

BIOMETHANE PURCHASE AND SALE AGREEMENT

This BIOMETHANE PURCHASE AND SALE AGREEMENT ("Agreement") is entered on December __, 2017, by and between:

1. CITY OF FRESNO, a California municipal corporation ("Seller"); and
2. COLONY ENERGY PARTNERS LLC, a State of Delaware limited liability company ("Buyer").

Buyer and Seller may be referred to herein individually as, a "Party" and collectively as, the "Parties."

RECITALS

A. Seller owns and operates the Fresno-Clovis Regional Wastewater Treatment Plant ("Plant") that is currently flaring approximately 1,200,000 standard cubic feet per day of methane-containing Digester Gas (equal to approximately 260,000 MMBtu per year).

B. Seller desires to sell to Buyer, and Buyer desires to buy from Seller, Digester Gas.

C. The Buyer will convert the Digester Gas to a Biomethane product which will generate Regulatory Credits as a renewable fuel. The Buyer will sell the Biomethane and Regulatory Credits at market prices to third-parties, and the Buyer and Seller will share the total revenue generated from the sales in the manner described in this Agreement.

D. The conversion of Digester Gas to Biomethane, and the sale of Biomethane and Regulatory Credits to third-parties, represents the Project that Buyer and Seller desire to pursue together with this Agreement for the mutual benefit of both Parties.

E. The Parties entered into a Letter of Intent and Term Sheet on September 19, 2017 ("LOI"). This Agreement supersedes the LOI.

NOW, THEREFORE, in consideration of the promises and mutual covenants and conditions contained herein, Seller and Buyer agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1.1 For purposes of this Agreement, the following terms shall have the following meanings:

"ACH" shall have the meaning set forth in Section 8.1.

“Alternative Project” means a project that will utilize Seller’s Digester Gas in a materially alternative fashion than that anticipated by the Parties pursuant to this Agreement, including a Biomethane pipeline to connect to the state’s natural gas grid system.

“Bankruptcy Proceeding” means with respect to a Party, such Party: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection from creditors, or has such a petition filed against it; (c) otherwise becomes bankrupt or insolvent (however evidenced); or (d) is unable to pay its debts as they fall due.

“Biomethane” means Digester Gas that has been cleaned, conditioned, and otherwise upgraded by the Gas Conditioning System to the quality specifications allowing for the injection to the state’s natural gas grid system.

“Business Day” means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 am to 5:00 pm Pacific Standard Time.

“Cellulosic Biofuel” means a renewable fuel derived from any cellulose, hemi-cellulose or lignin that has Lifecycle Greenhouse Gas Emissions that are at least sixty percent (60%) less than the Baseline Lifecycle Greenhouse Gas Emissions (as set forth in the EPA Renewable Fuel Standard Program (40 C.F.R. § 80.1401 (2012))).

“Claim” means any claim, liability, loss, demand, damages, lien, cause of action of any kind, obligation, costs, royalty, fees, assessments, penalties, fines, judgment, interest and award (including recoverable legal counsel fees and costs of litigation of the party asserting the Claim), whether arising by law, contract, tort, voluntary settlement or otherwise.

“CNG” means compressed natural gas.

“Convenience Fee” shall have the meaning set forth in Section 9.3.

“Darling” shall have the meaning set forth in Section 2.3.

“Darling Agreement” shall have the meaning set forth in Section 2.3.

“Date of First Delivery” means (i) the date when Seller is capable of delivering Digester Gas to Delivery Point; (ii) Buyer is prepared to accept Digester Gas at Delivery Point, (iii) pathways required by the EPA to supply natural gas from the Gas Conditioning System to the state’s natural gas grid system have been approved, and (iv) in any event no later than January 1, 2019.

“Defaulting Party” shall have the meaning set forth in Article IX.

“Delivery Point” means the metering station the Seller’s Digester Gas flows through to the Gas Conditioning System.

“Digester Gas” means the gas produced at the Seller’s Plant by the anaerobic digestion process.

“Dispute” means any dispute or controversy arising out of this Agreement including a claim under this Agreement and any dispute or controversy regarding the existence, construction, validity, interpretation, enforceability, or breach of this Agreement.

“Effective Date” means the date when both Parties have executed the Agreement, and all work and efforts required for the Project can proceed.

“EPA” means the United States Environmental Protection Agency.

“EPA Renewable Fuels Standard” means the renewable energy program and policies established by the EPA and published on March 26, 2010 at 75 Fed. Reg. 14863 (codified at 40 C.F.R. § 80.1400, et seq.) and which became effective on July 1, 2010, as amended from time-to-time.

“Event of Default” shall have the meaning set forth in Section 9.1.

“Governmental Authority” means any federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority. Governmental Authority includes, but is not limited to, the California Air Resources Board, and the State Public Utilities Commission or its successor agency.

“Greenhouse Gas” means any gas that absorbs infrared radiation in the atmosphere. Greenhouse gases include, but are not limited to, water vapor, carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride.

“Gross Revenue” means the sum of all revenues generated by the Project from the sale of Biomethane and Regulatory Credits.

“LCFS Credits” means Low Carbon Fuel Standard Credits generated and traded under the California Low Carbon Fuel Standard, with each credit equal to one metric ton of carbon dioxide (CO₂) reductions as compared to the baseline CO₂ emissions under the LCFS.

“Major Maintenance and Repairs” shall have the meanings set forth in Section 6.3.2.

“Major Maintenance and Repairs Reserve” shall have the meanings set forth in Section 6.3.1.

“Non-Defaulting Party” shall have the meaning set forth in Article IX.

“O&M Agreement” shall have the meaning set forth in Section 6.3.

“Plant” has the meaning set forth in the Recitals.

“Project” means all work and efforts required to convert Digester Gas to Biomethane, sell Biomethane and Regulatory Credits to third-party entities, and share Gross Revenues between the Buyer and Seller as described in this Agreement.

“Regulatory Credit” means any credit, benefit, attribute, aspect, characteristic, claim, reduction, offset or allowance, or similar benefit of any type, howsoever entitled or named, arising under any federal, state, local or other law as now effect, or as subsequently amended, enacted or adopted, including but not limited to RINs and LCFS Credits, resulting from, attributable to, or associated with the Digester Gas produced at the Plant, as created by the Renewable Fuel Standard Program under the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007 and all implementing regulations, including without limitation, 40 C.F.R. Part 80, Subpart M “RFS Program”), and under California’s Low Carbon Fuel Standard.

“Reimbursable Costs” shall have the meaning set forth in Section 9.3.

“Reserve Account” shall have the meaning set forth in Section 6.3.1 of this Agreement.

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

“Taxes” shall have the meaning set forth in Section 5.1 of this Agreement.

“Term” shall have the meaning set forth in Section 2.8 of this Agreement.

“Termination Date” shall have the meaning set forth in Section 2.8 of this Agreement.

“Tier 1 Revenue Sharing” shall have the meaning set forth in Section 2.62.

“Tier 2 Revenue Sharing” shall have the meaning set forth in Section 2.63.

“Utility Pipeline Injection Point” means the point at which Biomethane passes into the state’s natural gas grid system.

ARTICLE II
COMMITMENT; DATE OF FIRST DELIVERY NOTICE; TERM

Section 2.1 Initial Scope; Commitment. Subject to the terms and conditions of this Agreement, Buyer acknowledges that Buyer is required to take delivery of the entire daily volume of Digester Gas that is delivered to the Delivery Point by Seller; provided, however, that Seller makes no representations or warranties regarding minimum volumes of Digester Gas to be delivered to Buyer, or the quality of Digester Gas to be delivered to Buyer at the Delivery Point. Seller represents that it shall deliver all Digester Gas produced in the anaerobic digester process to the Delivery Point, subject to Section 2.3 below. The volumes of: (i) Digester Gas delivered to the Delivery Point; and (ii) Biomethane produced, shall be metered by Buyer and reported to both Parties. Historical volumes of Digester Gas produced by Seller are set forth in Exhibit F attached herein.

