

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION (YOUNGSTOWN)**

BIO ENERGY (OHIO II), LLC,)	CASE NO.
PO Box 15217,)	
Lansing, MI 48901)	JUDGE
)	
Plaintiff,)	
)	
v.)	
)	
STEARNS, CONRAD AND SCHMIDT,)	
CONSULTING ENGINEERS, INC. D/B/A)	
SCS ENERGY)	
3900 Kilroy Airport Way, Suite 300,)	
Long Beach, CA 90806)	
)	
and)	
)	
ADSORPTION RESEARCH, INC.,)	
D/B/A KENT S. KNAEBEL AND)	
ASSOCIATES INC.)	
6175-D Shamrock Court)	
Dublin, OH 43016)	
)	
Defendants.)	

COMPLAINT

For its Complaint against Defendants Stearns, Conrad and Schmidt, Consulting Engineers, Inc. D/B/A SCS Energy (“SCS”) and Adsorption Research Inc. D/B/A Kent S. Knaebel and Associates, Inc. (“ARI”), Plaintiff Bio Energy (Ohio II), LLC (“EDL”) states as follows:

INTRODUCTION

1. This action arises out of the catastrophic failure of EDL’s facility enhancement and upgrade project in Youngstown, Ohio, designed and constructed to process and condition landfill gas to pipeline quality renewable natural gas (“Project”). EDL engaged SCS to design, engineer,

construct, and deliver a complete, turnkey Project in fully functional, operational condition and guarantee the completion by the agreed date specified in the parties' contract.

2. SCS was required to perform and be responsible for all design and engineering, procure all materials and equipment, and provide all construction, technical and professional services, and labor for the Project.

3. SCS subcontracted with ARI to design and provide certain critical components of the Project. Rather than delivering a functioning facility capable of processing landfill gas to pipeline-quality renewable natural gas, SCS delivered a fundamentally defective and largely non-operational facility plagued by pervasive design and engineering failures. These failures have rendered the Project incapable of achieving its intended purpose without substantial past and future remedial corrective work. The Project and its systems remain defective to date due to SCS and ARI's failed promises and consistent downplay of their botched design and inability to remedy their deficiencies.

4. SCS owes and refuses to pay EDL more than \$16MM in liquidated and other delay damages for failing to deliver the Project by the agreed upon substantial and final completion deadline. (**Exhibit A** at Appendix A-2 (SCS EPC Proposal), p. 22). These damages are in addition to performance buy down damages of nearly \$3MM and the hard cost of correcting the work and design to make the facility operational, the cost of which exceeds \$19,400,000.

5. SCS's breaches are not limited to delay, and the fault also lies with its equally deficient teammate, ARI. While SCS failed to achieve substantial and final completion milestones by the contractually mandated deadlines, the more fundamental failure lies in the Defendants' inability to deliver a Project that works in theory and in practice. These failures stem from SCS's

failure to coordinate and execute critical systems within the Project, including negligence attributable to its design subcontractor, ARI.

6. As a result of ARI's defective design, engineering and construction, SCS's failure to manage and deliver a working, completed Project, and their concerted efforts to disguise their persistent deficiencies, EDL has incurred and will continue to incur, tens of millions of dollars in damages to investigate, repair, redesign, and reconstruct the defective systems, in addition to continuing liquidated damages. SCS's and ARI's representations that the Project was complete and systems fully operational were knowingly false when made and repeated.

PARTIES

7. EDL hereby incorporates by reference its allegations contained in the foregoing paragraphs of the Complaint as if fully rewritten herein.

8. Defendant SCS is a corporation organized under the laws of Virginia, with its primary place of business located in Long Beach, California. SCS is registered to do business in Ohio as a foreign corporation.

9. Defendant ARI is a corporation organized under the laws of Ohio, with its principal place of business in Dublin, Ohio. ARI is engaged in the business of engineering and design of renewable energy and gas processing facilities and conducted business in Ohio in connection with the Project.

10. Plaintiff EDL is a limited liability company formed and existing pursuant to the laws of Delaware with its primary place of business located in Lansing, Michigan. EDL is registered to do business in Ohio as a foreign limited liability company.

11. EDL's sole member is Bio Energy (I), LLC, a Delaware limited liability company, which is itself wholly owned by Bio Energy (US), LLC, a Delaware limited liability company,

which is itself wholly owned by EDL Holdings (US), Inc., a Delaware corporation. Accordingly, EDL is a resident of Delaware and no other state.

JURISDICTION AND VENUE

12. EDL hereby incorporates by reference its allegations contained in the foregoing paragraphs of the Complaint as if fully rewritten herein.

13. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332. EDL, SCS and ARI are citizens of different states and the amount in controversy is more than \$75,000.

14. The Court has personal jurisdiction over SCS because it is a foreign corporation registered to do business in Ohio and transacted business in Ohio that is subject to this Complaint.

15. The Court has personal jurisdiction over ARI because it is an Ohio corporation registered to do business in Ohio and transacted business in Ohio that is subject to this Complaint.

16. Venue is proper pursuant to 28 U.S.C. § 1391 because the events giving rise to this dispute occurred in Youngstown (Mahoning County), Ohio within the Northern District of Ohio, Eastern Division, and SCS and ARI are subject to personal jurisdiction in this district.

17. In addition, pursuant to Section 21.3 titled “Consent to Jurisdiction” in the parties’ contract, SCS and EDL expressly “agree[d] that any legal proceeding by or against any party or with respect to or arising out of this Agreement will be brought in the state or federal courts located in Ohio...[and] irrevocably and unconditionally submits to the exclusive jurisdiction of such court.”

18. The parties’ dispute is governed by the laws of the State of Ohio. *See* Ohio Revised Code 4113.62(D).

19. Finally, this dispute involves a construction contract for the improvement of real property located in Youngstown (Mahoning County), Ohio. As such, Ohio Revised Code 4113.62 applies to the parties' contract and this Project and requires that any disputes regarding the Project must be litigated in Ohio.

20. Venue is also proper pursuant to Ohio Revised Code 4113.62(D) because this dispute involves, in part, a breach of a construction contract, the construction occurred in Youngstown (Mahoning County), Ohio, and the events giving rise to EDL's claims occurred in Youngstown (Mahoning County), Ohio.

FACTS

21. EDL hereby incorporates by reference its allegations contained in the foregoing paragraphs of the Complaint as if fully rewritten herein.

22. EDL owns two landfill biogas production facilities in the State of Ohio, one of which is the Project at issue in this Complaint, commonly referred to as the "Carbon Limestone Project."

23. Although the landfill for the Project is owned and operated by Republic Services, the gas collection systems have long been operated and maintained by a wholly owned subsidiary of Defendant SCS.

24. In December 2020, after securing Republic's consent to replace the Project's facility with a renewable natural gas production facility, EDL put the engineering, design, procurement, and physical construction of the Project out to bid.

25. In the related Request for Proposals ("RFP"), EDL noted that "[t]he gas quality is anticipated to change over time both seasonably and annually. The gas processing equipment shall be designed such that variations in gas quality do not negatively impact the plant operation" and

that it was the bidder's responsibility to "confirm the LFG characteristics and coordinate the construction of an RNG Plant that can successfully meet the NPGC pipeline quality gas specifications."

26. In response to EDL's RFP, SCS submitted one of the four proposals for the Project.

27. SCS's initial proposal included a traditional membrane CO₂ removal system but failed to include a guaranteed methane recovery sufficient to beat the other bidders. Accordingly, EDL did not initially award the contract to SCS.

28. Upon learning that it lost the bid, SCS sent an unsolicited, updated proposal that included a novel CO₂ Rejection Unit (CRU) design developed by ARI. SCS had previously declined to propose to EDL the use of ARI's novel CRU as it was unproven and too risky; indeed, SCS's initial proposal recommended against using the system, noting that: "ARI has not deployed this technology on a full-scale basis" and labeling it as "unproven."

29. In SCS's unsolicited, updated proposal, SCS changed its tune and promised a minimum methane recovery of 96.4% with capacity to achieve up to 98% methane recovery—a stark turnaround from the initial proposal of 92.5%.

