

**LANDFILL GAS SALE AND PURCHASE AGREEMENT**

**(COLTON SANITARY LANDFILL)**

**Between**

**SAN BERNARDINO COUNTY**

**And**

**BIOFUELS SAN BERNARDINO BIOGAS, LLC**

**DATED AS OF JUNE 28, 2022**

## Table of Contents

<b>ARTICLE I.</b>	<b>DEFINITIONS.....</b>	<b>2</b>
<b>ARTICLE II.</b>	<b>COUNTY’S FACILITY; BUYER’S FACILITY .....</b>	<b>2</b>
SECTION 2.01	COUNTY’S FACILITY .....	2
SECTION 2.02	GOVERNMENTAL AUTHORIZATIONS .....	3
SECTION 2.03	OWNERSHIP OF BUYER’S FACILITY .....	3
SECTION 2.04	DELIVERY POINT/INTERCONNECTION .....	3
SECTION 2.05	ACCESS TO AND USE OF COUNTY’S PROPERTY .....	4
<b>ARTICLE III.</b>	<b>AGREEMENT PERIODS .....</b>	<b>4</b>
SECTION 3.01	OPTION AND CONSTRUCTION PERIOD .....	4
SECTION 3.02	OPTION AND CONSTRUCTION PERIOD REPORTING RESPONSIBILITIES .....	6
SECTION 3.03	COMMERCIAL OPERATION PERIOD .....	6
<b>ARTICLE IV.</b>	<b>DELIVERY AND PURCHASE .....</b>	<b>6</b>
SECTION 4.01	DELIVERY OF LANDFILL GAS.....	6
SECTION 4.02	PURCHASE OF LANDFILL GAS .....	7
SECTION 4.03	SUSPENSION OF DELIVERY OR PURCHASE .....	8
SECTION 4.04	DISPOSAL OF PLANT CONDENSATE .....	8
SECTION 4.05	TITLE TO GAS; DISPOSAL .....	8
SECTION 4.06	DELIVERY CONDITIONS.....	8
SECTION 4.07	LANDFILL GAS COMPOSITION .....	9
SECTION 4.08	“AS-IS” CONDITION; NO WARRANTIES .....	9
SECTION 4.09	NOTICE OF DISRUPTION OF LANDFILL GAS SUPPLY.....	9
<b>ARTICLE V.</b>	<b>PAYMENTS, BILLINGS AND OTHER RELATED CONSIDERATION.....</b>	<b>9</b>
SECTION 5.01	BASE PAYMENT .....	9
SECTION 5.02	PAYMENT FOR RENEWABLE NATURAL GAS SOLD .....	10
SECTION 5.03	ENVIRONMENTAL ATTRIBUTES.....	11
SECTION 5.04	RIGHT TO AUDIT AND DISPUTED AMOUNTS .....	11
SECTION 5.05	OTHER COSTS .....	12
SECTION 5.06	TAXES AND ASSESSMENTS.....	12
SECTION 5.07	GRANTS AND INCENTIVES .....	12
SECTION 5.08	LICENSES, PERMITS AND/OR CERTIFICATIONS .....	12
<b>ARTICLE VI.</b>	<b>TERM.....</b>	<b>12</b>
SECTION 6.01	TERM .....	12
SECTION 6.02	TERMINATION .....	13
<b>ARTICLE VII.</b>	<b>PERSONNEL.....</b>	<b>13</b>
SECTION 7.01	BACKGROUND CHECKS FOR BUYER PERSONNEL.....	13
SECTION 7.02	BUYER’S MANAGEMENT.....	13
SECTION 7.03	COUNTY REPRESENTATIVE .....	13
SECTION 7.04	DRUG AND ALCOHOL FREE WORKPLACE.....	14
SECTION 7.05	DEBARMENT AND SUSPENSION .....	14
SECTION 7.06	DAMAGE TO COUNTY PROPERTY.....	14
SECTION 7.07	EMPLOYMENT DISCRIMINATION.....	15
SECTION 7.08	IMPROPER INFLUENCE.....	15

SECTION 7.09	IMPROPER CONSIDERATION .....	15
SECTION 7.10	ON –SITE REPRESENTATIVES .....	15
SECTION 7.11	HEALTH AND SAFETY .....	16
<b>ARTICLE VIII.</b>	<b>BOND REQUIREMENT.....</b>	<b>16</b>
SECTION 8.01	LABOR AND MATERIAL BOND.....	16
<b>ARTICLE IX.</b>	<b>REMOVAL OF BUYER’S FACILITY .....</b>	<b>16</b>
SECTION 9.01	REMOVAL OF BUYER’S FACILITY .....	16
SECTION 9.02	SECURITY FOR REMOVAL OF THE BUYER’S FACILITIES.....	17
<b>ARTICLE X.</b>	<b>INDEMNIFICATION AND INSURANCE .....</b>	<b>17</b>
SECTION 10.01	INDEMNIFICATION.....	17
SECTION 10.02	ADDITIONAL INSURED .....	17
SECTION 10.03	WAIVER OF SUBROGATION RIGHTS.....	18
SECTION 10.04	POLICIES PRIMARY AND NON-CONTRIBUTORY .....	18
SECTION 10.05	SEVERABILITY OF INTERESTS .....	18
SECTION 10.06	PROOF OF COVERAGE .....	18
SECTION 10.07	ACCEPTABILITY OF INSURANCE CARRIER.....	18
SECTION 10.08	DEDUCTIBLES AND SELF-INSURED RETENTION.....	19
SECTION 10.09	FAILURE TO PROCURE COVERAGE.....	19
SECTION 10.10	INSURANCE REVIEW .....	19
SECTION 10.11	COVERAGES.....	19
SECTION 10.12	TYPES OF INSURANCE.....	19
<b>ARTICLE XI.</b>	<b>REPRESENTATIONS AND WARRANTIES OF BOTH PARTIES .....</b>	<b>21</b>
SECTION 11.01	REPRESENTATIONS .....	21
SECTION 11.02	AUTHORITY.....	22
SECTION 11.03	NO CONSENTS .....	22
SECTION 11.04	NO CONFLICT.....	22
SECTION 11.05	LITIGATION .....	22
<b>ARTICLE XII.</b>	<b>ASSIGNMENT AND SUBCONTRACTING .....</b>	<b>23</b>
SECTION 12.01	ASSIGNMENT BY COUNTY .....	23
SECTION 12.02	ASSIGNMENT BY BUYER.....	23
SECTION 12.03	SUCCESSORS AND ASSIGNS .....	23
SECTION 12.04	SUBCONTRACTING.....	24
<b>ARTICLE XIII.</b>	<b>EVENTS OF DEFAULT AND REMEDIES .....</b>	<b>24</b>
SECTION 13.01	EVENT OF DEFAULT DEFINED.....	24
SECTION 13.02	INFORMAL DISPUTE RESOLUTION .....	26
SECTION 13.03	FORCE MAJEURE .....	26
SECTION 13.04	TERMINATION REMEDIES ON DEFAULT .....	26
SECTION 13.05	NO REMEDY EXCLUSIVE .....	26
SECTION 13.06	WAIVER.....	26
SECTION 13.07	LIMITATION ON REMEDIES .....	27
SECTION 13.08	RIGHT TO MONITOR AND AUDIT.....	27
<b>ARTICLE XIV.</b>	<b>MISCELLANEOUS.....</b>	<b>27</b>
SECTION 14.01	USURY.....	27
SECTION 14.02	NOTICES .....	28
SECTION 14.03	ENTIRE AGREEMENT.....	28
SECTION 14.04	CONTRACT AMENDMENTS.....	29

SECTION 14.05	SEVERABILITY .....	29
SECTION 14.06	GOVERNING LAW; JURISDICTION AND VENUE; WAIVER OF JURY TRIAL.....	29
SECTION 14.07	CAPTIONS.....	30
SECTION 14.08	JOINT VENTURE .....	30
SECTION 14.09	DURATION OF TERMS .....	30
SECTION 14.10	FURTHER ASSURANCES.....	30
SECTION 14.11	CURRENCY AND PAYMENTS.....	30
SECTION 14.12	TIME IS OF THE ESSENCE.....	30
SECTION 14.13	INTELLECTUAL PROPERTY.....	30
SECTION 14.14	PREVAILING WAGE LAWS .....	30
SECTION 14.15	ENVIRONMENTAL REQUIREMENTS.....	31
SECTION 14.16	MATERIAL MISSTATEMENT/MISREPRESENTATION.....	31
SECTION 14.17	MUTUAL COVENANTS.....	31
SECTION 14.18	AIR, WATER POLLUTION CONTROL, SAFETY AND HEALTH .....	31
SECTION 14.19	RECORDS.....	32
SECTION 14.20	RELATIONSHIP OF THE PARTIES .....	32
SECTION 14.21	RELEASE OF INFORMATION .....	32
SECTION 14.22	REPRESENTATION OF THE COUNTY .....	32
SECTION 14.23	SUBPOENA .....	32
SECTION 14.24	CONFLICT OF INTEREST.....	33
SECTION 14.25	FORMER COUNTY ADMINISTRATIVE OFFICIALS.....	33
SECTION 14.26	DISCLOSURE OF CRIMINAL AND CIVIL PROCEDURES.....	33
SECTION 14.27	IRAN CONTRACTING ACT .....	34
SECTION 14.28	PUBLIC RECORDS DISCLOSURE.....	34
<b>ARTICLE XV.</b>	<b>CONCLUSION .....</b>	<b>36</b>
SECTION 15.01	ENTIRE AGREEMENT .....	36
SECTION 15.02	SIGNATURES .....	36

**LIST OF APPENDICES AND SCHEDULES**

APPENDICES:

- A. DEFINED TERMS
- B. HEALTH AND SAFETY LAWS AND REGULATIONS

SCHEDULES:

- SCHEDULE 2.1 MILESTONES FOR COMPLETION OF BUYER’S FACILITY INCLUDING PROJECT DEVELOPMENT MILESTONES
- SCHEDULE 2.2 BUYER’S FACILITY DESCRIPTION

## **LANDFILL GAS SALE AND PURCHASE AGREEMENT**

THIS LANDFILL GAS SALE AND PURCHASE AGREEMENT, dated as of June 28, 2022 (herein after referred to as “Agreement” or “Biogas Sales Agreement” or “BSA”), is between BioFuels San Bernardino Biogas, LLC, a Delaware limited liability company (“Buyer”), located at 4444 Westheimer Road, Suite 450G, Houston, Texas 77027 and San Bernardino County Department of Public Works, Solid Waste Management Division (“County”) located at 222 W. Hospitality Lane, Second Floor, San Bernardino, California 92415.

