

# **ATTACHMENT B**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern  
California Gas Company (U 904 G) to Establish a  
Biogas Conditioning & Upgrading Services Tariff

A. 12-04-024  
(Filed April 25, 2012)

**JOINT SUPPLEMENTAL EXHIBITS OF SOUTHERN CALIFORNIA GAS  
COMPANY, DIVISION OF RATEPAYER ADVOCATES, SOUTHERN  
CALIFORNIA GENERATION COALITION, AND AGRICULTURAL ENERGY  
CONSUMERS ASSOCIATION FOR ADOPTION OF SETTLEMENT AGREEMENT**

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September 6, 2013

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On May 3, 2013, in accordance with Article 12 of the Commission’s Rules of Practice and Procedure , Southern California Gas Company, the Division of Ratepayer Advocates, Southern California Generation Coalition, and the Agricultural Energy Consumers Association (collectively referred to hereafter as the “Joint Parties”)<sup>1</sup> filed their *Joint Motion of Southern California Gas Company, Division of Ratepayer Advocates, Southern California Generation Coalition, and Agricultural Energy Consumers Association for Adoption of Settlement Agreement* (“Motion”) in the above captioned proceeding.

These supplemental exhibits are being filed and served with assigned Administrative Law Judge Mason’s permission pursuant to Judge Mason’s September 3, 2012 email instruction in order to supplement the Motion with documents that will further the record and assist in the implementation of the Settlement Agreement attached to the Motion.

These supplemental documents are:

1. The Exemplary Tariff -- the terms by which the BCS services will be offered;
2. The BCS Services Agreement -- the terms by which the BCS tariff services will be provided to a particular customer;

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# **Document 1**

Schedule No. G-BCUS  
BIOGAS CONDITIONING/UPGRADING SERVICES

Sheet 1

APPLICABILITY

Applicable to Biogas Producers requesting biogas conditioning/upgrading services located on or adjacent to the Premises. Biogas Conditioning/Upgrading (BCUS) Services under this Schedule is conditioned upon arrangements mutually satisfactory to the Biogas Producer and the Utility for design, location, construction, and operation of required BC Facilities.

TERRITORY

Applicable throughout Utility's service territory.

GENERAL

1. **BIOGAS PRODUCER REQUIREMENTS.** Biogas Producer shall provide Utility with gas quantity and quality specifications of Untreated Biogas that would be subject to conditioning/upgrading to Treated Biogas and any other Biogas Producer requirements for Utility to determine through a Feasibility Analysis the appropriate level of BC Services required. Biogas Producer must be able to make all necessary contractual representations and warranties including those on gas quality and throughput.
2. **DESIGN.** Utility will be responsible for planning, designing, procuring, installing, constructing, and engineering the BC Facilities using the Utility's specifications for design, materials, and construction.
3. **OWNERSHIP.** BC Facilities installed under the provisions of this Schedule shall be owned, operated, and maintained by Utility and/or its contractors or agents. Biogas Producer shall own, operate, and maintain any and all equipment and facilities upstream of the BCUS Receipt Point for the Untreated Biogas and downstream of the BCUS Point of Service Delivery for the Treated Biogas, or have the legal rights to and ownership of Untreated Biogas and the full power and authority to perform all obligations under the Agreement related to the Premises.
4. **PLACEMENT OF BC FACILITIES AND RIGHTS-OF-WAY.** Biogas Producer shall provide an appropriate location and Protective Structures for the safe and secure placement and operation of BC Facilities as required by Utility. Biogas Producer shall provide rights-of-way, leases and/or easements as required by Utility, for Utility to install, operate and maintain BC Facilities on Premises to serve the Biogas Producer.
5. **ACCESS TO PREMISES.** Whether or not pursuant to rights-of-way, Utility, including its employees, contractors and agents, shall have at all times the right to enter and leave Premises for any purpose connected with the furnishing of BC Services or other gas services including, but not limited to, construction, operations, maintenance, and necessary deliveries on and off-site, and the exercise of any and all rights secured to it by law, or under Utility's tariff schedules. These rights include, but are not limited to:

(Continued)

(TO BE INSERTED BY UTILITY)  
 ADVICE LETTER NO. **Biogas**  
 DECISION NO.

ISSUED BY  
**Lee Schavrien**  
 Senior Vice President

(TO BE INSERTED BY CAL. PUC)  
 DATE FILED \_\_\_\_\_  
 EFFECTIVE \_\_\_\_\_  
 RESOLUTION NO. \_\_\_\_\_

Schedule No. G-BCUS  
BIOGAS CONDITIONING/UPGRADING SERVICES

Sheet 2

(Continued)

GENERAL (Continued)

5. ACCESS TO PREMISES (Continued)

- a. The use of a Utility-approved locking device to prevent unauthorized access to BC Facilities and any other of Utility's facilities;
- b. Safe and ready access for Utility personnel and/or its contractors or agents;
- c. Unobstructed ready access for Utility's vehicles and equipment to install, remove, repair, or maintain BC Facilities and any other of Utility's facilities; and
- d. Removal of any and all of BC Facilities or any other of Utility and/or its contractors or agents' facilities installed on or below Premises after the termination of BC Services.

6. SERVICE CONNECTIONS. Only personnel duly authorized by Utility are allowed to connect or disconnect BC Facilities, remove BC Facilities, or perform any work upon BC Facilities or Utility-owned existing facilities.

7. BIOGAS PRODUCER'S RESPONSIBILITIES. In accordance with Utility's design, specifications, and requirements for the installation, maintenance and operation of BC Facilities, Biogas Producer shall have the following responsibilities:

- a. Biogas Producer shall be solely responsible for electric and natural gas service and all electric and natural gas bills and electric and natural gas costs, including electricity and natural gas to run BC Facilities, during construction and operating periods and all other required utility services.
- b. Biogas Producer or Biogas Producer's designee shall be solely responsible for owning the Untreated Biogas and Treated Biogas.
- c. Biogas Producer shall be solely responsible, at Biogas Producer's own liability, risk and expense, to provide Untreated Biogas to the Point of Receipt. The Biogas Producer's facilities shall conform to industry standards and applicable laws, codes, and ordinances of all governmental authorities having jurisdiction, including any applicable environmental laws.

(Continued)

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Senior Vice President

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Schedule No. G-BCUS  
BIOGAS CONDITIONING/UPGRADING SERVICES

Sheet 3

(Continued)

GENERAL (Continued)

7. BIOGAS PRODUCER'S RESPONSIBILITIES (Continued)

- d. Biogas Producer shall make arrangements to stop deliveries of Untreated Biogas and shut down the operation of any existing equipment as needed by Utility including, but not limited to, the following: to tie into existing gas piping, to tie into the electrical system to provide power to the BC Facilities, to tie into the existing grounding system, to tie into existing control/emergency systems, and as necessary during the BC Facilities startup, commissioning and throughout the term of the Agreement for scheduled and un-scheduled maintenance.
- e. Biogas Producer (i) shall limit access and take all necessary steps to prevent BC Facilities from being damaged or destroyed, (ii) shall not interfere with Utility's ongoing operation of BC Facilities, and (iii) shall provide adequate notice to Utility through Utility's representative identified in the Agreement prior to any inspection of BC Facilities by regulatory agencies.
- f. Utility shall incur no liability whatsoever, for any damage, loss, or injury occasioned by or resulting from:
  - i. The selection, installation, operation, maintenance or condition of Biogas Producer's facilities or equipment; or
  - ii. The negligence, omission of proper shut-off valves or other protective and safety devices, want of proper care, or wrongful act of Biogas Producer, or any agents, employees, or licensees of Biogas Producer, on the part of Biogas Producer installing, maintaining, using, operating, or interfering with its own pipes, fittings, valves, regulators, appliances, fixtures, or apparatus.
- g. Biogas Producer shall meet on an on-going basis the Creditworthiness Requirements and maintain all required amounts and categories of insurance.
- h. Biogas Producer shall indemnify, defend and hold harmless Utility and its authorized officers, employees, and agents from any and all claims, actions, losses, damages and/or liability of every kind and nature in any way connected with or resulting from the violation or non-compliance with any local, state, or federal environmental law or regulation as a result of pre-existing conditions at the Premises, release or spill of any pre-existing hazardous materials or waste, or out of the management and disposal of any pre-existing contaminated soils or groundwater, hazardous or nonhazardous, removed from the ground as

(Continued)

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Senior Vice President

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Schedule No. G-BCUS  
BIOGAS CONDITIONING/UPGRADING SERVICES

Sheet 5

(Continued)

GENERAL (Continued)

8. UTILITY RESPONSIBILITIES (Continued)

- c. Utility and/or its contractors or agents shall be responsible for the operation of the BC Facilities and shall perform all preventative maintenance, including regular inspections, on BC Facilities consistent with the manufacturer's recommendations and regulatory requirements.
- d. Utility and/or its contractors or agents shall be responsible to remove BC Facilities at the end of the term of the Agreement or any extensions thereof, and Biogas Producer shall allow Utility a sufficient amount of time to complete removal of BC Facilities.

RATES

Utility and Biogas Producer will negotiate a rate based on the Biogas Producer's unique circumstances ("Services Fee"). The Services Fee shall be set forth in the Agreement and shall, unless otherwise specified in the Agreement, be billed in equal monthly installments over the term of the Agreement.

SPECIAL CONDITIONS

- 1. The definitions of principal or capitalized terms used in this schedule are found either herein, in the Agreement, or in Rule No. 1, Definitions.
- 2. Service may be denied, suspended or discontinued for nonpayment, unsafe apparatus, or other reasons in accordance with Rule No. 9, Discontinuance of Service.
- 3. Any disputed bill will be treated in accordance with Rule No. 11, Disputed Bills.
- 4. As a condition precedent to service under this schedule, a fully executed Agreement generally in the form of the Biogas Conditioning and Upgrading Services Agreement is required. All contracts, rates and conditions are subject to revision and modification as a result of Commission order.
- 5. Utility may file in the public records, including real estate records, such instruments as may be appropriate or desirable (such as UCC financing statements and fixture filings) to put others on notice of Utility's ownership of the BC Facilities.
- 6. Biogas Producer may request changes to BC Services or BC Facilities as a result of changes to Biogas Producer's requirements at any time during the term of the Agreement, however, Utility has sole discretion whether to make any changes to BC Services or BC Facilities, and Biogas Producer shall be responsible for the full costs related to the resulting changes in BC Services or BC Facilities.

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(TO BE INSERTED BY UTILITY)  
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Schedule No. G-BCUS  
BIOGAS CONDITIONING/UPGRADING SERVICES

Sheet 6

(Continued)

SPECIAL CONDITIONS

- 7. Utility disclaims any liability related to the quality of the conditioned biogas. Should any assessed liability occur, Utility's ratepayers will not bear the cost of such liability. The commercial obligations of Utility to the Biogas Producer regarding performance of the BC Services will be as specified in the Agreement.