30. Prior to agreeing to SCS's updated proposal touting ARI's novel approach, EDL challenged SCS on its position change and repeatedly questioned whether SCS could satisfy the Project requirements as contemplated in the RFPs and in line with SCS's updated proposal, including ARI's purportedly better technology.

31. SCS met several times with EDL personnel to sell them on the new ARI technology and repeatedly assured EDL that the ARI technology was reliable and would meet the methane recoveries promised in the updated proposal.

32. Based expressly on SCS's representations and guarantees, EDL, to its eventual detriment, elected to proceed with SCS's updated proposal for the Project.

Youngstown EPC Contract

33. On or around September 16, 2021, EDL and SCS entered an Engineering, Procurement and Construction Services Contract for the Carbon Limestone RNG Project ("Youngstown EPC Contract"). A true and correct copy of the Youngstown EPC Contract is attached hereto as **Exhibit A** and incorporated herein by reference.

34. The Youngstown EPC Contract obligated SCS to deliver a turnkey project and "perform, furnish, be responsible for, and pay the cost of all engineering and design, labor, Equipment and Materials, construction, technical and professional services" to complete the Project." (**Exhibit A** at Article 2.1.)

35. The Youngstown EPC Contract further provided that SCS would invoice EDL for its actual costs on an open book basis with an 11% mark-up on major equipment and 13% mark-up on all other costs, but with a guaranteed maximum contract price not to exceed Fifty-Nine Million Four Hundred Fifty-Nine Thousand Four Hundred U.S. Dollars (\$59,459,400) ("Initial GMP"). (See **Exhibit A** at Article 6.1; see also *id.* at Appendix A-2 (SCS EPC Proposal), p. 22.)

36. In addition, EDL approved \$6,761,716 in change orders, which adjusted to the Initial GMP to \$66,221,116.00 ("GMP").

37. SCS expressly agreed to be solely responsible for "[a]ll costs in excess of the Guaranteed Maximum Price necessary to complete the Work in accordance with this Agreement..." (See **Exhibit A** at Article 6.1.)

38. Pursuant to the Youngstown EPC Contract, SCS was to achieve substantial completion of the Project within 61 weeks after the Commencement Date of September 16, 2021. (**Exhibit A** at Article 12.6; *see also id.* at Appendix A-2 (SCS EPC Proposal), p. 21.)

39. In addition, SCS was required to achieve final completion within eight (8) weeks of Substantial Completion. (**Exhibit A** at Article 12.7; *see also id.* at Appendix A-2 (SCS EPC Proposal), p. 21.)

40. Accordingly, SCS was required to achieve Substantial Completion no later than November 17, 2022, and Final Completion no later than January 12, 2023.

41. The Youngstown EPC Contract at Article 12.1 defined Substantial Completion and provided the express conditions that must be satisfied for SCS to achieve Substantial Completion.

42. Likewise, the Youngstown EPC Contract at Article 12.4 defined Final Completion and provided the express conditions that must be satisfied for SCS to achieve Final Completion.

43. SCS acknowledged and agreed “that time is of the essence for the performance” of its obligations under the Youngstown EPC Contract and that it was required to perform and execute its work in accordance with the agreed to project schedule, milestone deadlines, and substantial and final competition deadlines. (**Exhibit A** at Article 5.1.)

44. SCS further agreed to liquidated damages of \$5,000 per day for the first 30 days of delay for which the plant fails to achieve Substantial Completion, \$10,000 per day for the next 30 days and \$15,000 per day for each day thereafter. (**Exhibit A** at Article 13.5; *see also id.* at Appendix A-2 (SCS EPC Proposal), p. 22.)

45. SCS also agreed to liquidated damages of \$3,000 per day after Substantial Completion for each day Final Completion was not achieved. (**Exhibit A** at Article 13.5; *see also id.* at Appendix A-2 (SCS EPC Proposal), p. 22.)

46. Absent “gross negligence, willful misconduct, intentional misrepresentation, or fraud by SCS, the parties agreed to limit SCS’s exposure on the liquidated damages to no more than 25% of the GMP (“Delay Damages Cap”). (**Exhibit A** at Articles 13.5, 15.2; *see also id.* at Appendix A-2 (SCS EPC Proposal), p. 22.)

47. As a result, liquidated damages have accrued and continue to accrue pursuant to Article 13.5 of the Youngstown EPC Contract in an amount exceeding \$16,555,279.00 and continuing to increase daily.

48. In addition, the Youngstown EPC Contract also provides that SCS is responsible for performance buy-downs in the form of compensation paid to EDL in the event the Facility fails to achieve the Design Parameters. (**Exhibit A** at Article 7.1.)

49. SCS agreed that Buy-Down Damages are to be calculated based on the formulas detailed in Section 13.6 of the Youngstown EPC Contract and are in addition to Liquidated Damages. (**Exhibit A** at Article 13.6.)

50. SCS was contractually obligated to provide a design that resulted in methane recovery of at least 96.3% for EDL to inject into the pipeline for sale. (*See Exhibit A*, Appendix B at pp. 47, 54.)

51. SCS’s and ARI’s design failed and continues to fail to achieve the contractual design specification for methane recovery of at least 96.3%.

52. Specifically, SCS could only demonstrate methane recovery of 92% and never met the contractual design minimum for methane recovery of 96.3%.

53. EDL is therefore entitled to performance buy-down of at least \$2,956,914, which is calculated using the formula for “failure to meet the Plant Percent Methane Recovery Design Parameter” provided in the Youngstown EPC Contract (Article 13.6), as shown below:

13.6 Buy Downs for Failure to Meet Design Parameters. Provided Owner has satisfied its obligation to provide inlet landfill gas in the quantity, and meeting the specifications as set forth in **Appendix B – Testing and Design Parameters**, if the Facility fails to satisfy any of the five Design Parameters set forth in **Appendix B – Testing and Design Parameters**, Contractor shall pay to Owner, in addition to any Delay Damages due pursuant to Section 13.5, the following amounts (the “*Buy Downs*”):

(a) for failure to meet the Plant Inlet Capacity Design Parameter = Guaranteed Maximum Price x (Demonstrated scfm – Design scfm) / (Design scfm);

(b) for failure to meet the Plant Percent Methane Recovery Design Parameter = Guaranteed Maximum Price x (Demonstrated Percent Recovery – Design Percent Recovery) / (Design Percent Recovery);

54. Accordingly, Buy-Down Damages have accrued pursuant to Article 13.6 of the Youngstown EPC Contract in an amount exceeding \$2,956,914.00.

SCS’s Integration of ARI for the Benefit of EDL and the Project

55. SCS did not engage in the Project in isolation. Rather, SCS interlocked with ARI as its design subcontractor to perform critical engineering and design services for the Project.

56. On or around September 16, 2021, in connection with the Project and the Youngstown EPC Contract, SCS entered into a purchase order agreement with ARI, Purchase Order 06-PO00509 (“ARI Purchase Order Agreement”), pursuant to which ARI agreed to provide engineering and design services for the Project.

57. Under the ARI Purchase Order Agreement, ARI was responsible for designing key systems and components of the Project necessary to process landfill gas into pipeline-quality renewable natural gas, including the pressure swing adsorption system for purifying LFG to meet pipeline specifications.

58. Pursuant to the ARI Purchase Order Agreement, ARI committed to the obligation that its completed work and furnished equipment will be new and will be free from defects in material and workmanship and warranted the same to Purchaser and Purchaser’s customer.

59. Pursuant to the ARI Purchase Order Agreement, ARI guaranteed, amongst other things, a methane recovery of at least 96.3 percent with a specific feed gas composition.

60. By design and express intent, SCS's customer and Project owner, EDL, is an explicit third-party beneficiary under the ARI Purchase Order Agreement.

61. SCS and ARI worked in close coordination throughout the Project and operated as an integrated design-build team, jointly responsible for the engineering, design, and implementation of critical Project systems.

62. ARI was aware that its designs were being prepared specifically for EDL's Project and that EDL would rely on those designs in constructing and operating the facility.

63. ARI communicated directly and indirectly with SCS regarding design specifications, system performance requirements, and implementation constraints, and its work was incorporated into the Project as constructed.

64. SCS bid the Project with ARI as the design engineer. SCS later adopted, approved, and implemented ARI's designs, and SCS and ARI jointly participated in decisions affecting system design, integration, and performance.

