AGENDA REPORT

Meeting Date: April 24, 2018
Item Number: D-11
To: Honorable Mayor & City Council
From: Craig Crowder, Fleet Manager

Subject: APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND CLEAN ENERGY RENEWABLE FUELS, LLC FOR SUPPLY OF RENEWABLE NATURAL GAS (RNG) AND LOW CARBON FUEL STANDARD (LCFS) CREDIT MANAGEMENT; AND APPROVAL OF A PURCHASE ORDER IN THE NOT-TO-EXCEED AMOUNT OF $65,000 TO CLEAN ENERGY RENEWABLE FUELS, LLC FOR SUPPLY OF RNG AND LCFS CREDIT MANAGEMENT

Attachments: 1. City of Norwalk RFP No. 17-505
2. City of Norwalk Council Agenda Report April 18, 2017
3. City of Norwalk RNG Contract July 21, 2017
4. Clean Energy Renewables Letter of Piggy-Back
5. Clean Energy Renewables LCFS & RNG Proposal
6. Clean Energy Renewables LCFS & RNG Contract Proposal
7. Clean Energy Renewables Natural Gas Provider Contract Proposal

RECOMMENDATION

Staff recommends that City Council (1) find that the conformance with the bidding procedures in the Municipal Code would be contrary to the best interests of the City, (2) waive the bidding requirements as the City is utilizing the City of Norwalk procurement contract, (3) move to approve a contract with Clean Energy Renewable Fuels, LLC for supply of Renewable Natural Gas (RNG) and Low Carbon Fuel Standard (LCFS) Credit Management, and (4) approve a purchase order in the not-to-exceed amount of $65,000 to Clean Energy Renewable Fuels, LLC for supply of RNG and LCFS Credit Management.
DISCUSSION

This report provides information on the Department’s plan to collaborate with Clean Energy Renewable Fuels, LLC to provide two unique services to the City: (1) Renewable Natural Gas (RNG) fuel supply and (2) Low Carbon Fuel Standard (LCFS) credit management for a five-year contract term. Since 2012, the City has operated its own Compressed Natural Gas (CNG) fueling station. This station allows us to comply with the Southern California Air Quality Management District (SCAQMD) rules that require use of alternative fuel in heavy-duty vehicles operating in the Los Angeles basin and to minimize mobile source emissions from on-road vehicles and reduce the use of non-renewable polluting transportation fuels, in support of the Beverly Hills Sustainable City Plan.

LCFS Program

The LCFS program regulates transportation fuel providers, requiring a 10% reduction in carbon intensity of fuels sold by 2020 and an 80% reduction by 2050. Importers or producers of gasoline and diesel are required to purchase credits based on the carbon intensity of the overall transportation fuel use in California. Because of the importer and producer deficit, producers of fuel with a carbon intensity lower than gasoline or diesel are able to generate credits that can be sold to these importers or producers.

The City’s vehicle fueling operations are eligible to generate LCFS credits from the use of (1) conventional natural gas also known as fossil natural gas, which is classified as “Fossil CNG” and (2) renewable natural gas (RNG) derived from organic feedstocks including landfills and anaerobic digestion of food, agriculture and wastewater treatment. An outside vendor can provide the City with a comprehensive LCFS credit management solution on its Fossil CNG that includes: Opting-in the City of Beverly Hills as a regulated party, management of the City’s LCFS account, reporting to the California Air Resource Board (CARB) quarterly on CNG usage at the station, submission of annual reports, sale of credits at competitive prices generated during the quarter and assuming audit/compliance liability for all transactions generated under this program. The City would receive a percentage share of the LCFS and Renewable Identification Number (RIN) credits.

RNG Fuel Supply

As previously noted, the use of RNG generates incremental environmental credits at a CNG station and provides a substantially lower carbon fuel as compared to Fossil CNG. The City can generate additional revenue using RNG and can claim the environmental benefit of fueling with 100% RNG. This is an important sustainability message that can be shared with residents and the general public. Based on an estimated 110,000 gasoline gallon equivalents (GGEs) of annual fuel consumed at the City’s CNG station, the City is anticipated to generate over $26,600 in annual RNG credit revenue. This amount would help to offset the $65,000 that the City spends on average each year in fuel for its CNG-powered vehicles. Currently the City receives its natural gas for the compressing station through existing Southern California Gas infrastructure. Clean Energy Renewable Fuels, LLC would supply the City with RNG through existing infrastructure with no modifications necessary. The RNG product delivers a 100% sustainable transportation fuel product while reducing greenhouse gas emissions (GHG).

After careful evaluation of various purchasing options and pricing, staff determined that it is in the best interest of the City not to proceed with its own bid process but to instead utilize the bid process of the City of Norwalk Purchasing Division Bid No. 17-505.
Meeting Date: April 24, 2018

(Attachment 1). Staff determined that using the City of Norwalk procurement resources, manpower and purchasing power gives the City the best pricing opportunity. Clean energy Renewable Fuels, LLC intends to extend the same terms, conditions and prices that are stipulated in the City of Norwalk 5-year RNG procurement contract (Attachment 3), which commenced on July 21, 2017, to the City of Beverly Hills. In order to ensure the City has continued and uninterrupted access to necessary renewable natural gas transportation fuel, staff recommends approval of the contract with Clean Energy Renewable Fuels, LLC and subsequent purchase order to Clean Energy Renewable Fuels, LLC.

FISCAL IMPACT
Funding for this purchase is included in the Fiscal Year 2017/18 City Council-approved Department budget. Renewable Natural Gas purchases are projected to total $65,000 annually with an offset of $26,600 in annual RNG credit revenue.

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<tr>
<th>Program # / Description of Fund Source</th>
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<tr>
<td>49010001 - 720900 / Fuel Inventory – Petroleum Products</td>
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Shana Epstein
Approved By
Attachment 1
REQUEST FOR PROPOSAL (RFP) No. 17-505
FOR
PROVISION OF RENEWABLE NATURAL GAS (RNG)

CITY OF NORWALK
PURCHASING DIVISION
12700 NORWALK BLVD., ROOM 6
NORWALK, CA 90650

RFP RELEASE: FRIDAY, DECEMBER 16, 2016
SUBMISSION OF QUESTIONS: TUESDAY, JANUARY 3, 2017
PROPOSAL DUE: MONDAY, JANUARY 23, 2017
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOTIFICATION TO PROPOSERS</td>
<td>4</td>
</tr>
<tr>
<td>COVER LETTER</td>
<td>5-7</td>
</tr>
<tr>
<td>ESTIMATED SCHEDULE OF EVENTS</td>
<td>8</td>
</tr>
<tr>
<td>PROPOSAL SUBMISSION CHECKLIST</td>
<td>9</td>
</tr>
<tr>
<td>SECTION 1 - INSTRUCTIONS TO PROPOSERS</td>
<td>10-18</td>
</tr>
<tr>
<td>IP.1 Proposal Format and Submittal</td>
<td></td>
</tr>
<tr>
<td>IP.2 Examination of Proposal Documents</td>
<td></td>
</tr>
<tr>
<td>IP.3 Addenda</td>
<td></td>
</tr>
<tr>
<td>IP.4 Clarifications</td>
<td></td>
</tr>
<tr>
<td>IP.5 Errors in Proposals</td>
<td></td>
</tr>
<tr>
<td>IP.6 Withdrawals of Proposal</td>
<td></td>
</tr>
<tr>
<td>IP.7 References</td>
<td></td>
</tr>
<tr>
<td>IP.8 Letter of Transmittal</td>
<td></td>
</tr>
<tr>
<td>IP.9 Pre-Contractual Expenses</td>
<td></td>
</tr>
<tr>
<td>IP.10 City of Norwalk Rights</td>
<td></td>
</tr>
<tr>
<td>IP.11 Licensing, Permits and Taxes</td>
<td></td>
</tr>
<tr>
<td>IP.12 Responsibility for Compliance with Legal Requirements</td>
<td></td>
</tr>
<tr>
<td>IP.13 Confidentiality and Public Record</td>
<td></td>
</tr>
<tr>
<td>IP.14 Joint Offers</td>
<td></td>
</tr>
<tr>
<td>IP.15 Company Personnel</td>
<td></td>
</tr>
<tr>
<td>IP.16 Single Proposal Response</td>
<td></td>
</tr>
<tr>
<td>IP.17 Price Sheet</td>
<td></td>
</tr>
<tr>
<td>IP.18 Protest Procedures</td>
<td></td>
</tr>
<tr>
<td>IP.19 Incorporation of Proposal into Agreement</td>
<td></td>
</tr>
<tr>
<td>IP.20 Award of Contract</td>
<td></td>
</tr>
<tr>
<td>IP.21 Proposal Evaluation Criteria</td>
<td></td>
</tr>
<tr>
<td>IP.22 DBE Participation</td>
<td></td>
</tr>
<tr>
<td>SECTION 2 - GENERAL TERMS AND CONDITIONS</td>
<td>19-27</td>
</tr>
<tr>
<td>GC.1 Definitions</td>
<td></td>
</tr>
<tr>
<td>GC.2 Assignment and Subcontractors</td>
<td></td>
</tr>
<tr>
<td>GC.3 Sample Agreement</td>
<td></td>
</tr>
<tr>
<td>GC.4 Notice of Labor Dispute</td>
<td></td>
</tr>
<tr>
<td>GC.5 Disputes</td>
<td></td>
</tr>
<tr>
<td>GC.6 Assumption and Risk of Loss</td>
<td></td>
</tr>
<tr>
<td>GC.7 Licensing, Permits and Taxes</td>
<td></td>
</tr>
<tr>
<td>GC.8 Waivers of Terms and Conditions</td>
<td></td>
</tr>
<tr>
<td>GC.9 Indemnification</td>
<td></td>
</tr>
<tr>
<td>GC.10 Interest of Members of the City</td>
<td></td>
</tr>
<tr>
<td>GC.11 Termination for Default</td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Page(s)</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>SECTION 2 - GENERAL TERMS AND CONDITIONS – CONTINUED</td>
<td>19-27</td>
</tr>
<tr>
<td>GC.12 Cancellation of Agreement</td>
<td></td>
</tr>
<tr>
<td>GC.13 Termination for Convenience</td>
<td></td>
</tr>
<tr>
<td>GC.14 Force Majeure</td>
<td></td>
</tr>
<tr>
<td>GC.15 Inspection and Acceptance</td>
<td></td>
</tr>
<tr>
<td>GC.16 Excess Reprocurement Liability</td>
<td></td>
</tr>
<tr>
<td>GC.17 Delivery/Installation</td>
<td></td>
</tr>
<tr>
<td>GC.18 Method of Payment</td>
<td></td>
</tr>
<tr>
<td>GC.19 Non-Restrictive Clauses</td>
<td></td>
</tr>
<tr>
<td>GC.20 Insurance</td>
<td></td>
</tr>
<tr>
<td>GC.21 Certificate of Non-Collusion</td>
<td></td>
</tr>
<tr>
<td>GC.22 Patent and Copyright Infringement</td>
<td></td>
</tr>
<tr>
<td>GC.23 Conflicts of Interest</td>
<td></td>
</tr>
<tr>
<td>GC.24 Order of Precedence</td>
<td></td>
</tr>
<tr>
<td>GC.25 Changes</td>
<td></td>
</tr>
<tr>
<td>GC.26 Differing Site Conditions</td>
<td></td>
</tr>
<tr>
<td>SECTION 3 - SCOPE OF WORK</td>
<td>28-29</td>
</tr>
<tr>
<td>SECTION 4 - FORM OF CONTRACT (SAMPLE)</td>
<td>30-36</td>
</tr>
<tr>
<td>SECTION 5 - FORMS AND CERTIFICATIONS</td>
<td>37-46</td>
</tr>
<tr>
<td>Letter of Transmittal</td>
<td></td>
</tr>
<tr>
<td>Exhibit A - Scope of Work</td>
<td></td>
</tr>
<tr>
<td>Exhibit B - Price Sheet</td>
<td></td>
</tr>
<tr>
<td>Exhibit C - Indemnification and Hold Harmless Agreement and Waiver of Subrogation and Contribution</td>
<td></td>
</tr>
<tr>
<td>Exhibit D - References</td>
<td></td>
</tr>
<tr>
<td>Exhibit E - Certification of Non-Collusion</td>
<td></td>
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<td>Exhibit F - Certification of Restrictions on Lobbying</td>
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<tr>
<td>Exhibit G - Designation of Subcontractors</td>
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</table>
NOTIFICATION TO PROPOSERS

The City of Norwalk invites prospective Proposers to compete for the provision of Renewable Natural Gas (RNG), including the percentage of RNG to be offered, in standard cubic feet per minute volumes, and any stipulations whereby RNG would become unavailable. Proposals must be submitted in accordance with the conditions outlined in the Request for Proposal ("RFP") attached hereto.

Comments regarding this RFP provided by any other department, employee, or City of Norwalk office other than the Purchasing Division shall not be considered valid and the City will not be bound by any such comments or responses. All comments or questions to this RFP must be submitted in writing.

The successful Proposer will be required to comply with Equal Employment Opportunity and all applicable federal, state and local laws, and requirements. The City of Norwalk hereby notifies all Offerors that the City will affirmatively assure that Disadvantaged Business Enterprises are afforded full opportunity to participate in the performance of contracts and sub-contracts financed in part or in whole with funds provided under this RFP, and will not be discriminated against on the grounds of race, color, gender, age, or national origin in consideration for an award.

The City of Norwalk reserves the right to reject any or all proposals, to waive information or irregularities to the extent permitted by law in any proposal received and to be the sole judge of the merits of the respective proposals received.
The City of Norwalk invites prospective Proposers to compete for the provision of Renewable Natural Gas (RNG), including the percentage of RNG to be offered, in standard cubic feet per minute volumes, and any stipulations whereby RNG would become unavailable.

Background:
Norwalk Transit System (NTS) has been operating fixed-route and paratransit service in Los Angeles County since 1974. Our fixed route operation serves an area, which includes the City of Norwalk and portions of Artesia, Bellflower, Cerritos, El Monte, La Mirada, Santa Fe Springs, La Habra, Whittier and Unincorporated areas of Los Angeles County.

NTS directly operates thirty four (34) fixed-route buses. By year 2022, NTS will operate a 100% Compressed Natural Gas (CNG) fleet. The CNG vehicle fueling station is located at 12650 E. Imperial Hwy., Norwalk, CA 90650 and the City fuels natural gas vehicles on a daily basis, typically between the hours of 4:00 p.m. and 11:30 p.m., Monday through Sunday.

Currently, the CNG station is managed by a contractor for a five (5) year term through an Operate and Maintenance (O&M) Service Plan. The O&M service includes all routine, preventative, and emergency maintenance, and all consumables, repairs, rebuilds, warranty processing, and labor costs.

The City receives natural gas through one (1) dedicated Meter Set Assembly (MSA) installed by Southern California Gas Company (SCGC). The City currently purchases its natural gas from SCGC. Natural gas usage for NTS' fixed-route purposed averages approximately 30,000 therms per month. However, provisions shall be included in the final agreement between the parties to accommodate increases and/or decreases in natural gas usage. Effective May 25, 2016, the City is registered in the Air Resources Board (ARB) LCFS Program.

The City’s goal is to reduce its energy cost (by way of rebates) while maintaining the highest possible degree of reliability and quality in its natural gas supply to ensure that the City's natural gas powered vehicles can be fueled and operated every day of the year.

Instructions:
A pre-proposal conference will not be held. All questions submitted in writing as outlined below will be responded to according to the guidelines contained herein. Responses will be in writing and will be provided to all prospective Proposers. Responses to questions or comments regarding this RFP provided by any other department, employee, or City of Norwalk department other than the contact person set forth above shall not be considered valid and the City will not be bound by any such comments or responses. With the exception of inquiries received at the pre-proposal conference, inquiries received via telephone or orally in-person will not receive a response.

All inquiries and comments concerning this RFP are due on Tuesday, January 3, 2017 no later than 3:00 p.m. and shall be submitted in writing to:
Proposals must be in writing and must be received by the City of Norwalk Purchasing Division by 11:00 a.m., on Monday, January 23, 2017 via U.S. Mail, FedEx, UPS or courier or in person. Proposals received after the above listed date and time will not be considered, regardless of postmark. Prospective Proposers are responsible for having Proposals deposited on time at the place specified and assume all risk of late delivery, including any delay in the mail or handling of the mail by the U.S. Postal Service or City employees. Proposers responding to this RFP must submit the original and three (3) copies of their proposal clearly marked as follows:

City of Norwalk Purchasing Division
12700 Norwalk Blvd., Room 6, Norwalk, CA 90650
“RFP NO. 17-505, PROVISION OF RENEWABLE NATURAL GAS (RNG)”

No oral, electronic, telegraphic, telephonic or facsimile transmittals will be accepted. All Proposals must contain an original signature by an authorized officer of the company.

The successful Proposer will be required to comply with all applicable Equal Opportunity Laws and Regulations. The City of Norwalk hereby notifies all prospective Proposers that the City will require each Proposer affirmatively demonstrate that Disadvantaged Business Enterprises are afforded full opportunity to participate in the performance of contracts and sub-contracts financed in part or in whole under this RFP, and will not be discriminated against on the grounds of race, color, gender, age, or national origin in consideration for an award.

The City of Norwalk Department of Transportation is committed to ensuring that no person is excluded from participation in, or denied the benefits of its programs and/or services on the basis of race, color or national origin in accordance with FTA Circular 4704.1 and Title VI of the Civil Rights Act of 1964, as amended (“Title VI”). In addition to Title VI, NTS also prohibits discrimination based on sex, age or disability.

Any person who believes he or she has been subjected to discrimination under Title VI can file a complaint with Norwalk Transit System. For more information on Norwalk Transit System’s Civil Rights Program, and the procedures to file a complaint, contact:

Norwalk Transit System
12650 E. Imperial Hwy., Norwalk, CA 90650
Tel: (562) 929-5550
transportation@norwalkca.gov

You may also contact the Federal Coordination and Compliance Office, Civil Rights Division at the Title VI Hotline: 888-TITLE-06 (888-848-5306) or send a letter to:

U.S. Department of Justice
Civil Rights Division
Federal Coordination and Compliance Section, NWB
950 Pennsylvania Avenue, N.W. Washington, D.C. 20530
More information on Title VI is available from the Justice Department online at www.justice.gov

Issued by:

CITY OF NORWALK
Purchasing Division

/s/Darlene Mena
Purchasing Agent
ESTIMATED SCHEDULE OF EVENTS

1. Friday, December 16, 2016  REQUEST FOR PROPOSAL (RFP) RELEASE
2. Tuesday, January 3, 2017  LAST DAY FOR SUBMISSION OF QUESTIONS
3. Monday, January 9, 2017  RESPONSE TO QUESTIONS
4. Monday, January 23, 2017  PROPOSAL DUE DATE
5. Week of February 6, 2017*  INTERVIEWS HELD WITH PROPOSERS
6. Tuesday, March 7, 2017*  CITY COUNCIL APPROVAL

* Tentative Dates
# PROPOSAL SUBMISSION CHECKLIST

This checklist must be completed and returned with the Proposal. Failure to return this checklist may be cause for considering the Proposal non-responsive.