Section 2.2 Digester Gas deliveries shall commence on the Date of First Delivery, and shall be made at the Delivery Point. Buyer's purchase of Seller's Digester Gas is subject to Section 2.3.

Section 2.3 Darling Agreement. Buyer acknowledges that Seller has executed a Development Agreement with Darling Ingredients, Inc. ("Darling") that includes the procurement and supply of certain quantities of Biomethane ("Darling Agreement"). The Parties agree that pursuant to the Darling Agreement, Seller's obligations to deliver Biomethane to Darling supersede Seller's obligation to deliver Digester Gas to Buyer pursuant to this Agreement. In the event Seller is unable to deliver Biomethane through the PG&E gas service pipeline, after Seller has exhausted all reasonable alternatives, Seller shall deliver certain Biomethane to Darling to satisfy the Darling Agreement.

Section 2.4 Exclusive Right to Digester Gas and Regulatory Credits. During the Term of this Agreement, Buyer shall have the right and obligation to acquire, take title, exploit and beneficially use all Digester Gas produced by the Plant, subject to Section 2.3. Buyer shall have right and title to all Regulatory Credits associated with the use of the Digester Gas for the term of the Agreement; provided, however, that Seller shall retain all right and title to any Regulatory Credits associated with reduction of flared gas emissions at the Plant.

Section 2.5 Date of First Delivery. Buyer shall provide written notice to Seller of Buyer's best estimate of the date upon which the Date of First Delivery shall occur, and such date shall be no later than January 1, 2019. Such written notice shall be delivered to Seller at least thirty (30) days prior to such estimated date, and such notice date shall be no later than December 1, 2018. If any changes occur to such estimated Date of First Delivery, Buyer shall provide written notice to Seller thereof as soon as possible after such changes become known to Buyer. The Parties shall work together to agree upon a Revised Date of First Delivery; however, the Seller is not obligated to accept or approve the Revised Date of First Delivery. If the Parties agree on the Revised Date of First Delivery, they shall document such agreement in writing,

referencing this Agreement, so that each Party may retain such agreement of the Revised Date of First Delivery in their files.

Section 2.6 Gross Revenue Sharing. Biomethane shall be sold by the Buyer to third party entities together with Regulatory Credits. The total revenue generated from Biomethane sales and Regulatory Credit sales shall represent Gross Revenues for the Project. The Buyer and Seller shall share Gross Revenues generated from the sale of Biomethane and Regulatory Credits on a two-tier basis as described in Sections 2.6.2 and 2.6.3.

Section 2.6.1 Gross Revenue Sharing Payments. The Buyer shall make Gross Revenue Sharing Payments to Seller on a monthly basis. The determination as to which tier shall govern Gross Revenue Sharing for any given month shall be based on an accrual basis, and not a cash basis, using sale invoices. The Parties acknowledge that revenue from Regulatory Credit sales may be received after revenue is received for Biomethane sales due to third-party payment terms, and as necessary, monthly Gross Revenue Sharing Payments shall be reconciled each calendar-year quarter as described in Section 2.6.4.

Section 2.6.2 Tier 1 Gross Revenue Sharing Schedule. During any calendar-year quarter, when total Gross Revenues received for Project transactions resulting from the sale of Biomethane and Regulatory Credits, are less than \$1,500,000 (one million, five-hundred thousand dollars), then the Seller's share of Tier 1 Gross Revenues shall be 30 percent (30%) and the Buyer's share of Tier 1 Gross Revenues shall be 70 percent (70%).

Section 2.6.3 Tier 2 Gross Revenue Sharing Schedule. During any calendar-year quarter, when total Gross Revenues received for Project transactions resulting from the sale of Biomethane and Regulatory Credits, are \$1,500,000 (one million, five-hundred thousand dollars) or greater, then the Seller's share of Tier 2 Gross Revenues shall be 40 percent (40%) and the Buyer's share of Tier 2 Gross Revenues shall be 60 percent (60%).

Section 2.6.4 Quarterly Reconciliation of Gross Revenue Sharing. With each monthly payment invoice from Buyer to Seller, Buyer shall provide Seller copies of Buyer's sales invoices to third-party buyers of Biomethane and Regulatory Credits. The sale of Regulatory Credits are expected to occur at least once every calendar-year quarter after the first full calendar-year quarter following the Effective Date. Buyer's sales invoices to third party buyers of Regulatory Credits will be subject to documented reconciliation due to third-party buyer payment terms. Seller shall have the right to audit Buyer's sales records for Biomethane and Regulatory Credits; provided that Seller may exercise such audit rights not more frequently than every six (6) months. Buyer makes no representations or warranties regarding the market conditions for Biomethane sales and Regulatory Credits sales, including, but not limited to, pricing and liquidity.

Section 2.6.5 Buyer Representations. Buyer represents that it intends to maximize revenue in transactions with third parties. Further, Buyer represents that it

intends to sell the Biomethane produced by the Gas Conditioning System at market prices and warrants that it will not discount or swap the Biomethane, for example, as part of a portfolio of transactions, except where such transactions will increase the Gross Revenue Sharing Payments paid to the Seller.

Section 2.7 Conditions Precedent. The Date of First Delivery is conditioned upon the Parties achieving certain milestones by certain dates. These milestones are listed on the Conditions Precedent Schedule, attached as Exhibit A, which is incorporated herein by reference. The Date of First Delivery shall not occur until all milestones are completed or waived, and the Date of First Delivery shall not be later than January 1, 2019. Once the Parties agree that the Conditions Precedent have been completed or waived, the Parties shall document such agreement in writing.

Section 2.8 Term; Renew of Term. Unless terminated earlier in accordance with this Agreement, the initial term of this Agreement shall begin on the Effective Date, and the Termination Date shall be on the fifth (5th) anniversary of the Date of First Delivery ("Termination Date"). Either Party may, no later than six (6) months prior to the Termination Date, provide written notice to the other Party of its desire to extend the Termination Date of this Agreement. The Parties agree to meet as soon as reasonably practicable after the issuance of such notice to consider such extension and the terms and conditions thereof.

Section 2.9 Biomethane to Seller. Buyer shall make reasonable efforts (but is not obligated) to make available to Seller Biomethane for Seller's own consumption which is estimated at an average of 400 MMBtu/day.

Section 2.10 Title, Risk of Loss, and Care, Custody and Control. Title, risk of loss, and care, custody and control to all Digester Gas produced at the Plant and purchased by Buyer shall pass to Buyer at the Delivery Point.

Section 2.11 Organic Waste for Co-Digestion. Seller and Buyer agree to cooperate to complete a separate Fee Schedule agreement that will be inserted as part of this Agreement as Exhibit C pursuant to the Buyer delivering to Seller, organic wastes that exceed certain organic characteristics, and result in the generation of Gross Revenues to Seller that are greater than Seller's expenditures for residual sludge processing and sludge disposal costs. For such organic wastes, the Seller shall charge Buyer a reduced-rate disposal fee for organic wastes at the Plant.

ARTICLE III MEASUREMENT AND QUALITY

Section 3.1 Measurement. The unit of quantity measurement for the Biomethane delivered and sold pursuant to this Agreement shall be one (1) MMBtu dry. Buyer shall, at its sole cost, construct, maintain, and operate metering devices at the Delivery Point at the Plant, and the Utility Pipeline Injection Point required by the relevant gas pipeline utility. Seller shall observe, or cause to be observed, all measurement procedures in order to verify the accuracy of Buyer's metering devices.

Measurement of the Biomethane delivered pursuant to this Agreement shall be in accordance with the published established procedures of Southern California Gas Company (“SoCalGas”). Final measurement calculations shall be used as the basis for all title transfer documents between the Parties, which shall be used for all compliance purposes with the relevant governing bodies. The metered quantity of Digester Gas delivered to the Delivery Point shall be reconciled with Biomethane transported off the Plant site and Buyer’s sales invoices to third parties. Buyer shall operate the facilities and systems pursuant to prudent industry standards and practices.