65. The ARI Purchase Order Agreement was entered into for the purpose of design and engineering the Project for the benefit of EDL. ARI knew that its design services were being performed specifically for the benefit of EDL and that EDL would rely on those services in constructing, commissioning, and operating the Project.

66. ARI knew that EDL would rely on ARI's preparation of designs intended to be incorporated into a functioning facility and foresaw that its failure to provide an effective and workable design would result in the delay of the Project and the Project's ultimate failure.

Defendants' Design and Construction Defects

67. In addition to failing to complete the Project timely, Defendants failed to design and construct a facility capable of operating in accordance with the contractual performance requirements.

68. The defects in the Project arise from the combined and interdependent failures of SCS and ARI, including failures in design, coordination, integration, and execution.

69. In or around October 2023, it became apparent that the ARI-designed systems could not process the contracted landfill gas quantities, causing EDL to dramatically reduce landfill gas intake while SCS and ARI offered to redesign that deficient CRU system under the guise of “making improvements.”

70. After ten months of devising redesigns to “make improvements,” implement the purported improvements, and required material changes to the Project components as recent as November 2025, the Project’s facilities remain fatally deficient and inoperable in contrast to SCS’s promise in SCS’s updated proposal to EDL.

71. ARI and SCS’s redesigns were in fact not “improvement efforts;” they were efforts to completely rehaul the deficient design, the promise and efficiency of which had caused EDL to sign the Youngstown EPC Contract in the first place.

72. SCS and ARI each knew or should have known that defects in design would foreseeably result in substantial harm to EDL, including the inability of the Project to function as intended and the need for extensive and costly remediation.

73. The Project, as delivered by SCS and as designed by ARI, suffers from numerous systemic and interrelated design defects, including but not limited to deficiencies in system integration, processing capacity, equipment selection, and operational reliability.

74. The three most glaring defects in ARI's designs, as co-signed and delivered to EDL by SCS, are (i) adsorbent flaws that failed to maximize methane recovery as promised; (ii) depressurization flaws related to control valve design choices falling well below the standard of care; and (iii) blowdown cycling flaws based on incorrect simulation data that caused further lost performance.

75. These defects prevent the facility from consistently processing landfill gas to pipeline-quality renewable natural gas and render the Project incapable of achieving its intended commercial purpose. ARI has shown no ability to cure its design defects, and SCS's blind eye to ARI's foul-up has further derailed recovery efforts.

76. Defendants' design failures were not isolated or minor. Rather, they reflect a fundamental breakdown in engineering judgment, coordination, and execution across critical Project systems.

77. The Project's failures at the defective design level are only the start of the issues. SCS's independent duty to construct the Project's facility in a workmanlike manner and properly execute the work for a "turnkey facility" falls short.

78. Despite only finishing one of the six contractual requirements for achieving substantial completion, SCS claimed that it achieved substantial completion of the Project's facility on July 14, 2023.

79. Moreover, on August 15, 2024, and in the same month that ARI purportedly completed its corrective design work, SCS submitted not one but several separate Change Order Requests seeking an additional \$6.1 million for alleged extra work for the Project.

80. The Change Order Requests, albeit baseless and questionably timed as SCS faced forthcoming liquidated damages claims, only further exemplify SCS's own contractual failures in executing the Project.

81. One Change Order Request contended that SCS was required to retain a third-party contractor to supplement EDL's purported insufficient staff support. SCS's obligation under the Youngstown EPC Contract to provide full-service commissioning for the turn-key Project was actively ignored by SCS. (*See generally* **Exhibit A.**)

82. SCS abandoned its construction duties at the Project by (i) delegating onsite staffing to third party contractors without receiving approval from EDL, (ii) failing to vet any of the third-party contractor's Project staff, and (iii) failing to notify EDL that SCS expected additional compensation for onboarding a third-party commissioning contractor.

83. Another Change Order Request seeks over a million dollars to account for the difference between its contracted stormwater pond estimate and the actual cost of the stormwater pond that was required by the local jurisdiction of the Project. SCS's inability to properly execute a stormwater pond under the applicable rules of the local permitting authority for this turnkey Project is its own, unique failure and underscores SCS's failure to abide by industry standards with the requisite standard of care.

84. Another Change Order Request seeks nearly two million dollars for the redesign and replacement of the Thermal Oxidizers at the Project due to a purportedly non-conforming landfill gas. SCS's Change Order Request intentionally and willfully leaves out its written confirmation that the thermal oxidizers needed a redesign and replacement because of their chosen vendor's miscalculation as to the product gas methane recovery.

85. Instead of communicating that landfill gas composition was the cause of the redesign, SCS betrayed the industry's standard of care and attempted to reclassify the change, evincing bad faith.

86. Apart from SCS's pointing out its own errors by way of Change Order Requests, EDL continues to experience recurring operational disruptions from SCS's below-standard execution.

87. EDL is now faced with substantial redesign, repair, replacement, and reconstruction of major Project components, which is required to get the Project to a remotely workable state.

88. Despite these fundamental design and construction flaws that have made the Project unworkable, Defendants have failed and refused to take responsibility for correcting the defective design and construction, leaving EDL to bear the cost of remedying a Project that SCS was contractually obligated to deliver in a functional, turnkey condition.

Defendants' Concerted Actions After the Fact

89. Knowing that ARI's design and engineering was fundamentally flawed and could not perform as promised, ARI and SCS both engaged in pushing forward the narrative that the initial design in SCS's updated proposal merely needed "improvements" to reach full efficacy.

90. At all points in time since the Project's design and construction efforts failed to meet expectations, ARI and SCS each knew that ARI's proffered design was untenable and neither Defendant had the ability or expertise to fix the pervading systemic defects in design and constructions and deliver the promised facility for the Project.

91. For example, ARI's simulation data for the blowdown cycling process was patently wrong. ARI chose to omit that fact during all redesign meetings, likely because increasing the

cycle frequency meant a reduction in the amount of methane recovery and an overload of the related vessels capacity.

92. Rather than engage in ten months of delay pretending to work on “improvements,” Defendants had an obligation to be direct about their inability to deliver on the Project as promised in SCS’s updated proposal and later contracted to in the Youngstown EPC Contract.

93. SCS and ARI prioritized maintaining a business relationship with EDL over honesty in design and execution capabilities and left EDL on the hook for uncovering the depth of the design’s defects and failure to meet delivery of a fully functional facility for the Project.

94. Unlike ARI’s design, Defendants’ concealment efforts worked as designed: maintain a business relationship and keep their own reputations intact while leaving EDL to fend for itself, hire outside consultants to independently evaluate the work, and repair Defendants’ failures.

95. Defendants’ constant efforts to conceal their impotence in curing critical design defects have caused and continue to cause costs incurred to remedy Defendants’ ineptitude and failed promises to skyrocket.

96. However, SCS’s conduct and ARI’s conduct extend beyond mere delay. Defendants’ defective design, engineering, and construction have caused substantial direct damages, including the cost to investigate, repair, redesign, and reconstruct defective work, which are not subject to the contractual limitation on liquidated damages.

97. As a direct and proximate result of Defendants’ breaches and failures, EDL has suffered substantial damages including (i) liquidated damages that continue to accrue; (ii) costs to investigate, repair, redesign, and reconstruct defective work; (iii) additional direct and

consequential damages to be proven at trial; and (iv) interest, attorneys' fees, and costs as permitted by contract and law.

COUNT ONE
(Breach of Contract Against SCS)

98. EDL hereby incorporates by reference its allegations contained in the foregoing paragraphs of the Complaint as if fully rewritten herein.

99. On or around September 16, 2021, EDL and SCS entered into the Youngstown EPC Contract described above and attached hereto as **Exhibit A**.

