I Municipal Solid Waste Landfill.

Potable water is not available at the site. The nearest potable water line is unknown.

During the Pre-Contract Execution Testing and Project Development period, the Respondent must identify the energy purchaser and provide the City with proof of an executed power purchase agreement. It is expected that the energy produced from this project will be sold to CPS Energy. The City shall receive written documentation that either CPS Energy shall be the purchaser of the power, or that CPS Energy has allowed the Respondent to sell the power to another entity, since CPS is the sole power provider and would need to allow the energy produced to be sold to another entity.

The Respondent shall notify the City as soon as practicable, but within the 240 day window, that the project is viable and that the contract should be executed. The City, at its sole discretion may terminate its obligation to execute the contract with the Respondent after 240 days. Additionally, during the 240 day testing period, the City may determine the project is not progressing and terminate any further testing by Respondent. The City will execute the contract only if the Respondent has demonstrated that it can produce the project, by obtaining a power purchase agreement, provide a verifiable timeline plan, and feasible technical plan. Unless this notification is received, the City shall withdraw the contract after 240 days while continuing to maintain the gas rights.

### 3. Permitting and Compliance

The Respondent shall upgrade, resolve, repair methane or other gas problems, at their cost, or City may correct and charge back Respondent. At the City's discretion, if problems are not resolved, the City will terminate the contract.

In the event it is determined by any local, state, or federal agency that for the purpose of health safety and welfare, including but not limited to the prevention of the migration of Landfill Gas to areas beyond the boundaries of the Landfill, the Respondent shall construct additional collection systems to rectify the situation.

The Respondent shall at its own cost and expense keep all facilities placed in or on the site in compliance with all applicable local, state and federal standards. City shall not be required to furnish any services or facilities or make any repairs in respect to the facilities.

The Respondent shall work with the designated representatives of the City to obtain all required licenses and permits for the construction and commercial operation of the Collection System and Conversion System, obtain all necessary building permits for any structure built or placed on the Landfill, as well as for any landscaping, and submit all plans to the Director of Solid Waste Management for review and comment. Following the installation of the Collection System the Respondent shall deliver to the City a set of "as built" drawings of the installed Collection System to be reviewed by City Staff, engineers, or consultants.

If the Respondent elects to use the Landfill Gas to generate electric power, the Respondent shall use its best efforts to negotiate an agreement with a public utility for the sale to such public utility of the electric power generated by the Conversion System. If the Respondent elects to

process the Landfill Gas and upgrade it to pipeline quality gas, the Respondent shall use its best efforts to negotiate an agreement with a public utility, pipeline company or other user for the sale to such public utility, pipeline company or other user of the gas processed by the Conversion System. A signed agreement will need to be in place before the 240 day testing period ends prior to awarding a contract.

Following the determination by the Respondent that Landfill Gas is recoverable in Paying Quantities, the Respondent shall, at its own expense, prepare and file applications and diligently execute processing of such applications for the purpose of obtaining all environmental and other permits which may be required under applicable local, state and federal laws for the installation and commercial operation of the Collection System and Conversion System. The City agrees to make available to the Respondent copies of all environmental information reports, environmental impact reports, air impact assessment studies, all environmental applications filed, and other available data relating to and used in connection with obtaining any environmental permits necessary for the installation and operation of any equipment or for conducting any other activities on the Landfill. The environmental permits of which the Respondent shall apply and obtain are limited solely to the scope of its commercial operation of the Collection System and Conversion System. The Respondent shall not be required to apply for or obtain any permits, conduct any studies, or perform any work relating to the collection, control, migration, or emission of any Landfill Gas which is not collected by the Collection System or any other aspects relating to the Landfill or operations conducted thereon, which shall remain the responsibility of the Landfill Owner.

#### 4. Construction

After the initial 240 day pre-contract testing period, if tests have been deemed successful and the contract is awarded, respondent shall complete and finish out the remnants of the existing metal building with bathrooms, interior walls, flooring, ceiling, and appropriate air conditioning and heat. The Respondent shall provide the City with ADA-accessible men's and woman's bathroom, meeting area, office space, changing rooms, kitchenette, and furnishings. The City has ownership of this existing building.

#### 5. Operations

Respondent shall pay for all costs associated with operating and maintaining the landfill gas collection system and beneficial reuse project. Respondent shall be responsible for site security. At no time, shall Respondent conduct, or allow to conduct any other activities at the site other than the gas collection, beneficial reuse project, and those other activities previously approved by the City.

The Respondent agrees to allow the City to operate leachate extraction wells designed to effectively remove leachate from the landfill. The Respondent further agrees to allow the City, if necessary, to use the current, and future, gas collection system, including piping, sumps, compressed air, etc. to remove and transport leachate from the landfill into the sanitary sewer.

The Respondent agrees to conduct operations so as not to unreasonably interfere with maintenance and other operations, such as leachate discharge and gas and water monitoring, conducted at the Landfill which may be required to remain in compliance with state, federal or local regulations. In the event that the Respondent's equipment impedes maintenance, Respondent, at its sole cost, will adjust accordingly. In the event that Respondent does not adjust, the City will attempt to move or adjust Respondent's equipment and will charge Respondent. Any damages, including those damages caused by the City, shall be the responsibility of the Respondent.

During the terms of the agreed contract, the Respondent shall have the right to substitute at its expense any item or items of equipment or the entire Conversion System at the Site and to retrofit Conversion Systems in order to improve the operating characteristics, or to comply with existing or newly instituted environmental regulations, or any other reason. Such substitutions may include the installation of equipment representing new or different technologies available to Respondent.

The Respondent shall provide and maintain in a neat and sanitary condition conveniences and accommodations for the use of both Respondent and City employees as may be necessary to comply with the requirements and regulations of the department of health or of other bodies having jurisdiction there of, in order that a public nuisance shall not be created.

The Respondent shall be allowed to perform periodic or emergency maintenance, replacement or repair activities, at any time such activities are necessary.

The Respondent shall supervise the start-up of operations of the Collection System and the Conversion System and, coordinate the electrical synchronization of the electric power output of the Conversion System through the utility interface with the grid of the public utility in the area in which the Landfill is located.

The Respondent shall operate and maintain the Collection System and Conversion System and cause to be operated and maintained the utility interface with a view to as continuous an operation as possible, with the exception of interruption caused by routine maintenance, equipment breakdowns, supplier delays or emergency outages affecting the grid servicing the public utility.

Upon ninety (90) days following the execution of an agreement, and at least quarterly thereafter, Respondent shall provide to the Director of Solid Waste Management a written report as to the performance of its duties pursuant to this agreement, including any reasons for delays in performance and the estimated time to complete the installation of the Collection System and Conversion System. This report shall also include quantity of gas and or electricity generated expressed in accepted industry standards, such as kilowatts, pricing for energy and revenues received. Additional written reports will be provided to the Director of Solid Waste Management when requested.

The Respondent shall comply with all local, state, and federal laws and regulations governing the construction and installation of the Collection System and the Conversion System, including

any applicable review or approval procedures imposed upon the City and requiring the submission of plans and specifications for review and approval to the governing agency as condition set forth in the permit issued by the Texas Commission on Environmental Quality to the City for the operation of its sanitary landfill.