Section 3.2 Biomethane Quality. Buyer shall be solely responsible for ensuring that Seller’s Digester Gas, utilizing the Gas Conditioning System, satisfies the Quality Requirements generally specified on the attached Exhibit D, which is incorporated herein for reference. Buyer is satisfied that the Gas Conditioning System as designed and historically operated will be capable of conditioning Seller’s Digester Gas to meet the Quality Requirements.

Section 3.2.1 Start-Up Repairs for Gas Conditioning System. If the Buyer determines through inspection and start-up testing, that it is necessary to make start-up repairs to the Gas Conditioning System to meet the Quality Requirements, then the Buyer shall prepare a start-up repair plan. The start-up repair plan shall detail the scope of repairs, the schedule for repairs, and the cost for repairs.

Section 3.2.2 Start-Up Repair Costs \$200,000 or Less. If the estimate for start-up repair costs is two-hundred thousand dollars (\$200,000) or less, then the Buyer shall proceed with the repairs as necessary without involvement or participation from the Seller.

Section 3.2.3 Start-Up Repair Costs Greater Than \$200,000. If the estimate of start-up repair costs is greater than \$200,000, then Seller shall cooperate with Buyer to prepare the repair plan, and the repair plan shall include an agreed upon allocation of start-up repair costs in excess of \$200,000 to be assigned to the Buyer and Seller, respectively. If Buyer and Seller agree on repair plan, and the allocation of start-up repair costs above \$200,000 to be assigned to each Party, then the Buyer will pay all the start-up repair costs and receive reimbursement from Seller for the agreed upon portion of the start-up repair costs assigned to Seller. The Seller’s agreed upon portion of the start-up repair costs that exceed \$200,000 shall be paid to Buyer from the Seller’s share of monthly Gross Revenues. To receive reimbursement, the Buyer shall withhold a portion of the Seller’s share of monthly Gross Revenue payments in six (6) equal payments that total the Seller’s agreed upon portion of the start-up repair costs. If Buyer and Seller cannot agree on the repair plan and the allocation of start-up repair costs to be assigned to each Party, then either Party shall have the right to terminate this Agreement without fault. If Buyer terminates this Agreement, Seller shall be liable for certain, verifiable and documented Engineering Services costs incurred by Buyer for the Project up to the point of termination such as EPA RIN certification, inspection and testing of Sellers equipment, and Sellers site preparation.

ARTICLE IV REGULATORY CREDITS

Section 4.1 To the extent the Digester Gas produced by the Plant may be eligible to generate, or required to generate, Regulatory Credits, Buyer shall, subject to Section 2.4, own and register or generate such Regulatory Credits for the term of this Agreement; provided, however, that Seller shall cooperate with Buyer by taking any necessary actions and delivering to Buyer all documentation necessary to satisfy all requirements of any applicable Governmental Authority which has jurisdiction over the relevant Regulatory Credit in order for Buyer to be able to register or generate such Regulatory Credits.

ARTICLE V TAXES

Section 5.1 Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any Government Authority with jurisdiction ("Taxes") on or with respect to the Digester Gas delivered to Buyer hereunder levied or arising prior to the Delivery Point and all Taxes levied or arising at Seller's side of the meter at the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the Digester Gas delivered to Buyer hereunder levied or arising at Buyer's side the flange at the Delivery Point. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder ("Remitting Party"), the Party responsible for such Taxes shall reimburse the other Party ("Non-Remitting Party") for such Taxes within thirty (30) days of the Remitting Party's written notice to the Non-Remitting Party. Any Party entitled to an exemption from any such Taxes or charges shall furnish the other Party any necessary documentation thereof.

ARTICLE VI FACILITIES

Section 6.1 Buyer's Facilities Obligations; Additional Facilities.

Section 6.1.1 Biomethane Compressor Station. Buyer shall cause to be designed, installed, and operated, at its own expense, a Biomethane Compressor Station capable of receiving and compressing all Biomethane that can be processed by the Gas Conditioning System. The Biomethane Compressor Station shall be connected to the existing Gas Conditioning System, and be capable of dispensing the compressed Biomethane gas to tube trailers for road transport. Buyer shall provide Seller proposed plans, specifications, and drawings prior to the installation of the facilities for approval, which approval by Seller shall not be unreasonably withheld.

Section 6.1.2 Buyer shall bear the cost of all utilities used by the Gas Conditioning System and Biomethane Compressor Station. Buyer shall be responsible for all gas conditioning, compression, transportation, delivery and marketing expenses required for the sale and delivery of Biomethane to third parties and the Seller. In coordination with SoCalGas, Buyer may design and construct pipeline lateral and

Interconnect Facilities to allow for the capacity of up to 1.5MM scf/day of Biomethane to be delivered to the SoCalGas system in the City of Tulare for sale by the Date of First Delivery. Buyer shall be responsible for any improvements required to be constructed in order to deliver Biomethane directly to stations, including the Fresno City station.

Section 6.2 Access Rights; Utilities. Seller shall provide Buyer with access rights in order to construct, operate, maintain, and access the facilities described in this Agreement. Access rights shall include those necessary for Biomethane transport trucks and trailers to access the facilities, as well as space for staging necessary for loading transport trucks.

Section 6.3 Operation and Maintenance. Buyer shall, at its own expense, operate, inspect, repair and maintain, or cause to be operated, inspected, repaired, and maintained, Seller's Gas Conditioning System and Buyer's Biomethane Compressor Station in accordance with all applicable state and federal laws and regulations, following industry best practices. Buyer shall enter into an operation and maintenance agreement with a qualified third-party operator approved by Seller for the Gas Conditioning System ("O&M Agreement"). Buyer shall be responsible for all costs associated with the O&M Agreement with such third-party operator. The O&M Agreement shall include an annual allowance of \$200,000 per year, to be funded by Buyer exclusively, for normal planned and unplanned maintenance and repair of the Gas Conditioning System as described in Exhibit ~~KE~~ (22)

Section 6.3.1 Reserve Account; Gas Conditioning System Maintenance and Repair. The Parties agree to establish a Reserve Account in the amount of five-hundred thousand dollars (\$500,000) to be used to fund maintenance and repair costs that may be required for the Gas Condition System in excess of \$200,000 per year ("Reserve Account"). The Reserve Account shall be funded by both Parties on a 50/50 basis using Gross Revenues received during the first year of the Agreement. The Reserve Account shall be maintained by Seller and shall not be subject to fees or charges assessed by Seller.

Section 6.3.2 Maintenance and Repair Project Cost Greater Than \$200,000. If the Buyer determines through inspection, testing, operational performance, or other source of information, that a maintenance and repair project is required for the Gas Condition System, and the cost of the maintenance and repair project is determined to be in excess of \$200,000 in a given calendar year, then Seller shall cooperate with Buyer to prepare a maintenance and repair plan for the Major Maintenance and Repair. The maintenance and repair plan shall detail the scope of repairs, the schedule for repairs, and the cost for repairs. Upon completion of the maintenance and repair plan, Buyer and Seller shall share the costs of the Major Maintenance and Repair above \$200,000 on a 50/50 cost share basis drawn from the Major Maintenance and Repairs Reserve Account; Buyer shall proceed with the Major Maintenance and Repairs; and Seller shall pay invoices submitted by Buyer for the maintenance and repair project. Prior to funding any Major Maintenance and Repairs , Buyer shall conduct the necessary due diligence to determine whether the necessity for

such work is due to third-party operator error, in which event, such operator shall be liable for such work and related expense.

Section 6.3.3 Maintaining Reserve Account Balance at \$500,000. If during any given year, funds are expended from the Reserve Account for a maintenance and repair project that exceeds \$200,000, the Parties agree to reestablish the Reserve Account balance to \$500,000 on a 50/50 basis using Gross Revenues received during the following year.

