

## LEASE

THIS AGREEMENT is made as of the 10<sup>th</sup> day of August , 2005 by and between the Town of Colonie, P.O. Box 508, Memorial Town Hall, Newtonville, N.Y, 12128 (the "Lessor") and **INNOVATIVE ENERGY SYSTEMS, INC.**, a New York corporation with an office at 2917 Judge Road, Oakfield, New York 14125 (the "Lessee").

### WITNESSETH:

WHEREAS, the Lessor is the owner of certain property situate in the Town of Colonie, County of Albany and State of New York, and more particularly described in the attached "Schedule A" (the "Leased Premises"); and

WHEREAS, immediately adjacent to the Leased Premises the Lessor owns and operates a landfill (the "Landfill") which generates methane gas; and

WHEREAS, Lessor has sold such methane gas to Lessee and Lessee intends to use the methane gas from the Landfill to power an electrical generation facility, which Lessee will build on the Leased Premises, all as more hereinafter particularly described.

NOW, THEREFORE, in consideration of the Premises, the sum of \$1.00 in hand paid by the Lessee to the Lessor and other good and valuable consideration including that contained in a separate agreement between the parties entitled gas assignment agreement, receipt and sufficiency of which is hereby acknowledged, the Lessor and Lessee hereby agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the respective meaning set forth below:

(a) Governmental Agencies. "Governmental Agencies" shall mean all federal, state, local and municipal agencies, authorities or individual officers or representatives thereof having jurisdiction or legal authority over or with respect to the Landfill or with respect to the generation of electrical power either from methane gas recovered from the Landfill or generated from alternative fuel sources or to the sale of any such electricity;

(b) Hazardous Materials. "Hazardous Materials" shall include those materials or substances currently defined or that are hereinafter promulgated as "hazardous substances", "hazardous materials," "hazardous wastes" or "toxic substances" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and as amended (42 U.S.C. §9601 et seq.), the Resource Conservation Recovery Act, as amended (42 U.S.C. §6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), Articles 27, 37 or 40 of the New York Environmental Conservation Law, or regulations promulgated pursuant thereto, or pursuant to any other applicable laws, rules or regulations ;

(c) Landfill. "Landfill" shall mean the Town's active and inactive Sanitary Landfill located at 1319 New Loudon Road, Albany County, Town of Colonie, New York State and shall include the leachate collection system, the pipelines for extraction and collection of the LFG, blowers, the Flare(s), the leachate storage lagoons and leachate pumping station/force main, yard waste composting, waste transfer station, residential refuse and recycling drop off station, materials recycling facility, light maintenance facility, weigh scale facility, stormwater management facilities, wetlands

mitigation facilities and any other support facilities and equipment presently existing or later constructed by the Town at the site to allow for the acceptance of non-hazardous solid wastes in accordance with the 6NYCRR Part 360 Solid Waste Management Facility Permit issued for these facilities.

- (d) Generation Operations. "Generation Operations" shall mean all generation, work and other operations related to the generation of electricity at the Leased Premises either through methane gas recovered from the Landfill or from alternate fuel sources and all work and operations related to the processing, production, transportation and sale of any such electricity and the installation of buildings, facilities and equipment at the Leased Premises and Landfill incident to such purposes.

2. Basic Lease. The Lessor does hereby lease the Leased Premises to the Lessee for the Generation Operations and all uses incident thereto including, but not limited to, (i) the fulfillment of the Lessee's obligation under a Gas Assignment Agreement (the "Gas Assignment Agreement") of even date herewith by and between the Lessor and the Lessee and (ii) the Lessee and Lessor agree to undertake further discussion in regard to the possible development of and the possible future construction and operation on the Leased Premises of greenhouses which grow vegetables, fruits, plants, etc. which utilizes the waste heat created from the Generation Operations in their operation. Lessee and Lessor agree to undertake discussions about any other such uses for the waste heat generated from the project as well.

(a) In addition to the foregoing, and subject to duly authorized prior written approval of Lessor, which shall not be unreasonably withheld or delayed, Lessor hereby gives to Lessee a non-exclusive right to:

(i) enter upon and use the Leased Premises for the Generation Operations and for all lawful purposes incident to performing its obligations thereunder and under the Gas Assignment Agreement except that in no way shall Lessee's activities interfere with Lessor's current or future operation of the Landfill;

(ii) use the surface of the Leased Premises for all lawful purposes incident to the Generation Operations, with the right of ingress and egress to and from the Landfill at all reasonable times for such purposes, including the right to construct, maintain and use such roads and improvements and such pipelines as may be necessary for the Generation Operations except that in no way shall Lessee's activities interfere with Lessor's current or future operation of the Landfill; as approved by Lessor.

(iii) construct and maintain such buildings, facilities and equipment on the Leased Premises as may be reasonably necessary for the Generation Operations, including installation of all utility lines, pipes, conduits, and the like to service the Leased Premises, except that in no way shall Lessee's activities interfere with Lessor's current or future operation of the Landfill. Lessor agrees that Lessee may exercise the rights granted to Lessee under 2(a) (i), and (ii) above without Lessor's prior written approval in the event of an emergency or as part of the normal day-to-day operations of the Generation Operations provided, however, that Lessee must notify Lessor as soon as practicable of any construction, or installation of utility lines, pipes or conduits resulting from emergency situations.

(b) Prior to Lessee commencing construction of any buildings or other improvements upon the Leased Premises, Lessee shall (i) obtain any and all municipal permits, consents and/or approvals for the proposed construction, (ii) submit to Lessor for review and prior approval all final building and site plans. Lessor shall have one (1) month in which to advise the Lessee of its comments with respect to such building and site plan.

(c) Lessee shall not cause any mechanics or other lien to be filed against the Leased Premises or the Landfill by reason of work, labor services or materials performed at Lessee's request or to anyone holding the Leased Premises and/or the Landfill through or under the Lessee. If any such mechanic's lien shall at any time be filed against the Leased Premises and/or the Landfill, Lessee shall forthwith cause the same to discharge of record by payment, bond, and order of a court of competent jurisdiction or otherwise. If the Lessee shall fail to cause such lien to be discharged within 30 days after being notified of the filing thereof and before judgment or sale thereunder, then in addition to any other right or remedy of the Lessor, the Lessor may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by posting a bond in the amount due, and the amount so paid by the Lessor and/or all actual costs and expenses, including reasonable attorney's fees incurred by the Lessor in procuring the discharge of such lien, shall be deemed to be additional rent for the Leased Premises and shall be due and payable by the Lessee to the Lessor on the first day of the next following month. It is acknowledged between Lessor and Lessee that the Lessee's failure to remove or bond any such lien within sixty (60) days after notice of filing thereof, shall in and of itself constitute damage to the Lessor in the amount of said lien and any expenses incurred to remove the same, including reasonable attorney's fees. Any bond issued pursuant to this paragraph shall be issued by a recognized insurance company or surety company authorized to do business in the State of New York. Nothing in this Lease shall be

construed as consent on the part of Lessor to subject the Lessor's estate in the Leased Premises and/or the Landfill to any lien or liability under the mechanics lien law or other law of the State of New York.

(d) Except as otherwise set forth in this Lease, Lessee assumes the sole responsibility for the operation and maintenance of the Leased Premises. Lessor shall have no responsibility with respect thereto and shall have no liability for damage to the property of Lessee or any tenant, subcontractors, or occupant of the Leased Premises or any portion thereof on any account or for any reason whatsoever, except as caused by the acts or omissions of the Lessor, its agents, employees or invitees.

Lessee shall take good care of the Leased Premises at its expense and make as and when needed all necessary repairs to the improvements located thereon. Lessee shall also maintain in a condition suitable for the operation of its business the exterior of any building or improvements constructed by Lessee upon the Leased Premises.

(e) Lessee shall not sublease any portion of the Leased Premises, except upon duly authorized prior written approval of Lessor.

3. Access. The Lessor hereby grants unto the Lessee, its agents and invitees, the easement described in Schedule "B" attached hereto for purposes of ingress and egress to the Leased Premises and the Landfill.

4. Term. Except as otherwise expressly provided for herein, this Lease shall be for a term coterminous with the term of the Gas Assignment Agreement.

5. Protection of Landfill. The Lessee agrees that the terms of this Lease (including, without limitation, Section 2 hereof) are subject to the condition that the Lessee shall not engage in any activities that impair the effectiveness of the cap that presently or in the future covers the Landfill or violate any condition of any applicable permit or cause any materials contained in the Landfill to leak on to property adjoining the Landfill, or otherwise impair any of Lessor's obligations under any governmental or administrative permits for the Landfill. Notwithstanding anything herein to the contrary, the Lessor acknowledges that the Lessee shall have no obligations with respect to any Environmental conditions existing on the Leased Premises or for the removal or remediation thereof. Lessee shall be responsible, however, for any Environmental removal or remediation necessary solely as a result of its activities on the Leased Premises.

6. Insurance. At all times during the term hereof, the Lessee agrees to maintain comprehensive general liability insurance, with no exclusion for XCU, and on an all-risk basis with respect to its obligations under this Lease and the Gas Assignment Agreement in amounts the same as those required under the Gas Assignment Agreement. Lessor shall be named as an additional insured on all of the above described policies. Lessee shall also provide Lessee with proof of Worker's Comp. coverage. Prior to the commencement of the term of this Lease and thereafter within five (5) days of request from Lessor, Lessee will deliver proof of coverage for the above-described policies.

7. Compliance with Laws. Lessee agrees that, in connection with this Lease and its use of the Leased Premises, Lessee shall (a) comply with all applicable federal, state, local and municipal laws, regulations, ordinances and rules and with all directives and orders of all Governmental Agencies having jurisdiction with respect to their operations and (b) obtain all approvals, consents and waivers from Governmental Agencies required by law and/or necessary for

said operations. Notwithstanding the foregoing, Lessor acknowledges that the Lessee shall have no liability for compliance with any Environmental laws, rules, regulations, and orders or with respect to any removal or remediation required thereunder, except Lessee's only environmental obligation will be to remove or remediate any Environmental damage caused solely by it and required by law to be remediated.

8. Rents/Consideration. Lessor grants this Lease to Lessee in consideration of Lessee's conduct of the Generation Operations on the Leased Premises and the Gas Assignment Agreement. Lessee shall pay as additional rent all increases in taxes and assessments over those of the base year of ~~2004~~<sup>2005</sup> for local, district and special district improvements that may be assessed against or become a lien upon the Leased Premises or any part thereof by virtue of any present or future law or regulation of a governmental authority ("Impositions"). Lessee shall pay all interest and penalties imposed on a late payment of any Impositions caused by Lessee's late payment of the same. If Lessee shall fail to pay within ten (10) days after written notice and demand by Lessor to Lessee to pay any Impositions on or before the last day upon which the same may be paid without interest or penalty, then Lessor may pay the same with all interest and penalties lawfully imposed upon the late payment thereof, and the amount so paid by Lessor shall thereupon be additional rent due and payable by Lessee to Lessor with the next monthly rental payment.

Lessee shall also pay all utility charges for water, gas, fuel oil and electricity consumed on the Leased Premises or otherwise used in connection with the Generation Operations or this Lease.

Lessee shall pay as additional rent 100% of any and all sums expended by Lessor to cure or fulfill or perform any obligation of Lessee under this Lease including but not limited to reasonable attorneys' fees.

9. Memorandum of Lease. Lessor and Lessee agree that simultaneously with the



execution of this Lease, a memorandum of this Lease shall be executed in proper form for recording and, at the option of Lessee, shall be recorded in the Clerk's Office of the County in which the Leased Premises are located. Such Lease memorandum shall contain such provisions and information as may be reasonably agreed upon between Lessor and Lessee but shall not contain a rental provision.

10. Maintenance and Repair. Unless otherwise specifically set forth in the Gas Assignment Agreement, Lessee shall also be responsible for the repair and maintenance of all equipment, facilities and improvements on the Leased Premises and for the maintenance and repair of the Generation Operations.

11. Warranties and Representations.

(a) Lessor warrants and represents to Lessee that it has not received any notice that the Leased Premises is currently in violation of any Environmental laws, rules, regulations, or orders having application to the Leased Premises. Lessor agrees to indemnify Lessee from any liability, cost, loss, expense or claims, including attorney's fees, incurred by Lessee or the Leased Premises as a result of any misrepresentation with respect to the foregoing warranty and representation.