6. Lease and Sale of Energy

In consideration of the leasing of the site and the sale of energy, the Respondent agrees to pay the City whichever of the two is greater: either one thousand dollars (\$1,000.00) per month, or five (5) percent of the monthly gross revenues (royalty) received by the Respondent from the sale of electric power or any other energy and/or sales associated with the gas from the Nelson Gardens Landfill site. Gross Revenues shall mean the total receipts received, including, but not limited to, energy payments, capacity payments and any capacity bonus payments to the Respondent from any utility or other customer that is purchasing the energy or non-energy products produced by the Conversion System(s). The City shall not entertain any offers of payment greater than the amounts stated herein. Failure to comply with this directive may result in disqualification from this solicitation.

The Respondent shall remit to the City all payments hereunder monthly on or before the twenty-fifth (25<sup>th</sup>) day following the end of each calendar month. Each payment shall be accompanied by a statement showing the computation of the amount owing by the Respondent to the City, including meter readings. The accuracy of each such statement shall be attested to by an authorized representative of the Respondent.

The City or its authorized representative shall have the right to inspect during reasonable business hours on a quarterly basis the sales journal and any other pertinent books and records of the Respondent relating to the income generated by each Conversion System covered by this agreement. Such inspection rights shall be conducted during business hours and in such manner so as not to unreasonably interfere with the ongoing business of the Respondent.

The Respondent shall install and maintain instruments to meter the quantity and energy content of the Landfill Gas extracted from the Landfill. The City shall have the right, upon reasonable notice, to examine and inspect during business hours any and all meters installed at the Landfill, whether installed by the Respondent or otherwise, as it relates to the duties of the Respondent pursuant to this agreement.

7. Indemnity

The Respondent agrees to protect the Landfill and the City from claims of laborers resulting from Respondents operations, and the City may post and keep posted on Landfill such notices of non-responsibility, as the City may desire, to protect against liens.

The City agrees to supervise its employees to prevent damage to any materials or equipment installed by the Respondent. All repairs to the Collection System and Conversion System shall be performed by the Respondent. The Respondent shall also support and protect all public utilities such as pipes, conduits, and other structures, which will remain in place and in service

during the term of the agreement which may be uncovered during construction or which may be installed by others during construction.

Respondent shall not interfere with the City or any other utility that has infrastructure located within the project boundary.

## **ADDITIONAL PROVISIONS**

### **A. TERMINATION**

#### **1. Termination Rights of Landfill Owner**

If the Respondent has not completed the drilling of test borings on the Landfill and the analysis of Landfill Gas within 240 days from the date of notification by written letter as detailed in Article II, section 2 above, or the execution of this agreement, at the option of the Landfill Owner, the agreement shall be terminated without liability, effective upon 30 days written notice of termination.

If the Respondent fails to commence installation within 18 months after receipt of all permits, or within any period approved or extended by the City, this agreement may, at the City's option, be terminated without liability therefore, effective upon 30 days written notice of termination.

The Respondent shall commence the commercial operation of and sale of gas from its facilities within 36 months after receipt of all necessary permits. If the Respondent has not commenced the commercial operation of and sale of energy from the Conversion system on or before thirty-six (36) months, excluding any delays attributable to the occurrence of events of force majeure as well as any delays in the receipt of any necessary permit for the installation and operation of the Conversion System and Collection System, this agreement may at the City's option be terminated, without liability, effective upon 30 days written notice of termination.

If the Respondent defaults in the performance of any other material obligation under this agreement, including the timely payment of royalties and leasing payment, this agreement may, at the City's option be terminated, without recourse, effective upon 30 days written notice of termination.

#### **2. Termination rights of Respondent**

The Respondent shall have the right to terminate this agreement and thereupon be relieved of any further obligations hereunder upon the occurrence of any of the following events and following the giving of at least 30 days written notice of termination specifying in such notice which of such events is the cause of such termination:

Prior to commencement of operations, the Landfill Gas is determined by the Respondent not to be in Paying Quantities based on test data from the Landfill obtained by the Respondent.

The Respondent is unable to obtain any required license, permit or other authority necessary to construct or operate the Collection System, the Conversion System or systems including without limitation, building permits and environmental permits.

The Respondent is unable to enter into a contract for the sale by the Respondent of energy generated by the Conversion System or systems including the inability to enter into agreements with any public utility, water company or other entity authorized to supply natural gas, water or both, Respondent at the Landfill in such quantities, at such availability, and on such terms as are determined by the Respondent to be necessary for the economic operation of the Conversion System or systems.

After commencement of commercial operations, if the gas in Paying Quantities is no longer being obtained, and/or is not the result of an action taken by the Respondent, the Respondent may terminate the agreement upon service of ninety days notice of termination to the Director of Solid Waste Management. The Respondent shall demonstrate and give evidence to the City that gas in Paying Quantities is not being obtained from the site.

The nonperformance by the City of any material covenant or the breach of any representation or warranty in this agreement, and the failure to correct such nonperformance or breach following the giving of at least thirty days notice by the Respondent specifying the particulars in which it is claimed the City is in default.

#### **B. SURRENDER OF POSSESSION**

On the expiration of this agreement, or its sooner termination, the Respondent shall surrender possession of the premises to the City, and shall cause a good and sufficient quitclaim deed to be placed of record in Bexar County.

Following any termination of this agreement, the Respondent shall have a reasonable period of time, not to exceed six months, unless extended by the Director of Solid Waste Management, for the removal from the Landfill of all personal and private property belonging to the Respondent, not to include wells, piping, blowers, flares or other portions of the gas and leachate extraction system necessary to continue gas and leachate extraction. Property supplied by the Leasee that, if remove, would result in a malfunction or inoperable condition of the landfill gas and leachate controls shall not be removed. Additionally, improvements, provided as a condition of this contract, are considered City property and shall not be removed.

Except for generator sets, equipment used for gas drying or refining, and equipment such as trucks, computers, etc. used for daily operations, all facilities and equipment shall become the property of the City upon expiration, termination, or cancellation of this contract. Equipment and property to become the City's property includes the current gas extraction system and any upgrades, flare system, gas and leachate collection systems, piping, blowers, buildings, and well field. All property and equipment currently owned and/or controlled by the City shall remain the property of the City.

#### **C. FORCE MAJEURE**

The provisions of this agreement shall be subject all applicable Federal, State and County and Municipal Laws, Executive Orders, Ordinances, Rule Regulations and Acts, and the agreement shall not be terminated, in whole or in part, nor shall the Parties be hereto held liable in damages, for failure to comply therewith, if compliance is prevent by, or the failure is the result of, any such law, order, ordinance, rule, regulation, or act, or the order of any court, or due to force majeure. The term "force majeure" as used herein shall mean: Any act of God, including but not limited to, storms, floods, washouts, earthquakes, landslides, fires and lightning; acts of the public, disorders, lockouts, strikes or other labor disturbances, epidemics, or quarantine regulations, freight embargoes or failures; exhaustion or unavailability or delays in delivery of any product, labor, fuel, service or material not the fault of the Parties; breakdown or failure of equipment; action by a governmental entity; or any other event or condition beyond the reasonable control of the Parties.

#### **D. AUTHORITY**

The Respondent understands and agrees that the Respondent receives only the rights to Landfill Gas under this agreement. The Respondent receives no rights to any other substance, including, but not limited to, oil and natural gas.

#### **E. OWNERSHIP AND LICENSES**

In accordance with Texas law, Respondent acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Respondent pursuant to this Contract shall be the subject of any copyright or proprietary claim by Respondent.

The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

Respondent acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFP, will belong to and be the property of City. Respondent, if awarded this contract, will be required to turn over to City, all such records as required by said contract. Respondent, if awarded this contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

In accordance herewith, Respondent, if selected, agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

### **III. TERM OF CONTRACT**

The term of the agreement shall be for five (5) years starting from the effective date of City Council approval and for as long thereafter as Landfill Gas is produced in Paying Marketable Quantities. In no event shall the agreement extend beyond the limitations set forth.