Section 6.3.4 Disposition of Reserve Account Upon Termination of Agreement. Within thirty (30) days of the Termination Date of the Agreement, unless extended pursuant to mutual agreement of the Parties, the balance of the Reserve Account shall be distributed to the Parties on a 50/50 basis.

Section 6.4 Seller's Facilities Obligations. Seller shall operate, maintain, repair and otherwise keep in good working order, all equipment and systems required to collect and deliver Digester Gas to the Delivery Point. Seller shall provide access to all utilities required to operate the Biomethane Compressor Station, including electrical and gas connection and metering. Buyer shall be responsible for the cost of all electricity, water and any other utilities consumed in the operation of the Gas Conditioning System and Biomethane Compressor Station. Seller shall obtain, secure, maintain, and comply with all required permits, laws, and regulations required for generating, collecting, and transporting Digester Gas to the Delivery Point. In addition, Seller shall operate its equipment pursuant to the prudence standard applicable to the municipal wastewater treatment industry.

Section 6.5 Outages. Buyer is permitted to have fifteen (15) calendar days per year of outages, whether planned or unplanned, of the Gas Conditioning System, or Biomethane Compressor Station. If an outage is planned, Buyer must provide Seller with notice ten (10) days in advance of the outage. If an outage is unplanned, Buyer must provide Seller with notice of the outage as soon as is reasonably practicable. In the event that Buyer exceeds the maximum number of outage days listed in this Section 6.5, Buyer shall pay Seller the sum of fifty cents (\$0.50)/MMBtu that is flared as a result of the outage, in addition to any costs, penalties and fines levied by the relevant Governmental Authority.

Section 6.6 Alternative Project. In the event Seller chooses to develop an Alternative Project during the Term of this Agreement, Seller shall issue to Buyer written notice of such intent.

ARTICLE VII INDEMNIFICATION

To the furthest extent allowed by law, Buyer shall indemnify, hold harmless and defend Seller and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to, personal injury, death at any

time and property damage) incurred by Seller, Buyer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Buyer's obligations pursuant to the preceding sentence shall apply regardless of whether Seller or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the sole negligence or willful misconduct of Seller or any of its officers, officials, employees, agents or volunteers, except when such officers, officials, employees, agents or volunteers are under the direct supervision and control of Buyer.

In the event that Buyer subcontracts all or any portion of the work to be performed under this Agreement, Buyer shall require each subcontractor to indemnify, hold harmless and defend Seller and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This Article VII shall survive termination or expiration of this Agreement, subject to the applicable statute of limitations.

ARTICLE VIII PAYMENT TERMS

Section 8.1 Statement and Payment. On or before the first (1st) day of the month following a month in which Digester Gas is delivered hereunder, Buyer shall provide Seller with a statement via mail to the address set forth in Section 13.1 setting forth the volumes of Biomethane sold to third parties and the price at which such volumes were sold during the preceding month ("Statement"). Along with such Statement, Buyer shall make payment of the price for the Biomethane sold to third parties in the previous month within five (5) days of providing the Statement to Seller. Payment shall be by check made out to "City of Fresno, Wastewater Management Division," and mailed to the City address on the signature page.

Section 8.2 Remedies for Non-Payment. If Buyer fails to pay undisputed amounts to Seller for Biomethane or Regulatory Credits within thirty (30) days after first due pursuant to Section 8.1, Seller shall have the right to interrupt deliveries under this Agreement without notice to Buyer until payment (and interest under Section 8.4) is received, which interruption right shall not prejudice Seller's rights to collect any sums due Seller (including interest under Section 8.4) for Digester Gas previously delivered to Buyer pursuant to this Agreement or Regulatory Credits accrued and owed by Buyer.

Section 8.3 Interest. If Buyer fails to pay undisputed amounts to Seller within thirty (30) days after first due, the unpaid balance shall bear interest, compounded monthly, at the five (5) year United States Treasury Bill rate effective as of the 30th day after due, plus on the first day of each month or calendar quarter, as applicable, or the maximum contract rate permitted by law, whichever is less, plus attorneys' fees, court costs, and other costs in connection with the collection of such

unpaid amounts. If and to the extent that an amount due is disputed in writing by Seller within thirty (30) days after the statement is received, and the dispute is resolved against Buyer, Buyer shall pay interest, fees, and costs, as set forth in this Section 8.4. If the disputed amount is resolved in Buyer's favor, no interest, fees, or costs shall accrue on the disputed unpaid amount, and Seller shall pay Buyer the cost of Buyer's attorneys' fees, court costs, and other costs incurred in connection with Buyer's defense.

Section 8.4 Books and Records. Each Party to this Agreement has the right to audit the other Party's books and records pursuant to Section 14.1.

ARTICLE IX EVENTS OF DEFAULT; REMEDIES; TERMINATION

Section 9.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any one or more of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) days after receipt of written notice by the non-defaulting Party ("Non-Defaulting Party");

(b) any representation or warranty is or becomes untrue or incorrect and such occurrence is not remedied within thirty (30) days of written notice by the other Party demanding the remedy of such occurrence;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within thirty (30) days after written notice of such failure to perform has been delivered to the Defaulting Party by the Non-Defaulting Party;

(d) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(e) if Buyer fails, refuses or delays to take delivery of Digester Gas produced at the Plant and such failure, refusal or delay continues for a fifteen (15) consecutive day period or in the aggregate forty-five (45) days in any given calendar year; and

(f) if Seller fails to supply Digester Gas as set forth in this Agreement.

Section 9.2 Remedies; Termination. For so long as an Event of Default has occurred and continues to occur, the Non-Defaulting Party, shall have the right, in its

sole discretion and upon written notice to the Defaulting Party, to: (i) designate a day (by providing the Defaulting Party with written notice thereof), which such day shall be within twenty-one (21) days after the delivery of such notice, upon which the Non-Defaulting Party shall accelerate all amounts owed between the Parties through such day and terminate and liquidate this Agreement (as provided below); (ii) withhold payments due to the Defaulting Party under this Agreement; and/or (iii) suspend performance under this Agreement (provided, however, that in no event shall any such withholding of payment or suspension of performance continue for longer than ten (10) days unless the Non-Defaulting Party shall have already delivered the written notice contemplated in this Section 9.2 concerning terminating the Agreement. If the Non-Defaulting Party elects to terminate this Agreement, the Non-Defaulting Party shall deliver to the Defaulting Party a written invoice for the "Termination Payment", for any outstanding sums due pursuant to this Agreement, along with any costs/damages incurred by the Non-Defaulting Party as a result of the Termination, which the Defaulting Party shall pay within thirty (30) days.

Section 9.2.1 Not Defaults. None of the following shall be considered an Event of Default: (i) a condition of Force Majeure that negatively affects the operation of the Plant for a period of fifteen (15) consecutive days or in the aggregate forty-five (45) days in a given calendar year; (ii) Seller's non-performance when performance pursuant to this Agreement breaches a material obligation of Seller's separate and unrelated agreement with a third party; or (iii) Seller's non-appropriation of funds sufficient to meet its obligations hereunder during any Seller fiscal year of this Agreement, or insufficient funding for the Project.

Section 9.3 Termination for Convenience; Convenience Fee; Reimbursable Costs: Seller may terminate this Agreement for convenience after the second anniversary of the Date of First Delivery upon submitting six (6) months prior written termination notice to Buyer; provided, that Seller pays to Buyer: (i) the relevant Convenience Fee set forth in Exhibit H; and (ii) the relevant reimbursable costs set forth in Exhibit H ("Reimbursable Costs") within ninety (90) days of Seller's issuing such said termination notice.

Section 9.4 Convenience Fee. The Convenience Fee shall start at a value of eight-hundred and fifty-thousand dollars (\$850,000) at the second anniversary of the Date of First Delivery and shall be amortized to zero on the fifth (5th) anniversary of the Date of First Delivery.