*M.E. B(b)* Lessor warrants and represents that it has good and clear title to the Leased Premises, ~~subject only to the liens and encumbrances set forth on the attached Schedule "C"~~. Lessor has full lawful authority to execute this Lease Agreement and the execution of this Lease Agreement has been authorized by the Town Board of Lessor and is not in contravention of its rules, regulations or by-laws applicable to Lessor.

(c) Lessee warrants and represents to Lessor that Lessee is a duly formed

corporation in good standing and authorized to do business in the State of New York and will remain so during the term hereof and that it has been in all respects duly authorized by all necessary company and/or member action and approval necessary for it to enter into, perform and guarantee the terms and conditions of this Lease.

(d) Lessee, in its use of the Leased Premises, shall comply with all federal, state and local rules, laws, statutes, ordinances and orders regulating the Environment, which affect the use and occupation of the Leased Premises and the Generation Operations. Furthermore, Lessee agrees that no Hazardous Materials shall be stored and/or used on the Leased Premises.

"Environment" means all air, water, or water vapor, including surface water and ground water, any land, including land surface or subsurface, and includes all fish, wildlife, biota and all other natural resources. Lessee shall only be responsible for compliance with Environmental laws that are related to its use and occupation of the Leased Premises and under no circumstances shall the Lessee be responsible for compliance with any Environmental laws or for conducting any investigatory, removal or remediation actions (as those terms are defined in CERCLA), which results from activities not caused by the Lessee. Lessee shall not be responsible to abate any nuisance or cure any trespass, which may result from the actions or omissions of parties or entities other than Lessee.

12. Lessee's Performance of Lessor's Obligations. In the event Lessor shall fail to discharge any duties and obligations hereunder imposed upon Lessor, Lessee shall after giving Lessor written notice of at least thirty (30) days have the right, but not the obligation, to perform such duties or obligations and in such event, Lessee and its agents shall be entitled to 100% reimbursement from Lessor within thirty (30) days of Lessor's receipt of paid invoices of the total cost and expenses including reasonable attorneys' fees incurred by Lessee with respect thereto. The

thirty (30) day notice requirement is hereby waived in circumstances wherein the sooner performance of Lessor's obligations by Lessee is necessary for the continued efficient operation of the Generation Operations. In such event, Lessee shall give Lessor as much notice as is practical under the circumstances.

13. Lessor's Performance of Lessee's Obligations. In the event Lessee shall fail to discharge any duties and obligations hereunder imposed upon Lessee, Lessor shall after giving Lessee written notice of at least thirty (30) days have the right, but not the obligation, to perform such duties or obligations and in such event, Lessor and its agents shall be entitled to 100% reimbursement from Lessee within thirty (30) days of Lessee's receipt of paid invoices of the total cost and expenses including reasonable attorneys' fees incurred by Lessor with respect thereto.

14. Certifications, Estoppel Certificates. Lessor and Lessee shall execute at the request of the other, and within five (5) days thereafter, instruments evidencing the validity of this Lease Agreement, and as often as reasonably requested shall sign estoppel certificates setting forth (i) the date said Lease Agreement commenced, (ii) the termination date of the Lease, and whether or not there is any claim, defense or offset to the enforcement of the Lease, (iii) any knowledge that any default or breach by the other party exists and, (iv) affirming that the Lease is in full force and effect, except as to modifications, agreements or amendments thereto, copies of each of which shall be attached to the Certificate, and such other matters as Lessor or Lessee may reasonably request.

15. Casualty. In the event of the total or partial destruction of the improvements on the Leased Premises by fire or other casualty insured under Lessee's casualty insurance, Lessee shall have the right, but not the obligation, to promptly restore and repair the improvements on the Leased Premises using the proceeds of its insurance. In the event that the improvements on the Leased Premises are so destroyed that they cannot be repaired or rebuilt within sixty (60) days after

the date of the damage or destruction, then and in that event, Lessee may, upon sixty (60) days' prior written notice to Lessor, terminate and cancel this Lease and all obligations hereunder shall thereupon cease and terminate, however, the site must be made clean by Lessee. Any proceeds not utilized by Lessee in restoring or repairing the Leased Premises shall be and remain the sole property of Lessee. In the event that the Lessee cancels this Lease pursuant to its rights hereunder, the Gas Assignment Agreement shall simultaneously terminate.

16. Eminent Domain. In the event all or any part of the Leased Premises shall be acquired by the exercise of eminent domain by any public or any quasi-public body in such manner that the Leased Premises shall become, wholly or partially, unusable by Lessee for the purposes for which it is then using the Leased Premises, then and in that event, this Lease will terminate after possession of the Leased Premises or part thereof is so taken. If Lessor is unable to provide a reasonable alternative site in all respects satisfactory to Lessee, Lessor shall have no claim against Lessee or other person, firm, corporation or governmental authority on account of any such acquisition for the value of the unexpired Lease remaining after possession of the Leased Premises or part thereof is so taken. All damages awarded therefor shall belong to Lessee except for amounts allocated to the land upon which Lessee's facilities are located and for Lessor's portion, as set forth in the Gas Assignment Agreement, of the lost profits associated with the sale of electricity.

17. Party's Non-Liability. Lessee shall not be liable for damage to any person or property due to any condition of the Leased Premises caused by Lessor or by reason of the occurrence of any accident in or about the Leased Premises due to any act or omission of Lessor or its agents, employees, and licensees. Lessor shall be responsible and liable to Lessee for any damage to the Leased Premises caused by it or any other person acting by, through, or under it and for any act or omission done thereon by Lessor or any other person acting by, through or on behalf

of Lessor.

Lessor shall not be liable for damage to any person or property due to any condition of the Leased Premises caused by Lessee or by reason of the occurrence of any accident in or about the Leased Premises due to any act or omission of Lessee or its agents, employees, and licenses.

Lessee shall be responsible and liable for any damage to the Leased Premises and for any act or omission done thereon by Lessee or any other person acting by, through, or on behalf of Lessee.

18. Mutual Waiver of Subrogation. To the extent that this provision does not void any policies of insurance affecting the Leased Premises and required hereunder, Lessor and Lessee hereby expressly waive any and all claims against and release each other, their respective officers, directors, shareholders, employees or agents, for loss or damage due to fire, or to the perils, risk, or hazards insured against in the standard form of fire insurance policy with extended coverage endorsement, regardless of the cause of such loss or damage, including without limitation, loss or damage resulting from negligence of the respective parties, their agents, servants, employees or invitees.

19. Covenant of Quiet Enjoyment. Lessor agrees that if Lessee shall perform all of the covenants and agreements herein provided to be performed on Lessee's part, Lessee shall at all times during the term of this Lease have the peaceable and quiet enjoyment and possession of the Leased Premises without any manner of hindrance from Lessor or any persons lawfully claiming under Lessor.

20. Notices. Any notice required to be permitted to be given or served by either party to this Lease shall be deemed to be given or served when made in writing, by certified or registered mail, return receipt requested, or by Federal Express or other similar overnight delivery service on a national basis with charges prepaid, which notice shall be deemed to be given three (3) days after

delivery to the U.S. Postal Service or one (1) day after delivery to Federal Express or other similar overnight carrier addressed as follows:

Lessor: TOWN OF COLONIE  
Memorial Town Hall  
Town's Attorney's Office  
P.O. Box 508  
Newtonville, NY 12128

Copy to: TOWN OF COLONIE  
Department of Public Works  
Division of Environmental Services  
1319 New Loudon Road  
Cohoes, NY 12047  
Attn: F. Joseph Stockbridge

Lessee: INNOVATIVE ENERGY  
SYSTEMS, INC.  
2917 Judge Road  
Oakfield, New York 14125  
ATTN: PETER H. ZELIFF

21. Possession. Lessor agrees that Lessee shall have possession of the Leased Premises and access thereto immediately upon the earlier of the effective date of the Gas Assignment Agreement or the commencement of construction of the Generation Operations.

22. Brokers. Lessor and Lessee warrant that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease Agreement and that they know of no broker or agent who is or might be entitled to a commission in connection with this Agreement. Lessor and Lessee hereby indemnify each other and hold each other harmless from and against any and all claims for any such commissions or fees claimed by any real estate broker or

agent claiming by, through or under said party.

23. Contingencies. The obligations of the Lessee hereunder are subject to the satisfaction or waiver by Lessee of all of the following conditions on or before March 1, 2005:

(a) The satisfaction or waiver of all of the contingencies set forth in Article XI of the Gas Assignment Agreement.

24. Lease Binding on Successors. All provisions of this Lease shall inure to the benefit of the parties hereto and their respective successors and legal representatives. This Lease and each of the rights and obligations of the parties hereunder may not be assigned or the Leased Premises subleased without the prior written consent of the other party, provided, however, that Lessee shall have the right to sublease the Leased premise to a third party of its choosing, with the prior approval of Lessor, for the purposes of the construction and operation of greenhouses on the Leased Premises.

25. Default. It is hereby mutually agreed that: (a) if Lessee shall fail to keep and materially perform each and every material covenant, condition and agreement contained in this Lease and on the part of Lessee to be kept and performed, including payment of any rent and additional rent due hereunder; or (b) if Lessee shall permanently abandon the Leased Premises or the Generation Operations; or (c) an execution or attachment shall be issued against Lessee whereupon the Leased Premises or the Generation Operations shall be taken or occupied by someone other than Lessor; or (d) if Lessee shall petition to be declared bankrupt or insolvent according to law; or (e) if a receiver or other similar officer shall be appointed to take charge of any part of the property or to wind up the affairs of Lessee, and it is not discharged within sixty (60) days; or (f) if any assignment shall be made of Lessee's property for the benefit of creditors; or (g) if a petition shall be filed for Lessee's reorganization under Chapter 7 or 11 of the Bankruptcy Code,

then in each and every such case, Lessee shall be in default under the terms of this Lease. If Lessee shall be in default as said term is defined herein, and such default shall continue for a period of sixty (60) days after written notice thereof to Lessee from Lessor, then Lessor in its sole option may terminate this Lease, provided that if Lessee proceeds with due diligence during such sixty (60) day period to cure such default and is unable by reason of the nature of the work involved to cure the same, within said sixty (60) days, its time to do so shall be extended for an additional sixty (60) day period, or such longer period as is reasonably necessary for Lessee to cure such default. On default of Lessee, Lessor shall be entitled to possession of the Leased Premises and to remove any and all persons and property there from and to re-enter the Leased Premises under due process of law, and in the event of any such re-entry or retaking by Lessor, Lessee shall nevertheless remain in all events liable and answerable for the full rental until the date of retaking or re-entry.

Lessee expressly agrees to reimburse Lessor for any expenses, including reasonable attorney's fees, Lessor may incur in enforcing the Lessor's rights against Lessee under this Lease, including but not limited to, the collection of rent and securing of possession of the Leased Premises.

If Lessee shall breach or threaten to breach any of the covenant or provisions of this Lease, Lessor shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Any mention in this Lease of any particular remedy shall not preclude Lessor from any other remedy it may have in law or in equity. It is expressly covenanted that, the various rights and remedies given to Lessor in this Lease, including the right to remove Lessee by summary proceeding are distinct, separate, non-exclusive and cumulative remedies. Lessee hereby expressly waives any and all right or redemption granted by or under any present or future law if Lessee is evicted or dispossessed for



any cause, or if Lessor obtains possession of the Leased Premises by reason of the violation of Lessee of any of the covenants and conditions of this Lease or otherwise. The words "re-entry" and "re-enter" as used in this Lease are not restricted to their technical legal meaning.

Whenever in this Lease any sum, item or charge shall be designated or considered as additional rent, Lessor shall have the same rights and remedies for the non-payment thereof as if Lessor would have for the non-payment of the rent reserved herein and provided for to be paid by Lessee.

Notwithstanding any of the foregoing to the contrary, the parties understand that any default by reason of Lessee's failure to satisfy Environmental permits or the governmental Environmental requirements may require additional time to cure beyond such sixty (60) day period and that Lessor shall not be entitled to terminate this Lease by reason of such default so long as Lessee makes on-going, continuing efforts to cure such default so long as project begins commercial operation on or before December 31, 2005. No such termination of this Lease shall relieve Lessee of its liabilities or obligations under this Lease to the date of termination and such liability and obligations shall survive such termination.