### **BACKGROUND**

A. WHEREAS, County owns the Mid-Valley Landfill located at 2390 Alder Avenue, Rialto, California (“MVSL”) and Landfill Gas rights, along with County’s Facility thereto;

B. WHEREAS, County owns the Colton Sanitary Landfill located at 850 Tropica Rancho Road, Colton, California 92324 (“CSL”) and Landfill Gas rights, and all facilities located thereon;

C. WHEREAS, Buyer and County previously entered into a Landfill Gas Sale and Purchase Agreement dated September 24, 2019 (the “Original Agreement”), pursuant to which Buyer was granted the rights to purchase Landfill Gas produced from the County at both the MVSL and the CSL for the purpose of processing and selling the resultant renewable natural gas to a third party;

D. WHEREAS, in connection with the Original Agreement, the parties entered into (i) the Mid-Valley Sanitary Landfill Site Lease Agreement dated September 24, 2019 (as it may be amended, restated and/or replaced from time to time, the “MVSL Lease”), whereby the County leased a certain portion of the MVSL to Buyer for purposes of operating Buyer’s Facility thereon, and (ii) the Colton Sanitary Landfill Site Lease Agreement dated September 24, 2019 (as it may be amended, restated and/or replaced from time to time, the “Lease”), whereby the County leased a certain portion of the CSL to Buyer for purposes of operating Buyer’s Facility thereon;

E. WHEREAS, Buyer and County wish to enter into separate Landfill Gas Sale and Purchase Agreements for both MVSL and CSL and amend certain terms contained therein;

F. WHEREAS, Buyer represents and warrants to County that (i) Buyer’s project partners, contractors, or subcontractors, including SCS Energy, and Archaea Energy Inc. (“Archaea”) and such other entities or persons as Buyer shall select from time to time, will act in whole or in part as a consortium with Buyer to carry out all the requirements of this Agreement, (ii) SCS, and such other entity or person as Buyer shall select from time to time, will provide turnkey engineering, procurement and construction of the hydrogen production facility; (iii) SCS potentially in conjunction with Archaea, and such other entity or person as Buyer shall select from time to time, will handle ongoing operations and maintenance of the system; (iv) Archaea, and such other entity or person as Buyer shall select from time to time, may provide any necessary on-site energy for the system; (v) Archaea, and such other entity or person as Buyer shall select from time to time, will be responsible for the sale of the resulting Renewable Hydrogen Product

and associated Environmental Attributes, and (vi) Buyer will be responsible for ensuring all aspects of the Agreement are fulfilled in addition to investing all necessary capital to implement, operate and maintain the Buyer's Facility as well as pay the Base Payments and Royalty Payments set forth herein, in addition to the Rent payment in the accompanying Lease, to the County; and

G. WHEREAS, County desires to sell and Buyer desires to buy Landfill Gas from the CSL in the quantities and upon the terms and conditions hereinafter set forth.

### **TERMS AND CONDITIONS**

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants herein, the parties hereto agree as follows:

#### **Article I. Definitions**

The capitalized terms used in this Agreement shall have the meanings specified in Appendix A hereto.

#### **Article II. County's Facility; Buyer's Facility**

##### **Section 2.01 County's Facility**

County shall, in its sole discretion, exercise, manage, and preserve and amend County's interest and rights in and to the Landfills, County's Facility, its Landfill Gas extraction rights and all related rights, titles and interests of County; provided, however, County shall not take any unnecessary action, unless required by applicable law or Government Entity, that would materially harm the interests of Buyer hereunder or materially breach any covenant in this Agreement.

Notwithstanding anything herein to the contrary, County shall have the following obligations relative to the operation of the County's Facility:

- a) On or before the Commercial Operation Date, and thereafter for the duration of this Agreement, maintain in service vertical landfill gas extraction wells providing a minimum wellfield density of one well for every two acres (about thirty-five (35) vertical landfill gas extraction wells);
- b) Allow Buyer, at his own expense, or in part as agreed upon with the County, to install additional landfill gas extraction wells and appurtenant conveyance piping at the CSL and connect into the County's Facility(ies) in a manner acceptable to the County.
- c) Upon written approval from the County, allow Buyer, at his own expense, or in part as agreed upon with the County, pursuant to Sections 4.01 and 4.07, to work with the operator of the landfill gas collection system to keep the gas constituents, i.e. methane, carbon dioxide, nitrogen and oxygen, in similar gas quality with the current gas constituents, as of the date of this Agreement. Written approval shall be at the sole discretion of the County and include specified dates and durations for these activities.

- d) County shall have no additional obligation to expand or upgrade the Landfill or County's Facility beyond the terms listed above, except as necessary for regulatory compliance to operate the Landfill as is.

## **Section 2.02 Governmental Authorizations**

Buyer shall make all necessary filings and diligently seek to obtain all Governmental Authorizations necessary to receive the Landfill Gas at the Delivery Point, and its subsequent sale to and use by Buyer; and to the extent Buyer installs any additional landfill gas extraction wells, and appurtenant conveyance piping at the CSL as provided in section 2.01. County's obligation with regard to Governmental Authorizations shall be limited to the delivery of Landfill Gas to the Delivery Point. The County shall cooperate with the Buyer in connection with such filings and Buyer shall keep County advised regarding its progress toward obtaining the necessary authorizations. Any costs incurred by County with regard to such cooperation shall be fully reimbursed by Buyer within thirty (30) days upon presentation of an invoice by County for such costs incurred.

## **Section 2.03 Ownership of Buyer's Facility**

Buyer's Facility will at all times, during and after the termination or expiration of this Agreement, be and remain the sole and exclusive property of Buyer. County shall take no action inconsistent with Buyer's ownership, except to the extent required to comply with applicable laws and orders, and when necessary for public health and safety. This provision shall not limit the ability of County to lien Buyer's Facility, and any personal property contained therein, in the event of default on Buyer's payment obligations, but only after applicable cure periods and mortgagee, lender or beneficiary rights have been exhausted as referred to in Section 13.01. Buyer's Facility includes proprietary information and County shall not permit third parties (other than representatives of Government Entities) to inspect Buyer's Facility or provide information concerning its operation without Buyer's prior written consent, or as required by law, including but not limited to the Public Records Act.

## **Section 2.04 Delivery Point/Interconnection**

Buyer and County shall use reasonable, good faith efforts to coordinate the installation and maintenance of interconnections between their respective facilities. Buyer shall be responsible for its own costs in bringing its facilities to the Delivery Point and for the cost of the infrastructure that constitutes the Delivery Point. County shall be responsible for its own costs in bringing its facilities to the Delivery Point. In connection with installation of the interconnections contemplated pursuant to this Section, Buyer shall develop an automated interface between Buyer's Facility and County's Landfill flare such that all Landfill Gas generated is either use to power Buyer's Facility or flared in County's existing Landfill flare. The parties may modify Delivery Point from time to time to reflect changes to their respective facilities, with the cost of such modifications borne by the party whose facility necessitates the modifications.

## **Section 2.05 Access to and Use of County's Property**

Buyer shall have the right to occupy and use, in connection with the performance of this Agreement, those parts of County's Property as set forth in the Lease and this Agreement. Buyer's rights of occupancy and use shall be limited to those purposes and activities provided for in the Lease and this Agreement. Buyer's right to occupy and use the County's Property will commence upon the "Effective Date" as defined in the Lease.

County shall provide access to Buyer's Facility via common roadways and entryways for Buyer's employees, its customers and its agents as well as for trucks involved in construction of Buyer's Facility and shipping of Buyer's Product reasonably sufficient to permit Buyer to fulfill its obligations under this Agreement. All third parties must check in at the scalehouse upon entry to the Landfill.

Buyer shall have the right to access those parts of County's Facility only during the Permitted Hours of Operation for Site Activities set forth in the most current Solid Waste Facility Permit for the Landfill. Such access shall in no way effect County's operation of the Landfill. Except as otherwise set forth in the Lease or herein, Buyer shall not have access to any area on County's Property without County's written permission. Except in cases of emergency, the only activities permitted to be conducted at the Landfill outside of County operating hours are monitoring and inspection of Buyer's Facility.

County will endeavor to the extent possible, to reduce the interruptions to Buyer's operations but in no way will be responsible for lost revenue, income or profits due to such interruptions. Any inability of Buyer to operate during such periods will not be considered a breach of this Agreement.

## **Article III. Agreement Periods**

### **Section 3.01 Option and Construction Period**

(a) Upon the Effective Date, and continuing for no more than sixty-three (63) months thereafter, the County will allow Buyer to conduct the activities reflected in Schedule 2.1 through completion of construction of Buyer's Facility and testing. If Buyer, at any time during the initial sixty-three (63) months of the Option and Construction Period, or prior to beginning construction of Buyer's Facility, whichever occurs earlier, determines that it is not economically feasible for Buyer to proceed with implementing this Agreement, then Buyer may terminate this Agreement by providing County with written notification of termination. Buyer's notice of termination will be effective as to this Agreement and the Lease. Buyer's ability to terminate the Agreement for this purpose will in no event extend beyond the commencement of construction activities.

(b) During the Option and Construction Period, Buyer shall secure any and all environmental permits, California Environmental Quality Act ("CEQA") compliance, planning approvals or other permits required to construct, operate, maintain, upgrade, or expand any facilities or equipment required of or by the Buyer pursuant to this Agreement. For purposes of

CEQA compliance, County shall act as the Lead Agency. Any and all environmental permits CEQA compliance, planning approvals or other permits required to operate, maintain, upgrade or expand any facilities or equipment required of or by County pursuant to this Agreement shall be the sole responsibility of the County. County and Buyer each agrees to fully cooperate with, expedite and assist the other in obtaining such permits or approvals.

(c) In connection therewith, County agrees to make available to the Buyer copies of all environmental information reports, environmental assessment reports, environmental impact reports, air impact assessment studies, environmental applications filed and other available data relating to, necessary for and used (or useful) at the Buyer's sole determination, provided such information is not privileged, in connection with obtaining any environmental permits, CEQA compliance and planning approvals necessary for the installation and operation of any equipment or the conducting of any other activities on the CSL. The County's obligation as stated herein is limited to those records and documents currently maintained by and in the possession of the County.

(d) Buyer shall copy County on any written communications with any Government Entity relating to Governmental Authorizations for the construction and operation of Buyer's Facility. Buyer shall provide County with at least three (3) business days' written notice of any planned meeting with any Government Entity relating to Governmental Authorizations for the construction and operation of Buyer's Facility and allow County's representative(s) to attend any such meeting.

(e) During the entire term of this Agreement, and any extensions thereof, Buyer shall be solely responsible for the design, installation, maintenance, repair, replacement and operation of Buyer's Facility, including specifically, without limitation, the equipment contained therein, the Delivery Point, any biogas interconnect and/or pipeline connection fees at no cost to the County. Buyer shall be solely responsible for compliance with any monitoring, reporting, recordkeeping and financial obligations arising under the Environmental Laws for the construction and operation of Buyer's Facility.

(f) County shall be given the right to review all plans for the design and construction of Buyer's Facility prior to the commencement of and during construction. Such review (or any decision not to review) shall not create any warranties as to the design, suitability, capability or expected performance of Buyer's Facility or Buyer's operations. If Buyer's Facility, as reflected in Buyer's plans for the design, does not, in County's good faith judgment, comply with County's overall plans for Landfill Gas operations, Buyer shall make such changes to the design of Buyer's Facility as may be reasonably requested by County and commercially reasonable under the circumstances. Failure of County to request any changes or modifications to the construction plans prior to the commencement of construction of Buyer's Facility shall not be deemed to be a waiver of County's rights hereunder, provided that changes or modifications to construction plans requested by County subsequent to initial approval of the same by County and commencement of construction shall be subject to Buyer's approval.

(g) To the extent any changes to the design of Buyer's Facility, either before or subsequent to approval by the County, are required in order to comply with a legal obligation or

directive, including but not limited to, cleanup and abatement orders, settlements, judgments, changes in the law, etc., Buyer shall be required to make such modification and bear responsibility for the cost thereof.

(h) Following the completion of construction of Buyer's Facility and prior to the Commercial Operation Date, Buyer shall perform testing of Buyer's Facility to ensure it can perform as required for purposes of this Agreement. County shall participate in such testing and provide to Buyer the Landfill Gas needed to perform such tests. Buyer shall provide County with advance notice of the commencement of testing activities and the results of each test accomplished. At such time as Buyer determines the testing sufficiently indicates Buyer's Facility can operate successfully, Buyer shall provide County seven (7) business days advanced notice that testing has completed and the Commercial Operation Date will commence.