DEFINITIONS

- 1. AGREEMENT. Biogas Conditioning and Upgrading Services Agreement between Biogas Producer and Utility describing BC Services to be provided to Biogas Producer and BC Facilities to be installed by Utility, subject to this Schedule and all applicable tariff schedules as filed from time to time with the Commission.
- 2. BC FACILITIES. Facilities to be placed on or adjacent to Premises in order to provide BC Services (to be identified in Exhibit A of the Agreement) including, but not limited to:
  - a. Compressors, blowers, vessels, upgrading skid, flares, gas monitoring and control systems, piping and any other equipment needed to provide BC Services; and
  - b. Other associated equipment that may be requested by Biogas Producer and agreed to by Utility.
- 3. BC SERVICES. Planning, designing, procuring, installing, constructing, owning, operating, and maintaining the BC Facilities located on or adjacent to Premises to upgrade and condition Untreated Biogas owned by Biogas Producer to gas quality levels agreed upon by both the Utility and Biogas Producer through the use of BC Facilities.
- 4. BCUS POINT OF SERVICE DELIVERY. Physical point(s) of delivery to the Biogas Producer downstream of BC Facilities. Each BCUS Point of Service Delivery shall be clearly marked or tagged physically and identified in the Agreement.
- 5. BCUS RECEIPT POINT. Physical point(s) of delivery to the Utility upstream of BC Facilities. Each BCUS Point of Receipt shall be clearly marked or tagged physically and identified in the Agreement.
- 6. CREDITWORTHINESS REQUIREMENTS. Biogas Producer shall provide adequate assurance acceptable to Utility to establish Biogas Producer's creditworthiness according to the amount to establish credit contained herein. Such adequate assurance shall be supplemented from time to time thereafter during the term hereof to the extent requested by Utility. The amount of credit required to establish or re-establish credit for BC Services will be the full cost of the BC Services consisting of the summation of the monthly service fees for the duration of the term of the Agreement.

(Continued)

(TO BE INSERTED BY UTILITY)  
ADVICE LETTER NO. Biogas  
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DATE FILED \_\_\_\_\_  
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Schedule No. G-BCUS  
BIOGAS CONDITIONING/UPGRADING SERVICES

Sheet 7

(Continued)

DEFINITIONS (Continued)

6. CREDITWORTHINESS REQUIREMENTS (Continued)

Biogas Producer shall be required to complete a credit application that includes financial and other relevant information needed to establish credit. Utility shall use financial and other relevant information, along with Biogas Producer's service request and any other available information, to determine the Biogas Producer's credit limit. If unsecured credit is granted based on the financial strength of a parental corporation, a parental guaranty will be required.

A guaranty in form, substance and in an amount reasonably acceptable to Utility may be provided by Biogas Producer from Biogas Producer's parent company or some other guarantor acceptable to Utility. Any guarantor must submit to a creditworthiness evaluation and provide necessary financial and other information as requested by Utility. Utility will provide acceptable guaranty forms and any amendments thereto and will allow reasonable modifications to the guaranty forms.

To assure the continued validity of an established credit facility with Utility, Biogas Producer shall be required to furnish Utility with financial and other relevant information satisfactory to Utility during the term of the Agreement. In the event that Utility determines that a financial change has affected, or could adversely affect the creditworthiness of Biogas Producer, or if Biogas Producer does not provide the requested financial information, Utility may terminate the Agreement. Utility shall provide written notice to Biogas Producer with a commercially reasonable cure time not to be less than three (3) business days prior to termination.

In the event that Utility determines that Biogas Producer qualifies for unsecured credit, security may be required at a future date if Utility determines that a material change has occurred, or becomes aware of a material change in Biogas Producer's financial position, or if the provisions of this Rule are changed.

Biogas Producer may submit a security deposit in lieu of the creditworthiness evaluation to qualify for BC Services. The security deposit is due at Agreement execution and will secure Biogas Producer's obligations during both the construction period and the service period. The security deposit may be in the form of (a) cash, (b) an irrevocable and automatic annually renewing standby letter of credit in form, substance and amount reasonably acceptable to Utility and issued by a major financial institution within the United States, acceptable to Utility, or (c) renewable surety bond(s) in a form reasonably acceptable to Utility and issued by a major insurance company within the United States, acceptable to Utility.

Biogas Producer may be required to reestablish credit if in the reasonable determination of Utility, the conditions under which credit was originally established have changed, or if in the opinion of Utility a condition of high risk exists.

(Continued)

(TO BE INSERTED BY UTILITY)  
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Senior Vice President

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Schedule No. G-BCUS  
BIOGAS CONDITIONING/UPGRADING SERVICES

Sheet 8

(Continued)

DEFINITIONS (Continued)

6. CREDITWORTHINESS REQUIREMENTS (Continued)

In the event Utility determines that a financial change has or could adversely affect the creditworthiness of Biogas Producer, or if Biogas Producer does not provide the requested financial information, Utility may terminate Biogas Producer's participation in the program with the sum of the remaining payments due immediately.

At the time of termination, if Biogas Producer has not paid Utility billings, any security held on Biogas Producer's accounts shall be applied to recoup unpaid bills. In addition, if Biogas Producer is terminated and/or declares bankruptcy, Biogas Producer will be liable to Utility for any and all costs, expenses, and attorney's fees incurred by Utility as a result of such termination or bankruptcy. Payment by Biogas Producer of all such costs, expenses and attorney's fees will be a condition of re-entry into, or continuation of, BC Services.

7. FEASIBILITY AGREEMENT. Feasibility Analysis Agreement between Biogas Producer and Utility providing a Feasibility Analysis to Biogas Producer, subject to this Schedule and all applicable tariff schedules as filed from time to time with the Commission.

8. FEASIBILITY ANALYSIS. All analyses as required by Utility to determine the scope and pricing for the Agreement.

9. PREMISES. All of the real property and apparatus employed by Biogas Producer on an integral parcel of land undivided (excepting in the case of industrial, agricultural, oil field, resort enterprises, and public or quasi-public institutions) by a dedicated street, highway, or other public thoroughfare, or a railway.

10. PROTECTIVE STRUCTURES. Fences, retaining walls (in lieu of grading), barriers, posts, barricades and other structures as required by Utility, permitting agencies, or other regulations.

(TO BE INSERTED BY UTILITY)

ADVICE LETTER NO. Biogas  
DECISION NO.

ISSUED BY

**Lee Schavrien**  
Senior Vice President

(TO BE INSERTED BY CAL. PUC)

DATE FILED \_\_\_\_\_  
EFFECTIVE \_\_\_\_\_  
RESOLUTION NO. \_\_\_\_\_

# **Document 2**

## BIOGAS CONDITIONING AND UPGRADING SERVICES AGREEMENT

This Biogas Conditioning and Upgrading Services Agreement (“*Agreement*”) is made, entered into and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “*Effective Date*”) by and between Southern California Gas Company (“*Utility*”), a California corporation and \_\_\_\_\_, a \_\_\_\_\_ (“*Biogas Producer*”).

### RECITALS

A. WHEREAS, Biogas Producer either 1) owns and operates a \_\_\_\_\_ (the “*Facility*”) located at \_\_\_\_\_ (the “*Premises*”) that, among other attributes, produces a stream of \_\_\_\_\_ [biogas description] \_\_\_\_\_ (the “*Untreated Biogas*”) or 2) has legal rights to and ownership of Untreated Biogas and the full power and authority to perform all obligations under this Agreement related to the Facility and Premises.

B. WHEREAS, in connection with such Untreated Biogas, Biogas Producer desires to obtain and Utility desires to provide certain biogas conditioning and upgrading services as described herein, including, among other things, the design, engineering, procurement, installation, construction, operation and maintenance of a biogas conditioning/upgrading facility and related services to provide Treated Biogas, all for the Services Fee (as hereinafter defined).

In light of the foregoing Recitals, which are incorporated herein as part of this Agreement, the Parties for good and valuable consideration agree as follows:

### ARTICLE 1 DEFINITIONS AND CONSTRUCTION

1.1 Definitions. As used in this Agreement, the following terms have the meanings indicated:

- 1.1.1 “*Adverse Information*” is defined in Section 4.7.1.
- 1.1.2 “*Agreement*” has the meaning set forth in the Tariff.
- 1.1.3 “*BC Facilities*” has the meaning set forth in the Tariff.
- 1.1.4 “*BC Services*” has the meaning set forth in the Tariff.
- 1.1.5 “*BCUS Point of Service Delivery*” has the meaning set forth in the Tariff.
- 1.1.6 “*BCUS Receipt Point*” has the meaning set forth in the Tariff.
- 1.1.7 “*Biogas Producer*” has the meaning set forth in the preamble.
- 1.1.8 “*Biogas Producer Acquired Permits*” is defined in Section 9.2.1.
- 1.1.9 “*Biogas Producer Event of Default*” is defined in Section 17.1.

1.1.10 “**Biogas Producer Representative**” is defined in Section 4.6.

1.1.11 [“**Biomethane Guidance Documents**” is defined as the biomethane standards or requirements developed by Utility, attached as Exhibit G and as updated periodically.]<sup>1</sup>

1.1.12 “**Capital Charge**” is defined in Section 6.1.1.

1.1.13 “**Change in Services**” is defined in Section 10.1.2.

1.1.14 “**Commission**” means the Public Utilities Commission of the State of California.

1.1.15 “**Consequential Damages**” shall mean damages for loss of anticipated profits, loss by reason of BC Facilities shutdown, non-operation or increased expense of operation, service interruptions, cost of purchased or replacement gas or power, cost of money, loss of use of capital or revenue or any other indirect, incidental, special, punitive, exemplary, or consequential loss or damage, whether arising from defects, delay, or from any other cause whatsoever.

1.1.16 “**Construction Commencement Date**” is defined in Section 5.1.1.

1.1.17 “**Creditworthiness Requirements**” has the meaning set forth in the Tariff.

1.1.18 “**Dispute**” or “**Disputes**” is defined in Article 21.

1.1.19 “**Environmental Attributes**” is defined in Article 8.

1.1.20 “**Environmental Laws**” is defined in Section 20.2.

1.1.21 “**Excusable Event**” means Biogas Producer’s failure to meet any of its responsibilities under this Agreement, or any interference with the Utility’s performance of the BC Services or the operation of the BC Facilities (other than as a result of the exercise of any of Biogas Producer’s rights under this Agreement) by Biogas Producer or any third party or any action or inaction by Biogas Producer or any contractor, subcontractor or any other entity acting at the direction and control of Biogas Producer.

1.1.22 “**Extensions**” is defined in Article 3.

1.1.23 “**Facility**” has the meaning set forth in the preamble.

1.1.24 “**Feasibility Agreement**” has the meaning set forth in the Tariff.

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<sup>1</sup> In certain sections of this Agreement, specific clauses and blanks are provided and set forth in [brackets] and are subject to mutual agreement of the parties.

1.1.25 “*Feasibility Analysis*” has the meaning set forth in the Tariff and attached as Exhibit C.