26. No Waiver. No waiver of any default of either party hereunder shall be implied from omission by the other to take any action on account of such default. One or more waivers of any covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition, and the consent or approval by the other party to or of any act of the other party requiring such party's consent or approval shall not be construed to waive or render unnecessary any consent to or approval of any subsequent similar act(s) by Lessee. The receipt by Lessor of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been

waived by unless such waiver be in writing and signed by the waiving party. No payment by Lessee or receipt by Lessor of a lesser amount than the monthly rent or the additional rent herein provided for shall be deemed to be other than on account of the earliest stipulated rent or additional rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or additional rent or pursue any other remedy Lessor may have pursuant to this Lease, at law or equity.

27. Termination. Upon expiration or termination of this Lease, all equipment used to generate electricity on the Leased Premises including, but not limited to, the electrical generators and all other personal property and leasehold improvements used in connection with the Generation Operations shall remain the property of Lessee. Lessee shall remove such equipment, personalty or leasehold improvements within four (4) months after the termination of this Lease. In the event Lessee shall fail to remove same within four (4) months of the termination of this Lease, then such equipment, personalty and leasehold improvements shall be deemed property of the Town of Colonie, if accepted, or shall be removed by the Town of Colonie, and costs borne by Innovative Energy Systems, Inc.

28. General. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement contains the entire agreement and understanding of the parties hereto with reference to the subject matter hereof and supersedes all prior negotiations, discussions, commitments and understandings, whether written or oral. This

Agreement may be modified, waived or discharged only by an instrument in writing signed by both parties against which enforcement of such modification, waiver or discharge is sought.

29. Holdover by Lessee. Except for Lessee's rights under Article 27, if Lessee shall not immediately surrender possession of the Leased Premises upon any termination of this Lease, Lessee, at the option of the Lessor, shall thereafter become a tenant from month-to-month at a monthly rental equal to the sum of the average monthly Gas Assignment payment to Lessor from the year of the holdover, or \$50,000/month which ever is greater, subject to all other conditions, provisions and obligation of this Lease insofar as the same are applicable to a month-to-month tenancy and Lessee shall indemnify Lessor against loss or liability resulting from Lessee's delay in so surrendering the Leased Premises. Hold over term shall not exceed ten months total.

30. Cross-Default. A default under the Gas Assignment Agreement shall constitute a default hereunder.

31. Force Majeure. In the event either Lessor or Lessee shall be delayed or hindered in or prevented from the performance of any act required under this Lease by reason of fire, casualty, strikes, lockouts, labor trouble, inability to procure materials, permits or supplies, failure of power, governmental authority, riots, insurrection, war or other reason of like nature, where such delay, hindrance or prevention of performance shall not be within the reasonable control of the Lessor or the Lessee, and shall not be avoidable by diligence, then, the Lessor or the Lessee shall thereupon be excused for such period of delay.

32. Lessor's Access. Lessor shall have access to the Leased Premises at all times during the term hereof provided that such access shall not interfere with the Lessee's use and enjoyment of the Leased Premises. Lessor's access shall be limited to those matters which relate to its operation of the Landfill.

33. Mutual Indemnification.

(a) Lessor hereby covenants and agrees to indemnify, defend, save and hold harmless the Lessee from all suits, claims, and proceedings arising out of the activities carried on by Lessor in connection with the agreement herein, to the extent of Lessor's responsibility for such claims, damages, and losses, except for those claims, suits or proceedings arising solely out of the negligence of Lessee.

(b) Lessee hereby covenants and agrees to indemnify, defend, save and hold harmless the Lessor from all suits, claims, and proceedings arising out of the activities carried on by Lessee in connection with the agreement herein, to the extent of Lessee's responsibility for such claims, damages, and losses, except for those claims, suits or proceedings arising solely out of the negligence of Lessor.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by its duly authorized representative as of the date first above written.

**TOWN OF COLONIE**

By: Mary E. Brizzell  
Mary E. Brizzell, Supervisor

**INNOVATIVE ENERGY SYSTEMS, INC.**

By: Peter H. Zelif  
Peter H. Zelif, President and CEO

S.Y. KIM LAND SURVEYOR, P.C.  
592 New Loudon Road, Latham, NY 12110  
(518) 785-3969 FAX (518) 785-1608

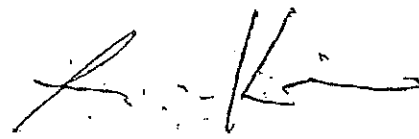
Lease Area to Landfill Gas to Energy Facility  
**DESCRIPTION OF CERTAIN LANDS TO BE CONVEY**

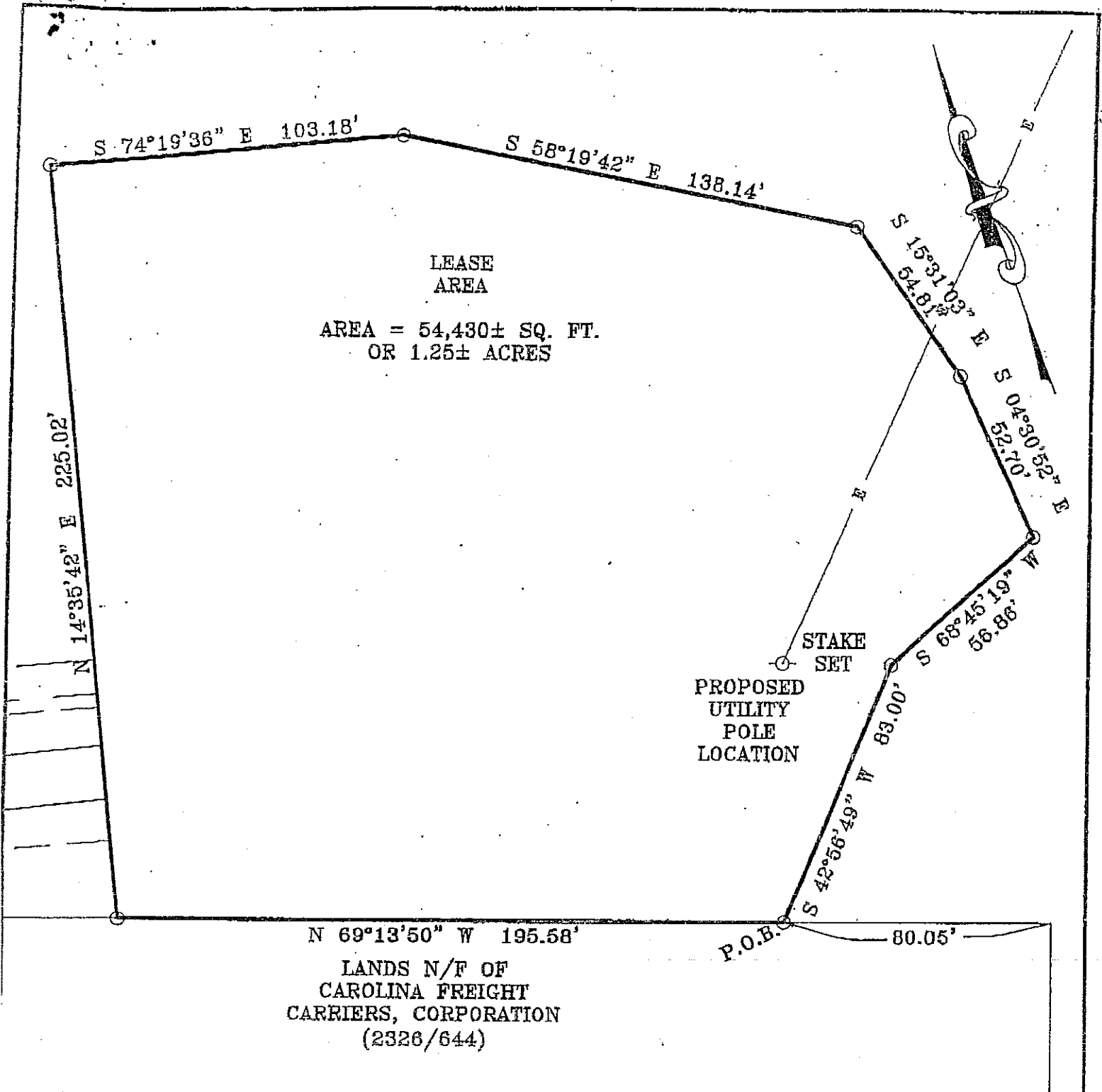
By.....Town of Colonie.....  
To.....Landfill Gas to Energy Facility.....

"----- all that certain tract, piece or parcel of land situate, lying and being in the Town of Colonie..., County of Albany...and State of New York, being a portion of lands conveyed to ...Town of Colonie.... and so recorded in Book..... of Deeds at Page....., in the Albany County Clerk's Office, and being more particularly bounded and described as follows:

Beginning at a point in the northerly line of lands now or formerly of Carolina Freight Carriers, Corp. conveyed by a deed recorded in the Albany County Clerk's Office in Book 2326 of Deeds at Page 644, 80.05 feet measured westerly along the same from the northeasterly corner thereof; running from said point of beginning along the northerly line of lands of said Carolina Freight Carriers, Corp. North 69° 13' 50" West, 195.58 feet to a point; thence through lands of Town of Colonie, the following seven ( 7 ) courses;



1. North 14° 35' 42" East, 225.02 feet to a point;
  2. South 74° 19' 36" East, 103.18 feet to a point;
  3. South 58° 19' 42" East, 138.14 feet to a point;
  4. South 15° 31' 03" East, 54.81 feet to a point;
  5. South 04° 30' 52" East, 52.70 feet to a point;
  6. South 68° 45' 19" West, 56.86 feet to a point;
- South 42° 56' 49" West, 83.00 feet to the point or place of beginning, containing 54,430 sq. ft. or 1.25 acres be the same, more or less.





N 69°13'50" W 195.58'

LANDS N/F OF  
CAROLINA FREIGHT  
CARRIERS, CORPORATION  
(2326/644)

<b>PLOT PLAN OF LEASE AREA TO LANDFILL GAS TO ENERGY FACILITY</b>		
TOWN OF COLONIE	ALBANY COUNTY, N.Y.	
SCALE : 1" = 40'	DATE: JULY 29, 2005	
JOB NO. :12-1121-05	CADD FILE :LEASEMAP.DWG	
		S. Y. KIM LAND SURVEYOR, P.C. 592 NEW LOUDON ROAD, LATHAM, N.Y. 12110 PHONE: (518) 785-3969 FAX: (518) 785-1608

S.Y. KIM LAND SURVEYOR, P.C.  
592 New Loudon Road, Latham, NY 12110  
(518) 785-3969 FAX (518) 785-1608

Ingress/Egress Easement

DESCRIPTION OF CERTAIN LANDS TO BE CONVEY

By.....Town of Colonie.....  
To.....Landfill Gas to Energy Facility.....

"----- all that certain tract, piece or parcel of land situate, lying and being in the Town of ..Colonie..., County of ....Albany....and State of New York, being a portion of lands conveyed to ...Town of Colonie.... and so recorded in Book..... of Deeds at Page....., in the Albany County Clerk's Office, and being more particularly bounded and described as follows:

Beginning at a point in the northerly terminus of Green Mountain Drive, 13.22' measured westerly along the northerly terminus of Green Mountain Drive from northeasterly corner thereof; running from said point of beginning along the northerly line of Green Mountain Drive, North 69° 13' 50" West, 40.14 feet to a point; thence through lands of Town of Colonie, the following six ( 6 ) courses;

1. North 14° 53' 44" East, 116.24 feet to a point;
2. North 05° 21' 23" East, 163.68 feet to a point;
3. North 06° 52' 37" West, 208.12 feet to a point;
4. North 89° 02' 10" East, 104.73 feet to a point;
5. South 68° 57' 45" East, 134.34 feet to a point;
6. South 74° 17' 52" East, 192.27 feet to a point on the westerly line of the Lease Area to Landfill Gas to Energy Facility; thence along the same South 14° 35' 42" West, 40.00 feet to a point; thence through the lands of Town of Colonie, the following six ( 6 ) courses;

1. North 74° 17' 52" West, 194.14 feet to a point;
2. North 68° 57' 45" West, 128.42 feet to a point;
3. South 89° 02' 10" West, 52.60 feet to a point;
4. South 06° 52' 37" East, 168.05 feet to a point;
5. South 05° 21' 23" West, 171.30 feet to a point;
6. South 14° 53' 44" West, 123.69 feet to the point or place of beginning, containing 35,173 sq. ft. be the same, more or less.