### **IV. PRE-SUBMITTAL CONFERENCE**

A Pre-Submittal Conference will be held at 1940 Grandstand, San Antonio, Texas 78238 at 10:00 a.m., Central Time, on Wednesday, September 23<sup>rd</sup>, 2009. Respondents are encouraged to prepare and submit their questions in writing three (3) calendar days in advance of the Pre-Submittal Conference in order to expedite the proceedings. City's responses to questions received by this due date may be distributed at the Pre-Submittal Conference and posted on the City's website at <http://epay.sanantonio.gov/RFPListings/>. Attendance at the Pre-Submittal Conference is optional.

This meeting place is accessible to disabled persons. Auxiliary aids and services are available upon request. Interpreters for the Deaf must be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses provided by City staff at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain official responses, if any. Any oral response given at the Pre-Submittal Conference that is not confirmed in the written summary of the Pre-Submittal Conference or by a subsequent addendum shall not be official or binding on the City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of the City shall not be binding on the City.

### **V. PROPOSAL REQUIREMENTS**

The successful qualified firm, to whom the contract is awarded, must demonstrate successful development of landfill gas beneficial use projects, including willingness to accept the risk for the project without recourse or support from the City of San Antonio. The Respondent must also demonstrate the ability to monetize landfill gas emissions, renewable energy credits, and/or other environmental markets, assume all costs associated with the installation, repair, improvement and maintenance of the existing landfill gas collection and control system, assure continued environmental compliance and meet other criteria as determined by the City of San Antonio.

Respondent's Proposal shall include the following items in the following sequence:

- 1) EXECUTIVE SUMMARY: The summary shall include a statement of the work to be accomplished, how Respondent proposes to accomplish and perform each specific service and unique problems perceived by Respondent and their solutions.

- 2) RESPONDENT QUESTIONNAIRE: Complete and submit RFP Attachment A, Respondent Questionnaire.
- 3) DISCRETIONARY CONTRACTS DISCLOSURE: RFP Attachment B, Discretionary Contracts Disclosure Form is posted as a separate document and may also be downloaded at <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.  
  
Complete on-line, print form and place copy as Tab B within respondent's proposal submittal. After successfully printing the completed form, click on the "Submit" button to file electronically.
- 4) LITIGATION DISCLOSURE: Complete and submit RFP Attachment C, Litigation Disclosure Form. If Respondent is proposing as a team or joint venture, then all persons or entities who will be parties to the contract (if awarded) shall complete and return this form with the proposal.
- 5) SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM FORM: Complete, sign and submit the List of Subcontractors/Suppliers contained in RFP Attachment D.
- 6) FINANCIAL INFORMATION: Submit a copy of Respondent's three most recent annual financial statements, prepared in accordance with Generally Accepted Accounting principles, audited by an independent Certified Public Accountant.
- 7) PROOF OF INSURABILITY: Submit a letter from insurance provider stating provider's commitment to insure the Respondent for the types of coverages and at the levels specified in Attachment F, if awarded a contract in response to this RFP. Respondent shall also submit a copy of their current insurance certificate.
- 8) SIGNATURE PAGE: Respondent must complete, sign and submit the Signature Page found in RFP Attachment H. The Signature Page must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the proposal.
- 9) ADDENDUMS: Respondent shall sign and submit all Addendums (if any) issued for this RFP. Changes to the RFP will be posted to the City of San Antonio's Bidding & Contract Opportunities Website, <http://epay.sanantonio.gov/RFPListings/>. It is Respondent's responsibility to review this site and ascertain whether amendments or revisions have been made prior to submission of a proposal response.
- 10) PROPOSAL CHECKLIST: Complete and submit the Proposal Checklist found in RFP Attachment I.

Respondent is expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THESE PROPOSAL REQUIREMENTS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

## VI. AMENDMENTS TO RFP

Changes, amendments, or written responses to questions received in compliance with Section VIII, Restrictions on Communication may be posted on the City's website at <http://epay.sanantonio.gov/RFPListings/>. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission of a proposal. A Respondent who does not have access to the Internet, must notify City in accordance with Section VIII, Restrictions on Communication, that Respondent wishes to receive copies of changes, amendments, or written responses to questions by mail.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFP, and changes to the RFP – if any – shall be made in writing only.

## VII. SUBMISSION OF PROPOSALS

- A. Respondent shall submit one (1) original, signed in ink, nine (9) copies, and one (1) compact disk (CD) in Adobe PDF format of the Proposal, in a sealed package, clearly marked on the front of the package **Nelson Gardens Landfill Gas Beneficial Reuse Project 2009**. All Proposals must be received in the City Clerk's office no later than 2:00 p.m., Central Time, on Monday, October 12, 2009 at the address below. Proposals submitted prior to the above time and date may be modified provided such modifications are sealed and received by the City Clerk's Office prior to the time and date set for submission of proposals. Any Proposal or modification received after this time shall not be considered, and will be returned, unopened to the Respondent. Respondents should note that delivery to the P.O. Box address in a timely manner does not guarantee its receipt in the City Clerk's office by the deadline for submission. Therefore, Respondents should strive for early submission to avoid the possibility of rejection for late arrival.

Mailing Address:

City Clerk's Office, Attn: Solid Waste Management Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Physical Address:

City Clerk's Office, Attn: Solid Waste Management Department  
100 Military Plaza  
2<sup>nd</sup> Floor, City Hall  
San Antonio, Texas 78205

Proposals sent by facsimile or email will not be accepted.

- B. Proposal Format: Each proposal shall be typewritten, single spaced and submitted on 8 ½" x 11" white paper inside a three ring binder. The use of recycled paper is encouraged. Unnecessarily elaborate brochures, artwork, bindings, visual aides, expensive paper or other materials beyond that sufficient to present a complete and effective submission are not required. Font size shall be no less than 12-point type. All pages shall be numbered and printed two-sided. Margins shall be no less than 1" around the perimeter of each page. Electronic files, websites, or URLs shall not be included as part of the proposal, other than the CD specified above. Each proposal must include the sections and attachments in the sequence listed in the RFP Section V, Proposal Requirements, and each section and attachment must be indexed and divided by tabs and indexed in a Table of Contents page. Failure to meet the above conditions may result in disqualification of the proposal.
- C. Respondents who submit proposals to this RFP shall correctly reveal, disclose, and state the true and correct name of the individual, proprietorship, corporation, and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nicknames, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number in their proposal's Respondent Questionnaire.
- If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on their proposal's Respondent Questionnaire, the Director of Solid Waste Management shall have the discretion, at any point in the contracting process, to suspend consideration of the proposal.
- D. All provisions in Respondent's proposal, including any estimated or projected costs, shall remain valid for ninety (90) days following the deadline date for submissions or, if a proposal is accepted, throughout the entire term of the contract.
- E. All proposals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- F. Any cost or expense incurred by the Respondent that is associated with the preparation of the Proposal, the Pre-Submittal conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

### VIII. RESTRICTIONS ON COMMUNICATION

A. Respondents are prohibited from communicating with elected City officials and their staff regarding the RFP or Proposals from the time the RFP has been released until the contract is posted as a City Council agenda item. Respondents are prohibited from communicating with City employees from the time the RFP has been released until the contract is awarded. These restrictions extend to “thank you” letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or Proposal submitted by Respondents. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent’s proposal from consideration. Exceptions to the restrictions on communication with City employees include:

1. Respondents may ask verbal questions concerning this RFP at the Pre-Submittal Conference.
2. Respondents may submit written questions concerning this RFP to the Staff Contact Person listed in the address below until 4:30 p.m., Central Time, on Thursday, October 1, 2009. Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by electronic mail or by fax to:

Grace Solis, Contract Coordinator  
City of San Antonio, Solid Waste Management Department  
[Grace.Solis@sanantonio.gov](mailto:Grace.Solis@sanantonio.gov) or to fax # (210) 207-6411

3. Respondents and/or their agents are encouraged to contact the Small Business Outreach Office of the Economic Development Department for assistance or clarification with issues specifically related to the City’s Small Business Economic Development Advocacy Program policy and/or completion of List of Subcontractors/Suppliers form. The point of contact is Ms. Grace Luna. Ms. Luna may be reached by telephone at (210) 207-3910, or (210) 207-3900 or by e-mail at [grace.luna@sanantonio.gov](mailto:grace.luna@sanantonio.gov). Contacting her or the Small Business Office regarding this RFP after the proposal due date is not permitted.
4. Respondents may provide responses to questions asked of them by the Staff Contact Person after responses are received and opened. During interviews, if any, verbal questions and explanations will be permitted. If interviews are conducted, Respondents shall not bring lobbyists. The City reserves the right to exclude any persons from such selection committee meetings as it deems in its best interests.
5. Upon completion of the evaluation process, Respondents shall receive a notification letter indicating the recommended firm and anticipated City Council agenda date. Respondents desiring a review of the solicitation process may submit a written request no later than seven (7) calendar days from the date letter was sent. The letter will indicate the name and address for submission of requests for review.

B. City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City. Such negotiations, initiated by City staff persons, shall not be considered a violation by Respondent of this section

**C. The contract that may result from this solicitation has been designated as “high-profile.”**

For contracts that have been designated by the City as high-profile, City Code Article VII, Section 2-309 provides that the following individuals cannot make a campaign or officeholder contribution to any councilmember or candidate during the “black-out” period:

1. any individual seeking a high-profile contract;
2. any owner or officer of an entity seeking a high-profile contract;
3. the designated legal signatory of high-profile contract;
4. the spouse of any of these individuals; and
5. any attorney, lobbyist or consultant retained to assist in seeking a high-profile contract.

The contribution “black-out” period will run from the 10th business day after the solicitation has been released until the 30th calendar day after the resulting contract has been awarded. Any legal signatories for a proposed high-risk contract must be identified within the response to this solicitation, if the identity of the signatory will be different from the individual submitting the response.

If any of the listed individuals have made a campaign or officeholder contribution during the “black out” period, the City cannot award the contract to that contributor or to that contributor’s business entity. Any contract awarded in violation of this provision shall be voidable at the discretion of the City Council.

The City has identified this solicitation as “high-profile”.

**IX. EVALUATION CRITERIA**

The City will conduct a comprehensive, fair and impartial evaluation of all Proposals received in response to this RFP. The City may appoint a selection committee to perform the evaluation. Each Proposal will be analyzed to determine overall responsiveness and qualifications under the RFP. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Respondents for interviews. If the City elects to conduct interviews, Respondents may be interviewed and re-scored based upon these same criteria. The City may also request additional information from Respondents at any time prior to final approval of a selected Respondent. The City reserves the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to the action of the City of San Antonio City Council.

Evaluation criteria:

A. Experience, Background, and Qualifications (40%)

B. Proposed Plan (40 %)

C. Small Business Economic Development Advocacy Program (SBEDA) (20%):

1. A maximum of ten percentage (10) points for Local Business Enterprises (LBEs).

Prime contractors who have a local branch office will receive six percent (6%) of the selection points.

Non-local prime contractors can receive points for subcontracting with local businesses proportional to the amount of work performed by those local subcontractors (i.e. – 50% to local = 5 points).

2. A maximum of five percentage (5%) points for companies designated as Historically Underutilized Enterprises (HUEs).

Prime contractors who subcontract with HUEs can receive points proportional to amount of work performed by those HUEs (i.e. – 50% to HUEs = 2.5 points).

S/MBEs and/or SWBEs must be certified by the South Central Texas Regional Certification Agency, the City's certifying agency, or approved by the Director of Economic Development or designee to be considered HUEs.

3. A maximum of five percentage (5%) points for Prime Contractor compliance with the SBEDA Program policy:

- a. One percent (1%) for submission/approval of the List of Subcontractors/Suppliers.
- b. One percent (1%) for meeting/exceeding the MBE goal.
- c. One percent (1%) for meeting/exceeding the WBE goal.
- d. One percent (1%) for meeting/exceeding the AABE goal.
- e. One percent (1%) for meeting/exceeding the SBE goal.

## **X. AWARD OF CONTRACT AND RESERVATION OF RIGHTS**

- A. City reserves the right to award one, more than one or no contract(s) in response to this RFP.
- B. The Contract, if awarded, will be awarded to the Respondent(s) whose Proposal(s) is deemed most advantageous to City, as determined by the selection committee, upon approval of the City Council.
- C. City may accept any Proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of City. However, final selection of a Respondent is subject to City Council approval.
- D. City reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals

received. City also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.

- E. City will require the selected Respondent(s) to execute a contract with the City, prior to City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of insurance as required in this RFP and the Contract. Contract documents are not binding on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
- F. This RFP does not commit City to enter into a Contract, award any services related to this RFP, nor does it obligate City to pay any costs incurred in preparation or submission of a proposal or in anticipation of a contract.
- G. If selected, Respondent will be required to comply with the Insurance and Indemnification Requirements established herein.
- H. Conflicts of Interest. Respondent acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of the City’s Ethics Code. (Discretionary Contracts Disclosure – RFP Attachment B)

- I. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, are and shall be deemed to be an independent contractors, responsible for their respective acts or omissions, and that City shall in no way be responsible for Respondent’s actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
- J. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response

to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. Respondent should consult its own legal advisor for answers to questions regarding the statute or form.

#### **XI. ASSIGNMENT AND USE OF SUBCONTRACTORS**

No assignment of this Agreement in whole or in part shall be made by Respondent, nor shall Respondent transfer any contract performance obligation effected by an ancillary or separate contract of Respondent, or by corporate sale, merger, or stock acquisition, or any change in the legal identity of Respondent, be made, without prior written consent from the City in accordance with the procedure set out herein. Any such described assignment, transfer, sale, merger, or change shall require approval from the City Council.

Respondent shall notify the City in writing evidencing the purpose, intent, terms and effects of the proposed assignment, merger, transfer, or change in ownership. Respondent shall provide the City with a copy of the proposed document effecting such change, or a memorandum, or other briefing document describing the proposal or executed transaction with sufficient detail to afford the City opportunity for informed review.

The City shall review the tendered documents pertaining to the proposed assignment, or other event described above, and shall respond to the Respondent in writing within thirty (30) days of initial receipt. The response shall contain the City staff's recommendation for approval, proposed modifications, or disapproval of the proposed assignment, transfer, merger or sale or other event affecting the City's contract with the Respondent; or, the staff's response may ask for more information necessary to an informed decision by the City. Such assignment or other action must be approved by the City Council.

The City expressly reserves the right to disapprove any proposed assignment, change in ownership, transfer of contract performance obligations, or any such business reorganization affecting the legal identity of the Respondent. The City agrees to provide Respondent with a written explanation outlining why such change is viewed by City to be adverse to the City's interests.

