

## INVITATION TO BID

CITY OF RIVERVIEW, MICHIGAN

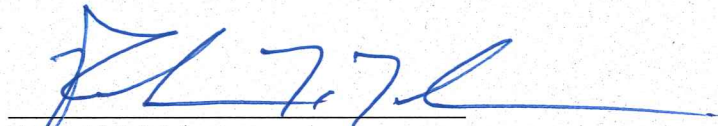
Sealed proposals will be received by the City Clerk, 14100 Civic Park Drive, Riverview, Michigan until 2:00 PM Eastern Standard Time, Thursday, March 15, 2018 at which time and place the proposals (except confidential portions thereof) will be publicly opened and read aloud for:

DEVELOPMENT OF A LANDFILL GAS TO RNG PROJECT AT THE CITY OF RIVERVIEW LANDFILL.

BID #RFP330

The Request for Proposal is available online with the Michigan Inter-governmental Trade Network at [www.mitn.info](http://www.mitn.info) and on the City Web site at [www.cityofriverview.com](http://www.cityofriverview.com). All bids must be plainly marked on the envelope, "BID #RFP330.

The City of Riverview reserves the right to reject any or all bids and waive defects in bidding in the best interest of the City.



Robert McMahon  
Finance Director/Purchasing Agent

## MUTUAL NON-DISCLOSURE AGREEMENT

This MUTUAL NON-DISCLOSURE AGREEMENT (this "Agreement"), effective as of signing (the "Effective Date"), is made by and between PROPOSER, and the City of Riverview, Michigan (CITY). In consideration of the mutual agreements and other provisions of this Agreement, the parties hereto agree as follows:

### 1. Scope of Confidential Information; Definitions.

1.1 "Confidential Information" means, subject to the exceptions set forth in Section 1.2, any reports, information or data, regardless of whether it is in tangible form, that is disclosed or otherwise made available by a party hereto or any of its Affiliates, officers, directors, Manager, employees, advisors or representatives ("Disclosing Party") to the other party hereto or any of its Affiliates, officers, directors, employees, advisors or representatives ("Receiving Party") and that (a) Disclosing Party has marked or identified as confidential, exempt or proprietary, or (b) Disclosing Party identifies as confidential, exempt or proprietary in writing within thirty (30) days of disclosure to Receiving Party; provided, however, that reports, data and/or information related to or regarding Disclosing Party's business plans, business methodologies, financial condition, profit, revenue, expenditures, creditworthiness, projections, drafts of and comments to agreements exchanged between the parties, strategies, technology, specifications, gas volume, development plans, customers, prospective customers, partners, suppliers, billing records and products or services shall be deemed Confidential Information of Disclosing Party even if not so marked or identified, unless such information is the subject of any of the exceptions set forth in Section 1.2.

1.2 "Confidential Information" shall not include any information that: (a) is or becomes available to the public (other than as a result of disclosure by Receiving Party prohibited by this Agreement); (b) is made available to Receiving Party by a third party who is lawfully in possession of such information, and who is not in violation of any confidentiality obligation in favor of Disclosing Party; or (c) Receiving Party can show by written record was available to or in possession of Receiving Party (free of any confidentiality obligation in favor of Disclosing Party known to Receiving Party at the time of disclosure or availability) prior to disclosure of such information by Disclosing Party to Receiving Party, provided that the Receiving Party must promptly notify the Disclosing Party of any prior knowledge in the manner provided in Section 2.4.

### 2. Use and Disclosure of Confidential Information.

2.1 Receiving Party shall only use the Confidential Information internally solely for the purpose of proposing on or assessing the proposal (the "Permitted Purpose"). Receiving Party must keep secret and shall never, without the prior written consent of Disclosing Party, directly or indirectly, disclose, publish, divulge, furnish or make accessible to anyone all or any portion of the Confidential Information, other than furnishing such Confidential Information to (a) Receiving Party's employees and consultants, and the employees and consultants of Receiving Party's Affiliates, who are required to have access to such Confidential Information in connection with the Permitted Purpose, and (b) Receiving Party's professional advisers (e.g., lawyers and accountants), in

each case, during the time that Receiving Party is permitted to retain such Confidential Information hereunder; provided that any and all such employees and consultants are bound by written agreements or, in the case of professional advisers, ethical duties, respecting the Confidential Information in the manner set forth in this Agreement.