1.1.26 “*Force Majeure*” means any occurrence beyond the reasonable control of and without the fault or negligence of the party claiming Force Majeure which causes the party to be unable to perform its obligations (except to pay the Services Fee), which by exercise of due foresight such party could not reasonably have been expected to avoid and which such party is unable to overcome by the exercise of due diligence. Such occurrences may include, but are not limited to, acts of God, acts of terrorism, disruption of natural gas supplies, power outages or disruptions, labor disputes not limited to the claiming Party’s workforce, unusually severe weather, actions or inactions by federal, state, and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.

1.1.27 “*Hazardous Substances*” is defined in Section 20.1.

1.1.28 “*Index*” means [to be determined by mutual agreement of the Parties].

1.1.29 “*Initial Term*” is defined in Article 3.

1.1.30 “*Latent Site Defects*” is defined in Section 7.2.6.

1.1.31 “*O&M Charge*” is defined in Section 6.1.1.

1.1.32 “*Party*” refers to Utility or Biogas Producer individually and “*Parties*” refers collectively to Utility and Biogas Producer.

1.1.33 “*Performance Requirements*” is defined in Section 5.4 and shall be as specified in Exhibit A.

1.1.34 “*Permits*” is defined in Section 9.2.

1.1.35 “*Premises*” has the meaning set forth in the Tariff and as further described by Exhibit B.

1.1.36 “*Regulatory Requirements*” is defined in Section 9.1.

1.1.37 “*Remedial Work*” is defined in Section 20.3.

1.1.38 “*Requirements*” means applicable laws, orders, ordinances, rules, regulations, certificates, consents, permits and any other authorizations of any federal, state, county, municipal or other governmental authorities or public officer which relate to the design, construction, maintenance, operation, repair, upgrade, renovation, removal, alteration, use, occupancy or control of the Facility, the BC Facilities, or the Premises. Requirements include Biomethane Guidance Documents, Regulatory Requirements, Biogas Producer Acquired Permits and Utility Acquired Permits.

1.1.39 “*Services Commencement Date*” is defined in Section 5.1.3.

1.1.40 “*Services Fee*” is defined in Section 6.1.

1.1.41 “*Tariff*” means the current Biogas Conditioning and Upgrading Services Tariff in force at the time of interpretation and incorporated herein by reference.

1.1.42 “*Termination by Utility Payment*” is defined in Section 18.1.2.

1.1.43 “*Treated Biogas*” means the conditioned/upgraded biogas that meets the Biogas Producer’s equipment requirements or those requirements pertaining to pipeline injection.

1.1.44 “*Treated Biogas Specifications*” are the specifications for the Treated Biogas set forth in Exhibit E.

1.1.45 “*Untreated Biogas*” shall have the meaning set forth in the Recitals.

1.1.46 “*Untreated Biogas Specifications*” are the specifications and quantities delivered for the Untreated Biogas set forth in Exhibit D.

1.1.47 “*Utility*” means Southern California Gas Company.

1.1.48 “*Utility Acquired Permits*” is defined in Section 9.2.2.

1.1.49 “*Utility Representative*” is defined in Section 5.3.

1.1.50 “*Work Notice*” is defined in Section 20.3.

1.2 Agreement Documents. This Agreement consists of the Tariff and the following Exhibits specifically made a part hereof by this reference:

**Exhibit A** – Statement of BC Services and Services Fee Table

**Exhibit B** – Map of Premises and Location of BC Facilities

**Exhibit C** – Feasibility Analysis

**Exhibit D** – Untreated Biogas Specifications

**Exhibit E** – Treated Biogas Specifications

[**Exhibit F** – Easement or Lease Agreement]

[**Exhibit G** - Biomethane Guidance Document]

1.3 Integration. This Agreement shall completely and fully supersede all prior undertakings or agreements, both oral and written, between the Biogas Producer and Utility relating to the subject matter of this Agreement. This Agreement, the Tariff and the exhibits are intended to be read together, and shall be given full force to the maximum extent practicable. In the event of any conflict between this Agreement, the Tariff and the exhibits, the Tariff at the time of interpretation shall control, regardless of whether there is a similar provision in this Agreement, and this Agreement shall control over the other exhibits. The other exhibits shall be given the following descending order of precedence in interpretation: [Exhibit F,] Exhibit A, Exhibit C, [Exhibit G,] Exhibit D, Exhibit E, Exhibit B.

## ARTICLE 2 EFFECTIVE DATE

The Effective Date of this Agreement means the date as set forth in the preamble to this Agreement.

## ARTICLE 3 TERM

This Agreement shall commence as of the Effective Date and shall be in full force and effect for a period of \_\_\_\_ years after the Services Commencement Date (the “*Initial Term*”), unless terminated earlier in accordance with the terms hereof. At least sixty (60) days prior to the end of the term of the Agreement and assuming that all required payments have been made by Biogas Producer, the Parties may mutually agree to extend the term of the Agreement for a period and at a Services Fee to be mutually agreed upon. By mutual agreement, the Parties may agree to six (6) month extensions of this Agreement (“*Extensions*”) at the Services Fee defined in Section 6.1.

## ARTICLE 4 RESPONSIBILITIES OF BIOGAS PRODUCER

4.1 Biogas Delivery. As a condition of the obligation of Utility to achieve the Performance Requirements, Biogas Producer shall provide Untreated Biogas to Utility that meets the Untreated Biogas Specifications and is consistent with the Feasibility Analysis and, as applicable, Biomethane Guidance Documents and Rule 30.

4.2 Site and Security Requirements. Biogas Producer shall provide an appropriate location at the Premises for the delivery of equipment, layout and storage of equipment and materials, ingress and egress and parking of construction related vehicles and the construction of the BC Facilities, including ongoing safeguards at the Premises for the protection of the BC Facilities and provision of the BC Services, and all persons and other property related thereto, including lights and barriers, guard service, controlled access, and other measures developed pursuant to a continuous safety and security assurance program acceptable to Utility, or otherwise reasonably required to prevent vandalism, theft, and danger to the BC Facilities. Within thirty (30) calendar days after the Construction Commencement Date, Biogas Producer shall provide a notice satisfactory to Utility describing Biogas Producer’s safety and security assurance program.

4.3 Access to Premises. At all times and as necessary for the Utility and/or its contractors or agents to perform the BC Services and for the purpose of delivery and acceptance of equipment, construction and testing of the BC Facilities and all related construction activities,

Biogas Producer shall provide Utility and/or its contractors or agents with reasonable access to the Premises and the BC Facilities, the location of which is described in Exhibit B herein, including, but not limited to, unobstructed ready ingress and egress for all personnel, equipment and materials, and vehicles [in accordance with the Easement or Lease Agreement attached hereto as Exhibit F].

4.4 Assistance. Biogas Producer shall provide reasonable assistance and shall promptly provide all requested information at no additional cost, to enable Utility to apply for and obtain all necessary Utility Acquired Permits. Biogas Producer shall comply in all respects with all laws and Biogas Producer Acquired Permits relating to the BC Facilities, the Premises, and the performance of the BC Services, and shall expeditiously acquire any additional permits related to the operation of the Facility that are made necessary for Biogas Producer to operate the Facility due to the BC Facilities.

4.5 Cooperation. Biogas Producer shall reasonably cooperate and cause its contractors to cooperate with Utility and/or its contractors or agents while working at or near the Premises in order to assure that Biogas Producer does not unreasonably hinder or interfere, or makes more difficult than necessary the BC Services. Each Party shall use its commercially reasonable efforts to cause its contractors to maintain good working relationships with the other's contractors, agents and employees.

4.6 Project Representative. Biogas Producer shall designate a project representative, who shall act as a single point of contact for Biogas Producer ("**Biogas Producer Representative**"). The Biogas Producer Representative or designee shall be reasonably available during all business hours and shall provide or facilitate all access, scheduling and operating and maintenance at Biogas Producer's location to support Utility during design, permitting, construction, start up and commissioning of the project as necessary to facilitate the project and performance of BC Services. The actions taken by Biogas Producer Representative shall be deemed the acts of Biogas Producer. Biogas Producer may at any time, upon written notice to Utility, change the Biogas Producer Representative.

4.7 Adverse Information.

4.7.1 Notice. Biogas Producer shall provide Utility notice and copies of: (a) all reports, pleadings, applications, notifications, notices of violation, communications or other material relating specifically to the Premises, BC Facilities or the Facility, submitted by Biogas Producer to, or received by Biogas Producer from, the United States Environmental Protection Agency, California Air Resources Board, California Energy Commission, South Coast Air Quality Management District, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court; (b) any notice of intent to sue, pleadings, notifications, communications, reports or other material by any citizen or other person alleging violations of or noncompliance with the federal Clean Water Act, Clean Air Act, Safe Drinking Water Act, Solid Waste Disposal Act, Toxics Substances Control Act, Endangered Species Act, Comprehensive Environmental Response, Compensation and Liability Act, Emergency Planning and Community Right to Know Act of 1986, Oil Pollution Act of 1990, or any other federal or state law authorizing a citizen to bring suit alleging violations of or noncompliance

with such laws or any implementing regulations or orders relating specifically to Utility's performance of BC Services pursuant to this Agreement, received by Biogas Producer from, any citizen, person, organization or group, the United States Environmental Protection Agency, California Energy Commission, California Air Resources Board, South Coast Air Quality Management District, or any other federal, state or local agency, including any federal or state court; and (c) any administrative, civil, or criminal charges for violation of any federal, state or local environmental law or antitrust law or for fraud or similar matters initiated hereafter against any management employee of Biogas Producer or its affiliates or any contractor of the Biogas Producer or its affiliates that have direct or indirect responsibility for administration of Biogas Producer's performance of this Agreement (collectively, (a) - (c) are "***Adverse Information***"). Copies of Adverse Information and any Biogas Producer filing, submission or other response to such Adverse Information shall be submitted to Utility as soon as practicable, but in any case not later than the Biogas Producer's filing, submission or other response to such Adverse Information with or to said agencies, courts, citizens or other person, as applicable. Biogas Producer's routine correspondence to said agencies, courts, citizens or other person, as applicable, need not be routinely submitted to the Utility Representative, but shall be made available to Utility promptly upon Utility's written request.

4.7.2 Material Breach. The refusal or failure of Biogas Producer to file any required reports, or to provide required Adverse Information to Utility, or the inclusion of any materially false or misleading statement or representation by Biogas Producer in such report shall be deemed a material breach of this Agreement, and shall subject Biogas Producer to all remedies available to Utility, after sixty (60) calendar days and notification to Biogas Producer by Utility of the selected remedy, under this Agreement or otherwise.

## **ARTICLE 5 RESPONSIBILITIES OF UTILITY**

5.1 BC Services. As of the Effective Date, Utility shall provide the BC Services consistent with the Feasibility Analysis. Specifically, Utility shall perform the BC Services in the following three phases:

5.1.1 Construction of the BC Facilities. Upon Utility's issuance of a notice to a contractor of its authorization to proceed with the supply and construction of the BC Facilities ("***Construction Commencement Date***"), which shall be at Utility's discretion and option, Utility and/or its contractors or agents shall initiate the construction of the BC Facilities in accordance with the Feasibility Analysis.

