

# REQUEST FOR BIDS

## Directed Biogas Derived from Swine Waste

Issued by the Fayetteville Public Works Commission

Issuance Date: January 24, 2022

**Bid Due Date and Time: 2:00 p.m., February 21, 2022**

The Fayetteville Public Works Commission (PWC) is planning to install a new electric generating facility in its service territory to be served by a connection to the natural gas local distribution system of Piedmont Natural Gas Company, Inc. (PNG) for the purpose of generating electricity from swine waste in order to achieve compliance with G.S. 62-133.8(e). Pursuant to G.S. 143-131, PWC is soliciting bids for the sale to PWC of directed biogas derived from swine waste that complies with the following terms:

1. The swine waste from which the directed biogas is derived must be located at one or more North Carolina sites;
2. In North Carolina, the directed biogas must be cleaned to pipeline quality standards and injected into and accepted by PNG for redelivery to PWC at its electric generation site in Fayetteville, North Carolina.
3. The directed biogas shall include sufficient attributes that allow PWC to generate and sell electricity (and produce renewable energy certificates) in compliance with G.S. 62-133.8(e).
4. The average delivered daily quantity of directed biogas shall be 135 MMBtu, with an imbalance tolerance of plus or minus two percent (2%) for the daily amount that PWC nominates. The bidder may implement a summer/winter seasonal schedule by adjusting the average delivered daily quantity up to twenty percent (20%) of the foregoing average daily delivery amount for the purpose of setting a daily average quantity for the entire season to which PWC will adhere during the specified season by providing PWC at least thirty (30) days prior written notice of the daily average quantity that is available during the season (for example, in the 3 winter months of the year, December - February, the bidder may reduce the average daily nomination amount to an identified amount as low as 108 MMBtu, and in the three summer months of the year, June - August, the bidder may increase the average daily nomination amount to an identified amount as high as 162 MMBtu); provided, however, (a) no daily nomination or delivery may exceed 270 MMbtu at any point; and (b) nominations and deliveries shall be 46,000 MMBtu (plus or minus 1%) during each year of the contract term.

5. An alternative or second bid may be submitted in the bidder's discretion for an average delivered daily quantity of directed biogas shall be 180 MMBtu, with an imbalance tolerance of plus or minus two percent (2%) for the daily amount that PWC nominates. The bidder may implement a summer/winter seasonal schedule by adjusting the average delivered daily quantity up to twenty percent (20%) of the foregoing average daily delivery amount for the purpose of setting a daily average quantity for the entire season to which PWC will adhere during the specified season by providing PWC at least thirty (30) days prior written notice of the daily average quantity that is available during the season; provided, however, (a) no daily nomination or delivery may exceed 360 MMBtu; and (b) nominations and deliveries shall be 61,000 MMBtu (plus or minus 1%) during each year of the contract term.
6. During each year of the contract term, the bidder and PWC shall each have: (a) up to ten (10) days each year for planned maintenance during which the bidder shall have no delivery obligation and PWC shall have no take obligation, provided that the party engaging in planned maintenance gives the other party at least seven (7) days prior written notice of each such planned date; and (b) up to ten (10) additional days for unplanned outages during which bidder shall have no delivery obligation and PWC shall have no take obligation, provided that notice of such outages is given promptly to the other party.
7. If the bidder is responsible for PWC incurring an imbalance charge to PNG due to an imbalance of more than two percent (2%), the bidder shall reimburse PWC the imbalance charge paid plus an administrative fee of five percent (5%) of the imbalance charge.
8. The bid shall specify the proposed contract term, which shall be no less than twenty (20) years and no more than thirty (30) years;
9. PWC anticipates that it will begin nominated directed biogas in the third calendar quarter of 2023 but PWC is willing to evaluate other delivery start dates;
10. The bid shall specify the price per MMBtu of swine waste gas and any proposed escalation, which must be based upon a stated fixed rate (such as 2% per annum).
11. Each bidder's bid(s) shall constitute a firm irrevocable offer for at least one hundred eighty (180) days after the bid due date to sell the directed biogas to PWC.
12. Each bidder with whom PWC enters into a Contract (as defined below) must provide a quarterly attestation consistent with Exhibit 1.1 attached hereto for the directed biogas that is derived from swine waste and delivered to PWC.

