

## EXHIBIT B

### LANDFILL GAS ENERGY AGREEMENT

THIS LANDFILL GAS ENERGY AGREEMENT (“**Agreement**” or “**Energy Agreement**”) is made as of this [ ] day of [ ], 2017 (“**Effective Date**”), by and between the County of Shasta, a political subdivision of the State of California (“**County**”) and [ ], (“**Company**”). County and Company may be referred to herein individually as “**Party**” and collectively as “**Parties**.”

### RECITALS

A. County owns the West Central Landfill (the “**Landfill**” or the “**Facility**”) located in Shasta County, California, which is more particularly described in Exhibit B to the Site Lease Agreement (defined below); and

B. Pursuant to an agreement for the operation of the West Central Landfill (the “**Operating Agreement**”), the City of Redding operates the Landfill; and

C. County desires to provide to Company, and Company desires to obtain from the County, the methane and other constituent gases generated by anaerobic decomposition of matter within the Landfill (the “**Landfill Gas**” or “**LFG**”); and

D. The Landfill is equipped with a landfill gas collection and control system (“**GCCS**”) which as of the Effective Date of this Agreement consists of 43 gas extraction wells (six in Phase 1 and 37 in Phase 2), two 750 standard cubic feet per minute (“**scfm**”) centrifugal blowers, a condensate collection and injection system, and a 45 million British Thermal Units (“**MMBtu**”) per hour enclosed flare. The County will undertake, at its sole cost and expense, all expansions and modifications to the GCCS during the Term of this Agreement as may be required by Applicable Laws (defined in Exhibit A). Company may modify and expand the GCCS throughout the Term of this Agreement in order for Company to maximize the production of energy due to increased gas quantities or improved gas to energy conversion technology.

E. Company intends to construct a landfill gas to energy conversion plant (the “**Plant**”) on a site at the Facility (the “**Premises**”). The County will lease the Premises to Company under the terms of the Site Lease Agreement (“**Site Lease Agreement**”) to be entered into by the Parties concurrent with the execution of this Agreement in the form attached hereto as Exhibit C-1.

F. Company will undertake responsibility for the operation, maintenance and monitoring of the GCCS under the terms of that certain Agreement for Gas Collection and Control System Operation and Maintenance Services to be entered into by the Parties concurrent with the execution of this Agreement (“**GCCS O&M Agreement**”) in the form attached hereto as Exhibit C-2.

G. Company desires to design, construct and use the Plant to convert the energy stored in the Landfill Gas to Electrical Energy and will sell the Electrical Energy and other commodities or byproducts of that process consistent with this Agreement; and

## **EXHIBIT B**

H. County has reviewed the General Scope of Work as shown in Exhibit B and the approvals contemplated by the Site Lease and GCCS O&M Agreements;

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, County and Company, intending to be legally bound, agree as follows:

### **AGREEMENT**

#### **ARTICLE 1**

##### **DEFINED TERMS**

**1.01 Defined Terms.** As used in this Agreement, (i) neutral pronouns and any derivations of them shall be deemed to include the feminine and masculine and all terms used in the singular shall be deemed to include the plural and vice versa, as the context may require; (ii) the word “**including**” is not intended to be exclusive and means “including without limitation”; (iii) the word “**days**” means “calendar days,” unless otherwise stated; (iv) “**Section**” refers to sections and subsections in this Agreement; (v) descriptive headings are inserted for convenience of reference only and do not constitute a part of and shall not be used in interpreting this Agreement; (vi) all capitalized terms used but not defined in the body of this Agreement shall have the meanings set forth in Exhibit A and the Site Lease and GCCS O&M Agreements; and (vii) each of the Exhibits to this Agreement are incorporated in this Agreement by reference.

#### **ARTICLE 2**

##### **CONDITIONS PRECEDENT**

Prior to commencement by Company of construction and installation activities at the Facility, the following conditions shall have been satisfied:

**2.01** Company shall have entered into a power purchase agreement for the purchase of power from the Plant (“**Power Purchase Agreement**” or “**PPA**”) for period of no less than ten (10) years on terms acceptable to Company, which PPA must provide for energy pricing payable to the Company which is materially consistent with the projected royalty compensation of County as set forth in Exhibit G;

**2.02** Company shall have entered into an interconnection agreement with the local electric utility on terms acceptable to Company allowing for the delivery of power to the purchaser set forth in the PPA (“**Interconnection Agreement**”). All facilities required to carry out the Interconnection Agreement will be the responsibility of Company;

**2.03** Company shall have sufficient capital for the construction of the Project;

**2.04** Company shall have conducted due diligence on the quantity and quality of LFG generated by the GCCS, and be satisfied with the results thereof.

**2.05** Company or its prime contractor shall have obtained all required insurance and

## EXHIBIT B

bonds, if any, for construction and installation of the Plant, subject to the terms of this Agreement;

**2.06** Company shall have obtained all permits, licenses and approvals required by Applicable Law for the performance of the installation work and the operation and maintenance of the Project, including, but not limited to permits related to land use, grading, building and air emissions;

**2.07** Company shall have reviewed and approved the condition of title for the Premises to ensure that nothing on the title of the Premises would prohibit or interfere with the construction and operation of the Plant, or Company' use of the Premises for the Permitted Uses. County, at its sole cost and expense, will obtain and deliver to Company, a preliminary title report and plot of all easements for the Premises, the GCCS and any other facilities or improvements to be used or provided by Company in connection with this Agreement;

**2.08** County's approval of the Plant, and any obligations of County associated with the Plant under this Agreement, are conditioned upon County's future compliance with the California Environmental Quality Act ("CEQA") as set forth in Section 3.01(iv), including, but not limited to, a determination that the environmental impacts of the Plant have been adequately considered and mitigated in compliance with CEQA and any and all applicable environmental laws. County's approval of this Agreement does not limit the ability of County to consider alternatives to the Plant pursuant to CEQA or to impose appropriate measure to mitigate any adverse environmental impacts. Any alternatives or mitigation measures that are adopted by the County will be subject to the approval of Company and the execution of a written modification to this Agreement setting forth the terms and conditions of such alternatives or mitigation measures to the mutual satisfaction of the Parties. If Company and the County cannot agree on such terms within sixty (60) days of the adopted of such measures by the County, then either Party will have the right to terminate this Agreement. Prior to the commencement of construction, nothing set forth herein shall be interpreted to require the County or Company to undertake environmental mitigation or remediation or to incur any expense in connection with any alternatives or mitigation measures without its prior approval.

**2.09** Successful completion of the Conditions in Sections 2.01-2.08 shall be conditions precedent to the Parties' obligations under this Agreement. If the activities contemplated in Sections 2.01-2.08 are not completed within eighteen (18) months of the Effective Date ("**Construction Commencement Date**") and are not waived in writing by County and Company, then either Party shall have the option to terminate the Agreement without triggering the default provisions of this Agreement and neither Party shall have any further liability under this Agreement. The Construction Commencement Date may be extended by either Party as reasonably necessary to account for one or more of the following delays: (i) the occurrence of a Force Majeure Event; (ii) a delay in the issuance of any necessary permit or approval for the Project by a regulatory agency or utility, provided that Company has been actively pursuing such permits and approvals in good faith; or (iii) a legal challenge to the project by a third party or governmental authority that Company and/or County are defending in good faith. The Party claiming the extension shall deliver to the other Party a written notice describing the cause of the delay, the action plan to address the delay and the proposed extension period to resolve the delay ("**Notice of Extension**"). Unless the other Party objects to the Notice of Extension within thirty

## **EXHIBIT B**

(30) days of the date thereof, the Construction Commencement Date shall be extended as proposed in the Notice of Extension. If a Party gives written notice of an objection to the Notice of Extension, then the Parties shall meet and confer within ten (10) Business Days to discuss the delay and why the proposing Party believes the extension is “reasonably necessary” as set forth above. If the Parties cannot resolve the issue during such meeting, then either Party may submit the proposed extension to the dispute resolution process set forth in Section 15.01. Alternatively, in the event that the conditions precedent are not satisfied by the Construction Commencement Date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operations Date and Term of this Agreement.

## **ARTICLE 3**

### **PERMITTING, DESIGN AND CONSTRUCTION**

#### **3.01 Permitting.**

(a) Company shall be solely responsible for ensuring that the Project is constructed in compliance with all applicable laws, regulations and permits, and in accordance with the standards set by any program providing incentives for the Plant, including, but not limited to, all improvements, conditions, and mitigation measures required for compliance with CEQA.

(b) Company shall, at Company’ sole cost and expense, obtain from governmental authorities having jurisdiction over the Project (“**Authorities**”), all necessary permits and approvals for the installation and operation of the Plant including, but not limited to, a Title V permit which is separate from County’s Title V permit from the Shasta County Air Quality Management District (“**ShCAQMD**”) to construct and permit to operate the Plant, land use, grading and building permits. County shall cooperate with Company in obtaining and maintaining any and all such permits, licenses and authorizations from any non-County Authorities, including but not limited to, (A) signing any applications or requests which are required to be signed by the owner of the Premises in order to obtain required approvals, (B) assisting Company in any proceedings, hearings or other procedures necessitated by laws, environmental regulations, governmental permits, grant applications, authorizations and similar type requirements, and (C) assisting Company in briefing lenders, governmental officials, or any other interested party, with respect to the status of the Project. County further agrees to reasonably assist in processing any necessary permits and approvals for the Plant from the County, including but not limited to any necessary land use, grading and building permits. Company shall complete all items required by the permits for the Plant and provide copies to County and shall maintain all documents as required by the permits. Company shall reimburse County for all costs associated with administration of any permits required for this Project. In the event that a department of County is an Authority with respect to any permit or approval required for the Plant, the term County for the purposes of this Section 3.01(ii) shall be limited to the Department of Public Works and such other department or departments of County will carry out the permit or approval process on an independent basis. If any such department or departments imposes any requirement or condition on the issuance of a permit or approval required for the Plant that would materially change the terms of this Agreement, then Company shall have the right to terminate this Agreement upon thirty (30) days written notice to County.

## EXHIBIT B

(c) Company shall be responsible for all costs, expenses and improvements to the extent required to obtain or comply with any permits, government approvals or other requirement under state or federal law made necessary as a result of the Plant's installation, operation and maintenance.

(d) County is a "public entity" and/or a "public agency" as defined under applicable California law. Therefore, County must satisfy the requirements of certain California statutes relating to the actions of public entities, including, without limitation, CEQA. County shall be the lead agency for the purposes of any environmental review required under CEQA, filing any and all required documents, and obtaining the relevant environmental approvals for the Project under CEQA. Company, as part of the land use permitting process, shall provide the County's Department of Resource Management with all information regarding the Project that is necessary to facilitate timely completion of any required CEQA analysis. Company shall be responsible for all costs and expenses related to any required CEQA analysis and review, required studies and reports and required environmental compliance measures. Prior to the Construction Commencement Date, either Company or County may terminate this Agreement upon thirty (30) days written notice to the other party if (A) the results of the permitting process, environmental review process, environmental compliance measures, or unforeseen site conditions render the Project environmentally or economically disadvantageous, (B) the time required to implement any permit conditions, environmental compliance measures, mitigation, or remediation exceed the reasonable expectations of County or Company; or (C) there is an actual or threatened litigation in connection with the CEQA process. In the event of actual or threatened litigation in connection with the CEQA process or any other permit or approval issued by the County in connection with the Project prior to the commencement of construction, the County and Company will promptly meet and confer to discuss the defense of such litigation. Company will have ten (10) days (or such longer period as the County may agree if the plaintiff agrees to extend the period for filing an answer) to make a determination whether it will defend the litigation and proceed with the Project. If Company desires to proceed, then it will be responsible for defending and indemnifying the County pursuant to sub-section (e) below. In the event that Company gives timely notice that it declines to defend the litigation and move forward with the Project, then either the County or Company will have the right to terminate this Agreement and the County will have the right to withdraw the permit or approval that has given rise to the litigation. Nothing set forth herein shall be interpreted to require County or Company to undertake environmental mitigation or remediation at the Premises or in connection with the Project if mandated by law, regulation or as a condition of regulatory approval prior to the construction of the Project.

(e) Unless Company has exercised its right of termination as set forth in Section 3.01(d), then Company shall defend, indemnify, and hold harmless the County from any claim, action or proceeding brought to attack, set aside, void, or annul any approval by the County. The indemnification obligation shall include any damages awarded against County, costs of suit, attorneys' fees (including costs of County retained attorneys and its Office of the County Counsel) and other costs and expenses incurred in connection with any such claim, action, or proceeding.

**3.02 Scope of Work.** Company or its contractors shall design, assemble, install and

## EXHIBIT B

construct the Plant (the “**Project**”) and execute, perform and provide the material, parts, equipment and other services described in the General Scope of Work attached to this Agreement as Exhibit B. Prior to construction of the Plant and any improvements to the GCCS, Company shall seek and obtain approval from County, which approval may not be unreasonably withheld, of the proposed plans for the Plant and GCCS. County shall be provided no less than thirty (30) calendar days to review and provide comments to the proposed plans. Company shall give reasonable consideration to County’s comments. Following receipt and consideration of County’s comments, Company shall provide County with copies of the final plans for construction of the Project (“**Final Project Plans**”). The General Scope of Work is a conceptual description of the work involved in the construction and installation of the Project. All of Company’ obligations for the construction and installation of the Plant are referred to as the “**Project Development Work**.” The review and approval of plans by County pursuant to this Section 3.02 are for the purposes of this Agreement and will not bind or abrogate the requirements of any other department of County with respect to any review or discretionary approval which is required in connection with a permit or approval pursuant to Section 3.01(ii). Notwithstanding the foregoing, The County agrees that during the period in which Company is working to obtain the permits, certificates and entitlements necessary to operate the Project, the County and its employees and agents will analyze and process all applications for said permits, certificates and entitlements in good faith, as expeditious as is reasonably practicable, and as is required by law. If at any time prior to the commencement of construction, Company disagrees with the addition of any condition or other requirement for the approval of the Final Project Plans, then Company will have the right to terminate this Agreement.