5.1.2 Start-up and Testing of the BC Facilities. Prior to the Services Commencement Date, Utility and/or its contractors or agents shall perform all start-up and testing of the BC Facilities to confirm delivery of Treated Biogas from Untreated Biogas.

5.1.3 Commencement of Operation of BC Facilities. As of the date that the Utility causes the BC Facilities to achieve, or to be deemed to have achieved at the

Utility's discretion, the Performance Requirements as specified in Exhibit A (the "**Services Commencement Date**"), Utility shall commence operation of the BC Facilities.

5.2 Ownership. At all times, Utility shall own, operate and maintain the BC Facilities to be located at the Premises, however, at no time shall Utility have ownership rights to the Untreated Biogas or Treated Biogas. Biogas Producer shall own, operate and maintain or have rights sufficient to perform its obligations under this Agreement related to any and all equipment and facilities necessary to meet the requirements of this Agreement (i) upstream from the BCUS Receipt Point of Untreated Biogas and (ii) downstream from the BCUS Point of Service Delivery for Treated Biogas. Biogas Producer or its assignee, and not Utility, shall at all times retain all ownership rights in the Untreated Biogas and Treated Biogas.

5.3 Representative. Utility will designate by written notice pursuant to Section 11, an individual as Utility's representative for all matters relating to Utility's performance of BC Services under this Agreement ("**Utility Representative**"). Utility may at any time, upon written notice to Biogas Producer, change the Utility Representative.

5.4 Performance Requirements. Utility and/or its contractors or agents shall operate the BC Facilities so that as of the Services Commencement Date and subject to Biogas Producer's obligation to provide Untreated Biogas as required by specifications set forth in Exhibit D, the BC Facilities shall satisfy the performance requirements set forth in Exhibit A ("**Performance Requirements**").

5.5 Decommissioning. Upon the expiration or termination of this Agreement, Utility and/or its contractors or agents shall be responsible for safely decommissioning and removing the BC Facilities and all of the improvements made pursuant to this Agreement by the Utility, consistent with the Requirements.

## ARTICLE 6 FEES FOR SERVICES

6.1 Services Fee. Commencing as of the Services Commencement Date and continuing throughout the Initial Term and Extensions, if any, Biogas Producer shall pay Utility the following services fee ("**Services Fee**") on a monthly basis: [\_\_\_\_\_] Dollars (\$ \_\_\_\_\_) per month pursuant to the Services Fee Table in Exhibit A.

6.1.1 The Services Fee shall consist of a (a) capital-related charge ("**Capital Charge**") and (b) operations and maintenance-related charge ("**O&M Charge**") as further set forth in Exhibit A. [The O&M Charge is subject to annual adjustment on each yearly anniversary of the Services Commencement Date by the positive percentage change in the Index most recently published as of such anniversary over the Index determined for the prior annual period (or in the case of the first anniversary, the Index most recently published as of the Effective Date).]

6.1.2 Utility will notify Biogas Producer, in writing (which may be through its invoice) of the Services Commencement Date.

6.2 Invoices. Utility will provide Biogas Producer with an invoice on a monthly basis and Biogas Producer shall pay such invoices within nineteen (19) calendar days after the date of

the invoice. If payment is not received by Utility by the due date, late payment charges will be imposed by Utility. Billing and late payment charges will be consistent with Utility's applicable tariff schedules as filed from time to time with the Commission. If a bill remains unpaid for a period of seven (7) calendar days following the date of past due notice to Biogas Producer, Utility may, in addition to any other rights and remedies available under this Agreement or at law or in equity, suspend further performance of BC Services until such bill is paid or in the alternative, terminate this Agreement, remove BC Facilities and charge the Termination by Utility Payment.

## **ARTICLE 7 COVENANTS, WARRANTIES AND REPRESENTATIONS**

7.1 Utility Covenants. Utility covenants, represents, and warrants to Biogas Producer that:

7.1.1 Organization, Standing and Qualification. Utility is a corporation, duly organized, validly existing, and in good standing under the laws of California, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business it presently conducts and contemplates conducting.

7.1.2 Professional Skills. Utility and/or its contractors or agents shall have all the required authority, ability, skills, experience and capacity necessary to perform and shall diligently perform the BC Services in a timely and professional manner, utilizing sound engineering principles, project management procedures, construction procedures and supervisory procedures, all in accordance with industry standards.

7.1.3 Enforceable Agreement. This Agreement has been duly authorized, executed, and delivered by or on behalf of Utility and is, upon execution and delivery, the legal, valid, and binding obligation of Utility, enforceable against Utility in accordance with its terms, except as such enforceability may be limited by Regulatory Requirements, applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

7.1.4 No Conflict. The execution, delivery and performance by Utility of this Agreement will not conflict with or cause any default under: (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales agreement, loan or credit arrangement or other agreement or instrument to which Utility is a party or by which it or its properties may be bound or affected; or (c) any applicable laws; and will not subject the Facility, BC Facilities or any component part thereof or the Premises or any portion thereof to any lien other than as contemplated or permitted by this Agreement.

7.2 Biogas Producer Covenants. Biogas Producer covenants, represents, and warrants to Utility that:

7.2.1 Organization, Standing and Qualification. Biogas Producer is a [corporation, (or \_\_\_\_\_)] duly formed, validly existing, and in good standing under the laws of the State of [\_\_\_\_\_], and has full power and authority to execute, deliver

and perform its obligations hereunder and to engage in the business Biogas Producer presently conducts and contemplates conducting.

7.2.2 Enforceable Agreement. This Agreement has been duly authorized, executed, and delivered by or on behalf of Biogas Producer and is, upon execution and delivery, the legal, valid, and binding obligation of Biogas Producer, enforceable against Biogas Producer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

7.2.3 No Conflict. The execution, delivery and performance by Biogas Producer of this Agreement will not conflict with or cause any default under: (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales agreement, loan or credit arrangement or other agreement or instrument to which Biogas Producer is a party or by which it or its properties may be bound or affected; or (c) any applicable laws.

7.2.4 Governmental Approvals. No authorization, approval, exemption, or consent by any governmental authority is required in connection with the execution, delivery, and performance of this Agreement by Biogas Producer. The Biogas Producer Acquired Permits either have been obtained and are in full force and effect on the date hereof or will be obtained and will be in full force and effect, so as to permit Utility to commence and prosecute the BC Services to completion.

7.2.5 No Suits, Proceedings. There are no material actions, suits, proceedings, or investigations pending or, to Biogas Producer's knowledge, threatened against it at law or in equity before any court (United States or otherwise) or before any governmental authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Biogas Producer or in any impairment of its ability to perform its obligations under this Agreement. Biogas Producer has no knowledge of any violation or default with respect to any order, writ, injunction, or any decree of any court or any governmental authority that may result in any such materially adverse effect or such impairment.

7.2.6 No Latent Site Defects. There are no latent defects at the Premises that will impede Utility from obtaining the Utility Acquired Permits. "***Latent Site Defects***" include any conditions or circumstances that were not revealed to or ascertained by Utility during the development of the Feasibility Study for the Premises. Latent Site Defects include but are not limited to the presence of legally significant cultural resources, endangered species, dangerous site conditions, earthquake fault lines, or air, soil or water contamination.

## ARTICLE 8 ENVIRONMENTAL ATTRIBUTES

8.1 Environmental Attributes. "***Environmental Attributes***" means any and all current or future credits, benefits, air quality credits, methane capture credits, renewable energy credits,

emission reductions, offsets and allowances, howsoever entitled or referred to, earned by or in connection with the capture of methane, the reduction of air pollutants or the avoidance of the emission of any gas, chemical or other substance, including without limitation any Environmental Attributes arising out of laws or regulations involving or administered by the Environmental Protection Agency, the California Air Resources Board, California Energy Commission, South Coast Air Quality Management District, or any state, federal or international entity given jurisdiction over a program involving transferability of Environmental Attributes, and any reporting rights to such Environmental Attributes. Environmental Attributes include (i) voluntary and mandatory international, federal, state or local credits associated with the construction or operation of air quality projects, (ii) any other financial incentives in the form of credits, reductions, or allowances associated with the Facility and the BC Facilities that are applicable to a local, state or federal income taxation obligation, and (iii) any corporate citizen or corporate sustainability measurements, ratings or benefits.

8.2 Ownership of Environmental Attributes. Biogas Producer shall be entitled to all Environmental Attributes that relate to the Facility, the Untreated Biogas, the Treated Biogas, or the BC Facilities. Both Parties shall provide reasonable assistance to fulfill any requirements related to the Environmental Attributes but the Party holding legal title to the particular Environmental Attribute shall be responsible for reimbursing any additional costs incurred by the other Party in providing reasonable assistance. [Any adjustments to this provision necessary to maximize the value of Environmental Attributes will be negotiated by the Parties and reflected in this clause.]

## ARTICLE 9 REGULATORY REQUIREMENTS

9.1 Regulatory. This Agreement shall at all times be subject to such changes or modifications by Commission, as said Commission may, from time to time, direct in the exercise of its jurisdiction (“**Regulatory Requirements**”). This Agreement is subject to and incorporates by reference all of Utility’s applicable tariff schedules as filed from time to time with the Commission and which shall be included in Regulatory Requirements.

9.2 Permits. This Agreement shall also be subject to all local, state and federal permits applicable to the Premises (the “**Permits**”).

9.2.1 Biogas Producer shall remain responsible for all of the Permits relating to the ownership and operation of the Facility and the Premises (“**Biogas Producer Acquired Permits**”).

9.2.2 Utility shall be responsible for compliance with all Permits specifically applicable to the BC Services (“**Utility Acquired Permits**”).

## ARTICLE 10 CHANGE IN SERVICES

10.1 Change Events.

10.1.1 Minor Variations in Services. Utility shall have the right, at any time, to make minor variations in the BC Services that do not involve an adjustment in the Services Fee and are compatible with the design concept of the BC Facilities.

10.1.2 Change in Services. If, during the Term, as a result of an Excusable Event, a change in the Requirements or Biogas Producer’s requirements, or other causes as defined in this Section, conditions occur which cause a change to the cost or time required for the performance of BC Services or a change to the performance of the BC Facilities (a “*Change in Services*”), Parties shall negotiate in good faith and enter into a contract modification providing for an equitable adjustment of Services Fees reflecting the additional costs incurred by the Utility. [Specifics on criteria for triggering a Change in Services event and the process and criteria for determining the Services Fee adjustment to be added as applicable.]