Section 9.5 Not Penalty. The Parties agree and acknowledge that the Convenience Fee and the Reimbursable Costs are not punitive, but is necessary and appropriate compensation for an Early Termination and to reimburse the Buyer for certain verifiable and documented equipment, materials, supplies and services procured by the Buyer in order for the Buyer to meet the Buyer's full and complete obligations for the first full term of the Agreement and reimbursement for demobilization and third-party contract breakage fees incurred as a result of Early Termination. Maintenance and Repair Costs will be reimbursed based on verifiable

and documented costs incurred by Buyer during the twelve months preceding the date upon which the notice of Early Termination is submitted by the Seller to the Buyer.

Section 9.6 Schedule. The Buyer shall provide appropriate invoices, receipts or similar documentation to the Seller for all equipment, materials, supplies and services procured by the Buyer and incorporated into the schedule of values presented in Exhibit H for the Convenience Fee and the Reimbursable Costs. The Parties agree that the schedule of values presented in Exhibit H is based exclusively on the documentation provided by the Buyer to the Seller for the equipment, materials, supplies and services procured by Buyer in order for the Buyer to meet the Buyer's full and complete obligations for the first full term of the Agreement.

Section 9.7 Receipt of Payment. Upon payment of the Convenience Fee and the Reimbursable Costs, or upon the completion of the original contract term, whichever occurs first, all equipment, materials, supplies and services associated with the Convenience Fee and the Reimbursable Costs shall become the exclusive property of the Seller, inclusive of all warranties, spare parts, service agreements, and similar provided to the Buyer at the time when the purchase of the equipment, materials, supplies and services was completed.

Section 9.8 Application to Reserve Account. In the event Seller terminates this Agreement pursuant to this Article IX, Seller's portion of the Reserve Account will be applied to fund all or part of the Convenience Fee, as applicable, owed to Buyer.

Section 9.9 Setoff. Upon the termination of this Agreement pursuant to this Article IX, the Non-Defaulting Party may, at its option and in its sole discretion, setoff (including by setoff, offset, combination of accounts, deduction, retention, counterclaim or withholding), against any amounts owed to the Defaulting Party by the Non-Defaulting Party under this Agreement or any other agreement between the Parties, any amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement or any other agreement between the Parties. The obligations of each of the Parties under this Agreement in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff. The Non-Defaulting Party shall deliver to the Defaulting Party written notice of any such setoff; provided, however, that failure to give such notice shall not affect the validity of the setoff. Nothing herein shall be effective to create a charge or other security interest. This setoff provision shall be in addition to but without duplication of, and not in limitation of, any other right or remedy available to the Non-Defaulting Party (including, without limitation, any right of setoff, offset, combination of accounts, deduction, counterclaim, retention or withholding), whether arising under this Agreement, any other agreement, under applicable law, in equity, or otherwise. Notwithstanding anything to the contrary in this Section 9.9, no right or remedy of Seller to recover, collect or enforce payment of any and all amounts payable by Buyer hereunder shall be limited, waived or restricted in any way by any offset right, agreement or arrangement enforceable by any such purchaser against Buyer.

Section 9.10 Change in Law Not Default. The Parties hereby agree and acknowledge that any of the following changes in law do not constitute a default by either Party and do not entitle either Party to unilaterally terminate this Agreement: (i) a change or changes in the EPA Renewable Fuels Standard regulations that prevent the generation of either RINs from gas derived from the Plant; or (ii) if the EPA Renewable Fuels Standard is repealed or otherwise invalidated or modified in any material respect through legislative, executive, administrative or judicial process or otherwise; or (iii) if the feedstock wherefrom the Plant derives the gas to produce the Digester Gas is deemed by the EPA or any other regulatory agency with jurisdiction to make such determination is rendered or restricted or prohibited from producing a Cellulosic Biofuel and thus generating a D3 RIN under the EPA Renewable Fuels Standard; or (iv) any change to California statutes, regulations, case law, or guidance that in any way changes the ability to generate or use LCFS Credits.

Section 9.11 Default. Upon any material breach of this Agreement by Buyer, Seller may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement.

Section 9.12 Termination or Expiration Consequences. Immediately upon any termination or expiration of this Agreement, the Parties shall: (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to the other Party any and all unearned payments and all properties and materials in the possession of one Party that belong to the other Party.

ARTICLE X LIMITATION OF LIABILITY

Section 10.1 Limitation of Liability. **FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES, PLUS REASONABLE ATTORNEY'S FEES, COURT COSTS, AND OTHER COSTS IN CONNECTION WITH ENFORCING SUCH REMEDY, SHALL BE THE SOLE AND EXCLUSIVE REMEDY.** A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE XI
REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 11.1 Seller's Representation, Warranties and Covenants. Seller hereby represents and warrants to Buyer, such representations and warranties forming a material part of this Agreement upon which Buyer is relying, that as of the date this Agreement is executed and continuing throughout the Term of this Agreement:

(a) This Agreement has been duly and validly executed and delivered by Seller, and this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms, except to the extent its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.

(b) Seller has the legal authority to enter into this Agreement and perform the obligations described herein.

(c) Seller has good and marketable title to all Digester Gas delivered to Buyer at the Delivery Point, it has the right to sell the same to Buyer, and such natural gas is free from any liens or encumbrances, except as set forth in Section 2.3.

(d) Seller is solely responsible, at its own expense, for obtaining and maintaining all land necessary for its operation of the Plant.

(e) Seller shall procure and maintain in force all licenses, consents and approvals required to operate the Plant, and shall be solely responsible for and indemnify Buyer against any costs, or fines arising out of Seller's failure to comply with such requirements.

(f) Seller covenants that it shall promptly notify Buyer of any actual or anticipated production downtime at the Plant or disruption to Digester Gas availability.

(g) Seller has received, and shall maintain, all necessary permits to operate the Plant in its normal course of business. Seller's performance under this Agreement does not require the consent of any third party nor shall they result in a breach or default of another other agreement to which Seller is a party or by which Seller is bound. Neither the execution, delivery, nor performance by Seller under this Agreement shall result in a breach or default of any other agreement to which Seller is a party or by which Seller is bound.

(h) Subject only to Section 2.3, Seller has not previously sold, transferred, or committed to sell or transfer the Digester Gas produced from the Plant to any other party.

(i) There is no Bankruptcy Proceeding pending or being contemplated by Seller or, to Seller's knowledge, threatened against Seller, and there are no other legal proceedings pending before any court or Governmental Authority that would reasonably be expected to materially adversely.

Section 11.2 Buyers Representations, Warranties and Covenants. Buyer represents and warrants to Seller, as of the date this Agreement, and covenants to Seller at all times during the Term of the Agreement, as follows and acknowledges that Seller is relying upon such representations, warranties and covenants in connection with this Agreement:

(a) This Agreement has been duly and validly executed and delivered by Buyer, and this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms, except to the extent its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.

(b) Buyer has the legal authority to enter into this Agreement and perform the obligations described herein.

(c) Buyer shall procure and maintain in force all licenses, consents and approvals required for its purchase from Seller and resale of Biomethane hereunder and all its other obligations under this Agreement, and shall be solely responsible for and indemnify Seller against any costs, liabilities or fines arising out of Buyer's failure to comply with the applicable requirements of such licenses, consents and approvals.

(d) Buyer shall be responsible for all compression, transportation, pipeline delivery and marketing expenses required in the sale of Biomethane to third parties.

(e) Buyer intends to maximize revenue in transactions with third parties. Further Buyer represents it intends to sell the Biomethane at market prices and Buyer will not discount or swap the Biomethane, except the cash value of the Biomethane from such transactions is accounted for to the Seller.

(f) Buyer is a U.S. entity for purposes of state and federal income and excise taxes.

(g) There is no Bankruptcy Proceeding pending or being contemplated by Buyer or, to Buyer's knowledge, threatened against Buyer, and there are no other legal proceedings pending before any court or Governmental Authority that would reasonably be expected to materially adversely affect its ability to perform its obligations under this Agreement.