### **Section 3.02 Option and Construction Period Reporting Responsibilities**

During the Option and Construction Period, Buyer shall provide County, on the first date of each Quarter, written Quarterly status reports of Buyer's progress in achieving the milestones listed in Schedule 2.1. Reports shall address each milestone, the time estimate for completion of the milestone, the progress made in completing the milestone, any information or assistance required of the County to meet such milestone, and any delay known or reasonably foreseeable to Buyer that may delay completion of the milestone.

### **Section 3.03 Commercial Operation Period**

The Commercial Operation Period shall commence at the end of the Option and Construction Period, which shall occur at the earlier of sixty-three (63) months after the Effective Date, or upon the Commercial Operation Date. Regardless of whether the Commercial Operation Date has occurred during the Option and Construction Period, the Commercial Operation Period will begin no later than sixty-three (63) months following the Effective Date. The Commercial Operation Period shall continue for a period of twenty (20) years with the option to extend for two (2) five (5) year periods upon mutual written agreement of the parties. Any agreement to extend the Commercial Operation Period shall be made no less than 60 days prior to the expiration of the Agreement.

## **Article IV. Delivery and Purchase**

### **Section 4.01 Delivery of Landfill Gas**

Beginning on the day immediately following the Commercial Operation Date, County shall deliver to Buyer at the Delivery Point(s) the Landfill Gas produced in accordance with the provisions below; provided that County shall have no obligation to deliver an amount of Landfill Gas in excess of the actual production of Landfill Gas from County's Facility. Subject to the other terms and conditions of this Agreement, County shall use reasonable, good faith efforts to deliver Landfill Gas to each Delivery Point on a continuous basis. Buyer acknowledges that the amount of Landfill Gas produced at the CSL may decrease over time due to the implementation and adherence by the County to legislation and the regulations promulgated thereunder, including but

not limited to, California Senate Bill 1383, and any future laws or requirements with which the County must comply.

For Landfill Gas produced at the CSL, the Buyer shall, on a weekly basis, provide in writing to the County's designated representative their intent to, either:

- 1) Accept all Landfill Gas extracted and collected from the CSL through the County's Facility and delivered to the Delivery Point. Should the Buyer accept all Landfill Gas, the Buyer shall also be responsible for the treatment and/or disposal of all appurtenant Landfill Gas condensate associated with the delivered Landfill Gas as described in Section 4.04.
- 2) Accept at the Delivery Point a specified quantity and quality of Landfill Gas, to be declared in MMBTU/hr, extracted from the CSL and collected through the County's Facility. Buyer shall be responsible for only the appurtenant Landfill Gas condensate associated therewith. Buyer must allow the County to retain Landfill Gas at a minimum flow rate of 450 standard cubic feet per minute and sufficient quality to provide a minimum heating rate of 9.0MMBTU/hr. When utilizing this option, Buyer shall not be entitled to a quantity and/or quality of delivered Landfill Gas that prevents the County from operating their Landfill Gas flare with active condensate injection in a manner that complies with applicable regulatory permits.

By no later than 2:00 PM on each and every Monday, Buyer shall notify the County in writing of its intent to select either option 1) or 2) above for the Delivery of Landfill Gas from the CSL for the period beginning at 9:00 AM on the following Monday. The option selected by Buyer shall continue for a duration of 168 consecutive hours (7 days). Should a County holiday fall on a Monday, written intent shall be provided to the County by 2:00 PM on the immediately following work day.

To the extent County is required to reduce Delivery of Landfill Gas to meet a legal obligation or directive, County will provide notice to Buyer of such reduction. If County is made aware of a mandatory reduction after Buyer has submitted its weekly written selection the amount of Landfill Gas Delivered to Buyer will be automatically reduced in order to comply with the obligation or directive.

Planned or unplanned disruptions to the Delivery System shall not result in the extension of the 168 hour period. Should the Buyer fail to provide a written selection by the deadline stated above, the County, at its discretion, shall select the weekly operational standard.

#### **Section 4.02 Purchase of Landfill Gas**

Buyer shall purchase all Landfill Gas Delivered up to the design capacity of Buyer's Facility. In the event Buyer desires to expand the capacity of Buyer's Facility, it shall submit to County a proposed expansion plan describing in detail the additional construction to occur, the timeframes needed to conduct the expansion, any interruption or suspension such expansion may cause to the existing sale and delivery of Landfill Gas, the amount of additional Landfill Gas Buyer anticipates will be purchased through the expansion, and any other information reasonably

requested by County. County shall have thirty (30) business days to review the proposed expansion plan and either approve or deny the request. Any expansion approved by County will not impact the term of this Agreement.

Buyer must promptly notify County by telephone if Buyer's Facility is shut down unintentionally, and Buyer must give County at least three (3) business days' notice if Buyer's Facility is to be taken out of operation for scheduled repairs or other reasons. Buyer warrants that it shall use commercially reasonable efforts to continually operate its facility(ies) for 90% of the time during any calendar year following the first anniversary of the Commercial Operation Date throughout the term of the Agreement.

#### **Section 4.03 Suspension of Delivery or Purchase**

The Parties will work together to attempt to resolve any conditions that lead to a suspension of either delivery or purchase of Landfill Gas as soon as practicable. County shall only be responsible for the resolution of conditions that are reasonably within the County's control, including compliance with directives from applicable regulatory agencies directly related to operation of the Landfills. Any cost of overcoming a suspension caused by the operation of County's Facility, whether through modifications to facilities or operations, will be the responsibility of County. In no event will County be responsible for the payment of lost profits due to a suspension occurring between 7 p.m. and 6 a.m. during the weekdays, or at any period during the weekend or a County holiday. Any costs of overcoming a suspension in the delivery or purchase of biogas caused by the operation of Buyer's Facility, whether through modifications to facilities or operations, or as the result of directives or orders from applicable regulatory agencies directly related to the operation of Buyer's Facility, will be the responsibility of Buyer.

#### **Section 4.04 Disposal of Plant Condensate**

Buyer shall be responsible for the collection and disposal of Plant Condensate generated at Buyer's Facility as well as that otherwise collected from the Landfill Gas at the CSL by the County and received by Buyer at the Delivery Point as described in Section 4.01. At Buyer's option and expense, Buyer may install a new evaporative system or deliver Plant Condensate by truck or pipeline to a Buyer's designated storage tank located at the CSL within Buyer's leased area or other County approved location.

#### **Section 4.05 Title to Gas; Disposal**

Ownership, title, control, liability and risk of loss with regard to Landfill Gas shall pass from County to Buyer at the Delivery Point.

#### **Section 4.06 Delivery Conditions**

County shall use reasonable good faith efforts to deliver Landfill Gas to the Delivery Point without rapid or instantaneous material changes in the rate of flow.

#### **Section 4.07 Landfill Gas Composition**

County shall use commercially reasonable efforts to maintain the quantity and quality of the Landfill Gas delivered to the Delivery Point as determined by the procedures in Sections 2.01 and 4.01. County shall not be liable to Buyer if this qualitative Landfill Gas characteristic level cannot be maintained at all times, and County makes no representation or warranty that these levels will be maintained.

#### **Section 4.08 “AS-IS” Condition; No Warranties**

ALL LANDFILL GAS SHALL BE TAKEN BY BUYER IN AN “AS IS” CONDITION. BUYER REPRESENTS AND WARRANTS THAT BUYER HAS DONE ITS OWN DUE DILIGENCE AS TO THE QUANTITY AND QUALITY OF LANDFILL GAS AVAILABLE AT THE LANDFILL AND THAT COUNTY MAKES NO WARRANTY CONCERNING EITHER THE QUANTITY OF AVAILABLE LANDFILL GAS OR ITS QUALITY. BUYER IS FAMILIAR WITH THE EXTRACTION AND PROCESSING OF LANDFILL GAS, AND UNDERSTANDS THAT ITS CHEMICAL CONTENT WILL VARY FROM TIME TO TIME, DEPENDING ON THE CONTENTS OF THE LANDFILL. ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND DO NOT APPLY TO THE LANDFILL GAS SOLD HEREUNDER. BUYER RECOGNIZES THAT LANDFILL GAS MAY CONTAIN CORROSIVE OR DELETERIOUS SUBSTANCES. COUNTY SHALL HAVE NO OBLIGATION TO PAY COSTS FOR REPAIR OR REPLACEMENT OF BUYER’S FACILITIES CAUSED BY SUCH SUBSTANCES AND BUYER ACCEPTS THE RISK OF SUCH SUBSTANCES. IN ADDITION, IN NO WAY LIMITING ANY PROVISIONS HEREIN, BUYER ACKNOWLEDGES AND AGREES THAT THE COUNTY HAS NO OBLIGATIONS TO PROVIDE SECURITY AT THE LANDFILL OR OTHER PROTECTION FOR BUYER’S FACILITY, AND COUNTY SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR INJURY TO BUYER’S FACILITY CAUSED BY PERSONS OR CIRCUMSTANCES OUTSIDE OF COUNTY’S REASONABLE CONTROL.

#### **Section 4.09 Notice of Disruption of Landfill Gas Supply**

County shall keep Buyer informed of all planned disruptions of Landfill Gas supply due to planned maintenance, planned downtime or any other events that are known in advance. In the case of unforeseen and unplanned disruptions in Landfill Gas supply, County shall notify Buyer as soon as practically possible as to the nature of the disruption and the expected duration of the disruption.

### **Article V. Payments, Billings and other Related Consideration**

#### **Section 5.01 Base Payment**

Upon commencement of the Commercial Operation Period and excluding any period in which the facility has ceased operation due to a Force Majeure event, Buyer shall pay to the County

a Base Payment of \$300,000 per year (the “Base Payment”). The County and Buyer agree that the Base Payment shall be for each calendar year of the Commercial Operation Period; provided, however, for the first year in which the Commercial Operation Period commences, the Base Payment shall be prorated from the commencement of the Commercial Operation Period through December 31st of that year. The Base Payment will be reduced by the Rent paid pursuant to Section 5.1 of the Lease. Payment shall be due in quarterly installments payable in advance on the first day of each Quarter in the amount of \$75,000, less the Quarterly Rent paid pursuant to Section 5.1 of the Lease. Any amounts not paid in accordance with this section shall accrue interest at ten percent (10%) per annum until paid. Payments shall be paid in lawful money of the United States to County at such place as County shall from time to time direct Buyer by prior written notice.

### **Section 5.02 Royalty Payment For Renewable Hydrogen**

In addition to the Base Payment, Buyer shall pay to the County a royalty payment on a Quarterly basis using the following procedure (collectively, the “Royalty Payment”):

$$\text{Royalty Payment} = (\text{Total Gross Revenue (Renewable Hydrogen) realized in Quarter} * 15\%) - \$75,000$$

Note 1: Gross Revenues shall be as defined in the definitions contained in Appendix A hereto.

Note 2: During the term of any Force Majeure event which prevents Buyer from operating Buyer’s Facilities and during which time Buyer does not receive Gross Revenue, the Royalty Payment obligations expressed above will be suspended, and no Royalty Payment will be due to the County during such term. To the extent Buyer receives Gross Revenue during such Force Majeure event, the royalty obligations expressed above will continue to apply.

Determination of Royalty Payments shall commence on the Commercial Operation Date.

Within ten (10) days of the end of each Quarter, Buyer shall deliver to County a Royalty Payment statement indicating the royalty payment due calculations for Buyer’s Product sold by Buyer for that period. The Royalty Payment statement shall include the following for the relevant Quarter: the quantity and quality of Landfill Gas Delivered; the quantity of Buyer’s Product sold; the Total Gross Revenues received by Buyer; payments due to County based on the Gross Revenue; any taxes or duties Buyer is obliged to charge on payments due to County; and, other such information as may be mutually agreed upon by the Parties. Such Royalty Payment statement shall include backup documentation such as invoices/purchase orders relating to the sale of Buyer’s Product, and shall be signed by an authorized representative of Buyer under penalty of perjury.