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<tbody>
<tr>
<td>1</td>
<td>Proposal (original and three (3) copies)</td>
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<td>2</td>
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<td>IP.8</td>
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<td>3</td>
<td>Licensing, Permits and Taxes</td>
<td>IP.11</td>
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<td>4</td>
<td>Indemnification and Hold Harmless Agreement and Waiver of Subrogation and Contribution</td>
<td>Exhibit C</td>
<td></td>
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<td>5</td>
<td>References</td>
<td>Exhibit D</td>
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<td>6</td>
<td>Certification of Non-Collusion</td>
<td>Exhibit E</td>
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<td>Certification of Restrictions on Lobbying</td>
<td>Exhibit F</td>
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SECTION 1 - INSTRUCTIONS TO PROPOSERS

IP. 1 PROPOSAL FORMAT AND SUBMITTAL

Proposals must be received at the City of Norwalk Purchasing Division by 11:00 a.m. on Monday, January 23, 2017, via U.S. Mail, FedEx, UPS or courier or in person. The envelope/package must be clearly marked “Proposal No. 17-505, PROVISION OF RENEWABLE NATURAL GAS (RNG).” Hard copy (printed) submittal of the Proposal documents is required. Respondents to this RFP must submit the original and three (3) copies of their Proposal to:

City of Norwalk Purchasing Division
12700 Norwalk Blvd., Room 6, Norwalk, CA 90650
RFP No. 17-505 “PROVISION OF RENEWABLE NATURAL GAS (RNG)”

No oral, electronic, telegraphic, telephonic or facsimile transmittals will be accepted. All Proposals must contain an original signature by an authorized officer of the company. Proposals will be publicly opened at the specified time in the Purchasing Division of City Hall, Room 6.

Proposals received after the above listed date and time will not be considered, regardless of postmark. Proposals shall be time stamped when received and will be accepted up to and no later than the time indicated than the time indicated in this RFP. The Proposer assumes the risk of any delay in the delivery of the mail by the U.S. Postal Service or in the handling of the mail by employees of the City. Whether sent by mail or by means of personal delivery, Proposers assume responsibility for having Proposals deposited on time at the place specified.

Proposals shall not include a photocopy of the following:

- ‘INSTRUCTIONS TO PROPOSERS’ [Section 1]
- ‘GENERAL TERMS AND CONDITIONS’ [Section 2]
- ‘SCOPE OF WORK’ [Section 3]
- ‘FORM OF CONTRACT’ (SAMPLE) [Section 4]

Proposals shall be typed, single-spaced and submitted on 8½”x11” paper in a 3-ring binder. Proposals shall not include any unnecessarily elaborate or promotional material. Proposals may not be modified or corrected after being opened unless an addendum is issued requesting resubmissions. Proposals will not be valid until all information has been verified and Proposers references have been checked. All Proposals shall be accompanied by a completed and signed letter of transmittal provided as a part of this RFP.

All requests for exceptions or deviations as a result of this RFP shall be clearly identifiable by a separate section of the Proposer’s submitted Proposal for review by the City of Norwalk. It shall be the right of the City of Norwalk to accept or reject any portion of the submitted requests.

Proposals shall be submitted in accordance with the form prescribed herein. Failure to respond in this manner may render the Proposal non-responsive. Unauthorized conditions, limitations, or provisions attached to a Proposal will render the Proposal non-conforming and non-responsive and may cause its rejection. The completed Proposal shall be without
interlineations, alterations, or erasures. Proposer submitting basic conforming Proposals may choose to submit alternate Proposals as complete and separate offers, if the alternate Proposal offers technical or other improvements or modifications, which are to the overall benefit to the City of Norwalk and its passengers. Any and all alternate Proposals must be submitted in writing and included with the original Proposal, conforming to the requirements as stated herein. No verbal modifications will be accepted.

Proposal documents shall be deemed to include by reference each and every one of the following:

- Request for Proposal (RFP)
- Addenda to RFP
- Supplements to RFP
- All other required forms

**IP. 2 EXAMINATION OF PROPOSAL DOCUMENTS**

By submitting a Proposal, Proposer represents that: (1) Proposer has thoroughly examined and become familiar with the Work required under this RFP, (2) Proposer comprehends all conditions that may impact the Proposal, (3) Proposer has reviewed of all addenda, and (3) Proposer is capable of providing the equipment, goods and services necessary to perform the Work and/or meet the specifications outlined in this RFP, in a manner that meets the City’s objectives. Failure to examine the documents and inform itself shall be at the Proposers’ own risk. A Proposer shall have no claim against the City based upon ignorance of or misunderstanding of the RFP documents. Once the award has been made, failure of a Proposer to have read all of the conditions, instructions and the Agreement shall not be cause to alter any term of the Agreement nor shall such failure provide valid grounds for a Proposer to withdraw its Proposal or to seek additional compensation.

**IP. 3 ADDENDA**

Any changes made by the City to the requirements in this RFP will be made by written addenda. Any written addenda issued to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. The City will not be bound by any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. The City reserves the right to revise or withdraw this RFP at any time and for any reason.

**IP. 4 CLARIFICATIONS**

Should a Proposer require clarifications of this RFP, the Proposer shall notify the contact person identified in this RFP in writing. Should the City, in its sole discretion, determine that the point in question is not clearly and fully set forth, the City will issue a written addendum clarifying the matter. Said addendum shall be sent to all persons who have requested the RFP.

All questions, clarifications or comments must be submitted to the contact person in the Purchasing Division no later than 3:00 p.m., Tuesday, January 3, 2017. No questions will be answered individually by the Transportation Department.

Requests for clarification, questions and comments must be clearly labeled “Written Questions for RFP No. 17-505”. Questions may be faxed to (562) 929-5966, **ATTENTION:** Darlene Mena, Purchasing Division. The City is not responsible for failure to respond to a request that has not been submitted in accordance with this section.
Responses by the City to the clarifications, comments and questions will be communicated in writing to all recipients of this RFP. Every attempt will be made to provide responses to all Proposers in accordance with the procurement schedule for this RFP. Inquiries received after the deadline will not be accepted and will be returned to the sender without a response.

Requests for clarifications and questions should be formatted in the following manner:

Section
Paragraph number
Page number
Text of passage being questioned
Question

IP.5 ERRORS IN PROPOSALS
All Proposers are responsible for errors and omissions in their Proposals. No consideration will be given by the City to allow Proposals to be withdrawn once a Proposal has been opened. Any errors and omissions will not serve to diminish the Proposer’s obligations to the City.

IP.6 WITHDRAWAL OF PROPOSALS
Proposers may withdraw their Proposals in writing, provided that such requests are received by the City prior to the scheduled deadline for Proposal submission or within six months following the scheduled deadline for Proposal submission when no contract has been awarded.

IP.7 REFERENCES
All reference information requested in the REP and specified in the form included in this REP must be submitted with the Proposal. Refer to Exhibit D.

Provide a minimum of three (3) references for the projects cited as related experience, and furnish the name, title, address and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. Proposer may also supply references from other work not cited in this section as related experience. Each reference must specifically address start/end dates of the project and services provided which should correlate with the requirements of this REP. This information must be concise and contain no sales information.

IP.8 LETTER OF TRANSMITTAL
If an individual makes the Proposal it shall be signed and the full name and address of the Proposer shall be given.

If a partnership makes the Proposal, it shall be signed with the partnership name, by a member of the partnership who shall sign by name and the name and address of each partner shall be given.

If a corporation prepares the Proposal, the name of the corporation shall be provided and signed by two (2) duly authorized Officers and, if available, stamped with the corporate seal, and the names and titles of all officers of the corporation shall be given. If a corporation provides a certified letter stating that one (1) duly authorized officer signature is binding for the corporation, this will suffice to omit the second signature requirement in the
Proposal. Certified letter is to be included in the Proposal accompanied with the Letter of Transmittal.

IP.9 PRE-CONTRACTUAL EXPENSES
The City will be under no obligation for payment of pre-contractual expenses. Pre-contractual expenses are defined as expenses incurred by Proposer in:
- Preparing the Proposal in response to this request.
- Submitting that Proposal to the City.
- Negotiating with the City any matter related to this Proposal, and/or
- Any other expenses incurred by the Proposer prior to date of award.

IP.10 CITY OF NORWALK RIGHTS
In its discretion, the City reserves the right to:
1. Reject any and/or all Proposals for no reason or any reason including but not limited to the following:
   a. The Proposal is incomplete, non-responsive, obscure, irregular or lacking necessary detail and specificity.
   b. The Proposer, in the sole judgment of the City, lacks the qualifications, experience, and/or responsibility necessary to provide the services.
   c. The Proposer failed or neglected to complete and submit any information within the time specified by the City, and as may be otherwise required herein.
2. Reject any Proposal that, in the opinion of the City is so unbalanced in comparison to other Proposals received and/or to the City’s internal estimates that it does not accurately reflect the cost to perform.
3. Accept all or any part of a Proposal.
4. Cancel the entire RFP;
5. Issue subsequent RFPs;
6. Waive any errors or informalities in any Proposal, to the extent permitted by law.

IP.11 LICENSING, PERMITS AND TAXES
All Proposals and prices set forth therein shall be deemed to include applicable taxes. The Proposer shall be appropriately licensed in accordance with the laws of the State of California for the work to be performed. The cost for any required licenses or permits shall be the responsibility of the successful Proposer. The successful Proposer is liable for any and all taxes due as a result of the contract.

Proposer shall submit copies within Proposal technical certifications, appropriate licenses from all federal, state, and local governments. Proposal shall describe which postings are in public view.

IP.12 RESPONSIBILITY FOR COMPLIANCE WITH LEGAL REQUIREMENTS
The Proposer’s products, services, and facilities shall be in full compliance with all applicable Federal, State and local regulations, standards, and ordinances, regardless, of whether or not they are referred to in the RFP.

IP.13 CONFIDENTIALITY AND PUBLIC RECORD
All Proposers are hereby put on notice that each Proposal received shall become the exclusive property of the City and, unless the City’s prior written agreement to maintain all
or part of a Proposal confidential as a trade secret is first obtained, each Proposal shall be subject to disclosure pursuant to the California Public Records Act and/or the Federal Freedom of Information Act. The City shall not in any way be liable or responsible for the disclosure of any Proposals or portions thereof absent such agreement; nor shall such agreement preclude the City from disclosing any Proposal or portion thereof where such disclosure is required by law.

**IP.14 JOINT OFFERS**
Where two or more Proposers desire to submit in response to this RFP, they shall do so on a prime-subcontractor basis rather than as a joint venture. City of Norwalk intends to contract with a single firm and not with multiple firms doing business as a joint venture. Any Proposal submitted on behalf of any form of joint venture or partnership between two (2) existing Proposers may be considered collusive and may be rejected as non-responsive.

**IP.15 COMPANY PERSONNEL**
It shall be the burden of the successful Proposer to ensure all personnel possesses qualifications and/or experience. All personnel required in performing the services herein shall be secured at the expense of the successful Proposer. Personnel shall not be employees of or have any contractual relationship with the City. Successful Proposer's personnel shall conduct themselves in a professional manner to all City employees at all times. Rude or discourteous behavior by the successful Proposer will not be tolerated and the offense can be justification for termination of contract. All sub-contractors of successful Proposer shall abide by all the requirements set forth in this section.

**IP.16 SINGLE PROPOSAL RESPONSE**
If only one Proposal is received in response to this RFP, a detailed cost/price Proposal may be requested of the Proposer. A cost or cost and price analysis and evaluation and/or audit of the cost may be performed in order to determine if the price is fair and reasonable. If the City determines a cost analysis is required, Proposer must be prepared to provide, upon request, cost summaries of estimated costs (i.e. labor, equipment, supplies, overhead costs etc.) and documentation supporting all cost elements.

**IP.17 PRICE SHEET**
The City reserves the right to select the option that is determined to be the most advantageous to the City and enter into a contract based on that selection. During the five-year (5) term of this agreement, the City reserves the right to purchase natural gas based on a current index (e.g. SoCal Gas), plus or minus fees, or convert such agreement into a fixed price, longer term agreement or such other terms as may be in the best interest of the City.

The City will require proposing parties to provide their pricing in a minimum amount to allow for a reasonable minimum contract term. Each proposer may offer its available alternatives and best approach in terms of providing both natural gas pricing and Low Carbon Fuel Standard (LCFS) management services for a total requirements "package" that ensures the reliable delivery of the City's natural gas requirements, at a competitive price, and guarantees top market value for the City's LCFS credits.

For its price submittal, proposing firms must provide pricing in a monthly format using a California State recognized natural gas index as a basis, and the price submittal must designate the index used for the basis of pricing. Proposing firms are to include a minimum...
and maximum contract term. In each instance, narrative must be provided to thoroughly explain the rational, payment mechanisms and individual cost elements for the proposal submittals and details of the California Air Resources Board (CARB) auctions of LCFS credits.

Index pricing shall mean the price posting relative to that as first published each month for SoCal Gas. Fixed pricing shall mean a constant price for all natural gas requirements during the contract term.

**IP.18 PROTEST PROCEDURES**

All protests must be filed in accordance with the following:

1. The protest must be in writing and identify the solicitation (RFP) number.
2. The protest must be submitted by some return receipt method or guarantee of delivery that insures that the protest was received in a timely manner. The City is not responsible for lost or delayed deliverables.
3. The party's standing to protest must be identified.
4. Identification of the specific provision, law, regulation, specification, procedure or policy violated.
5. A statement of the relief requested.

Protests related to the content of the RFP shall be received no later than ten (10) working days prior to the Proposal due date.

Protests on matters related to the recommendation for award or any other item not related to the contents of the RFP shall be submitted within ten (10) working days of the issuance of the recommendation for award.

If the Protest does not comply with the preceding requirements it may not be evaluated and may be returned to the Protestor. A protest lodged after award by City Council will not be considered.

All protests shall be submitted to the contact person identified in this solicitation.

If the solicitation is funded with Federal Transit Administration (FTA) monies, a protest may be filed with the FTA. However, the FTA only accepts protests alleging that a grantee failed to have written protest procedures or did not comply with those procedures or protests that involve a conflict of interest or fraud.

**IP.19 INCORPORATION OF PROPOSAL INTO AGREEMENT**

This RFP and the Proposer’s response, including all promises, warranties, commitments and representations made in the successful Proposal, shall be binding and incorporated by reference in the City’s contract with the successful Proposer.

**IP.20 AWARD OF CONTRACT**

The contract(s) resulting from this RFP will be awarded to the responsive and responsible Proposer whose proposal, conforming to the requirements of the RFP, is determined to be the most advantageous to the City, based on the Evaluation Criteria. No agreement(s) shall exist until the City Council or the City Manager has awarded the Agreement and it has been mutually executed. The City reserves the right to:
(a) Accept all or any part of a proposal;
(b) Reject any or all proposals for any reason;
(c) Waive any informality or minor errors to the extent permitted by law;
(d) Award the Agreement as the interest of the City may require;
(e) Cancel the entire RFP; or
(f) Issue subsequent RFPs.

An Evaluation Committee comprised of the City of Norwalk, or other City staff in accordance with the Proposal Evaluation Criteria set forth in Evaluation Criteria section of this RFP, will evaluate all the proposals. During the evaluation period, the City may interview some or all the proposing firms. Proposers should be aware; however, that award may be made without interviews or further discussions.

The City may negotiate contract terms with the selected Proposer prior to award, and expressly reserves the right to negotiate with several Proposers simultaneously and, thereafter, to award a contract to the Proposer offering the most favorable terms to the City. However, negotiations may or may not be conducted with Proposers; therefore, the proposal submitted should contain the most favorable terms and conditions, since the selection and award may be made without discussion with any Proposer.

The City may perform a site visit at the Proposer location(s). Site visits shall be at the City expense. The purpose of such visits shall be to provide the City with an increased understanding of the Bidder’s place of business and compliance to applicable local, state and federal provisions.

No agreement shall exist until the City Council or City Manager has awarded the Agreement and it has been mutually executed. The City reserves the right to reject any and all Proposals for any reason, to waive any informality or minor errors as determined by the City in any Proposal and to award the Agreement as the best interests of the City may require. The award, if any, will be made by the City within ninety (90) calendar days after the opening of the Proposals.

**IP.21 PROPOSAL EVALUATION CRITERIA**

The contract resulting from this RFP will be awarded to the most responsive and responsible Proposer whose offer, conforming to the requirements of the RFP, is determined to be most advantageous to the City of Norwalk.

The successful Proposer is deemed to be responsive as it relates to conformity with technical approach and requirements of the solicitation. The responsible contractor must possess the ability, experience, and integrity to perform successfully under the terms and conditions of the contract. The City expects the prospective contractor to demonstrate affirmatively that it qualifies as “responsible” and that its proposed subcontractors also qualify as “responsible.” Factors of responsibility determinations include:

- **Integrity and Ethics.** Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).

- **Debarment and Suspension.** Is neither debarred nor suspended from Federal programs under U.S. Department of Transportation (DOT) regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.
Affirmative Action and DBE. Is in compliance with the Common Grant Rules’ affirmative action and DOT’s Disadvantaged Business Enterprise requirements.


Administrative and Technical Capacity. Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).

Licensing and Taxes. Is in compliance with applicable licensing and tax laws and regulations.

Financial Resources. Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).

Production Capability. Has, or can obtain, the necessary production, construction, and technical equipment and facilities.

Timeliness. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.

Performance Record. Is able to provide a satisfactory current and past performance record.

The proposal shall contain a complete response to each of the areas identified below, in the order shown. Proposers should review the requirements listed under each area in providing their responses.

1. **Price**  
   Reasonableness of the total price and competitiveness of this amount with other offers received; adequacy of data in support of figures quoted; reasonableness of unit price; basis on which prices are quoted and the highest projected or secured revenues. This will be measured year-over-year for the life of this contract.

As part of their cost and price proposal, the Proposer shall submit proposed pricing to provide the services for the required effort described in Section 3, “Scope of Work.” Proposers’ pricing shall include all applicable prices and costs, including but not limited to, direct/indirect labor rates, material costs (if any), other direct charges, profit, and all applicable taxes. The Proposer shall furnish narrative as noted in Section 3, “Scope of Work” to support its price submittal. Any costs excluded from Proposer’s price proposal to City shall be the sole responsibility of the Proposer. An authorized employee must execute the forms and the originals (only) shall be included in the “Price Proposal” package.