Section 11.3 Good Faith Efforts of the Parties. Each of the Parties is entering into this Agreement with the intent of operating in good faith subject to this Agreement.

ARTICLE XII FORCE MAJEURE

Section 12.1 General. If because of a Force Majeure either Party is unable, in whole or in part, to carry out any of its obligations under this Agreement, the obligations of the Party shall be suspended to the extent and for the period made reasonably necessary by such Force Majeure; provided that the claiming Party gives notice to the other party of as reasonably promptly as the claiming Party determines or should have determined, but in no event longer than ten (10) days after the date such Party knew or should have known of the event causing the Force Majeure, and includes in such notice a description of the event, when it was discovered, how long the Force Majeure is anticipated to continue, and the anticipated impact to the claiming Party's performance under this Agreement. If the Party making the Force Majeure fails to give the proper notice in accordance with this Section 12.1, the Party shall be deemed to have waived its right to Claim any impact due to such Force Majeure.

Section 12.2 Definition. For the purposes of this Agreement, "Force Majeure" shall mean any event or cause beyond the reasonable control of the claiming Party that cannot be prevented or eliminated by the exercise of due diligence, including but not limited to, acts of God, strike, lockout or other labor dispute, sabotage, fire, storm, freeze, wind, flood, unusually severe weather, pest insect damage, drought, war, riot or insurrection, explosion, accident, embargo, blockade, act of restraint by any civil or military authority, or any other cause whether of the kind herein enumerated or otherwise that limits the ability of the claiming Party to perform under this Agreement which is beyond the reasonable control of the claiming Party and that cannot be prevented or eliminated by the exercise of due diligence.

Section 12.3 Elimination of Force Majeure. A Party seeking to rely on Force Majeure as justification for nonperformance of its obligations shall use reasonable efforts to eliminate and minimize the effects of the circumstance of Force Majeure; provided, however, that this Agreement shall not require the Party to resolve or settle any dispute related to a strike, work stoppage, lock-out, any other kind of industrial dispute, or any obstructive action or activity by organizations or local inhabitants.

ARTICLE XIII NOTICES

Section 13.1 Notices. Except as herein otherwise provided, each notice, request, demand, statement, report and bill which must or may be given pursuant hereto shall be in writing and may be mailed by prepaid first-class mail (or equivalent), delivered by hand or sent by email to the address indicated below:

If to Seller: City of Fresno, Department of Public Utilities
 Attention: Thomas Esqueda, Director of Public Utilities
 2600 Fresno St. Room 4019
 Fresno, CA 93721

If to Buyer: Colony Energy Partners, LLC
Attention: Kent Hawkins, Managing Partner
4940 Campus Dr. Suite C
Newport Beach CA 92660

Section 13.2 Notices. Any notice required or permitted to be given to either Party shall be given by telephone and confirmed by email, at the telephone numbers and email addresses set forth below (or such other telephone numbers and email addresses as the Parties may designate from time-to-time by written notice under Section 13.1). Notices given by telephone shall be effective immediately and the confirmation by email shall be effective as provided in Section 13.1. Notices hand delivered shall be deemed delivered by the close of the Business Day on which it was hand delivered. If the day on which such email is received is not a Business Day or is after 5:00 p.m. Pacific Prevailing Time on a Business Day, then such email shall be deemed to have been received on the next following Business Day. Notices provided by certified mail, postage prepaid, return receipt requested, or by overnight mail or courier, shall be deemed to have been received on the date noted as delivered on the receipt or tracking registry, as applicable.

Section 13.3 Changes to Notice Instructions. Either Party may designate address changes or changes to the primary or secondary contacts by formal written notice pursuant to Section 13.1.

ARTICLE XIV ADDITIONAL PROVISIONS

Section 14.1 Records; Audit. Seller and Buyer shall establish and maintain always, true and accurate books, records and accounts in accordance with generally accepted accounting principles applied consistently from year-to-year consistent with good industry practices, distinguishable from all other books and records, in respect of all transactions undertaken by such Party pursuant to this Agreement. During normal business hours, each Party shall have the right to audit such books, records and accounts of the other Party in respect of all transactions undertaken pursuant to this Agreement once per year at the end of the calendar year or at any time upon the occurrence of an Event of Default by such other Party. If any error is discovered in any statement or invoice rendered hereunder, such error shall be adjusted within seven (7) days from the date of discovery, but no adjustment shall be made for any error discovered more than one (1) year after delivery and receipt of such statements. If a material difference from a statement rendered under this Agreement by any Party is discovered by any audit, the Party which rendered such statement shall pay the costs of such audit. If no such material difference appears, the Party requesting the audit of such statement shall pay such costs.

Section 14.2 Insurance. At all times, Buyer shall maintain insurance in amounts and limits as set forth in Exhibit G.

Section 14.3 Assignment. Neither Party may assign this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of the other Party; provided, however that Buyer shall be permitted to (i) collaterally assign this Agreement in relation to a related secured financing and (ii) to a related entity under common control of Buyer's ownership, subject to adequate disclosure of the assignee to Seller and Seller's consent. For all other assignments, Seller is not obligated or required to approve the requested assignment.

Section 14.4 Inurement. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

Section 14.5 Documents. Each Party to this Agreement shall perform any and all and execute and deliver any and all documents as may be necessary and proper in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

Section 14.6 Cumulative Remedies. Unless otherwise specifically provided herein, the rights, powers, and remedies of each of the Parties provided herein are cumulative and the exercise of any right, power or remedy hereunder does not affect any other right power or remedy that may be available to either Party hereunder or otherwise at law or in equity.

Section 14.7 Confidentiality. During the Term of this Agreement, the Parties may furnish to each other information of a confidential and proprietary nature. The Party furnishing the proprietary information shall have the exclusive right and interest in and to such proprietary information and the goodwill associated therewith. The Party receiving such information shall maintain its confidentiality using such care and diligence as it uses to protect its own confidential information, but in no event less than reasonable care. Seller is subject to the California Public Records Act, and confidential documents must be labeled "Confidential" to avoid disclosure. In the event that Seller reasonably believes that it will be legally compelled to disclose Buyer's proprietary information that is protected by this Section 14.7, then Seller shall provide adequate notice to Buyer of such potential disclosure so that Buyer may take any actions Buyer deems necessary to protect such proprietary information and Buyer shall, subject to the limitations of the California Public Records Act, cooperate with Buyer's efforts to protect such proprietary information.

Section 14.8 Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California. Should a Dispute arise that is not resolved under the Dispute resolution mechanism described in Section 14.13, any legal action shall be brought in the state or federal courts located in Fresno, California.

Section 14.9 No Partnership. This Agreement shall not create or be construed to create in any respect a partnership, joint venture, or any other business association between the Parties and neither Party may bind the other in any contract, arrangement, or understanding.

Section 14.10 Non-Waiver; Duty to Mitigate; No Third-Party Beneficiaries. No waiver by any Party of any of its rights with respect to the other Party or with respect to any matter or default arising about this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver shall be in writing signed by the waiving Party. Each Party agrees that it has a duty to mitigate damages. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or Claim in connection with, this Agreement.

Section 14.11 Entire Agreement; Amendments; Interpretation. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement and supersedes any prior or contemporaneous agreements or representations affecting the same subject matter. Except for any matters which, in accordance with the express provisions of this Agreement, may be resolved by verbal agreement between the Parties, no amendment, modification or change to this Agreement shall be enforceable unless reduced to a writing specifically referencing this Agreement and executed by both Parties. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be used in interpretation of this Agreement.

Section 14.12 Counterparts; Severability. This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. Except as may otherwise be stated herein, any provision or section hereof that is declared or rendered unlawful or unenforceable by any applicable court of law or regulatory agency, or deemed unlawful or unenforceable because of a statutory change, shall not otherwise affect the lawful obligations that arise under this Agreement. In the event any provision of this Agreement is declared unlawful or unenforceable, the Parties shall promptly renegotiate to restore this Agreement as near as possible to its original intent and effect.