If a bidder wishes to submit confidential information in its bid, the bidder must deliver to PWC an executed Nondisclosure Agreement in the form attached hereto as Exhibit A with or prior to submission of the bidder's bid(s). The bidder must also mark as "Confidential" the portions of

the bid which are to be so treated. Submission of a bid constitutes bidder's consent for PWC to file under seal with the North Carolina Utilities Commission and its Public Staff confidential bid information if reasonably necessary for PWC to establish compliance with or a seek a waiver of G.S. 62-133.8(e).

In order to submit a bid, the bidder must: (1) complete, execute, and submit to PWC Exhibit B, which is the Base Contract for the Sale and Purchase of Directed Biogas Derived from Swine Waste ("Base Contract"); (2) complete and execute and submit to PWC Exhibit C, which is the bid form on which to identify pricing, quantity, and other terms and conditions; and (3) provide a statement (and may include supporting documentation) that: (a) either confirms the bidder's existing rights to inject directed biogas into PNG's local distribution system or identifies the bidder's plan to obtain such rights, (b) identifies all of the bidder's previous and current transactions (including but not limited to counterparties, sales volumes, and sales periods) in which the bidder has sold or is selling directed biogas derived from swine waste, and (c) includes financial records disclosing the bidder's financial strength and/or identifying the other means by which the bidder commits to establishing its creditworthiness (including, for example, but not limited, to letters of credit or a parent guaranty). The terms of this Request for Bids, Exhibits B and C attached hereto, and the means by which the bidder proposes to establish its creditworthiness, are collectively the "Contract" between the bidder and PWC if the bid is approved and accepted by PWC. In the event of a conflict between the terms of the documents comprising the Contract, the following documents shall govern in the order specified: (1) this Request for Bids, (2) Exhibit C, and (3) the Base Contract. The contract documents submitted with the bid must be signed by an authorized official of the bidder. If a winning bid is selected and approved by PWC, PWC will complete the "buyer contact and accounting information" for the Contract and execute and deliver to the bidder a copy of the fully executed Contract.

If the bidder wishes to propose modifications to the Base Contract or Exhibit C, the bidder must submit executed copies of such documents as modified and a redlined version of such documents identifying all proposed revisions, some or all of which may be rejected by PWC as non-responsive. MS Word versions of the documents will be made available to the bidder upon request directed to [nikole.bohannon@faypwc.com](mailto:nikole.bohannon@faypwc.com).

Each bid shall be submitted in a sealed opaque envelope that clearly identifies on the outside front cover the title of this Request for Bids ("Directed Biogas Derived from Swine Waste"). Bids may be delivered in person or by express mail to:

Fayetteville Public Works Commission

Procurement Department, Attn: Nikole Bohannon  
955 Old Wilmington Road  
Fayetteville, NC 28301

or by US Mail to:

Fayetteville Public Works Commission  
Procurement Department, Attn: Nikole Bohannon  
P.O. Box 1089  
Fayetteville, NC 28302

**Bids received after the above-stated due date and time will not be considered.**

This Request for Bids does not constitute PWC's offer to purchase directed biogas, and it does not create any obligation for PWC to execute any Contract to enter into a transaction with any bidder. PWC reserves the right at any time, in its sole discretion, to reject any or all bids or withdraw or otherwise terminate this Request for Bids for any reason without prior notification and without liability to, or responsibility of, PWC or anyone acting on PWC's behalf to any bidder or potential bidder. PWC reserves the right at any time, at its sole discretion, to reject any bid on the grounds that it does not conform to the terms and conditions of this Request for Bids, including but not limited to any omission, alteration of form, additions not called for, conditional bid, or any irregularities of any kind. PWC reserves the right to waive all informalities. PWC shall have no obligation to reimburse any of Respondent's expenses regardless of whether such Respondent's bid is selected, not selected, rejected, or disqualified. Unless earlier terminated, the Request for Bids will terminate automatically upon the execution of one or more Contracts by PWC with the selected bid(s). PWC may consider, among other things, the bidder's past performance conduct on other contracts, and other information as PWC deems necessary to assist in the evaluation of any bid.