S.Y. KIM LAND SURVEYOR, P.C.  
592 New Loudon Road, Latham, NY 12110  
(518) 785-3969 FAX (518) 785-1608

Easement

DESCRIPTION OF CERTAIN LANDS TO BE CONVEY

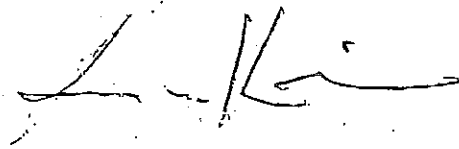
By.....Town of Colonie.....  
To.....Landfill Gas to Energy Facility.....

"----- all that certain tract, piece or parcel of land situate, lying and being in the Town of ..Colonie..., County of ...Albany...and State of New York, being a portion of lands conveyed to ...Town of Colonie.... and so recorded in Book..... of Deeds at Page....., in the Albany County Clerk's Office, and being more particularly bounded and described as follows:

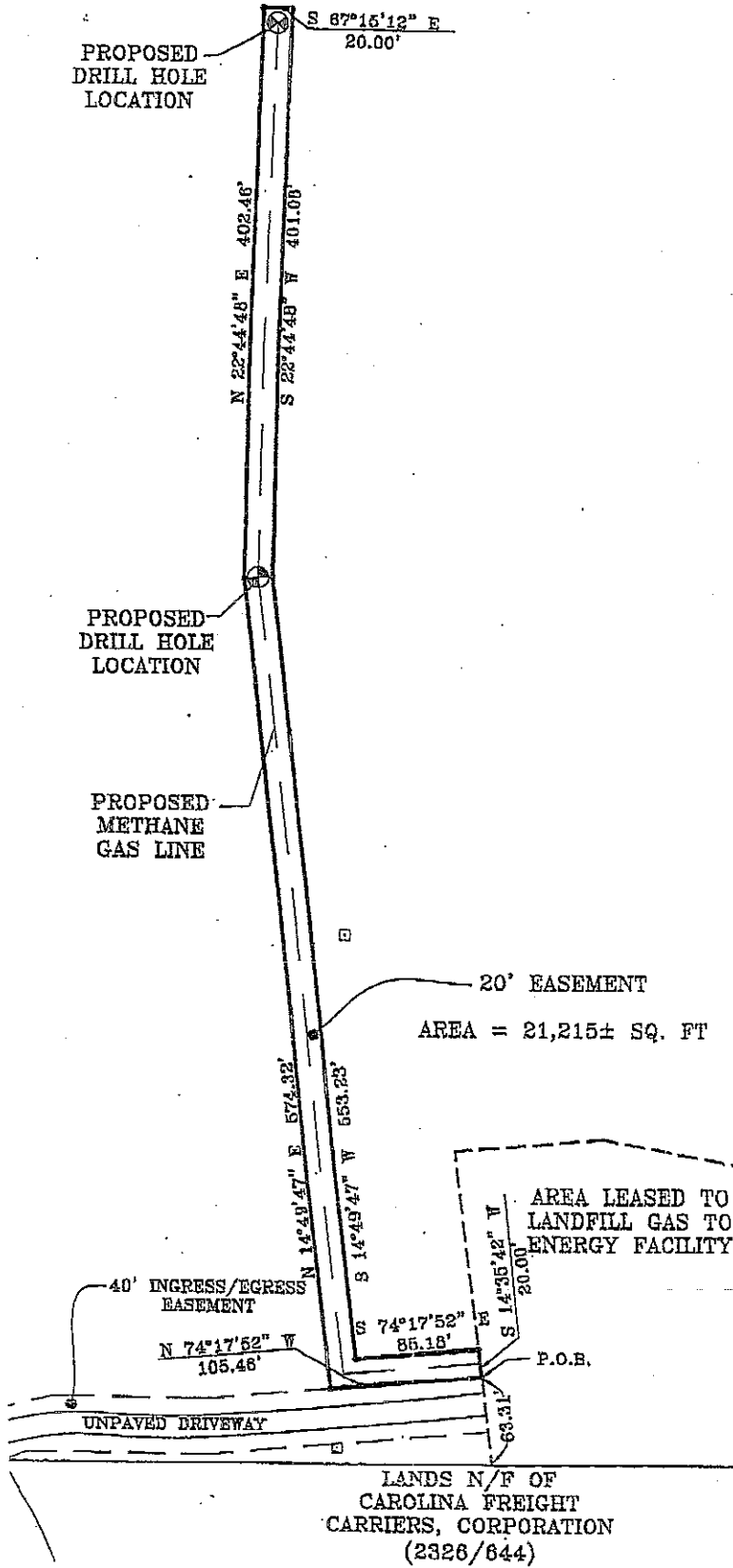
Beginning at a point in the westerly line of Lease Area to Landfill Gas to Energy Facility, North 14° 35' 42" East, 63.31' measured along the westerly line of Lease Area from its intersection with the northerly line of lands now or formerly of Carolina Freight Carriers, Corp. conveyed by a deed recorded in the Albany County Clerk's Office in Book 2326 of Deed at Page 644; running from said point of beginning along the 40' Ingress & Egress easement to Landfill Gas to Energy Facility North 74° 17' 52" West, 105.46 feet to a point; thence through lands of Town of Colonie, the following six ( 6 ) courses;

1. North 14° 49' 47" East, 574.32 feet to a point;
2. North 22° 44' 48" East, 402.46 feet to a point;
3. South 67° 15' 12" East, 20.00 feet to a point;
4. South 22° 44' 48" West, 401.08 feet to a point;
5. South 14° 49' 47" West, 553.23 feet to a point;
6. South 74° 17' 52" East, 85.18 feet to a point on the westerly line of the

Lease Area described above; thence along the same South 14° 35' 42" West, 20.00 feet to the point or place of beginning, containing 21,215 sq. ft. be the same, more or less.







**PLOT PLAN FOR  
EASEMENT TO  
LANDFILL GAS TO  
ENERGY FACILITY**

TOWN OF COLONIE	ALBANY COUNTY, N.Y.
SCALE : 1" = 100'	DATE: JULY 29, 2005
JOB NO. : 12-1121-05	PP-EASE-2.DWG



**SYK** S.Y. KIM LAND SURVEYOR, P.C.  
592 NEW LOUDON ROAD, LATHAM, N.Y. 12110  
PHONE: (518) 785-3000 FAX: (518) 785-1804

*[Handwritten signature]*



LEASE Addendum No. 1

**INNOVATIVE ENERGY SYSTEMS, INC.(IES) and the TOWN OF COLONIE ("Town") agree to such different and/or additional terms to their 2005 Lease as set forth in this Addendum:**

WHEREAS, on August 10, 2005 IES and the Town entered into a Lease for the use of Town land by IES to run a landfill gas to electricity project at the Town of Colonie Solid Waste Management Facility; and

WHEREAS, IES needs to run an electrical transmission line from the gas to electricity plant to the National Grid interconnect point; and

WHEREAS, the Lease with IES did not include in its description of the Leased Premises the area in which this electrical transmission line will be placed; and

WHEREAS, the Lease now needs to be modified so as to include the area in which the electrical transmission line will be placed as part of the Leased Premises.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in the Lease and Lease Addendum No. 1, the parties hereto do amend said Lease as follows:

- 1) THE LEASED PREMISES SHALL BE AMENDED TO INCLUDE THE LAND NEEDED TO RUN AN ELECTRICAL TRANSMISSION LINE FROM IES' GAS TO ELECTRIC PLANT TO THE NATIONAL GRID INTERCONNECT POINT, WHICH IS MORE PARTICULARLY DESCRIBED AND ATTACHED HERETO. THE USE OF THE LEASED PREMISES SHALL BE NON-EXCLUSIVE. IES SHALL HAVE THE RIGHT TO DO ANY NECESSARY MAINTENANCE ON THE LEASED PREMISES.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the date and year hereinafter written.

INNOVATIVE ENERGY SYSTEMS, INC.

TOWN OF COLONIE

By

  
PETER KUZELIFF  
PRESIDENT and CEO

By

  
MARY E. BRIZZELLA  
SUPERVISOR

Date:

12/27/05

Date:

12/20/05

**S.Y. KIM LAND SURVEYOR, P.C.**  
592 New Loudon Road, Latham, NY 12110  
(518) 785-3969 FAX (518) 785-1608

Easement

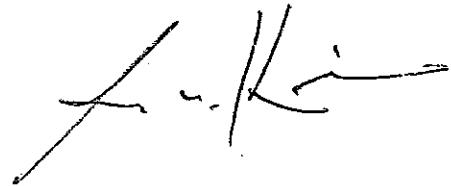
**DESCRIPTION OF CERTAIN LANDS TO BE CONVEY**

By.....Town of Colonie.....  
To.....National Grid.....