100. SCS materially breached the terms and conditions of the Youngstown EPC Contract by, including, but not limited to: (i) failing to complete the Project by the contractually agreed to Substantial Completion deadline; (ii) failing to complete the Project by the contractually agreed to Final Completion deadline; (iii) failing to complete the Project within the GMP; (iv) failing to furnish sufficient construction, technical and professional services, including, but not limited to, adequate materials, labor, supervision; (v) delivery of unsatisfactory work and damage to completed work; (vi) failing to design, engineer and construct the Project in compliance with the contractually agreed to performance standards; (vii) failing to regularly provided updated and accurate scheduling information for the Project; (viii) defectively designing and constructing the Project; (ix) failing to abide by the implied duty of good faith and fair dealing; (x) failing to achieve the contractually required methane recovery of 96.3%; and (xi) otherwise disregarding and ignoring SCS's obligations to EDL under the Youngstown EPC Contract.

101. EDL fully performed all its obligations required under the terms and conditions of the Youngstown EPC Contract and has met all conditions precedent to the performance by SCS.

102. As a direct and proximate result of SCS's material breaches, EDL has incurred and will continue to incurred direct compensatory damages related to SCS's defective design and

construction of the Project, failing to timely complete the Project, delays associated with SCS's failure to timely achieve substantial and final completion, and performance buy-downs, in an amount no less than Thirty Eight Million Nine Hundred Twelve Thousand and One Hundred and Ninety-Three Dollars (\$38,912,193.00) comprised of nearly \$20 Million in hard cost of repairs and no less than \$16,555,279.00 in Liquidated and Delay damages and no less than \$2,956,914.00 in Buy-Down damages to be more fully proven at trial, in addition to prejudgment interest, post-judgment interest and the costs of this action.

COUNT TWO
(Breach of Contract Against ARI)

103. EDL hereby incorporates by reference its allegations contained in the foregoing paragraphs of the Complaint as if fully rewritten herein.

104. On or around September 16, 2021, ARI and SCS entered into the ARI Purchase Order Agreement described above.

105. The ARI Purchase Order Agreement was entered into for the direct and intended benefit of EDL as the owner and SCS's customer. EDL is the intended third-party beneficiary of the ARI Purchase Order Agreement and is entitled to enforce its terms.

106. The ARI Purchase Order Agreement required ARI to design critical systems and components of the Project in accordance with specified performance requirements, applicable industry standards, and the overall Project objectives.

107. ARI knew that the purpose of the design work was to enable the Project to function as a facility capable of processing landfill gas into pipeline-quality renewable natural gas for EDL's commercial use.

108. ARI materially breached the ARI Purchase Order Agreement by, including, but not limited to: (i) failing to exercise reasonable care, skill and diligence in the performance of its design

services; (ii) failing to prepare designs that complied with applicable performance requirements and specifications; (iii) failing to ensure that its designs were suitable for their intended purpose; (iv) failure to coordinate its design work to integrate with other Project systems; (v) failing to provide accurate and reliable engineering and technical information; (vi) specifying inadequate or incompatible equipment and configurations; (vii) failing to identify and correct design deficiencies; and (viii) otherwise failing to perform its obligations in accordance with the requirements of the ARI Purchase Order Agreement.

109. EDL fully performed its obligations required under the terms and conditions of the related Youngstown EPC Contract and the ARI Purchase Order Agreement and has met all conditions precedent to the performance by ARI.

110. As a direct and proximate result of ARI's material breaches, EDL has incurred and will continue to incur direct compensatory damages related to ARI's defective design of the Project, and failing to investigate, repair, and redesign the defective systems in alignment with Project objectives, in an amount no less than Twenty Million Dollars (\$20,000,000.00) comprised of the hard cost of repairs to be more fully proven at trial, in addition to prejudgment interest, post-judgment interest and the costs of this action.

COUNT THREE
(Breach of Express Warranty Against ARI)

111. EDL hereby incorporates by reference its allegations contained in the foregoing paragraphs of the Complaint as if fully rewritten herein.

112. The ARI Purchase Order Agreement includes an express warranty made by ARI for the benefit of SCS and SCS's customer, EDL.

113. EDL is therefore an intended beneficiary of ARI's Express Warranty and is entitled to enforce it.

114. ARI expressly warranted, to EDL, that its completed work and furnished equipment and Product would be new and will be free from defects in material and workmanship.

115. ARI's completed work under the ARI Purchase Order Agreement, in connection with the Youngstown EPC Contract, includes its engineering and design services, as well as the specifications, configurations, and integration of equipment and systems incorporated into the Project.

116. Contrary to ARI's express warranty, ARI's completed work, furnished equipment, and product were defective, including but not limited to defects arising from: (i) improper and deficient design of critical systems; (ii) selection and specification of inadequate or incompatible equipment; (iii) failure to ensure proper workmanship in integration and functionality of Project components; (iv) incorporation of design errors that rendered systems unable to perform as required; and (v) other defects in the materials, workmanship, and design embodied in ARI's work and furnished product.

117. These defects are not limited to isolated issues but reflect systemic deficiencies that have rendered the Project incapable of reliably operating in accordance with its intended purpose.

118. EDL has repeatedly provided ARI with reasonable notice of the defect which ARI has failed to cure and shown a constant inability to cure.

119. ARI's defective work and furnished equipment constitute breaches of its express warranty, including because the work and product were not free from defects in material and workmanship and were not fit for their intended use.

120. As a direct and proximate result of ARI's breach of its express warranty, EDL has suffered and will continue to suffer substantial damages, including but not limited to an amount an amount no less than Twenty Million Dollars (\$20,000,000.00), and costs to investigate, repair,

redesign, and replace defective systems and equipment and loss of use, operational inefficiencies, and other consequential damages in an amount to be more fully proven at trial, in addition to prejudgment interest, post-judgment interest and the costs of this action.

COUNT FOUR
(Professional Negligence Due to Defective Construction Against SCS)

121. EDL hereby incorporates by reference its allegations contained in the foregoing paragraphs of the Complaint as if fully rewritten herein.

122. SCS owed EDL a duty to perform construction and project execution in accordance with reasonable care, industry standards, and contractual requirements.

123. SCS breached its duty by (i) failing to construct the Project in a workmanlike manner; (ii) failing to properly execute system installation and integration; (iii) delegating critical responsibilities without proper oversight; (iv) failing to comply with applicable standards and specifications; and (v) improperly managing commissioning and startup.

124. SCS's defective construction was a direct and proximate cause of the Project's operational failures.

125. As a direct and proximate result of SCS's professional negligence, EDL has suffered and will continue to suffer substantial damages, including but not limited to costs to investigate, repair, redesign, and replace defective systems and equipment and loss of use, operational inefficiencies, and other consequential damages in an amount to be more fully proven at trial, in addition to prejudgment interest, post-judgment interest and the costs of this action.

COUNT FIVE
(Professional Negligence Due to Defective Design Against ARI)

126. EDL hereby incorporates by reference its allegations contained in the foregoing paragraphs of the Complaint as if fully rewritten herein.

127. ARI, as a professional engineering and design firm, owed a duty to exercise reasonable care, skill, and diligence consistent with the standards of its profession.

128. ARI breached that duty by, among other things: (i) failing to design systems of capable of meeting the required performance standards; (ii) failing to ensure proper integration of Project components; (iii) specifying inadequate, incompatible, or improperly configured equipment; (iv) failing to identify and correct design deficiencies; and (v) failing to coordinate design elements necessary for a functioning facility.

129. ARI's breaches directly caused the Project's failure.

130. ARI's breaches proximately caused substantial damages to EDL, including the costs to repair, redesign, and reconstruct defective systems and resulting economic losses.

131. As a direct and proximate result of ARI's professional negligence, EDL has suffered and will continue to suffer substantial damages, including but not limited to costs to investigate, repair, redesign, and replace defective systems and equipment and loss of use, operational inefficiencies, and other consequential damages in an amount to be more fully proven at trial, in addition to prejudgment interest, post-judgment interest and the costs of this action.

COUNT SIX
(Negligent Misrepresentation Against Defendants)

132. EDL hereby incorporates by reference its allegations contained in the foregoing paragraphs of the Complaint as if fully rewritten herein.

133. Defendants supplied information, including design specifications and engineering representations, for the guidance EDL in connection with the Project.

134. Defendants failed to exercise reasonable care in obtaining and communicating that information.

135. Defendants, in the course of their business, supplied false information for EDL's guidance, including performance projections, design capabilities, and system functionality.

136. Defendants failed to exercise reasonable care in communicating the relevant information, including but not limited to stating inaccurate reasons for Project failure during redesign meetings.