Section 14.13 Dispute Resolution.

Section 14.13.1 Conciliation. In the event of any Dispute related to this Agreement, either Party may give notice to the other Party pursuant to Section 13.1 invoking the provisions and process set forth in this Section 14.13. The notice shall contain the name of the sending Party's senior representative that it nominates and authorizes to attempt resolution of such Dispute. Promptly following receipt of the notice, the receiving Party shall nominate a senior representative that is authorized to attempt resolution of the Dispute and shall notify the sending Party of such nomination. The representatives nominated by each Party shall meet at a mutually agreed time and place to attempt to resolve such Dispute not later than fifteen (15) days after the date of the notice of Dispute. Any meetings between the Parties required by this Section 14.13.1 shall be held in-person in Fresno, or such other site as the Parties may mutually agree. If such Dispute is not resolved by the Parties' senior officers within ten (10)

Business Days following the meeting described above, each Party may pursue any and all remedies available to it at law or equity.

Section 14.13.2 Dispute Resolution Confidential. The Parties agree that any Dispute and any negotiations between them in relation to any Dispute (including, without limitation, any information, documents, or materials produced for purposes thereof) shall be confidential and shall not be disclosed to any third party.

Section 14.13.3 Continuing Obligations. Pending final resolution of any Dispute, the Parties shall continue to fulfill their obligations hereunder that are not the subject of the Dispute.

Section 14.13.4 Injunctive Relief. Notwithstanding this Section 14.13.5, a Party shall be entitled to seek injunctive relief against the other Party in the state and federal courts in the Eastern District of California.

Section 14.13.5 No Third-Party Beneficiaries. This Agreement is made for the sole benefit of the Parties and their respective successors and assigns. The Parties do not intend to create, and this Agreement shall not be construed to create, by implication or otherwise, any rights in any other person or entity not a Party to this Agreement, and no such person or entity shall have any rights or remedies under or because of this Agreement, or any right to the exercise of any right or power hereunder or arising from any default hereunder.

Section 14.13.6 Interpretation. Each Party acknowledges and agrees that it has participated in the drafting of this Agreement and has had the opportunity to consult with legal counsel and any other advisors of its choice to its satisfaction regarding the terms and provisions of this Agreement and the results thereof. As a result, the rule of construction that an agreement be construed against the drafter shall not be asserted or applied to this Agreement.

ARTICLE XV CONFLICTS OF INTEREST

Neither Party, nor any director, employee, or agent of a Party shall give to or receive from any Party or any director, employee, or agent of the other Party any commission, fee, rebate, gift, or entertainment of significant cost or value in connection with this Agreement. Each Party shall promptly notify the other Party of any violation of this Article XV, and any consideration received by a Party as a result of such violation shall be paid over or credited to the other Party. Each Party, or its designated representative(s), may audit any and all records of the other Party as provided in Section 14.1 of this Agreement for the sole purpose of determining whether there has been compliance with this Article XV. Each Party and its subcontractors and vendors of any tier shall maintain true and correct records in connection with all matters relating to this Agreement and retain such records for at least twenty-four (24) months after termination of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the date first written above.

CITY OF FRESNO,
a California municipal corporation

Colony Energy Partners, LLC,
a Delaware Limited Liability Company

By: _____

By: Dirk Ivory

Wilma Quan Schecter
City Manager

Name: Dirk Ivory
Title: President

APPROVED AS TO FORM:

DOUGLAS T. SLOAN,
City Attorney

By: _____

Name: Jake Terrada
Title: CFO

By: Amanda Freeman 12/20/17
Amanda Freeman Date
Deputy City Attorney

ATTEST:

YVONNE SPENCE, CMC,
City Clerk

By: _____
Deputy

Addresses:

SELLER:

BUYER:

City of Fresno
Attention: Thomas Esqueda
Director of Public Utilities
2600 Fresno St., Room 4019
Fresno, CA 93721
Phone: (559) 621-8610
Email: thomas.esqueda@fresno.gov

Colony Energy Partners, LLC
Attention: Kent Hawkins
Managing Partner
4940 Campus Dr. Suite C
Newport Beach CA 92660
Phone: 949-752-7120
Email: kent@colonyenergypartners.com

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the date first written above.

CITY OF FRESNO,
a California municipal corporation

Colony Energy Partners, LLC,
a Delaware Limited Liability Company

By: _____

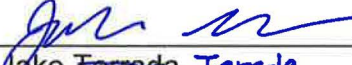
By: _____

Wilma Quan Schecter
City Manager

Name: Dirk Ivory
Title: President

APPROVED AS TO FORM:

DOUGLAS T. SLOAN,
City Attorney

By:  _____
Name: ~~Jake Ferrada~~ **Terrada**
Title: CFO **J.T.**

By: _____
Amanda Freeman Date
Deputy City Attorney

ATTEST:

YVONNE SPENCE, CMC,
City Clerk

By: _____
Deputy

Addresses:

SELLER:

City of Fresno
Attention: Thomas Esqueda
Director of Public Utilities
2600 Fresno St., Room 4019
Fresno, CA 93721
Phone: (559) 621-8610
Email: thomas.esqueda@fresno.gov

BUYER:

Colony Energy Partners, LLC
Attention: Kent Hawkins
Managing Partner
4940 Campus Dr. Suite C
Newport Beach CA 92660
Phone: 949-752-7120
Email: kent@colonyenergypartners.com

Attachments:

1. **Exhibit A – Conditions Precedent Schedule**
2. **Exhibit B – Disclosure of Conflict of Interest**
3. **Exhibit C – Organic Waste Fee Schedule**
4. **Exhibit D – Quality Requirements**
5. **Exhibit E – Maintenance Estimates**
6. **Exhibit F – Seller’s Historical Digester Gas Production**
7. **Exhibit G – Insurance Requirements⁸.**
8. **Exhibit H – Projected Early Termination Payment Schedule of Values/Reimbursable Costs**

Exhibit A

Conditions Precedent Schedule

Buyer's and Seller's obligations under the Agreement are conditioned on the following actions being completed by the dates indicated. If an action is not completed by the target date, the other party may, in accordance with Section 2.7, waive the condition or terminate the Agreement.

	Seller Must Complete the Following:	Target Date
(1)	Cooperate and assist as necessary and required with Buyer in the registration and certification of the facilities as a qualified renewable facility eligible for the issuance of the Regulatory Credits.	n/a
(2)	Cooperate and assist as necessary and required with Buyer in the permitting and installation of Buyer's facilities at the Delivery Point, including the identification of locations where Buyer can connect to utility services.	n/a
(3)	Cooperate as necessary for the execution of an O&M Agreement between Buyer and third-party operator for the Conditioning System owned by Seller.	n/a
(4)		
(5)		
(6)		
(7)		

	Buyer Must Complete the Following:	Target Date
(1)	Receive all approvals and permits necessary to construct and operate the compressor station at the digester gas delivery point and the gas utility pipeline receipt injection facility in the City of Tulare.	Feb 28, 2018
(2)	Secure contract(s) for the sale of all Digester Gas to a third party or parties.	Feb 28, 2018
(3)	Secure financing to construct and operate all Buyer's facilities discussed in the Agreement. If Buyer uses grant funds as financing, Buyer must provide documentation to support that it may use the grant funds to construct or operate the facilities from the grantor agency.	Mar 31, 2018
(4)	Give notice to proceed on the construction and installation of all Buyer's facilities as described in this Agreement.	Mar 31, 2018
(5)	Execution of an O&M Agreement with a qualified third party (with Seller's approval) regarding the Gas Conditioning System.	May 31, 2018
(6)	File Registration to certify the Biomethane production and the Gas Conditioning System as qualifying renewable facilities eligible to generate renewable credits issued by State and Federal Agencies	Jun 30, 2018
(7)	Start-up and commercial operations of all Buyer's facilities as described in this Agreement (Date of First Delivery).	Jan 1, 2019

Exhibit B

DISCLOSURE OF CONFLICT OF INTEREST

Colony Biomethane Project

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Colony Disposes Organic Waste at the

Wastewater Treatment Plant for a Fee and

is discussing a new fee agreement with the

City. Colony also anticipates moving into an

expanded biogas Agreement, which may

include the construction of a new digester

and biogas pipeline utility interconnect.