The price proposal shall include the minimum / maximum revenues the City can anticipate to receive based on the selling the City’s LCFS Credits on the open market.
2. Qualifications 20%
Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; and number of employees.

Provide a general description of the firm’s financial condition and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger, and potential labor disputes) that may impede Proposer’s ability to complete the project. Audited financial statements, or a one-page summary from a CPA shall be submitted. This statement should clearly identify the financial status and condition of the Proposer’s immediate business entity, as well as that of the overall Company structure, if applicable; the date of this statement should cover a period of at least one (1) year and should be dated no more than twelve (12) months prior to the date of the proposal submission.

3. Related Experience 20%
Technical experience in performing work of similar nature; experience working with public agencies; and technical competence of Proposers; assessment by client references; references with demonstrated success in providing similar services.

This section of the proposal shall establish the ability of a Proposer to satisfactorily perform/provide the required work by reasons of: experience in performing work of a similar nature; demonstrated competence in the services to be provided; strength and stability of the firm; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references. Particular attention should be given to Section 3, “Scope of Work,” to ensure the Contractor’s ability to fulfill all requirements is demonstrated in its submittal.

Describe the firm’s experience in performing work of a same/similar nature to that solicited in this RFP. Include at a minimum, name of the contracting City, type of service(s) provided, and contract period, and the name, address and telephone number of a current contact person/reference.

4. Completeness of Response 10%
Completeness of response in accordance with RFP instructions; exceptions to or deviations from the RFP requirements that the City cannot or will not accommodate; and any other relevant factors not considered elsewhere.

IP.22 DBE PARTICIPATION
Effective July 21, 2015, the City of Norwalk’s Department of Transportation FTA overall anticipated level of DBE participation for federal fiscal year 2015/16 through 2017/18 is 3% of federal financial assistance. No specific goals are set on a contract by contract basis. The goal is accomplished through the use of race-neutral measures in accordance with 49 CFR, Part 26. The City shall take all necessary steps to ensure non-discrimination in the award of all contracts to meet the objectives of the above cited regulation. When listing subcontractors in Exhibit G, Proposer shall identify them as DBE with the approximate value of their sub-contract.
SECTION 2 - GENERAL TERMS AND CONDITIONS

GC.1 DEFINITIONS

Agreement The Contract to be negotiated and entered into by the City and the successful Proposer for the work described in this RFP.

Proposer/Vendor/Contactor Any manufacturer, firm, company or agency providing services, equipment, software, or supplies for this RFP.

Change Additions, deletions or other revisions to the Work within the general scope of the contract. The City through issuance of a modification must direct a change.

City The City of Norwalk, a municipal corporation.

Contract The written agreement executed by the City and the successful Proposer which sets forth the rights and obligations of the Parties in connection with the Work, and which includes the Contract Documents.

Days Calendar days unless specifically noted otherwise.

Defect Patent or latent malfunction of failure in manufacture or design of any component or subsystem that causes a product to cease operating or causes it to operate in a degraded mode.

RFP Request for Proposal

Notice to Proceed Purchase Order issued from the City to the successful Proposer specifying the date on which the Work under the Contract is to be initiated.

Proposer Proposer or Contractor or Consultant

Special Provisions Contract Document containing requirements that modify or supplement the General Terms and Conditions.

Specifications Part of the contract documents that adequately and completely describes the locations, dimensions, character, properties, requirements and details of the Work. Contract specifications include, without limitation, all things described, referenced, or stated in any Contract document as a “Specification,” “Statement of Work” or “Scope of Work.”
Work

Any and all of the labor, material, services, supervision, tools, machinery, equipment, supplies, facilities and support used by the Proposer to generate the results specified, indicated or implied in the requirements described in the contract Statement of Work and/or Specifications.

GC.2 ASSIGNMENT AND SUBCONTRACTORS
Neither this RFP nor any interest herein nor claim hereunder may be assigned by successful Proposer either voluntarily or by operation of law, nor may all or part of this RFP or subsequent agreement be subcontracted by successful Proposer, without the prior written consent of the City of Norwalk. Consent by the City shall not be deemed to relieve successful Proposer of obligations to comply fully with the requirements hereof.

GC.3 SAMPLE AGREEMENT
A form approved by the City Attorney must be executed between the City and the successful Proposer prior to commencement of any work.

GC.4 NOTICE OF LABOR DISPUTE
Whenever Proposer has knowledge that any actual or potential labor dispute may delay the award of this RFP, Proposer shall immediately notify and submit all relevant information to the City of Norwalk. Proposer shall insert the substance of this entire clause in any subcontract hereunder.

GC.5 DISPUTES
The Agreement shall be constructed and all disputes hereunder shall be settled in accordance with the laws of the State of California. Pending final resolution of a dispute hereunder, Proposer shall proceed diligently with the performance of this agreement.

Disputes arising in the performance of the Agreement to be awarded which are not resolved by agreement of the parties shall be decided in writing by the City Council or its designated representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the successful Proposer mails or otherwise furnishes a written appeal to the City of Norwalk City Manager. In connection with any such appeal, the successful Proposer shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City Council or its designated representative shall be binding upon the successful Proposer and the successful Proposer shall abide by the decision.

Performance During Dispute
Unless otherwise directed by the City Manager, successful Proposer shall continue performance under the Agreement while matters in dispute are being resolved.

Claims for Damages
Should either party to the Agreement to be awarded suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
**Remedies**

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the successful Proposer arising out of or relating to the Agreement or any breach thereof, will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction. The parties shall further agree that the proper venue for any court action shall be in the Superior Court for Los Angeles County for state court actions and the United States District Court for the Central District of California sitting in Los Angeles.

**Rights and Remedies**

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder, shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or successful Proposer shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**GC.6 ASSUMPTION OF RISK OF LOSS**

Unless otherwise provided, Proposer shall have title to and bear the risk of loss of or damage to the items purchased hereunder until they are delivered in conformity as outlined in the RFP/RFP at the F.O.B. point specified herein, and upon such delivery Proposer's responsibility for loss or damage shall cease, except for loss or damage resulting from Proposer's negligence.

**GC.7 LICENSING, PERMITS AND TAXES**

The Proposer shall maintain all appropriate licenses required by the State of California for the work required under the terms of this Agreement. The cost for any required licenses, permits or special taxes shall be the responsibility of the successful Proposer. The awarded Proposer is to obtain necessary City of Norwalk licenses.

**GC.8 WAIVER OF TERMS AND CONDITIONS**

The failure of the City or the successful Proposer to enforce one or more of the terms or conditions of the Agreement or to exercise any of its rights or privileges, or the waiver by the City of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

**GC.9 INDEMNIFICATION**

Successful Proposer shall comply with this section and the language of this section shall be adopted in the agreement:

Contractor shall indemnify, defend and hold harmless City, and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors and assigns in accordance with the Indemnification and Hold Harmless Agreement and Waiver of Subrogation and Contribution attached hereto as Exhibit C. Contractor's covenant under this Section and Exhibit C shall survive the expiration or termination of this Agreement.

**GC.10 INTEREST OF MEMBERS OF THE CITY**

The successful Proposer covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in the City or any other interest which would conflict in any
manner or degree with the performance of its services hereunder. The successful Proposer further covenants that in the performance of this Agreement no person having any such interest shall be employed by successful Proposer.

**GC.11 TERMINATION FOR DEFAULT**

Upon failure of the successful Proposer to make satisfactory progress or adequately correct deficiencies to abide by the terms of the Agreement, or to obtain, furnish or keep in force any required permit, license, bond or insurance, the City shall have the right to terminate the Agreement for default. Written notice of termination shall be mailed to the successful Proposer at its address. Notice shall be effective when mailed. Upon receipt of notice, the successful Proposer shall immediately stop work and relinquish all project files to the City. The City may thereafter pursue the work or hire another project manager to do so and charge the successful Proposer liquidated damages.

**GC.12 CANCELLATION OF AGREEMENT**

In any of the following cases, the City shall have the right to cancel the Agreement without expense to the City: (1) the successful Proposer is guilty of misrepresentation; (2) the Agreement is obtained by fraud, collusion, conspiracy, or other unlawful means; or (3) the Agreement conflicts with any statutory or constitutional provision of the State of California or the United States. This section shall not be construed to limit the City’s right to terminate the contract for convenience or default, as provided herein.

**GC.13 TERMINATION FOR CONVENIENCE**

The performance of work under the Agreement may be terminated by the City in accordance with this section in whole or in part, whenever the City determines that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the successful Proposer of a written notice of termination specifying the extent to which performance of work under the Agreement is terminated and the date upon which such termination becomes effective.

Upon receipt of the notice of termination, and except as otherwise directed by the City, the successful Proposer shall: (1) stop work under the Agreement on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Agreement as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; (4) assign to the City in the manner, at the times, and to the extent directed by the City, all of the right, title and interest of the successful Proposer under the orders and subcontracts so terminated in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; (5) settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts to the extent, if any, directed by the City the fabricated or unfabricated parts, work in process, or completed work, supplies, and other materials produced as a part of, or acquired in connection with their performance of, the work terminated, and the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the City; (6) use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) authorized by the City, any property of the types referred to above, provided, however, that the successful Proposer shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by the City and, provided further, that the
proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to the successful Proposer under this Agreement or shall otherwise be credited to the price or cost of the work covered by this Agreement or paid in such a manner as the City may direct; (7) complete performance of such part of the work as shall not have been terminated by the notice of termination; (8) take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to the Agreement which is in the possession of the successful Proposer and in which the City has or may acquire an interest. Payments by the City to the successful Proposer shall be made for all services completed and/or delivered up to and including the effective date of termination but not thereafter. Except as otherwise provided, settlement of claims by the successful Proposer under this termination section shall be in accordance with the provisions set forth in 48 CFR Part 49, as amended.

GC.14 FORCE MAJEURE
The successful Proposer shall not be liable for any failure to perform if acceptable evidence has been submitted to the City that failure to perform the Agreement was due to causes beyond the control and without the fault or negligence of the successful Proposer. Examples of such causes include acts of God, civil disturbances, fire, war, or floods, but does not include labor related incidents such as strikes or work stoppages or unavailability of any product to be supplied to the City.

GC.15 INSPECTION AND ACCEPTANCE
All items are subject to final inspection and acceptance by the City of Norwalk, Department of Transportation at destination. Final inspection will be made within a reasonable time after receipt of items hereunder. The City reserves the right to withhold final payment until the final inspection and acceptance of all work.

GC.16 EXCESS REPROCUREMENT LIABILITY
Proposer shall be liable to the City of Norwalk for all expenses incurred by the City in reprocuring elsewhere the same or similar items or services offered by the Proposer hereunder, should Proposer fail to perform or be disqualified for failure to meet terms and conditions set forth herein. Such reprocurement expense obligation by Proposer shall be limited to the excess over the price specified herein for such items or services.

GC.17 DELIVERY/INSTALLATION
The services and/or equipment described herein are to be rendered for the City of Norwalk.

GC.18 METHOD OF PAYMENT
City will pay successful Proposer in accordance with the following terms and procedures: Successful Proposer shall submit written invoices to City by the 10th of each month clearly detailing the services furnished by successful Proposer during the preceding month and for all other supplies and services provided by successful Proposer. City shall pay all undisputed portions of the invoice within thirty (30) calendar days after receipt of the invoice in accordance with its standard warrant procedures. Clear reference must be made to the contract number, the time period that the work was performed, itemization of the work and/or reference to the payment schedule and identification of the Contractor’s taxpayer identification number.

GC.19 NON-RESTRICTIVE CLAUSES
Wherever brand, manufacturer or product names are indicated in these specifications, they are included for the purpose of establishing identification and a general description.
Wherever such names appear, the term “or approved equal” is deemed to follow. The decision whether a proposed unit is an approved equal will be made by the City. Specifying a brand name in the specification shall not relieve the successful Proposer, or any subcontractor or supplier, of the responsibility to design and produce a unit which fully meets the performance specifications, the warranty and any other contractual requirements.

Requests for "or approved equal", clarification of the specifications, and complaints on specifications must be received by the City, in writing, not less than fourteen (14) full days before the Proposal opening date. Any request for an approved equal or complaint concerning the equipment or material specifications must be fully supported with technical data, test results, or other pertinent facts as evidence that the substitute offered is equal to or better than the specification requirement.

Time limitations in this section must be complied with strictly and in no case will an extension of time for performance of this contract be granted because of Contractors failure to request a substitution of an alternative item at the times and manner set forth herein. Furthermore, if a proposed substitution is rejected, Proposer shall be responsible to provide the item or product or work as originally specified at no additional cost to the City. The City has the complete and sole discretion to determine if an item or article is an equal item.

**GC.20 INSURANCE**

Proposal shall include a statement that the insurance requirements set forth in the contract documents can be obtained and will be carried without reservation or exclusion should Proposer be awarded a contract pursuant to this RFP.

Successful Proposer shall comply with this section and the language of this section shall be adopted in the agreement:

Contractor shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, with an insurance company admitted to do business in California, rated “A” or better in the most recent A.M. Best Insurance Rating Guide, and approved by City, a policy or policies of:

(a) Broad-form commercial general liability insurance with minimum combined single limits of One Million Dollars ($1,000,000) combined single limit coverage against any injury, death, loss or property damage as a result of wrongful or negligent acts by Contractor, its officers, employees, agents, and independent contractors in performance of work under this Agreement;

(b) Automobile liability insurance, with minimum combined single limits of One Million Dollars ($1,000,000); and

(c) Workers’ compensation insurance with a minimum limit of One Million Dollars ($1,000,000) or the amount required by law, whichever is greater.

City, its officers, employees, attorneys, and designated volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automobile liability with respect to liabilities arising out of Contractor’s performance of services under this Agreement.
Each insurance policy required by this Section shall be endorsed as follows: (1) the insurer waives the right of subrogation against City and its officials, officers, employees, agents and representatives; (2) except for the workers' compensation policy, the policies are primary and non-contributing with any insurance that may be carried by City; and (3) the policies may not be canceled or materially changed except after thirty (30) calendar days' prior written notice by insurer to City, unless canceled for non-payment, then ten (10) calendar days' notice shall be given.

All insurance coverages shall be confirmed by execution of endorsements required under this Section. Contractor shall file the endorsements with City on or before the date of commencement of services pursuant to this Agreement, and thereafter maintain current endorsements on file with City. The endorsements are subject to City's approval. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section.

**GC.21 CERTIFICATE OF NON-COLLUSION**

Proposer's must represent and warrant that all submittals for this work are genuine and not sham or collusive or made in the interest of or on behalf of any person not therein named, and that the Proposer has not, directly or indirectly, induced or solicited any other Proposer to put in a sham Proposal or any other person, firm or corporation to refrain from proposing, and that the Proposer has not in any manner sought by collusion to secure to the Proposer or another Proposer an advantage over any other Proposer.

**GC.22 PATENT AND COPYRIGHT INFRINGEMENT**

In lieu of any other warranty by the City or the successful Proposer against patent or copyright infringement, statutory or otherwise, it is agreed that successful Proposer shall defend at its own expense any claim or suit against the City on account of any allegation that any item furnished under this Agreement or the normal use of sale thereof arising out of the performance of this Agreement, infringes on any present existing United States letter patent or copyright and successful Proposer shall pay all costs and damages finally awarded in any such suit or claim. Provided that successful Proposer is promptly notified in writing of the suit or claim and given authority, information and assistance at the Proposer expense of same.

However, the successful Proposer will not indemnify the City if the suit results from: (1) City's alteration of a deliverable, such that said deliverable in its altered form infringes upon any presently existing United States letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by the Proposer when such use in combination infringes upon an existing United States letters patent or copyright.

The successful Proposer shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof. The successful Proposer shall not be obligated to indemnify the City under any settlement made without the Proposer's consent or in the event the City fails to cooperate fully in the defense of any suit or claim, provided, however, that said defense shall be at the Proposer's expense. If the use or sale of said item is enjoined as a result of such suit or claim, the Proposer, at no expense to the city, shall obtain for the City the right to use and sell said item, or shall substitute an equivalent item acceptable to the City and extend this patent and copyright indemnity thereto.
GC.23 CONFLICTS OF INTEREST
Each Proposer represents and warrants, and if awarded a contract, will covenant, that it presently has no interest and shall not acquire any financial interest, direct or indirect, in any City business or any other interest which would conflict in any manner or degree with the performance of the services to be performed. The successful Proposer shall further covenant that in the performance of the Agreement no person having any such interest shall be employed. Successful Proposer further covenants and warrants that successful Proposer and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to the performance of services contemplated by this RFP, including, but not limited to, the Political Reform Act (Government Code Sections 81000, et seq.) and Government Code Section 1090. During the term of the Contract, successful Proposer and its officers, employees, associates and subcontractors shall not, without the prior written approval of the City Manager, perform work for another person or entity for whom successful Proposer is not currently performing work that would require successful Proposer or one of its officers, employees, associates or subcontractors to abstain form a decision under the Contract pursuant to a conflict of interest statute.

GC.24 ORDER OF PRECEDENCE
In the event of any conflict, the order of precedence of the contract documents will be:

The Agreement and any written amendment thereto
Special Provisions
General Conditions
Technical Specifications

A modification to this Agreement shall take its precedence from only those specific terms it amends. All other terms and conditions shall remain unchanged.

GC.25 CHANGES
The City may at any time, by written order, and without notice to sureties, if any, make changes within the general scope of this contract in any one or more of the following:

1. Drawings, designs or specifications when the supplies to be furnished are to be specially manufactured for the City in accordance with the drawings, designs, or specifications.
2. Method of delivery or packing.
3. Place of delivery.

If any such change causes an increase or decrease in the cost of, causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Project Manager shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

The Contractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the Project Manager decides that the facts justify it, the Project Manager may receive and act upon a change proposal submitted before final payment of the contract.
If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Project Manager shall have the right to prescribe the manner of the disposition of the property.

Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

GC.26 DIFFERING SITE CONDITIONS
The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the City of Norwalk Project Manager of subsurface or latent physical conditions at the site which differ materially from those indicated in the contract, or unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

The City of Norwalk Project Manager shall investigate the site conditions promptly after receiving the notice. If the conditions do not materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed above for giving written notice may be extended by the City of Norwalk Project Manager.

No request by the Contractor for an equitable adjustment to the contract for a differing site condition shall be allowed if made after final payment under this Agreement.
SECTION 3 - SCOPE OF WORK

1.0 Background. Any proposed Low Carbon Fuel Standard (LCFS) Program shall be cost neutral/effective to the City with no, or minimal, required expenses and maximum revenues. When initiating the LCFS Program, should retroactive revenue be found applicable for the City’s long-committed use of natural gas, the Contractor shall provide the time period allowable under the program in retroactive revenue.