County shall have the right to audit all records, documents and data used in preparing its Royalty Payment statement on reasonable prior written notice during normal business hours.

Within thirty (30) days of providing the Royalty Payment statement, Buyer shall pay the amount due as shown on the Royalty Payment statement to County. Any such amounts that are not paid by such date shall accrue interest at ten percent (10%) per annum until paid. Payments shall be paid in lawful money of the United States to County at such place as County shall from

time to time direct Buyer by prior written notice. Acceptance of the Royalty Payment will not waive the County's ability to challenge the amount of such payments based upon a future audit.

### **Section 5.03 Environmental Attributes**

County shall be entitled to all Environmental Attributes resulting from reductions in emissions of Greenhouse Gases and other air and water pollutants from County's Facility, including but not limited to Environmental Attributes resulting from reductions in the volume of biogas flared at the Landfill. Buyer shall be entitled to all Environmental Attributes resulting from the sale by Buyer of Buyer's Product (i.e RINS, LCFS, REC's, if applicable, etc.).

### **Section 5.04 Right to Audit and Disputed Amounts**

Buyer shall at all times during the Term and for a period of three (3) years after the expiration or termination of this Agreement, keep or cause to be kept true and complete books, records, periodic statements and accounts, together with applicable supporting data, information, and documentation, of all sales of Buyer's Product. County shall have the right through an independent certified public accounting firm to examine and audit said books, records and accounts at least once during each year of the Term, upon thirty (30) days prior written notice to Buyer, during normal business hours. The notice period shall not apply if the audit is required in order to comply with a legal directive issued by a Government Entity.

The full cost of any audit conducted under this section shall be borne by Buyer if the audit reveals either: (1) a discrepancy in the amount of payments due County of greater than five percent (5%), or (2) Buyer has failed to maintain true and complete books, records, accounts, and supporting documentation as required by this section; and in all other cases, County shall bear the full cost of the audit and any reasonable expenses incurred by Buyer in connection therewith.

If it is determined amounts are due and owing to County, Buyer shall pay County, in addition to such disputed amounts, interest at the prime rate of Wells Fargo Bank, N.A. (or other similar institution if Wells Fargo Bank, N.A. fails to exist or fails to publish its prime rate) from time to time in effect plus two percent (2%) per annum from the date that such disputed amounts were due until paid in full to County. Buyer agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that County will incur from Buyer's late payment.

If it is determined that Buyer overpaid any amounts to County, such overpayments may only be offset against future payments due to County from Buyer hereunder at the time such payments are due; provided, however, overpayments occurring in the last twenty-four (24) months of this Agreement will be paid on demand if sufficient future payments are insufficient to provide for reimbursement by offset.

Acceptance of late charges and any portion of the late payment by County shall in no event constitute a waiver of Buyer default with respect to late payment, nor prevent County from exercising any of the other rights and remedies granted in this Agreement.

### **Section 5.05 Other Costs**

Each party shall be solely responsible for the operation, utility costs, maintenance, repair, taxes upon, and insuring of its respective facilities, and solely liable for any damages or claims caused by the presence of Landfill Gas on or within its respective properties or facilities.

### **Section 5.06 Taxes and Assessments**

Each party shall be solely responsible for any taxes or assessments levied on any real, personal, or tangible property possessed or owned by it. If the value of any part of Buyer's Facility is assessed against County, Buyer shall promptly reimburse County for any taxes paid with respect to Buyer's Facility. If, after the Effective Date of this Agreement, action is taken by the County to impose a tax or assessment which applies to Buyer's Facility based upon the facility acting as a biomethane plant, then Buyer shall be reimbursed by the County for such taxes.

### **Section 5.07 Grants and Incentives**

Buyer shall be responsible for any costs associated with securing any local, State, or Federal grants or incentive moneys for construction and operation of Buyer's Facility, and County shall provide information and reasonable administrative support to Buyer in securing the grant or incentive funds. Buyer will be entitled to utilize all grants and incentive moneys received for the construction and operation of Buyer's Facility.

### **Section 5.08 Licenses, Permits and/or Certifications**

Buyer shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. Buyer shall maintain these licenses, permits and/or certifications in effect for the duration of this Agreement. Buyer shall notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Agreement.

## **Article VI. Term**

### **Section 6.01 Term**

The Term of this Agreement shall commence on the Effective Date and shall remain in effect for a sixty-three (63) month Option and Construction Period. Unless the Agreement is terminated as provided in Section 3.01, at the commencement of the Commercial Operation Period, the term shall continue for an additional twenty (20) years with the option to extend for two (2) five (5) year periods upon mutual written agreement of the parties. The Term shall be extended by the number of days (not to exceed 180 days) in which County's delivery of Landfill Gas to the Delivery Point is interrupted by a Force Majeure event.

## **Section 6.02 Termination**

At any time during the Term, Buyer may terminate this Agreement upon not less than 18 months' prior written notice to the County if Buyer determines, in its sole discretion, that its operations are not economically viable or best-situated on the Premises for any reason, and such termination shall not be a breach or default or impact such conditions hereunder as are intended explicitly or by their nature to survive termination. Such termination shall be confirmed in writing by the County upon its receipt of such written notice. **Buyer shall continue to pay to the County the Base Payment and Royalty Payment, as set forth in Section 5.01 of this BSA, throughout the entire 18 month notice period. Buyer shall remove all equipment and improvements, returning the site to its original state prior to the end of the 18 month notice period.**

## **Article VII. Personnel**

### **Section 7.01 Background Checks for Buyer Personnel**

Buyer shall ensure that all personnel performing work pursuant to this Agreement (a) are authorized to work in the jurisdiction of San Bernardino County; (b) do not use legal or illegal substances in any manner which will impact their ability to provide perform work pursuant to this Agreement; and (c) are not otherwise disqualified from performing work pursuant to this Agreement under applicable law. If reasonably requested by the County and not in violation of applicable law, Buyer shall conduct a background check, at Buyer's sole expense, on all its personnel performing work at the CSL pursuant to this Agreement. If requested by the County, Buyer shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Buyer in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. If a background check reveals a prior felony conviction, County must be given the opportunity to review the background check results for that specific employee and consent to the personnel performing work at the CSL. Buyer personnel, who do not reasonably meet this County employment criteria, shall not be assigned to work at the Landfill.

### **Section 7.02 Buyer's Management**

Throughout the term of this Agreement, Buyer shall provide competent management for the facilitation of this Agreement and operation of Buyer's Facility to the satisfaction of the County. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a renewable hydrogen production facility and related activities in a clean, safe, maintained, and fiscally responsible manner. Buyer management, who do not reasonably meet this County employment criteria, shall not be assigned to work at the Landfill.

### **Section 7.03 County Representative**

The Director of the Department of Public Works or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Agreement, including termination and assignment of this Agreement, and shall be the final authority in all matters

pertaining to this Agreement. If this Agreement was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Agreement, unless otherwise delegated.

#### **Section 7.04 Drug and Alcohol Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Agreement, the Buyer agrees that the Buyer and the Buyer's employees, while on CSL property or while using County equipment:

- (a) Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- (b) Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- (c) Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Buyer or Buyer's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Buyer shall inform all employees that are on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while on County property or using County equipment.

County may terminate for default or breach of this Agreement, but only after applicable cure periods and mortgagee, lender or beneficiary rights have been exhausted as referred to in Section 13.01, and any other agreement the Buyer has with County, if the Buyer or Buyer's employees are determined by the County not to be in compliance with above.

#### **Section 7.05 Debarment and Suspension**

Buyer certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Buyer further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

#### **Section 7.06 Damage to County Property**

Buyer shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Buyer or its employees or agents. Such repairs shall be made immediately after Buyer becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Buyer fails to make timely repairs, the County may make any necessary repairs. Buyer, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand.

### **Section 7.07 Employment Discrimination**

During the term of the Agreement, Buyer shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Buyer shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

### **Section 7.08 Improper Influence**

Buyer shall make all reasonable efforts to ensure that no County officer or employee, whose position with the County enables him/her to influence any award of the Agreement or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Agreement or shall have any relationship to the Buyer or officer or employee of the Buyer.

### **Section 7.09 Improper Consideration**

Buyer shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Agreement.

The County by written notice, may immediately terminate this Agreement, but only after applicable cure periods and mortgagee, lender or beneficiary rights have been exhausted as referred to in Section 13.01, if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Buyer shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Buyer. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, but only after applicable cure periods and mortgagee, lender or beneficiary rights have been exhausted as referred to in Section 13.01, the County is entitled to pursue any available legal remedies.

### **Section 7.10 On –Site Representatives**

The Buyer shall designate in writing to the County an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order.

County shall designate in writing to the Buyer a representative who shall be responsible for interfacing with the Buyer as to the day-to-day operations on the Site.

### **Section 7.11 Health and Safety**

- (a) Buyer will comply with all applicable laws relating to health and safety pertaining to its business operations.
- (b) Buyer will submit a copy of the Health and Safety Plan to the County Department of Risk Management within thirty (30) calendar days after the Effective Date of the Agreement and within 30 days whenever it is modified. Appendix B outlines the minimum requirements, as known to the County Department of Risk Management as of the Effective Date of this Agreement, for County approval of the Health and Safety Plan. The County's acceptance/concurrence of Buyer's Health and Safety Plan does not relieve or transfer any such responsibilities to the County.
- (c) Buyer shall maintain a San Bernardino County fire authority approved Hazardous Materials disclosure plan on Site.

## **Article VIII. Bond Requirement**

### **Section 8.01 Labor and Material Bond**

A labor and material bond shall be furnished in an amount not less than one-half the total estimated construction cost for Buyer's Facilities, which shall be provided no later than 30 days prior to construction of Buyer's Facility, including any disturbance to the ground. All bonds must be issued and executed by an admitted surety insurer authorized to transact surety insurance in the State of California and issued in a form generally utilized by the County for similar projects. All bonds shall insure faithful and full observance and performance by the Buyer of all terms, conditions, covenants, and agreements relating to the construction of improvements within the Premises and/or the CSL. If the surety is unacceptable to the County, the Buyer shall promptly furnish such additional surety as may be required by the County to protect the interest of the County. The County shall not unreasonably withhold, condition or delay its approval of the surety. Failure to provide the additional surety as may be reasonably required by the County shall constitute a default under this Agreement. Such bond, as described in this paragraph, shall be released upon completion of construction of Buyer's facilities and verification of payment for all labor and material utilized to construct Buyer's facilities.

## **Article IX. Removal of Buyer's Facility**

### **Section 9.01 Removal of Buyer's Facility**

Buyer shall within twelve (12) months after expiration of this Agreement in accordance with Section 6.01 or termination of this Agreement pursuant to Section 13.04, remove Buyer's Facility from the Premises, and restore the affected portions of the Premises to a substantially similar condition as when received from the County, clean and free of debris, subject to normal

wear and tear, at Buyer's sole expense. Unless otherwise directed by the County, Buyer shall have no obligation to remove any pilings, foundations or other such in ground installations. In the event that Buyer's Facility has not been fully removed by Buyer within the aforesaid time period, County may remove some or all of Buyer's Facility, and invoice Buyer for the reasonable costs of removal. Buyer shall pay County the amount set forth in such invoice within ten (10) days of its receipt thereof, provided Buyer retains its right following such payment to dispute any unreasonable amount set forth in an invoice.