10.1.3 Biogas Producer Requested Change in Services. In addition to the provisions of Section 10.1.2, Biogas Producer may request a Change in Services in writing to Utility. In such event, Utility shall prepare and submit to Biogas Producer a written estimate relating to the proposed Change in Services, including: (a) any projected change in the cost of the performance of the BC Services and any projected modification of the Services Fee, occasioned by such Change in Services and (b) the effect such Change in Services could be expected to have on the performance of the BC Facilities. If Biogas Producer elects to proceed with a more detailed examination of such proposed Change in Services, within such period as shall be agreed upon by the Parties, Utility shall submit to Biogas Producer a detailed estimate relating to the contemplated change and Biogas Producer shall be responsible for the cost of preparing the detailed estimate. If Biogas Producer elects to proceed with the proposed Change in Services, Biogas Producer and Utility shall agree upon a change order that shall include: (i) an adjustment in the Services Fee for the costs expected to be incurred by Utility as a result of such Change in Services less any savings or costs not incurred as a result of such Change in Services, and (ii) an adjustment in other terms of this Agreement, including but not limited to the Performance Requirements as a result of such Change in Services.

**ARTICLE 11 NOTICES OR DEMANDS**

Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (1) personally delivered; or (2) as of the date of signed return receipt after deposit with the U.S. Postal Service by certified or registered mail, postage prepaid, with a return receipt requested; or (3) if sent by email or facsimile with confirmation sent as provided in (2) above. All correspondence shall reference the Agreement number specified on the cover page of this Agreement. Notices shall be addressed as follows to:

If to Utility: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Biogas Producer:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

with a copy to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

or, as to each Party, at such other or additional address as may be designated by such Party in a written notice to the other Party.

**ARTICLE 12 TERMINATION BY EITHER PARTY**

If the Construction Commencement Date has not occurred by [    Date    ], either Party shall have the right to terminate this Agreement upon notice to the other Party, in which case neither Party shall have any further rights or obligations hereunder (other than such rights and obligations that by the express terms of this Agreement survive the expiration or earlier termination of this Agreement).

**ARTICLE 13 INSURANCE, CREDIT AND SECURITY REQUIREMENTS**

13.1 Biogas Producer Insurance. Biogas Producer agrees to obtain and maintain at Biogas Producer’s sole cost and expense the following types and amounts of insurance coverage consistent with the following requirements for the entire term of this Agreement to insure against any and all liabilities, claims, losses, damages or expenses resulting from Biogas Producer’s facilities located at the Premises and Biogas Producer’s responsibilities under the Tariff and this Agreement:

13.1.1 Workers’ Compensation and Employers’ Liability Insurance. In accordance with the laws of California, Biogas Producer shall maintain in force workers’ compensation insurance for all of its employees. Biogas Producer shall also maintain Employers’ Liability coverage in an amount of not less than \$[    ,000,000.00 (     Million Dollars)] per accident and per employee for disease. In lieu of such insurance, Biogas Producer may maintain a self-insurance program meeting the requirements of California along with the required Employers’ Liability insurance. Such insurance shall contain a waiver of subrogation in favor of Utility.

13.1.2 Commercial or Business Automobile Liability Insurance. Biogas Producer shall maintain an automobile liability policy or policies insuring against liability for damages because of bodily injury, death, or damage to property, (including loss of use

thereof), and occurring in any way related to the use by or on behalf of Biogas Producer, including loading or unloading of any of Biogas Producer's automobiles (including owned, non-owned, leased, rented and/or hired vehicles). Such coverage shall be in an amount of not less than [\$\_,000,000.00 (\_\_\_ Million Dollars)] combined single limit.

13.1.3 Commercial General Liability Insurance. Biogas Producer shall carry and maintain on an "occurrence" form commercial general liability policy or policies, insuring against liability arising from bodily injury, death, property damage, personal and advertising injury, products/completed operations liability, contractual liability covering all operations of Biogas Producer on the Premises which policy shall contain a waiver of subrogation in favor of Utility. There shall be no explosion, collapse or underground exclusion. Such coverage shall be in an amount of not less than [\$\_,000,000.00 (\_\_\_ Million Dollars)] per occurrence. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.

13.1.4 Pollution Liability Insurance. Biogas Producer shall maintain pollution liability insurance or insurance policies in an amount not less than [\$\_,000,000.00 (\_\_\_ Million Dollars)] each claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.

13.1.5 Certificates of Insurance. On or before the effective date of this Agreement, and thereafter during its term, Biogas Producer shall provide Utility with original, current certificates of insurance, and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies required under this Section. Utility shall not commence BC Services until Biogas Producer has obtained all insurance required by this Section and has provided acceptable certificates of insurance to Utility for review and approval. No insurance policy may be canceled, materially revised, or subject to non-renewal without at least thirty (30) calendar days prior written notice being given to Utility, ten (10) calendar days for non-payment of premium. Biogas Producer shall provide Utility with renewal certificates of insurance or binders within seven (7) calendar days prior to or after such expiration. Insurance shall be maintained without lapse in coverage during the term of this Agreement.

13.1.6 Policy Requirements. The required policies and any of Biogas Producer's policies providing coverage in excess of the required policies shall provide that the coverage is primary for all purposes and Biogas Producer shall not seek any contribution from any insurance or self-insurance maintained by Utility. All required policies of insurance shall be written by companies having an A.M. Best rating of "A -, VII" or better, or equivalent. Biogas Producer shall be solely responsible for any deductible or self-insured retention on insurance required under this Agreement.

13.1.7 Additional Insureds. Utility, its parent company, and its subsidiaries, affiliates, contractors and their respective officers, directors, employees, successors and assigns shall be named as additional insureds for policies listed above, except for workers' compensation. Commercial General Liability insurance shall provide

a severability of interest or cross-liability clause. Biogas Producer shall not violate nor knowingly permit to be violated any condition of the policies required under this Section.

13.2 Recorded and Secured Interest in Premises and BC Facilities. [At Utility's election, Utility shall be entitled to record in the public records a memorandum of lease describing its leasehold interest in the Premises or an easement.] To the extent that either presently or in the future, there are any persons other than Biogas Producer and Utility holding any interests in the Premises, Biogas Producer and Utility shall enter into a subordination and non-disturbance agreement that secures Utility's interest in the BC Facilities and the Premises in a manner satisfactory to Utility. At Utility's election, Utility may file a Uniform Commercial Code ("UCC") Financing Statement identifying Utility as the owner of the BC Facilities. Biogas Producer shall fully cooperate with the UCC filing if pursued by Utility.

13.3 Creditworthiness Requirements. Biogas Producer shall be responsible for meeting all Creditworthiness Requirements.

#### **ARTICLE 14 FORCE MAJEURE**

14.1 Force Majeure. Either Party shall notify the other Party in writing immediately of any delay, or anticipated delay in that Party's ability to perform its obligations under this Agreement due to the occurrence of events of Force Majeure, including causes or circumstances beyond the reasonable control of Utility, and the reason for and anticipated length of such delay.

14.2 Excuse of Performance. If, because of an occurrence of an event of Force Majeure, either Party is unable to perform its obligations under this Agreement (other than payment obligations), the affected Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent so affected, provided that the suspension of performance is of no greater scope and of no longer duration than is required by the event of Force Majeure and the affected Party shall use commercially reasonable efforts to mitigate damages.

14.3 Termination Due to Force Majeure. In the event a Party's performance of obligations hereunder (other than payment obligations) is prevented by an event of Force Majeure for a period of more than one hundred twenty (120) calendar days, the unaffected Party may elect to terminate this Agreement. In such case, if the terminating Party is the Utility, following such termination, Biogas Producer shall be liable for the Termination by Utility Payment.

#### **ARTICLE 15 TAXES**

15.1 Utility Tax Obligations. Utility assumes the benefit of any tax credits related to the BC Facilities and exclusive liability for and shall pay before delinquency, all federal, state, regional, municipal or local sales, use, excise, ad valorem and other taxes, charges or contributions imposed on, or with respect to, or measured by, the materials, supplies or labor furnished hereunder, or the wages, salaries or other remunerations paid to individuals employed in connection with the performance of the BC Services.

15.2 Biogas Producer Tax Obligations. Biogas Producer assumes exclusive liability for and shall pay before delinquency any increased real property or other applicable taxes it may be subject to as a result of the ownership and operation of the Premises, including the BC Facilities.

## ARTICLE 16 RELATED AGREEMENT

Any violation of the terms of the Tariff [or the Lease] shall constitute a default under this Agreement. Any notice of default given under [the Lease,] this Agreement or the Tariff shall be deemed to have also been given under the other agreements. Any cure periods under such agreements for any act or omission that constitutes a default shall run concurrently. This Agreement [and the Lease are] indivisible for purposes of section 365 of the Bankruptcy Code. In the event that any part of this Agreement [or the Lease] is assumed and/or assigned pursuant to section 365, the other parts of this Agreement [and the Lease] shall similarly be assumed and/or assigned.

## ARTICLE 17 DEFAULT

17.1 Biogas Producer Default. At any time during the term of this Agreement, if Biogas Producer: (a) abandons the Premises, tampers with or otherwise affects the operations of the BC Facilities, creates a condition at the Premises that poses a risk to health or safety, or fails to pay the Services Fee in Section 6.1 above; or (b) files a petition or otherwise commences a proceeding or case under bankruptcy, becomes bankrupt or insolvent, or assigns this Agreement, including any assignment as part of a sale of assets to a third party, or sublets any part thereof, without the express prior written authorization of Utility, is unable to pay its debts as they fall due, or has a receiver, custodian, trustee or similar official appointed with respect to it or substantially all of its assets; (c) is in material breach as set forth in Section 4.7.2 or any other section of this Agreement, or (d) violates any of the provisions of this Agreement including if any material representation or warranty made by Biogas Producer herein was materially false or misleading when made, and Biogas Producer fails to cure such event of default within sixty (60) calendar days after written notice from Utility ("**Biogas Producer Event of Default**"), Utility may notify Biogas Producer and exercise its rights under Section 18.1.

17.2 Utility Event of Default. If Utility fails to perform any material provision of this Agreement including if any material representation or warranty made by Utility herein was materially false or misleading when made, and Utility fails to cure such event of default within sixty (60) calendar days after written notice from Biogas Producer ("**Utility Event of Default**") Biogas Producer may notify Utility and exercise its rights under Section 18.2.

## ARTICLE 18 REMEDIES

18.1 Utility Remedies. In the event of a Biogas Producer Event of Default, or in the event of an Excusable Event or Latent Site Defect that cannot be remedied by a Change of Services and subject to Section 18.3, Utility shall have the following non-exclusive rights and remedies:

18.1.1 To suspend performance of the BC Services until Biogas Producer cures such Biogas Producer Event of Default or Excusable Event or removes the Latent

Site Defect, in which event, Biogas Producer shall be liable for all additional costs and expenses incurred by Utility arising out of such suspension;

18.1.2 To terminate this Agreement, in which event Biogas Producer shall be liable for all of Utility's unrecovered Capital Charge and other ownership costs and including any costs resulting from early-termination provisions in Utility's subcontracts ("*Termination by Utility Payment*"), and

18.1.3 To avail itself of any equitable remedy to enforce the obligations of Biogas Producer under this Agreement.

18.2 Biogas Producer Remedies. In the event of a Utility Event of Default that is uncured by Utility following notice from Biogas Producer as required by Section 17.2, Biogas Producer shall have the right to suspend deliveries of Untreated Biogas and may terminate this Agreement, in which case Utility, as its sole liability and Biogas Producer's sole remedy, shall be responsible for the removal of the BC Facilities and restoration of the Facility to a condition similar to that which existed prior to the Effective Date.