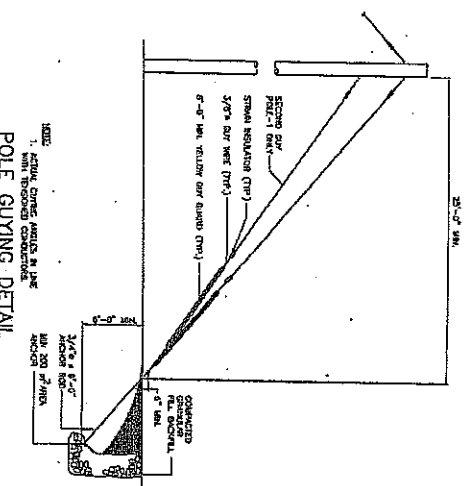
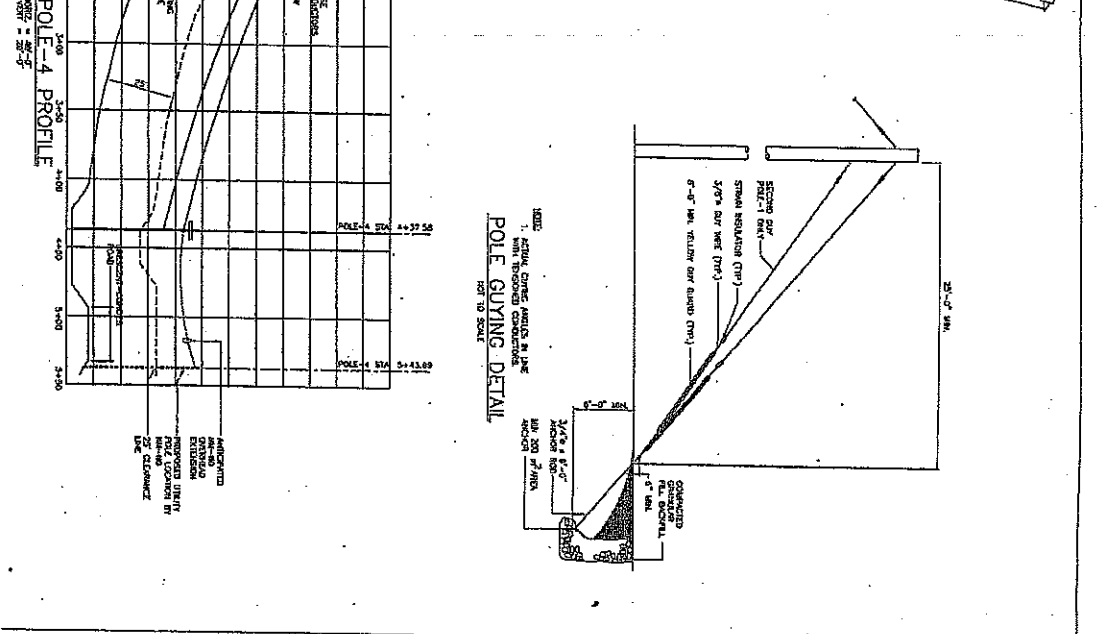
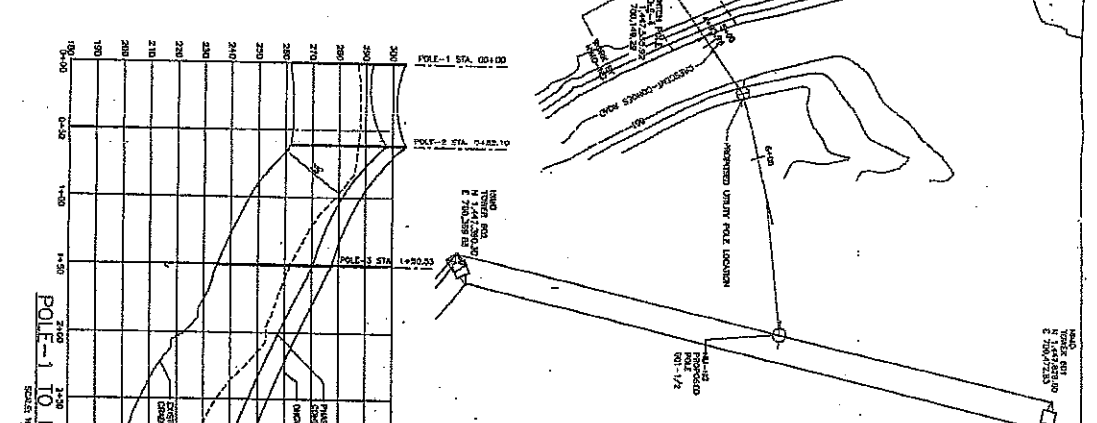
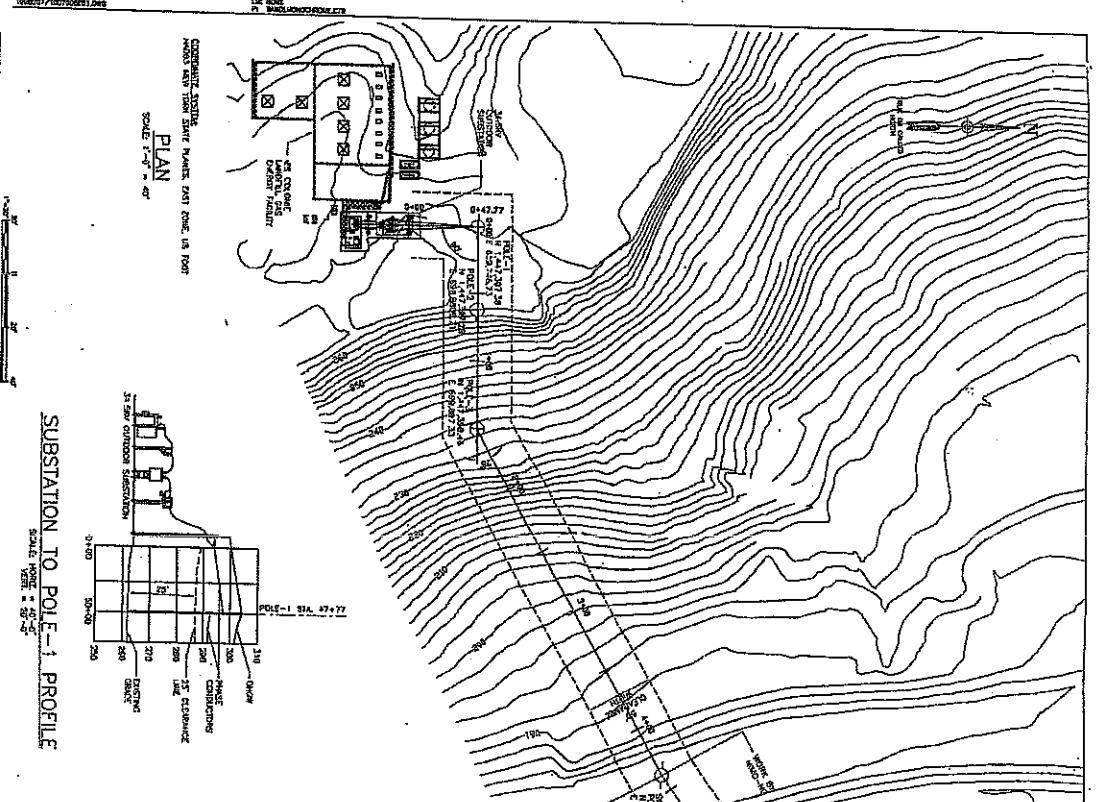
"----- all that certain tract, piece or parcel of land situate, lying and being in the Town of ..Colonie..., County of ....Albany....and State of New York, being a portion of lands conveyed to ...Town of Colonie.... and so recorded in Book..... of Deeds at Page....., in the Albany County Clerk's Office, and being 50' wide and 25' each side of the center line thereof which center line being more particularly bounded and described as follows:

Beginning at a point marked by a wooden stake within the premises leased to Landfill Gas to Energy Facility, said point being located North 25° 49' 14" West, 112.29 feet measured from the northeasterly corner of a parcel now or formerly of Carolina Freight Carriers Corp. conveyed by a deed recorded in the Albany County Clerk's Office in Book 2326 of Deeds at Page 644, said point of beginning also being located North 19° 38' 20" East, 77.18 feet measured from the southeasterly corner of a parcel heretofore leased to Landfill Gas to Energy Facility; running from said point of beginning North 44° 47' 00" East, 208.95 feet to a point marked by a wooden stake; thence North 76° 07' 15" East, 387.10 feet to an end point marked by a wooden stake.

November 29, 2005  
Sherri/National Grid Easement, L.D



NO. OF SHEETS	17	NO. OF SHEETS	17
SHEET NO.	17	SHEET NO.	17
DATE	NOVEMBER 2003	DATE	NOVEMBER 2003
BY	DATE	BY	DATE
REVISIONS		REVISIONS	
APPROVED FOR CONSTRUCTION	DATE	APPROVED FOR CONSTRUCTION	DATE



**Barton**  
Engineering, P.C.

INNOVATIVE ENERGY SYSTEMS  
LANDFILL GAS TO ENERGY FACILITY  
34.5KV EXTENSION ELECTRICAL  
SITE PLAN AND PROFILES  
ALBANY COUNTY, NEW YORK

E-1  
1006,007-01F

GAS ASSIGNMENT AGREEMENT

THIS AGREEMENT, made and entered into as of this <sup>December</sup> 9<sup>th</sup> day of November, 2004 by and between The Town of Colonie with an office and principal place of business at Memorial Town Hall, Newtonville, New York, 12128 ("Assignor"), and **INNOVATIVE ENERGY SYSTEMS, INC.**, with an office and principal place at 2917 Judge Road, Oakfield, NY 14125 ("Assignee").

WITNESSETH:

WHEREAS, Assignor owns and controls gas ("Gas") in and underlying the Town landfill located at 1319 New Loudon Road in the Town of Colonie, New York (the "Landfill"); and

WHEREAS, Assignor is desirous of assigning all of the rights in and to the Gas produced at the Landfill for the uses and purposes set forth herein; and

WHEREAS, Assignee is desirous of accepting the assignment from the Assignor of the Gas produced at the Landfill and utilizing the Gas to fuel an electric generation power plant to be constructed by Assignee immediately adjacent to the Landfill (the plant, the electrical generation equipment, the gas scrubbing system and all piping, wiring and equipment owned by Assignee and incidental to the production of the electricity are hereinafter referred to as the "Electricity Project"); and

WHEREAS, it is in the best interest of Assignor for the Assignee to construct the Electricity Project and to utilize the Gas in the operation thereof; and

WHEREAS, as an inducement to Assignee to enter into this Agreement, Assignor has this date entered into a Lease Agreement (the "Lease") with Assignee, which Lease grants unto Assignee leasehold rights for the duration of this landfill gas assignment agreement to the portion of the Town of Colonie Solid Waste Management Facility land (Approximately 1-2 acres) (the "Leased Premises") on which the Town and Innovative agree that the Electricity Project is to be constructed and operated.

WHEREAS, the Assignor and Assignee recognize that the continued operation of the Town Solid Waste Management Facility is primary to the success of the Landfill Gas Utilization project, both parties agree that the landfill operation shall take preeminence and precedent over all other activities at the Solid Waste Management Facility or Landfill Gas Utilization Facility.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter contained and other good and valuable consideration, receipt of which is acknowledged by the parties hereto, intended to be legally bound hereby, agree as follows:

ARTICLE I  
VOLUME

A. Subject to the terms and conditions hereinafter set forth, Assignor agrees to exclusively assign and Assignee hereby accepts the exclusive assignment of all Assignor's rights in and to all Gas recovered from the Landfill to the extent needed by Assignee to operate the Electricity Project and all future expansions thereof (Assignee's Requirements). The Assignee agrees to allow the Assignor to use a minor amount (0-200 scfm.) of LFG for Town R& D research projects. The amount of LFG used by the

Version #4

Assignor shall be subordinate to providing the Assignee with sufficient LFG to efficiently operate the LFG to Electricity Project. In furtherance of Assignor's agreement to assign the rights to the Gas to Assignee, Assignee agrees to construct on the Leased Premises a 3.2 megawatt Electricity Project using a quarterly average of at least 1,200 scfm. of Landfill Gas, or more at its discretion, which shall be operational on or before December 31, 2005.

Assignee shall have the right to expand the Electricity Project beyond 3.2 megawatts at such time as Assignee deems it to be economically viable to do so, subject to prior written approval of the Assignor, which approval shall not be unreasonably withheld or delayed. Expansion of the Electricity Project shall be premised upon and determined viable when a consistent generation of an additional 400 scfm. of acceptable LFG occurs over a four consecutive month term. Assignee's right to expand the Electricity Project beyond 3.2 megawatts shall be limited only by the quantity or quality of Gas produced at the Landfill. It being the understanding of the parties that Assignee shall have an unlimited right to produce as much electricity as possible through the utilization of the Gas, subject to prior written approval of the Assignor, and compliance with applicable regulatory requirements. Assignor agrees that Assignee may utilize the Gas for the operation of an expanded Electricity Project. Gas not utilized by Assignee in the Electricity Project shall be given back to the Town for use or to be flared by Assignee in accordance with appropriate federal, state and local laws. Assignee shall have right of claim with 30 days notice over all landfill gas generated from the Town landfill including the use of gas capacity that was determined to be excess landfill gas and returned to the Assignor for use or flaring. Assignee will at all times operate the Electricity Project in

11/04/04

compliance with applicable environmental laws and regulations, in a manner that is protective of the Town landfill and will make a good faith effort to maximize the economic benefits of the electricity project for the benefit of both the Assignee and Assignor, provided, however, that the Assignees reasonable business judgment with respect to the Electricity Project's operation shall be binding upon the Assignor.

(B) Assignor shall promptly notify Assignee by telephone, and confirm by letter the existence of any information which Assignor may obtain concerning any condition, occurrence or circumstances which could adversely affect Assignor's ability to deliver the quantities of Gas covered by this Agreement other than the natural depletion of gas over time. Assignor agrees that it will take no action at any time that will in any way impede the flow of Gas to the Electricity Project unless such action is necessary to protect the health, safety or environment of the Town's Solid Waste Management Facilities or maintenance of the Assignor's landfill gas collection system. Assignor further agrees that at all times it will operate the Landfill in such a manner so as to ensure the availability of Gas for the Electricity Project, and in furtherance thereof, it will at all times maintain the gas collection system on the Landfill in good operating condition and repair in order to facilitate the delivery of Gas to the Electricity Project. Assignor does not expressly or impliedly warrant the production or delivery of any volume of gas to the Electricity Project.

(C) Assignee is hereby granted the right to regulate and absolutely control the flow of Gas entering the Electricity Project, including discontinuing same at any time if, in the reasonable opinion of Assignee, the Gas adversely affects the operations of the Electricity Project or it is no longer economically viable to operate the Electricity Project



with the Gas no sooner than 15 years. Assignee shall provide sufficient notice (seven days) of gas flow rates to Assignor to allow Assignor to use excess landfill gas or to appropriately dispose of excess gas in accordance with applicable regulatory requirements.

ARTICLE II  
DELIVERY AND ASSIGNMENT

(A) Assignor shall deliver Gas hereunder to Assignee at the point where the Gas leaves the Town's landfill gas collection and conveyance piping system at the manifold located adjacent to the Landfill leachate lagoon area (the "Delivery Point"). Title to Gas shall pass from Assignor to Assignee at the Delivery Point and the assignment of the Gas shall be consummated at the Delivery Point.