**3.03 Critical Milestones.** (a) The Parties acknowledge that the development of the Project will involve a number of critical milestones, including, but not limited to, the Construction Commencement Date and those permits, conditions, contingencies, commitments, analyses, contracts, or other factors which must be achieved for the Project to meet the business and financial objectives of Company and the County (“**Critical Milestones**”). Many of these Critical Milestones must be achieved in sequence. Neither the County nor the Company intends to continue to pursue the development of the Project indefinitely, nor to hold or reserve the Facility for future development if these Critical Milestones cannot be met within a commercially reasonable period of time. In this regard, a Project Schedule illustrating the Critical Milestones and the estimated time periods contemplated for the Project are set forth in Exhibit B-1. The Project Schedule shows the activities of County, Company, governmental agencies, and third parties necessary to meet the completion requirements for the Project and the Critical Milestones established in the Project Schedule. The Project Schedule shall be updated periodically with the mutual written agreement of the Parties with the level of detail reflecting the information then available. If an update indicates that a previously approved schedule will not be met, Company shall recommend corrective action to the County in writing.

(b) In addition to the remedy set forth above in Section 2.09, in the event that any Critical Milestone is not met or expected to be met by the date or within the time period established in the Project Schedule, the Party responsible for its completion or satisfaction will inform the other Party as promptly as possible and the Parties will make a diligent joint effort to determine when (if ever) the Critical Milestone will be met and to complete the activities necessary to achieve the Critical Milestone as promptly as possible. If, notwithstanding these joint efforts, Company or County reasonably determines that the failure to meet a Critical

## EXHIBIT B

Milestone will adversely affect the successful and timely completion of the Project, including the achievement of any deadlines necessary to meet the requirements of any grants, tax credits, Product sale contracts, governmental permits, financing terms, or other similar matters, then the Company or County may terminate this Agreement by a written notice to the other Party within thirty (30) days after the Critical Milestone without any liability to the other Party for costs or liabilities incurred prior to the date of such termination. In the event of such termination, Company shall remove any and all improvements made by Company to the Premises and shall remediate the Premises as set forth in Section 7.08.

(c) Company shall provide the County with status reports as reasonably requested by the County, on Company's progress with respect to the Project Schedule.

**3.04 Performance and Construction Warranty.** Company warrants that the Plant shall be designed and constructed to provide the Rated Production Capacity during the Term. During the commissioning process and prior to the Commercial Operations Date, and subject to the availability of LFG which meets the Minimum Landfill Gas Standard, Company shall demonstrate that the Plant will provide the Rated Production Capacity for a period of 120 continuous hours in accordance with customary industry practice for landfill gas to energy projects of a size and type similar to the Plant. Company shall bear all costs and expense relating to its performance and satisfaction of such demonstration. During the Term, Company shall operate the Plant at the Rated Production Capacity, subject to (i) reductions in performance that are anticipated as a result of the normal product life cycle and ordinary wear and tear; (ii) the use of LFG which does not meet the Minimum Landfill Gas Standard due to changes in County's operation of the Facility, but not including any failure of Company to properly manage the GCCS in accordance with the GCCS O&M Agreement; (iii) property damage caused by the negligent or willful act of County or any third party which is granted access to the Plant by County; (iv) any changes in federal, state or local law or Regulation occurring after the Commercial Operation Date, (v) Forced Outages and Unforced Outages not due to an act or omission of Company, and (vi) events of Force Majeure.

Company shall cause its prime contractor to build and construct the Plant and all ancillary facilities in compliance with (i) the requirements set forth in Exhibits B and B-1; and (ii) the plans approved by County pursuant to Section 3.02. The warranty provided by the prime contractor shall survive for a period of twelve (12) months following the Commercial Operation Date.

**3.05 Alterations.** Company may from time to time make any alterations and additions to the Plant that Company may in its reasonable discretion deem necessary or desirable for the Company's operations, including but not limited to, GCCS improvements solely to increase the production and output of Company's Plant. All such alterations and additions are to be made in compliance with all Applicable Laws and subject to the mutual written agreement of the Parties executed prior to any alterations or additions. County shall give reasonable consideration to improvements to the GCCS that Company requests to maximize the amount of Landfill Gas available for the Plant provided that such proposed improvements comply with all Applicable Laws. All costs of any additional wells, pipes or other items installed or constructed by Company to increase the quantity or quality of Landfill Gas collected from the Premises and constituting a portion of the GCCS shall be the responsibility of the Company and any and all

## EXHIBIT B

such wells, pipes and other items shall, without further action on the part of County or Company, become the property of County.

**3.06 Construction Security.** Before commencing the construction or installation, Company shall provide to County evidence of a customary performance bond in favor of Company to secure completion of the construction of the Plant by Company's construction contractor. Such bond will be in a form and issued by a surety that is reasonably acceptable to County.

**3.07 Stormwater.** Company shall comply with all applicable stormwater pollution prevention and control requirements during construction and operation of the Plant, including but not limited to, the most current edition of the Landfill's Storm Water Pollution Prevention Plan, and the California General Industrial and Construction Storm Water Permits. Prior to commencing construction and operation of the Plant, the Company shall submit to the County for review and approval a storm water pollution prevention plan for the Plant and its operation consistent with such requirements.

**3.08 Staging Area.** Company and County shall jointly agree to a staging area for all materials and equipment used by Company for construction or installation.

## ARTICLE 4

### **PREMISES; PLANT OPERATIONS**

**4.01 Site Lease Agreement and Development of Premises.** Concurrent with the execution of this Agreement, County and Company have executed the Site Lease Agreement, a copy of which is attached to this Agreement as Exhibit C-1, pursuant to which County shall lease to Company, and Company shall lease from County, the Premises. Company shall, at its sole cost and expense, design, build, own and operate the Plant on the Premises in accordance with the terms of the Site Lease Agreement, including conducting all Project Development Work in accordance with this Agreement and all Applicable Laws. Company shall have access to the Premises as provided in the Site Lease Agreement. Company shall retain control of and discretion over any improvements, upgrades, expansions or renovations of the Plant, subject to approval and/or mutual agreement as applicable with County as set forth in Section 3.05.

**4.02 Plant Operations and Maintenance.** (a) On and after the Commercial Operations Date and throughout the Term, Company shall cause the Plant and the interconnection facilities to be operated and maintained at Company's sole cost, including the cost of capital repairs and replacements, in accordance with Good Industry and Engineering Practices and in compliance with Applicable Laws. Operation and maintenance of the Company's responsible system(s) shall be in accordance with all applicable permit and regulatory requirements, the manufacturer's recommended operational requirements and maintenance schedule and good operations and maintenance practices.

(b) Company shall have Supervisory Control and Data Acquisition ("SCADA") systems in place to monitor the Plant in accordance with Applicable Laws and permits and shall report results of monitoring as required by Applicable Laws to County



## EXHIBIT B

within five (5) days of monitoring completion or earlier if required by any Applicable Law. Should an exceedance of LFG control-related permits, laws, and regulations be detected by Company or its contractors, Company shall notify County within four (4) hours of the exceedance being detected. Company is responsible for all reporting requirements under Company' permits and applicable regulations. Company shall be responsible for coordinating and conducting/subcontracting periodic performance (source) testing of Company' responsible control device(s), including but not limited to, the existing GCCS flare, in accordance with the operating permit(s).

(c) The County shall operate and maintain the GCCS in such a way that the landfill and the wellfield shall comply with all permits and Applicable Laws related to surface emissions, subsurface migration, and wellhead operating requirements, as applicable. Operation and maintenance of the GCCS shall include responsibility for operation and maintenance of the LFG condensate management systems to ensure proper handling of condensate and operation of the GCCS. Company may relocate existing LFG piping at Company' cost, subject to the other requirements of this Agreement. Such modifications shall be to coordinate with the landfill operation and shall be subject to approval of County. County reserves the right to temporarily remove gas extraction wells from service and relocate installed GCCS piping and make other changes to the GCCS as necessary to avoid conflict with or inhibition of landfill operations. The determination as to whether the GCCS conflicts with or inhibit landfill operations shall be at the County's sole discretion. Where such changes are deemed necessary by the County, County may intermittently request Company to assist in making such changes at County's cost. Company may modify or otherwise expand the GCCS, following written notice to and approval from County, in order to maximize the generation of energy from the Landfill due to increased amounts of gas from the Landfill or improved technologies which provide greater efficiency in gas extraction. Any improvements to the GCCS made by Company shall be operated and maintained by Company in accordance with all permits and Applicable Laws related to surface emissions, subsurface migration, and wellhead operating requirements, as applicable.

(d) Company shall modify future LFG well adjustment criteria at the written request of, and at the preapproved cost and expense of, County if such adjustments do not impede or conflict with the objective of energy production or if such adjustments are needed to comply with Applicable Laws.

### **4.03 Scheduled Maintenance; Maintenance Outages.**

(a) Within approximately seventy five (75) days after the Commercial Operations Date, Company shall provide County with a schedule, which Company may amend from time to time in consultation with County, indicating when preventative maintenance ("**Scheduled Maintenance**") will be performed on the Plant. Company will provide County with reasonable advance notice of any changes in the schedule of Scheduled Maintenance to enable County to advise Company of any requested changes in the schedule to avoid conflicts with Landfill operations. In addition to Scheduled Maintenance, Company may perform repairs or maintenance on the Plant which removes the Plant from availability at such times as Company, in its sole discretion, deems prudent to repair or replace worn or damaged portions of the Plant. The unavailability of the Plant at such time shall be referred to

## EXHIBIT B

as a “**Maintenance Outage**” and, for the sake of clarity, a Maintenance Outage will not include Scheduled Maintenance. Company shall use commercially reasonable efforts to promptly notify County of the event of a Maintenance Outage or any other Plant Shutdown. In accordance with the GCCS O&M Agreement, during any such event of a Maintenance Outage or any other Plant Shutdown, Company shall have the sole and exclusive responsibility to ensure that the Landfill Gas which would have been consumed by the Plant shall be managed in accordance with the Facility’s and/or Company’ Title V Permit or otherwise in accordance with all Applicable Laws

(b) In the event of a Maintenance Outage or any other Forced Outage, Company shall be solely responsible, at its own cost, to restore the Plant to operation in a manner that is not unreasonably disruptive to the operations of the Landfill. County will reasonably cooperate with Company as necessary to facilitate such efforts. Company shall use commercially reasonable efforts to coordinate preventative maintenance or other anticipated downtime of the GCCS pursuant to the GCCS O&M Agreement with Scheduled Maintenance or other Maintenance Outages.

(c) Nothing in this Agreement shall be construed as an assumption by County of any obligations or liabilities imposed by any Applicable Law upon the Company as the operator of the Plant and associated Company-undertaken improvements to the GCCS, including but not limited to, obligations and liabilities under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. s. 9601, et seq.

(d) Nothing in this Agreement shall be construed as an assumption by Company of any obligations or liabilities imposed by any Applicable Law or the Operating Agreement upon the County as the operator of the Landfill, including but not limited to, obligations and liabilities under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. s. 9601, et seq. County shall operate the Landfill in compliance with all such Applicable Laws. The Parties acknowledge that Company shall have no right under any agreement, including but not limited to this Agreement, or the Site Lease Agreement, to operate or otherwise control any aspect of the Landfill or its operations.

**4.04 Reports.** Company shall submit to County monthly LFG field adjustment reports that identify:

1. Methane, carbon dioxide, and oxygen content, carbon monoxide content, and flow rate delivered to the Plant.
2. Other information reasonably requested by County to verify that the conditions of this Agreement and the Site Lease Agreement are being fulfilled.

Further, Company shall complete, provide copies to, keep and make available to County records required by Applicable Laws for the longer of five (5) years after this Agreement terminates or the duration required by Applicable Law.

**4.05 Noise.** Company shall provide noise containment as needed to ensure that noise from the equipment installed by Company meets the following noise standards as prescribed by

## EXHIBIT B

the Shasta County General Plan:

Hourly Equivalent Sound Level ( $L_{eq}$ ): 50 dB (measured at the Landfill property boundary)

**4.06 Odor.** No odor nuisances shall emanate from the Plant in excess of applicable air quality standards.

**4.07 Utilization/Destruction of All LFG Collected by GCCS.**

(a) In order to maintain compliance with applicable permits, laws, and regulations, Company shall ensure that all LFG collected by the GCCS is either utilized as fuel to generate Electrical Energy at the Plant or is destroyed. County shall at all times maintain flare capacity sufficient to destroy 100% of all LFG collected by the GCCS, including any expansion thereof or of the Landfill. County currently operates a flare to destroy all LFG, which flare will be made available for use during the Term by Company in connection with the GCCS and the Project. Company acknowledges that the existing flare requires a minimum flow of 250 scfm of LFG (“**Minimum Flow**”) to properly operate and that the Surplus Landfill Gas Quantity, as defined in Section 5.03, may not meet the Minimum Flow requirements. The initial Surplus Landfill Gas Quantity and method of destruction shall be determined as part of the Project Development Work. Where modification of existing or addition of new equipment will be needed for destruction of the initial Surplus Landfill Gas Quantity, such modifications and equipment shall be in place prior to commencement of the Plant commissioning process. If during the Term the Surplus Landfill Gas Quantity provides no less than One Hundred Twenty Percent (120%) of the Minimum Flow, then Company may use the existing flare for destruction of the Surplus Landfill Gas Quantity. If during the Term, the Surplus Landfill Gas Quantity drops below One Hundred Twenty Percent (120%) of the Minimum Flow and a means for destruction of such quantities of Landfill Gas has not yet been addressed, Company shall have 180 days from date of the drop below One Hundred Twenty Percent (120%) of the Minimum Flow to modify or install additional equipment to destroy such quantities of Landfill gas. During the 180 day period during which no means is available to destroy the quantity of Landfill Gas below One Hundred Twenty Percent (120%) of the Minimum Flow, the County and Company shall jointly agree upon an operating strategy which provides for the Landfill’s continual compliance with applicable permits, laws, and regulations. To the extent permitted by ShCAQMD, Company will further have the option to (i) modify existing flare controls, subject to County approval, in order to keep either flare operational, (ii) supplement the excess LFG with an alternative fuel (e.g. propane) in order to keep either flare operational, or (iii) add additional generating capacity to consume such Surplus Landfill Gas.