2.0 Contractor must be a registered Energy Service Provider (ESP) with SoCal Gas and as approved by the California PUC.

3.0 The City’s proposed LCFS Program is intended to be a fully contracted and managed program by the Contractor for five (5) full years, or term of the ARB LCFS Program whichever is greater.

4.0 Contractor shall manage, report, complete all documentation to all required and reporting parties on behalf of the City on a timely, scheduled (regular) basis without exception. Any fault in the reporting of information, failure to provide the State or Utility Companies, or the City with required information on a predetermined timeframe, is considered a default and may cause immediate termination of the program until such time it may be re-initiated. If after 30 days there is no response or intent to continue the program by the Contractor the City will move to terminate the contract by the Contractor’s default.

5.0 The City shall for the term of the agreement, and in return for compensation, provide the successful Contractor with rights to all LCFS credits generated as a result of CNG being dispensed from the City’s CNG fueling station. The Contractor shall compensate the City for a fossil fuel equivalent volume of credits created at the fueling station(s) using the guidance provided in Title 17 of the California Code of Regulations.

6.0 Contractor shall identify a method or approach that will guarantee that the City is reimbursed within 15 calendar days or other mutually agreed upon timeframe for 100 percent of the market value of its LCFS credits earned each month throughout the contract term.

7.0 Contractor shall provide the City with monthly output reports indicating the amount of LCFS credits used, the estimated revenue from the anticipated volume and the revenue percentage the Contractor expects to receive through the program. If RNG is supplied, these monthly reports shall include the percentages of the RNG gas supplied. The City desires the greatest percentage of RNG available while not negating the requirement of high quality natural gas for its CNG fleet. Additionally, the selected vendor will be required to provide the following services based on the selected procurement method:

a. Monthly balancing as required by natural gas supplier
b. Billing services
c. Monthly updates to the City regarding LCFS market conditions
d. Quarterly cumulative accounting of the City’s LCFS credit balance
e. Natural gas supply and delivery arrangements
f. Maintenance of an auditable “paper trail”
g. Management all regulatory requirements including regulatory filings
h. Reporting requirements
i. Adherence to market rules
j. Verification of actual emissions to regulatory agencies
k. All compliance obligations promulgated under AB32 or subsequent legislation
l. Submit periodic reports to ARB documenting generation and consumption of RNG as transportation fuel
m. Submit annual report to ARB
n. Develop and maintain working relationships with major compliance credit buyers

8.0 Contractor is required to hold and maintain separate contracts between their company and all relative utility companies for the introduction of renewal natural gas (RNG) by use of the utility's piping, connections, any and all infrastructure, dispenser equipment, valves, meters and natural gas gating to include inter-state transmission of gas that may be used by the City. This contractual agreement between the Contractor and City shall remain in effect for the five-year life of this contract. The Contractor shall provide to the City each renewable threshold time period a new (if applicable) copy of any or all such contracts. This documentation must be in City files and kept current by the Contractor and maintained by the sole responsibility of the Contractor.

9.0 Contractor will indemnify, defend and hold harmless the City and its employees by any company or the public utilities commission seeking any and all damages as a part of this program from the negligence or complicit actions by the Contractor; and defend and hold harmless the City and its employees by any company seeking any and all damages as a part of this program, the City from any breach of contract held between the Contractor and their using utility company(s). The City will have no interest, expressed or otherwise in the, or any contractual agreement(s) between the Contractor and the utility company(s).
THIS SERVICES AGREEMENT FOR THE PROVISION OF RENEWABLE NATURAL GAS (RNG) ("Agreement") is made and entered into this ____ day of ____________, 2016 ("Effective Date"), by and between the City of Norwalk, a California municipal corporation ("CITY") and ______________________, a California corporation ("CONTRACTOR").

RECITALS

A. CITY desires to utilize the services of an independent contractor for the provision of Renewable Natural Gas (RNG), including the percentage of RNG to be offered, in standard cubic feet per minute volumes, and any stipulations whereby RNG would become unavailable.

B. CONTRACTOR represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. CITY desires to retain CONTRACTOR and CONTRACTOR desires to serve CITY to perform these services subject to the terms contained herein and all applicable local, state and Federal regulations.

The parties therefore agree as follows:

1. CONTRACTOR’S Services.

1.1 Scope of Services. CONTRACTOR shall perform the specific work more particularly described in Exhibit A for the Project, and in accordance with the provisions of Request for Proposal (“REP”) No. 17-505 and all Addenda.

1.2 REP No. 17-505 and Addenda. CONTRACTOR has confirmed receipt of all Addenda, amending REP No. 17-505, and CONTRACTOR, in the performance of all services required under this Agreement, shall adhere to REP No. 17-505 and all Addenda provided to CONTRACTOR.

1.3 Personnel. CONTRACTOR represents that it has, or will secure at its own expense, all personnel required to perform the work under this Agreement. All of the work required under this Agreement will be performed by CONTRACTOR or under its supervision, and all personnel engaged in the work shall be qualified to perform such work.

1.4 Party Representatives. For purposes of this Agreement, the City Representative shall be the City Manager or such other person designated by the City
Manager (the “City Representative”). For purposes of this Agreement, the Contractor Representative shall be ______________________ (the “Contractor Representative”).

1.5 Time of Performance. CONTRACTOR shall commence the services required under this Agreement immediately upon receipt of a Notice to Proceed for such services from the City Representative, or his or her designee.

2. Term of Agreement. The term of this Agreement shall be from the date of the Notice to Proceed through completion of the Project, unless sooner terminated as provided in Section 13 herein.

3. Compensation.

3.1 As full compensation for CONTRACTOR’s services provided under this Agreement, and subject to the maximum amount of compensation hereafter provided, CITY shall pay CONTRACTOR in accordance with the rates set forth in Exhibit B (“Price Sheet”). The maximum amount of compensation that CITY shall pay CONTRACTOR pursuant to this Agreement is ______________________ ($__________) for the term set forth in Section 2. CITY shall not pay CONTRACTOR rates higher than those specified in Exhibit B, unless mutually agreed by the City Council and the CONTRACTOR Representative. CITY shall not allow any claims for additional products provided or services performed by CONTRACTOR, unless the City Council or the City Manager, as authorized, authorizes the additional products or services in writing prior to CONTRACTOR’s provision of the products, performance of the additional services or incurrence of additional expenses. Any additional products or services authorized by the City Council shall be compensated a rate mutually agreed to by the parties. Any additional services authorized by the City Manager, including pursuant to an extension or amendment of this Agreement, shall be compensated at a rate mutually agreed to by the parties, and only if the funds for the additional services are included in the adopted budget. CITY shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

4.1 Invoices. CONTRACTOR shall submit to CITY detailed monthly invoices for all services performed and expenses incurred, if any, pursuant to this Agreement during the prior month. Invoice shall be based on percentage of completion of each task as identified in Exhibit B. CITY shall review invoices and notify CONTRACTOR within ten (10) business days of any disputed amounts. Invoices are subject to approval by the City Representative, or his or her designee.

4.2 Payment. CITY shall pay all undisputed portions of an approved invoice within thirty (30) calendar days after receipt of the invoice up to the maximum compensation amount set forth in Section 3.1 of this Agreement. CITY shall not withhold federal payroll, state payroll and other taxes, or other similar deductions from each payment made to CONTRACTOR.
4.3 Audit of Records. Upon CITY providing 24-hour prior notice, CONTRACTOR shall make all records, invoices, time cards, cost control sheets and other records maintained by CONTRACTOR in connection with this Agreement available to CITY for review and audit by CITY. CITY may conduct such review and audit at any time during CONTRACTOR’s regular working hours.

5. Standard of Performance. CONTRACTOR shall perform all work under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to CITY.

6. Ownership of Work Product. All reports, documents or other written material (collectively, "work product") developed by CONTRACTOR in the performance of this Agreement shall be and remain CITY's property without restriction or limitation upon its use or dissemination by CITY. Work product shall not be the subject of a copyright application by CONTRACTOR. Any alteration or reuse by CITY of work product on any project other than the Project shall be at CITY's sole risk, unless CITY compensates CONTRACTOR for such reuse.

7. Status as Independent Contractor. CONTRACTOR is, and shall at all times remain as to CITY, a wholly independent contractor. CONTRACTOR shall have no power to incur any debt, obligation or liability on behalf of CITY. Neither CITY nor any of its agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's employees, except as set forth in this Agreement. CONTRACTOR shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of CITY. CONTRACTOR shall pay all required taxes on amounts paid to CONTRACTOR under this Agreement, and indemnify and hold CITY harmless from any and all taxes, assessments, penalties and interest asserted against CITY by reason of the independent contractor relationship created by this Agreement. CONTRACTOR shall fully comply with the workers’ compensation law regarding CONTRACTOR and CONTRACTOR’s employees. CONTRACTOR shall indemnify and hold CITY harmless from any failure of CONTRACTOR to comply with applicable workers’ compensation laws. CITY may offset against the amount of any fees due to CONTRACTOR under this Agreement any amount due to CITY from CONTRACTOR as a result of CONTRACTOR’s failure to promptly pay to CITY any reimbursement or indemnification arising under this Section 7.

8. Confidentiality. CONTRACTOR covenants that all data, documents, discussion or other information (collectively, “data”) developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR to any person or entity without CITY’s prior written authorization. CITY shall grant such authorization if disclosure is required by law. CONTRACTOR shall return all data to CITY upon the expiration or termination of this Agreement. CONTRACTOR's covenant under this Section 8 shall survive the expiration or termination of this Agreement.

9. Conflict of Interest. CONTRACTOR and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of
California applicable to CONTRACTOR's work under this Agreement, including, but not limited to, the Political Reform Act (Cal. Gov. Code, § 81000 et seq.) and Government Code Section 1090. During the term of this Agreement, CONTRACTOR may perform similar services for other clients, but CONTRACTOR and its officers, employees, associates and subcontractors shall not, without the City Manager's prior written approval, perform work for another person or entity for whom CONTRACTOR is not currently performing work that would require CONTRACTOR or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

10. Indemnification. CONTRACTOR shall indemnify, defend and hold harmless CITY, and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors and assigns, in accordance with the Indemnification and Hold Harmless Agreement and Waiver of Subrogation and Contribution attached as Exhibit C. CONTRACTOR's covenant under this Section 9 shall survive the expiration or termination of this Agreement.

11. Insurance.

11.1. CONTRACTOR shall at all times during the term of this Agreement, carry, maintain, and keep in force and effect, with an insurance company admitted to do business in California, rated "A" or better in the most recent A.M. Best Insurance Rating Guide, and approved by CITY, a policy or policies of:

(a) Broad-form commercial general liability insurance with minimum limits of One Million Dollars ($1,000,000) combined single limit coverage against any injury, death, loss or property damage as a result of wrongful or negligent acts by CONTRACTOR, its officers, employees, agents, and independent contractors in performance of work under this Agreement;

(b) Automobile liability insurance, with minimum combined single limits coverage of One Million Dollars ($1,000,000); and

(c) Workers’ compensation insurance with a minimum limit of One Million Dollars ($1,000,000) or the amount required by law, whichever is greater.

CITY, its officers, employees, attorneys and designated volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automobile liability coverages with respect to liabilities arising out of CONTRACTOR’s work under this Agreement.

11.2. Each insurance policy required by this Section 11 shall be endorsed as follows: (1) the insurer waives the right of subrogation against CITY, its officials, officers, employees, agents and representatives; (2) except for the workers’ compensation policy, the policies are primary and non-contributing with any insurance that may be carried by CITY; and (3) the policies may not be canceled or materially changed except
after thirty (30) calendar days' prior written notice by insurer to CITY, unless cancelled for non-payment, then ten (10) calendar days' notice shall be given.

11.3 All insurance coverages shall be confirmed by execution of endorsements required under Section 11.2. CONTRACTOR shall file the endorsements with CITY on or before the Effective Date of this Agreement, and thereafter maintain current endorsements on file with the CITY. The endorsements are subject to CITY’s approval. CONTRACTOR shall not cancel, reduce or otherwise modify the insurance policies required by this Section 11.

12. Cooperation. In the event any claim or action is brought against CITY relating to CONTRACTOR’s performance or work rendered under this Agreement, CONTRACTOR shall render any reasonable assistance and cooperation that CITY requires.

13. Termination. Either party may terminate this Agreement for any reason without penalty or obligation on thirty (30) calendar days' written notice to the other party. CONTRACTOR shall be paid for services satisfactorily rendered to the last working day the Agreement is in effect, and CONTRACTOR shall deliver all materials, reports, documents, notes or other written materials compiled through the last working day the Agreement is in effect. Neither party shall have any other claim against the other party by reason of such termination.

14. Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required by or permitted under this Agreement shall be in writing and given by first class U.S. mail or by personal service. Notices shall be conclusively deemed received on: (a) personal delivery; (b) confirmed delivery by courier service during CONTRACTOR’s and CITY’s regular business hours or by facsimile before or during CONTRACTOR’s regular business hours; or (c) on the third (3rd) business day following deposit in the United States mail, postage prepaid, to the addresses below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this Section 14.

All notices shall be delivered to the parties at the following addresses:

If to CITY:
City of Norwalk
Attn: City Clerk
12700 Norwalk Boulevard
PO Box 1030
Norwalk, CA 90651-1030
Fax: (562) 929-5773

With a copy to:
City of Norwalk
Attn: James C. Parker, Director of Transportation
12700 Norwalk Boulevard
PO Box 1030
Norwalk, CA 90651-1030
Fax: (562) 929-5572

RFP NO. 17-505 34 REV. 8/16
15. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation. CONTRACTOR will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.

16. Non-Assignability; Subcontracting. CONTRACTOR shall not assign or subcontract all or any portion of this Agreement, unless otherwise approved by CITY. Any attempted or purported assignment or subcontracting by CONTRACTOR in violation of the provisions of this Section 16 shall be null, void and of no effect.

17. Compliance with Laws. CONTRACTOR shall comply with all applicable federal, state and local laws, ordinances, codes and regulations in the performance of this Agreement, including all federal and state grant funding requirements applicable to this Agreement.

18. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by CITY of any payment to CONTRACTOR constitute or be construed as a waiver by CITY of any breach of covenant, or any default that may then exist on the part of CONTRACTOR, and the making of any such payment by CITY shall in no way impair or prejudice any right or remedy available to CITY with regard to such breach or default.

19. Attorney's Fees. In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees.

20. Exhibits; Precedence. Exhibits A, B and C, RFP No. 17-505 and all Addenda to RFP No. 16-468 are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

21. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by
and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Norwalk.

22. **Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between CONTRACTOR and CITY. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

The parties, through their respective authorized representatives, are signing this Agreement on the date stated in the introductory clause.

CITY OF NORWALK

By: ______________________________
    Michael J. Egan
    City Manager

By: ______________________________
    ______________________________
    Name: __________________________
    Title: __________________________

ATTEST:

By: ______________________________
    ______________________________
    Name: __________________________
    Title: __________________________

By: ______________________________
    Theresa Devoy, CMC
    City Clerk

(Please note, two signatures required for corporations under California Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.)

APPROVED AS TO FORM:

By: ______________________________
    Roxanne Diaz
    City Attorney
LETTER OF TRANSMITTAL

CITY OF NORWALK
PURCHASING DIVISION
12700 NORWALK BLVD., ROOM 6
NORWALK, CA 90650

SUBJECT: REQUEST FOR PROPOSAL (RFP) NO. 17-505
PROVISION OF RENEWABLE NATURAL GAS (RNG)

In response to the subject Request for Proposal (RFP) and in accordance with the accompanying Instructions to Proposers, the Proposer hereby commits to the City of Norwalk to perform the work in accordance with the provisions in the Proposal Level Contract Documents and any addenda thereto and at the prices stated in the Price Sheet, which will be included and made a part of any subsequent Contract.

The Proposer agrees that the Proposal constitutes a firm offer that cannot be withdrawn for one hundred eighty (180) calendar days from the Proposal opening or until the Contract for the work is fully executed between the City and a third party, whichever is earlier.

If awarded a contract, the Proposer agrees to execute the Agreement and deliver it to the City of Norwalk within seven (7) calendar days after receiving a Letter of Award together with the necessary certificates of insurance and any applicable performance or payment bonds. The CONTRACTOR shall proceed with the work upon receipt of a Notice to Proceed.

The Proposer certifies that it has:

1. Examined and is fully familiar with all the provisions of the RFP Documents and any addenda thereto;
2. Satisfied itself as to the requirements of the Contract, the nature and location of the work, the general and local conditions to be encountered in performance of the work, and all other matters that can in any way affect the Work and/or the cost thereof;
3. Examined the experience, skill and certification requirements in Scope of Work and that the entities performing the work can fulfill the specified requirements; and
4. Carefully reviewed the accuracy of all statements and figures shown in the Proposal and attachment hereto.

Therefore, the undersigned hereby agrees that the City of Norwalk will not be responsible for any errors or omissions in the Proposal.

The Proposer further certifies that:

1. The only persons, firms, corporations, joint ventures/partnerships, and/or other parties interested in the Proposal as principals are those listed as such in the Proposal Forms and that,
2. The Proposal has been prepared without collusion with any other person, firm, corporation, joint venture/partnership, and/or other party.

The undersigned acknowledges receipt, understanding and full consideration of the following addenda to the Proposal Documents:
Addenda No(s)  

_________________ Dated__________  __________________ Dated__________  

_________________ Dated__________  __________________ Dated__________  

_________________ Dated__________  __________________ Dated__________  

Failure to acknowledge receipt of all addenda may cause the Proposal to be considered non-responsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the Proposal /offer.

Proposer’s Name______________________________________

Business Address______________________________________

______________________________

Contact Person__________________________________________

Phone___________________________________________________

Fax_____________________________________________________

Email Address_________________________________________

_________________ Signature of Authorized Official

Typed or Printed Name

Title

_________ Date

(Joint ventures/partnerships are to provide a signed copy of their agreement with their Proposal.)