Each bidder or potential bidder shall refrain from collaborating or discussing with any other bidder or potential bidder its bid or anticipated bid, including without limitation, the price, the quantity, or any other terms or conditions of any bid. Each bidder represents and warrants to PWC that the bidder has not engaged, and covenants that it will not engage, in any communications with any other actual or potential bidders in response to this Request for Bids concerning this solicitation, price, quantity, other terms in a bid, or related matters and has not engaged in collusion or other unlawful or unfair business practices in connection with this Request for Bids.

All inquiries related to this Request for Bids shall be submitted to PWC via e-mail to Nikole Bohannon, Procurement Advisor ([nikole.bohannon@faypwc.com](mailto:nikole.bohannon@faypwc.com)) no later than 5:00 p.m. on

February 11, 2022 in order to be considered for response. With respect to matters of general interest raised by any potential bidder, PWC may, without reference to the specific potential bidder raising such matter or initiating the inquiry, reply to all parties on the distribution list of this Request for Bids with the questions and responses. PWC may, in its sole discretion, decline to respond to any email or other inquiry.

## Exhibit A

### NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement ("Agreement") is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Fayetteville Public Works Commission, a public authority organized under the laws of the State of North Carolina with its principal place of business located at 955 Old Wilmington Road, Fayetteville, North Carolina 28302 ("PWC"), and \_\_\_\_\_, a \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ ("Vendor")(PWC and Vendor are each a "Party" and collectively the "Parties"). In consideration of the mutual covenants contained herein, the Parties intending to be legally bound, agree as follows:

1. "Confidential Information" means all records, communications, and other information, whether written, electronic, or oral, given by one Party ("Disclosing Party") to the other Party ("Receiving Party") that are not subject to disclosure as a public record under North Carolina law when such information is in the possession, custody, or control of PWC, which information includes but is not limited to trade secrets, personnel records, and customer billing records. All Confidential Information shall either be marked or otherwise identified as "confidential" or be such information that a reasonable person would be expected to understand is confidential under the circumstances. Confidential Information excludes information which:

- a. Was known to Receiving Party prior to its receipt from Disclosing Party free of any obligation to keep it confidential;
- b. Is or becomes publicly available, by means other than unauthorized disclosure;
- c. Is independently developed by Receiving Party without knowledge of the Confidential Information;
- d. Is disclosed to any non-agent third party by Disclosing Party without restriction;
- e. Is lawfully received from a third party whose disclosure would not violate any confidentiality or other legal obligation; or
- f. Is required to be disclosed pursuant to North Carolina law.

2. Receiving Party will: (a) protect and safeguard the Confidential Information with at least the same degree of care as it uses to protect its own Confidential Information, which will be no less than a commercially reasonable degree of care; (b) use the Confidential Information of Disclosing Party only for the purpose for which Disclosing Party provided such information to Receiving Party ("Purpose") and for no other purpose or otherwise in any manner to Disclosing Party's detriment; (c) not disclose, publish, or furnish Confidential Information, in any manner, except to its employees, agents, attorneys, accountants or advisors (collectively "Representatives") who (i) need to know such Confidential Information to assist Receiving Party in relation to the Purpose, (ii) are informed by Receiving Party of the confidential nature of the Confidential Information, and (iii) are subject to confidentiality duties or obligations to Receiving Party that are no less restrictive than those in this Agreement; (d) not copy Confidential Information without the written consent of Disclosing Party, unless necessary for the Purpose, and (e) be responsible for any breach of this Agreement caused by any of its Representatives. The Receiving Party shall give the Disclosing Party notice immediately upon becoming aware that any Confidential Information has or may have been disclosed or released.

3. If Receiving Party or its Representatives is requested or required by applicable federal, state or local law, including but not limited to, subpoena, civil investigative demand or similar process (collectively, a "Legal Order"), to disclose any Confidential Information, the Receiving Party will (a) promptly notify Disclosing Party of such request, except as prohibited by law, so that Disclosing Party may seek an appropriate protective order or other remedy; and (b) provide commercially reasonable assistance to Disclosing Party in opposing such disclosure and/or obtaining a protective order or other remedy to the extent such opposition is reasonably warranted by law. If, after providing such notice and assistance as required in this Section, Receiving Party remains subject to a Legal Order to disclose any Confidential Information, Receiving Party or its Representatives, as the case may be, will disclose no more than the portion of the Confidential Information, which, on the advice of Receiving Party's legal counsel, is specifically required to be disclosed by such Legal Order. If Vendor designates information as Confidential Information, Vendor shall defend, indemnify, and hold harmless PWC, its Commissioners, officers, employees, and agents, from every claim, demand, loss, expense, cost, damage or injury,