Any such change described above or assignment by Respondent, executed in violation of the above described submittal, review, and approval procedure is acknowledged by the Respondent to be void *ab initio* and Respondent shall risk termination at the City's option, but shall otherwise continue to be bound by the terms and conditions of this Agreement.

Use of Sub-contractors by the Respondent or subsidiary or affiliate firms of the Respondent for technical or professional services shall not be considered an assignment of a portion of this Agreement. However, the City reserves the right to approve in writing specific Sub-contractor's,

used or intended to be used, to fulfill any part of this contract pertaining to physical performance of any service.

Nothing herein shall be construed to give any rights or benefits to anyone other than the City and Respondent.

## XII. VENUE

If the City and Respondent do not arrive at resolution through agreed mediation to resolve any outstanding claims, counterclaims, disputes and other matters in question arising out of or relating to this Agreement, then resolution of same shall be decided by a court of competent jurisdiction in Bexar County in the State of Texas in which County venue shall lie and in which county this contract is performable.

## XIII. RECORDS RETENTION

All records, reports, and other documents generated by or pertaining to this contract must be retained by Respondent for a period of no less than four (4) years following termination date. For purposes of extended option terms, records retention requirements shall be honored and measured from four (4) years following the termination date of each respective annual performance period.

## XIV. SCHEDULE OF EVENTS

Following is a list of projected dates/times with respect to this RFP:

RFP Issue Date	September 12, 2009
Pre-Submittal Conference	September 23, 2009 10:00 A.M. Central Time
Final Questions Accepted	October 1, 2009 4:30 P.M. Central Time
Proposals Due	October 12, 2009 2:00 P.M. Central Time

**RFP ATTACHMENT A**  
**RESPONDENT QUESTIONNAIRE**

## RESPONDENT QUESTIONNAIRE

### Part A - GENERAL INFORMATION

1. **Respondent Information:** Provide the following information regarding the Respondent.  
(NOTE: Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. Sub-contractors are not Co-Respondents and should not be identified here. If this proposal includes Co-Respondents, provide the required information in this Item #1 for each Co-Respondent by copying and inserting an additional block(s) before Item #2.)

Respondent Name: \_\_\_\_\_  
(NOTE: Give exact legal name as it will appear on the contract, if awarded.)

Principal Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Social Security Number or Federal Employer Identification Number: \_\_\_\_\_

Texas Comptroller's Taxpayer Number, if applicable: \_\_\_\_\_  
(NOTE: This 11-digit number is sometimes referred to as the Comptroller's TIN or TID.)

Business Structure: Check the box that indicates the business structure of the Respondent.

- Individual or Sole Proprietorship If checked, list Assumed Name, if any: \_\_\_\_\_  
 Partnership  
 Corporation If checked, check one:  For-Profit  Nonprofit  
Also, check one:  Domestic  Foreign  
 Other If checked, list business structure: \_\_\_\_\_

Printed Name of Contract Signatory: \_\_\_\_\_

Job Title: \_\_\_\_\_

(NOTE: This RFP solicits proposals to provide services under a contract which has been identified as "High Profile". Therefore, Respondent must provide the name of person that will sign the contract for the Respondent, if awarded.)

2. **Contact Information:** List the one person who the City may contact concerning your proposal or setting dates for meetings.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Email: \_\_\_\_\_

3. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes  No

4. Is Respondent authorized and/or licensed to do business in Texas?

Yes  No  If "Yes", list authorizations/licenses.

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5. Where is the Respondent's corporate headquarters located? \_\_\_\_\_

6. **Local Operation:** Does the Respondent have an office located in San Antonio, Texas?

Yes  No  If "Yes", respond to a and b below:

a. How long has the Respondent conducted business from its San Antonio office?

Years \_\_\_\_\_ Months \_\_\_\_\_

b. State the number of full-time employees at the San Antonio office. \_\_

7. **County Operation:** If the Respondent does not have a San Antonio office, does the Respondent have an office located in Bexar County, Texas?

Yes  No  If "Yes", respond to a and b below:

a. How long has the Respondent conducted business from its Bexar County office?

Years \_\_\_\_\_ Months \_\_\_\_\_

b. State the number of full-time employees at the Bexar County office. \_\_\_\_\_

8. **Debarment/Suspension Information:** Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes  No  If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

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9. **Surety Information:** Has the Respondent ever had a bond or surety canceled or forfeited?

Yes  No  If "Yes", state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

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10. **Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes  No  If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

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11. Provide any other names under which Respondent has operated within the last 10 years.

**Part B - REFERENCES** - Respondent shall provide three (3) references, for whom Respondent has provided similar services, and should include a current phone number and e-mail address for each reference. Respondent shall not include City of San Antonio Solid Waste Management staff as references.

**Reference No. 1:**

Firm/Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_  
Email: \_\_\_\_\_

**Reference No. 2:**

Firm/Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_  
Email: \_\_\_\_\_

**Reference No. 3:**

Firm/Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_  
Email: \_\_\_\_\_

**Part C - EXPERIENCE, BACKGROUND, QUALIFICATIONS** - Prepare and submit narrative responses to address the following items. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

1. Background of Respondent and support personnel, including professional qualifications and length of time working in Respondent's capacity. Identify any additional skills, experiences, qualifications, and/or other relevant information about the Respondent's qualifications. Include résumés of key personnel that would be assigned to this contract as well as the percentage of time key personnel will devote to the project if awarded the contract.
2. Relevant experience of Respondent as it relates to the scope of services contemplated by the RFP (include specific information regarding Respondent's experience with any previous landfill gas to energy projects within the past five years, including the names, titles and telephone numbers of contact persons at the involved entities for which the work was performed). Describe Respondent's specific experience with public entities clients, especially large municipalities. If Respondent has provided services for the City in the past, identify the name of the project and the department for which Respondent provided those services.
3. Other resources, including total number of employees, number and location of offices, number and types of equipment available to support this project. Information on proposed sub-Respondents for this project with their experience and qualifications, identifying what tasks in the contract would be subcontracted;
4. Respondent shall submit a list of their corporate and individual experience in landfill gas to energy projects/program(s). The list shall show experience since 1988 and include the project title, year, and references (title, present address, and phone number of principal personnel for whom prior projects were accomplished). Respondent must complete and return an ethics disclosure form for the City of San Antonio as addressed below.
5. The closest technical service representative is available at the following location (City and State): \_\_\_\_\_, approximately \_\_\_\_\_ miles from San Antonio, Texas.  
TELEPHONE ( ) \_\_\_\_\_.
6. If Respondent has had experience in working as a member of a joint venture or team, describe that experience, including the type of project for which the joint venture or team was formed.
7. Has RESPONDENT's firm ever had a contract terminated or prematurely concluded due to alleged unsatisfactory performance or other unresolved dispute or conflict? If so, state when, where, why, client name, contact person and telephone number.

**Part D - PROPOSED PLAN** - Prepare and submit the following items.

1. **Employee Plan:** Provide a completed organizational chart which clearly shows the team/firm structure, key personnel and area(s) of responsibility, and reporting/workflow hierarchy. Describe the role of the Respondent and sub-consultants, if any. If utilized, identify the type and amount of work to be performed by sub-consultants. Describe personal to be located at the site, hours spent at the site and their duties, operations, etc.
2. **Technical/Operational Plan:** Describe work practices for the services described in this RFP. Describe any specialized equipment to be used in performance of these services, and unique problems perceived by Respondent, as well as proposed solutions to address these issues. A schedule of work should be provided including activities that shall include pre-contract execution testing and analyses, funding procurement, power purchase agreement executions, engineering plans (if any), construction plans, and expected sale of energy date.
3. **Financing and Energy Sales Plan:** Describe in general terms estimated cost of the capital improvements, how any capitol costs will be recovered, and the ability to remit lease and/or royalty payments to the City.
4. **Additional Information.** Provide any additional plans and/or relevant information about Respondent's approach to providing the required services.