137. Defendants knew that EDL would rely, directly or indirectly, on its design work in constructing and operating the Project.

138. EDL reasonably relied on Defendants' design and engineering work, resulting in substantial financial harm.

139. The acts and omissions of SCS and ARI combined to cause indivisible harm to EDL.

140. SCS and ARI are jointly and severally liable for the damages resulting from their concerted and interdependent conduct.

141. As a direct and proximate result of Defendant's negligent misrepresentation, EDL has suffered and will continue to suffer substantial damages, including but not limited to costs to investigate, repair, redesign, and replace defective systems and equipment and loss of use, operational inefficiencies, and other consequential damages in an amount to be more fully proven at trial, in addition to prejudgment interest, post-judgment interest and the costs of this action.

COUNT SEVEN
(Gross Negligence Against Defendants)

142. EDL hereby incorporates by reference its allegations contained in the foregoing paragraphs of the Complaint as if fully rewritten herein.

143. Defendants owed duties of care to EDL.

144. Defendants' conduct went beyond ordinary negligence and constituted a failure to exercise even slight care, including but not limited to (i) knowingly advancing an unproven and previously rejected design, (ii) ignoring known performance failures and labeling required fixes as mere "improvements" on a fundamentally flawed design, (iii) continuing defective redesign efforts without disclosure as to Defendants' ability to execute and deliver; and (iv) prioritizing business interests over safety and functionality.

145. Defendants acted with reckless disregard for the consequences of their actions.

146. EDL was proximately injured in both delays and costs to remedy the ongoing defects and Project failures.

147. The acts and omissions of SCS and ARI combined to cause indivisible harm to EDL.

148. SCS and ARI are jointly and severally liable for the damages resulting from their concerted and interdependent conduct.

149. As a direct and proximate result of Defendant's gross negligence, EDL has suffered and will continue to suffer substantial damages, including but not limited to costs to investigate, repair, redesign, and replace defective systems and equipment and loss of use, operational inefficiencies, and other consequential damages in an amount to be more fully proven at trial, in addition to prejudgment interest, post-judgment interest and the costs of this action.

CONDITIONS PRECEDENT

150. All conditions precedent to institute this action and for EDL's claim for relief have been performed or have occurred.

WHEREFORE, EDL demands judgment as follows:

- A. EDL prays that a monetary judgment be entered against SCS and in favor of EDL in an amount no less than \$38,912,193.00, which consists Liquidated and Buy-Down Damages in an amount no less than \$19,512,193.00 and damages and cost for diagnosing and correcting all design defects and defective work in an amount no less than \$19,400,000.00;
- B. EDL prays that monetary judgment be entered against ARI, jointly and severally with SCS, in an amount no less than \$19,400,000.00 for the damages and cost for diagnosing and correcting all design defects and defective work;
- C. That EDL receives its costs, disbursements, interest, and attorneys' fees as provided by contract and/or law;
- D. Pre-judgment and post-judgment interest as provided by the parties' contract and/or applicable law; and
- E. Such other and further relief, at law and in equity, as the Court deems just and proper.

Respectfully submitted,

/s/Thomas Crist

THOMAS O. CRIST (0064454)
JONATHON KORINKO (0088407)
BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP
127 Public Square, Suite 4900
Cleveland, OH 44114
T: 216-363-4500; F: 216-363-4588
Email: tcrist@beneschlaw.com
jkorinko@beneschlaw.com

*Counsel for Plaintiff Bio Energy (Ohio II),
LLC*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Bio Energy (Ohio II) LLC

(b) County of Residence of First Listed Plaintiff Ingham Cty Michigan (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment.

DEFENDANTS

Conrad and Schmidt, Consulting Engineers, Inc. D/B/A CCC Environmental Adaptation Resources Inc. D/B/A Kent Co. County of Residence of First Listed Defendant Los Angeles Cty, CA; (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §1332(a)(1)

Brief description of cause: Breach of contract and related claims for defective construction and design of Plaintiff's renewable gas facility.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 38,912,193.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

4/10/2026 /s/ Thomas Crist

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

- 1. General Civil
- 2. Administrative Review/Social Security
- 3. Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. **RELATED OR REFILED CASES** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action: is **RELATED** to another **PENDING** civil case is a **REFILED** case was **PREVIOUSLY REMANDED**

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested. ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY:

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY: Mahoning County

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

- Akron - (Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)
- Cleveland - (Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)
- Youngstown - (Counties: Columbiana, Mahoning, and Trumbull)

WESTERN DIVISION

- Toledo - (Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Attachment to Civil Cover Sheet

THOMAS O. CRIST (0064454)
JONATHON KORINKO (0088407)
BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
127 Public Square, Suite 4900
Cleveland, OH 44114
T: 216-363-4500; F: 216-363-4588
Email: tcrist@beneschlaw.com
jkorinko@beneschlaw.com

Counsel for Plaintiff Bio Energy (Ohio II), LLC

EXHIBIT A



**Engineering, Procurement and Construction
Services Contract**
for the Carbon Limestone RNG Project

Bio Energy (Ohio II), LLC (**EDL**)
Stearns, Conrad and Schmidt, Consulting
Engineers, Inc. (**Contractor**)

ARTICLE 2 - SCOPE OF WORK AND CONTRACTOR RESPONSIBILITIES

2.1 General. Contractor shall perform, furnish, be responsible for, and pay the cost of all engineering and design, labor, Equipment and Materials, construction, technical and professional services (including, without limitation, all activities described in **Appendix A – Basis of Design Specification and Scope of Work**) required such that Owner will be provided a completed Facility that will achieve the Design Parameters set forth in **Appendix B – Testing and Design Parameters** during testing and comply with all Applicable Laws, Permits and all other requirements set forth in the Contract Documents, all for the Guaranteed Maximum Price. The Contractor is obligated to supply all of the Equipment and Materials, labor and design services and to supply and perform all of the Work, in each case as may reasonably be required, necessary, incidental, or appropriate (whether or not specifically set forth in this Agreement) to complete the Work such that the Facility satisfies the applicable terms, conditions and requirements set forth in this Agreement. All parts of the Work indicated or reasonably inferred from the terms of this Agreement and not expressly mentioned herein shall be furnished and executed as if it were expressly required by this Agreement. Without limiting the generality of the foregoing, design details omitted from this Agreement shall, as a minimum, be as necessary to meet the performance requirements of **Appendix B – Testing and Design Parameters**. The completed Facility will be designed and constructed to, meet the requirements of (a) this Agreement and the Contract Documents, including those concerning appropriate coordination, interface and operation with equipment that is integrated with but outside the Facility as set forth in **Appendix A – Basis of Design Specification and Scope of Work**; (b) the Design Parameters as set forth in **Appendix B – Testing and Design Parameters**, and (c) Applicable Laws and Permits.

[REDACTED]

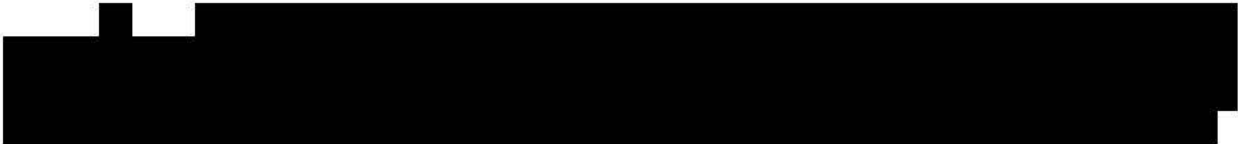
[REDACTED]

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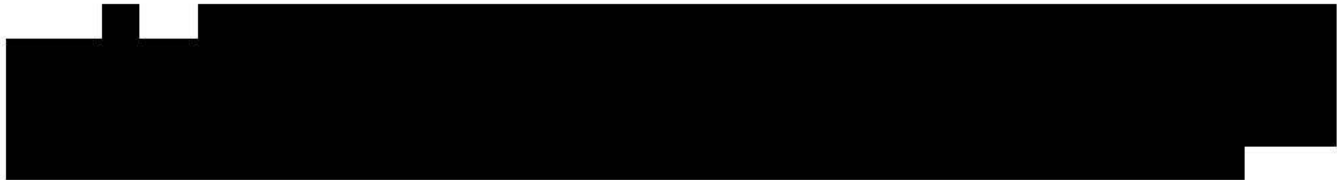
[REDACTED]