## **Section 9.02 Security for Removal of the Buyer's Facilities**

Prior to commencement of construction of Buyer's Facility, including any disturbance of the ground, Buyer shall furnish to the County evidence that assures the County that sufficient monies will be available to fulfill the removal requirements stated in Sections 6.02, 9.01 and 13.04 upon expiration or termination of this Agreement in the form of: a performance bond in the total amount of Five Hundred Thousand and 00/100 Dollars (\$500,000). The form of the performance bond obtained by Buyer shall be mutually agreed by the parties, provided that it must provide that upon default of Lessee's removal obligations under this Agreement, County shall have the right to draw on such performance bond. Upon the Commercial Operation Date, the performance bond shall be increased in an amount, as determined by the Parties, to reasonably account for the cost of removal of Buyer's Facility, including the cost associated with the disposal or any and all quantities of hazardous chemicals and/or co-mingled materials, and restore the Premises. The performance bond must be maintained for the duration of this Agreement, and any extensions thereof.

## **Article X. Indemnification and Insurance**

### **Section 10.01 Indemnification**

The Buyer agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Buyer indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

The rights to indemnification set forth in this Article X are not intended to be exclusive of any other right or remedy otherwise available. All rights hereunder shall be cumulative and in addition to all other rights and remedies.

### **Section 10.02 Additional Insured**

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

### **Section 10.03 Waiver of Subrogation Rights**

The Buyer shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Buyer and Buyer's employees or agents from waiving the right of subrogation prior to a loss or claim. The Buyer hereby waives all rights of subrogation against the County.

### **Section 10.04 Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

### **Section 10.05 Severability of Interests**

The Buyer agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Buyer and the County or between the County and any other insured or additional insured under the policy.

### **Section 10.06 Proof of Coverage**

The Buyer shall furnish Certificates of Insurance to the County evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the County, and Buyer shall maintain such insurance from the time Buyer commences performance of services hereunder until the completion of such services. Prior to commencing construction activities at the Landfill, the Buyer shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

### **Section 10.07 Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

### **Section 10.08 Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

### **Section 10.09 Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Agreement, but only after applicable cure periods and mortgage, lender or beneficiary rights have been exhausted as referred to in Section 13.01, or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Buyer.

### **Section 10.10 Insurance Review**

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Buyer agrees to execute any such amendments within a reasonable time.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

### **Section 10.11 Coverages.**

The Buyer agrees to provide insurance set forth in accordance with the requirements herein. If the Buyer uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Buyer agrees to amend, supplement or endorse the existing coverage to do so.

### **Section 10.12 Types of Insurance.**

Without in anyway affecting the indemnity herein provided and in addition thereto, the Buyer shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

**10.12.1** Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$1,000,000 limits covering all persons including volunteers providing services on behalf of the Buyer and all risks to such persons under this Agreement.

If Buyer has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

**10.12.2** Commercial/General Liability Insurance – The Buyer shall carry General Liability Insurance covering all operations performed by or on behalf of the Buyer providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

**10.12.3** Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Buyer is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Buyer owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**10.12.4** Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**10.12.5** Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

**or**

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

## **Article XI. Representations and Warranties of Both Parties**

### **Section 11.01 Representations**

Each party warrants and represents to the other that:

It is duly organized, validly existing and in good standing under the laws of the state in which it is formed and has all requisite power and authority to own its property and assets and execute and deliver this Agreement and perform its obligations hereunder.

Furthermore, County represents and warrants to Buyer and covenants to Buyer at all times during the term of this Agreement as follows:

- (a) County has title to all Landfill Gas Delivered under this Agreement, and County has the right to sell the Landfill Gas to Buyer, which is delivered free from any liens and encumbrances; and
- (b) County covenants that County will procure and maintain in force all licenses, consents, permits and approvals required for County’s production and sale of the Landfill Gas from County to Buyer.

Buyer represents and warrants to County and covenants to County at all times during the term of this Agreement as follows:

- (a) Buyer has the right to purchase the Landfill Gas from County, and to produce Buyer's Product; and
- (b) Buyer covenants that Buyer will procure and maintain in force all licenses, consents, permits and approvals required for Buyer's production and sale of Buyer's Product.

### **Section 11.02 Authority**

The execution, delivery and performance of this Agreement have been duly authorized by, or are in accordance with, its organizational instruments; this Agreement has been duly executed and delivered for the respective party by the signatories so authorized; and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof subject to the bankruptcy, insolvency, fraudulent conveyance, transfer, reorganization and similar laws relating to or affecting the parties rights generally, and general principles of equity;

### **Section 11.03 No Consents**

No approval, authorization, order or consent of or declaration, registration or filing with any governmental authority is required for the valid execution, delivery and performance under this Agreement by such party except as have been duly obtained or made;

### **Section 11.04 No Conflict**

The execution, delivery and performance of this Agreement will not (i) conflict with or violate any provision of such party's corporate charter, articles, bylaws, partnership or limited liability company agreement or other organizational documents; (ii) conflict with, violate or result in a breach of any constitution, law, judgment, regulation or order of any governmental authority applicable to such party; or (iii) conflict with, violate or result in a breach of or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected, or create or cause the imposition of any mortgage, pledge, lien, security interest or other encumbrance under any term or condition of any mortgage, indenture or other agreement or instrument as to which such party or any of its properties are bound or affected; and

### **Section 11.05 Litigation**

There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or governmental authority, pending, or to the best of such party's knowledge, threatened, against it, wherein an anticipated decision, ruling or finding would materially adversely affect the performance of its obligations hereunder or the performance of its obligations under the transactions contemplated hereby or adversely materially affect the validity or enforceability of this Agreement, except as previously set forth above. There is no outstanding order, writ, injunction, decree, judgment or award by any court, arbitration panel or other Government Entity against or affecting it, its business, operations, or properties, or that may adversely materially affect the performance of its obligations hereunder, except as previously set forth above.

## **Article XII. Assignment and Subcontracting**

### **Section 12.01 Assignment by County**

County may assign its rights, obligations and interests hereunder (i) to a third-party buyer upon the sale of County's entire interest in the CSL and assignee assumes all of County's obligations hereunder in a writing addressed to Buyer, or (ii) to any Affiliate of County, at any time. Buyer shall consent to any assignment if the assignee has a financial capability similar to that of the County.

### **Section 12.02 Assignment by Buyer**

Buyer may not sell, assign, pledge or transfer this Agreement or any interest Buyer may have hereunder, without the prior written consent of County, which consent shall not be unreasonably withheld or delayed, except that:

- (a) Buyer may sell, assign, pledge or transfer this Agreement or any interest Buyer may have hereunder to an Affiliate that is controlled by Buyer.
- (b) Buyer may sell, assign, pledge or transfer this Agreement or any interest Buyer may have hereunder to one or more lenders (or such lender's trustee or agent) as collateral security for any financing provided, directly or indirectly, by such lender(s) in connection with the construction, ownership, or operation of Buyer's Facilities located on the CSL. A security interest may also be granted in the equipment in Buyer's Facility and that such equipment will be considered personal property only and not considered a fixture. Any lender, mortgagee or beneficiary to whom a security interest is assigned by Buyer shall promptly notify County in writing of its interest, including name and address of such for purposes of delivering notices.

Upon a request for assignment, Buyer shall present to County evidence of the proposed assignee's financial solvency, agreement to operate under the terms and conditions of this Agreement and prior experience in operating a renewable hydrogen production facility. County has the right to request additional documentation from Buyer as determined by County to be necessary in authorizing the requested assignment.

Unless specifically agreed in writing by County, any sale, assignment, pledge or transfer by Buyer as contemplated under this Section, or otherwise as may be consented to by County, shall not be construed to relieve Buyer of any of their respective obligations under this Agreement, nor shall any such sale, transfer, pledge or assignment be deemed to modify or otherwise affect any of County's rights hereunder.

### **Section 12.03 Successors and Assigns**

This Agreement shall inure to the benefit of and shall be binding upon Buyer and County and their authorized successors and assigns. Any transfer of any right, title or interest in County's Facility to a third party must require that third party be bound to this Agreement and the Lease according to their terms.

## **Section 12.04 Subcontracting**

Buyer shall obtain County's written consent, which County may not unreasonably withhold, before entering into contracts with or otherwise engaging any subcontractors who may perform any aspect of this Agreement on Buyer's behalf. At County's request, Buyer shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Buyer shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in this Agreement. All approved subcontractors shall be subject to the provisions of this Agreement applicable to Buyer Personnel.

For any subcontractor, Buyer shall:

- (a) Be responsible for subcontractor compliance with the Agreement and the subcontract terms and conditions; and
- (b) Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- (c) Include in the subcontractor's subcontract substantially similar terms as are provided in this Agreement.

## **Article XIII. Events of Default and Remedies**

### **Section 13.01 Event of Default Defined**

Any one or more of the following shall be an Event of Default under this Agreement:

- (a) Failure by Buyer, for any reason other than a Force Majeure event, to achieve the designated Project Milestone Dates, as delineated in Schedule 2.1.
- (b) Failure by Buyer to pay any amount due on the date specified that such payment is due and payable which failure shall have continued for a period of forty-five (45) days after written notice of such failure shall have been given to Buyer by County.
- (c) Failure by Buyer to timely pay the amounts due under Sections 5.01 and 5.02 on three (3) separate occasions during any two (2) year period shall be considered an Event of Default, notwithstanding subsequent payment by Buyer following written notice as provided below unless subject payments(s) are the subject of an Informal Dispute Resolution as delineated in Section 13.02.
- (d) Except as provided in Section 13.03, failure by County or Buyer to observe or perform to a material extent any covenant, condition, or agreement on their part to be observed or performed hereunder, other than a payment default by Buyer as described in the foregoing subsections (a) and (b), for a period of forty-five (45) days after the non-defaulting party has given written notice specifying such failure, requesting that it be

- remedied, and stating that it is a notice of default; provided, that if the default is such that it cannot be corrected within forty-five (45) days and the defaulting party takes diligent and timely efforts to cure the default the cure period shall be ninety (90) days from the non-defaulting party's notice of default. The foregoing notwithstanding, the defaulting party shall remain liable to the other party for any damages and any delay payments expressly provided herein the period beginning on the date on which the failure of performance occurred through the date on which performance is cured.
- (e) The institution by County or Buyer of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing of a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, or similar official or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of action by any of them in furtherance of any such action. The foregoing notwithstanding, if any such proceeding is dismissed within ninety (90) days, such proceedings shall not create a default under this Agreement.
  - (f) Any event of default by either party within the meaning of any other agreement entered by the parties hereto with respect to, or entered by the parties hereto applying to, the production, sales, or use of Landfill Gas or operation of their respective facilities at the CSL, and such event of default has not been cured within any allowable cure period (if any) in such other agreement.
  - (g) Any material breach of any representation made in this Agreement by a party and such event of default has not been cured within any allowable cure period as referenced in this Agreement.
  - (h) Buyer's failure, for any reason other than a Force Majeure event, to produce Renewable Hydrogen after the first anniversary of the Commercial Operation Date as reflected in Article IV, which failure shall have continued for a period of forty-five (45) days, or an aggregate total of 90 days in a one-year period.
  - (i) In the event there is a deed of trust, mortgagee, lender or beneficiary involved in either this Agreement or the Lease, County shall give the mortgagee, lender or beneficiary written notice of the default(s) complained of, and the same mortgagee, lender or beneficiary shall have ninety (90) days from such notice to cure the reason for default(s) or, if any such default(s) is not curable within ninety (90) days, to commence to cure the default(s) and diligently pursue such cure to completion. The ninety (90)-day period may be extended during such time as the mortgagee, lender or beneficiary pursues said cure with reasonable diligence. County agrees that the mortgagee, lender or beneficiary shall be entitled to exercise all remedies available to it under Buyer's loan documents that do not alter or conflict with the terms of this Agreement, including the replacement of Buyer with a successor reasonably acceptable to County. In the event that Buyer shall be so replaced, County will agree to accept performance by such successor, provided that such performance shall be in conformity with all then-existing

agreements between Buyer and County. Furthermore, County will provide to Buyer's mortgagee, lender or beneficiary copies of all notices, demands and other directives given by County to Buyer under this section.