(B) It is expressly agreed and understood that until Gas is delivered to Assignee as herein provided, Assignor shall be deemed to be in exclusive possession and control thereof, and shall be solely liable and responsible therefor.

(C) Except as otherwise expressly provided hereunder, Assignor shall be responsible for all costs related to gathering and transporting to the Delivery Point the Gas to be assigned and delivered hereunder.

(D) Assignor will be responsible, at its expense, for collection and disposing of all condensate generated by the Gas collection and production facilities of Assignor. Disposal of condensate within the Landfill leachate disposal system is anticipated to be acceptable under NYSDEC Regulations and the Albany County Sewer District Wastewater Treatment Facility Requirements. If the condensate quality changes and is

ultimately determined to be unacceptable for disposal by the NYSDEC or Albany County Sewer District Wastewater Treatment Facility, the Assignee and Assignor shall investigate treatment or alternative disposal options for the condensate. Any additional cost for treatment or disposal of the condensate shall be shared equally by the Assignee and Assignor.

(E) Assignor shall not assign or utilize or permit the utilization of the Gas in any manner other than as expressly set forth herein. The Assignor shall have the right of use for any quantity of landfill gas designated by the Assignee as excess gas and directed by the Assignee back to the Assignor as excess gas.

(F) Assignee shall identify any quantity of excess landfill gas and shall approve the Assignor to use the excess gas if feasible. If Assignee determines that a quantity of landfill gas above the amount used by the Assignee which has previously been determined to be excess gas is necessary for Assignee's production of electricity, the Assignee shall notify the Assignor and the parties shall meet to review and agree to an increase of the amount of landfill gas for use in the Electricity Project and an appropriate transition date.

ARTICLE III  
USE OF GAS; QUANTITY AND QUALITY

Provided that Assignee's Requirements are satisfied from Gas production at the Landfill, Assignee agrees not to purchase or produce Gas from any other source during the term of this Agreement. In the event that the Gas produced at the Landfill is not of sufficient quantity or quality to meet Assignee's Requirements for a period greater than three months, then Assignee may, at its option, purchase or produce fuel to power the Electricity Project from whatever sources it deems appropriate to the extent, and only to the extent, that Assignor is unable to meet Assignee's requirements. Cost of supplemental fuel shall be born by Assignee.

Assignee shall assist Assignor to identify additional sources of acceptable quality landfill gas or to improve the generation, quality or capture of the landfill gas generated within the Town Landfill.

ARTICLE IV  
CONSIDERATION

The consideration for the assignment of the Gas rights from Assignor to Assignee for production of electricity at the Electricity Project shall be as set forth on Schedule "A" attached hereto.

If the Assignor or Assignee shall be entitled to environmental benefits, emission credits, renewable energy production or tax credits created or resulting from the assignment of the Gas to Assignee hereunder and the production and sale of electricity at the Electricity Project the parties shall share the value of these additional benefits in accordance with the example presented in Schedule (A). The Parties agree to reasonably

Version #4

cooperate in order to ensure that any such environmental benefits, renewable energy production, emission or tax credits are attainable to Assignee or Assignor.

Assignee shall agree to offer Electricity for sale to the Town at the rate the Electricity Project obtains for electrical sale at the time of generation. If secondary project benefits (heat) are determined to be viable, the value of the benefit from these benefits after payment of additional costs for developing these benefits shall be shared equally.

If the Electricity Project ceases operation for in excess of thirty (30) consecutive days, the Assignee shall be in default of the agreement and the Assignor shall have the right to terminate the agreement without recourse of the Assignee. If the Assignee determines that the Electricity Project is no longer economically viable for the Assignee to continue operation or the Assignee proposes to transfer ownership of the Electric Project, the Assignor shall have right of first offer to purchase the Electricity Project at a simple declining rate of 1/10 per year of operation.. (IE. If project costs \$5.0 million, year two - \$4.5 million, year three - \$4.0 million, year four - \$3.5 million, year five - \$3.0 million, year six - \$2.5 million, year seven - \$2.0 million, year eight \$1.5 million, year nine - \$1.0 million year ten - \$.5 million)

ARTICLE V  
PAYMENT AND INVOICES

The amounts owing under Schedule "A" shall be payable in consecutive monthly installments. Such payments shall be due and owing within forty-five days after the close of each month commencing with the month that the Electricity Project first becomes operational and sells electricity.

Accompanying all invoices pursuant to Schedule "A", Assignee shall enclose a statement or other evidence establishing the total electric revenues for the month in question and the number of KWH of electricity sold during such period. Upon receipt of such payment, Assignor shall examine the accompanying statement to ensure that it has been calculated correctly, and shall promptly notify Assignee of any errors therein, which Assignor in good faith believes have been made together with the facts providing the basis for such belief. Assignee will promptly review Assignor's complaint, and if any error is found, shall promptly correct the same.

ARTICLE VI  
WARRANTY OF TITLE, RESPONSIBILITIES OF THE PARTIES, INSURANCE

(A) Assignor warrants that it has good and marketable title to, and the right to assign, all Gas to be delivered hereunder, free and clear of all liens, encumbrances and claims what so ever.

(B) Assignor shall be responsible for the repair and/or replacement of damage to the gas collection system on the Landfill unless such damage is caused by the negligent acts or omissions of the Assignee or its agents or invitees.

(C) Assignee shall be responsible for the repair and/or replacement of damage to the Electricity Project, unless such damage is caused by the acts or omissions of Assignor's agents or invitees.

(D) Assignor agrees that it will keep on hand an appropriate inventory of pipeline and incidentals, which may be utilized in the repair, and maintenance of the collection system located on Landfill. If there is an interruption of Gas production and/or supply, Assignee shall immediately notify the Assignor of the disruption. If the Assignor does not correct the disruption within a seven day term, the Assignee shall after that time have immediate access to such inventory and Landfill Gas Collection system for the sole purpose of repair and restoration of the collection system. It being agreed by the parties that the continued and unimpeded flow of Gas to the Electricity Project is at the essence of this Agreement, and that Assignor, in agreeing to maintain such inventory and allowing Assignee access thereto and to Landfill for repairs and restoration, is thereby mitigating any liability that it may have to Assignee as a result of its acts or omissions of those of its employees, agents or invitees.

(E) Neither Assignor or Assignee shall be in default hereunder if either is unable to fulfill, or is delayed in fulfilling, any of their obligations hereunder by reason of fire or other casualty, strikes or labor troubles, governmental preemption in connection with a national emergency, or by reason of any rule, order or regulation of any governmental authority, or by reason of any supply and demand affected by war or other

emergency or by any negligent acts or omissions of the other, their employees, agents or invitees, or any cause beyond their control.

(F) Assignor is the owner of the premises upon which Landfill is located and has good and clear title thereto.

(G) The parties hereby acknowledge and understand that Assignor is a self insured municipality pursuant to General Municipal Law Section 6-n, and such self insurance shall provide coverage for all of Assignor's obligations and operations pursuant to this Agreement. Assignee shall be responsible for property damage insurance for the Electricity Project power plant and the contents thereof and Assignee shall also maintain comprehensive general liability and automobile insurance naming Assignor as an additional insured.

(H) Assignor and Assignee shall include in their respective insurance policies the name of the other for the required insurances hereunder including appropriate clauses pursuant to which the insurance carrier waives all rights against the Assignor/Assignee, as the case may be, with respect to losses payable under such policies. Assignor and Assignee shall each advise the other promptly as to the language of the clauses included in the insurance policy or policies and shall notify each other promptly of any cancellation or change in the terms of any such policy or policies, which would affect said clauses. See Schedule B for the listing of the types and amounts of all insurance policies required of both parties under this agreement.

ARTICLE VII  
MUTUAL INDEMNIFICATION

(A) Assignor hereby agrees to indemnify, defend, save and hold harmless the Assignee from and against, and to reimburse Assignee for or in respect of any and all losses, damages, deficiencies, liabilities, claims, obligations, expenses, fines, penalties, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements, fees and expenses including, without limitation, special, indirect, incidental, and all out-of-pocket expenses of any nature whatsoever, incurred or sustained by Assignee arising out of, based upon, resulting from or by reason of any negligence or material breach by Assignor of any of its warranties, representations, covenants or agreements contained herein or in the Schedule or Schedules attached hereto.

(B) Assignee hereby agrees to indemnify, defend, save and hold harmless Assignor from and against, and to reimburse Assignor for or in respect of any and all losses, damages, deficiencies, liabilities, claims, obligations, expenses, fines, penalties, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements, fees and expenses including, without limitation, special, indirect, incidental and all out-of-pocket expenses of any nature whatsoever, incurred or sustained by Assignor arising out of, based upon, resulting from, or by reason of any negligence or material breach by Assignee of any of its warranties, representations, covenants or agreements contained herein or in the Schedule or Schedules attached hereto.



ARTICLE VIII  
GOVERNMENTAL REGULATION

This Agreement, insofar as it is affected thereby, shall be subject to all present and future valid and applicable laws and to the valid and applicable present and future rules, regulations, permits or orders of any regulatory agency or authority having jurisdiction. Nothing contained herein shall be construed as affecting Assignee or Assignor's rights to contest the validity or applicability of any such laws, rules, regulations or orders.

Assignee shall be responsible for obtaining and maintaining all permits, approvals and licenses relating to Assignee's Electricity Project. Assignor shall be responsible for obtaining and maintaining all permits, approvals and licenses relating to the Assignor's Landfill Gas Collection System and Flare. Assignee and Assignor shall assist each other in obtaining and maintaining these permits, approvals and licenses.

ARTICLE IX  
TERM

Except as expressly provided herein, this Agreement shall remain in full force for the longer of fifteen (15) years from the date on which the Electricity Project first produces commercial electric energy for sale to third parties. This agreement may be renewed for two additional five year periods by mutual consent. Consent to renew must be obtained in writing not less than 120 days prior to the expiration of this agreement. Assignee shall give Assignor at least ninety (90) days' advance notice of its intention to

terminate this Agreement in the event that it determines that it is no longer economically viable to produce electricity at the Electricity Project. This Agreement shall then terminate on the termination date set forth in the notice of termination. Upon notice of termination of the agreement, the Assignee shall have 90 days to remove all facilities relating to the Landfill Gas Utilization facility from the Assignors property unless the Assignor agrees in writing to allow the specific facility to remain on site.

ARTICLE X  
SUCCESSORS AND ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and legal representatives. This Agreement and each of the rights and obligations of the parties hereunder may not be assigned without prior written consent of the other party, which consent may not be unreasonably withheld or delayed.

ARTICLE XI  
CONTINGENCIES

The obligations of the parties hereunder are subject to the satisfaction or waiver by Assignee or Assignor as applicable of all the following contingencies on or before March 1, 2005:

- (A) Assignee obtaining from all governmental or quasi-governmental bodies having jurisdiction over the Electricity Project all permits, approvals and authorizations for the construction and operation of the Electricity Project

including those necessary for the construction and acquisition of all improvements and assets incident thereto;

- (B) Assignee entering into an interconnection agreement with the Niagara Mohawk Power Corp. permitting the transmission of the electricity produced at the Electricity Project on terms and conditions in all respects satisfactory to Assignee;
- (C) Assignee obtaining financing in amounts and on terms and conditions satisfactory to it so as to permit it to construct a 3.2 megawatt Electricity Project which shall include, but not be limited to, the construction of a physical plant, the acquisition of electrical generating equipment, and the utility interconnects;
- (D) Assignor and Assignee executing the Property lease;
- (E) Assignee obtaining from the Assignor, or third parties, such easements and rights of way as it deems necessary to construct and operate the Electricity Project;
- (F) Assignor providing adequate evidence of clear title to the property to the reasonable satisfaction of Assignee. In that regard, Assignor will provide a title abstract updated to within thirty (30) days of the date of this Agreement and any surveys in Assignor's possession or to which it has access;

- (G) If a set of facts or circumstances come to the attention of the Assignee subsequent to the date of execution of this agreement which would materially impair or interfere with the construction and operation of the Electricity Project or which would make the construction and/or operation thereof, in Assignee's reasonable judgment, economically unfeasible, the Parties agree to meet to discuss the Electricity Project in light of these new facts and determine a mutually acceptable resolution. The Assigned is responsible for identifying that this situation has occurred and shall notify the Assignor within 10 days of Assignee's knowledge of the change in project conditions. Failure of the Assignee to timely notify the Assignor shall preclude the Assignee from exercising this contingency.