(b) County shall ensure proper equipment and controls are installed to ensure one hundred percent (100%) backup capacity to the Plant which shall be equal to or greater than the predicted LFG generation rates for the Landfill during the Term of this Agreement. Automated controls shall be installed by Company which enable all or any portion of LFG not utilized by the Plant to be diverted to the flare, backup control device, or both. Operations shall be as such to ensure continuous recovery of LFG generated by the Landfill to ensure compliance with applicable permits, laws, and regulations during the Term of this Agreement.

## EXHIBIT B

**4.08 Safety.** Beginning on the Effective Date and continuing throughout the Term, Company shall be responsible for the safety and security of the Plant and the Premises. Company shall take reasonable steps to prevent unauthorized access to the Premises and to limit authorized access to the Premises, the Plant, and the Company Property to those employees, subcontractors and third parties authorized by Company. Should County notify Company that an employee, subcontractor, or third party invitee is violating any of the terms of this agreement or is acting in a manner detrimental to the County's operation of the Facility, Company shall take reasonable action to correct the conduct or behavior. If the conduct or behavior is not corrected, Company will no longer utilize the employee, subcontractor or third party invitee upon written notice from County. Company shall establish its own safety program implementing safety measures, policies, and standards that, at a minimum, conform to County's safety requirements and Applicable Laws. Company, its employees, and subcontractors shall comply with the County's safety requirements, all Company-established safety programs and all Applicable Laws, including the requirements of the Occupational Safety and Health Act of 1970, Environmental Law and Environmental Permits, and in the event of a conflict among any of these requirements, Company and its employees and subcontractors shall comply with the most stringent requirement. Company shall also comply with the reasonable recommendations of insurance companies having an interest in the Project or the Facility or County's Risk Management and shall temporarily suspend any part of the Project Development Work which County reasonably determines to be unsafe, until corrective actions are taken.

**4.09 Authorized County Support Actions.** County acknowledges and agrees that County's employees may be requested, on a case-by-case basis, to perform certain monitoring, diagnostic and preventative maintenance operations as set forth in Exhibit D (collectively, the "**Authorized County Support Actions**"). County shall be under no obligation to undertake Authorized County Support Actions. County shall not be liable for any occurrence arising out of County's decision to not undertake Authorized County Support Actions. County shall conduct Authorized County Support Actions in accordance with the Plant Operations Program and in compliance with Applicable Laws. Other than Authorized County Support Actions, County shall have no right or authority to operate or maintain the Plant and neither County nor its Duly Authorized Representatives shall have the right, or shall authorize or knowingly permit any person, except a Company Duly Authorized Representative (i) to operate the Plant, (ii) to break or replace a Company seal or lock, or (iii) to alter or to interfere with the operation of the Plant or any Company Property installed on or located within the Premises without a written request or advance written permission from Company. County shall be liable for any direct loss or damage occasioned by any of the matters described in clauses (i), (ii) or (iii) above; provided, however, that County shall not be liable for any such loss or damage if the action taken by the County was reasonably required to ensure timely compliance with an Applicable Law or to prevent an imminent threat to public health or safety.

**4.10 Plant Operations Program.** Prior to the Commercial Operations Date, Company shall provide County with a draft of the Plant Operations Program. The Plant Operations Program shall include detailed procedures for the proper execution of (i) all Authorized County Support Actions and (ii) Unforced Outages. County shall reasonably approve or disapprove of the draft Plant Operations Program within thirty (30) days after receipt thereof; provided, however, that the Plant Operations Program shall permit the County to take any appropriate action reasonably necessary to ensure that the Facility is in strict compliance with all applicable

## EXHIBIT B

governmental permits. If County reasonably disapproves of the draft Plant Operations Program, County shall specify its reasons for disapproval in writing. Thereafter, Company shall revise the draft Plant Operations Program to remove County's objections or Company shall inform County of its reasons for disagreeing with County's objections. If County and Company have not reached agreement on the Plant Operations Program within ninety (90) days after the Commercial Operations Date, the Parties may resolve the dispute in accordance with Section 15.01 herein.

**4.11 Duly Authorized Representatives.** Company and County shall each appoint representatives to act on their behalf in all communications with respect to the installation, operation and maintenance of the Plant ("**Duly Authorized Representatives**"). Each Party shall furnish the other Party with a written list of its Duly Authorized Representatives, which list shall include office telephone number(s), mobile telephone number(s), facsimile number(s) and e-mail address(es) for each Duly Authorized Representative. Only such Duly Authorized Representatives are authorized to execute documents on behalf of such Party related to the installation, operation or maintenance of the Plant, and without the signature of such Duly Authorized Representative, no such document shall be binding upon either Party. Either Party may from time to time change or add to the list of Duly Authorized Representatives by giving the other Party written notice of the addition or change.

**4.12 Coordination.** Each of the Parties acknowledges the important commercial purposes that the other Party will conduct at or from the Facility. Each of the Parties agrees to ensure that its employees, agents and subcontractors shall coordinate with the management of the other Party to avoid, to the maximum extent feasible, interfering with the operations of the other Party at or from the Facility. County will give Company reasonable advance notice of any changes in its operations which could have an effect upon Company's operations of the Plant, and will work with Company to avoid interference with Company's operations of the Plant. Company acknowledges and agrees that County's primary responsibility is the operation of the Landfill and, as such, agrees that County is solely responsible for determining the types of waste accepted, the location and manner in which such waste is placed in the Landfill, and operation of the Landfill. Company agrees such waste acceptance, waste placement and Landfill operation by the County is not grounds for claiming interference of Company's Plant operations by the County, though may be cause for termination of this Agreement by Company pursuant to Section 7.04(c).

**4.13 Product Sales.** Company shall retain control and discretion over the times of operation of the Plant and the generation of Electrical Energy, Thermal Energy and other Product(s), if any. Company shall have the sole and exclusive right to market and sell all Electrical Energy, Thermal Energy and other Products, Incentives, and Environmental Attributes, if any, generated by the Plant to a Product Purchaser or Product Purchasers in retail or wholesale transactions. If requested by Company, County shall execute and deliver a Confirmation, substantially in the form of Exhibit E hereto, to any purchaser or potential purchaser from Company of any of the foregoing.

**4.14 Taxes.** Company shall be responsible for all taxes, fees, or other impositions levied or assessed against or with respect to the sale or delivery of Electrical Energy, Thermal Energy or other Product(s) to a Product Purchaser or the ownership, use, or operation of the Plant or other Company Property.

## **EXHIBIT B**

**4.15 Incentives.** Company shall own, and may assign or sell in its sole discretion, all right, title and interest associated with or resulting from the development and installation of the Plant or the production, sale, purchase or use of Product including, without limitation (i) all Incentives; (ii) all Environmental Attributes; and (iii) the Reporting Rights and the exclusive rights to claim that: (A) the Electrical Energy was generated by the Plant; (B) Company is responsible for the delivery of the Electrical Energy to the Electrical Delivery Point; (C) Company is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of the Electrical Energy and the delivery thereof to the Electrical Delivery Point; (D) Company is responsible for and the owner of all Fuel Carbon Credits; and (E) subject to the terms of this Agreement, Company is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.

**4.16 Compliance with Applicable Laws.** (a) Company shall design, install, construct, operate and maintain the Plant and perform its obligations under this Agreement in compliance with all Applicable Laws. In addition to any other indemnification provision of this Agreement, Company shall indemnify and hold County harmless from and defend County against any and all claims of liability, regulatory fines or assessments for any failure by Company arising in part or in whole from Company's, and its agents', contractors', or employees' failure to comply with the duties proscribed by this Section.

(b) County shall, operate and maintain the Facility and perform its obligations under this Agreement in compliance with all Applicable Laws. In addition to any other indemnification provision of this Agreement, County shall indemnify and hold Company harmless from and defend Company against any and all claims of liability, regulatory fines or assessments for any failure by County arising in part or in whole from County's, and its agents', contractors', or employees' failure to comply with the duties proscribed by this Section.

## **ARTICLE 5**

### **GCCS; LANDFILL GAS SUPPLY**

**5.01 GCCS.** (a) Pursuant to the terms and conditions of the GCCS O&M Agreement, Company shall, on behalf of County, operate and maintain the GCCS during the term of this Agreement. Company shall be responsible for any liability, cost or expense arising from any failure by Company to operate, maintain and monitor the GCCS in accordance with the terms of the GCCS O&M Agreement. County shall be responsible for any liability, cost or expense arising from any failure by County to perform its obligations under the GCCS O&M Agreement.

(b) If, during the Term, County elects to replace or repair any portion of the GCCS from which the Plant accepts or is designed to accept delivery of Landfill Gas and the replacement or repair would reasonably be expected to have an impact on the Plant, then County shall, within a reasonable time, replace or repair such portion of the GCCS such that the replaced or repaired equipment is equally capable of delivering Landfill Gas to the Plant.

(c) Company shall be responsible for handling and disposal or destruction of all Condensate Materials generated during operation of the GCCS. For the avoidance of

## EXHIBIT B

doubt, “Condensate Materials” shall be limited to the liquids that condense from the LFG as a result of the compression and delivery of such LFG to the Landfill Gas Delivery Point. Condensate Materials shall specifically exclude leachate and all other liquids present in the Landfill.

**5.02 Landfill Gas Quantity and Quality.** It is the intent of the Parties that the GCCS and all replacements, expansions and additions of it and its operation shall primarily function to collect LFG so that the operation of the Landfill will remain in compliance with Applicable Laws and permits. Secondly, the GCCS and all replacements, expansions and additions of it and its operation shall function to collect LFG so that as much LFG as Company may require for operation of the Plant will be available for delivery to and use by the Company. The assumptions of the Parties with respect to the operation of the Plant are based upon the availability of LFG to meet the minimum quality standards which are attached hereto as Exhibit F (“**Minimum Landfill Gas Standards**”). Company will confirm the availability of LFG that meets such standards pursuant to Section 2.04, provided, however, that County makes no guarantee to Company that the Facility or the GCCS will continue to provide the same levels of quantity and quality of LFG for the duration of the Agreement. Notwithstanding the foregoing, County will reasonably cooperate with Company to maintain the quality and quantity of LFG during term of this Agreement. Consistent with the foregoing, subject to County’s obligations to comply with Applicable Laws, County and Company, where applicable, shall use commercially reasonable efforts to construct, develop, operate and maintain the GCCS pursuant to the terms of the GCCS O&M Agreement so as to achieve these functions.

### **5.03 Landfill Gas Delivery.**

(a) Subject to the terms of this Agreement, County grants the Company the exclusive right to take and use all of the LFG collected by the GCCS. County agrees to deliver, and Company agrees to accept, one hundred percent (100%) of the output of LFG from the GCCS, up to (but not in excess of) the amount required in respect of the Plant’s rated capacity. Subject to the provisions of this Agreement, County and Company shall use their best efforts to deliver to the Landfill Gas Delivery Point sufficient quantities of LFG as may be required for operation of the Plant.

(b) The Parties acknowledge that from time to time, Landfill Gas quantities generated from the Landfill and made available at the Landfill Gas Delivery Point may surpass the quantities desired for operation of the Plant. Company may, but shall have no obligation to, take delivery of any quantity of Landfill Gas which is in excess of the quantities required for operation of the Plant at the level of operation which is desired and expected by Company (such excess Landfill Gas to be referred to as the “**Surplus Landfill Gas Quantity**”).

(c) In the event that Surplus Landfill Gas Quantity becomes available, Company shall notify County of such in writing and County shall have ninety (90) days to verify that Surplus Landfill Gas Quantity is and will be consistently available. Company shall have an additional ninety (90) days to determine, in its sole discretion, whether it wishes to take delivery of the Surplus Landfill Gas Quantity, and Company shall promptly notify County in writing of its determination.

## EXHIBIT B

(d) Company shall have the right to use the Surplus Landfill Gas Quantity for the generation of Electrical Energy, in which case payment for the Surplus Landfill Gas Quantity will be included in the Landfill Gas Charge as set forth in Section 6.01.

(e) If Company desires to use the LFG and/or Surplus Landfill Gas Quantity to produce thermal energy, biomethane fuel or for any other use, then Company may request approval of such alternative use and County will not unreasonably withhold such consent provided that the alternative use does not result in less revenue than the revenue provided by the PPA. The compensation to County for any such alternative future use shall be no less than the Royalty set forth in Section 6.01.