including reasonable attorney's fees, resulting from any third party bringing an action under Chapter 132 of the North Carolina General Statutes, to the extent such may result from the decision of PWC or its staff to withhold information in accordance with Chapter 132 and this Agreement. PWC agrees to maintain the confidentiality of Confidential Information during the pendency of any such action consistent with its statutory obligations and the commitments undertaken herein.

4. The Parties agree that, upon the written request of a Disclosing Party, Receiving Party and its Representatives will promptly return to Disclosing Party or provide written certification of the destruction of all Confidential Information of Disclosing Party, including all Confidential Information contained in internal documents, without retaining any physical or electronic copy, extract or summary of any part thereof. Notwithstanding the foregoing, a Receiving Party may retain copies of Confidential Information to the extent required by law and, in addition, solely to the extent necessary for purposes of such Party's ordinary course internal document retention and backup requirements and procedures, provided that such Confidential Information will remain subject to the terms and conditions of this Agreement for so long as it is retained.

5. The Parties agree that (a) all Confidential Information disclosed under this Agreement, and all copies thereof, will be and remain the property of Disclosing Party; (b) nothing contained in this Agreement grants or implies any grant of any right, license or authority in or to the Confidential Information; and (c) neither Party will be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. THE PARTIES HEREBY AGREE THAT ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS," AND NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE THEREOF.

6. The Parties agree that (a) money damages alone would not be a sufficient remedy for any breach of this Agreement, and that, in addition to all other remedies, each Party will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach; (b) neither Party will oppose any injunctive relief sought by the other Party on the grounds of failure to prove actual damage; and (c) each Party waives any requirement for the securing or posting of any bond in connection with such remedy.

7. Either Party may terminate this Agreement at any time by providing written notice to the other Party. Notwithstanding the foregoing, the confidentiality provisions of this Agreement shall survive and continue to apply to Confidential Information in perpetuity after such Confidential Information was disclosed to Receiving Party.

8. This Agreement sets forth the entire agreement and understanding between the Parties on the subject matter hereof, and supersedes all prior discussions and agreements between them. This Agreement may not be modified or amended except in a writing signed by all Parties. This Agreement will be binding upon and will inure to the benefit of each Party hereto and its successors and assigns. Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party, except that upon prior written notice to the other Party, either Party may assign this Agreement to: (1) an entity that purchases all or substantially all of the equity or assets of the assigning Party; or (2) a successor entity into which the assigning Party merges or consolidates. The Parties agree that if at any time a Party elects not to assert any of its rights under this Agreement, this election will not be construed as a waiver of such Party's rights under such provision or any other provision of this Agreement, nor shall any exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy granted herein or by law. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina. Venue for any proceedings arising under or relating to this Agreement shall be in the courts serving Cumberland County, North Carolina, and Vendor consents to the exercise of personal jurisdiction over Vendor by such courts and waives all objections and defenses relating to *forum non*

*conveniens* and venue. All notices under this Agreement will be in writing and will be deemed to have been duly given upon receipt, if personally delivered or if sent by certified mail, return-receipt requested, postage prepaid or by a nationally recognized overnight courier service (e.g. Federal Express) to the addresses set forth on the first page of this Agreement. This Agreement may be executed in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. For purposes of this Agreement, a facsimile copy or scanned copy or photocopy of a party's signature shall be sufficient to bind such party. This Agreement shall be subject to execution by electronic means in accordance with Article 40 of Chapter 66 of the North Carolina General Statutes.

IN WITNESS WHEREOF, the Parties have executed this Nondisclosure Agreement effective the date first written above.