If on or before March 1, 2005 all of the above conditions have not been satisfied or waived by Assignee, this Agreement shall become null and void and of no further force and effect.

ARTICLE XIII  
MISCELLANEOUS

- (A) All notices to be given under this Agreement shall be in writing and sent pre-paid, certified United States Mail, return receipt requested, or telegram, addressed to the respective parties at the addresses stated at the beginning of this Agreement or to other such party or address as they shall respectively designate in writing from time to time.

Version #4

Town of Colonie Contract Persons

F. Joseph Stockbridge, Director  
Town of Colonie  
Department of Public Works  
Division of Environmental Services  
1319 New Loudon Road  
Cohoes, New York 12047  
518-783-2827  
518-786-7331 facsimile

Arnis Zilgme, Town Attorney  
Town of Colonie  
Memorial Town Hall  
Newtonville, New York 12128  
518-783-2704  
518-786-7324 facsimile

Innovative Energy Systems, Contract Person(s)

Peter Zeliff  
Innovative Energy Systems, Inc.  
2917 Judge Road  
Oakfield, NY 14125

\_\_\_\_\_ telephone number

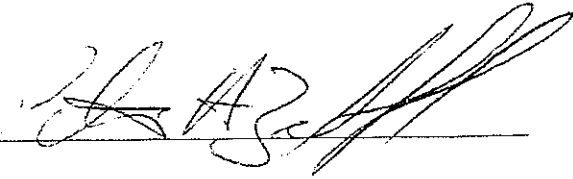
\_\_\_\_\_ facsimile number

The above facsimile numbers are presented for the convenience of the representatives of both parties and both parties acknowledge and agree that notice or service shall not be accepted by facsimile.

Assignee shall provide the Assignor with the ability/software/security assess for routine, remote access to the project data collected by the SCADA data package to be implemented for the Electricity Project. Access shall be limited to two entities or locations under the control of the Assignor.


This Agreement shall be construed in accordance with and be governed by the laws of the State of New York. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective legal representatives, heirs and permitted successors and permitted assigns. There are no oral agreements in connection with this Agreement. This Agreement may not be terminated, modified or amended orally or by any course of conduct, but only by an agreement in writing duly executed by the parties hereto. Any waiver of a breach of any of the provisions of this Agreement shall not be deemed a waiver of any other provisions of this Agreement. If any article, paragraph, section, portion, sub-section, sub-paragraph or sub-portion of this Agreement shall be determined to be unenforceable or invalid, it shall not affect the remainder of this Agreement, which shall be and remain binding and effective as against all parties hereto. The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the parties hereto, and they should not be used in any manner in construing this Agreement.

IN WITNESS THEREOF, the parties have duly executed this agreement as of the date first above written.

By: 

**Peter Zeliff**  
**INNOVATIVE ENERGY SYSTEMS, INC.**

Date: 11/8 2004

By: 

**Mary E. Brizzell, Supervisor**  
**Town of Colonie**

Date: 12/9/04 2004

SCHEDULE "A"

ROYAL PAYMENT

In consideration of the assignment of the Gas from Assignor to Assignee, Assignee agrees to pay Assignor a royalty payment calculated as follows:

During each month of the term hereof, Assignor shall receive for such month an amount equal to 50% of the amount by which all sums received by Assignee from the sale of electric energy generated at the Electricity Project in any calendar month of the term hereof exceeds the amount Assignee would have received had it received a monthly average of \$.04 per KWH (the "Initial Base Rate") from its electric energy sales in such month.

For purposes of the following paragraphs, the term "Year 1" shall mean the year which commences on the date on which the Electricity Project first becomes operational and the term "Year 2" shall mean the year commencing on the first anniversary date after the Electricity Project has become operational.

The parties acknowledge that in the future economic incentives such as tax, emissions reduction, energy production, secondary project benefits (heat) or other project benefit credits may become available to either or both of the parties as a result of the operation of the Project. In such event, the parties agree that they will each make a reasonable good faith effort to obtain these incentives so as to achieve an overall project economic benefit. If such economic benefit is received by either party, the Assignor and the Assignee shall be entitled to 50% of the net economic benefit. By way of example, if credits are available to the Assignee and result in a net economic benefit to it of \$100,000.00 in a given year, the Assignee would then owe Assignor \$50,000.00. If credits were available to the Assignor and Assignor sold such credits for \$100,000.00 then Assignor would owe Assignee \$50,000.00.

CPI - shall mean the Consumer Price Index - Urban Wage Earners and Clerical Workers for this region



Version #4

Year 1 The 50% share is above 4 cents per kwh as per contract.

Year 2 If we start production on June 1, 2005 then June 1, 2006 would start year 2.  
On May 1, 2006 the published CPI would be used as the factor to increase the initial 4 cents per kwh.  
If the CPI is 2% during that month, the new share price per kwh to be used starting June 1, 2006 would be:

$$\begin{array}{r} 4 \quad \text{current kwh price being shared in Year 1} \\ \times 2\% \quad \text{CPI as published} \\ \hline 4.08 \quad \text{new kwh price to be used in sharing in} \\ \hline \hline \quad \text{Year 2} \end{array}$$

Year 3 The kwh price would be calculated as follows assuming that on May 1, 2007 the CPI is again 2%:

$$\begin{array}{r} 4.08 \quad \text{kwh price being shared in Year} \\ \quad \quad \quad 2 \\ \times 2\% \quad \text{CPI as published} \\ \hline 4.16 \quad \text{new kwh price to be used in sharing in} \\ \hline \hline \quad \text{Year 3} \end{array}$$

Year 4 and thereafter would follow the same procedures.

**SCHEDULE "B"**

**INSURANCE COVERAGE**

The kinds and amounts of insurance to be provided are as follows:

A. Worker's Compensation and Employees Liability Insurance. A policy or policies providing protection for Employees of the obligor in the event of job related injuries.

B. Automobile Liability Policies with the limits of not less than \$1,000,000 for each accident because of bodily injury, sickness or disease sustained by any person, including death at any time, caused by accident and arising out of the ownership, maintenance or use of any automobiles . In addition the automobile liability policies shall have limits of not less than \$1,000,000 for each accident for damage to property, including all resulting loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of any automobiles.

C. General Liability including comprehensive form, contractual, premises/completed operations and broad form property insurance shall be furnished with limits of not less than:

<i>Liability</i>	<i>Each Occurrence</i>	<i>Annual Aggregate</i>
<b>Bodily Injury &amp; Property Damage</b>	\$1,000,000.00	\$1,000,000.00



Albany County Clerk  
32 North Russell Rd.  
Albany, NY 12206-1324

Return to:

STEWART  
707 WESTCHESTER AVE  
STE 411  
WHITE PLAINS NY 10604

Instrument: Deed, Agreement

Document Number: 10872533 Book: 3003 Page: 788

Grantor

TOWN OF COLONIE

Grantee

INNOVATIVE/COLONIE LLC

Number of Pages: 9

Recorded Date/Time: 04/21/2011 at 10:56 AM

Receipt Number: 638160

Note: \*\*DO NOT REMOVE - THIS PAGE IS PART OF THE DOCUMENT\*\*  
THIS PAGE CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 318-a(5) &  
319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.

Thomas G. Clingan, County Clerk

Albany County Clerk  
Deed Books (Record Room)  
Book 3003 Page 789

Execution Version

Albany County Clerk  
Document Number 10872533  
Rcvd 04/21/2011 10:56:35 AM

**COLONIE UTILITIES AGREEMENT**

**THIS COLONIE UTILITIES AGREEMENT** (this "**Agreement**") is made and entered into as of the 21<sup>st</sup> day of March, 2011, by and between **TOWN OF COLONIE** ("**Colonie**"), having an address of Memorial Town Hall, P.O. Box 508, Newtonville, New York 12128, and **INNOVATIVE/COLONIE, LLC**, a Delaware limited liability company, having an address of 2999 Judge Road, Oakfield, New York 14125 ("**Innovative/Colonie**").

**RECITALS:**

**WHEREAS**, Colonie and Innovative Energy Systems, Inc., a New York corporation ("**IES**") entered into that certain Lease, dated as of August 10, 2005, as amended by Lease Addendum No. 1 last signed by IES on December 12, 2005 (as amended from time to time, the "**Lease**");

**WHEREAS**, pursuant to that certain Assignment, Assumption, Consent and Waiver Agreement dated as of January 1, 2009, IES assigned all of its right, title and interest in and to the Lease, among other things, to Innovative Energy Systems, LLC, a Delaware limited liability company, which in turn immediately thereafter assigned all of its right, title and interest in and to the Lease, among other things, to Innovative/Colonie;

**WHEREAS**, in accordance with the terms of the Lease, Innovative/Colonie operates the Generation Operations (as defined in the Lease) on the Leased Premises (as defined in the Lease);

**WHEREAS**, in order to operate the Generation Operations on the Leased Premises, a water line, a telephone line, and a power transmission line, together with related facilities, and a driveway have been constructed on Innovative/Colonie's behalf on a portion of property owned by Colonie; and

**WHEREAS**, Colonie and Innovative/Colonie desire to enter into this Agreement for Colonie to provide Innovative/Colonie with: (i) an easement for water lines and related facilities over, across and under that portion of property owned by Colonie, as more particularly described on Exhibit A attached hereto (the "**Water Easement Area**"); (ii) an easement for a telephone lines and related facilities over, across and under that portion of property owned by Colonie, as more particularly described on Exhibit B attached hereto (the "**Telephone Easement Area**"); and (iii) an easement for access and power transmission lines and related facilities over, across and under that portion of property owned by Colonie, as more particularly described on Exhibit C attached hereto (the "**Access and Power Facilities Easement Area**"), all as more particularly set forth herein.

**NOW THEREFORE**, in consideration of the foregoing, of the mutual covenants, and benefits herein contained, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, Colonie and Innovative/Colonie hereby agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein.

2. **Grant of Water Easement.** Colonie hereby grants and conveys to Innovative/Colonie, its agents, employees, invitees, successors and assigns a non-exclusive water easement (the "**Water Easement**") over, across and under the Water Easement Area, which Water Easement shall be for the purposes of: (i) installing, operating, maintaining and replacing water lines and related facilities; and (ii) ingress and egress over and across the Water Easement Area as may be reasonably necessary to exercise the rights granted pursuant to the Water Easement.

3. **Grant of Telephone Easement.** Colonie hereby grants and conveys to Innovative/Colonie, its agents, employees, invitees, successors and assigns, a non-exclusive telephone easement (the "**Telephone Easement**") over, across and under the Telephone Easement Area, which Telephone Easement shall be for the purposes of: (i) installing, operating, maintaining and replacing telephone lines and related facilities; and (ii) ingress and egress over and across the Telephone Easement Area as may be reasonably necessary to exercise the rights granted pursuant to the Telephone Easement.

4. **Grant of Access and Power Facilities Easement.** Colonie hereby grants and conveys to Innovative/Colonie, its agents, employees, invitees, successors and assigns, a non-exclusive access and power facilities easement (the "**Access and Power Facilities Easement**") over, across and under the Access and Power Facilities Easement Area, which Access and Power Facilities Easement shall be for the purposes of: (i) installing, operating, maintaining and replacing power transmission lines and related facilities; (ii) access to and from the Leased Premises over and across the stone driveway located within the Access and Power Facilities Easement Area; (iii) installing, operating, maintaining and replacing such stone driveway improvements; and (iv) ingress and egress over and across the Access and Power Facilities Easement Area as may be reasonably necessary to exercise the rights granted pursuant to the Access and Power Facilities Easement.

5. **Term of Easements.** The term of the easements granted herein shall commence as of the date of this Agreement and shall be co-terminus with the term of the Lease. **UPON EXPIRATION OF THE LEASE, THE PARTIES HERETO SHALL ENTER INTO AN AGREEMENT IN RECORDABLE FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE PARTIES EVIDENCING THE TERMINATION OF THIS AGREEMENT.**

6. **Maintenance/Ownership.** Innovative/Colonie shall install, operate, maintain, repair, alter and replace its Facilities in good condition and repair at its sole cost and expense. Innovative/Colonie shall also generally maintain the Easement Area in good condition and repair, at its sole cost and expense, including, but not limited to, any repair to the surface of the Easement Area arising from the maintenance activities conducted by Innovative/Colonie

pursuant to this Agreement. If requested by Colonie, upon the expiration of this Agreement, all improvements made to and facilities located on the easement areas shall be conveyed by Innovative/Colonie, free and clear of all liens and encumbrances to Colonie.