### **Section 13.02 Informal Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

### **Section 13.03 Force Majeure**

If by reason of Force Majeure either party is unable in whole or in part to timely perform any of its obligations under this Agreement, such party shall not be deemed in default during the first one hundred eighty (180) days of the continuance of such inability, provided that (a) the party unable to carry out its obligations, within ten (10) business days after the occurrence of the event of Force Majeure, gives the other party written notice describing the particulars of such occurrence; (b) the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure and, unless mutually agreed, shall not in any event be longer than a one hundred eighty (180)-day period; and (c) the non-performing party shall use its reasonable good faith efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations; provided that the foregoing requirement that a party shall use reasonable good faith efforts to remedy any event of Force Majeure shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the party having the difficulty.

### **Section 13.04 Termination Remedies on Default**

In addition to any other right or remedy of the parties, Buyer and County shall each have the right, by notice to the other party, to terminate this Agreement if the other party commits an Event of Default but only after applicable cure periods and mortgagee, lender or beneficiary rights have been exhausted as referred to in section 13.01.

### **Section 13.05 No Remedy Exclusive**

No remedy provided herein is exclusive of any other available remedy or remedies under law or in equity.

### **Section 13.06 Waiver**

To the extent permitted by law, no delay or omission to exercise any right or remedy of a party hereto shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be expedient.

Any actual waiver shall be in writing and signed by the party against whom it is to operate. For either party to exercise any remedy hereunder, it shall not be necessary to give any notice other than as may be required in this Agreement or as required by law. If any covenant contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

### **Section 13.07 Limitation on Remedies**

NO PROVISION HEREOF SHALL BE CONSTRUED TO IMPOSE ANY PERSONAL OR PECUNIARY LIABILITY UPON ANY OFFICER, MANAGER, PARTNER, OR EMPLOYEE OF BUYER OR COUNTY. BUYER HEREBY IRREVOCABLY WAIVES, FOR ITSELF AND ANY ENTITY OR PERSON CLAIMING BY OR THROUGH BUYER INCLUSIVE OF ANY BUYER INDEMNITEE, ANY CLAIM FOR LOSS, DAMAGE OR COMPENSATION BASED ON ANY ALLEGATION OF DAMAGE TO ANY EQUIPMENT, COMPONENT OR SYSTEM OF BUYER OR ANY BUYER INDEMNITEE CAUSED BY USE OF LANDFILL GAS WITHIN SUCH EQUIPMENT, COMPONENT OR SYSTEM UNLESS SUCH LOSS OR DAMAGE IS CAUSED BY COUNTY'S MISCONDUCT OR NEGLIGENCE.

### **Section 13.08 RIGHT TO MONITOR AND AUDIT**

The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested that are related to this Agreement, and shall have absolute right to monitor the performance of Buyer in the fulfillment of its obligations under this Agreement. Buyer shall give full cooperation, in any auditing or monitoring conducted. Buyer shall cooperate with the County in the implementation, monitoring, and evaluation of this Agreement and comply with any and all reporting requirements established by the County.

All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Agreement or until all pending County, State and Federal audits are completed, whichever is later.

## **Article XIV. Miscellaneous**

### **Section 14.01 Usury**

In no event shall any payment deemed interest received in connection with this Agreement (together with any other costs or considerations that constitute interest under the law of the State of California) exceed, and the same shall be subject to reduction to, the maximum amount of interest allowed under the laws of the State of California as now or hereafter construed by courts having jurisdiction.

## **Section 14.02 Notices**

All notices, certificates, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed properly served (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if by mail, on the third (3<sup>rd</sup>) business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) if by Federal Express or other reputable express mail service for overnight delivery, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. All notices required or permitted to be served upon either party hereunder will be directed to:

### If to Buyer:

BioFuels San Bernardino Biogas, LLC  
4444 Westheimer Road, Suite 450G  
Houston, Texas 77027  
Attn: Brian McCarthy  
Phone: (603) 340-4022

With a copy to:

BioFuels San Bernardino Biogas, LLC  
4444 Westheimer Road, Suite 450G  
Houston, Texas 77027  
Attn: Legal Notices

### If to County:

San Bernardino County  
Attention: Deputy Director  
Solid Waste Management Division  
222 West Hospitality Lane, 2nd Floor  
San Bernardino, CA 92415-0017

Buyer and County may, by notice given hereunder, designate any further or different addresses to which notices, certificates, or other communications shall be sent; provided that any such notice will be deemed given only upon actual receipt.

## **Section 14.03 Entire Agreement**

This Agreement and the Lease, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the parties relating to the subject matter hereof. All Attachments and Schedules attached hereto are incorporated herein by this reference. This Agreement is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder,

except that County Indemnitees and Buyer Indemnitees shall be intended third-party beneficiaries under the provisions of Article XI. The consent of any third-party beneficiary shall not be required to amend this Agreement (including, without limitation, Article XI hereof). This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Agreement and signs the same of its own free will. The Lease is hereby expressly incorporated into this Agreement.

#### **Section 14.04 Contract Amendments**

Buyer agrees any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the person(s) authorized to do so on behalf of Buyer and County.

#### **Section 14.05 Severability**

The parties' actions under the Agreement shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. If any term or provision of this Agreement or the application thereof to any party or circumstance be judged invalid or unenforceable to any extent, the remainder of this Agreement and the application of such terms and provisions to Persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, except as it might be necessary to effectuate the intent of the parties, and each provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

#### **Section 14.06 Governing Law; Jurisdiction and Venue; Waiver of Jury Trial**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California. Notwithstanding the foregoing, any legal action arising under or in connection with this Agreement or any other instrument, document or agreement executed or delivered in connection with this Agreement, or in any way connected with or related or incidental to the dealings of the parties with respect to this Agreement or such other instrument, document or agreement or the transactions contemplated hereby or thereby ("Dispute") shall be brought exclusively in San Bernardino County, California Superior Court or in the United States District Court for California. By execution and delivery of this Agreement, with respect to Disputes each of the parties knowingly, voluntarily and irrevocably: (a) consents, for itself and in respect of its property, to the exclusive jurisdiction of these courts; (b) waives any immunity or objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, which it may have from or to the bringing of the Dispute in such jurisdiction; (c) waives any right to trial by jury; (d) agrees that any such Dispute shall be decided by court trial without a jury; and (e) agrees that any party to this Agreement may file an original counterpart or a copy of this Article with any court as written evidence of the consents, waivers and agreements of the parties set forth in this Article. The ability of any party to terminate this Agreement as provided herein shall in no way affect each party's right to proceed with litigation against the other, without exercising such right to terminate.

### **Section 14.07 Captions**

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

### **Section 14.08 Joint Venture**

Nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any joint venture or fiduciary or other relationship between the parties.

### **Section 14.09 Duration of Terms**

This Agreement, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Agreement.

### **Section 14.10 Further Assurances**

If either party reasonably determines or is reasonably advised that any further instruments or any other things are necessary or desirable to carry out the terms of the Agreement, the other party shall execute and deliver all such instruments and assurances and do all things reasonably necessary and proper to carry out the terms of this Agreement.

### **Section 14.11 Currency and Payments**

All payments under this Agreement shall be made in immediately available funds and in U.S. currency by wire transfer to the bank account specified by the payee in writing to the payor.

### **Section 14.12 Time is of the Essence**

Time is of the essence with respect to all dates and time periods set forth in this Agreement.

### **Section 14.13 Intellectual Property**

Buyer shall be the sole owner of, and County shall acquire no rights in, any and all intellectual property associated with Buyer's Facility. County shall not have the right to use or reproduce any of Buyer's equipment, processes, operations or systems without the written consent of Buyer.

### **Section 14.14 Prevailing Wage Laws**

By its execution of this Agreement Contract, Buyer certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Section 1720 of the California Labor Code states in part: "For purposes of this paragraph, 'construction' includes work performed during the design and

preconstruction phases of construction including, but not limited to, inspection and land surveying work.” If the Services/Scope of Work are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Buyer agrees to fully comply with such Prevailing Wage Laws. Buyer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Buyer’s principal place of business and at the project site. Buyer will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. Buyer shall defend, indemnify and hold the County, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws. See Exhibit A, which is attached and incorporated by reference, for additional information regarding Prevailing Wage Laws. Buyer shall comply with all applicable terms and conditions in Exhibit A. The applicable general prevailing wage determinations are on file with the County and are available to any interested party on request. Buyer shall post a copy of the applicable prevailing wage determinations at the job site.

#### **Section 14.15 Environmental Requirements**

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Buyer to use recycled paper for any printed or photocopied material created as a result of this Agreement. Buyer is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

#### **Section 14.16 Material Misstatement/Misrepresentation**

If during the course of the administration of this Agreement, the County determines that Buyer has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Agreement may be immediately terminated, but only after applicable cure periods and mortgagee, lender or beneficiary rights have been exhausted as referred to in Section 13.01. If this Agreement is terminated according to this provision, the County is entitled to pursue any available legal remedies.

#### **Section 14.17 Mutual Covenants**

The parties to this Agreement mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of “good faith” and “fair dealing”.

#### **Section 14.18 Air, Water Pollution Control, Safety and Health**

Buyer shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Agreement.

### **Section 14.19 Records**

Buyer shall maintain all records and books pertaining to the delivery of services under this Agreement and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Agreement requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Agreement.

All records relating to the Buyer's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

### **Section 14.20 Relationship of the Parties**

Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

### **Section 14.21 Release of Information**

No news releases, advertisements, public announcements or photographs arising out of the Agreement or Buyer's relationship with County may be made or used without prior written approval of the County.

### **Section 14.22 Representation of the County**

In the performance of this Agreement, Buyer, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino.

### **Section 14.23 Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning this Agreement is served upon Buyer or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Buyer and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Buyer for County.

#### **Section 14.24 Conflict of Interest**

Buyer shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Buyer shall make a reasonable effort to prevent employees, Buyer, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Agreement. This provision shall not be construed to prohibit employment of persons with whom Buyer's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

#### **Section 14.25 Former County Administrative Officials**

Buyer agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Buyer. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Buyer. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

#### **Section 14.26 Disclosure of Criminal and Civil Procedures**

The County reserves the right to request the information described herein from the Buyer. Failure to provide the information may result in material breach of this Agreement. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Buyer also may be requested to provide information to clarify initial responses.

Buyer is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Buyer will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Buyer is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, Buyer will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

### **Section 14.27 Iran Contracting Act**

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Buyer certifies that at the time the Agreement is signed, the Buyer signing the Agreement is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Buyer is cautioned that making a false certification may subject the Buyer to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

### **Section 14.28 Public Records Disclosure.**

All information received by the County from any source concerning this Agreement, including the Agreement itself, may be treated by the County as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Sections 6250 *et seq.* (the "Public Records Act"). Buyer understands that although all materials received by the County in connection with this Agreement are intended for the exclusive use of the County, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which Buyer has reasonably requested County to hold in confidence is made to the County, the County shall notify the Lessee of the request and shall thereafter disclose the requested information unless the Buyer, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides County a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the County harmless in any/all actions brought to require disclosure. Buyer waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event County fails to notify Buyer of any such disclosure request and/or releases any information concerning the contract received from the Buyer or any other source.