**RFP ATTACHMENT B**

**DISCRETIONARY CONTRACTS DISCLOSURE FORM**

Discretionary Contracts Disclosure Form is posted as a separate document or may be Downloaded at <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.

Instructions for completing the Discretionary Contracts Disclosure form are listed below:

1. Download form and complete all fields.
2. Click on the "Print" button and place the copy in proposal response as indicated in the Proposal Checklist.
3. Click the "Submit" button. If the Respondent neglects to complete all required fields, incomplete areas will be highlighted in red. All fields must be completed prior to submitting the form.

**RFP ATTACHMENT C**  
**LITIGATION DISCLOSURE FORM**

### LITIGATION DISCLOSURE

Respond to each of the questions below by checking the appropriate box. Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Yes  No

2. Have you or any member of your Firm or Team to be assigned to this engagement been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Yes  No

3. Have you or any member of your Firm or Team to be assigned to this engagement been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Yes  No

If you have answered "Yes" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

**RFP ATTACHMENT D**

**SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM  
POLICY AND LIST OF SUBCONTRACTORS/SUPPLIERS FORM**

## SMALL BUSINESS PROGRAM

### 1. **Small Business Participation**

Pursuant to Ordinance No. 2007-04-12-0396, it is the policy of the City of San Antonio to involve Small, Minority, Women and African-American Owned Business Enterprises (S/M/W/AABE) to the greatest extent feasible in the City's discretionary contracts. The intent and purpose of the policy is to ensure that S/M/W/AABE firms have the opportunity to compete for City contracts without discrimination on the basis of race, color, religion, national origin, age, sex or handicap. To accomplish the objectives of the Small Business policy, the City has established specific goals for local S/M/W/AABE participation in this contract.

### 2. **DEFINITIONS** related to the Small Business Program Provisions:

- a. **Small Business Program:** the Small Business Economic Development Advocacy ("SBEDA") Program governed by this ordinance and managed by the SMALL BUSINESS Program Office.
- b. **Small Business Enterprises (SBE):** a corporation, partnership, sole proprietorship or other legal entity, for the purpose of making a profit, which is independently owned and operated and which meets the U.S. Small Business Administration (SBA) size standard for a small business. All firms meeting these thresholds will be considered an SBE.
- c. **Local Business Enterprise (LBE):** a corporation, partnership, sole proprietorship, or other legal entity which is headquartered within Bexar County for at least one year. For a branch office of a non-headquartered business to qualify as an LBE, the branch office must be located in Bexar County for at least one-year and employ a minimum of ten (10) residents of Bexar County for use at the local branch of fice.
- d. **Minority Business Enterprise (MBE):** a sole proprietorship, partnership, or corporation owned, operated, and controlled by a minority group member(s) who has at least 51% ownership. Minority group member(s) include African-Americans; Hispanic Americans; Asian-Pacific Americans; Asian-Indian Americans; American Indians; and Disabled Individuals. The minority group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an MBE, the enterprise shall be headquartered in Bexar County or the San Antonio Metropolitan Statistical Area (the SAMSA) for any length of time, or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the MBE's category of contracting for at least one year.
- e. **Woman Business Enterprise (WBE):** a sole proprietorship, partnership, or corporation owned, operated and controlled by women who have at least 51% ownership. The woman or women must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as a WBE, the enterprise shall be headquartered in Bexar County or the SAMSA for any length of time or shall be doing business in a locality or localities from which the City regularly solicits

or receives bids on or proposals for, City contracts within the WBE's category of contracting for at least one year.

- f. **African-American Business Enterprise (AABE)**: a sole proprietorship, partnership, or corporation owned, operated and controlled by an African-American group member(s) who has at least 51% ownership. The African American Group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an AABE, the enterprise shall be headquartered in Bexar County or the SAMSA for any length of time or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the AABE's category of contracting for at least on year.

3. **Goals for Small Business Participation**

The goals for the utilization and participation of SBE-MBE-WBE-AABE businesses on this contract are as follows:

**MBE 31%**  
**WBE 10%**  
**AABE 2.2%**  
**SBE 50%**

Please note that a small business could be classified in multiple categories and thus their utilization could in theory be counted in each category of goals. For example, **Prime Contractor X** submits a proposal, which specifies that they intend to subcontract with Subcontractor A for 10% of the contract. Subcontractor A is certified by the City as an SBE and MBE (a male-owned Hispanic Business owner can be certified as an SBE and MBE). **Prime Contractor X** also intends to subcontract with Subcontractor B for 13% of the contract. Subcontractor B is certified by the City as SBE, MBE and a WBE (a female-owned Hispanic Business owner can be certified as SBE, MBE and WBE). In addition, **Prime Contractor X** also intends to subcontract 10% of the contract to Subcontractor C—a City certified SBE, MBE and AABE (a male-owned African-American business owner can be certified as both a MBE and as an AABE Business). **Prime Contractor X** is also classified as a local SBE. **Prime Contractor X's** compliance with the Small Business goals under this scenario would be as follows:

	City's Small Business Goals	Prime Contractor X's Compliance
MBE	31%	33%
WBE	10%	13%
AABE	2.2%	10%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the Small Business policy.

Another example regarding compliance with the policy is as follows: **Prime Contractor Y** submits a proposal, which specifies that they intend to partner through a joint-venture agreement with Company D. Company D is certified by the City as both an SBE and MBE (a male-owned Hispanic Business—certified as an SBE and MBE). As part of their joint-

venture agreement, Company D will perform on 32.5% of the contract. **Prime Contractor Y** also intends to subcontract 13% of the contract with Subcontractor F. Subcontractor F is a City certified SBE/MBE/WBE and AABE business. **Prime Contractor Y** is also classified as a local SBE. **Prime Contractor Y** compliance with the Small Business goals would be as follows:

	City's Small Business Goals	Prime Contractor Y's Compliance
MBE	31%	45.5%
WBE	10%	13%
AABE	2.2%	13%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the Small Business policy.

**4. List of Subcontractors/Suppliers Required**

Proposals shall include a List of Subcontractors/Suppliers, which shall identify the particular SBEs, MBEs, WBEs and AABEs to be utilized in the performance of a contract awarded pursuant to this RFP.

**5. SBE-MBE-WBE-AABE Certification Required**

Only companies certified as SBE, MBE, WBE, or AABE through the South Central Texas Regional Certification Agency (SCTRCA), or as approved by the City of San Antonio Director of Economic Development, can be applied towards the contracting goals. Proof of certification must be submitted.

**6. Small Business Program Information**

Interested contractors/proposers are encouraged to contact the Small Business Outreach Office for information regarding the City's Small Business Program Policy in accordance with the City's Communication Policy outlined in the solicitation document. Please call (210) 207-3900 or FAX: (210) 207-3909.

## LIST OF SUBCONTRACTORS/SUPPLIERS

The Bidder/Proposer, \_\_\_\_, as part of the procedure for the submission of bid/proposals on a project known as Nelson Gardens Landfill Gas Beneficial Reuse Project 2009, submits the following list of subcontractors/suppliers for proposed subcontracting areas (use additional sheets if necessary) to be used in the performance of work to be done on said project.