7. **Colonie Access/Use.** Colonie and Colonie's successors and assigns shall have the right to use the easement areas; provided that such use shall not unreasonably interfere with or obstruct any of Innovative/Colonie's rights granted under this Agreement. Colonie reserves the right to grant other easements and rights-of-way on, through, over or under the easement areas; provided that such easements and rights-of-way do not unreasonably interfere with or obstruct any of Innovative/Colonie's rights granted under this Agreement and the Lease.

8. **Indemnity/Costs.**

(a) Innovative/Colonie shall indemnify, defend and hold Colonie harmless from and against all liabilities, damages, claims, suits and actions arising out of Innovative/Colonie's exercise of any of its rights granted under this Agreement or the operations, acts, omissions or negligence of Innovative/Colonie, Innovative/Colonie's servants, agents, employees, contractors or invitees upon or in relation to the easement areas and/or Colonie's property. Innovative/Colonie shall be responsible for all costs, including reasonable attorneys fees, incurred by Colonie in enforcing the provisions of this section, which shall be payable upon demand.

(b) Colonie shall indemnify, defend and hold Innovative/Colonie harmless from and against all liabilities, damages, claims, suits and actions arising out of Colonie's exercise of any of its rights granted under this Agreement or the operations, acts, omissions or negligence of Colonie, Colonie's servants, agents, employees, contractors or invitees upon or in relation to the easement areas and/or Innovative/Colonie's property. Colonie shall be responsible for all costs, including reasonable attorneys fees, incurred by Innovative/Colonie in enforcing the provisions of this section, which shall be payable upon demand.

9. **Status of Lease.** Colonie and Innovative/Colonie agree that, as of the date of this Agreement: (i) the Lease is current and in full force and effect; (ii) there are no unrecorded agreements, modifications, or transfers affecting the Lease; and (iii) to each party's knowledge, there are no defaults or outstanding breaches by the other party to the Lease; excepting, however, Schedule B is amended to delete all pages other than page "1 of 3". This Agreement has been authorized by Colonie and Innovative/Colonie.


10. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. **Assignment.** The rights granted under this Agreement may not be assigned by Innovative/Colonie without the prior written consent of Colonie.



INNOVATIVE/COLONIE:

INNOVATIVE/COLONIE, LLC,  
a Delaware limited liability company

By: 

Name: Peter H. Zelif, Sr.

Title: President

vice PHZ

STATE OF NEW YORK )  
                                  ) ss.:  
COUNTY OF ERIE )

On 3/20/11, 2011 before me, the undersigned, personally appeared Peter H. Zelif, Sr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Vincent J. Sanchez  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires October 31, 2013

  
Notary Public



Exhibit A

WATER EASEMENT AREA

ALL that certain tract, piece or parcel of land situate, lying and being in the Town of Colonie, County of Albany and State of New York, being a portion of lands conveyed to Town of Colonie and so recorded in Book 2307 of Deeds at Page 609, in the Albany County Clerk's Office, and being more particularly bounded and described as follows:

BEGINNING at a point in the northerly line of lands now or formerly of Carolina Freight Carriers, Corp. conveyed by a deed recorded in the Albany County Clerk's Office in Book 2326 of Deeds at Page 644, 275.63 feet measured westerly along the same from the northeasterly corner thereof, said point also being the southwesterly corner of the Lease Area for Landfill Gas to Energy Facility;

Thence along the northerly line of lands of said Carolina Freight Carriers, Corp. N69°13'50"W, 341.37 feet to the northwesterly corner thereof;

Thence on a bearing of S89°02' 10" W, 24.51 feet;

Thence on a bearing of N0°57' 50" W, 40.22 feet;

Thence on a bearing of N89°02' 10" E, 49.85 feet;

Thence on a bearing of S68°57' 45" E, 134.34 feet;

Thence on a bearing of S74° 17' 52" E, 192.27 feet to a point on the westerly line of the Lease Area to Landfill Gas to Energy Facility; and

Thence along said Lease Area on a bearing of S14° 35' 42" W, 63.31 feet to the point or place of beginning and containing 0.426 acres more or less.

EXHIBIT B

TELEPHONE EASEMENT AREA

ALL that certain tract, piece or parcel of land situate, lying and being in the Town of Colonie, County of Albany and State of New York, being a portion of lands conveyed to Town of Colonie and so recorded in Book 2307 of Deeds at Page 609, in the Albany County Clerk's Office, and being more particularly bounded and described as follows:

BEGINNING at a point in the northerly line of lands now or formerly of Carolina Freight Carriers, Corp. conveyed by a deed recorded in the Albany County Clerk's Office in Book 2326 of Deeds at Page 644, 275.63 feet measured westerly along the same from the northeasterly corner thereof, said point also being the southwesterly corner of the Lease Area for Landfill Gas to Energy Facility;

Thence along the northerly line of lands of said Carolina Freight Carriers, Corp. N69°13'50"W, 341.37 feet to the northwesterly corner thereof;

Thence continuing along the westerly line of lands of said Carolina Freight Carriers, Corp. on a bearing of S05°39'50"E, a distance of 47.42 feet to a point of curvature;

Thence along said curve to the right, having a radius of 914.24 feet and a chord bearing and distance of S07°34'10"W, 418.58 feet, an arc length of 422.33 feet to the northeasterly corner of Green Mountain Drive;

Thence along the northerly line of Green Mountain Drive on a bearing of N69°13'50"W, a distance of 53.31 feet to the southeasterly corner of a 40 feet wide ingress/egress easement conveyed by the Town of Colonie to Innovative Energy Systems;

Thence along the westerly and northerly lines of said easement the following six courses:

1. N14°53' 44"E, 116.24 feet
2. N05°21' 23"E, 163.68 feet
3. N06° 52' 37" W, 208.12 feet
4. N89°02' 10" E, 104.73 feet
5. S68°57' 45" E, 134.34 feet
6. S74° 17' 52" E, 192.27 feet to a point on the westerly line of the Lease Area to Landfill Gas to Energy Facility;

Thence along said Lease Area on a bearing of S14° 35' 42" W, 63.31 feet to the point or place of beginning and containing 1.153 acres more or less.

EXHIBIT C

ACCESS AND POWER FACILITIES EASEMENT AREA

ALL that certain tract, piece or parcel of land situate, lying and being in the Town of Colonie, County of Albany and State of New York, being a portion of lands conveyed to Town of Colonie and so recorded in Book 2307 of Deeds at Page 609, in the Albany County Clerk's Office, and being more particularly bounded and described as follows:

COMMENCING at a point in the northerly line of lands now or formerly of Carolina Freight Carriers, Corp. conveyed by a deed recorded in the Albany County Clerk's Office in Book 2326 of Deeds at Page 644, 275.63 feet measured westerly along the same from the northeasterly corner thereof, said point also being the southwesterly corner of the Lease Area for Landfill Gas to Energy Facility (the "Lease Area");

Thence along the westerly line of the Lease Area N14°35'42"E 225.02 feet to a point, said point being the northwesterly corner of the Lease Area and the POINT OF BEGINNING of the Access and Power Facilities Easement;

Thence from said POINT OF BEGINNING along the northerly line of said Lease Area the following three courses:

1. S74° 19'36"E, 103.18 feet
2. S58°19'42" E, 138.14 feet
3. S15°31'03"E, 10.73 feet;

Thence along the westerly line of a 50 feet wide powerline easement on a bearing of N44°47'00"E, a distance of 94.70 feet;

Thence on a bearing of N67°21'00"W, a distance of 117.86 feet;

Thence on a bearing of N82°12'27"W, a distance of 172.73 feet;

Thence on a bearing of S14°35'42"W, a distance of 26.13 feet to the point or place of beginning and containing 0.333 acres more or less.

## ASSIGNMENT, ASSUMPTION, CONSENT AND WAIVER AGREEMENT

This Assignment, Assumption, Consent, and Waiver Agreement (the "Agreement") is made and entered into as of the 31<sup>st</sup> day of August 2010, by and among Innovative Energy Systems, Inc. ("Innovative, Inc."), Innovative Energy Systems, LLC ("Innovative LLC"), Innovative/Colonie LLC ("Innovative/Colonie") and the Town of Colonie ("Colonie").

### RECITALS

A. Innovative, Inc. and Colonie are parties to a Gas Assignment Agreement dated December 9, 2004 (the "GAA") and a Lease Agreement dated August 10, 2005 (the "Lease"), as amended by the Lease Addendum No. 1, between Colonie and Innovative, Inc. and signed by the Town of Colonie on December 20, 2005 and by Innovative Inc. on December 27, 2005. The GAA and Lease are hereinafter collectively referred to as the "Agreements".

B. Pursuant to the Agreements, Innovative, Inc. is currently producing electricity at the Electricity Project for its benefit and the benefit of Colonie.

C. Innovative, Inc. has rearranged its corporate structure and that of its affiliates. In furtherance thereof, Innovative, Inc. has formed two new Delaware limited liability companies, Innovative LLC and Innovative/Colonie.

D. Innovative, Inc. transferred to Innovative LLC all of its right, title and interest in and to all of the assets used by it in conjunction with the performance of its obligations under the Agreements including, all of its right, title and interest in, to and under the Agreements. Assets of Innovative, Inc., other than the Agreements, used by it in conjunction with the performance of its obligations under the Agreements are hereinafter referred to as the "Assets". Immediately thereafter, Innovative LLC transferred to Innovative/Colonie, as a capital contribution, the Assets and Agreements.

E. Innovative, Inc. has requested that Colonie consent to the assignment of the Agreements and Assets first to Innovative LLC, and then from Innovative LLC to Innovative/Colonie pursuant to the terms and conditions hereof.

**NOW, THEREFORE**, in consideration of the covenants and agreements hereinafter contained and other good and valuable consideration, receipt of which is acknowledged by the parties hereto, intended to be legally bound hereby, agree as follows:

1. Assignment. As of January 1, 2009 Innovative, Inc. assigned and transferred as a capital contribution to Innovative LLC, and Innovative LLC accepted the assignment, transfer and contribution of all of Innovative Inc.'s right, title, benefit, privileges and interest in, to and under the Agreements and Assets.

5. Future Borrowings. Innovative/Colonie may assign its rights, duties or obligations under the Agreements as collateral security to any lenders ("Lenders") providing financing to Innovative, Inc., Innovative/Colonie or any of their affiliates only upon the written consent of Colonie, which consent shall not be unreasonably withheld, provided however, that no such assignment shall change or interfere with Colonie's rights hereunder, including, without limitation, the right to receive payments provided for under the Agreements.

6. Miscellaneous.

(a) This Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

(b) This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(c) This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of New York.

(d) Colonie acknowledges and agrees that by execution of this Agreement, Innovative, Inc. has complied with all of the restrictions regarding assignment set forth in the Agreements including those set forth in Article X of the GAA and Section 24 of the Lease.

(e) Innovative, Inc. and Colonie hereby acknowledge and agree that all of the contingencies set forth in Article XI of the GAA have been satisfied or waived by the parties hereto within the timeframe specified in Article XI of the GAA.

(f) Innovative, Inc. and Colonie acknowledge and agree that the Lease Commencement Date is March 9, 2006.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective duly authorized officers.

**INNOVATIVE ENERGY SYSTEMS, INC.**

By: \_\_\_\_\_

Name: Peter H. Zeff, Sr.  
Title: President and CEO

Date: \_\_\_\_\_

8/31/10

**INNOVATIVE ENERGY SYSTEMS, LLC**

By: \_\_\_\_\_

Name: Peter H. Zeff, Sr.  
Title: President and CEO

Date: \_\_\_\_\_

8/31/10

**INNOVATIVE/COLONIE, LLC**

By: \_\_\_\_\_

Name: Peter H. Zeff, Sr.  
Title: President and CEO

Date: \_\_\_\_\_

8/31/10

**TOWN OF COLONIE**

By: \_\_\_\_\_

Name: Paula A. Mahan  
Title: Supervisor

Date: \_\_\_\_\_

8/17/10