18.3 Limitation of Remedies. Except as set forth as a specific remedy hereunder, including the termination payments provided for by Sections 18.1.2 and 18.2, each Party waives any and all Consequential Damages from the other Party that may result from a breach of this Agreement by such other Party. Except as expressly limited herein, the Parties shall have all remedies, at law or equity, for any cause of action based on or arising out of this Agreement.

## ARTICLE 19 INDEMNIFICATION

19.1 Utility Indemnification. Utility shall indemnify, defend and hold the Biogas Producer and officers, directors, employees, agents, contractors and subcontractors harmless from any and all liabilities, damages, fines, penalties, costs, claims, interest and expenses (including costs of defense, settlement, and reasonable attorney fees) that arise from third party claims, allegations, suits and causes of action for losses, penalties, judgments, awards or damages of any kind to the extent such claims arise out of (i) the negligence or willful misconduct of Utility or its employees, agents, contractors and subcontractors, or intentional act of Utility or its employees, agents, contractors and subcontractors, or (ii) violations of any federal, state or local law, statute, regulation, rule, ordinance, order, or government directive by Utility or any person engaged by Utility to perform BC Services, on Utility's behalf; except to the extent any such claim, suit, action, loss, penalty, judgment, or award for damages arises from the breach of this Agreement, negligence, intentional misconduct or other fault of the Biogas Producer.

19.2 Biogas Producer Indemnification. Notwithstanding any other provision in this Agreement, Utility shall not be liable to Biogas Producer for any loss or damage to persons or property resulting from the Biogas Producer's entries upon, occupancy, use, operation, alteration, maintenance, repair or other activities on or about the BC Facilities or from any damage caused by fire or other casualty or by any person not employed or controlled by Utility, or as the result of any existing or future condition of the Facility. The Biogas Producer shall indemnify, defend, and hold Utility and its shareholders, officers, directors, employees, agents, contractors and

subcontractors harmless from and against any and all liabilities, damages, fines, penalties, costs, claims, interest and expenses (including costs of defense, settlement, and reasonable attorney fees) that arise from third party claims, allegations, suits and causes of action for losses, penalties, judgments, awards or damages of any kind due to (i) Biogas Producer's breach of this Agreement and/or any representation or warranty made in this Agreement; (ii) entries upon, occupancy, use, operation, alteration, maintenance, repair or other activities on or about the BC Facilities by Biogas Producer or its employees, agents, contractors and subcontractors; (iii) the negligence or willful misconduct of Biogas Producer or its employees, agents, contractors and subcontractors, or (iv) the intentional acts of Biogas Producer or its employees, agents, contractors and subcontractors, or (v) violations of any federal, state or local law, statute, regulation, rule, ordinance, order, or government directive by Biogas Producer or any person engaged by Biogas Producer to perform BC Services on Biogas Producer's behalf; except to the extent any such claim, suit, action, loss, penalty, judgment, or award for damages arises from the breach of this Agreement, negligence, intentional misconduct or other fault of the Utility.

19.3 Survival. Notwithstanding any other provision of this Agreement the indemnification provisions in this Agreement are intended to and shall survive termination of this Agreement so as to cover all claims instituted within the period set forth in the applicable statute of limitations.

## ARTICLE 20 HAZARDOUS SUBSTANCES

20.1 Definition of Hazardous Substances. "*Hazardous Substances*" for purposes of this Agreement shall be interpreted broadly to include, but not be limited to, any material or substance that is defined, regulated or classified under any Environmental Law or other applicable federal, state or local laws and the regulations promulgated thereunder as (i) a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14), the Federal Water Pollution Control Act, 33 U.S.C. §1321(14), as now or hereafter amended; (ii) a "hazardous waste" pursuant to section 1004 or section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903(5), 6921, as now or hereafter amended; (iii) toxic pollutant under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1) as now or hereafter amended; (iv) a "hazardous air pollutant" under section 112 of the Clean Air Act, 42 U.S.C. §7412(a)(6), as now or hereafter amended; (v) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §5102(2), as now or hereafter amended; (vi) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws or any state or local counterpart to any of the aforementioned laws; or (vii) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances or regulations, as now or as may be passed or promulgated in the future. "Hazardous Substances" shall also mean any substance that after release into the environment or upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities and specifically includes, but is not limited to, asbestos, polychlorinated biphenyls ("PCBs"), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde.

20.2 Biogas Producer's Representation and Warranty. Biogas Producer warrants and represents to Utility that the Facility and the Premises do not now contain any Hazardous Substances and that, to the best of Biogas Producer's knowledge, Biogas Producer and its predecessors and their respective agents or employees have not caused or permitted any such Hazardous Substances to be released, discharged or deposited onto or in the vicinity of the Premises. Biogas Producer warrants and represents further that (i) to the best of Biogas Producer's knowledge Biogas Producer and/or the Facility and Premises are not subject to any existing, pending or threatened investigation by any governmental authority under any applicable federal, state or local law, regulation or ordinance pertaining to soil, groundwater, air and water quality, the handling, transportation, storage, treatment, usage or disposal of Hazardous Substances, air emissions and other environmental matters (collectively, "**Environmental Laws**"); (ii) to the best of Biogas Producer's knowledge any handling, transportation, storage, treatment or use of Hazardous Substances that has occurred on the Facility and Premises to date has been in compliance with all Environmental Laws; and (iii) to the best of Biogas Producer's knowledge, the Facility and Premises, the soil, groundwater, air and water are free of the deposit of Hazardous Substances during the time Biogas Producer has owned the Facility and Premises. "Best of Biogas Producer's knowledge" is actual knowledge of Biogas Producer's managerial level employees and information acquired through any source including but not limited to environmental reports and analyses, all as it relates to environmental matters.

20.3 Biogas Producer's Covenant. Biogas Producer shall be responsible at its expense for conducting any clean-up, repair or other work in response to any Hazardous Substances to the extent the Hazardous Substances were accepted by or introduced by Biogas Producer or parties claiming under Biogas Producer, its agents, employees and contractors on the Premises, Facility, BC Facilities and any surrounding areas ("**Remedial Work**"). Biogas Producer shall perform all Remedial Work in accordance with all applicable laws, regulations, guidelines and standards in order to obtain a "No Further Action" determination from the applicable agency, to the extent such determination is necessary. Biogas Producer shall provide fifteen (15) calendar days' advance written notice to the Utility Representative of any Remedial Work to be performed on the BC Facilities, Premises or Facility ("**Work Notice**"), except in the event of an emergency in which case Biogas Producer shall proceed without a Work Notice to abate the release and shall provide the Utility Representative with a Work Notice as soon thereafter as practicable. Said Work Notice shall describe the anticipated start and completion dates of Remedial Work, the work to be performed including the cleanup action plan, and the identity of the proposed contractor. The Utility Representative shall respond in writing to the Work Notice within fifteen (15) calendar days of receipt. Utility's failure to respond within such fifteen (15) calendar day period shall be deemed approval of the Work Notice but only in the event that the Biogas Producer has obtained written proof that the Work Notice was actually received by the Utility Representative. Unless otherwise agreed to by the Utility Representative, Biogas Producer shall be responsible for restoring the BC Facilities to substantially the condition it was in prior to the commencement of the Remedial Work. Biogas Producer shall timely provide the Utility Representative with all monitoring, status, or other reports submitted in furtherance of obtaining a "No Further Action" determination. Biogas Producer shall conduct any such Remedial Work not located at the Premises pursuant to a commercially reasonable license agreement.

20.4 Survival. The provisions of this Section 20 shall survive the expiration or earlier termination of this Agreement.

## ARTICLE 21 DISPUTE RESOLUTION

All claims, disputes and other matters in question between the Parties arising out of or relating to this Agreement or the breach thereof, including contract, tort, property, statutory, or common law claims (a “*Dispute*” or “*Disputes*”) shall be addressed and resolved as follows:

21.1 Negotiation. The resolution of the Dispute should first be negotiated in good faith by the Parties.

21.2 Mediation. If the Parties are unable to resolve a Dispute through negotiation, the Parties agree first to try in good faith to settle the Dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures, or through private mediation upon agreement of the Parties. The mediator’s fees and costs shall be paid equally by the Parties. Any and all mediations arising out of or relating to this Agreement shall include, by consolidation or joinder, any other person or entity not a party to this Agreement that is substantially involved in a common issue of law or fact and whose involvement in the consolidated mediation is necessary to achieve a final resolution of a matter in controversy therein. The Parties’ obligation to mediate shall be specifically enforceable by any court with jurisdiction thereof.

21.3 Litigation. If the Parties do not settle the Dispute through mediation within forty five (45) calendar days of the written notice to the other Party requesting mediation, then either Party shall have the right to pursue litigation as provided for herein. In the event of any litigation to enforce or interpret any terms of this Agreement, unless the parties agree in writing otherwise, such action shall be brought in a Superior Court of the State of California located in the County of Los Angeles (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in either the U.S. District Court for the Central District of California), and the parties hereby submit to the exclusive jurisdiction of said courts. In any action in litigation to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses, (including expert testimony) and reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing party.

## ARTICLE 22 MISCELLANEOUS

22.1 Governing Law and Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California with all Parties consenting to jurisdiction and venue in Superior Court of the State of California located in the County of Los Angeles (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in either the U.S. District Court for the Central District of California).

22.2 Time of the Essence. Time and all terms and conditions shall be of the essence of this Agreement.

22.3 Waiver. No provisions of this Agreement may be waived except in writing by the waiving Party. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

22.4 No Benefits to Outside Parties. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give to any party other than the Biogas Producer and Utility any right, remedy, or claim under or by reason of this Agreement; and the covenants and agreements contained herein are and shall be for the sole and exclusive benefit of the Parties and their successors and assigns.

22.5 Binding on Successors. Subject to any restrictions upon assignments, this Agreement shall inure to the benefit of, and shall be binding upon, the Biogas Producer, Utility, and their respective successors and assigns.

22.6 Construction. All references herein to any agreement shall be to such agreement as amended, supplemented or modified from time to time. All references to a particular entity shall include a reference to such entity's successors and permitted assigns. The words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. The singular shall include the plural and the masculine shall include the feminine and neuter and vice versa. "Includes" or "including" shall mean "including, without limitation." All Exhibits to this Agreement are hereby incorporated herein by reference.

22.7 Section Headings. Section and subsection headings in this Agreement are included for convenience of reference only and will not constitute a part of this Agreement for any purpose.

22.8 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

22.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement.

22.10 Subcontracting and Assignment. Utility and Biogas Producer shall each be authorized to assign or subcontract its duties and obligations established by this Agreement. Notwithstanding any assignment, or subcontract, the Party subcontracting or assigning duties or obligations shall not be relieved from fulfilling any provisions of this Agreement. The Parties shall impose on their subcontractors or assignees the same responsibilities that the Parties assume by the terms and conditions of this Agreement. The Parties will be fully responsible to one another for the acts and omissions of their respective subcontractors or assignees and of persons either directly or indirectly employed by the Parties' subcontractors or assignees. This Agreement is personal to the Parties and shall not be transferable without the written consent of both Parties.