[REDACTED]



ARTICLE 5 - COMMENCEMENT AND SCHEDULING OF THE WORK

5.1 Time for Performance. The Parties acknowledge that time is of the essence for the performance of Contractor’s obligations under this Agreement. Contractor shall perform the Work in accordance with the Project Schedule. Contractor shall meet all milestones and conform with the times specified in the Project Schedule. Should there be a delay to any Critical Path Item, as reasonably determined by the Owner, Owner’s Representative or Owner’s Engineer, for reasons not otherwise excused under this Agreement, Contractor shall propose within five (5) Days a manpower loaded recovery schedule designed to bring the Work back in line with the Project Schedule. Upon approval of the manpower loaded recovery schedule by Owner, Contractor shall immediately commence and shall diligently prosecute the Work in accordance with the then-current approved recovery schedule. Should Owner reject any proposed recovery schedule, or should Owner doubt that Contractor can recover the critical path of the Project Schedule, then Owner may engage an independent third party engineer, at Contractor’s sole cost and expense, to evaluate Contractor’s ability to recover the critical path of the Project Schedule using the proposed recovery schedule and to make a binding recommendation for the recovery schedule, including milestones to be met by Contractor in implementing such recovery schedule. All costs under the recovery schedule shall be borne by Contractor and any failure by Contractor to meet the milestones under the recovery schedule shall be an Event of Default under this Agreement pursuant to ARTICLE 18.



ARTICLE 6 - GUARANTEED MAXIMUM PRICE AND CONTRACTOR SAVINGS BONUS

6.1 Guaranteed Maximum Price. As full compensation and consideration for the full and complete performance of all of the Work and all of Contractor’s other obligations under this Agreement and all costs in connection therewith, Owner shall pay to Contractor, and Contractor shall accept a guaranteed maximum price of Fifty-Nine Million Four Hundred Fifty Nine Thousand Four Hundred U.S. Dollars (USD \$59,459,400) (the “*Guaranteed Maximum Price*” or “*GMP*”), which shall include all transportation fees, freight, packing costs, sales and use taxes and import and custom duties (prevailing at the time the Agreement was executed), subject to Sections 6.2, 6.4 and 6.5 and adjustment as otherwise set forth in this Agreement. All costs in excess of the Guaranteed Maximum Price necessary to complete the Work in accordance with this Agreement, shall be paid solely by Contractor.



[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 7 - PROGRESS PAYMENTS

7.1 Applications for Payments.

(a) Subject to the terms of this Agreement and the Contractor reaching the GMP, payments to Contractor (each a “***Progress Payment***”) shall be made based on actual costs incurred. The Contractor’s actual costs incurred are defined as follows: (i) Contractor’s labor at Contractor’s **Appendix D – Standard Fee Schedule** rates; (ii) actual cost of major equipment (defined as purchases over \$250,000) plus a markup of eleven percent (11%); and (iii) actual cost of subcontracts, expenses and minor equipment plus a markup of thirteen percent (13%).

(b) On a monthly basis, Contractor shall submit to Owner’s Representative an application for payment in the form set out in **Appendix C – Proforma Application for Payment**, that includes a description of the Work completed, the Progress Payment amount that Contractor is seeking and the cumulative total of the values of all previous Applications for Payment (“***Application for Payment***”). Each Application for Payment shall be accompanied by: (a) conditional waivers and releases of Liens in the form set forth on **Appendix J-1 – Conditional Lien Waiver and Release on Progress Payment** from

Contractor and such Subcontractors and Vendors as Owner shall require with respect to the period addressed by such Application for Payment; (b) unconditional waivers and releases of Liens in the form set forth on **Appendix J-2 – Unconditional Lien Waiver and Release on Progress Payment** from Contractor and such Subcontractors and Vendors as Owner shall require with respect to periods addressed by prior Applications for Payment, to the extent (but subject to Owner’s rights to withhold payment and Retainage) such prior payments have been received; (c) an itemized breakdown by hours and rates for all labor (including Contractor’s personnel, and those of Contractor’s other subcontractors that are providing professional services on a time and materials basis) used in the period covered by the Application for Payment); (d) a certification by Contractor that all of its laborers, Subcontractors and Vendors have been paid all monies due for Work performed through the most recent Progress Payment paid by Owner and that the Work has been completed pursuant to the requirements of the Contract Documents; (e) in the case of Equipment and Materials delivered to the Job Site, but not incorporated into the Work as of the date of such Application for Payment, bills of sale, invoices, or other documents warranting that Contractor has received such Equipment and Materials free and clear of all Liens; (f) photographs and other evidence that the Work has been completed pursuant to requirements of the Contract Documents; and (g) all other information reasonably requested by Owner for the purpose of verifying the Progress Payment claimed in the Application for Payment. Owner shall not be obligated to pay any Application for Payment which is not accompanied by those items set forth in clauses (a) through (g) above. Owner’s payment of any Application for Payment shall not constitute acceptance of the Work associated with such progress or relieve Contractor from its obligations hereunder.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

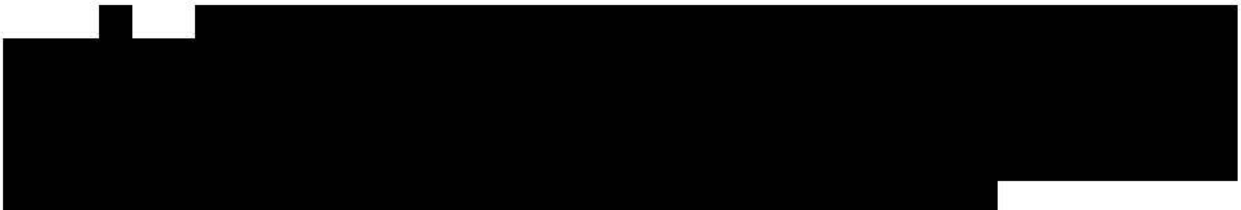
ARTICLE 12 - SUBSTANTIAL COMPLETION AND FINAL COMPLETION

12.1 Substantial Completion. “**Substantial Completion**” shall be achieved only when all of the following conditions have been satisfied; (a) the Facility has been physically constructed in accordance with the Contract Documents and is sufficiently complete in accordance with the Contract Documents such that it can be operated for its intended purpose, (b) the entire Work has been completed, except for Work on the Punchlist, (c) Contractor has obtained all Contractor Obtained Permits and Additional Permits for the Work, covering all Work up to the date of Substantial Completion; (d) Owner has received all Contractor document deliverables required to be delivered hereunder by Substantial Completion, including the O&M Manual and supporting documents necessary to operate the Facility in a safe and reliable manner (including an electronic copy draft of the SCADA/controls manuals), (e) the Punchlist shall have been created as provided in Section 12.3(a); and (f) the Facility shall have successfully completed the Reliability Test as set forth in **Appendix B – Testing and Design Parameters**.