**FAYETTEVILLE PUBLIC WORKS COMMISSION**

**[VENDOR]**

By: \_\_\_\_\_  
\_\_\_\_\_  
(Printed Name) (Title)

By: \_\_\_\_\_  
\_\_\_\_\_  
(Printed Name) (Title)



## Exhibit B

### Base Contract for Sale and Purchase of Directed Biogas Derived from Swine Waste

This Base Contract for Sale and Purchase of Directed Biogas Derived from Swine Waste (the "Base Contract") is entered into as of the following date: \_\_\_\_\_ . The parties to this Base Contract are the following:

PARTY A	PARTY NAME	PARTY B
Fayetteville Public Works Commission		
	<i>ADDRESS</i>	
	<i>BUSINESS WEBSITE</i>	
	<i>CONTRACT NUMBER</i>	
	<i>D-U-N-S® NUMBER</i>	
<input type="checkbox"/> US <input type="checkbox"/> FEDERAL: <input type="checkbox"/> OTHER:	<i>TAX ID NUMBERS</i>	<input type="checkbox"/> US <input type="checkbox"/> FEDERAL: OTHER:
<input type="checkbox"/> North Carolina	<i>JURISDICTION OF ORGANIZATION</i>	<input type="checkbox"/> _____ <input type="checkbox"/> _____
<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership LLP                      Other: <u>NC Public Authority</u>	<i>COMPANY TYPE</i>	<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership LLP                      Other: _____
	<i>GUARANTOR (IF APPLICABLE)</i>	none
<b>CONTACT INFORMATION</b>		
<b>ADDRESS:</b> <b>ATTN:</b> <b>TEL#:</b> <b>FAX#:</b> <b>EMAIL:</b>	<input type="checkbox"/> <b>MANAGER</b>	<b>ATTN:</b> _____ _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b>
<b>ADDRESS:</b> <b>ATTN:</b> <b>TEL#:</b> <b>FAX#:</b> <b>EMAIL:</b>	<input type="checkbox"/> <b>COMMERCIAL</b>	<b>ATTN:</b> _____ _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b>
<b>ADDRESS:</b> <b>ATTN:</b> <b>TEL#:</b> <b>FAX#:</b> <b>EMAIL:</b>	<input type="checkbox"/> <b>SCHEDULING</b>	<b>ATTN:</b> _____ _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b>
<b>ADDRESS:</b> <b>ATTN:</b> <b>TEL#:</b> <b>FAX#:</b> <b>EMAIL:</b>	<input type="checkbox"/> <b>CONTRACT AND LEGAL NOTICES</b>	<b>ATTN:</b> _____ _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b>
<b>ADDRESS:</b> <b>ATTN:</b> <b>TEL#:</b> <b>FAX#:</b> <b>EMAIL:</b>	<input type="checkbox"/> <b>CREDIT</b>	<b>ATTN:</b> _____ _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b>
<b>ADDRESS:</b> <b>ATTN:</b> <b>TEL#:</b> <b>FAX#:</b> <b>EMAIL:</b>	<input type="checkbox"/> <b>TRANSACTION CONFIRMATIONS</b>	<b>ATTN:</b> _____ _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b>



- 2.4. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.5. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S. and shall run from 8 a.m. to 5 p.m. E.S.T.
- 2.6. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.7. "Confirming Party" shall mean the Buyer.
- 2.8. "Commencement Date" means the date which is the last of: (a) the Execution Date, (b) the date of Buyer's written notice of the Condition Precedent Satisfaction Date, (c) the Delivery Start Date set forth in Seller's bid or on which the parties otherwise agree in a writing signed by both parties.
- 2.9. "Condition Precedent Satisfaction Date" means that date following the Execution Date on which Buyer gives the notice provided for in Section 3; provided, however, if Buyer does not give or waive in writing the giving of such notice, this Base Contract shall terminate without payment or penalty by Buyer.
- 2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed by the parties in a transaction.
- 2.12. "Cover Standard", as referred to in Section 3.3, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to the Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, Seller, such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a Transaction Confirmation.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction at which Seller injects Gas into the Piedmont Natural Gas Company, Inc. local distribution system.
- 2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under the Contract.
- 2.18. "Execution Date" means the last date on which both parties sign this Base Contract.
- 2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.20. "Gas" shall mean directed biogas derived from swine waste in North Carolina that includes sufficient attributes that allow Buyer to generate electricity in compliance with G.S. 62-133.8(e) and is cleaned to pipeline quality standards and injected into and accepted by Piedmont Natural Gas Company, Inc. for redelivery to Buyer at its electric generating facility (the "Generator") site in Fayetteville, North Carolina.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.23. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.24. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.25. "Payment Date" shall mean the 25th day of the Month following the Month of delivery.
- 2.26. "Prolonged Non-Delivery" means, without limiting the rights of either party under Section 10 of the Base Contract, Seller's failure to deliver Gas to Buyer at the Delivery Point for a period exceeding sixty (60) consecutive days
- 2.27. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.28. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.29. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or

exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.