For Proposals requiring licenses the following information is required:

CONTRACTOR’s License No. ____________________________

Expiration Date: __________________________

License Classification: __________________________
SCOPE OF WORK

The Scope of Work, Section 3 of RFP 17-505, is herein incorporated by reference.
PRICE SHEET

The Price Sheet of RFP 17-505 is herein incorporated by reference.
INDEMNIFICATION AND HOLD HARMLESS AGREEMENT
AND WAIVER OF SUBROGATION AND CONTRIBUTION

Contract/Agreement/License/Permit No. or description: Provision of Renewable Natural Gas (RNG)

Indemnitor(s): (list all names)

To the fullest extent permitted by law, Indemnitor hereby agrees, at its sole cost and expense, to protect, indemnify, and hold harmless the City of Norwalk and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, and assigns (collectively "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith (collectively "Liabilities"), resulting from any wrongful or negligent act, failure to act, error, or omission of Indemnitor or any of its officers, agents, servants, employees, subcontractors, material men, suppliers or their officers, agents, servants or employees, arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to the above-referenced contract, agreement, license, or permit (the "Agreement") or the performance or failure to perform any term, provision, covenant, or condition of the Agreement, including this indemnity provision. This indemnity provision is effective regardless of any prior, concurrent, or subsequent passive negligence by Indemnitees and shall operate to fully indemnify Indemnitees against any such negligence. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies which Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against the Indemnitor shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision. Indemnitor shall pay Indemnitees for any attorneys fees and costs incurred in enforcing this indemnification provision. Notwithstanding the foregoing, nothing in this instrument shall be construed to encompass (a) Indemnitees' active negligence or willful misconduct to the limited extent that the underlying Agreement is subject to Civil Code § 2782(a), or (b) the contracting public agency's active negligence to the limited extent that the underlying Agreement is subject to Civil Code § 2782(b). This indemnity is effective without reference to the existence or applicability of any insurance coverages which may have been required under the Agreement or any additional insured endorsements which may extend to Indemnitees.

City agrees to promptly inform Indemnitor in writing of any claim that City believes to be subject to this Indemnification and Hold Harmless Agreement.

Indemnitor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the Indemnitor regardless of any prior, concurrent, or subsequent non-active negligence by the Indemnitees.

In the event there is more than one person or entity named in the Agreement as an Indemnitor, then all obligations, liabilities, covenants and conditions under this instrument shall be joint and several.

"Indemnitor"

Name: ______________________________________  Name: ______________________________________
(Print)  (Print)

By: ________________________________________  By: _______________________________________
(Signature)  (Signature)

Title: ______________________________________

Date: ______________________________________

Date: ______________________________________
REFERENCES

Proposers shall furnish a minimum of three (3) references of customers for which they have been the Principal or are currently the Principal for work of a similar nature to the requirements outlined in this RFP.

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<th>Company Name</th>
<th>Address</th>
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<th>Contact Person</th>
<th>Description of Work</th>
<th>Use of Subcontractor</th>
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CERTIFICATION OF NON-COLLUSION

By submission of this Proposal, each Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint Proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

1. The prices in this Proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any other matter relating to such prices with any other Proposer or with any competitor.

2. Unless otherwise required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competition; and,

3. No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purposes of restricting competition.

Dated: ____________________________

Company Name: ____________________________

Signature: ____________________________

NOTARY
Subscribed and sworn before me this ______ day of ____________________, 20__. 

_______________________________ My commission expires ____________________, 20__.

_______________________________

Type or Print Title
CERTIFICATION OF RESTRICTIONS ON LOBBYING  
(applicable to contracts $100,000 or greater)

I, ________________________________, hereby certify on behalf of  
(Name and title of company official)

_________________________________________ that:

(Name of company)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the  
undersigned, to any person for influencing or attempting to influence an officer or employee of  
any agency, a Member of Congress, an officer or employee of Congress, or an employee of a  
Member of Congress in connection with the awarding of any Federal contract, the making of  
any Federal grant, the making of any Federal loan, the entering into of any cooperative  
agreement, and the extension, continuation, renewal, amendment, or modification of any  
Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person  
for influencing or attempting to influence an officer or employee of any agency, a Member of  
Congress, an officer or employee of Congress, or an employee of a Member of Congress in  
connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned  
shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in  
accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award  
documents for all sub-awards at all tiers (including subcontracts, sub grants, and contracts  
under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and  
disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this  
transaction was made or entered into. Submission of this certification is a prerequisite for making  
or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails  
to file the required certification shall be subject to a civil penalty of not less than $10,000 and not  
more than $100,000 for each such failure.

Executed this ________ day of ________________________________, 20__.

Signed by: ________________________________________________

__________________________________________

Type or Print Name
DESIGNATION OF SUBCONTRACTORS  
(required for construction contracts)

To comply with the requirements of the California subletting and Subcontracting Fair Practices Act the Proposer shall submit with the Proposal the names and business addresses of each subcontractor who will perform work under the contract in excess of \( \frac{1}{2} \) of 1 percent of the amount of the total Proposal and shall list the portion of the work to be performed by each subcontractor.

Attach additional copies of this form if more space is needed.

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Attachment 2
TO: Honorable City Council
FROM: Michael J. Egan, City Manager
BY: James C. Parker, Director of Transportation
Theresa Clark, Manager of Strategic Planning and Administrative Services

SUBJECT: AWARD – CLEAN ENERGY RENEWABLES A CONTRACT FOR THE PROVISION OF RENEWABLE NATURAL GAS (RNG)

Background:

Norwalk Transit System (NTS) is seeking to utilize Redeem, a renewable natural gas for commercial vehicles supplied by Clean Energy Renewables. NTS directly operates 34 fixed-route buses; 18 of which are powered by Compressed Natural Gas (CNG). NTS anticipates replacing all remaining buses with CNG powered vehicles by the year 2022. Currently, the City purchases and receives natural gas from traditional sources through Southern California Gas Company (SCGC) by means of the CNG Station located at the Transportation/Public Service Facility. Natural gas usage for NTS’ fixed route buses averages approximately 30,000 therms per month.

Redeem is the world’s first renewable fuel made entirely from organic waste for commercial vehicles. It is a biomethane cost-efficient fuel, available in North America, and up to 70% cleaner than gasoline and diesel, making it a smart choice for natural gas vehicle fleets including heavy-duty trucks.

Proposal Evaluations:

The Department of Transportation issued a Request for Proposal (RFP) for the provision of Renewable Natural Gas (RNG) for the Compressed Natural Gas (CNG) buses that operate on the fixed route transit system. Two proposals were received from the following energy companies: Clean Energy Renewables and Trillium USA Company, LLC.

Award of a contract is to be made to the most responsive and responsible Proposer whose offer conforms to the requirements of the RFP and is determined to be most advantageous to the City of Norwalk. Based on review of the proposals, it was
determined that Clean Energy Renewables (CER) met the requirements of the solicitation.

Additionally, City Council approved NTS participation in the California Air Resources Board (CARB) Low Carbon Fuel Standard (LCFS) Program whereby credits are earned through fuel usage by the City’s CNG buses. CER has agreed to handle all LCFS compliance obligations for NTS, including but not limited to: (1) quarterly and annual reporting; (2) regulatory filings; and (3) any additional compliance obligations associated with the use of RNG fuel.

RNG is based out of Newport Beach, CA and is readily available to execute the project in keeping with the terms and conditions set forth in the RFP. As of January 2017, CER supplies RNG to 45 public CNG stations, 18 customer-owned CNG stations and 39 public or customer-owned LNG stations. Additionally, they perform similar services for other transit agencies including: City of Santa Monica’s Big Blue Bus and Foothill Transit.

Fiscal Impact:

By utilizing renewable natural gas from Clean Energy Renewables the City would receive a natural gas commodity savings of approximately $72,000 over a three-year period and a percentage share of the federal Renewable Identification Number (RIN) and LCFS credits of $268,369 over a five-year period.

Citizens Advised: N/A

Strategic Action Plan Implementation:

The recommended action will further the City’s strategic plan goal of: (6.B) Support and invest in energy efficient and environmentally friendly technologies to develop sustainable infrastructure, reduce harmful greenhouse gases and the City’s emission of harmful pollutants

Recommended Action:

Staff recommends City Council:

a. approve an agreement with Clean Energy Renewables for the provision of renewable natural gas from May 1, 2017 through June 30, 2022; and

b. authorize the City Manager to execute the agreement and subsequent amendments provided there is funding in the budget, on behalf of the City, in a form approved by the City Attorney.

Attachments: N/A
Attachment 3
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated July 21, 2017. The terms of this Transaction Confirmation are binding upon execution by the parties.

**SELLER:**
Clean Energy Renewable Fuels, LLC  
Attn: Tyler Henn  
Phone: 949-437-1258  
Fax: 949-724-1358  
Base Contract No. NOR001

**BUYER:**
City of Norwalk  
Attn: James Parker  
Phone: 562-929-5533  
Fax: 949-929-5572

**Contract Price:**

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<th>Contract Price ($/MMBtu):</th>
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The Contract Price for Conventional Gas or Biogas per MMBtu for the time period beginning on the Start Date (as defined below) and ending on the three (3) year anniversary of the Start Date, shall be equal to the SoCalGas Citygate First of the Month Index ("SoCalGas Citygate") per MMBTU as published by Natural Gas Intelligence ("NGI") or any successor thereto minus $0.10 per MMBtu.

The Contract Price for Conventional Gas or Biogas per MMBtu for the time period beginning on the day after the three (3) year anniversary of the Start Date and through the end of the Delivery Period (as defined below), shall be equal to the SoCalGas Citygate price per MMBtu as published by NGI or any successor thereto.

**Delivery Period:** The Delivery Period shall begin on the Start Date and end on the five (5) year anniversary of the Start Date (the “Initial Delivery Period’’).

However, notwithstanding the foregoing, Buyer shall be entitled to extend the Delivery Period for up to three (3) consecutive one (1) year terms (each a “Renewal Delivery Period”) by notifying Seller in writing of Buyer’s intent to extend the Delivery Period at least sixty (60) days prior to the end of the Initial Delivery Period or current Renewal Delivery Period, as applicable.

The Initial Delivery Period and any Renewal Delivery Periods shall be referred to as the “Delivery Period”.

The “Start Date” shall be (a) within ninety (90) days following the day this Transaction Confirmation is executed by Seller and Buyer, and (b) determined by Seller and indicated in a written notice provided by Seller to Buyer.
Performance Obligation and Contract Quantity: (Select One)

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Subject to the Max Daily Quantity, during the Delivery Period, Seller will deliver Biogas or Conventional Gas to the Delivery Point to meet Buyer's full requirements. Buyer acknowledges that the delivered quantities of Gas will fluctuate and agrees to receive all Gas, up to the Max Daily Quantity.

Buyer and Seller acknowledge and agree that there is no minimum amount of Biogas that will be delivered by Seller to the Delivery Point during the Delivery Period and that Seller shall determine, in Seller's sole discretion, the amount of Biogas Seller delivers to the Delivery Point. Seller shall be the exclusive provider of Biogas and Conventional Gas to Buyer at the Delivery Point for the Delivery Period.

For the purpose of clarity, Buyer shall have no obligation to purchase Conventional Gas or Biogas beyond the volume that can be delivered to the Station Vehicle Fuel market and documented in compliance with the rules and regulations of the Low Carbon Fuel Standard and Renewable Fuel Standard, and without any modification of Buyer's existing Vehicle Fuel facility (the Station).

**Delivery Point:** The Delivery Point shall be Buyer’s Southern California Gas Company ("SoCalGas") meter interconnect at Buyer’s California compressed natural gas ("CNG") station listed in Exhibit A (the “Station”), which is attached hereto and incorporated herein by reference.

**Definitions:**

"Advanced Biofuel" means a renewable fuel as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012)), other than ethanol derived from corn starch, and which must achieve a Lifecycle Greenhouse Gas Emission displacement of fifty percent (50%) compared to the baseline Lifecycle Greenhouse Gas Emissions.

"Alternative Fuel" means any transportation fuel that is not California reformulated gasoline or a diesel fuel, including but not limited to, those fuels specified in the California Low Carbon Fuel Standard (Cal. Code Regs. tit. 17, § 95480.1(a)(12) (2010)).

"Blue Gas LCFS Credits" means LCFS Credits which are generated by Buyer when Conventional Gas is dispensed from the Station as a Blue Gas Vehicle Fuel.

"Blue Gas Vehicle Fuel" means CNG derived from Conventional Gas and used in transportation vehicles.

"Biogas" means pipeline quality Gas derived from the decomposition of organic matter that meets the EPA RFS eligibility requirements as either an Advanced Biofuel or Cellulosic Biofuel.

"CARB" means the California Air Resources Board or its successor agency and policies established under the California Low Carbon Fuel Standard Regulation, (Cal. Code Regs. tit. 17, §§ 95480 – 90 (2010)), (collectively, the "LCFS") applying to any transportation fuel that is sold, supplied, or offered for sale in California.
“Cellulosic Biofuel” means a renewable fuel derived from any cellulose, hemi-cellulose or lignin that has lifecycle greenhouse gas emissions that are at least sixty percent (60%) less than the Baseline Lifecycle Greenhouse Gas emissions (as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012)).

“Conventional Gas” means Gas other than Biogas.

“Deliver” means Buyer shall cause its Blue Gas LCFS Credits to be electronically delivered into Seller’s LCFS Account in accordance with the LCFS and the terms of this Transaction Confirmation.

“Disqualified Biogas” means Gas that was initially determined by the parties upon delivery to be Biogas but subsequently becomes disqualified as Biogas by not satisfying the requirements of the EPA Renewable Fuels Standard or the CARB LCFS.

“EPA” means the United States Environmental Protection Agency.

“EPA Renewable Fuels Standard” or “EPA RFS” means the renewable energy program and policies established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and which became effective on July 1, 2010.

“Green Attributes” means any and all attributes, including Lifecycle Greenhouse Gas Emissions, associated with the production, sale and use of Biogas as an Advanced Biofuel, Cellulosic Biofuel, low carbon fuel or Alternative Fuel as necessary to generate or claim applicable CARB LCFS Credits and EPA RINs.

“Greenhouse Gas” means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), 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 tonne of carbon dioxide equivalent.

“Governmental Authority” means any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority. Governmental Authority includes, without limitation, the EPA, CARB and the California Public Utilities Commission or its successor agency.

“Incremental LCFS Credits” means the LCFS Credits generated from Biogas sold under this Transaction Confirmation to Buyer minus the LCFS Credits that would have been generated if the same amount of Biogas had been Conventional Gas.

“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 RFS 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 consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

“LCFS Account” means an account containing an entity’s LCFS Credits, established and maintained in accordance with the LCFS.

“Low Carbon Fuel Standard Credits” or “LCFS Credits” shall mean credits generated and traded under the California Air Resources Board Low Carbon Fuel Standard, with each credit equal to one metric tonne of Carbon Dioxide reductions as compared to the baseline CO2 emissions under the Low Carbon Fuel Standard.

“LCFS Credits Resale Price” shall be calculated by reference to the volume weighted average price of all LCFS Credits of the same annual and quarterly vintage realized by Seller within the same calendar quarter.
"LRT" means the reporting tool established in accordance with LCFS and required by CARB to submit annual compliance and quarterly progress reports and track LCFS Credits.

"Renewable Identification Number" or "RIN" is a number generated to represent a volume of renewable fuel as set forth in Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 75 Fed. Reg. 16484 (March 26, 2010) (codified at 40 C.F.R. § 80.1425 (2011); 40 C.F.R. § 80.1426 (2012)).

"RIN Resale Price" shall be calculated by reference to the volume weighted average price of all RINs which is realized by Seller that were generated within the same calendar month as the RINs generated from the Biogas sold hereunder.

"RIN Share" means three percent (3%) of the RIN Resale Price for each RIN generated by the Biogas sold by Seller to Buyer under this Transaction Confirmation which is then sold by Buyer as a Vehicle Fuel at the Station.


"Vehicle Fuel" means compressed natural gas (CNG) or liquefied natural gas (LNG) derived from Gas and used in transportation vehicles.

Special Conditions:

1. Representations.

(a) Buyer represents that it shall process all Conventional Gas and Biogas purchased from Seller hereunder into Vehicle Fuel which shall be distributed as Vehicle Fuel through Buyer’s Station.

(b) Seller represents that all Biogas sold hereunder shall be Biogas that has been produced by facilities properly registered under the EPA RFS as renewable fuel producers.

(c) Seller represents that all Biogas sold hereunder shall be Biogas with an approved pathway for LCFS Credit generation.

(d) Buyer represents that it is not aware of any reason that would cause the Blue Gas LCFS Credits not to comply with the LCFS.

2. Records and Documentation Related to Biogas and RIN and LCFS Credits Creation.

(a) Buyer shall provide Seller with a copy of its natural gas invoice related to the Delivery Point for the prior month (when such prior month is during the term of this Transaction Confirmation) between the 0th and 20th day of each month. This obligation shall survive the termination or expiration of this Transaction Confirmation until the last day of the full calendar month following the month in which this Transaction Confirmation expired or terminated. Buyer shall maintain all records relevant to the purchase of Conventional Gas and Biogas from Seller and use of such Conventional Gas and Biogas as a Vehicle Fuel in accordance with the requirements of CARB for the creation and sale of LCFS Credits.

(b) Seller shall maintain records relevant to the production and purchase and sale of Conventional Gas and Biogas and transportation and distribution of the Conventional Gas and Biogas purchased hereunder as a Vehicle Fuel as it applies to the creation and sale of LCFS Credits in accordance with the requirements of CARB.

(c) Buyer shall provide reasonable cooperation to Seller with respect to the requirements for the generation of RINs under the EPA RFS including, without limitation, by signing periodic attestations regarding the use of the Biogas sold hereunder as a Vehicle Fuel. Further, on at least a quarterly basis, and at any other time requested by Seller, Buyer shall provide Seller with attestations executed by an authorized officer of Buyer which indicate that the
volume of Conventional Gas and Biogas delivered to the Station is consumed as a Vehicle Fuel. Buyer shall provide Seller with such attestations no later than thirty (30) days after Seller’s written request.

3. **Hierarchy and Governing Law.**

In the event of any inconsistency between the Base Contract and this Transaction Confirmation, this Transaction Confirmation shall govern.

The law governing the Base Contract shall apply to this Transaction Confirmation, except to the extent that the EPA Renewable Portfolio Standards and CARB Low Carbon Fuels Standard, together with regulations and decisions promulgated thereunder, are applicable to the purchase and sales of Conventional Gas or Biogas.

4. **CARB LCFS Regulated Party Status.**

Pursuant to the California Code of Regulations for the Low Carbon Fuel Standard, Seller will retain the Low Carbon Fuel Standard (LCFS) regulated party status set forth in Title 17, California Code of Regulations in §§ 95480-95490 as an “opt-in” regulated party under California Air Resources Board as set forth in Title 17, California Code of Regulations § 95480.3 with respect to all Biogas sold by Seller to Buyer hereunder.

Buyer will retain regulated party status set forth in Title 17, California Code of Regulations in §§ 95480-95490 as an “opt-in” regulated party under California Air Resources Board as set forth in Title 17, California Code of Regulations § 95480.3 with respect to all Conventional Gas purchased by Buyer at the Delivery Point.