(f) Upon Company's notification of its determination not to take delivery of any of the Surplus Landfill Gas Quantity the County may then utilize the Surplus Landfill Gas Quantity in its discretion, including, but not limited to, sale of the Surplus Landfill Gas Quantity to an independent third party; provided, however, that any such sale shall in no way interfere with the rights of Company under this Agreement and the Site Lease Agreement.

(g) Nothing contained in this Section 5.03 will alter the obligation of Company to properly dispose of the Surplus Landfill Gas Quantity in accordance with the terms of Section 4.08 to the extent such excess LFG is not used by Company or sold by County pursuant to sub-section (e) above.

### **5.04 Metering**

(a) Company shall install and maintain, at its sole cost and in accordance with Good Industry and Engineering Practices, all metering devices required for measuring (i) the quantity of LFG used by the Plant; (ii) the Electrical Energy sold to a Product Purchaser, and (iii) such other information and data as is necessary to perform its obligations under this Agreement or Applicable Law (collectively, the "**Meters**"). Company shall perform all calibrating and adjusting of the Meters at its own cost. Each year, within approximately forty-five (45) days after the anniversary of the Commercial Operations Date, Company's Duly Authorized Representatives shall test the Meters for accuracy at Company's cost and County's Duly Authorized Representatives shall have the right to witness such test.

(b) County may request a special test of the Meters at any time. The expense of such special test shall be borne by County if the Meters are found to be inaccurate by less than two percent (2%). If, upon any test, the metering equipment is found to be inaccurate so that it affects the measurement accuracy by two percent (2%) or more, the expense shall be borne by Company and meter readings shall be corrected for a period extending back to the time such inaccuracy first occurred if that time can be ascertained. If that time is not ascertainable, corrections shall be made for one half of the elapsed time since the previous meter calibration.

### **5.05 County-Caused Outages**

(a) Unforced Outage caused by County. County shall have the right to cause a Plant Shutdown for the purpose of performing maintenance on or improving the Landfill or the GCCS after giving Company at least twenty-four (24) hours advance written or



## EXHIBIT B

oral notice. Such a Shutdown Shall be considered an Unforced Outage.

(b) Forced Outage caused by County. If County, through negligence or willful misconduct, causes a Plant Shutdown, including, but not limited to a Plant Shutdown caused by the interruption in the supply of Landfill Gas to the Plant, or fails to give twenty-four (24) hours advance written or oral notice of an intentional County-initiated Plant Shutdown, such a Plant Shutdown shall be considered a Forced Outage. In the case of a County-caused Forced Outage, County shall pay Company (a) the amount of any actual damages to the Plant and/or any associated diagnostic and/or repair costs incurred by Company resulting from such Forced Outage plus (b) any direct monetary damages or losses incurred by Company as a result of the Plant being inoperable due to any damages to the Plant resulting from such Forced Outage. Company shall use commercially reasonable efforts to perform Scheduled Maintenance during such Forced Outages and, in the event that Company, in its sole but reasonable discretion, determines that Scheduled Maintenance can be performed during such Forced Outage, then County shall have no obligation to compensate Company for those periods when Scheduled Maintenance is performed.

## ARTICLE 6

### PAYMENTS

**6.01 Payment for Landfill Gas.** (a) Commencing on the Commercial Operations Date, for each calendar month during the Term in which Company receives Landfill Gas at the Plant as recorded by the Meters, Company shall pay to County (such payment to be referred to herein as the “**Landfill Gas Charge**”) an amount equal to [\_\_\_\_\_].

(b) Company shall pay the Landfill Gas Charge no later than thirty (30) days after the end of each such calendar month for which it is due.

(c) For each calendar month after Commercial Operations Date, Company shall furnish County with a statement (the “**Landfill Gas Statement**”) itemizing the calculation of the Landfill Gas Charge. Company shall maintain records pertaining to Landfill Gas Statements for three years after the year in which such Landfill Gas Statements are produced.

(d) In addition to the monthly Landfill Gas Statements, Company shall generate and provide to County an annual landfill gas statement within ninety (90) days of the end of each calendar year during the Term containing the same information and in substantially the same format as the monthly Landfill Gas Statement.

**6.02 Audit Right.** (a) If County disputes any Landfill Gas Statement or Company’s calculation of Landfill Gas Charges, County shall promptly provide Company with a written explanation specifying in detail the basis for the dispute. County shall have the right, after reasonable notice and at reasonable times during business hours, to inspect and audit Company’s books and records regarding the calculation of Landfill Gas Charges for up to three (3) years after the date of a Landfill Gas Statement. County agrees to pay the costs of the audit, provided that, if the audit reveals that Company’s determination of the Landfill Gas Charge was under-

## EXHIBIT B

reported by more than five percent (5%), then Company shall pay the cost of such audit.

(b) If such audit reveals that the amount due the County has been under-reported, then within thirty (30) days after the results of such audit are made available to Company, Company shall pay County the amount due. If such audit reveals that the amount due the County has been over-reported, then the amount of the over-payment shall be credited against the next Landfill Gas Charge payable to County or, if no further Landfill Gas Charge is payable, paid to Company within thirty (30) days of completion of the audit.

(c) If Company desires to contest such audit results, Company may do so by submitting the results to dispute resolution in accordance with Section 15.01 below within thirty (30) days after receipt of the results of the audit.

**6.03 Payments.** All payments shall be in lawful money of the United States of America and shall be made in accordance with written wire transfer instructions given by one Party to the other or to such other person or at such other place as a Party may from time to time designate in writing to the other Party. Any payments that are not made by the date due shall accrue interest at the Contract Rate from and including such due date to, but excluding, the date of payment.

**6.04 Taxes.** County shall provide to Company within twenty (20) days exemption certificates and other information necessary reasonably requested to evidence any applicable tax exemption. If County fails to do so within the requisite amount of time, Company shall not be required to recognize any exemption.

**6.05 Future benefits not now defined.** County and Company recognize that future uses for LFG (as discussed in Section 5.03(e)) may be available to Company that cannot be foreseen at this time. County contemplates that a portion of the revenues received by Company from the use or sale of the Facility's LFG shall accrue to County, that portion being equal to the portion of gross revenues from the sale of Products as set forth in Section 6.01 hereunder.

## ARTICLE 7

### **TERM; TERMINATION**

**7.01 Term of Agreement.** (a) The initial term of this Agreement (the "**Initial Term**") shall commence on the Effective Date and shall expire on the last day of the calendar year which includes the twentieth (20<sup>th</sup>) anniversary of the Commercial Operations Date (the "**Expiration Date**"), unless (i) earlier terminated pursuant to the provisions of this Agreement or (ii) extended pursuant to the provisions of this Agreement, in which event a new expiration date shall be established.

(b) At any time prior to the expiration of the Term, the Parties may mutually agree to extend the Term for additional five (5) year periods on terms that are mutually acceptable to the Parties. A Party will give written notice to the other party of its proposal to extend the Term not fewer than one hundred and eighty (180) days prior to the last day of the then-existing term. Any reference in this Agreement to the "**Term**" shall include the Initial Term and any and all such extended terms.

## EXHIBIT B

**7.02 Termination for Event of Default.** Either Party shall have the right to terminate this Agreement by giving written notice of termination to the other Party upon an Event of Default, as set forth in Section 10.01, by the other Party.

**7.03 Termination by County.** In addition to County's right to terminate for a Company Event of Default as provided in Sections 7.02 and 10.02, County may terminate this Agreement upon giving Company ninety (90) days' prior written notice as follows:

(a) County may terminate this Agreement if construction of the Plant has not been commenced on or before one hundred eighty (180) days after County approves the Final Project Plans and Company fails to provide evidence of good faith efforts to commence or complete such construction; provided however that this deadline will be extended one (1) day for each day that Company is delayed in commencing or completing the construction by County or as a result of Force Majeure;

(b) County may terminate this Agreement as set forth in Section 2.09 or Section 3.03(b);

(c) County may terminate this Agreement if Company fails to operate the Plant for a period of ninety (90) consecutive days after the Commercial Operations Date (excluding a failure to operate caused by Force Majeure and excluding a failure to operate caused by an engine overhaul or other major Plant maintenance or renovation not resulting from the negligence of the Company or any party for whose negligence the Company is responsible provided Company exercises good faith effort in carrying out these operations) and Company fails to provide evidence of good faith efforts to return the Plant to normal operation;

(d) County may terminate this Agreement if the PPA is terminated for any reason and Company fails to enter into a new agreement for the sale of Product from the Plant which generates Electrical Revenue within six (6) months of the date of termination; and

(e) County may terminate this Agreement if Company sells, exchanges or otherwise voluntarily or involuntarily transfers or assigns its interests in the Plant and this Agreement and Company does not comply with the provisions of Article 12.

**7.04 Termination by Company.** In addition to Company's right to terminate for a County Event of Default as provided in Sections 7.02 and 10.02, Company may terminate this Agreement upon giving County thirty (30) days' prior written notice as follows:

(a) Company may terminate this Agreement as set forth in Section 2.09;

(b) Company may terminate this Agreement if County sells, exchanges or otherwise voluntarily or involuntarily transfers or assigns its interests in the Facility and this Agreement and County does not comply with the provisions of Section 12.02;

(c) Company may terminate this Agreement at any time if the PPA is terminated for any reason other than a default under the PPA by the Company and Company is unable to negotiate a new agreement for the sale of Product from the Plant on terms

## EXHIBIT B

reasonably acceptable to Company within six (6) months of the date of termination. Company shall not be deemed in default of the PPA pursuant to the immediately preceding sentence if the default under the PPA is (i) a direct result of Company's inability to perform its obligations thereunder due to a breach of this Agreement by County or (ii) if Landfill Gas is not being generated in quantities sufficient to operate the Plant or not being generated at a methane content which meets the Minimum Landfill Gas Standard; provided, however, if Company determines there is insufficient quantities of Landfill Gas or the content of the Landfill Gas fails to meet the Minimum Landfill Gas Standard necessary to deliver Product to Product Purchaser under the PPA, Company shall provide written notice of the same to County and County shall have 120 days to investigate and attempt to increase the production or methane content of Landfill Gas to a level that Company determines to be sufficient to satisfy its obligations under the PPA and Company shall have no right to terminate this Agreement hereunder prior to the expiration of such 120 day period; and

(d) Company may terminate this Agreement in accordance with Section 3.03(b) in the event of a failure to meet a Critical Milestone or in accordance with Section 10.04 of the Site Lease Agreement for reason of condemnation of the Premises.

**7.05 Termination for Force Majeure.** A Party may terminate this Agreement upon giving the other Party written notice of termination if the other Party is unable to perform any obligation under this Agreement for a period of six (6) months or more due to an event of Force Majeure. Such termination shall be effective upon the date specified in such termination notice (provided, however, that such date shall not be earlier than thirty (30) days after the date the other Party receives such termination notice). In addition, either Party may terminate this Agreement for reason of casualty in accordance with Section 7.09.

**7.06 Additional Remedies.** The termination and other rights set forth in this Article 7 are in addition to any other rights or remedies either Party may have against the other for such other Party's breach of this Agreement, in law or in equity.

**7.07 Accrued Rights; Surviving Obligations.** Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing before such expiration or termination and shall be without prejudice to the rights of either Party against the other Party accrued or accruing before such expiration or termination. All of the Parties' rights and obligations under Article 8, Section 10.03, Article 11, Article 15, Sections 16.08 through 16.12, inclusive, and Exhibit A, to the extent definitions are embodied in the preceding listed Articles and Sections, shall survive the expiration or early termination of this Agreement.

**7.08 Removal and Restoration Obligations.** Following the expiration or earlier termination of this Agreement, and at no cost to County, Company shall provide for the removal of the Plant (other than the GCCS) from the Premises. Company's obligation shall include any removal or restoration with respect to any buildings or improvements erected by Company on the Premises. In addition, Company shall remove all of its personal property on the Premises (other than Company implemented improvements to the GCCS) not otherwise used in the operation, maintenance, repair or replacement of the Plant. Company shall repair any damage to the Landfill caused by its removal pursuant to this Section. Notwithstanding the foregoing, if this Agreement is terminated as a result of a default by County, then the costs of removal and

## EXHIBIT B

restoration as provided in this Section shall be for the account of County.

**7.09 Casualty.** If the Facility, Premises or the Plant are substantially destroyed or damaged by fire or other casualty so as to impair the performance of Company' or County's obligations under this Agreement, the Site Lease Agreement, the GCCS O&M Agreement or the operations or maintenance of the Plant, then the affected Party shall have the option, upon written notice to the other Party within sixty (60) days after such casualty, to terminate this Agreement and the Site Lease Agreement. Notwithstanding the foregoing, Company will have the obligation to rebuild the Plant in the event that (i) there are sufficient proceeds from insurance to rebuild the Plant; (ii) there are at least five (5) years remaining on the term of this Agreement, (iii) the PPA will remain in place following reconstruction of the Plant; and (iv) County agrees to extend the term such that there are at least ten (10) years of operations prior to the expiration of this Agreement. In the event of a casualty, unless this Agreement is terminated by either Party as provided in this section, Company or County shall, as soon as reasonably possible, repair, or cause to be repaired, the Plant or the Facility, respectively, in a manner and to at least a condition comparable to that existing prior to its destruction or casualty, and recommission the Plant or Facility or cause the Plant or the Facility to be recommissioned, as applicable, for operation; provided that neither Party shall be required to expend more than the proceeds of any insurance or claim received by a Party with respect to such casualty. In no event shall Company have any obligation to restore the Plant.