***[SIGNATURES ON NEXT PAGE]***

**Article XV. CONCLUSION**

**Section 15.01 Entire Agreement**

This Agreement, consisting of thirty-four (34) pages and Attachments A, B, and C, Appendices A and B, and Schedules 2.1-2.2, is the full and complete document describing the agreement between Buyer and County, including all covenants, conditions, and benefits.

**Section 15.02 Signatures**

The signatures of the Parties affixed to this Agreement affirm that they are duly authorized to commit and bind their respective institutions to the terms and conditions set forth in this document.

**IN WITNESS WHEREOF**, the Board of Supervisors of the County of San Bernardino has caused this Agreement to be subscribed to by the Clerk thereof, and Buyer has caused this Agreement to be subscribed in its behalf by its duly authorized officers, the day, month, and year written.

BIOFUELS SAN BERNARDINO BIOGAS, LLC

BOARD OF SUPERVISORS

►  
\_\_\_\_\_  
Curt Hagman, Chairman, Board of Supervisors

Dated: \_\_\_\_\_  
SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Lynna Monell  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By \_\_\_\_\_  
Deputy

\_\_\_\_\_  
*(Print or type name of corporation, company, contractor, etc.)*

By ► \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Name Brian McCarthy  
*(Print or type name of person signing contract)*

Title Chief Investment Officer  
*(Print or Type)*

Dated: \_\_\_\_\_

Address \_\_\_\_\_

## **LIST OF ANNEXES AND SCHEDULES**

### Appendices:

- A. DEFINED TERMS
- B. HEALTH AND SAFETY LAWS AND REGULATIONS

### Schedules:

- SCHEDULE 2.1 MILESTONES FOR COMPLETION OF BUYER'S FACILITY INCLUDING PROJECT DEVELOPMENT MILESTONES
- SCHEDULE 2.2 BUYER'S FACILITY DESCRIPTION

## **APPENDIX A**

### **DEFINED TERMS**

As used herein, unless the context otherwise requires, the following terms shall have the following meanings:

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with such Person. “Control” for purposes of this definition includes, without limitation, the ability to vote fifty percent (50%) or more of the voting equity of a Person.

“Agreement” means this Landfill Gas Sale and Purchase Agreement, dated as of the date first set forth above, by and between Buyer and County, as it may hereafter be amended.

“BTU” means the amount of heat required to raise the temperature of one avoirdupois pound of pure water from 60 degrees Fahrenheit to 61 degrees Fahrenheit.

“Buyer’s Facility” means those facilities required for and appurtenant to the hydrogen production facilities, including, without limitation, the Electric Facility, the CCUS Facilities, pipelines and pipeline interconnection equipment and facilities, utility interconnection equipment and facilities, the hydrogen trailers and/or storage units or tanks, a hydrogen fueling station or other transfilling facility for hydrogen distribution and vehicle loading, constructed by or for Buyer on the Premises.

“Buyer’s Product” means the Renewable Hydrogen product produced by Buyer’s Facility, inclusive of any and all Renewable Hydrogen product produced as result of renewable natural gas received at Buyer’s Facility, including, without limitation fuel cell electric vehicle (“FCEV”) grade hydrogen fuel.

“CCUS Facilities” means any carbon capture, utilization and storage equipment installed at the Buyer’s Facility for purposes of capturing carbon produced as a byproduct of the renewable hydrogen production process.

“Code” means the Internal Revenue Code of 1986, as amended.

“Colton Sanitary Landfill” or “CSL” means the Colton Sanitary Landfill, an inactive Class III landfill, with an address of 850 Tropica Rancho Road, Colton, California 92324.

“Commercial Operation Date” means the first date on which Buyer’s Facility at the Colton Sanitary Landfill makes commercial delivery of Buyer’s Renewable Hydrogen Product to a third party.

“Commercially Reasonable” describes those practices, methods, acts and standards that (a) are commonly used by a prudent person or entity in the same business as the County or the Buyer, as applicable, in a comparable situation and, (b) in the exercise of reasonable judgment, considering the facts known when engaged in, could have been expected to reach the expected

result to the extent such result and the efforts required to attain such result are consistent with applicable law, safety, reliability, efficiency, expedition and economy. “Commercially Reasonable” shall not be limited to the optimum practices, methods, acts or standards, but rather shall encompass a spectrum of possible practices, methods, acts or standards.

“Condensate Delivery Point” means the location at the boundary of the Premises at which County will deliver Plant Condensate to Buyer. The Condensate Delivery Point will be established by mutual agreement between County and Buyer.

“County’s Facility” means the Landfill Gas collection and treatment system, comprising the network of extraction wells and interconnecting pipes together with gas moving equipment, attendant valves, pumps, monitoring devices and other extraction related equipment that County maintains, constructs, or licenses the use of, for the purpose of extracting, recovering and combusting Landfill Gas, and/or liquids associated with extraction, recovery, and combustion Landfill Gas, from the CSL, and any pipelines, metering equipment, and any miscellaneous or ancillary equipment of County located at or near the CSL.

“Delivery Point” means the point(s) at which Landfill Gas collected from the County’s Facilities is delivered to Buyer’s Landfill Gas supply header (to be located directly adjacent to Buyer’s leased property), and will be identified in final as-built drawings of the interconnections between Buyer’s Facility(ies) and County’s Facility(ies) and/or subsequently modified as described in Section 2.04.

“Effective Date” means September 24, 2019.

“Electric Facility” means the electrical generation facility owned and operated by Buyer, consisting of (i) one or more electrical energy generating units designed and installed by Buyer and, that will be fueled by Landfill Gas, and (ii) any transformers, switch gear, distribution lines, meters and related equipment necessary for the generation and delivery of electric energy to customers.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the extraction, collection and recovery of Landfill Gas and , if applicable, the generation of energy and its displacement of conventional energy generation. Environmental Attributes include but are not limited to: (1) Green Attributes including Lifecycle Greenhouse Gas Emissions, associated with the use of Landfill Gas as an Advanced Biofuel, Cellulosic Biofuel, low carbon fuel or Alternative Fuel as recognized by applicable regulatory or statutory authority; (2) Greenhouse Gas including carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, or any other substance or combination of substances that may become regulated or designated as greenhouse gases under any federal, state or local law or regulation, or any emission reduction registry, trading system, or reporting or reduction program for greenhouse gas emission reductions that is established, certified, maintained, or recognized by any international, governmental (including U.N., federal, state, or local agencies), or non-governmental agency from time to time, in each case measured in increments of one metric ton of carbon dioxide equivalent; (3) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; and (4) the reporting rights to these avoided

emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag purchaser's discretion, and include, without limitation, those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with the generation of one (1) MWh of energy in the State of California using a renewable fuel.

“Environmental Laws” means any applicable federal, state, or local governmental law, statute, rule, regulation, order, consent decree, decree, judgment, permit, license, covenant, deed restriction, ordinance or other requirement or standard relating to pollution or the regulation or protection of health, safety, natural resources, or the environment, as now existing or hereafter in effect, including, without limitation, those relating to releases, discharges, emissions, injections, leachings, or disposals of Hazardous Substances or hazardous materials into air, water, land or groundwater, to the withdrawal or use of groundwater, to the regulation of Greenhouse Gas emissions, or to the use, handling, treatment, removal, storage, disposal, processing, distribution, transport, or management of Hazardous Substances. “Environmental Laws” shall include, but shall not be limited to, the Clean Air Act; the federal Water Pollution Control Act; the Safe Drinking Water Act; the Toxic Substances Control Act; the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Occupational Safety and Health Act; the Hazardous Materials Transportation Act; the Oil Pollution Act of 1990; the California Environmental Quality Act (CEQA) and any similar federal, state or local statutes and regulations.

“Event of Default” shall have the meaning as set forth in Article XIII.

“Force Majeure” means acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances; explosions; the unavailability of Landfill Gas or renewable natural gas that was not anticipated as of the date the Agreement was entered into, which is not within the reasonable control nor the result of negligence by County or the party supplying Landfill Gas or renewable natural gas to Buyer, and which by the exercise of reasonable due diligence County is unable to overcome or avoid or cause to be avoided; the delay or inability to obtain permits or interconnect agreements despite due diligence in seeking such permits or agreements; delays in deliveries; unavailability of materials; or any other cause or event, not reasonably within the control of the party claiming Force Majeure (other than the financial inability of such party), which precludes that party from carrying out, in whole or in part, its obligations under the Agreement. Nothing in this provision excuses any party from performing due to any governmental act, failure to act, permit or order, where it was reasonably within such party's power to prevent, correct, anticipate, or guard against such act, failure to act, or order.

“Good Engineering Practices” means any of the practices, methods and acts that comply with manufacturer's specifications and that, in the exercise of reasonable judgment by an

independent engineering professional in light of the facts known, or that in the exercise of due diligence, should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with reliability, safety, environmental protection, expedition, project economics and applicable laws and regulations for similar facilities in the State of California. “Good Engineering Practice” is not intended to be limited to the consideration of any one practice, method or act to the exclusion of all others, but rather is intended to require the consideration of a spectrum of possible practices, methods or acts that will yield the most desired and cost-effective result.

“Governmental Authorizations” means all applicable authorizations from, permits and licenses issued by, consents and approvals of, filings with, notices from, and registration with, any Government Entity (including all conditions thereof) which are currently required to be obtained, or may be required in the future.

“Government Entity” means any court or tribunal in any jurisdiction or any federal, state, municipal, or other governmental body, agency, authority, department, commission, board, bureau or instrumentality, acting in its capacity as an enforcement, regulatory or permitting agency, and not as a buyer or consumer of Buyer’s Product.

“Greenhouse Gas” or “Greenhouse Gases” means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and other fluorinated greenhouse gases as defined in 40 Code of Federal Regulations 98.6.

“Gross Revenues” means the revenues received into Buyer’s project bank account with respect to Buyer’s Product sold by Buyer including the sale of any Environmental Attributes, if any, of the Renewable Hydrogen produced by the Buyer’s Facility. Buyer’s costs to operate Buyer’s Facility shall not be deducted for purposes of calculating Gross Proceeds.

“Heating Value” means the BTU content of Landfill Gas Delivered, measured in BTU per SCF.

“Index” means U.S. Department of Labor’s Bureau of Labor Statistics’ Consumer Price Index for the San Bernardino County Service Area.

“Landfill Gas” means any mixture of hydrocarbons or of hydrocarbons and noncombustible gases, in a gaseous state, consisting primarily of methane and carbon dioxide collected at the Landfill.

“Landfill Gas Delivered” means Landfill Gas delivered by County to a Delivery Point.

“Lease” has the meaning set forth in the Background.

“Lifecycle Greenhouse Gas Emissions” means the aggregate quantity of Greenhouse Gas emissions (including direct emissions and significant indirect emissions from land use changes), as determined by the EPA or CARB, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate customer, where the mass

values for all Greenhouse Gases are adjusted to account for their relative global warming potential.”

“Long Lead Equipment” means major capital purchases, including, without limitation, the compressors, the steam methane reformer, the pressure swing absorption (PSA) technology, electrical switchgear and transformers.

“Mid Valley Sanitary Landfill” or “MVSL” means the Mid-Valley Sanitary Landfill, a Class 3 Municipal Solid Waste Facility, with an address of 2390 Alder Avenue, Rialto, California 92377.

“MMBTU” means million British Thermal Units

“MMSCF” means million standard cubic feet.