2.2 Receiving Party shall use at least reasonable care and adequate measures to protect the confidentiality of the Confidential Information of Disclosing Party and to ensure that any Confidential Information of Disclosing Party is not disclosed or otherwise made available to other persons or used in violation of this Agreement. Without limiting any of the foregoing, such measures shall be at least the equivalent of measures which Receiving Party uses to protect Receiving Party's own most valuable proprietary information.

2.3 In the event that Receiving Party is required by law to make any disclosure of any of the Confidential Information of Disclosing Party, by subpoena, judicial or administrative order or otherwise, Receiving Party shall first give written notice of such requirement to Disclosing Party, and shall permit Disclosing Party to intervene in any relevant proceedings to protect its interests in the Confidential Information, and provide full cooperation and assistance to Disclosing Party in seeking to obtain such protection.

2.4 Receiving Party agrees to notify Disclosing Party promptly in writing if (a) Receiving Party becomes aware of any breach of this Agreement with respect to the Confidential Information of Disclosing Party in Receiving Party's possession; (b) subsequent to disclosure of any Confidential Information by Disclosing Party, information is disclosed to Receiving Party in the manner described in Section 1.22; or (c) to the extent that the Receiving Party can make such notification without violating any confidentiality agreement by which Receiving Party is bound, upon disclosure of Confidential Information by Disclosing Party, Receiving Party has prior knowledge of the same.

2.5 Without the prior written consent of Disclosing Party, Receiving Party shall not embody any of the Confidential Information of Disclosing Party in any of Receiving Party's products, processes or services, or duplicate or exploit any of such Confidential Information in Receiving Party's business, or otherwise use any of the Confidential Information for any purpose other than for the Permitted Purpose.

2.6 Each party hereto shall be responsible for the performance of each of its Affiliates hereunder, and each party hereto and its Affiliates shall be in direct privity hereunder with the other party hereto and its Affiliates.

### 3. Certain Rights and Limitations.

3.1 All Confidential Information shall remain the property of Disclosing Party. The provision of Confidential Information hereunder shall not transfer any right, title or interest in such information to Receiving Party. Disclosing Party does not grant Receiving Party any express or implied right to or under Disclosing Party's or another party's patents, copyrights, trademarks, trade secret information or other proprietary rights.

3.2 Receiving Party shall not shall not remove, overprint or deface any notice of confidentiality, copyright, trademark, logo, legend or other notices of ownership or confidentiality from any originals or copies of Confidential Information it obtains from Disclosing Party.

3.3 This Agreement imposes no obligations on either party hereto or its Affiliates to exchange any Confidential Information.

3.4 All tangible embodiments of the Confidential Information of Disclosing Party (e.g., drawings, memoranda and notes) and all copies thereof, whether in hard-copy or machine-readable form and whether supplied by Disclosing Party or made by or for Receiving Party (collectively, the "Tangible Embodiments"), shall at all times be and remain the exclusive property of Disclosing Party.

3.5 Receiving Party will provide upon Disclosing Party's request a written and signed certification that access and use is being controlled in accordance with this Agreement.

3.6 **FOIA.** Proposer recognizes that the City is a public body subject to the Michigan Freedom of Information Act, MCL 15.243(1) and that pursuant to MCL 15.243(1)(f) the parties agree that proposer's trade secrets, commercial and/or financial information are voluntarily provided to the City for use in developing governmental policy in connection with land preserve operations. The parties further agree that the information is: 1) submitted upon a promise of confidentiality by the City, 2) that the instant promise of confidentiality is authorized by the chief administrative officer of the City at the time the promise is made; and 3) a description of the information will be recorded by the City within a reasonable time after it has been submitted, maintained in a central place within the City, and made available as provided by law.

3.7 The Parties further recognize that Confidential Information provided by the City is exempt from FOIA pursuant to, *inter alia*, MCL 15.243(1)(m) because it consists of communications and notes within the City of an advisory nature concerning land preserve operational conditions, data and criteria, to the extent that they cover other than purely factual materials, and are preliminary to a final determination by the City in connection with its land preserve policies or actions regarding responses to said operational conditions, data and criteria. The parties agree that the public interest in encouraging frank communication between officials and employees of the City regarding land preserve policy and actions especially in connection with

land preserve gas and volume data, revenue, pricing and other proprietary and confidential data, documents and information, clearly outweigh the public interest in disclosure.