## ARTICLE 8

### **INDEMNITY**

**8.01 Company Indemnity.** Company shall defend, indemnify and hold harmless County and County's officers, elected officials, members, agents, volunteers, attorneys, contractors, employees and Duly Authorized Representatives (collectively, the "**County Indemnified Parties**"), from and against any and all Claims arising as a result of (a) personal injury or property damage to the extent caused by Company or its employees', contractors', agents' or representatives' negligence or willful misconduct, (b) the breach by Company of any of the provisions of this Agreement, the Site Lease Agreement or the GCCS O&M Agreement, (c) the violation by Company of Applicable Laws and Permits, including without limitation, any regulatory fines or penalties, (d) the use, operation, repair or maintenance of the Plant and the Premises pursuant to the terms of this Agreement and the Site Lease Agreement, or (e) the failure of Company to use, operate, repair or maintain the GCCS in accordance with the terms to the GCCS O&M Agreement; provided, that, Company shall have no duty to indemnify, defend or hold harmless any County Indemnified Party to the extent any County Indemnified Party caused or contributed to Claims or to the extent County is obligated to indemnify Company under Section 8.02.

**8.02 County Indemnity.** County shall defend, indemnify and hold harmless Company and Company' partners, members, agents, officers, directors, attorneys, contractors, shareholders, employees and Duly Authorized Representatives (collectively, the "**Company Indemnified Parties**"), from and against any and all Claims arising as a result of (a) personal injury or property damage to the extent caused by County or its employees', contractors', agents'

## EXHIBIT B

or representatives' negligence or willful misconduct, (b) the breach by County of any of the provisions of this Agreement, the Site Lease Agreement or the GCCS O&M Agreement, (c) the violation of Applicable Laws and related permits in connection with the operation of the Facility by County, including without limitation, any regulatory fines or penalties; or (d) the County's use, operation, repair or maintenance of the Facility; provided, that, County shall have no duty to indemnify, defend or hold harmless any Company Indemnified Party to the extent any Company Indemnified Party caused or contributed to Claims or to the extent Company is obligated to indemnify County under Section 4.17, the GCCS O&M Agreement or under the Site Lease Agreement. In addition, in the event that County, subject to the terms and conditions of this Agreement, enters into an agreement to sell Landfill Gas to a third party user(s) of Landfill Gas, County shall indemnify, defend and hold harmless Company Indemnified Parties from and against all Claims arising out of any dispute between County and any third party user(s) of the Landfill Gas.

**8.03 Defense of Claims.** An indemnifying party pursuant to Section 8.01 or 8.02 shall have the right to defend an indemnified party by counsel (including insurance counsel) of the indemnifying party's selection reasonably satisfactory to the Indemnified Party, with respect to any Claims within the indemnification obligations of this Agreement. The Parties shall give each other prompt written notice of any asserted claims or actions to be indemnified against hereunder and shall cooperate with each other in the defense of any such claims or actions. No indemnified party shall settle any such claims or actions without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld or delayed.

## ARTICLE 9

### INSURANCE

**9.01 Insurance Coverage.** Company and County, each at its sole cost and expense, shall obtain and maintain during the Term insurance coverage meeting the following requirements:

(a) Without limiting Company's duty of indemnification, Company and any subcontractor shall obtain, from an insurance carrier authorized to transact business in the State of California, and maintain continuously during the term of this Agreement the following insurance coverages:

(i) Commercial General Liability Insurance, including coverage for owned and non-owned automobiles, and other insurance necessary to protect County and the public with limits of liability of not less than \$2 million (\$2,000,000) combined single limit bodily injury and property damage;

(ii) Workers' Compensation and Employer's Liability Insurance to cover Company, subcontractor, Company's partner(s), subcontractor's partner(s), Company's employees, and subcontractor's(s') employees, covering the full liability for compensation for injury to those employed by Company or subcontractor.

(iii) Pollution Liability, Environmental Impairment Liability, or

## **EXHIBIT B**

Hazardous Waste Liability Insurance, with limits of liability of not less than \$2 million (\$2,000,000) per occurrence.

(iv) Automobile Liability with limits no less than \$1,000,000 per accident / \$2,000,000 aggregate for bodily injury and property damage. Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto).

(v) Excess liability coverage shall be provided on a following-form basis, with a limit not less than Five Million Dollars (\$5,000,000). Company also shall maintain a policy or policies of insurance covering loss or damage to the Plant in the amount of the full replacement cost for the Plant, providing protection against all perils included within the classification of fire and extended coverage, vandalism coverage and malicious mischief, leakage, water damage, and special extended coverage.

(vi) Professional Liability coverage in an amount of \$1,000,000 per claim and \$1,000,000 in Project-specific professional excess coverage. Professional Liability Insurance insuring Company, its officers, directors, stockholders, employees, agents, or partner, and all other persons for whose acts the Company may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities described in this Agreement.

(vii) Company shall purchase and maintain until the Commercial Operations Date, installation floater insurance policy for coverage of Company' labor, materials and equipment to be used for completion of the Project performed under this Agreement. The minimum amount of coverage to be carried shall be in an amount no less than equal to the full amount of the Company' labor, equipment, materials, or fixtures to be installed, in-transit, or stored both on-site and off-site during the performance of this Agreement. The policy shall include as loss payee, the Company and its Subcontractors as their interest may appear.

(viii) Company shall hereby certify that Company is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to insure against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and Company shall comply with such provisions before commencing the performance of the work or the provision of services pursuant to the Agreement.

(b) Any deductible or self-insured retention exceeding \$25,000 for Company or subcontractor shall be disclosed to and be subject to reasonable approval by County.

(c) If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, Company or subcontractor shall maintain such insurance coverage with an effective date earlier or equal to the effective date of the Agreement and continue coverage for a period of three years after the expiration of the Agreement and any extensions thereof. In lieu of maintaining post-contract expiration coverage as specified above, Company or subcontractor may satisfy this provision by

## EXHIBIT B

purchasing tail coverage for the claims-made policy. Such tail coverage shall, at a minimum, provide the insurance coverage required hereunder for claims received and reported two years after the expiration date of the Agreement.

(d) All insurance (except workers' compensation and professional liability) shall include an endorsement or an amendment to the policy of insurance which names *Shasta County, its elected officials, officers, employees, agents, and volunteers* as additional insureds and provides that coverage *shall not be reduced or canceled without 30 days written prior notice certain to County*. The additional insureds coverage shall be equal to Insurance Service Office endorsement CG 20 10 for on-going operations, and CG 20 37 for completed operations.

(e) Each insurance policy (except for workers' compensation and professional liability policies), or an endorsement thereto, shall contain a "separation of insureds" clause which shall read:

"Separation of Insureds.

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each suit insured against whom a claim is made or suit is brought."

(f) The insurance provided by Company and its Subcontractors hereunder shall be primary as to any other insurance maintained by County. Company shall provide County with an endorsement or amendment to Company' policy of insurance as evidence of insurance protection before the Effective Date.

(g) County shall maintain comprehensive public liability and property damage insurance on an occurrence basis with a combined single limit of not less than Five Million Dollars (\$5,000,000) for death or injury to any person(s) or for property damage as a result of any one occurrence which may arise out of or in connection with the County's ownership, installation, use, maintenance, repair or operation of the Facility. County also shall maintain a policy or policies of insurance covering loss or damage to the Facility (but not including the Plant), providing protection against all perils included within the classification of fire and extended coverage, vandalism coverage and malicious mischief, leakage, water damage, and special extended coverage.

**9.02 Insurance Policies.** (a) All insurance policies required under this Article 9 shall be issued by insurers who are rated A-/VII or better by AM Best.

(b) All such insurance policies shall provide for thirty (30) days' written notice to the other Party prior to any change of coverage or cancellation.



## EXHIBIT B

(c) County shall concurrently with the execution of this Agreement, and Company shall on or before the start of construction of the Plant, provide the other Party with a certificate containing evidence of such coverage and each Party shall subsequently provide the other Party with appropriate evidence of such coverage on or before each anniversary date of the policy. Company shall require subcontractors to furnish satisfactory proof to County that liability and workers' compensation and other required types of insurance have been obtained and are maintained similar to that required of Company pursuant to the Agreement.

(d) The limits required under this Agreement may be maintained under a single policy or under a combination of a basic policy and an excess or umbrella policy. Any umbrella policy shall follow the form of the underlying policy. The coverage limits set forth above shall be increased from time to time as reasonably necessary to maintain coverage limits which are consistent with current commercial practices.

(e) County shall have the right to satisfy any insurance coverage requirements set forth in this Article 9 with self-insurance or through participation in a self-insured risk pool with other public agencies.

**9.03 Waiver of Subrogation** The Parties release each other, their affiliates and their respective Duly Authorized Representatives from any claims for damage to the Premises, and to the fixtures, personal property and improvements of either County or Company, in or on the Premises or the Facility, that are caused by or result from risks insured against under any insurance policies carried by the Parties and in force at the time of any such damage, whether or not caused by the negligence or fault of the other Party. In addition, the County and Company shall cause each such insurance policy carried by them insuring their property or its improvements or contents to include a clause or endorsement denying the insurer any rights of subrogation against the other Party to the extent any rights have been waived by the insured prior to the occurrence of injury or loss. The foregoing waiver shall not apply with respect to any deductible or self-insurance retention of either Party.

## ARTICLE 10

### **DEFAULTS; REMEDIES; DISPUTE RESOLUTION**

**10.01 Event of Default** As used in this Agreement and in the Site Lease Agreement and GCSS O&M Agreement, an "Event of Default" shall mean:

(a) a Party fails to pay any amounts due under this Agreement when the same is due and payable, and such failure continues for thirty (30) days after receipt of written notice from the other Party;

(b) a Party fails to perform or observe any other obligation of such Party under this Agreement and such failure continues for thirty (30) days after receipt of written notice to the defaulting Party from the other Party; provided, however, as follows:

(i) if the Event of Default is of such a nature that it cannot reasonably be cured within such thirty (30) day period, the time within which to cure shall be reasonably extended up to an additional sixty (60) days (i.e., ninety (90) days after receipt of such notice) so

## EXHIBIT B

long as the defaulting Party shall commence the cure within such thirty (30) day period and the defaulting Party diligently proceeds to complete such cure and the cure is completed on or before the date which is ninety (90) days after receipt of such notice; provided; however; that such sixty (60) day extension limit shall not apply in the event the action needed to cure the default requires governmental approvals, in which case the extension shall be for a reasonable period of time.

(ii) if the Event of Default is by Company and if Company has failed to cure such Event of Default within a reasonable cure period (as described in Section 10.01(b)(i) above), County shall provide copies of any notices of Company' default to any Financing Party and Product Purchaser whose address has been provided in writing to County and County shall provide such Financing Party and Product Purchaser a reasonable time after receipt of such notice within which to cure such Company Event of Default following the expiration of Company' cure periods, which in no event shall be less than ninety (90) days (plus such additional time as is necessary to obtain possession of the Company Property by power of sale or judicial foreclosure or the exercise of any option to purchase if such should be necessary to effect a cure).

(iii) if the Event of Default is by County, Company shall provide copies of any notices of County's default to any mortgagee or deed of trust beneficiary whose address has been provided in writing to Company and Company shall provide such mortgagee or deed of trust beneficiary a reasonable time after receipt of such notice within which to cure such County Event of Default following the expiration of County's cure periods hereunder, which in no event shall be less than ninety (90) days (plus such additional time as is necessary to obtain possession of the Premises by power of sale or judicial foreclosure if such should be necessary to effect a cure).

(c) a Party commits an Event of Default specified in the Site Lease Agreement or GCCS O&M Agreement; or

(d) a Party files a petition of any type as to its bankruptcy, is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business involuntarily.

**10.02 Remedies for Event of Default.** In the event of an Event of Default by either Party, the non-defaulting Party shall have the remedies provided in Article 7 and Article 15 of this Agreement.

**10.03 Waiver of Jury Trial.** COUNTY AND COMPANY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED ON THIS AGREEMENT, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY ARISING OUT OF OR RELATED IN ANY MANNER WITH THE FACILITY OR THE PLANT (INCLUDING WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT OR ANY CLAIMS OR DEFENSES ASSERTING THAT THIS AGREEMENT WAS

## EXHIBIT B

FRAUDULENTLY INDUCED OR OTHERWISE VOIDABLE).

### ARTICLE 11

#### **DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY**

**11.01** Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE PLANT OR ITS PERFORMANCE OR ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY WITH RESPECT TO THE LANDFILL GAS.

**11.02** Limitation of Liability. EXCEPT FOR THIRD PARTY CLAIMS FOR WHICH EITHER PARTY HAS INDEMNIFIED THE OTHER PURSUANT TO SECTIONS 8.01(A) and 8.02(A) OR ANY INDEMNITY CLAIM RELATED TO REGULATORY FINES OR PENALITIES, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, LOSS OF USE OR REVENUE OR LOSSES BY REASON OF COST OF CAPITAL, ARISING FROM OR RELATING TO ANY PERFORMANCE OR LACK OF PERFORMANCE UNDER THIS AGREEMENT, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER A CLAIM IS BASED ON CONTRACT, TORT, OR VIOLATION OF ANY APPLICABLE LEGAL OR EQUITABLE PRINCIPLE. THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT THE PARTIES' INDEMNIFICATION RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT, AND SHALL NOT APPLY TO DAMAGES RELATED TO BREACHES BY EITHER PARTY OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN THIS AGREEMENT.