5. **LCFS Credit Generation and LCFS Credit and RIN Sales.**

(a) For Biogas sold by Seller to Buyer hereunder, Seller shall pay Buyer: (1) one-hundred (100%) of the LCFS Credits Resale Price for all LCFS Credits that would have been generated by Conventional Gas if the Biogas provided under this Transaction Confirmation and sold as Vehicle Fuel at the Station had been Conventional Gas (the “Conventional LCFS Credits”); plus (2) six percent (6%) of the LCFS Credits Resale Price for all Incremental LCFS Credits generated from Biogas Vehicle Fuel sold at the Station. Seller shall make such payment within thirty (30) days of the date of Seller’s receipt of payment for such sold LCFS Credits.

(b) Buyer acknowledges that Seller and/or its affiliates will act as a principal with respect to their own LCFS Credits and/or as an agent with respect to LCFS Credits generated and/or sold hereunder and Buyer hereby waives any claim against Seller and/or its affiliates based on any conflict of interest or alleged conflict of interest of Seller and/or its affiliates with respect to the manner, price or terms of the sale of any of the LCFS Credits generated and/or sold hereunder. Seller and/or its affiliates and control persons shall owe no fiduciary obligation to Buyer with respect to the LCFS Credits generated and sold. Seller and its affiliate’s sole obligation with respect to the sale of LCFS Credits generated and/or sold in this transaction shall be to use commercially reasonable efforts to sell such credits alongside other LCFS Credits that Seller and/or its affiliates may market or sell based on the calendar quarter in which such credits are generated.

(c) Buyer will Deliver the Blue Gas LCFS Credits on or before the ninetieth (90th) day of the calendar quarter following the end of each calendar quarter at Buyer’s sole expense. Within thirty (30) days after each Delivery, Seller will provide Buyer with a report detailing the quantity of LCFS Credits that Buyer Delivered to Seller’s LCFS Account. All rights, title to and interest in and risk of loss for the Blue Gas LCFS Credits will transfer from Buyer to Seller upon Delivery. Seller shall pay Buyer eighty percent (80%) of the LCFS Credits Resale Price for each Blue Gas LCFS Credit sold by Seller. Seller shall make this payment within thirty (30) days of its receipt of payment for such sold Blue Gas LCFS Credits.

(d) Seller will use commercially reasonable efforts to sell all LCFS Credits generated hereunder from Biogas delivered hereunder within six (6) months of the generation of such LCFS Credits. Any outstanding Conventional
LCFS Credits retained by Seller for longer than six (6) months, may, at Buyer’s discretion, be transferred to Buyer in kind.

(e) Seller shall pay Buyer the RIN Share within thirty (30) days of the date of Seller’s receipt of payment for such sold RINs.

(f) Buyer acknowledges that Seller and/or its affiliates will act as a principal with respect to their own RINs and/or as an agent with respect to RINs generated and/or sold hereunder and Buyer hereby waives any claim against Seller and/or its affiliates based on any conflict of interest or alleged conflict of interest of Seller and/or its affiliates with respect to the manner, price or terms of the sale of any of the RINs generated and/or sold hereunder. Seller and/or its affiliates and control persons shall owe no fiduciary obligation to Buyer with respect to the RINs generated and sold. Seller and its affiliate’s sole obligation with respect to the sale of RINs generated and/or sold in this transaction shall be to use commercially reasonable efforts to sell such credits alongside other RINs that Seller and/or its affiliates may market or sell based on the calendar month in which such credits are generated.


Buyer and Seller shall work with Seller’s consultant and/or RIN quality assurance plan (“QAP”) provider to ensure that it has created documentation necessary for Biogas and RIN creation in compliance with EPA requirements and LCFS Credit creation in compliance with CARB requirements. Seller shall be responsible for all of its costs incurred for EPA RFS and LCFS compliance and RIN generation. Seller shall also be responsible for all of its costs incurred for LCFS Credit generation when such credits are generated by the Biogas provided by Seller hereunder. Buyer shall be responsible for all of its costs incurred for LCFS Credit generation when such credits are generated by Conventional Gas.

7. Change in Regulation.

(a) Change in CARB Regulations. In the event CARB amends its regulations for the creation and sale of LCFS Credits, Buyer and Seller shall work together and attempt to amend this Transaction Confirmation to maintain the economic arrangement set forth herein.

(b) Change in EPA Regulations. In the event that the EPA amends its regulations for the creation of RINs as related to the purchase and sale of Biogas for the production of Vehicle Fuel, Buyer and Seller shall work together and attempt to amend this Transaction Confirmation accordingly.

8. Term of this Transaction Confirmation

The term of this Transaction Confirmation shall commence upon the execution of this Transaction Confirmation by Buyer and Seller and this Transaction Confirmation shall expire on the last day of the Delivery Period.

9. Environmental Attributes and Alternative Fuel Credit

Buyer is not entitled to any RINs, LCFS Credits generated from Biogas provided under this Transaction Confirmation, or other environmental attributes that may be attributed to or generated from the Biogas delivered under this Transaction Confirmation other than as specifically stated herein. Seller’s retention and/or sale of RINs and/or LCFS Credits generated from the Biogas delivered under this Transaction Confirmation shall not limit Buyer’s ability to report the purchase of Biogas and applicable reductions in greenhouse gases or emissions directly associated with the use of Biogas at the Station.

However, as between the parties, to the extent available, Buyer shall be solely entitled to claim 100% of the federal Alternative Fuel Credit (defined below) revenue as allowed or may be allowed under Sections 6426 and 6427 of the Internal Revenue Code of 1986 (“Alternative Fuel Credit”), as may be amended, for each gasoline gallon equivalent of Conventional Gas or Biogas dispensed from the Station. The parties agree that Buyer will be considered the “Alternative Fueler” as defined in Proposed Treasury Regulation Section 48-6426-1 and is responsible for remitting any federal or state fuel taxes, if any, imposed on the subsequent sale or use of such fuel.
10. Adjustment for Disqualified Biogas

In addition to other remedies available under the Base Contract and hereunder, if Gas sold by Seller and purchased by Buyer hereunder originally deemed to be Biogas becomes classified as Disqualified Biogas and such disqualification did not occur based on an act or omission of Seller, Seller will be entitled to a refund of any payment made to Buyer under Sections 5(a) and 5(e) above which is related to such Gas. This obligation shall survive the termination or expiration of this Transaction Confirmation.

11. Failure to Produce Vehicle Fuel

In the event that Buyer cannot utilize any Conventional Gas or Biogas for the production of a Vehicle Fuel, including but not limited to an event of Force Majeure or Event of Default, Buyer shall promptly notify Seller in writing. Any disruption due to an event of Force Majeure shall not be considered an Event of Default resulting in Early Termination under the Base Contract.

In addition to all other remedies under the Base Contract and hereunder, if Gas sold by Seller and purchased by Buyer hereunder originally deemed to be Biogas is not processed into a Vehicle Fuel, Seller will be entitled to a refund of any payment made to Buyer under Sections 5(a) and 5(e) above for the volume of Biogas that was not processed into a Vehicle Fuel. This obligation shall survive the termination or expiration of this Transaction Confirmation.

12. Further Assurances

Each party will provide the other party such cooperation, additional documentation, certifications or other information as may be reasonably necessary to carry out the purposes of this Transaction Confirmation (including pursuant to any audit of this Transaction Confirmation by a Governmental Authority) and in order for title to the conveyed Green Attributes to vest in the Seller in connection with the purchase and sale of the Contract Quantity of Biogas.

13. AB 32

Effective January 2015, transportation fuel suppliers in California are subject to the Cap and Trade regulations under AB 32. AB 32 requires fuel suppliers to purchase compliance instruments if the total amount of greenhouse gas (GHG) emissions from fuel they supply in California exceeds 25,000 MTCO2e per year. Seller will pass through any applicable AB 32 compliance costs for non-exempt gas purchased hereunder to Buyer.

14. Additional Terms Applicable to Deliveries to SoCalGas

Upon Seller’s request, in writing, (a) Buyer will notify SoCalGas and will designate Seller as its energy service provider beginning on the Start Date, and (b) Buyer will assist Seller in completing all required Direct Access Service Request forms.

By executing this Transaction Confirmation, Buyer understands and agrees that: (i) it shall at all times, notwithstanding anything to the contrary herein, remain responsible for payment of its core gas transportation service received from SoCalGas; (ii) it will continue to receive an invoice from SoCalGas for transportation and other access charges and Buyer will be responsible for payment of all invoices it receives from SoCalGas; and (iii) it is responsible for all Franchise Fees under Tariff Rate Schedule G-NGV1 and any Utility Users Tax that a city or county may require as a result of Buyer receiving its gas commodity through Seller. Buyer agrees to release and hold harmless, defend and indemnify the applicable utility from and against any liability, claims, demands, causes of action, damages and/or expenses resulting from or in connection with any improper use of its gas consumption information.
15. Nominations

At least 7 days prior to the first day of each calendar month during the Delivery Period, Buyer shall provide Seller with its Gas nominations for the following month (the “Monthly Nomination”). In the event Buyer does not provide the Monthly Nomination to Seller at least 7 days prior to the first day of the month, Seller shall determine the applicable month’s Monthly Nomination based on historical usage.

For each month that Buyer’s Gas consumption at the Delivery Point exceeds the Monthly Nomination, Buyer shall be deemed to have purchased the excess Gas from Seller for the applicable Spot Price plus $0.025 per MMBtu.

For each month that Buyer’s Gas consumption at the Delivery Point is less than the Monthly Nomination, Buyer will be deemed to have sold the excess Gas to Seller for the applicable Spot Price minus $0.025 per MMBtu.

Seller: Clean Energy Renewable Fuels, LLC

By: __________________________
Name: Tyler Henn
Title: General Manager
Date: 6/21/2017

Buyer: City of Norwalk

By: __________________________
Name: James Parker
Title: Director of Transportation
Date: 6/17/2017
EXHIBIT A

<table>
<thead>
<tr>
<th>CNG Station Location</th>
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<td>12650 Imperial Hwy</td>
<td>Norwalk</td>
<td>SoCalGas</td>
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Attachment 4
March 12, 2018

Via Email
City of Beverly Hills
345 Foothill Road
Beverly Hills, CA 90210
Attn: Craig Crowder, Fleet Manager

Re: Renewable Natural Gas Supply Contract

Dear Mr. Crowder,

In conjunction with this letter, please find Clean Energy Renewable Fuels, LLC’s (CERF’s) updated Renewable Natural Gas (RNG) Supply Contract that provides the same terms and conditions to the City of Beverly Hills (City) as presented in the City of Norwalk City Council Agenda Report on April 18, 2017. The City of Norwalk awarded Clean Energy a five-year RNG Supply Contract through a competitive bid process.

CERF is prepared to supply the City’s compressed natural gas station, located at 345 North Foothill Road, these same terms and conditions to allow the City to start reaping the fiscal and sustainability benefits of RNG.

After you have a chance to review, we would like to set up a call to discuss next steps. Please contact John Hodgkinson by phone at (949) 315-9959 or by email at John.Hodgkinson@cleanenergyfuels.com to set up this call or if you have any questions. We look forward to hearing from you and working with the City.

Thank you,

Tyler Henn
Vice President, Clean Energy Renewable Fuels, LLC
Attachment 5
City of Beverly Hills
RNG Supply & LCFS
Credit Management

Tyler Henn
Vice President

4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
(949) 437-1000
www.CleanEnergyFuels.com

February 28, 2018
February 28, 2018

Craig Crowder
City of Beverly Hills
345 North Foothill Road
Beverly Hills, CA 90210

Low Carbon Fuel Standard/Renewable Gas Supply Proposal

Dear Craig,

Clean Energy (CE) and Clean Energy Renewables are pleased to present two unique service offerings to the City of Beverly Hills: (1) Low Carbon Fuel Standard (LCFS) credit management and (2) Renewable Natural Gas (RNG) Fuel Supply. The services provided in the below proposal will generate additional revenue for the City of Beverly Hills while reducing the greenhouse gas emissions (GHG) of your fleet operations.

Low Carbon Fuel Standard (LCFS) Program Overview

The Low Carbon Fuel Standard was an early action item of AB 32: Global Warming Solutions Act of 2006. The program regulates transportation fuel providers, requiring a 10% reduction in carbon intensity of fuels sold by 2020 and an 80% reduction by 2050. Importers or producers of gasoline and diesel are required to purchase credits based on the carbon intensity of the overall transportation fuel mix used in the state. Because of the importer and producer deficit, producers of fuels with a lower carbon intensity than gasoline or diesel are able to generate credits that can be sold to these importers or producers (also referred to as “obligated parties” in the LCFS).

Your operations are eligible to generate LCFS credits from the use of (1) conventional natural gas also known as fossil natural gas, which we classify as “Fossil CNG”; and (2) renewable natural gas (RNG) derived from organic feedstocks including landfills, and anaerobic digestion of food, agricultural and wastewater treatment. Clean Energy contracts with RNG producers throughout the country to deliver RNG, branded Redeem, as a transportation fuel to California. As an owner of a CNG station, you are eligible to generate credits on the Fossil CNG used at the station. If RNG is supplied to the station, the RNG producer is eligible to generate credits. Because the Carbon Intensity (CI) of RNG is substantially lower than Fossil CNG, it creates approximately three times more credit value.
To participate in this program, CE will assist the City of Beverly Hills with the following steps:

1. “Opt-in” and register in the LCFS program via CARB’s website.
2. Complete all forms and certifications and designate an account administrator.
3. An LCFS Reporting Tool (LRT) account and Alternative Fuels Portal (AFP) account will be activated by CARB once all forms and certifications have been submitted.
4. Track usage at the station and report all low carbon fuel consumption quarterly.
5. Credits are generated on a quarterly basis based on the volumes submitted.
6. Sell the credits on the open market to obligated parties.
7. Maintain fuel consumption records for all credits generated/sold for audit purposes.

**Renewable Natural Gas (RNG) Fuel Supply**

As previously noted, use of RNG generates incremental environmental credits at a CNG station and provides a substantially lower carbon fuel at parity to conventional natural gas, which is why many Clean Energy customers have chosen Redeem to be supplied to their station, in place of Fossil CNG.

Under this arrangement, CE provides 100% of the fossil CNG credit value that would have been realized on equivalent volumes of fossil CNG and CE shares a portion of the incremental revenue from the biogas producer. The City of Beverly Hills will receive 3% of the RIN credit value, and 6% of the LCFS credit value for the same services described as above. The City of Beverly Hills will generate additional revenue by using Redeem and be able to claim the environmental benefit of fueling with RNG. This is an important sustainability message that can be shared with residents and the general public. Outlined below is an economic analysis illustrating the value of Redeem to the City of Beverly Hills.

| Expected Annual Fuel Consumption (DGEs) | 110,000 |
| Estimated Annual Environmental Credit Revenue | $26,600 |
The credit revenue estimate provided above is based on the proposed revenue structure, and current LCFS credit prices of $75/LCFS credit, and $2.50/D3 RIN credit. It is important to note that the LCFS and RIN credit markets are subject to market changes and compliance standards which may increase or decrease the value to the City throughout the life of the programs.
Redeem is Clean Energy's branded biomethane vehicle fuel. Redeem is the cleanest and only commercially available alternative fuel in the world capable of meeting 100% of the fueling requirements of the heavy-duty transportation sector while providing up to a 70% reduction in GHG emissions – and all at a price that represents a substantial discount to gasoline and diesel. It is truly a groundbreaking alternative fuel.

Currently, numerous Clean Energy municipal, public transit and corporate CNG customers have utilized the Redeem marketing program to communicate the GHG emissions reduction and sustainability of its fleet operations to their stakeholders, including Foothill Transit, the City and County of Sacramento, University of California, San Diego (UCSD), and Santa Monica’s Big Blue Bus. In 2017, Clean Energy sold over 70 million gallons of Redeem.

We are excited at the opportunity to partner with City of Beverly Hills on this program and appreciate its consideration of CE. Please feel free to contact me at 949-437-1258 or Tyler.Henn@cleanenergyfuels.com if you have any questions. Once you are prepared to move forward, I will generate a contract for your review and approval.
Attachment 6
TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated ______, 2018. The terms of this Transaction Confirmation are binding upon execution by the parties.

SELLER: Clean Energy Renewable Fuels, LLC
Attn: Tyler Henn
Phone: 949-437-1258
Fax: 949-724-1358
Base Contract No. BEV001

BUYER: City of Beverly Hills
Attn: Shana Epstein, Director of Public Works
Phone: 310-285-2484
Fax: 310-278-1838

Contract Price:

The Contract Price for Conventional Gas or Biogas per MMBtu for the time period beginning on the Start Date (as defined below) and ending on the three (3) year anniversary of the Start Date, shall be equal to the SoCalGas Citygate First of the Month Index (“SoCalGas Citygate”) per MMBTU as published by Natural Gas Intelligence (“NGI”) or any successor thereto minus $0.10 per MMBtu.

The Contract Price for Conventional Gas or Biogas per MMBtu for the time period beginning on the day after the three (3) year anniversary of the Start Date and through the end of the Delivery Period (as defined below), shall be equal to the SoCalGas Citygate price per MMBtu as published by NGI or any successor thereto.

Delivery Period: The Delivery Period shall begin on the Start Date and end on the five (5) year anniversary of the Start Date (the “Initial Delivery Period”).

However, notwithstanding the foregoing, Buyer shall be entitled to extend the Delivery Period for up to three (3) consecutive one (1) year terms (each a “Renewal Delivery Period”) by notifying Seller in writing of Buyer’s intent to extend the Delivery Period at least sixty (60) days prior to the end of the Initial Delivery Period or current Renewal Delivery Period, as applicable.

The Initial Delivery Period and any Renewal Delivery Periods shall be referred to as the “Delivery Period”.

The “Start Date” shall be (a) within ninety (90) days following the day this Transaction Confirmation is executed by Seller and Buyer, and (b) determined by Seller and indicated in a written notice provided by Seller to Buyer.

ID # 2278
Performance Obligation and Contract Quantity: (Select One)

<table>
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<th>Firm (Fixed Quantity):</th>
<th>Firm (Variable Quantity):</th>
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<td>_____ MMBtus/day</td>
<td>0 MMBtus/day Minimum</td>
<td>Up to _____ MMBtus/day.</td>
</tr>
<tr>
<td>□ EFP</td>
<td>200 MMBtus/day Maximum (“Max Daily Quantity”)</td>
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</tbody>
</table>

Subject to the Max Daily Quantity, during the Delivery Period, Seller will deliver Biogas or Conventional Gas to the Delivery Point to meet Buyer’s full requirements. Buyer acknowledges that the delivered quantities of Gas will fluctuate and agrees to receive all Gas, up to the Max Daily Quantity.