NAME OF SUBCONTRACTOR/SUPPLIER	SBE-MBE-WBE-AABE CERTIFICATION NUMBER	PERCENT AND DOLLAR AMOUNT OF SUBCONTRACT

The following section is to be completed if the contract (Project) is for less than \$200,000. Please list subcontracting solicitations to all SBE-MBE-WBE-AABE contractors for participation on project. If none, explain (exclude successful bidders listed above). Use additional sheets if necessary. **The contractor is expected to solicit participation on subcontracts from available MBE-WBE-AABE-SBEs under this contract.**

NAME OF COMPANY PERFORMING WORK	SBE-MBE-WBE-AABE CERTIFICATION NUMBER	REASON FOR REJECTION

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a business is not certified, please call the Small Business Program Office at (210) 207-3900 for information and details on how subcontractors/suppliers may obtain certification.

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the submittal of the Request for Approval of Change to Affirmed List of Subcontractors/Suppliers).

### AFFIRMATION

*I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.*

NAME AND TITLE OF AUTHORIZED OFFICIAL: \_\_\_\_\_  
 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**RFP ATTACHMENT E**

**NOT REQUIRED**

**RFP ATTACHMENT F**  
**INSURANCE REQUIREMENTS**

If selected to provide the services described in this RFP, Respondent shall be required to comply with the insurance requirements set forth below:

**INSURANCE**

- A) Prior to the commencement of any work under this Agreement, Respondent shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City’s Solid Waste Management Department, which shall be clearly labeled “**Nelson Gardens Landfill Gas Beneficial Reuse Project 2009**” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Solid Waste Management Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.
  
- B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.
  
- C) A Respondent’s financial integrity is of interest to the City; therefore, subject to Respondent’s right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Respondent’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

e. Contractual Liability	
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles d. MCS-90 Endorsement	Combined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence
5. Pollution Legal Liability	\$1,000,000 per occurrence
6. Builders Risk	100% of replacement cost during construction or renovation period

D) Respondent agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

E) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Respondent shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

F) In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work hereunder, and/or withhold any payment(s) which become due to Respondent hereunder until Respondent demonstrates compliance with the requirements hereof.

- G) Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under this Agreement.
- H) It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- I) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.
- J) Respondent and any Subcontractors are responsible for all damage to their own equipment and/or property.

**RFP ATTACHMENT G**  
**INDEMNIFICATION REQUIREMENTS**

If selected to provide the services described in this RFP, Respondent shall be required to comply with the indemnification requirements set forth below:

### **INDEMNIFICATION**

**RESPONDENT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT'S activities under this Agreement, including any acts or omissions of RESPONDENT, any agent, officer, director, representative, employee, consultant or subcontractor of RESPONDENT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT RESPONDENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RESPONDENT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT known to RESPONDENT related to or arising out of RESPONDENT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at RESPONDENT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving RESPONDENT of any of its obligations under this paragraph.

**RFP ATTACHMENT H**  
**SIGNATURE PAGE**

## SIGNATURE PAGE

The undersigned certifies that (s)he is authorized to submit this Proposal on behalf of the entity named below:

\_\_\_\_\_  
Respondent Entity Name

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

(NOTE: If Proposal is submitted by Co-Respondents, an authorized signature from a representative of each Co-Respondent is required. Add additional signature blocks as required.)

\_\_\_\_\_  
Co-Respondent Entity Name

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By signature(s) above, Respondent(s) agrees to the following:

1. If awarded a contract in response to this RFP, Respondent will be able and willing to execute an integration agreement with the understanding that the scope and compensation provisions will be negotiated and included in the final document.
2. If Respondent is a corporation, Respondent will be required to provide a certified copy of the resolution evidencing authority to enter into the contract, if other than an officer will be signing the contract.
3. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with the insurance and indemnification requirements set out in RFP Attachment F & G.
4. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with all representations made by Respondent in Respondent's proposal and during Proposal process.
5. Respondent has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of proposal from consideration.
6. Respondent agrees to fully and truthfully submit a Respondent Questionnaire and understands that failure to fully disclose requested information may result in disqualification of proposal from consideration or termination of contract, once awarded.
7. To comply with the City's Ethics Code, particularly Section 2-61 that prohibits a person or entity seeking a City contract - or any other person acting on behalf of such a person or entity - from contacting City officials or their staff prior to the time such contract is posted as a City Council agenda item.

**Acknowledgement of Prohibition regarding Campaign and Officeholder Contributions**

I acknowledge that this contract has been designated a "high-profile" contract. I have read and understand the provisions regarding high profile contracts that appear on the cover page of this RFP.

**RFP ATTACHMENT I**  
**PROPOSAL CHECKLIST**

### PROPOSAL CHECKLIST

Use this checklist to ensure that all required documents have been included in the proposal and that they are properly tabbed and appear in the correct order.

Tab in Proposal	Document	Initial to Indicate Document is Attached to Proposal
	Table of Contents	
1.	Executive Summary	
2.	Respondent Questionnaire (RFP Attachment A )	
3.	* Discretionary Contracts Disclosure (RFP Attachment B)	
4.	Litigation Disclosure (RFP Attachment C )	
5.	* List of Subcontractors/Suppliers (RFP Attachment D) and associated Certificates)	
6.	Financial Information	
7.	Proof of Insurability <ul style="list-style-type: none"> <li>• Insurance Provider's Letter</li> <li>• Copy of Current Certificate of Insurance</li> </ul>	
8.	* Signature Page (RFP Attachment H)	
9.	*All Addendums issued (if any) for this RFP.	
10.	Proposal Checklist (RFP Attachment I)	
	One (1) Original, Nine (9) Copies, and <b>one (1) CD</b> of entire Proposal in PDF format.	

**\*Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of proposal.**



# CITY OF SAN ANTONIO

P.O. Box 839966  
SAN ANTONIO, TEXAS 78283-3966

## ADDENDUM I

**SUBJECT:** Nelson Gardens Landfill Gas Beneficial Reuse Project 2009 Request for Proposal, scheduled to open October 12, 2009, date of issue September 12, 2009.

**DATE:** September 30, 2009

### THE ABOVE MENTIONED REQUEST FOR PROPOSAL IS HEREBY AMENDED AS FOLLOWS:

1. Page 12, Section III, TERM OF CONTRACT, **Change Paragraph to Read:** The term of the agreement shall be for an initial period of ten (10) years, starting after the completion of the testing period, after City Council approval. The City shall have sole discretion to renew this Contract in all its terms and conditions for two (2) additional five (5) year terms, for as long thereafter as Landfill Gas is produced in Paying Marketable Quantities, if such authority is granted by the enabling Ordinance. In no event shall the agreement extend beyond the limitations set forth. By responding to this RFP, the successful Respondent so agrees. There is no guarantee to the selected Respondent that the City will exercise one or more options to continue this contract beyond the initial (ten) 10 year period. Any amendment or adjustment to the Contract's original terms shall require City Council action.