### ARTICLE 12

#### **ASSIGNMENT**

**12.01 Collateral Assignment.** (a) Company anticipates arranging non-recourse project financing for the Plant. Shasta Receivables may request that County consent to the collateral assignment of this Agreement to any person providing financing for construction or operation of the Plant, whether in the form of debt or equity (the "**Financing Parties**") or to any other person selected by the Financing Parties or by their agent, which consent shall not be unreasonably withheld or delayed. County shall reasonably cooperate by providing such acknowledgements and consents and execute such acts and instruments in respect of such collateral assignment as the Financing Parties or their counsel or their agent may from time to time reasonably request, and are customary for a financing of plants such as the Plant, provided, however, that no such acts by County shall require County to undertake any obligation on behalf of any Financing Parties or allow a lien to be placed on the Facility (other than with respect to a customary lien

## EXHIBIT B

placed on Company' rights and interests under the Site Lease Agreement).

(b) County shall reasonably cooperate with Company and the Financing Parties to enter into an agreement which shall provide such Financing Parties with certain customary, commercially reasonable rights including, but not limited to, step-in rights following an Event of Default by Company. County shall reasonably cooperate with Company in the negotiation and execution of customary, commercially reasonable amendments or additions to this Agreement as required by Financing Parties as a condition to a financial closing for the project debt or equity financing for the Plant; provided, however, that such amendments or additions to this Agreement do not impose any additional obligations on County, alter any rights of County or the obligations of Company, or allow the Financing Parties to step into the rights of Company under this Agreement without curing all existing defaults.

(c) The agreements in this Agreement with respect to the rights and powers of a Financing Party and the obligations of County with respect to such Financing Party constitute a continuing offer to any person that may provide financing for the construction or operation of the Plant.

(d) County irrevocably agrees that in the event of any default by Company under the terms and conditions of any agreement between Company and any Financing Party, (i) the Financing Party shall be deemed to be an assignee of this Agreement approved by County and shall be entitled to enforce this Agreement, as the same may be amended or supplemented before or after such default, all without additional cost to the Financing Parties, but subject to the obligation of the Financing Parties to cure any existing defaults by Company; and (ii) the Financing Parties may assign this Agreement to any purchaser of the Financing Parties' collateral and this Agreement shall continue in effect so long as such assignee has financial strength and technical competence equal to that possessed by Company as of the Effective Date.

(e) To the extent permitted by law, County waives the provisions of any current or future statute, rule or law which may give or purport to give County any right or election to terminate or otherwise adversely affect this Agreement and the obligations of County in the event of any foreclosure proceeding or sale.

(f) This Section 12.01 shall be self-operative, but in confirmation of the terms of this Section, Host shall execute and deliver to the Financing Parties such additional agreements, consents to assignment and similar documents confirming the matters set forth herein.

**12.02 Other Assignment by Company.** In addition to assignment authorized under Section 12.01, Company may sell, exchange or otherwise voluntarily transfer or assign its interests in the Company Property, the GCCS O&M Agreement, the Site Lease Agreement and this Agreement, subject to County's prior written consent, which consent shall not be unreasonably withheld or delayed. The County may withhold consent for business and/or operational concerns, such the technical experience and financial ability of the assignee to perform Company's obligations. Notwithstanding the foregoing, no consent of County shall be

## **EXHIBIT B**

required for any assignment, subletting or transfer by Company to a parent entity, subsidiary entity, or other entity controlled by or under common control with Company (collectively “**Related Entities**”), or any such transfers to a Related Entity occurring as a result of a merger or corporate reorganization of Company.

### **ARTICLE 13**

#### **REPRESENTATIONS AND WARRANTIES**

**13.01 General Representations and Warranties.** Each of County and Company represents and warrants to the other that the following statements are true and correct as of the Effective Date:

(a) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and, to its knowledge, do not violate any of the terms or conditions of its governing documents or any contract to which it is a party or any Applicable Law applicable to it;

(b) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, subject to Applicable Laws affecting creditors’ rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending;

(c) to its knowledge, there are no suits, proceedings, judgments, rulings or orders by or before any court or any governmental authorities that could adversely affect its ability to perform under this Agreement;

(d) it is duly organized, validly existing and in good standing under the laws and jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to its performance under this Agreement.

**13.02 Representations and Warranties of County.** The County warrants and represents that the County holds title to the Landfill Gas, its delivery of Landfill Gas pursuant to the terms of this Agreement is lawful, and the Landfill Gas shall be delivered to Company under this Agreement free and clear of any encumbrances, liens, or adverse claims.

**13.03 Further Assurances.** The Parties agree to use reasonable commercial efforts (which shall not require that either Party incur any expense) to cooperate to the extent further actions, consents and approvals, further agreements, assignments, consents, waivers, instructions or documents, are necessary to fulfill the purposes, terms and conditions of this Agreement and the consummation of the transactions contemplated.

### **ARTICLE 14**

#### **FORCE MAJEURE**

**14.01 Event of Force Majeure.** If Force Majeure renders a Party unable to carry out, in whole or part, its obligations under this Agreement and such Party gives written notice and

## **EXHIBIT B**

full details of the event to the other Party as soon as practicable after the occurrence of the Force Majeure, then during the pendency of such Force Majeure, but for no longer period, the obligations of the Party claiming Force Majeure (other than the obligation to make payments then due or becoming due) shall be suspended to the extent required. Notice of any Force Majeure event shall include its anticipated duration and any action being taken to avoid or minimize its effects. The claiming Party shall use commercially reasonable efforts to remedy any Force Majeure event and to resume performance under this Agreement, but neither Party shall be obliged to settle or resolve a labor difficulty or to hire substitute labor on terms unacceptable to that Party.

## **ARTICLE 15**

### **DISPUTES**

#### **15.01 Disputes.**

(a) The Parties shall meet to negotiate in good faith and attempt to resolve any dispute, controversy or claim (each, a “**Dispute**”) arising out of or relating to this Agreement, the Site Lease Agreement and the GCCS O&M Agreement or any breach or alleged breach hereof, within thirty (30) days after the date that a Party receives written notice of such dispute to the other Party.

(b) Notwithstanding the Dispute resolution provisions contained herein, each Party may pursue any rights and remedies as each may have, whether in law or at equity. Except to the extent that this Agreement expressly permits a Party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement.

## **ARTICLE 16**

### **MISCELLANEOUS PROVISIONS**

**16.01 Notices.** All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person; or (b) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the Parties to this Agreement shall designate in a written notice to the other Party:

If to County:

Name/Title: Director of Public Works  
Address: Shasta County Department of Public Works  
1855 Placer Street  
Redding, CA 96001  
Fax: 530-225-5667

If to Company:

## EXHIBIT B

All notices sent pursuant to the terms of this Section shall be deemed received (i) if personally delivered, then on the date of delivery, or (ii) if sent by reputable overnight, express courier, then on the next Business Day immediately following the day sent.

**16.02 Successors and Assigns.** The rights, powers and remedies of each Party shall inure to the benefit of such Party and its successors and permitted assigns.

**16.03 Amendments to Agreement.** This Agreement shall not be amended, modified or supplemented without the written agreement of the Parties at the time of such amendment, modification or supplement.

**16.04 Waivers; Approvals.** No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Default, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

**16.05 Partial Invalidity.** In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, the Parties shall make reasonable attempts to negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that the Parties cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

**16.06 Execution in Counterparts.** This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same agreement.

**16.07 Governing Law; Jurisdiction; Forum.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. The Parties irrevocably agree that any action, suit or proceeding by or among the Parties may be brought in the Superior Court of the State of California located in the County of Shasta or the Federal Court for the Eastern District of California, provided that such court has subject matter jurisdiction over the dispute.

**16.08 Publicity.** Each Party agrees that, unless otherwise required by Applicable Law, such Party agrees that it shall not issue any press release regarding the Project without the prior consent of the other Party, and each Party agrees not to unduly withhold or delay any such consent. Each Party agrees to cooperate with the other Party in connection with the issuance of such releases including, without limitation, completed review of press releases proposed to be issued by such other Party by no later than five (5) Business Days after submission to such Party.

## EXHIBIT B

**16.09 Attorneys' Fees.** If any action shall be instituted between the Parties in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

**16.10 No Third Party Rights.** This Agreement is only for the benefit of the Parties to this Agreement, their successors and permitted assigns and Persons expressly benefited by the indemnity provisions of this Agreement. No other person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

**16.11 No Agency.** This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party. The Parties are independent contractors.

**16.12 Setoff.** Except as otherwise set forth herein, each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement or arising out of any other contractual arrangements between the Parties. All outstanding obligations to make, and rights to receive, payment under this Agreement may be offset against each other.

**16.13 Estoppel.** Either Party hereto, without charge, at any time and from time to time, within twenty (20) Business Days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person, firm or corporation specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by a Party hereto. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

**16.14 Entire Agreement.** This Agreement, the GCCS O&M Agreement and the Site Lease (including all exhibits attached hereto) represent the entire agreement between the Parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements. In the event of any conflict between the provisions of this Agreement and the provisions of the GCCS O&M Agreement or the Site Lease, the provisions of this Agreement shall govern and control.

**16.15 Notice of Claims.** If any claim for damages is filed with Company or if any lawsuit is instituted concerning Company' performance under this agreement and that in any



## EXHIBIT B

way, directly or indirectly, contingently or otherwise, affects or might reasonably affect County, Company shall give prompt and timely notice thereof to County. Notice shall be prompt and timely if given within 30 days following the date of receipt of a claim or 10 days following the date of service of process of a lawsuit.

**16.16 Non-Discrimination** (a) Company shall not discriminate in employment practices or in the delivery of services on the basis of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, medical condition (including cancer, HIV, and AIDS) physical or mental disability, use of family care leave under either the Family & Medical Leave Act or the California Family Rights Act, or on the basis of any other status or conduct protected by law.

(b) Company represents that it is in compliance with and agrees that it shall continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. sections 12101, et seq.), the Fair Employment and Housing Act (Government Code sections 12900, et seq.), and regulations and guidelines issued pursuant thereto.

(c) No funds or compensation received by Company under this agreement shall be directly or immediately used by Company for sectarian worship, instruction, or proselytization. No funds or compensation received by Company under this agreement shall be used by Company to provide direct, immediate, or substantial support to any religious activity.

**16.17 Prevailing Wage**. For any work performed by Company that constitutes a public work as that defined in California Labor Code section 1720 et seq., Company shall comply with the following provisions:

(a) If the cost of the work is \$1,000 or more, Company shall pay, and shall require any subcontractor to pay, not less than the specified prevailing rates of per diem wages to all laborers, workers, and mechanics employed by them in the execution of this Agreement in accordance with the provisions of Article 2 (commencing with section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code. Copies of the prevailing rate of per diem wages are on file at County's Department of Public Works, located at 1855 Placer Street, Redding, California, and are available to Company upon request. Company shall also pay, and shall require each subcontractor to pay, travel and subsistence payments to each laborer, worker, and mechanic needed to execute the work.

(b) If the cost of the work is \$1,000 or more, Company shall comply with Labor Code section 1775. In accordance with Labor Code section 1775, Company shall forfeit as a penalty to County such amount as is determined by the Labor Commissioner, or otherwise \$50.00, for each calendar day or portion thereof for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any work done under this Agreement or by any subcontractor under this Agreement. In addition to such penalty and pursuant to section 1775, the difference between prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Company.

## **EXHIBIT B**

(c) If the cost of the work is \$1,000 or more, Company shall keep, and shall require each subcontractor to keep, an accurate payroll record showing the name, address, social security number, work classification, the straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Company and any subcontractors in connection with the execution of this Agreement or any subcontract under this Agreement. Such records shall be certified and shall be open at all reasonable hours to inspection by County, its officers and agents, and to the representatives of the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the State Department of Industrial Relations and to the public through request to the County, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. Company shall comply fully with the provisions of Labor Code section 1776 in connection with the keeping and disclosure of payroll records and shall also require all subcontractors to comply therewith.

(d) In addition to any other indemnification provision of this agreement, Company shall indemnify and hold County harmless from and defend County against any and all claims of liability arising in part or in whole from Company' or its agents, contractors, or employees' failure to comply with the duties proscribed by this section.

**[Signatures on Next Page]**

**EXHIBIT B**

To evidence their understandings, County and Company have executed this Landfill Gas Energy Agreement as of the Effective Date.

**County:**

COUNTY OF SHASTA

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

\_\_\_\_\_  
DAVID A. KEHOE, CHAIRMAN  
Board of Supervisors  
County of Shasta County  
State of California

**ATTEST:**

LAWRENCE G. LEES  
Clerk of the Board of Supervisors

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

Approved as to form:  
RUBIN E. CRUSE, JR  
County Counsel

**RISK MANAGEMENT APPROVAL**

By: \_\_\_\_\_  
David M. Yorton, Jr.  
Senior Deputy County Counsel

By: \_\_\_\_\_  
Jim Johnson  
Risk Management Analyst I

**Company:**

## EXHIBIT B

## EXHIBIT A

### DEFINED TERMS

**This Exhibit A contains all defined terms used in the Agreement, the GCCS O&M Agreement and the Site Lease.**

**Accessories** shall mean, collectively, the special tools, equipment, parts and other materials required for unscheduled repairs resulting from a breakdown of the GCCS that occurs due to Force Majeure or acts or omissions of County or third parties other than Company, its employees, subcontractors or others acting on behalf of or under the control or supervision of Company.

**Additional Rent** has the meaning set forth in Section 4.01 of the Site Lease Agreement.

**Affiliate** shall mean any corporation or other entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, another corporation or entity.

**Annual Operating Plan** shall mean the plan established for each Operating Year, as further described in Section 4.1.1 of the GCCS O&M Agreement, that sets forth the following anticipated events and activities: (i) operations, repairs and capital improvements; (ii) routine and preventive maintenance; (iii) procurement, personnel and labor activities; (iv) administrative activities; (v) scheduled shutdowns; (vi) environmental monitoring and compliance; and (vii) all other work proposed to be undertaken by Company during the Operating Year.