Buyer and Seller acknowledge and agree that there is no minimum amount of Biogas that will be delivered by Seller to the Delivery Point during the Delivery Period and that Seller shall determine, in Seller’s sole discretion, the amount of Biogas Seller delivers to the Delivery Point. Seller shall be the exclusive provider of Biogas and Conventional Gas to Buyer at the Delivery Point for the Delivery Period.

For the purpose of clarity, Buyer shall have no obligation to purchase Conventional Gas or Biogas beyond the volume that can be delivered to the Station Vehicle Fuel market and documented in compliance with the rules and regulations of the Low Carbon Fuel Standard and Renewable Fuel Standard, and without any modification of Buyer’s existing Vehicle Fuel facility (the Station).

Delivery Point: The Delivery Point shall be Buyer’s Southern California Gas Company (“SoCalGas”) meter interconnect at Buyer’s California compressed natural gas (“CNG”) station listed in Exhibit A (the “Station”), which is attached hereto and incorporated herein by reference.

Definitions:

“Advanced Biofuel” means a renewable fuel as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012)), other than ethanol derived from corn starch, and which must achieve a Lifecycle Greenhouse Gas Emission displacement of fifty percent (50%) compared to the baseline Lifecycle Greenhouse Gas Emissions.

“Alternative Fuel” means any transportation fuel that is not California reformulated gasoline or a diesel fuel, including but not limited to, those fuels specified in the California Low Carbon Fuel Standard (Cal. Code Regs. tit. 17, § 95480.1(a)(12) (2010).).

“Blue Gas LCFS Credits” means LCFS Credits which are generated by Buyer when Conventional Gas is dispensed from the Station as a Blue Gas Vehicle Fuel.

“Blue Gas Vehicle Fuel” means CNG derived from Conventional Gas and used in transportation vehicles.

“Biogas” means pipeline quality Gas derived from the decomposition of organic matter that meets the EPA RFS eligibility requirements as either an Advanced Biofuel or Cellulosic Biofuel.

“CARB” means the California Air Resources Board or its successor agency and policies established under the California Low Carbon Fuel Standard Regulation, (Cal. Code Regs. tit. 17, §§ 95480 – 90 (2010).), (collectively, the “LCFS”) applying to any transportation fuel that is sold, supplied, or offered for sale in California.
“Cellulosic Biofuel” means a renewable fuel derived from any cellulose, semi-cellulose or lignin that has lifecycle greenhouse gas emissions that are at least sixty percent (60%) less than the Baseline Lifecycle Greenhouse Gas emissions (as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012))).

“Conventional Gas” means Gas other than Biogas.

“Deliver” means Buyer shall cause its Blue Gas LCfS Credits to be electronically delivered into Seller’s LCfS Account in accordance with the LCfS and the terms of this Transaction Confirmation.

“Disqualified Biogas” means Gas that was initially determined by the parties upon delivery to be Biogas but subsequently becomes disqualified as Biogas by not satisfying the requirements of the EPA Renewable Fuels Standard or the CARB LCFS.

“EPA” means the United States Environmental Protection Agency.

“EPA Renewable Fuels Standard” or “EPA RFS” means the renewable energy program and policies established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and which became effective on July 1, 2010.

“Green Attributes” means any and all attributes, including Lifecycle Greenhouse Gas Emissions, associated with the production, sale and use of Biogas as an Advanced Biofuel, Cellulosic Biofuel, low carbon fuel or Alternative Fuel as necessary to generate or claim applicable CARB LCFS Credits and EPA RINs.

“Greenhouse Gas” means carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), 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 tonne of carbon dioxide equivalent.

“Governmental Authority” means any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority. Governmental Authority includes, without limitation, the EPA, CARB and the California Public Utilities Commission or its successor agency.

“Incremental LCFS Credits” means the LCFS Credits generated from Biogas sold under this Transaction Confirmation to Buyer minus the LCFS Credits that would have been generated if the same amount of Biogas had been Conventional Gas.

“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 RFS 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 consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

“LCFS Account” means an account containing an entity’s LCFS Credits, established and maintained in accordance with the LCFS.

“Low Carbon Fuel Standard Credits” or “LCFS Credits” shall mean credits generated and traded under the California Air Resources Board Low Carbon Fuel Standard, with each credit equal to one metric tonne of Carbon Dioxide reductions as compared to the baseline CO2 emissions under the Low Carbon Fuel Standard.

“LCFS Credits Resale Price” shall be calculated by reference to the volume weighted average price of all LCFS Credits of the same annual and quarterly vintage realized by Seller within the same calendar quarter.
“LRT” means the reporting tool established in accordance with LCFS and required by CARB to submit annual compliance and quarterly progress reports and track LCFS Credits.

“Renewable Identification Number” or “RIN” is a number generated to represent a volume of renewable fuel as set forth in Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 75 Fed. Reg. 16484 (March 26, 2010) (codified at 40 C.F.R. § 80.1425 (2011); 40 C.F.R. § 80.1426 (2012)).

“RIN Resale Price” shall be calculated by reference to the volume weighted average price of all RINs which is realized by Seller that were generated within the same calendar month as the RINs generated from the Biogas sold hereunder.

“RIN Share” means three percent (3%) of the RIN Resale Price for each RIN generated by the Biogas sold by Seller to Buyer under this Transaction Confirmation which is then sold by Buyer as a Vehicle Fuel at the Station.


“Vehicle Fuel” means compressed natural gas (CNG) or liquefied natural gas (LNG) derived from Gas and used in transportation vehicles.

Special Conditions:

1. Representations.

(a) Buyer represents that it shall process all Conventional Gas and Biogas purchased from Seller hereunder into Vehicle Fuel which shall be distributed as Vehicle Fuel through Buyer’s Station.

(b) Seller represents that all Biogas sold hereunder shall be Biogas that has been produced by facilities properly registered under the EPA RFS as renewable fuel producers.

(c) Seller represents that all Biogas sold hereunder shall be Biogas with an approved pathway for LCFS Credit generation.

(d) Buyer represents that it is not aware of any reason that would cause the Blue Gas LCFS Credits not to comply with the LCFS.

2. Records and Documentation Related to Biogas and RIN and LCFS Credits Creation.

(a) Buyer shall provide Seller with a copy of its natural gas invoice related to the Delivery Point for the prior month (when such prior month is during the term of this Transaction Confirmation) between the 10th and 20th day of each month. This obligation shall survive the termination or expiration of this Transaction Confirmation until the last day of the full calendar month following the month in which this Transaction Confirmation expired or terminated. Buyer shall maintain all records relevant to the purchase of Conventional Gas and Biogas from Seller and use of such Conventional Gas and Biogas as a Vehicle Fuel in accordance with the requirements of CARB for the creation and sale of LCFS Credits.

(b) Seller shall maintain records relevant to the production and purchase and sale of Conventional Gas and Biogas and transportation and distribution of the Conventional Gas and Biogas purchased hereunder as a Vehicle Fuel as it applies to the creation and sale of LCFS Credits in accordance with the requirements of CARB.

(c) Buyer shall provide reasonable cooperation to Seller with respect to the requirements for the generation of RINS under the EPA RFS including, without limitation, by signing periodic attestations regarding the use of the Biogas
sold hereunder as a Vehicle fuel. Further, on at least a quarterly basis, and at any other time requested by Seller, Buyer shall provide Seller with attestations executed by an authorized officer of Buyer which indicate that the volume of Conventional Gas and Biogas delivered to the Station is consumed as a Vehicle fuel. Buyer shall provide Seller with such attestations no later than thirty (30) days after Seller's written request.

3. Hierarchy and Governing Law.

In the event of any inconsistency between the Base Contract and this Transaction Confirmation, this Transaction Confirmation shall govern.

The law governing the Base Contract shall apply to this Transaction Confirmation, except to the extent that the EPA Renewable Portfolio Standards and CARB Low Carbon Fuels Standard, together with regulations and decisions promulgated thereunder, are applicable to the purchase and sales of Conventional Gas or Biogas.

4. CARB LCFS Regulated Party Status.

Pursuant to the California Code of Regulations for the Low Carbon Fuel Standard, Seller will retain the Low Carbon Fuel Standard (LCFS) regulated party status set forth in Title 17, California Code of Regulations in §§ 95480-95490 as an “opt-in” regulated party under California Air Resources Board as set forth in Title 17, California Code of Regulations § 95480.3 with respect to all Biogas sold by Seller to Buyer hereunder.

Buyer will retain regulated party status set forth in Title 17, California Code of Regulations in §§ 95480-95490 as an “opt-in” regulated party under California Air Resources Board as set forth in Title 17, California Code of Regulations § 95480.3 with respect to all Conventional Gas purchased by Buyer at the Delivery Point.

5. LCFS Credit Generation and LCFS Credit and RIN Sales.

(a) For Biogas sold by Seller to Buyer hereunder, Seller shall pay Buyer: (1) one-hundred (100%) of the LCFS Credits Resale Price for all LCFS Credits that would have been generated by Conventional Gas if the Biogas provided under this Transaction Confirmation and sold as Vehicle fuel at the Station had been Conventional Gas (the “Conventional LCFS Credits”); plus (2) six percent (6%) of the LCFS Credits Resale Price for all Incremental LCFS Credits generated from Biogas Vehicle fuel sold at the Station. Seller shall make such payment within thirty (30) days of the date of Seller’s receipt of payment for such sold LCFS Credits.

(b) Buyer acknowledges that Seller and/or its affiliates will act as a principal with respect to their own LCFS Credits and/or as an agent with respect to LCFS Credits generated and/or sold hereunder and Buyer hereby waives any claim against Seller and/or its affiliates based on any conflict of interest or alleged conflict of interest of Seller and/or its affiliates with respect to the manner, price or terms of the sale of any of the LCFS Credits generated and/or sold hereunder. Seller and/or its affiliates and control persons shall owe no fiduciary obligation to Buyer with respect to the LCFS Credits generated and sold. Seller and its affiliate’s sole obligation with respect to the sale of LCFS Credits generated and/or sold in this transaction shall be to use commercially reasonable efforts to sell such credits alongside other LCFS Credits that Seller and/or its affiliates may market or sell based on the calendar quarter in which such credits are generated.

(c) Buyer will Deliver the Blue Gas LCFS Credits on or before the ninetieth (90th) day of the calendar quarter following the end of each calendar quarter at Buyer’s sole expense. Within thirty (30) days after each Delivery, Seller will provide Buyer with a report detailing the quantity of LCFS Credits that Buyer Delivered to Seller’s LCFS Account. All rights, title to and interest in and risk of loss for the Blue Gas LCFS Credits will transfer from Buyer to Seller upon Delivery. Seller shall pay Buyer eighty percent (80%) of the LCFS Credits Resale Price for each Blue Gas LCFS Credit sold by Seller. Seller shall make this payment within thirty (30) days of its receipt of payment for such sold Blue Gas LCFS Credits.
(d) Seller will use commercially reasonable efforts to sell all LCFS Credits generated hereunder from Biogas delivered hereunder within six (6) months of the generation of such LCFS Credits. Any outstanding Conventional LCFS Credits retained by Seller for longer than six (6) months, may, at Buyer’s discretion, be transferred to Buyer in kind.

(e) Seller shall pay Buyer the RIN Share within thirty (30) days of the date of Seller’s receipt of payment for such sold RINs.

(f) Buyer acknowledges that Seller and/or its affiliates will act as a principal with respect to their own RINs and/or as an agent with respect to RINs generated and/or sold hereunder and Buyer hereby waives any claim against Seller and/or its affiliates based on any conflict of interest or alleged conflict of interest of Seller and/or its affiliates with respect to the manner, price or terms of the sale of any of the RINs generated and/or sold hereunder. Seller and/or its affiliates and control persons shall owe no fiduciary obligation to Buyer with respect to the RINs generated and sold. Seller and its affiliate’s sole obligation with respect to the sale of RINs generated and/or sold in this transaction shall be to use commercially reasonable efforts to sell such credits alongside other RINs that Seller and/or its affiliates may market or sell based on the calendar month in which such credits are generated.


Buyer and Seller shall work with Seller’s consultant and/or RIN quality assurance plan (“QAP”) provider to ensure that it has created documentation necessary for Biogas and RIN creation in compliance with EPA requirements and LCFS Credit creation in compliance with CARB requirements. Seller shall be responsible for all of its costs incurred for EPA RFS and LCFS compliance and RIN generation. Seller shall also be responsible for all of its costs incurred for LCFS Credit generation when such credits are generated by the Biogas provided by Seller to Buyer hereunder. Buyer shall be responsible for all of its costs incurred for LCFS Credit generation when such credits are generated by Conventional Gas.

7. Change in Regulation.

(a) Change in CARB Regulations. In the event CARB amends its regulations for the creation and sale of LCFS Credits, Buyer and Seller shall work together and attempt to amend this Transaction Confirmation to maintain the economic arrangement set forth herein.

(b) Change in EPA Regulations. In the event that the EPA amends its regulations for the creation of RINs as related to the purchase and sale of Biogas for the production of Vehicle fuel, Buyer and Seller shall work together and attempt to amend this Transaction Confirmation accordingly.

8. Term of this Transaction Confirmation

The term of this Transaction Confirmation shall commence upon the execution of this Transaction Confirmation by Buyer and Seller and this Transaction Confirmation shall expire on the last day of the Delivery Period.

9. Environmental Attributes and Alternative Fuel Credit

Buyer is not entitled to any RINS, LCFS Credits generated from Biogas provided under this Transaction Confirmation, or other environmental attributes that may be attributed to or generated from the Biogas delivered under this Transaction Confirmation other than as specifically stated herein. Seller’s retention and/or sale of RINS and/or LCFS Credits generated from the Biogas delivered under this Transaction Confirmation shall not limit Buyer’s ability to report the purchase of Biogas and applicable reductions in greenhouse gases or emissions directly associated with the use of Biogas at the Station.

However, as between the parties, to the extent available, Buyer shall be solely entitled to claim 100% of the federal Alternative Fuel Credit (defined below) revenue as allowed or may be allowed under Sections 6426 and 6427 of the Internal Revenue Code of 1986 ("Alternative Fuel Credit"), as may be amended, for each gasoline gallon equivalent
of Conventional Gas or Biogas dispensed from the Station. The parties agree that Buyer will be considered the "Alternative Fueler" as defined in Proposed Treasury Regulation Section 48-6426-1 and is responsible for remitting any federal or state fuel taxes, if any, imposed on the subsequent sale or use of such fuel.

10. Adjustment for Disqualified Biogas

In addition to other remedies available under the Base Contract and hereunder, if Gas sold by Seller and purchased by Buyer hereunder originally deemed to be Biogas becomes classified as Disqualified Biogas and such disqualification did not occur based on an act or omission of Seller, Seller will be entitled to a refund of any payment made to Buyer under Sections 5(a) and 5(e) above which is related to such Gas. This obligation shall survive the termination or expiration of this Transaction Confirmation.

11. Failure to Produce Vehicle Fuel

In the event that Buyer cannot utilize any Conventional Gas or Biogas for the production of a Vehicle Fuel, including but not limited to an event of Force Majeure or Event of Default, Buyer shall promptly notify Seller in writing. Any disruption due to an event of Force Majeure shall not be considered an Event of Default resulting in Early Termination under the Base Contract.

In addition to all other remedies under the Base Contract and hereunder, if Gas sold by Seller and purchased by Buyer hereunder originally deemed to be Biogas is not processed into a Vehicle Fuel, Seller will be entitled to a refund of any payment made to Buyer under Sections 5(a) and 5(e) above for the volume of Biogas that was not processed into a Vehicle Fuel. This obligation shall survive the termination or expiration of this Transaction Confirmation.

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14. Additional Terms Applicable to Deliveries to SoCalGas

Upon Seller’s request, in writing, (a) Buyer will notify SoCalGas and will designate Seller as its energy service provider beginning on the Start Date, and (b) Buyer will assist Seller in completing all required Direct Access Service Request forms.

By executing this Transaction Confirmation, Buyer understands and agrees that: (i) it shall at all times, notwithstanding anything to the contrary herein, remain responsible for payment of its core gas transportation service received from SoCalGas; (ii) it will continue to receive an invoice from SoCalGas for transportation and other access charges and Buyer will be responsible for payment of all invoices it receives from SoCalGas; and (iii) it is responsible for all Franchise Fees under Tariff Rate Schedule G-NGV1 and any Utility Users Tax that a city or county may require as a result of Buyer receiving its gas commodity through Seller. Buyer agrees to release and hold harmless, defend and indemnify the applicable utility from and against any liability, claims, demands, causes of
action, damages and/or expenses resulting from or in connection with any improper use of its gas consumption information.

15. Nominations

At least 7 days prior to the first day of each calendar month during the Delivery Period, Buyer shall provide Seller with its Gas nominations for the following month (the “Monthly Nomination”). In the event Buyer does not provide the Monthly Nomination to Seller at least 7 days prior to the first day of the month, Seller shall determine the applicable month’s Monthly Nomination based on historical usage.

For each month that Buyer's Gas consumption at the Delivery Point exceeds the Monthly Nomination, Buyer shall be deemed to have purchased the excess Gas from Seller for the applicable Spot Price plus $0.025 per MMBtu.

For each month that Buyer's Gas consumption at the Delivery Point is less than the Monthly Nomination, Buyer will be deemed to have sold the excess Gas to Seller for the applicable Spot Price minus $0.025 per MMBtu.

IN WITNESS WHEREOF:

Buyer and Seller hereto have caused this Transaction Confirmation to be executed the day and year first above written.
CITY OF BEVERLY HILLS
a California municipal corporation

By: ____________________________________________
    Julian A. Gold, M.D., Mayor

ATTEST:

By: ____________________________________________
    Byron Pope, City Clerk

CLEAN ENERGY RENEWABLE FUELS, LLC,
a Delaware limited liability company

By: ____________________________________________
    Name: Tyler Hen
    Title: Vice President

By: ____________________________________________
    Name: Mitchell W. Pratt
    Title: Coo & Corporate Secretary

(Please note: Two signatures required for corporations pursuant to California Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.)

Place corporate seal here

ID # 2278
<table>
<thead>
<tr>
<th>CNG Station Location</th>
<th>City</th>
<th>Local Distribution Channel</th>
</tr>
</thead>
<tbody>
<tr>
<td>345 North Foothill Road</td>
<td>Beverly Hills</td>
<td>SoCalGas</td>
</tr>
</tbody>
</table>
SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS
Dated ______________, 2018

by and between

City of Beverly Hills

And

Clean Energy Renewable Fuels, LLC

Section 15.10

In Section 15.10 is hereby amended by deleting the following language in the Section “in order to comply with any applicable law, order, regulation, or exchange rule” and replacing the deleted language with “in order to comply with any applicable law, order, regulation, or exchange rule, including, without limitation, the California Public Records Act”.