Additional page(s) attached.



Signature

12-12-17

Date

Kent Hawkins

Colony Energy Partners
4940 Campus Dr. Suite C
Newport Beach CA, 92660

Exhibit C

Organic Waste Fee Schedule

(The Organic Waste Fee Schedule shall be incorporated at a later date as an Amendment to the Agreement upon the City's completion of the necessary studies)

Exhibit D

Biomethane Quality Requirements (Buyer's Sole Responsibility)

- a. Minimum Heating Value: nine hundred and ninety (990) Btu (gross) per standard cubic foot on a dry basis—(ninety-eight percent (98%) methane).
- b. Moisture or Water Content: not in excess of seven (7) lbs. per million standard cubic feet.
- c. Hydrogen Sulfide: shall not contain more than 25-5 hundredths (0.25) of one (1) grain of hydrogen sulfide, measured as hydrogen sulfide, per one hundred (100) standard cubic feet (4 ppm). The gas stream shall not contain any entrained hydrogen sulfide treatment chemical (solvent) or its by-products.
- d. Carbon Dioxide: the gas shall not have a total carbon dioxide content in excess of three percent (3%) by volume.
- e. Oxygen: The gas shall not have an oxygen content in excess of two-tenths of one percent (0.2%) by volume, and Seller shall make every reasonable effort to keep the gas free of oxygen.

Exhibit E

Maintenance and Repair Costs

The following items are considered Annual Average Expected Maintenance and Repair Costs for the operations of the Gas Conditioning System. The costs for these items shall be borne exclusively by the Buyer up to the agreed upon upper limit of \$200,000 per year (Section 6.3).

Darco Media (One Change Out)	\$57,400
Membrane Skid Activated Carbon (Two Change Outs)	\$50,000
Compressor Oil	\$6,000
Filters	\$4,000
Calibration Gas	\$1,500
Gas Lab Testing	\$4,000
Main Compressor Maintenance	\$24,000
Other Mechanical Maintenance/Repairs	\$15,000
Electrical/Instrumentation Maintenance/Repairs	\$15,000
Total Annual Average	\$176,900

Exhibit F

Historic Volumes of Digester Gas Produced by Seller

Table 1. GCF 2014 Production

	Inlet DG (scfm)	Product Gas (scfm)	Waste Gas (scfm)	TOX Fuel (scfm)	Product Gas CH4 (%)
Jan-14	881	522	355	72.6	98.8%
Feb-14	810	454	338	79.7	98.7%
Mar-14	N/A	N/A	N/A	N/A	N/A
Apr-14	N/A	N/A	N/A	N/A	N/A
May-14	N/A	N/A	N/A	N/A	N/A
Jun-14	886	497	417	52.7	98.8%
Jul-14	898	510	424	52.4	99.0%
Aug-14	897	518	379	52.8	98.8%
Sep-14	822	476	333	52.8	98.7%
Oct-14	798	461	324	52.6	98.6%
Nov-14	721	420	277	49.8	79.4%
Dec-14	693	408	279	49.1	65.5%
Jan-Oct 2014 Averages*	856	491	367	59.4	98.8%

Note:

November and December included anomalously low flow and CH₄ readings. Not included in annual averages.

Table 2. GCF 2015 Production

	Inlet DG (scfm)	Product Gas (scfm)	Waste Gas (scfm)	TOX Fuel (scfm)	Product Gas CH4 (%)
Jan-15	781	455	327	52.7	98.0%
Feb-15	789	445	345	52.1	98.6%
Mar-15	841	472	384	51.9	98.6%
Apr-15	728	442	332	47.2	97.8%
May-15	791	474	357	52.7	98.5%
Jun-15	734	430	360	52.5	98.7%
Jul-15	725	390	350	51.4	98.5%
Aug-15	998	555	489	52.4	98.9%
Sep-15	931	524	441	52.6	98.7%
Oct-15	978	593	443	51.4	98.8%
Nov-15	1,102	641	463	52.7	98.8%
Dec-15	949	566	386	52.6	98.7%
2015 Averages	862	499	390	51.9	98.6%

Exhibit G

Insurance Requirements

(a) Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONTRACTOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONTRACTOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01,

providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE
EXHIBIT A

CONTRACTOR shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**

- (i) \$5,000,000 per occurrence for bodily injury and property damage;
- (ii) \$5,000,000 per occurrence for personal and advertising injury;
- (iii) \$10,000,000 aggregate for products and completed operations; and,
- (iv) \$10,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**

\$5,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **CONTRACTORS' POLLUTION LEGAL LIABILITY** with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$5,000,000 per occurrence or claim; and,
- (ii) \$10,000,000 general aggregate per annual policy period.

(a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability insurance* covering materials to be transported by CONTRACTOR pursuant to the Agreement.

UMBRELLA OR EXCESS INSURANCE

In the event CONTRACTOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONTRACTOR shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) CONTRACTOR shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) *All policies of insurance* required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. CONTRACTOR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONTRACTOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONTRACTOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen

- (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General, Contractors Pollution Liability and Automobile Liability insurance policies shall be written on an occurrence form.
 - (iii) The Commercial General, Automobile and Contractors Pollution Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. CONTRACTOR shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Commercial Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37 and the Commercial Automobile policy shall contain an ISO form CA 99 48 03 06.
 - (iv) All such policies of insurance shall be endorsed so the CONTRACTORS' insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If CONTRACTOR maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by CONTRACTOR.
 - (v) All above, including the Commercial General, Contractors Pollution and Automobile policies shall contain a waiver of subrogation as respects to CITY.
 - (vi) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
 - (vii) For any claims related to this Agreement, CONTRACTOR'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
 - (viii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS - CONTRACTOR shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. **All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONTRACTOR shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This

requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of CONTRACTOR shall also be required to provide all documents noted herein.

CLAIMS-MADE POLICIES - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONTRACTOR.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, CONTRACTOR must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

MAINTENANCE OF COVERAGE - If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY hereunder shall in any way relieve CONTRACTOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, its principals, officers, agents, employees, persons under the supervision of CONTRACTOR, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS -If CONTRACTOR subcontracts any or all of the services to be performed under this Agreement, CONTRACTOR shall require, at the discretion of the

CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, CONTRACTOR shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and CONTRACTOR shall ensure that CITY, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with CONTRACTOR, and CITY, prior to commencement of any work by the subcontractor.

Exhibit H

Projected Early Termination Payment Schedule of Values/Reimbursable Costs

Beginning Year	3	4	5
Convenience Fee	\$850,000	\$566,667	\$283,333
Compressor Liquidation Value	\$553,500	\$389,000	\$141,450
Trailer Equipment Lease Breakage	\$955,800	\$637,200	\$318,600
Maintenance and Repairs	\$200,000	\$200,000 MP	\$200,000
Start-Up and Demobilization	\$420,000	\$280,000	\$140,000
Total Estimated Payment	\$2,979,300	\$2,072,867	\$1,083,383

The Parties agree that the schedule of values shown in Exhibit H are best professional estimates, and that the final payment to be made by the Seller to the Buyer for Termination for Convenience shall be based on actual and verifiable invoices, receipts or similar documentation provided by the Buyer to the Seller for all equipment, materials, supplies and services procured by the Buyer in order for the Buyer to meet the Buyer's full and complete obligations for the first full term of the Agreement. Refer to Sections 9.3, 9.4, 9.5, 9.6, and 9.7 for a complete discussion of the Termination for Convenience provisions.