[REDACTED]



■ ■



12.4 Final Completion. “*Final Completion*” of the Work shall be deemed to have occurred only when all of the following have occurred:

- (a) Substantial Completion has been achieved;
- (b) the Performance Test in **Appendix B – Testing and Design Parameters** has been successfully completed such that all Design Parameters have been achieved or, if such Performance Test has not been successfully completed, Contractor has paid all Buy Down amounts in accordance with Section 13.6;
- (c) Contractor shall have completed all items on the Punchlist to Owner’s reasonable satisfaction;
- (d) Contractor shall have completed all of the other Work (other than warranty work);
- (e) Owner shall have received all drawings and specifications, copies of final as-built drawings, the O&M Manual and supporting documents, training aids, the Spare Parts Schedule, and other technical information (including the finalized SCADA/controls manuals), each as required hereunder for Owner to operate and maintain the Facility; including a binder containing all manufacturer manuals and warranty card registration regarding the Work (including all Equipment and Materials);
- (f) Contractor shall have assigned to Owner, or provided Owner with, all warranties or guarantees that Contractor received from Subcontractors and Vendors;

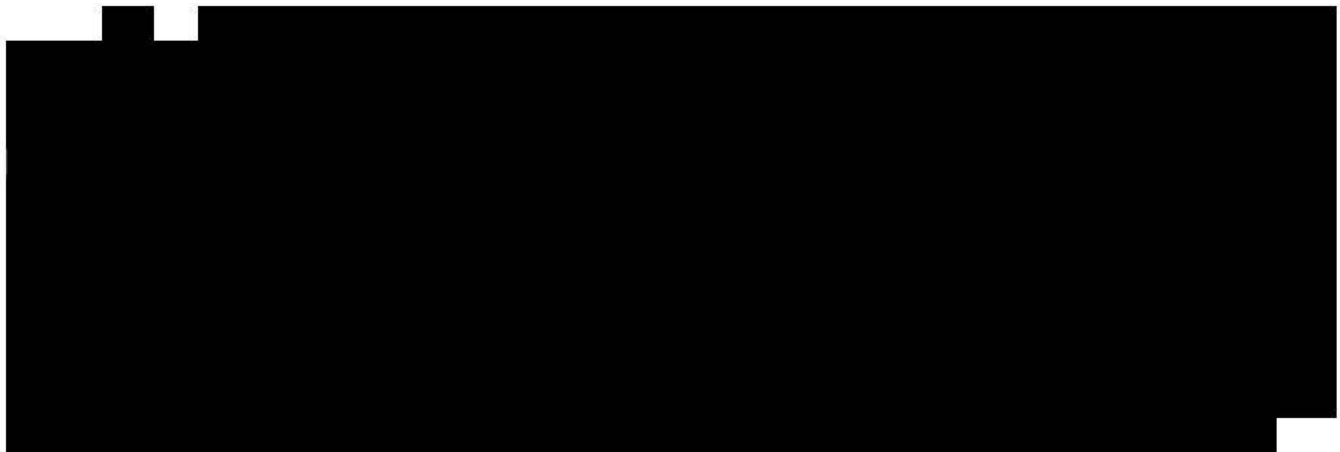
(g) all training of Owner's personnel by Contractor has been completed in accordance with the mutually agreed protocol in **Appendix L – Training Protocol**;

(h) removal from the Job Site of all of Contractor's, Subcontractors' personnel, supplies, waste, materials, rubbish and construction equipment;

(i) delivery by Contractor to Owner of evidence acceptable to Owner that all Subcontractors and Vendors have been fully and finally paid, including fully executed final conditional lien waivers and releases in accordance with Section 7.6;

(j) Owner has received payment in full of all accrued and unpaid Substantial Completion Delay Damages and Final Completion Delay Damages, if any, due to Owner, and any other damages due and payable by Contractor under this Agreement; and

(k) substantial performance by Contractor of all other material obligations expressly required under this Agreement for Final Completion, ignoring matters which are trivial or which would not, individually or in the aggregate, reasonably be expected to materially and adversely affect the functionality of or safe and efficient use of the Work (including Equipment and Materials).



12.6 Contractual Substantial Completion Date. Subject to adjustment by Change Order or as otherwise expressly set forth herein, Contractor will achieve Substantial Completion on or before sixty-one (61) weeks after the Commencement Date (the "***Contractual Substantial Completion Date***").

12.7 Contractual Final Completion Date. Subject to adjustment by Change Order or as otherwise expressly set forth herein, Contractor will achieve Final Completion on or before eight (8) weeks after the Contractual Substantial Completion Date (the "***Contractual Final Completion Date***").



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13.5 Damages for Failure to Meet Project Schedule. Contractor acknowledges that if Substantial Completion is not achieved by the Contractual Substantial Completion Date, or if Final Completion is not achieved by the Contractual Final Completion Date, Owner may suffer delay damages, including additional interest and financing charges on funds received by Owner to finance the Work, idle plant costs, other losses of revenue, supervision, and other operating charges. Therefore, Contractor specifically agrees that provided the Owner has satisfied its obligation to provide inlet landfill gas in the quantity, and meeting the specifications as set forth in **Appendix B – Testing and Design Parameters**, (a) if the Facility has not achieved Substantial Completion by the Contractual Substantial Completion Date, Contractor shall be liable for delay damages (the “**Substantial Completion Delay Damages**”) in an amount not to exceed Five Thousand Dollars (USD \$5,000) per Day (or part thereof) for the first thirty (30) Days, Ten Thousand Dollars (USD \$10,000) per Day (or part thereof) for the next thirty (30) Days, and then Fifteen Thousand Dollars (USD \$15,000) per Day (or part thereof) thereafter, until Substantial Completion is achieved; and (b) if the Facility has not achieved Final Completion by the Contractual Final Completion Date, Contractor shall be liable for delay damages (the “**Final Completion Delay Damages**”) not to exceed Three Thousand Dollars (USD \$3,000) per Day (or part thereof) until Final Completion is achieved; provided, however, that Delay Damages under this Section 13.5 are subject to a maximum cap of twenty five percent (25%) of the Guaranteed Maximum Price (the “**Delay Damages Cap**”). The Substantial Completion Delay Damages and Final Completion Delay Damages shall be Owner’s sole and exclusive remedy for Contractor’s delay in timely achieving Substantial Completion and Final Completion, respectively. The Substantial Completion Delay Damages and Final Completion Delay Damages are not additive. They do not overlap, so that if Substantial Completion has not been achieved by the Contractual Final Completion Date, then (i) Substantial Completion

Delay Damages shall continue to apply until Substantial Completion is achieved and (ii) Final Completion Delay Damages shall apply from the date that Substantial Completion is achieved until Final Completion is achieved.

13.6 Buy Downs for Failure to Meet Design Parameters. Provided Owner has satisfied its obligation to provide inlet landfill gas in the quantity, and meeting the specifications as set forth in **Appendix B – Testing and Design Parameters**, if the Facility fails to satisfy any of the five Design Parameters set forth in **Appendix B – Testing and Design Parameters**, Contractor shall pay to Owner, in addition to any Delay Damages due pursuant to Section 13.5, the following amounts (the “**Buy Downs**”):

(a) for failure to meet the Plant Inlet Capacity Design Parameter = Guaranteed Maximum Price x (Demonstrated scfm – Design scfm) / (Design scfm);

(b) for failure to meet the Plant Percent Methane Recovery Design Parameter = Guaranteed Maximum Price x (Demonstrated Percent Recovery – Design Percent Recovery) / (Design Percent Recovery);

(c) for failure to meet the Plant RNG Quality Design Parameter = 100% of the Guaranteed Maximum Price

(d) for failure to meet the Plant Emissions Design Parameter = 100% of the Guaranteed Maximum Price

(e) for failure to meet the Plant Power Consumption Design Parameter = Guaranteed Maximum Price x (Demonstrated Power Consumption (kW) – Design Power Consumption (kW) / Design Power Consumption

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 15 - LIMITATION OF LIABILITY

[REDACTED]

15.2 Exclusions from Cap. The limit of liability set forth in Section 15.1 shall not limit Contractor's obligations for (a) third party bodily injury, death or property damage, Intellectual Property claims as set forth in ARTICLE 14, or (b) the gross negligence, willful misconduct, intentional misrepresentation or fraud by Contractor.

APPENDIX A-2

**SCS EPC PROPOSAL, CARBON LIMESTONE LANDFILL,
RENEWABLE NATURAL GAS PLANT**

EPC Proposal
Carbon Limestone Landfill
Renewable Natural Gas Plant

Bio Energy (Ohio II), LLC
P.O. Box 15217
Lansing, MI 48901

SCS ENERGY

060023220 | September 15, 2021

3900 Kilroy Airport Way Suite 100
Long Beach, CA 90806
562-426-9544

8 PROJECT SCHEDULE

SCS will achieve Substantial Completion within 61 weeks of the Commencement Date. Substantial Completion is defined as, among other things, successfully passing a seven-day Reliability Test. The criteria for successfully passing the Reliability Test is operating for 168 consecutive hours, at a minimum availability of 95 percent, producing pipeline quality gas, processing all available LFG up to the inlet capacity of 9,000 scfm.

SCS will achieve Final Completion within 8 weeks thereafter. Final Completion is defined as, among other things, satisfactorily passing the Performance Test and completion of the punch list.