<table>
<thead>
<tr>
<th>City of Beverly Hills</th>
<th>PARTY NAME</th>
<th>Clean Energy Renewable Fuels, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: Julian A. Gold, M.D.</td>
<td>SIGNATURE</td>
<td>By: Tyler Henn</td>
</tr>
<tr>
<td>Mayor</td>
<td>PRINTED NAME</td>
<td>VP &amp; General Manager</td>
</tr>
</tbody>
</table>

City of Beverly Hills signatures continue for Clean Energy Renewable Fuels, LLC – City of Beverly Hills Special Provisions Attached to and Forming Part of the Base Contract for Sale and Purchase of Natural Gas

ATTEST:

___________________________________________(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

SHANA F. STEIN
Director of Public Works

SHARON L’HEUREUX DRESSEL
Risk Manager
# Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: ________________

The parties to this Base Contract are the following:

<table>
<thead>
<tr>
<th>PARTY A</th>
<th>PARTY NAME</th>
<th>PARTY B</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Beverly Hills</td>
<td>345 North Foothill Road Beverly Hills, CA 90210</td>
<td>Clean Energy Renewable Fuels, LLC</td>
<td>4675 MacArthur Court, Suite 800 Newport Beach, CA 92660</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>BUSINESS WEBSITE</th>
<th>CONTRACT NUMBER</th>
<th>D-U-N-S® NUMBER</th>
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</thead>
<tbody>
<tr>
<td><a href="http://www.cleanenergyfuels.com">www.cleanenergyfuels.com</a></td>
<td>BEV001</td>
<td>FJ US FEDERAL 27-5411503</td>
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<tr>
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<thead>
<tr>
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<th>GUARANTOR</th>
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<tr>
<td>☐ Corporation</td>
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</tr>
<tr>
<td>☐ Limited Partnership</td>
<td>☐ Partnership</td>
</tr>
<tr>
<td>☐ LLP</td>
<td>☐ Other: Municipal Corporation</td>
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</tbody>
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<table>
<thead>
<tr>
<th>CONTACT INFORMATION</th>
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<tbody>
<tr>
<td>City of Beverly Hills</td>
</tr>
<tr>
<td>ATTN: Shana Epstein, Director of Public Works</td>
</tr>
<tr>
<td>TEL#: (310)285-2494</td>
</tr>
<tr>
<td>FAX#:</td>
</tr>
<tr>
<td>EMAIL: <a href="mailto:sepstein@beverlyhills.org">sepstein@beverlyhills.org</a></td>
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<th>PAYMENTS</th>
<th>SETTLEMENTS</th>
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<th>WIRE TRANSFER NUMBERS (IF APPLICABLE)</th>
<th>CHECKS (IF APPLICABLE)</th>
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<tbody>
<tr>
<td>BANK:</td>
<td>ATTN: Clean Energy Renewable Fuels, LLC</td>
</tr>
<tr>
<td>ABA:</td>
<td>ADDRESS: 4675 MacArthur Ct, Suite 800</td>
</tr>
<tr>
<td>ACCT:</td>
<td>Newport Beach, CA 92660</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>OTHER DETAILS:</th>
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<tr>
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<tr>
<td>ACH NUMBERS (IF APPLICABLE)</td>
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<td>OTHER DETAILS:</td>
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</tr>
<tr>
<td>ACH NUMBERS (IF APPLICABLE)</td>
</tr>
<tr>
<td>OTHER DETAILS:</td>
</tr>
</tbody>
</table>
Base Contract for Sale and Purchase of Natural Gas
(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

<table>
<thead>
<tr>
<th>Section 1.2 Transaction Procedure</th>
<th>Section 10.2 Additional Events of Default</th>
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</thead>
<tbody>
<tr>
<td>Oral (default)</td>
<td>No Additional Events of Default (default)</td>
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<tr>
<td>Written</td>
<td>Indebtedness Cross Default</td>
</tr>
<tr>
<td></td>
<td>Party A: _____________________________</td>
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<tr>
<td></td>
<td>Party B: _____________________________</td>
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<table>
<thead>
<tr>
<th>Section 2.7 Confirm Deadline</th>
<th>Section 10.3.1 Early Termination Damages</th>
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<tbody>
<tr>
<td>2 Business Days after receipt (default)</td>
<td>Early Termination Damages Apply (default)</td>
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<tr>
<td>5 Business Days after receipt</td>
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<tr>
<td></td>
<td>Early Termination Damages Do Not Apply</td>
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<table>
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<tr>
<th>Section 2.8 Confirming Party</th>
<th>Section 10.3.2 Other Agreement Setoffs</th>
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<tbody>
<tr>
<td>Seller (default)</td>
<td>Other Agreement Setoffs Apply (default)</td>
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<tr>
<td>Buyer</td>
<td>Bilateral (default)</td>
</tr>
<tr>
<td></td>
<td>Triangular</td>
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<td>Other Agreement Setoffs Do Not Apply</td>
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<table>
<thead>
<tr>
<th>Section 3.2 Performance Obligation</th>
<th>Section 15.5 California Choice Of Law</th>
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<tbody>
<tr>
<td>Cover Standard (default)</td>
<td>California</td>
</tr>
<tr>
<td>Spot Price Standard</td>
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<table>
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<tr>
<th>Section 6 Taxes</th>
<th>Section 15.10 Confidentiality</th>
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</thead>
<tbody>
<tr>
<td>Buyer Pays At and After Delivery Point (default)</td>
<td>Confidentiality applies (default)</td>
</tr>
<tr>
<td>Seller Pays Before and At Delivery Point</td>
<td>Confidentiality does not apply</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 7.2 Payment Date</th>
<th>Section 15.10 Confidentiality</th>
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</thead>
<tbody>
<tr>
<td>25th Day of Month following Month of delivery (default)</td>
<td>Confidentiality applies (default)</td>
</tr>
<tr>
<td>Day of Month following Month of delivery</td>
<td>Confidentiality does not apply</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 7.2 Method of Payment</th>
<th>Section 15.10 Confidentiality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wire transfer (default)</td>
<td>Confidentiality applies (default)</td>
</tr>
<tr>
<td>Automated Clearinghouse Credit (ACH)</td>
<td>Confidentiality does not apply</td>
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<tr>
<td>Check</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Section 7.7 Netting</th>
<th>Section 15.10 Confidentiality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Netting applies (default)</td>
<td>Confidentiality applies (default)</td>
</tr>
<tr>
<td>Netting does not apply</td>
<td>Confidentiality does not apply</td>
</tr>
</tbody>
</table>

| Special Provisions                | Number of sheets attached: 1 |
| Addendum(s):                      |                           |

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

<table>
<thead>
<tr>
<th>City of Beverly Hills</th>
<th>PARTY NAME</th>
<th>Clean Energy Renewable Fuels, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: Julian A. Gold, M.D.</td>
<td>SIGNATURE</td>
<td>By: Tyler Henn</td>
</tr>
<tr>
<td>Mayor</td>
<td>PRINTED NAME</td>
<td>Vice President</td>
</tr>
<tr>
<td></td>
<td>TITLE</td>
<td></td>
</tr>
</tbody>
</table>

All Rights Reserved
Page 2 of 14

(CE rev. 08.01.14)
City of Beverly Hills signatures continue for Clean Energy Renewable Fuels, LLC – City of Beverly Hills Base Contract for Sale and Purchase of Natural Gas

ATTEST:

______________________________(SEAL)

BYRON POPE
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

SHANA EPSTEIN
Director of Public Works

SHARON L’HEUREUX DRESSEL
Risk Manager
General Terms and Conditions
Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

The parties have selected either the “Oral Transaction Procedure” or the “Written Transaction Procedure” as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a “writing” and to have been “signed”. Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party’s Transaction Confirmation is materially different from the receiving party’s understanding of the agreement referred to in Section 2.9, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party’s agreement to the terms of the transaction described in the sending party’s Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. “Additional Event of Default” shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.
2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.

2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.

2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.

2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.

2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.

2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.

2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.

2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.

2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.

2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.

2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.

2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.

2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.

2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.

2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.

2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.

2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.

2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate
amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

2.24. “Interruptible” shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

2.25. “MMBtu” shall mean one million British thermal units, which is equivalent to one dekatherm.

2.26. “Month” shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

2.27. “Payment Date” shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.

2.28. “Receiving Transporter” shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

2.29. “Scheduled Gas” shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

2.30. “Specified Transaction(s)” shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.

2.31. “Spot Price” as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

2.32. “Transaction Confirmation” shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.

2.33. “Transactional Cross Default” shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.

2.34. “Termination Option” shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.

2.35. “Transporter(s)” shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the “Cover Standard” or the “Spot Price Standard” as indicated on the Base Contract.

Cover Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party’s invoice, which shall set forth the basis upon which such amount was calculated.
SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business
Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after
it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1.

10.2. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". The Non-Defaulting Party (i) shall give Notice to the Defaulting Party with respect to each Terminated Transaction, (ii) with respect to each Terminated Transaction, shall determine, in good faith and in a commercially reasonable manner, the amount due under such Terminated Transaction, (iii) shall give Notice to the Defaulting Party with respect to each Terminated Transaction, (iv) shall request, and (v) shall give Notice to the Defaulting Party with respect to each Terminated Transaction, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". The Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.
Early Termination Damages Do Not Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

Other Agreement Setoffs Apply:

Bilateral Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

Triangular Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

Other Agreement Setoffs Do Not Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.
SECTION 11.  FORCE MAJEURE

11.1.  Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2.  Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3.  Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4.  Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5.  The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6.  Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 12.  TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

SECTION 13.  LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.
SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party’s two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party’s assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency’s reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party’s legal obligations) with the other party’s efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.
15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties.

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated __________. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.

**SELLER:**

<table>
<thead>
<tr>
<th>Attn:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fax:</td>
<td>Base Contract No.</td>
</tr>
<tr>
<td>Transporter:</td>
<td>Transporter Contract Number:</td>
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**BUYER:**

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<tr>
<th>Attn:</th>
<th>Phone:</th>
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<tbody>
<tr>
<td>Fax:</td>
<td>Base Contract No.</td>
</tr>
<tr>
<td>Transporter:</td>
<td>Transporter Contract Number:</td>
</tr>
</tbody>
</table>

**Contract Price:** $_____/MMBtu or ________

**Delivery Period:** Begin: __________, _____ End: __________, _____

**Performance Obligation and Contract Quantity:** (Select One)

- **Firm (Fixed Quantity):** MMBtus/day
- **Firm (Variable Quantity):** MMBtus/day Minimum MMBtus/day Maximum

  subject to Section 4.2. at election of Buyer or Seller

- **Interruptible:** Up to ______ MMBtus/day

**Delivery Point(s):**

(If a pooling point is used, list a specific geographic and pipeline location):

**Special Conditions:**

**Seller:**

<table>
<thead>
<tr>
<th>By:</th>
<th>Title:</th>
<th>Date:</th>
</tr>
</thead>
</table>

**Buyer:**

<table>
<thead>
<tr>
<th>By:</th>
<th>Title:</th>
<th>Date:</th>
</tr>
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</table>
Attachment 7
**Base Contract for Sale and Purchase of Natural Gas**

This Base Contract is entered into as of the following date:

The parties to this Base Contract are the following:

<table>
<thead>
<tr>
<th>PARTY A</th>
<th>PARTY NAME</th>
<th>PARTY B</th>
<th>PARTY NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Beverly Hills</td>
<td>Clean Energy Renewable Fuels, LLC</td>
<td>City of Beverly Hills</td>
<td>Clean Energy Renewable Fuels, LLC</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ADDRESS</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>345 North Foothill Road Beverly Hills, CA 90210</td>
<td>4675 MacArthur Court, Suite 800 Newport Beach, CA 92660</td>
</tr>
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<table>
<thead>
<tr>
<th>BUSINESS WEBSITE</th>
<th>BUSINESS WEBSITE</th>
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<tbody>
<tr>
<td><a href="http://www.cleanenergyfuels.com">www.cleanenergyfuels.com</a></td>
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<table>
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**JURISDICTION OF ORGANIZATION**

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<td>□ LLC</td>
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<tr>
<td>□ Limited Partnership</td>
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<td>□ LLP</td>
<td>□ Other: Municipal Corporation</td>
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**CONTACT INFORMATION**

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<tr>
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</tr>
</tbody>
</table>
Base Contract for Sale and Purchase of Natural Gas
(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

<table>
<thead>
<tr>
<th>Section 1.2</th>
<th>Section 10.2</th>
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<tbody>
<tr>
<td>Transaction Procedure</td>
<td>Additional Events of Default</td>
</tr>
<tr>
<td>Oral (default)</td>
<td>No Additional Events of Default (default)</td>
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<tr>
<td>Written</td>
<td>Indebtedness Cross Default</td>
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<tr>
<td>OR</td>
<td>Party A:</td>
</tr>
<tr>
<td>Section 2.7</td>
<td>OR</td>
</tr>
<tr>
<td>Confirm Deadline</td>
<td>Party B:</td>
</tr>
<tr>
<td>2 Business Days after receipt (default)</td>
<td>Transactional Cross Default</td>
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<td>OR</td>
<td>Specified Transactions:</td>
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<td>Section 2.8</td>
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<td>Confirming Party</td>
<td>Early Termination Damages Apply (default)</td>
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<td>Seller (default)</td>
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<td>OR</td>
<td>Early Termination Damages Do Not Apply</td>
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<tr>
<td>Buyer</td>
<td>Section 10.3.2</td>
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<td>Section 3.2</td>
<td>Other Agreement Setoffs Apply (default)</td>
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<td>Performance Obligation</td>
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<td>Cover Standard (default)</td>
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<td>Spot Price Standard</td>
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<td>Section 6</td>
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<td>Taxes</td>
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<tr>
<td>Seller Pays Before and At Delivery Point</td>
<td>Confidentiality does not apply</td>
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<td>Section 7.2</td>
<td>Section 15.10</td>
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<td>Payment Date</td>
<td>Confidentiality</td>
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<td>25th Day of Month following Month of delivery (default)</td>
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<td>OR</td>
<td>Confidentiality does not apply</td>
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<td>Day of Month following Month of delivery</td>
<td>Section 7.2</td>
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<td>Netting</td>
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<td>OR</td>
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<tr>
<td>Special Provisions</td>
<td>Number of sheets attached:</td>
</tr>
</tbody>
</table>

Addendum(s):

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

<table>
<thead>
<tr>
<th>City of Beverly Hills</th>
<th>PARTY NAME</th>
<th>Clean Energy Renewable Fuels, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: Shana Epstein</td>
<td>SIGNATURE</td>
<td>By: Tyler Henn</td>
</tr>
<tr>
<td>Director of Public Works</td>
<td>PRINTED NAME</td>
<td>TITLE</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Vice President</td>
</tr>
</tbody>
</table>

Copyright © 2006 North American Energy Standards Board, Inc. All Rights Reserved
SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

The parties have selected either the “Oral Transaction Procedure” or the “Written Transaction Procedure” as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a “writing” and to have been “signed”. Notwithstanding the foregoing sentence, the parties agrees that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the offer and acceptance constituting the agreement of the parties Confirming Party adopts its confirming letterhead or the like as its signature on any Transaction transaction shall be considered a writing and to have been signed. Notwithstanding the foregoing sentence, the parties agree that any Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), such provisions shall not be deemed to invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a receiving party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. “Additional Event of Default” shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.
2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.

2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.

2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.

2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.

2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.

2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.

2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.

2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.

2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.

2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.

2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.

2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.

2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.

2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties specifically relating to the communication of Transaction Confirmations under this Contract.

2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.

2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure Interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.

2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.

2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.

2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.

2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.

2.31. "Spot Price " as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.

2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.

2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.

2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the “Cover Standard” or the “Spot Price Standard” as indicated on the Base Contract.

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<th>Cover Standard</th>
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<td>3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such...</td>
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replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Spot Price Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of the nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer’s receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller’s delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBlu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

SECTION 6. TAXES

The parties have selected either “Buyer Pays At and After Delivery Point” or “Seller Pays Before and At Delivery Point” as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority (“Taxes”) on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party’s responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority (“Taxes”) on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party’s
SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month’s billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it conceives to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. If the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under “Money Rates” by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys’ fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any; and all applicable record keeping requirements.
SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine’s confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. “Adequate Assurance of Performance” shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the “Early Termination Date”) for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a “Terminated Transaction”. On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either “Early Termination Damages Apply” or “Early Termination Damages Do Not Apply” as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated
Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, “Contract Value” means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and “Market Value” means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to “evergreen provisions”) shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

**Early Termination Damages Do Not Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either “Other Agreement Setoffs Apply” or “Other Agreement Setoffs Do Not Apply” as indicated on the Base Contract.

**Other Agreement Setoffs Apply:**

**Bilateral Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the “Net Settlement Amount”). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

**Triangular Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the “Net Settlement Amount”). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

**Other Agreement Setoffs Do Not Apply:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the “Net Settlement Amount”). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained.

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Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party’s remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party’s obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term “Force Majeure” as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller’s ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer’s ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer’s market(s) or Buyer’s inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller’s gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 12. TERM

This Contract may be terminated on 30 Day’s written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.
SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY’S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party’s two quotes shall determine the replacement price for the Floating Price. “Floating Price” means the price or a factor of the price agreed to in the transaction as being based upon a specified index. “Market Disruption Event” means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuation or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract, the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.
15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party’s assets or any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency’s reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party’s legal obligations) with the other party’s efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB’S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated ______________. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.

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<th>SELLER:</th>
<th>BUYER:</th>
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<td>Attn:</td>
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<td>Phone:</td>
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<td>Fax:</td>
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<td>Base Contract No.</td>
<td>Base Contract No.</td>
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<td>Transporter:</td>
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<td>Transporter Contract Number:</td>
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Contract Price: $_____/MMBtu or __________

Delivery Period: Begin: __________, __________ End: __________, __________

Performance Obligation and Contract Quantity: (Select One)

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<tr>
<th>Firm (Fixed Quantity):</th>
<th>Firm (Variable Quantity):</th>
<th>Interruptible:</th>
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<td>_____ MMBtus/day</td>
<td>_____ MMBtus/day Minimum</td>
<td>Up to _____ MMBtus/day</td>
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<td>EFP</td>
<td>_____ MMBtus/day Maximum</td>
<td>subject to Section 4.2. at election of</td>
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<td>Buyer or Seller</td>
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Delivery Point(s): __________________
(If a pooling point is used, list a specific geographic and pipeline location):

Special Conditions:

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<th>Seller:</th>
<th>Buyer:</th>
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<td>By:</td>
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