4. **Remedies.** Receiving Party acknowledges that a breach by it of any of the terms of this Agreement would cause irreparable harm to Disclosing Party for which Disclosing Party could not be adequately compensated by money damages. Accordingly, Receiving Party agrees that, in addition to all other remedies available to Disclosing Party in an action at law, in the event of any breach or threatened breach by Receiving Party of the terms of this Agreement, Disclosing Party shall, without the necessity of proving actual damages or posting any bond or other security, be entitled to temporary and permanent injunctive relief, including, but not limited to, specific performance of the terms of this Agreement and the right to seek recovery of money damages.

### 5. Termination.

5.1 This Agreement is effective commencing on the Effective Date and shall remain in effect until it is terminated by either party with thirty (30) days prior written notice or following the expiration of five (5) years from and after the day and year herein first set forth. The terms and conditions of this Agreement shall survive any such termination with respect to Confidential Information that is disclosed prior to the effective date of termination. In addition, Section 4 shall survive any such termination for a period of 1 year.

5.2 Upon the earlier of (a) the termination of this Agreement, (b) Disclosing Party's written request or (c) such time as Receiving Party no longer requires the Confidential Information for the Permitted Purpose, Receiving Party agrees to promptly return to Disclosing Party or destroy all Confidential Information and any and all Tangible Embodiments that are in the possession of Receiving Party and to certify the return or destruction of all such Confidential Information and embodiments. Notwithstanding the foregoing, (i) Receiving Party may retain a copy of any Confidential Information or Tangible Embodiments to the extent that such retention is required to comply with applicable law or to comply with a bona fide document retention policy of Receiving Party, provided that any such information so retained shall be held confidential pursuant to the terms of this Agreement and (ii) notwithstanding clause (i) above, Receiving Party shall return or destroy any Confidential Information or Tangible Embodiments that Disclosing Party requests in writing to be returned to Disclosing Party or destroyed.

6. **Warranty.** NO WARRANTY IS MADE BY EITHER PARTY UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS."

7. **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan governing such agreements, without regard to conflicts-of-law principles. The sole and exclusive jurisdiction and venue for any litigation arising out of this Agreement shall be state courts sitting in Wayne County, MI, or the federal courts in Wayne County, MI, and the parties agree not to raise, and waive, any objections or

defenses based upon venue or *forum non conveniens* with respect to such courts.

**8. Miscellaneous.** This Agreement does not create any agency or partnership relationship between the parties hereto. This Agreement contains the complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings whether written or oral, express or implied. Except where expressly indicated otherwise, the words "written" or "in writing" shall include, but not be limited to, written or printed documents, in any format now known or later developed including electronic and facsimile transmissions and computer disks or tapes (whether machine or user readable). If any provision of this Agreement is held invalid, illegal or unenforceable by a

court of competent jurisdiction, such shall not affect any other provision of this Agreement, which shall remain in full force and effect. No amendment or alteration of the terms of this Agreement shall be effective unless made in writing and executed by both parties hereto. A failure or delay in exercising any right in respect to this Agreement shall not be presumed to operate as a waiver, and a single or partial exercise of any right shall not be presumed to preclude any subsequent or further exercise of that right or the exercise of any other right. Any modification or waiver of any provision of this Agreement shall not be effective unless made in writing. Any such waiver shall be effective only in the specific instance and for the purpose given. This Agreement shall be binding upon the parties and upon their respective legal representatives, employees, agents, successors and assigns.

[Remainder of Page Intentionally Blank]

**IN WITNESS WHEREOF**, the parties have caused this Mutual Non-Disclosure Agreement to be executed below by their duly authorized signatories.

By PROPOSER: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed by PROPOSER: \_\_\_\_\_

Address for notices:  
Street: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip: \_\_\_\_\_  
Attention: \_\_\_\_\_  
email: \_\_\_\_\_

By CITY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for notices:  
Street: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
ZIP: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_