**Applicable Law** shall include, but not be limited to, all laws, statutes, rules, regulations, directives, standards, requirements, ordinances, policies, procedures, permits, certificates, authorizations, decisions, writs, orders, decrees, judgments, or any interpretation thereof by any and all governmental authorities having jurisdiction, which are applicable to and/or affect the Parties, the Project Development Work, the Plant, the Facility, the Premises, the GCCS, the flare, or this Agreement, including, without limitation, all rules, regulations, ordinances or laws governing life-safety, asbestos-containing material, sprinklers, hazardous waste, the Americans with Disabilities Act and OSHA.

**Authorized County Support Actions** has the meaning set forth in Section 4.10 of the Energy Agreement.

**Authorities** has the meaning set forth in Section 3.01(b) of the Energy Agreement.

**Bankruptcy** shall mean a situation in which: a Party (i) shall commence a proceeding under federal, provincial, state or other bankruptcy, insolvency or reorganization law; (ii) has such a proceeding filed against it and fails to have such proceeding vacated within sixty (60) Business

## EXHIBIT A

## EXHIBIT B

Days thereafter; (iii) admits the material allegations of any petition in bankruptcy filed against it; (iv) is adjudged bankrupt; (v) makes a general assignment for the benefit of its creditors, or admits in writing its inability to pay or generally fails to pay its debts as they mature or become due; or (vi) petitions or applies for or has appointed a trustee or other custodian, liquidator or receiver for all or any substantial part of such Party's assets which receiver is not discharged within sixty (60) Business Days after his appointment.

**Base Rent** has the meaning set for the in Section 4.01 of the Site Lease Agreement.

**Blower/Flare Station** shall refer to the collection of piping and equipment, separate from that of the LFGTE Facility, and within a designated fenced perimeter that is utilized for the application of vacuum to the GCCS, destruction of LFG, and storage of Condensate generated by the GCCS.

**Business Day** shall mean every day other than a Saturday, Sunday, or holiday which is set as a County Holiday by the Board of Supervisors of the County of Shasta.

**CEQA** means the California Environmental Quality Act.

**Change** shall mean any of the following that is proposed in writing by one Party to the other: (i) a change in connection with the Services; (ii) a change made necessary to avoid injury to persons or property or to mitigate losses as a result of the occurrence or expected occurrence of an Emergency, except an Emergency arising from the acts or omissions of Company, its employees, subcontractors or others acting on behalf of or under the control or supervision of Company; or (iv) a change in the scope of Services resulting from a Change In Law, change in Permit or governmental requirements/regulations, or a change in the Energy Agreement, or a change in the Site Lease Agreement.

**Change In Law** shall mean amendments, modifications or changes in existing Applicable Law occurring after the Effective Date, including changes in the enforcement or application of Applicable Law, or the enactment of any new Applicable Law after the Effective Date.

**Change Order** shall mean the written approval of a proposed Change and the related Change Order Budget Statement by Company and County as provided in Section 4.3 of the GCCS O&M Agreement.

**Change Order Budget Statement** shall mean the statement prepared by Company pursuant to Section 4.3.2 of the GCCS O&M Agreement with respect to a proposed Change setting forth in reasonable detail: (i) the direct cost or cost savings to County of the proposed Change; (ii) the time anticipated to implement the proposed Change; (iii) the indirect costs or cost savings of the proposed Change including any operating, maintenance or other costs during or following the implementation of the proposed Change; (iv) changes in the operating efficiency of the GCCS; and (v) any other material effect on the operation, maintenance or efficiency of the GCCS or the provision of the Services.

## EXHIBIT A

## EXHIBIT B

**Claims** means all claims or actions, threatened or filed, and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of the Energy, Site Lease or GCCS O&M Agreements.

**Commercial Operations Date** means the date no later than two (2) years from the Effective Date, that Company certifies to County that the Project Development Work and all start-up testing have been completed and the Plant is operational.

**Condemnation Proceedings** shall have the meaning set forth in Section 10.04 of the Site Lease Agreement.

**Condensate** or **Condensate Materials** means any constituent products of Landfill Gas, including condensate, generated during the collection, conveyance and preparation of the Landfill Gas for use in the Plant and any such constituent products of Landfill Gas, including Condensate, remaining after Company has used Landfill Gas in the Plant. Condensate Materials shall specifically exclude leachate and all other liquids present in the Landfill.

**Construction Commencement Date** has the meaning set forth in Section 2.09 of the Energy Agreement.

**Consumables** shall mean piping, valves, hoses, clamps, glue, chemicals, fluids, supplies, filters, and such other materials (other than Accessories, and fuel, water, utilities and other items to be purchased by County hereunder) required for the operation and maintenance of the GCCS in accordance with the terms hereof, including all scheduled and unscheduled maintenance.

**Contract Rate** means a rate per annum equal to two percent (2%) over the prime lending rate as from time to time may be published in *The Wall Street Journal* under "Money Rates," compounded semiannually; provided that the Contract Rate charged and collected shall never exceed in the aggregate, taking into account all payments constituting interest under Applicable Law, the maximum rate permitted by Applicable Law.

**County-Caused Outage** means any Unforced Outage or Forced Outage caused by County or any contractor, agent, employee or representative of County.

**County Indemnified Parties** has the meaning set forth in Section 8.01 of the Energy Agreement.

**County's Operator** shall mean any contractor, subcontractor, supplier, vendor, agent or representative hired or engaged by, or hired or engaged on behalf of, County or its representative, other than the Company and subcontractors hired or engaged by Company or any subcontractors directly or indirectly hired or engaged by subcontractors of Company.

## EXHIBIT A

## EXHIBIT B

**County's Representative** shall mean the individual representative authorized to represent County on all matters concerning this Agreement as delineated in Section 3.5 of the GCCS O&M Agreement to the extent permitted by law or County policy.

**Critical Milestones** has the meaning set forth in Section 3.03 of the Energy Agreement.

**Damages** shall have the meaning set forth in Section 6.1 of the GCCS O&M Agreement.

**Dispute** has the meaning set forth in Section 15.01 of the Energy Agreement.

**Duly Authorized Representatives** has the meaning set forth in Section 4.12 of the Energy Agreement.

**Effective Date** means the day and year of the execution of Energy Agreement, which is set forth in the Preamble of the Energy Agreement.

**Electrical Delivery Point** shall mean the point of interconnection between the Plant and the electrical utility at which point Electrical Energy is to be transferred to the electrical utility.

**Electrical Energy** means energy produced by the Plant in the form of electricity.

**Electricity Revenue** means the gross revenue received by the Company from sales of Electrical Energy and Environmental Attributes, including revenues from any hedging or derivative transactions which are based on the Electrical Energy or Environmental Attributes generated by the Plant. If the parties are unable to agree on the method of calculating Electricity Revenue, the matter shall be resolved in accordance with the dispute resolution provisions of this Agreement.

**Emergency** shall mean any occurrence or possible occurrence which, in the reasonable judgment of County or Company, as the case may be, requires immediate action and which constitutes a serious hazard to the safety of persons or property or which may materially interfere with the safe operation of the GCCS, Blower/Flare Station, and/or Plant or the operation of the GCCS in compliance with Governmental Approvals or Applicable Law.

**Energy Agreement** means the Landfill Gas Energy Agreement, the County's agreement with Company regarding the terms and conditions of Company receipt of Landfill Gas from the County for the express purpose of converting the energy stored in the Landfill Gas to Electrical Energy in order to sell the Electrical Energy and other commodities or byproducts of the conversion process.

**Environmental Attributes** means (a) any and all marketable credits derived from the generation of electrical energy using a renewable energy fuel source (landfill gas) whether referred to as Renewable Energy Credits or otherwise, and which directly attributable to the generation of

## EXHIBIT A

## EXHIBIT B

electricity or other energy from the Plant, and (b) the Reporting Rights associated with the generation of electrical energy from the Plant such as “Green Tag Reporting Rights.” Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Plant, (ii) production or investment tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to state or federal income tax obligations, (iii) emission reduction credits encumbered or used by the Plant for compliance with local, state, or federal operating and/or air quality permits; (iv) any tradable credits for emission reduction (such as “Carbon Credits” or “Voluntary Carbon Units”) based on the greenhouse gas reduction benefits attributed to the collection and destruction of methane gas by the Landfill (as opposed to the Plant) , or (v) any Fuel Carbon Credits.

**Environmental Law(s)** means any federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety or Hazardous Materials, including without limitation, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.

**Environmental Permits** means all permits, approvals, identification numbers, licenses and other authorizations required under any applicable Environmental Law.

**Event of Default** has the meaning set forth in Section 10.01 of the Energy Agreement.

**Expiration Date** has the meaning set forth in Section 7.01 of the Energy Agreement.

**Facility** has the meaning set forth in the Recitals to the Energy Agreement.

**Financing Parties** has the meaning set forth in Section 12.01 of the Energy Agreement.

**Final Project Plans** has the meaning set forth in Section 3.02 of the Energy Agreement.

**Force Majeure** means an event or condition that is beyond the reasonable control of, and not due to the fault or negligence of, Company or County including drought, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, casualty, theft, sabotage, explosions, strikes or labor disputes, the unavailability of labor, materials, equipment, fuel (including sufficient quantity and quality of Landfill Gas) or utilities from customary sources upon

## EXHIBIT A



## EXHIBIT B

customary terms, or the existence of hazardous waste or subsurface conditions, orders or judgments of any governmental entity, or the absence, suspension, termination, interruption, denial or failure of renewal of any Permit or other governmental authorization, or any changes in Applicable Laws which prohibit or frustrate a Party from performing under the Energy, Site Lease or GCCS O&M Agreement. Force Majeure includes the failure of a contractor or vendor to furnish labor, services, materials or equipment in accordance with its contractual obligations (but solely to the extent such failure is itself due to a Force Majeure event).

**Forced Outage** means any Plant Shutdown which does not constitute an Unforced Outage, including, but not limited to a Maintenance Outage.

**Fuel Carbon Credits** means any tradable credit, voluntary carbon unit ("VCU") based on the greenhouse gas reduction benefits attributed to the Plant's use of Landfill Gas as a fuel as opposed to those which are attributed to the collection and destruction of Landfill Gas by the gas GCCS and flare at the Landfill. Fuel Carbon Credits include credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the destruction or reduction of contaminants or greenhouse gases in the Landfill Gas used as a fuel in the Plant, including but not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides ("Sox"), nitrogen oxides ("NOx"), carbon monoxide ("CO") and other pollutants; (2) any avoided emissions of carbon dioxide ("CO2"), methane ("CH4") and other greenhouse gases ("GHGs") that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the Reporting Rights to these avoided emissions such as "Green Tag Reporting Rights."

**GCCS or Gas Collection And Control System** means the collective whole of the piping, valves, probes, sensors, filters, meters, instrumentation, Wellfield, Blower/Flare Station, pumps, sumps and all other equipment that operate together to collect, control, and convey the LFG created by the Landfill from the Landfill to its proper destruction either through utilization in the Plant or destruction at the Blower/Flare Station. Such system shall include ancillary equipment used to remove Condensate from the system so as to preventatively avoid clogging or blockages that prevent or diminish the passing of LFG through the system. The GCCS shall include any expansion of or additions to the system existing as of the Effective Date.

**GCCS O&M Agreement** means the Agreement for Gas Collection and Control System Operation and Maintenance Services, the County's agreement with Company regarding the terms and conditions of Company operation and maintenance of the GCCS.

**GenSet** has the meaning set forth in Exhibit B of the Energy Agreement.

**Good Industry and Engineering Practices** means those practices, methods and standards of engineering, design, manufacture, construction, performance, operations, maintenance, measurement and verification, and safety, including all federal, state and local and professional

## EXHIBIT A

## EXHIBIT B

codes and standards, which, in the exercise of reasonable judgment and consistent with industry and professional engineering, construction, operating, maintenance and measurement and verification practices, and with the standards of good workmanship, would be expected to be utilized by a reasonable person engaged in the same type of undertaking under the same or similar circumstances.

**Governmental Approvals** shall mean any authorization, consent, approval, ruling, Permit, tariff, rate, certification, re-certification, exemption, filing, registration, contract, license, easement, franchise, right-of-way or other right required by any Governmental Person or Applicable Law.

**Governmental Person** shall mean any federal, state, provincial, county, municipal or other governmental authority or any political subdivision thereof with jurisdiction over the applicable conduct or activity.

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

**Hazardous Materials** means (i) petroleum or petroleum products, natural or synthetic gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and radon gas; (ii) any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "designated wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law; and (iii) any other substance exposure to which is regulated by any governmental authorities.

**Incentives** means all credits (including tax credits), rebates, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including Fuel Carbon Credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the Environmental Attributes or otherwise from the development or installation of the Plant or the production, sale, purchase, consumption or use of Product. Without limiting the foregoing, Incentives includes the right to claim federal income tax credits under Sections 45 of the Internal Revenue Code.

**Initial Term** has the meaning set forth in Section 7.01(a) of the Energy Agreement.

**Interconnection Agreement** has the meaning set forth in Section 2.02 of the Energy Agreement.

## EXHIBIT A

## EXHIBIT B

**Labor Rates** shall mean the rates charged for labor in connection with all Reimbursable Expenses pursuant to the standard labor rate schedule that is attached hereto as Attachment A of the GCCS O&M Agreement, as the same may be modified from time to time as set forth therein.