“Month” or “month” means the period commencing at 7:00 a.m. local time on the first (1<sup>st</sup>) day of a calendar month and ending at 7:00 a.m. local time on the first (1<sup>st</sup>) day of the next calendar month.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, or other entity, or a government or any political subdivision or agency thereof, or any trustee, receiver, custodian, or similar official.

“Plant Condensate” means water and other liquids derived from the operations conducted at Buyer’s Facility, including, without limitation, liquids contained in Landfill Gas Delivered.

“Premises” means the real property leased to Buyer under the Lease.

“Project Milestone Dates” means those reflected in Schedule 2.2.

“Quarter” means a three (3)-month period ending March 31, June 30, September 30 or December 31.

“Renewable Hydrogen” means the end product of hydrogen resulting from the processing of delivered renewable natural gas to Buyer’s Facilities.

“SCF” means standard cubic feet.

“SCFM” means standard cubic feet per minute.

“Section 45 & 48 Credits” mean federal tax credits arising out of Section 45 and 48 of the Code.

## APPENDIX B

### HEALTH AND SAFETY LAWS AND REGULATIONS

#### 1) GENERAL SAFETY RESPONSIBILITY

- a) The Buyer shall be solely and completely responsible for conditions including, but not limited, the protection and safety of its employees, visitors and property.
- b) The Buyer shall have in placed a written Health and Safety Plan (HSP) that is in compliance with all Federal, State, and local health and safety laws, orders, and regulations pertaining to their operations. More specifically, the Buyer shall ensure compliance with the applicable requirements of the Department of Occupational Safety and Health, DOSH (commonly referred to as Call/OSHA) and, to the extent possible, provide its employees, subcontractors, and agents with a safe work environment free from recognized hazards.
- c) The HSP shall be submitted to the County within ten (10) calendar days after the Effective Date of the agreement.
  - i) Review of the Buyer's HSP by the County shall not relieve the Buyer of the responsibility for any aspect of this agreement, or for compliance with all Federal, State, and local laws pertaining to health and safety.
    - (1) Strict adherence to the Buyer's HSP will be required for all internal company and subcontractor personnel
- d) Department review: The County's Safety Officer will review/audit the submitted HSP, according to regulatory requirements, at the time of submission.
  - i) The County's acceptance/concurrence/ of the Buyer's HSP does not relieve or transfer any such responsibilities to the County.

#### 2) HEALTH AND SAFETY PLAN (HSP) REQUIREMENTS

- a) General: Site Characterization and Scope-of-Work
  - i) Site-specific, with an emphasis on the type(s) of service(s) performed, including the hazards associated with such work and the procedures in effect to protect employees against such hazards.
    - (1) *Example – Identified Hazard: Landfill Gas (LFG) is derived from decomposing refuse, and is comprised primarily of methane (CH<sub>4</sub>) and carbon dioxide (CO<sub>2</sub>); trace quantities of other gases are also present, including volatile organic compounds, hydrogen sulfide, vinyl chlorides, etc. LFG can ignite explosively, create asphyxiation*

*hazards, and is capable of offsite migration that could pose a safety threat within enclosed structures.*

(2) *Example – Mitigation Measure (Administrative – procedure): Staff and subcontractors will be fully advised and trained in the need for precautions against fire, explosion, and asphyxiation hazards when working in areas with a potential for an LFG release.*

b) Injury and Illness Prevention Program – IIPP

i) Background: The Department of Occupational Safety and Health (DOSH) requires a written and effective Injury and Illness Prevention Program (IIPP). The IIPP is the primary component of a comprehensive Health & Safety Plan, and one that is closely evaluated by DOSH Compliance Officers.

(1) The IIPP is mandated in T8 CCR § 1509, *Construction Safety Orders*.

ii) IIPP Components:

(1) **Responsibility** – 3203(a)(1): Identify the person(s) with authority and responsibility for implementing the Program.

*(a) NOTE: This is overall authority for the program – field and office.*

(2) **Compliance** – 3203(a)(2): Include a system for ensuring that employees comply with safety and healthy work practices. This includes employee recognition, i.e. safety incentives, disciplinary actions, remedial training or other means to ensure compliance.

(3) **Communication** – 3203(a)(3): Implement a system to communicate safety and health matters to all affected employees, including provisions whereby the employee can inform the employer of worksite hazards without fear of reprisal. This includes safety or “tailgate” meetings, written communications and/or postings, anonymous hazard reporting by employees, labor/management safety and health committees, or other means to ensure communication with employees.

(4) **Inspections** – 3203(a)(4): Include procedures for identifying and evaluating work place hazards, i.e. unsafe conditions and/or work practices. Also to be included in the inspection process is the addition of a new or previously unrecognized occupational safety and health hazard (substance, process, procedure or equipment).

(5) **Accident Investigations** – 3203(a)(5): The Program must include a procedure(s) to investigate injury or occupational illness.

- (6) **Hazard Correction** – 3203(a)(6): Include methods and/or procedures for correcting unsafe and unhealthy work conditions, or practices, in a timely manner.
- (7) **Safety Training & Instruction** – 3203(a)(7): Provide safety training and relevant instruction to employees:
  - (a) New hires, re-classified employees and supervisors.
  - (b) Upon discovery of new or previously unrecognized hazards, or introduction of new materials, policy or equipment.
- (8) **Record Keeping & Documentation:** Records taken to implement and maintain the Program shall include:
- (9) **Safety Inspections** – 3203(b)(1): Inspection records, as required by subsection (a)(4), shall include person(s) conducting inspection, identified hazards and corrective actions taken. Retain records for at least one (1) year.
- (10) **Training** – 3203(b)(2): Employee training records, as required by subsection (a)(7), shall include employee name or other identifier, dates, type of training, and instructor(s). Retain records for at least one (1) year.

### 3) OTHER HEALTH AND SAFETY PLAN (HSP) REQUIREMENTS

- a) General: The IIPP is one of a handful of programs that may be required by DOSH. Depending on operations, certain work details may require other written programs such as those defined below. It is the responsibility of the Buyer to maintain compliance with applicable safety standards beyond the basic IIPP requirements.
- b) Other Health and Safety Plan component examples (based on operations):
  - i) *Code of Safe Practices* – T8 CCR §1509; *Emergency Action Plan* – T8 CCR §3220; *Fire Prevention Plan* – T8 CCR §3221; *Hazard Communication Program* – T8 CCR §5194; *Confined Space Entry* – T8 CCR §5156-§5159; *Respiratory Protection* – T8CCR §5144; *Lockout / Tag out* – T8 CCR §3314, §6003 & §2320; *Chemical Hygiene* – T8 CCR §5191 & Article 110; *Blood borne Pathogens* – T8 CCR §5193; *Hearing Conservation* – T8 CCR §5096 - §5100; *Excavation and Shoring* – T8 CCR §1541.1; *Personal Protective Equipment* – T8 CCR §3380-§3400; *Welding, Brazing and Cutting* – T8 CCR §1536, §1537; etc.
- c) Buyer is subject to periodic review and/or audit by the County Safety Officer; this is to ensure regulatory compliance as well as promote a cooperative working relationship on safety matters between the Buyer and the County.

#### 4) HAZARDOUS MATERIALS DISCLOSURE PLAN

- a) Required by the California Health & Safety Code, as a “CUPA” requirement, and comprised of two (2) parts:
  - i) *Chemical Inventory:* Detailed listing of both hazardous materials and hazardous waste stored on-site.
  - ii) *Business Emergency Plan:* *Addresses internal procedures for handling spills of hazardous, liquid or nuisance materials it is using while working on County property. This shall include proper handling, removal and disposal of these materials per all applicable Federal, State and local requirements.*
- b) Any spill-damaged area(s) must be restored/repared to its original condition by the Buyer, in an environmentally correct and timely manner, to the satisfaction of the County
- c) This program will be evaluated by the San Bernardino County Fire Authority (SBFA) and is to be maintained on-site.
  - i) This program will not be evaluated by County, but must be complete and ready for review by SBFA during annual inspection of the facility.

## SCHEDULE 2.1

### PROJECT MILESTONE DATES

<b>Milestone</b>	<b>Completion Date</b>
Confirm SWMD CEQA Lead Agency/Initiate Application	Effective Date plus 34 month (June 2022)
Prepare and Submit SCAQMD Application for SMR	Effective Date plus 34 months (July 2022)
Complete Preliminary Design	Effective Date plus 34 months (July 2022)
Procurement of Long Lead Equipment	Effective Date plus 35 months (August 2022)
Initiate Sempra Gas Service Interconnect Capacity Study	Effective Date plus 36 months (September 2022)
Secure Civil Construction Permits	Effective Date plus 37 months (October 2022)
Commence on-site civil construction of Buyer's Facility	Effective Date plus 38 months (November 2022)
Sempra Completion of Facility Preliminary Engineering Report	Effective Date plus 41 months (February 2023)
Secure Remaining Construction Permits	Effective Date plus 42 months (March 2023)
Complete Construction of Project	6 months from receipt of Long Lead Equipment
Testing of Buyer's Facility	2 months after Completion of Construction Effective Date
Commercial Operation Date	2 months after completion of Testing of Buyer's Facility

## SCHEDULE 2.2

### BUYER'S FACILITY DESCRIPTION

#### **Conceptual Design**

Buyer's Facility at CSL will convert renewable natural gas ("RNG") to Renewable Hydrogen ("RH2"). The facilities at CSL will utilize RNG provided via utility pipeline as the feedstock to a Steam Methane Reformer ("SMR") which will process it into RH2. The LFG at CSL will be utilized to generate electricity to provide the SMR facilities power requirements. The power plant will incorporate equipment to remove H2S and Siloxane impurities; hence, the County can continue to operate the Landfill Gas (LFG) collection systems on a "business-as-usual" basis.

Buyer will accept LFG at the discharge of the Buyer's LFG extraction blowers and will maintain a slight positive pressure at this point, drawing only that quantity of LFG that is available. The County will maintain control of wellfield vacuum. If the power plant is offline, the LFG will continue to flow to the County's existing flare. Buyer will cover the cost of the valving, piping, and Programmable Logic Controller (PLC)/communication costs necessary to make the above arrangement seamless.

The potential basis of design for the RH2 Plant would approximate the following: 2,800 kilograms per day of hydrogen, and up to 2 MW of electric power.

The process chain for the RH2 plant is as follows:

Reciprocating booster compressor for Natural Gas supply to the SMR, - to initially pressurize the feed gas;

The Natural Gas will be desulfurized and brought up to reformer feed gas temperature via recuperative heat recovery with the SMR furnace flue gas;

The Natural Gas is then processed into Hydrogen in the SMR furnace reactor, where at high temperatures a catalytic reaction occurs separating the hydrogen molecules from methane and steam.

Steam generation via recuperative heat recovery from the SMR furnace flue;

Pressure swing adsorption (PSA) technology for N2 and CO2 removal to purify the hydrogen gas to product specifications, with the tail gas (impurity stream) being recycled to the reformer furnace for combustion;

High pressure product compression and storage to support tube trailer filling;

A tube trailer loading rack with two to four loading positions;

A Flare to destroy any offspec gas or transient stream from the SMR and Power Plant;

Condensate recovery for either recycle in the steam generator or for off-haul for offsite treatment and disposal.

The process chain for the RH2 Power Plant is as follows:

Booster compressors, an air-to-LFG cooler and moisture separator- to initially pressurize the LFG gas;

Chilling the LFG to 60 degrees F for microturbine protection;

Moisture and condensables removal;

H<sub>2</sub>S and Siloxane removal via sacrificial adsorption media;

Microturbine power generators for up to 2 MW of generation.

Condensate recovery for either recycle in the steam generator or for off-haul for offsite treatment and disposal.

The RH2 will be delivered to a purchaser, by tube trailer off take located on the facility premises.