### PRE-SUBMITTAL CONFERENCE QUESTIONS AND RESPONSES

On September 23, 2009, the City of San Antonio hosted a Pre-Submittal Conference to provide information and clarification for the Nelson Gardens Landfill Gas Beneficial Reuse Project 2009 Request for Proposal for the City of San Antonio. Below are a list of questions that were asked during the conference, and the Small Business Economic Development Advocacy (SBEDA) presentation. The City's official response to questions asked is as follows:

- Question 1:** Can we get a copy of the attendance sign in sheet?  
**Response:** Potential Respondents may contact the Economic Development Department Small Business Division at 210-207-3900 for further assistance. Refer to RFP, Section VIII, Restrictions on Communication, for contact information.
- Question 2:** Is there currently a flare system? How much gas flow is going to it?  
**Response:** There is currently a flare system at the Nelson Gardens Landfill. It was designed by Flare Industries. The amount of gas flow is unknown.
- Question 3:** How many wells are out there?  
**Response:** There are approximately 140 gas extracting wells and 9 perimeter gas probes at the Nelson Gardens Landfill.
- Question 4:** Did the city respond to CPS Energy's Request for Proposal for Renewable Energy Project?

Response: The City did not respond to the Request for Proposal issued by CPS.

Question 5: What is the power rate respondent would get from CPS?  
Response: The selected respondent would negotiate the rate with CPS Energy directly.

Question 6: Has there been a gas analysis to see what H2S is?  
Response: There was some analysis conducted by Ecogas as part of a preliminary investigation and no H2S was detected in the results.

Question 7: Has a gas generation model been done on the site?  
Response: The City has no data regarding a gas generation model for the Nelson Gardens Landfill.

Question 8: When did the City take over the well field?  
Response: The well field was transferred from Synchro Energy to City of San Antonio in February 2008.

Question 9: Who is currently operating it?  
Response: The City of San Antonio Solid Waste Management Department currently operates the well field and flare system.

Question 10: Is there any gas migration?  
Response: Gas is detected in the perimeter probes on occasion. This typically happens when the flare system is not operational due to maintenance or repairs.

Question 11: Can we get a set of as-builts for the system?  
Response: There are no as-builts available from the City for the gas collection system located at Nelson Gardens Landfill.

Question 12: Do you have a contractor on site?  
Response: The City does not have a contractor on site. The City uses in-house staff as well as two (2) on-call landfill consultants as needed.

Question 13: Who are the consultants?  
Response: The City currently has contracts with Hartnett Engineered Solutions, Inc. and Raba-Kistner Consultants, Inc.

Question 14: The proposals are due Monday, October 12, 2009, is this a City holiday?  
Response: This is not a City Holiday. The proposals are due on date indicated no later than 2:00 PM

Question 15: How many migration issues have you had in the past and have they occurred for an extended amount of time?  
Response: Gas is detected in the perimeter probes on occasion. This typically happens when the flare system is not operational due to maintenance or repairs.

Question 16: Page 8, Item 6, Lease and Sale of Energy, Who keeps the carbon or renewable energy credits?  
Response: The City has no interest for carbon or renewable energy credits. The City is more interested in seeing the successful development of a beneficial reuse program.

Question 17: What is the purpose of this RFP?  
Response: The purpose of this RFP is to develop a successful beneficial reuse program for the Nelson Gardens Landfill.

Question 18: Do you have groundwater issues?  
Response: There are no groundwater issues.

Question 19: Are there any major Volatile Organic Compounds (VOC's)?

Response: There are no Volatile Organic Compounds (VOC's).

Question 20: Is the contract term negotiable?

Response: The contract term is not negotiable. Please see Addendum I, Item 1, for amended contract term.

Question 21: Is the 240 day testing period a part of the 5-year term of the contract?

Response: The 240 days is only a testing period for the selected respondent to gather all required information in order to convince the City that a viable project can be achieved. After the 240 day testing period if a viable project can be achieved a contract will be executed with the respondent and the ten (10) year term will commence. Please see Addendum I, Item 1, for amended contract term.

Question 22: If there is a renewable energy project, is the term only for 5 years?

Response: Please see Addendum I, Item 1, for amended contract term.

Question 23: Is the site a New Source Performance Standard (NSPS) site?

Response: No. The Nelson Gardens Landfill is not considered an NSPS site.

Question 24: RFP Section I, Background, 5<sup>th</sup> paragraph... "During the term of this agreement, the Respondent shall upgrade and maintain the existing landfill gas collection system, collect gas from the Landfill, ensure no gas migration occurs from the Landfill to adjacent properties, resolve and rectify any environmental and/or regulatory issues related to landfill gas migration and sell the energy produced from the landfill gas." Does the respondent have to resolve and rectify environmental issues?

Response: The respondent will be responsible for any regulatory issues related to gas migration, since ownership of the gas collection system will be turned over to the selected firm. The respondent shall be responsible for environmental issues, including permitting associated with operating a beneficial reuse plant.

Question 25: Section II, Scope of Services, Item 2, Pre-Contract Execution Testing and Project Development, 3<sup>rd</sup> paragraph... "A small storage tank used for the collection of condensate and leachate is located at the Landfill. This tank is piped into the Sanitary Sewer and may be used for the disposal of liquid waste obtained during the testing process. Any waste unearthed during this process must be disposed of properly by the Respondent at a Type I Municipal Solid Waste Landfill." Is the Respondent responsible for the disposal of the waste?

Response: The respondent is responsible to properly manage all waste encountered through the testing or development process.

Question 26: Section II, Scope of Services, Item 4 Construction... "The respondent shall complete and finish out the remnants of the existing metal building with bathrooms, interior walls, flooring, ceiling, and appropriate air conditioning and heat." Who will use the completed building?

Response: The City will be utilizing the completed building.

Question 27: Section II, Scope of Services, Item 5 Operations, Is the Respondent responsible for site security?

Response: The respondent will be responsible for site security.

Question 28: What did Ecogas and Synchron do at the site? Were they doing an electrical project?

Response: In 1997 Ecogas developed the extraction wells and flare station for a high BTU plant, and eventually withdrew from the project without completion. Around 2005, Synchron Energy worked on developing an electrical generation facility.

Question 29: What is the distance to the nearest CPS substation?

Response: The City does not know the distance to the nearest CPS Energy substation.

Question 30: Can site visits be scheduled?

Response: The City will allow site visits by appointment up until Friday 3:00 P.M. CST, October 2, 2009 by calling Efrain Villanueva at (210) 275-2705. As a reminder, the Restrictions on Communication are in effect.

**QUESTIONS SUBMITTED IN ACCORDANCE WITH SECTION IV, PRE-SUBMITTAL CONFERENCE:**

Question 1: Is any information available regarding the amount of landfill gas currently being collected from the landfill or the amount of landfill gas that was collected from the landfill at any point in time in the past?

Response: The City has provided all known and available information with this RFP. Additional information is unknown

Question 2: What is the current rate of gas produced at the site, e.g. current gas flow from all wells taken together?

Response: The current rate of gas produced is unknown.

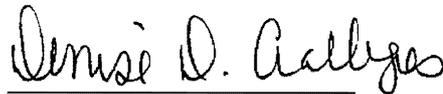
Question 3: What is the historical rate of gas produced at the site, e.g. annual production of gas since collection began?

Response: The City does not have any historical data related to the rate of gas produced.

Question 4: What is the current fuel value of the gas produced, e.g. BTU per standard cubic foot?

Response: Currently, the percentage of methane at the flare is approximately 31.2%, which is about 317.7 BTUs per cubic foot.

**\*\*THIS ADDENDUM MUST BE SIGNED AND RETURNED WITH THE PROPOSAL PACKAGE\*\***



Denise D. Gallegos, CPPB  
Purchasing & Contracts Administrator  
Purchasing & General Services Department

Date \_\_\_\_\_

Company Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip Code \_\_\_\_\_

Signature \_\_\_\_\_