**Landfill** has the meaning set forth in the Recitals to the Energy Agreement.

**Landfill Gas** or **LFG** has the meaning set forth in the Recitals to the Energy Agreement.

**Landfill Gas Charge** has the meaning set forth in Section 6.01 of the Energy Agreement.

**Landfill Gas Delivery Point** shall mean the point of interconnection between the GCCS and Company' gas main at the Plant at which Landfill Gas is to be delivered to the Plant.

**Landfill Gas Statement** has the meaning set forth in Section 6.01(c) of the Energy Agreement.

**Leachate** means the liquid that forms in the Landfill other than Condensate.

**Lender** or **Lenders** shall mean the entity or entities providing construction and/or term financing to Company for any or all of the GCCS and/or Plant.

**Lien** has the meaning set forth in Section 10.02 of the Site Lease Agreement.

**Maintenance Outage** has the meaning set forth in Section 4.03(a) of the Energy Agreement.

**Meters** has the meaning set forth in Section 5.04(a) of the Energy Agreement.

**Minimum Flow** has the meaning set forth in Section 4.07(a) of the Energy Agreement.

**Minimum Landfill Gas Standard** has the meaning set forth in Exhibit F of the Energy Agreement.

**MMBtu** shall mean one million British Thermal Units.

**Notice of Extension** has the meaning set forth in Section 2.09 of the Energy Agreement.

**Non-Routine O&M Services** shall have the meaning set forth in Section 2.2 of the GCCS O&M Agreement.

**Operating Agreement** has the meaning set forth in the Recitals of the Energy Agreement.

**Operating Year** shall mean: (i) with respect to the first Operating Year, that period of time beginning on the Commercial Operations Date and ending on December 31 of the year in which

## EXHIBIT A

## EXHIBIT B

the Commercial Operations Date falls, and (ii) with respect to subsequent Operating Years, each subsequent calendar year through the end of the Term.

**Company Personnel** shall mean supervisory and all operation and maintenance personnel employed by Company to perform the Services at the Facility.

**Company' Representative** shall mean the individual representative authorized to represent Company on all matters concerning the GCCS O&M Agreement as delineated in Section 2.19 of the GCCS O&M Agreement.

**Parasitic Load** shall mean the electrical energy required to operate the Plant, including but not limited to gas compression and conditioning equipment, radiators, air compressors, and electrical and lighting systems, all of which reduces the amount of net electrical energy generated for delivery and sale to the purchaser under an offtake agreement by an amount not exceeding six percent (6%) of the nameplate gross capacity of the Plant.

**Permitted Hazardous Materials** has the meaning set forth in Section 7.01 of the Site Lease Agreement.

**Permitted Uses** has the meaning set forth in Section 3.01 of the Site Lease Agreement.

**Permits** shall mean all permits and approvals required by Applicable Law to construct, operation and maintain the Plant and GCCS.

**Plant** shall mean the engines, generators, switchgear, lines, interconnection equipment, and other equipment and improvements that may be installed and used by Company from time to time to process and convert Landfill Gas to an energy product that could be sold to a Product Purchaser. Without limitation, the definition of Plant shall include all equipment and improvements used by Company to convert Landfill Gas to one or more saleable Products.

**Plant Operations Program** means the instructions and procedures agreed to by County and Company as to the proper execution of the Authorized County Support Actions and Unforced Outages.

**Plant Shutdown** means the systematic cessation of operation of those portions of the Plant which are used to convert Landfill Gas to one or more salable Products.

**Power Purchase Agreement** or **PPA** has the meaning set forth in Section 2.01 of the Energy Agreement.

**Premises** has the meaning set forth in Section 2.01 of the Site Lease Agreement.

## EXHIBIT A

## EXHIBIT B

**Prudent Operating Practices** shall mean those practices, methods, equipment, specifications, and standards of safety and performance, as are commonly used by third party operators of facilities similar in type and location to the GCCS which, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, are considered good, safe and prudent practice in connection with the operation and maintenance of such facilities and which are conducted in a manner consistent with Applicable Laws, Governmental Approvals, manufacturers' recommendations, reliability, safety, environmental protection, economy, and expedition.

**Product** means any and all energy or other salable commodities which are produced by the Plant, including but not limited to Electrical Energy and Thermal Energy.

**Product Purchaser** means: any electric energy producer, user, or reseller or any other person or firm that purchases Product. Nothing in this Agreement shall preclude Company from providing Product to more than one party, whether consecutively or concurrently. In that event, the singular form in this definition shall include all purchasers and the singular form shall be read as plural.

**Project** has the meaning set forth in Section 3.02 of the Energy Agreement.

**Project Development Work** has the meaning set forth in Section 3.02 of the Energy Agreement.

**Project Schedule** has the meaning set forth in Exhibit B-1 of the Energy Agreement.

**Rated Production Capacity** shall mean the gross nameplate capacity of the Plant to generate electricity, less the average Parasitic Load associated with the operation of the Plant, which such capacity shall not be less than 1,966 kW (gross).

**Records** shall have the meaning set forth in Section 5.2.2 of the GCCS O&M Agreement.

**Reimbursable Expenses** shall mean the reasonable direct costs and expenses incurred by Company only in the performance of Non-Routine O&M Services that occur due to Force Majeure or acts or omissions of County or third parties other than Company, its employees, subcontractors or others acting on behalf of or under the control or supervision of Company, which costs and expenses shall be limited to the following: (i) the cost of Accessories; (ii) the costs associated with the importation, exportation and transportation of Accessories, (iii) the costs associated with consultants, subcontractors and other special outside services; and (iv) a handling fee of fifteen percent (15%) on the amount in subsections (i) through (iii) above; provided that County shall hold title to all Accessories the cost of which is reimbursed by County. All labor cost reimbursements will be made at the Labor Rates.

**Related Entities** has the meaning set forth in Section 12.02 of the Energy Agreement.

## EXHIBIT A

## EXHIBIT B

**Rent** has the meaning set forth in Section 4.01 of the Site Lease Agreement.

**Reporting Rights** means the right of Company to report to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Company owns the Environmental Attributes associated with the Electrical Energy generated at the Plant.

**Revenue Sharing Plan** means the plan specifying the percentage of gross Electricity Revenue due to the County as the Landfill Gas Charge as set forth in Exhibit G of the Energy Agreement.

**Rights of Way** has the meaning set forth in Section 2.02 of the Site Lease Agreement

**Routine O&M Services** shall have the meaning set forth in Section 2.1 of the GCCS O&M Agreement.

**Services** shall mean all activities and services required to be performed by Company under the GCCS O&M Agreement as set forth in Section 2 of the GCCS O&M Agreement.

**Site Lease Agreement** shall refer to the County's agreement with Company regarding the terms and conditions of the Company' lease of land from the County for the express purpose of operation of the Plant and providing a staging area for GCCS operations.

**SCADA** means Supervisory Control and Data Acquisition.

**scfm** means standard cubic feet per minute.

**Scheduled Maintenance** has the meaning set forth in Section 4.03 of the Energy Agreement.

**Shasta County General Plan** means the official document which sets forth the general development policies for Shasta County.

**ShCAQMD** means the Shasta County Air Quality Management District.

**Company' Indemnified Parties** has the meaning set forth in Section 8.02 of the Energy Agreement.

**Company Property** means the Plant; all designs, plans and specifications of the Plant; all alterations, additions, improvements or installations made to the Plant; all Company property used in connection with the installation, operation, maintenance or repair of the Plant or the GCCS; and any other equipment, personal property or trade fixtures placed by or on behalf of Company on or about the Premises.

## EXHIBIT A

## EXHIBIT B

**Storage Facilities** shall mean suitable, accessible and secured dry areas for the storage of Accessories and tools.

**Supplies** shall mean collectively (i) Consumables, and (ii) the special tools, equipment, parts and other materials required for scheduled maintenance and otherwise for the performance of the Services, and (iii) all tools, equipment, parts and other materials required for repairs under Prudent Operating Practices.

**Surplus Landfill Gas Quantity** has the meaning set forth in Section 5.03 of the Energy Agreement.

**Taxes** shall mean all levies, fees, charges, duties, tariffs and taxes, including sales taxes, value added taxes, ad valorem taxes, use taxes, excise taxes, possessory use taxes, and stamp taxes, imposed by a Governmental Person on the provision of Services hereunder; but shall not include, among other things, taxes on income, payroll or other taxes imposed directly on a business or the privilege of doing business, which shall be borne by the respective Party upon which such tax is imposed.

**Term** has the meaning set forth in Section 7.01 of the Energy Agreement.

**Thermal Energy** shall mean the chilled water, as measured in tons per hour, and/or hot water, as measured in Therms, and/or steam, as measured in thousand-pounds (Mlbs), supplied by Company to a Product Purchaser.

**Title Policies** shall have the meaning set forth in Section 2.03 of the Site Lease Agreement

**Unforced Outage** means an intentional scheduled Plant Shutdown by Company in accordance with the Plant Operations Program, or Plant Shutdown by County in accordance with Section 5.05 of the Energy Agreement.

**Well** shall mean any individual gas collection point, including vertical wells and horizontal headers, in the GCCS consisting of a Wellhead, length of pipe penetrating into the Landfill, and a section of perforated pipe through which LFG enters the GCCS.

**Wellfield** shall mean the collection of all Wells within the GCCS.

**Wellhead** shall mean the collection of equipment used to manage and monitor the flow and gas concentrations from each Well typically consisting of a manual gate valve, pressure ports, venturi-style flow measurement device, and sample ports.

## EXHIBIT A

## **EXHIBIT B**

## **EXHIBIT B**

### **GENERAL SCOPE OF WORK**

The Project consists of an electric generation plant fueled by Landfill Gas. Landfill Gas collected by the Landfill's GCCS will be supplied to [\_\_\_\_\_].



## **EXHIBIT B**

### **EXHIBIT B-1**

#### **PROJECT SCHEDULE**

<b>Milestones</b>	<b>Timetable</b>
1. Air Permit Application filed	2 months after Effective Date
2. Use Permit Application filed	2 months after Effective Date
3. Interconnection Agreement Application filed	2 months after Effective Date
4. Interconnection Agreement Executed	Upon completion of interconnection study.
5. Power Purchase Agreement Executed	Upon completion of interconnection study.
6. Air Permit received	Estimated 3-6 months after submission of application
7. Use Permit received	Estimated 3-6 months after submission of application
8. GenSet Purchase Order placed	Upon receipt of Air Permit, Use Permit, Interconnection Agreement, and PPA
9. Submission of proposed project plans to County for review	Upon receipt of Air Permit, Use Permit, Interconnection Agreement, and PPA
9. Building Permit Application filed	1 month after County approval of proposed project plans
10. Building Permit received	Estimated 3-6 months after submission of application
11. Construction Commencement Date	Upon receipt of Building Permit, no later than 18 months following Effective Date
12. Commercial Operations Date	On or prior to the second anniversary of the Effective Date

**EXHIBIT B**

**EXHIBIT C-1**

**SITE LEASE AGREEMENT**

**EXHIBIT B**

**EXHIBIT C-2**

**GCCS O&M AGREEMENT**

EXHIBIT C-2

## **EXHIBIT B**

## **EXHIBIT D**

### **AUTHORIZED COUNTY SUPPORT ACTIONS**

1. County Duly Authorized Representatives may, but are not required to, in the event of an emergency, perform a Plant Shutdown in accordance with Plant Operations Program.
2. County Duly Authorized Representatives may, but are not required to, upon explicit verbal request of Company Duly Authorized Representatives, enter onto the Premises and obtain information from the Plant's human-machine-interface equipment.
3. County Duly Authorized Representatives may, but are not required to, upon written authorization by Company Duly Authorized Representatives, perform a Control Reset, as set forth in the Plant Operations Program. Such written authorization may be by letter, fax, e-mail, or other written form.

**EXHIBIT B**

**EXHIBIT E**

**CONFIRMATION**

To:  
Counterparty Name  
Counterparty Address

This notice confirms that, pursuant to that certain Landfill Gas Energy Agreement, [ ], is the owner of and is entitled to validate, bank, resell, assign, market, or transfer, all current and future Fuel Carbon Credits, and grants the Company the exclusive ownership rights to Fuel Carbon Credits generated from the gas to energy project constructed and operated by Company at the West Central Landfill (the Facility), including any future expansions of the Facility.

For purposes of this Confirmation, the term “Fuel Carbon Credits” means any tradable Environmental Attributes based on the greenhouse gas reduction benefits attributed to the use of landfill gas generated at the Facility as a fuel in the landfill gas to energy plant owned by [ ], or its successors. Fuel Carbon Credits include credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the destruction or reduction of contaminants or greenhouse gases in the landfill gas used as a fuel in the Plant, including but not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the Reporting Rights to these avoided emissions such as “Green Tag Reporting Rights.”

Dated \_\_\_\_\_

[ \_\_\_\_\_ ]

[ \_\_\_\_\_ ]

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

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

**EXHIBIT B**

**EXHIBIT F**

**MINIMUM LANDFILL GAS STANDARD**

<b>Parameter Description</b>	<b>Parameter Test Method</b>	<b>Boundary Description</b>	<b>Unit of Measure</b>	<b>Minimum Standard</b>
Methane Content	Handheld Landfill Gas Meter	Minimum	% by volume	45
Oxygen Content	Handheld Landfill Gas Meter	Maximum	% by volume	2
Total Reduced Sulfur (CS <sub>2</sub> , H <sub>2</sub> S, COS, mercaptans, & DMS)	EPA Test Method 15 or 16	Maximum	ppmv (parts per million on a volume basis)	100
Total Organic Silicon (siloxanes)	GC/MS	Maximum	µg/BTU	0.6