The preliminary project schedule provided in Appendix A is based on a Commencement Date of September 16, 2021.

9 CONTRACTUAL ISSUES

Under a negotiated EPC agreement, SCS would:

1. Agree to a GMP of \$59,459,400. EDL will be invoiced for actual cost on an open book basis. Major subcontracts (civil, mechanical and electrical) will be bid from completed plans/specifications. SCS would mark up major equipment by 11 percent and all other costs by 13 percent. Cost savings under the GMP would be shared 20 percent to SCS and 80 percent to EDL. SCS would be responsible for all costs over the GMP;
2. Provide a plant designed to process 9,000 scfm (wet basis) of landfill gas (average over a 4-hour period);
3. Provide a plant designed to meet a minimum CH₄ recovery of 96.3 percent;
4. Provide a plant designed to meet a maximum power consumption of 6,550 kW;
5. Provide a plant designed to meet the pipeline quality specification for the parameters listed in Table 2, including parameters identified in the EPC Agreement ;
6. Provide a TOX designed to meet the air emissions limits set forth in the TOX air permit, issued under an air permit application developed by SCS;
7. Achieve Substantial Completion within 61 weeks from the Commencement Date; and
8. Achieve Final Completion within 8 weeks of Substantial Completion.

Satisfaction of the design parameters set forth under Items 2, 3, 4 and 5 will be simultaneously demonstrated by a 48-hour Performance Test conducted after Substantial Completion. Satisfaction of the design parameter of Item 6 will be demonstrated by a source test conducted by a third party. If the RNG plant does not satisfy the design parameters set forth under Items 2, 3, 4 and 5, SCS will make three attempts to make RNG plant modifications and/or repairs and then restart the plant. If these efforts are unsuccessful, SCS may request and Owner may grant further retests or require SCS to pay specified Buy Downs at EDL's discretion.

Under Item 7, SCS will accept liquidated damages of \$5,000 per day for the first 30 days of delay for which the plant fails to achieve Substantial Completion, \$10,000 per day for the next 30 days and \$15,000 per day for each day thereafter. SCS will accept liquidated damages of \$3,000 per day for each day Final Completion is not achieved. Liquidated damages would be paid up to a limit of 25 percent of the GMP.

As an incentive to reach Substantial Completion early, EDL will pay SCS \$200,000 for achieving Substantial completion within 61 weeks of the Commencement Date with the incentive decreasing by \$6,667 for each day after 61 weeks that Substantial Completion is not achieved. The \$200,000 incentive is in excess of the Guaranteed Maximum Price.

APPENDIX B - TESTING AND DESIGN PARAMETERS

Contractor shall design the Facility such that it will, when operating at 100 percent (100%) capacity, and with the inlet landfill gas conditions as identified below (“*Conforming Landfill Gas*”), achieve the following Design Parameters during the Reliability Test, the Performance Test, and the Plant Emissions Test:

- (a) Consume no more than 6,550 kW of electric power (average over a 48-hour period) or the appropriate amount determined under the Power Consumption Adjustment, as measured at the Facility electric service entrance (the “*Plant Power Consumption Design Parameter*”);
- (b) Process 9,000 scfm (wet basis) of landfill gas (average over a 4-hour period) (the “*Plant Inlet Capacity Design Parameter*”);
- (c) Achieve a methane recovery efficiency of 96.3% (average over 48-hour period) (the “*Plant Percent Methane Recovery Design Parameter*”);
- (d) Achieve 95% availability (over a 168-hour period) (the “*Plant Reliability Design Parameter*”).
- (e) Produce renewable natural gas meeting the following pipeline quality gas standards (the “*Plant RNG Quality Design Parameters*”) and deliverable at the plant outlet at a maximum pressure of 790 psig:
 1. Heating value ≥ 967 Btu/ft³ (higher heating value) and $\leq 1,100$ Btu/ft³;
 2. ≤ 2.0 percent by volume carbon dioxide;
 3. ≤ 0.2 percent by volume oxygen;
 4. ≤ 0.25 grains of hydrogen sulfide per 100 cubic feet;
 5. ≤ 0.5 grains of mercaptan sulfur per 100 cubic feet;
 6. ≤ 5.0 grains of total sulfur per 100 cubic feet;
 7. Temperature $\leq 120^{\circ}\text{F}$;
 8. Wobbe number between 1,314 – 1,400;
 9. Delivered gas shall be commercially free from objectionable odors, dust, or other solid or liquid matters, including hydrocarbon liquids which might interfere with its merchantability or cause interference or cause injury to or interfere with proper operation of lines, regulators, meters, or other appliances through which it flows to the point of delivery; and
 10. ≤ 1 ppmv of siloxanes (as Si).
 11. ≤ 7 pounds of water vapor per million cubic feet.
- (f) The Facility’s flare and thermal oxidizer will satisfy the air permit requirements based on an initial third-party test, if such a test is required by the local air quality agency (the “*Plant Emissions Design Parameter*”).

All cubic feet references are considered to be standard cubic feet measured at 60°F and 14.73 psia.

Power Consumption Adjustment

Upon completion of the 100% Design of the Facility, Contractor will provide a table and/or formula to calculate the maximum kW in electric power consumed by the Facility in correlation with the input flow rate of landfill gas in scfm. The maximum kW in electric power shall not exceed 6,550 kW for any flows $\leq 9,000$ scfm. Once the Owner and Contractor mutually agree on the correlation of kW consumed to landfill gas flow then this will be used as the Plant Power Consumption Design Parameter.

Reliability Test

A Reliability Test will be run as a prerequisite to running the Performance Test to demonstrate compliance with the Plant Reliability Design Parameter and the Plant RNG Quality Design Parameter. The Reliability Test will be a 168-hour test. If the Facility delivers pipeline quality gas meeting the requirements of (e) listed above and an

No.	Media/Type	Permits/Permission, Agency, and Existing Permits	Responsible Party	Description	Special Requirements
6.	Construction	Permit(s): Floodplain Development Permit Agency: Mahoning County Planning Commission Existing Permit(s): None	Contractor	Complete application for floodplain development permit determination (required). https://www.mahoningcountyoh.gov/DocumentCenter/View/451/Flood-Zone-Information-Request-Form-PDF	Cash or check only. Contractor and Owner agree that the Job Site is not in a floodplain. If it should be determined by Government Authorities that the Job Site is in a floodplain, the Floodplain Development Permit shall be treated as a Contractor Additional Permit in accordance with Section 2.5.
7.	Land Use	Permit(s): Conditional Use Application Agency: Poland Township Existing Permit(s): Unknown Building Property Class 380 Mines and Quarries (Industrial real property)	Contractor (preparation of application only)	This project could potentially require that a new CUP be obtained or that the landfill's existing CUP (if applicable) be modified. Property tax data http://oh-mahoning-auditor.publicaccessnow.com/property.aspx?mpropertynumber=35-107-0-001.00-0 and http://oh-mahoning-auditor.publicaccessnow.com/property.aspx?mpropertynumber=35-114-0-001.00-0	Poland Township CUP Application form: https://polandtownship.com/images/zoning/pdfs/Board-of-Zoning-Appeals-Application-19.pdf Owner assumes CUP is issued within 6 weeks of receipt of an administratively complete application prepared by Contractor.
8.	Sewer Permitting	Permit(s): Right of Way / Open Cut Permit Agency: Mahoning County Engineer Department Existing Permit(s): None	Contractor	Potentially required depending on existing infrastructure. Required to bore under a roadway, work within limits of the ROW, or to open cut the road. https://www.mahoningcountyoh.gov/DocumentCenter/View/67/Boring-Work-Within-the-Road-Right-of-Way-or-Open-Cut-Permit-PDF?bidId=	Potentially required. Township reviews plans from Zoning perspective before they get sent reviewed by County Engineering Dept.
9.	Road/Right of Way Permitting	Permit(s): Right of Way Permit Agency: Poland Township Existing Permit(s): None	Contractor	Potentially required depending on existing infrastructure. Required for ditch enclosure, driveway approach, and/or, work within limits of the ROW.	Potentially required. Drawings and other requirements included in the application. https://polandtownship.com/images/zoning/pdfs/Resources/POLAND-TOWNSHIP-PERMIT.pdf