22.11 Interpretation. THE PARTIES HEREBY AGREE THAT NO TRADE USAGE, PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS

AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**SOUTHERN CALIFORNIA GAS COMPANY**

**BIOGAS PRODUCER**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

### **Exhibit A – Statement of BC Services and Services Fee Table**

Utility shall plan, design, procure, install, construct, own, operate, and maintain the BC Facilities to condition and upgrade the Untreated Biogas as described in Exhibit D to achieve the Treated Biogas Specifications as described in Exhibit E.

Utility shall be responsible for:

- The operation of the BC Facilities and performance of all maintenance for the BC Facilities consistent with the manufacturer’s recommendations and Regulatory Requirements. The BC Facilities’ operation and maintenance activities include, but are not limited to, the following: preventative maintenance, corrective maintenance, spare parts and consumables inventory tracking, on-call support, media change-out and disposal, process control and data monitoring, collection, storage and reporting.
- Providing a safety education plan and emergency response plan.
- Meeting the following Performance Requirements:
  - Providing a minimum methane recoverability rate for the BC Facilities of \_\_\_\_%. The recoverability calculation shall be completed on an [annual] basis.
  - Providing a percent uptime for the BC Facility of \_\_\_\_%, which is the percent of time the BC Facilities are available to process the design flow of the Untreated Biogas. The percent uptime calculation will exclude any period(s) where the BC Facilities are non-operational because the Biogas Producer is out of compliance with the Utility’s operational requirements and/or Untreated Biogas Specifications. The percent uptime calculation shall be completed on an [annual] basis.
  - [Additional performance requirements, if any, mutually agreed upon by the Parties]

Services Fee Table

The Services Fee shall consist of the components as specified below. The Services Fee includes the recovery of the Utility’s full capital cost, operations and maintenance, and overhead costs through monthly payments under this Agreement.

	Annual			Monthly Services Fee
	Capital Charge	O&M Charge*	Services Fee	
<i>Year 1</i>				
<i>Year 2</i>				
<i>Year 3</i>				
<i>Year 4</i>				
<i>Year 5</i>				
<i>Year 6</i>				
<i>Year 7</i>				
<i>Year 8</i>				
<i>Year 9</i>				
<i>Year 10</i>				
<i>Year xx**</i>				

\* The O&M Charge is subject to annual adjustment on each yearly anniversary of the Services Commencement Date by the positive percentage change in the Index most recently published as of such anniversary over the Index determined for the prior annual period (or in the case of the first anniversary, the Index most recently published as of the Effective Date).

\*\*Year xx is considered a placeholder for an Initial Term extending up to fifteen (15) years in length.

**Exhibit B – Map of Premises and Location of BC Facilities**

Exhibit B identifies the location of BC Facilities and related pipelines and other appurtenances. Also included will be areas for deliveries, lay down and storage areas at the Premises.

**Exhibit C – Feasibility Analysis**

**Exhibit D – Untreated Biogas Specifications**

**Exhibit E – Treated Biogas Specifications**

**[Exhibit F – Easement or Lease Agreement**

**[Exhibit G – Biomethane Guidance Document]**

# **Document 3**

## FEASIBILITY ANALYSIS AGREEMENT

This Feasibility Analysis Agreement (the "*Feasibility Agreement*") is made, entered into and effective as of \_\_\_\_\_, 20\_\_, (the "*Effective Date*") by and between Southern California Gas Company, \_\_\_\_\_ a \_\_\_\_\_ California corporation ("*Utility*") and \_\_\_\_\_ ("*Biogas Producer*") for certain preconstruction feasibility assessments relating to Utility's potential development of a biogas conditioning/upgrading facility adjacent to and as a functional part of Biogas Producer's facility located at \_\_\_\_\_, California (the "*Facility*"). Utility and Biogas Producer may be referred to herein individually each as a "*Party*" and collectively as the "*Parties*."

### ARTICLE 1 DESCRIPTION AND STANDARD OF SERVICES

1.1 Utility shall conduct feasibility analyses described in **Exhibit A** (the "*Services*") with the intent of (a) determining the technical and economic feasibility of the design, equipment procurement, construction, operation and maintenance of gas conditioning equipment as necessary to treat the biogas output from the Facility for use as pipeline quality gas or for other purposes as described in Exhibit A, and (b) providing sufficient information to prepare the scope of work and pricing ("*Scope of Work*") for the Biogas Conditioning and Upgrading Services Agreement ("*Agreement*").

1.2 If the Scope of Work is acceptable to Biogas Producer, Utility shall prepare the Agreement in accordance with Schedule G-BCUS - Biogas Conditioning/Upgrading Services.

1.3 Utility and Biogas Producer acknowledge and agree that: (1) all Services shall be performed by Utility for the mutual benefit of the Parties; (2) Utility shall exercise its independent, professional and trade judgment in performing the Services; and (3) in its preparation of the Scope of Work, Utility will be relying on information provided by Biogas Producer, which Biogas Producer represents is complete and accurate except as noted in writing to Utility.

### ARTICLE 2 SERVICES FEE

As consideration for performance of the Services, Biogas Producer shall pay Utility \_\_\_\_\_ Dollars (\$) (the "*Feasibility Services Fee*").

### ARTICLE 3 TERM

The term of this Feasibility Agreement shall be \_\_\_\_\_ ("*Term*").

### ARTICLE 4 RECORDS/OWNERSHIP AND USE OF DOCUMENTS

4.1 Utility shall own such studies, plans, designs, know-how, specifications, and other intellectual property and work product of Utility that are related to and incorporated in the Scope of Work ("*Work Product*"), and such Work Product shall at all times be the exclusive property of Utility. If any of the Work Product contains intellectual property of the Biogas Producer or Biogas Producer's affiliates or subcontractors that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws and it is conspicuously marked and identified as such ("*Proprietary Work Product*"), and in the event the Parties, subsequent to this Feasibility Agreement, execute an Agreement, Biogas Producer hereby grants and Biogas Producer shall cause its subcontractors to grant, Utility a perpetual, royalty-free, fully paid-up, nonexclusive and irrevocable license to copy, reproduce, perform, dispose of, use, in whole or in part, and to authorize others to do so for the benefit of Utility, all such Proprietary Work Product, including but not limited to: databases, templates, file formats, scripts, links, procedures, materials, training manuals and other training materials, specially-created key commands, and any other information, designs, plans, or works provided or delivered to Utility or produced by Biogas Producer or

its subcontractors. If the Parties fail to execute an Agreement and the Parties mutually terminate negotiations, Utility shall have no license to use Proprietary Work Product and shall return all Proprietary Work Product to Biogas Producer.

#### **ARTICLE 5 INDEMNIFICATION**

To the fullest extent allowed by applicable law, Biogas Producer shall indemnify, hold harmless, reimburse and defend Utility and its respective members, partners, officers, directors, employees and agents, and the successors in interest of the foregoing ("*Utility Related Parties*"), from, for and against any and all claims, demands, damages, losses, expenses, liabilities and penalties, including but not limited to reasonable attorneys' and expert witnesses' fees, for damages to property or injuries or death of any person arising out of or relating to this Feasibility Agreement, but only to the extent caused by the negligent or other wrongful acts or omissions of Biogas Producer or any person or entity for whose acts or omissions it is responsible.

#### **ARTICLE 6 LIMITATION OF LIABILITY**

Notwithstanding anything to the contrary contained in this Feasibility Agreement, in no event shall Utility be liable to Biogas Producer for any damages, claims, demands, suits, causes of action, losses, costs, expenses and/or liabilities arising out of or relating to the Services provided or to be provided hereunder in excess of the amount paid by Biogas Producer to Utility as compensation under this Feasibility Agreement, regardless of whether such liability arises out of breach of contract, tort, product liability, contribution, strict liability or any other legal theory.

#### **ARTICLE 7 ASSIGNMENT**

7.1 Except with respect to Utility's subcontractors, neither Utility nor Biogas Producer shall assign or transfer any of its interest in this Feasibility Agreement, in whole or in part, without the prior written consent of the other Party.

7.2 The provisions of this Feasibility Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

#### **ARTICLE 8 INDEPENDENT CONTRACTOR; SAFETY**

8.1 Utility shall perform the Services as an independent contractor and employing unit.

8.2 Utility shall be responsible for remittance of all federal, state and local taxes applicable to any compensation or payments paid to Utility under this Feasibility Agreement, which shall be included in the Feasibility Services Fee.

8.3 Each Party shall give prompt written notice to the other Party of any claim or notice of a claim made against the other Party by any third party for acts or omissions related to, or that may impact the completion of, the Services, in no event later than ten (10) business days after becoming aware of the claim or receiving the notice of claim.

8.4 Utility shall be responsible for the safety of its employees and those of its subcontractors, and shall take all reasonable precautions to prevent personal injury, death and property damage resulting from the Services and its acts and omissions and those of Subcontractors. At all times during the performance of any Services at the Facility, Utility shall comply with all Biogas Producer safety rules provided such rules, policies, programs and directives are communicated to Utility in writing by Biogas Producer.

## ARTICLE 9 TERMINATION OF CONTRACT

9.1 Notwithstanding Section 1.1, Utility may terminate this Feasibility Agreement in whole or in part at any time for Utility's convenience or for cause. In the event Utility terminates this Feasibility Agreement for its convenience, the termination shall be effective upon Biogas Producer's receipt of Utility's written notice of such termination. For a termination for cause, the termination shall be effective ten (10) calendar days after Biogas Producer's receipt of Utility's written notice thereof and Biogas Producer's failure during that period to cure the cause or default which is at issue and the reason for the notice of termination. In the event of a termination for convenience, as Biogas Producer's sole and exclusive remedy, Utility shall refund any unused amounts paid as compensation hereunder, if any.

9.2 The Parties agree that Utility will incur substantial liabilities to third parties upon the commencement of the Services and that the extent and amount of loss or damage to Utility as a result of Biogas Producer's breach of the Feasibility Agreement is impractical and difficult to determine with certainty. Therefore, if Biogas Producer breaches the contract and fails to cures such breach within ten (10) calendar days after receiving notice of the breach from Utility, Biogas Producer shall pay Utility liquidated damages equal to the Service Fee. The Parties agree that such liquidated damages are a genuine pre-estimate of the damages suffered by Utility by reason of Biogas Producer's failure to perform under the Feasibility Agreement, and are not intended as a penalty. The amounts payable by Utility under this Section shall be Biogas Producer's sole and exclusive liability to Utility, and Utility's sole and exclusive remedy, with respect to Biogas Producer's breach. Nothing in this Section shall be construed as relieving Biogas Producer of its obligation to fulfill its obligations under this Feasibility Agreement.

9.3 The rights and remedies of Utility provided in this Section 9 are not exclusive and are in addition to any other rights and remedies provided by law or under this Feasibility Agreement. All rights and remedies of Utility shall be cumulative and may be exercised successively or concurrently.

## ARTICLE 10 FORCE MAJEURE

Neither Biogas Producer nor Utility shall be held responsible for delay in the performance of the Services or default to the extent caused by fire, riot, an Act of God, war, terrorist attack or other cause beyond, respectively, Biogas Producer's or Utility's reasonable control ("Force Majeure Events"). So long as the conditions set forth in this Section 10 are satisfied, except with regard to payment obligations, neither Party shall be responsible or liable for or deemed in breach of this Feasibility Agreement because of any failure or delay in complying with its obligations under or pursuant to the Feasibility Agreement to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof; provided that in such event:

10.1 any liability of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall not be excused as a result of the occurrence;

10.2 the affected Party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Force Majeure Event, remedy its inability to perform, and limit damages to the other Party;

10.3 the affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and,

10.4 when the affected Party is able to resume performance of the affected obligations under the Feasibility Agreement, that Party shall give the other Party written notice to that effect, and the affected Party promptly shall resume performance under the Feasibility Agreement.

## ARTICLE 11 FACILITY ACCESS

11.1 Biogas Producer shall provide reasonable access to the Facility and the Biogas Producer's operational records as requested by Utility and its subcontractors in connection with the performance of Services.

11.2 Utility shall have no responsibility for the loss, theft, disappearance of or damage to equipment, tools, materials, supplies, and other property of Biogas Producer or its employees whatsoever.

## ARTICLE 12 CONFIDENTIALITY; PUBLICITY

12.1 Each Party shall hold in confidence: (a) any information provided or supplied by the other Party or its representatives that is marked to be confidential, including such information as may have been provided or supplied prior to the Effective Date; (b) the Scope of Work and all exhibits thereto; and (c) the contents of this Feasibility Agreement (collectively, "*Confidential Information*"). Both Parties shall inform any of their affiliates, subcontractors, suppliers and personnel that become involved in the Services or come into contact with Confidential Information of their obligations under this Section 12.1 and require such persons to adhere to the provisions hereof. Notwithstanding the foregoing, the following categories of information will not constitute Confidential Information:

12.1.1 information that was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of such Party or its affiliates, subcontractors, employees, directors, officers, agents, advisers or representatives;

12.1.2 information that such Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;

12.1.3 information received by such Party from a third party having no obligation of confidentiality with respect thereto; and,

12.1.4 information at any time developed independently by such Party providing it is not developed from otherwise Confidential Information.

12.2 Notwithstanding anything herein to the contrary, a Party may disclose Confidential Information as follows:

12.2.1 Confidential Information may be disclosed pursuant to and in conformity with applicable laws or in connection with any legal proceedings, provided that the Party required to disclose such information shall give prior notice to the other Party of such required disclosure and, if so requested by the other Party, shall use all reasonable efforts to oppose the requested disclosure as appropriate under the circumstances or to seek, through a protective order or other appropriate mechanism, to maintain the confidentiality of the Confidential Information;

12.2.2 Confidential Information may be disclosed as required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries;

12.2.3 Confidential Information may be disclosed to affiliates, subcontractors, employees, directors, officers, agents, advisors or representatives of such Party as necessary in connection with the Services; provided that such persons are informed of the confidential nature of the Confidential Information, and such Party shall be liable to the other for any disclosure by such person in violation of the terms of this Section; and

12.3 Notwithstanding the foregoing, either Party may disclose Confidential Information with the express written consent of the other Party, which consent shall not be unreasonably conditioned, withheld, or delayed.

12.4 It is agreed that each Party shall be entitled to relief both at law and in equity, including injunctive relief and specific performance, in the event of any breach or anticipated breach of this Section, without proof of any actual or special damages.

12.5 All right and title to, and interest in, a Party's Confidential Information shall remain with such Party. All Confidential Information obtained, developed or created by or for Utility exclusively for the Services, including copies thereof, is the exclusive property of Utility whether delivered to Biogas Producer or not. No right or license is granted to Biogas Producer or any third party respecting the use of Confidential Information by virtue of this Feasibility Agreement, except to the extent required for Utility's performance of its obligations hereunder. Biogas Producer shall deliver the Confidential Information, including all copies thereof, to Utility upon request.

### **ARTICLE 13 DISPUTE RESOLUTION**

All claims, disputes and other matters in question between the Parties arising out of or relating to this Feasibility Agreement or the breach thereof, including contract, tort, property, statutory, or common law claims (a "Dispute" or "Disputes") shall be addressed and resolved as follows:

13.1 Negotiation. The resolution of the Dispute should first be negotiated in good faith by the Parties.

13.2 Mediation. If the Parties are unable to resolve a Dispute through negotiation, the Parties agree first to try in good faith to settle the Dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures, or through private mediation upon agreement of the Parties. The mediator's fees and costs shall be paid equally by the Parties. Any and all mediations arising out of or relating to this Feasibility Agreement shall include, by consolidation or joinder, any other person or entity not a party to this Feasibility Agreement that is substantially involved in a common issue of law or fact and whose involvement in the consolidated mediation is necessary to achieve a final resolution of a matter in controversy therein. The Parties' obligation to mediate shall be specifically enforceable by any court with jurisdiction thereof.

13.3 Litigation. If the Parties do not settle the Dispute through mediation within forty five (45) calendar days of the written notice to the other Party requesting mediation, then either Party shall have the right to pursue litigation as provided for herein. In the event of any litigation to enforce or interpret any terms of this Feasibility Agreement, unless the parties agree in writing otherwise, such action shall be brought in a Superior Court of the State of California located in the County of Los Angeles (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in either the U.S. District Court for the Central District of California), and the parties hereby submit to the exclusive jurisdiction of said courts. In any action in litigation to enforce or interpret any of the terms of this Feasibility Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses, (including expert testimony) and reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing party.

### **ARTICLE 14 WAIVER**

The failure of either Party to enforce any provision of this Feasibility Agreement shall not constitute a waiver by that party of that or any other provision of this Feasibility Agreement.

**ARTICLE 15 NOTICES**

Any notice or other communication regarding this Feasibility Agreement shall be served in one of the following manners: (1) personal delivery, (2) facsimile transmission or (3) delivery by courier or messenger service that maintains records of its deliveries.

**ARTICLE 16 GOVERNING LAW**

The laws of the State of California shall govern this Feasibility Agreement.

**ARTICLE 17 SEVERABILITY**

If any provision of this Feasibility Agreement is determined to be illegal, in conflict with any law, void or otherwise unenforceable, and if the provisions of this Feasibility Agreement that are essential to each Party's interests otherwise remain valid and enforceable, then the remaining provisions shall continue to be valid and enforceable and the offending provision shall be given the fullest meaning and effect intended by the Parties as allowed by applicable law.

**ARTICLE 18 SURVIVAL**

The terms, conditions, representations, and warranties contained in this Feasibility Agreement shall survive the termination or expiration of this Feasibility Agreement.

**ARTICLE 19 ENTIRE CONTRACT**

This Feasibility Agreement constitutes the entire legally-binding contract between the Parties regarding its subject matter. No waiver, consent, modification or change of terms of this Feasibility Agreement shall bind either party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

**ARTICLE 20 SIGNATURES**

This Feasibility Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument. A facsimile signature or an electronically scanned and electronically mailed (e-mail) signature shall be considered an original. The individuals signing this Feasibility Agreement certify that they are authorized to execute this Feasibility Agreement on behalf of Utility and Biogas Producer, respectively.

**ARTICLE 21 EXHIBITS**

The following documents are incorporated into and made a part of this Feasibility Agreement:

**Exhibit A** – Scope of Services

[Signature Page to Follow]

**UTILITY:**

Southern California Gas Company

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**BIOGAS PRODUCER:**

\_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**EXHIBIT A**

**SCOPE OF SERVICES**

Utility shall conduct the Services with the intent of determining the technical and economic feasibility of the design, equipment procurement, construction, operation and maintenance of gas conditioning/upgrading equipment as necessary to process the biogas and upgrade/condition it to the gas quality level(s) specified by the Biogas Producer. The Scope of Work may include, but is not limited to, the following:

Comprehensive Scope Definition

- Define the project execution processes for technical execution, construction, operations & maintenance, and other business related aspects of the project.
- Prepare the scope of work and pricing for the Agreement

# Document 4



PRELIMINARY STATEMENT – PART VII – TRACKING ACCOUNTS  
BIOGAS CONDITIONING/UPGRADING SERVICES TRACKING ACCOUNT (BCSTA)

1. Purpose

The BCSTA is a tracking account that is not reflected on SoCalGas' financial statements. The purpose of the BCSTA is to track the difference between actual O&M and capital revenue requirements associated with providing biogas conditioning/upgrading services under Schedule No. G-BCUS and the revenues collected from customers for this service. The BCSTA will be mainly used by SoCalGas to monitor SoCalGas' effectiveness in providing biogas conditioning/upgrading services to customers. Since recovery of biogas conditioning/upgrading services costs will be recovered directly from biogas conditioning/upgrading services customers through miscellaneous revenues under Schedule No. G-BCUS, these costs and miscellaneous revenues will be excluded for cost recovery in SoCalGas' general rate case proceedings. This will ensure that ratepayers are not impacted by any under or over-collection of revenue associated with providing biogas conditioning/upgrading services.

2. Applicability

See Purpose Section.

3. Rates

Not Applicable.

4. Accounting Procedures

SoCalGas shall maintain the BCSTA by recording entries at the end of each month as follows:

- a) A debit entry equal to the actual revenue requirements (i.e., O&M and capital-related costs such as depreciation, income taxes and return) associated with providing biogas conditioning/upgrading services;
- b) A debit entry for uncollectible costs associated with biogas conditioning/upgrading services; and
- c) A credit entry for biogas conditioning/upgrading services revenues billed to customers for this service.

5. Disposition

See Purpose Section.

(TO BE INSERTED BY UTILITY)

ADVICE LETTER NO.  
DECISION NO.

100

ISSUED BY

**Lee Schavrien**  
Senior Vice President  
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)

DATE FILED \_\_\_\_\_  
EFFECTIVE \_\_\_\_\_  
RESOLUTION NO. \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of **JOINT SUPPLEMENTAL EXHIBITS OF SOUTHERN CALIFORNIA GAS COMPANY, DIVISION OF RATEPAYER ADVOCATES, SOUTHERN CALIFORNIA GENERATION COALITION, AND AGRICULTURAL ENERGY CONSUMERS ASSOCIATION FOR ADOPTION OF SETTLEMENT AGREEMENT** on all parties of record in **A.12-04-024** by electronic mail and by U.S. mail to those parties who have not provided an electronic address to the Commission.

Copies were also sent by overnight mail to the Assigned Administrative Law Judge in this proceeding.

Dated at Los Angeles, California, this 6<sup>th</sup> day of September, 2013.

*/s/ Marjorie O. Bracken*

Marjorie O. Bracken

(End of Attachment B)