2.30. "Swine Waste REC Price " as referred to in Section 3.3 shall mean the price at which in-state (North Carolina) swine waste RECs can be acquired by Buyer.

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

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

2.33. "Transporter(s)" shall mean Piedmont Natural Gas Company, Inc., acting in the capacity of a transporter, transporting Gas for Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

## SECTION 3. PERFORMANCE OBLIGATION

3.1. The completion of the following to the satisfaction of Buyer is a condition precedent to Buyer's obligations under the Contract, and, upon such completion to the satisfaction of Buyer, Buyer shall issue a declaration that the Condition Precedent Satisfaction Date has occurred: within one hundred eighty-five (185) days following the Execution Date (provided, however, that Buyer may upon notice extend such period for an additional 90 days), Buyer has received all required regulatory approvals from the North Carolina Utilities Commission and other permitting authorities, including but not limited to the North Carolina Department of Environmental Quality, to install and operate a new electric generating facility and gas lines in Fayetteville, North Carolina to generate electricity consuming Gas to meet the requirements of the Swine Waste set-aside requirements set forth in N.C.G.S. § 62-133.8(e).

3.2 Beginning on the Commencement Date and continuing until the completion of the Term or earlier termination of the Contract in accordance with its terms, Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity unless the parties otherwise utilize one or more Transaction Confirmations to modify their sales and purchase obligations for one or more specified periods. Sales and purchases will be on a Firm basis. Any Gas rejected by the Transporter for failure to meet its pressure, quality, and heat content requirements is not Gas, and Buyer shall have no liability or obligation with respect to such rejected Gas and Seller shall receive no credit for rejected Gas.

3.3. Subject to Section 10, the sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas, and no such replacement is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of Buyer with respect to the Gas not replaced shall be an amount equal to the positive difference of the Swine Waste REC Price multiplied by the number of Swine Waste RECs that Buyer would have produced with the Generator from the Gas that Seller failed to deliver (based upon the most recently determined heat rate of the Generator) minus the cost of the Gas Buyer would have paid to Seller if Seller had delivered sufficient Gas to generate the same number of Swine Waste RECs purchased by Buyer as a result of Seller's failure to deliver Gas. Imbalance Charges shall not be recovered under this Section 3.3, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

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

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

## SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

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

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

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

Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

## SECTION 5. QUALITY AND MEASUREMENT

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

## SECTION 6. TAXES

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses, or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof. Failure by a party to timely furnish any necessary documentation shall not result in a breach of the Contract.

## SECTION 7. BILLING, PAYMENT, AND AUDIT

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

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or twenty-five (25) Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.3 or 3.4, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five (5) Business Days after receipt of invoice.

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

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

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under the Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two (2) years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. The parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 8. TITLE, WARRANTY, REGULATION, AND INDEMNITY

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

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims.

8.3. Seller shall cooperate in Buyer's seeking all required regulatory approvals from the North Carolina Utilities Commission ("NCUC") and other permitting authorities to install and operate a new electric generating facility and gas lines in Fayetteville, North Carolina to generate electricity consuming Gas to meet the requirements of the Swine Waste set-aside requirement as set forth in N.C.G.S. § 62-133.8(e) and the orders of the NCUC. From time-to-time hereafter and throughout the Term, Seller shall cooperate in Buyer's efforts to obtain and submit all documentation necessary to qualify or register and maintain such qualification and registration of the Generator and the Gas for compliance with N.C.G.S. § 62-133.8(e). Seller shall

also provide to Buyer and assist Buyer in Buyer's efforts in obtaining copies of all environmental reports related to the Gas. Seller, at Seller's sole expense, shall provide necessary documentation demonstrating the feedstock source, quality and quantity of Gas, including meter readings in BTUs of Gas injected into a natural gas pipeline at the Delivery Point, and otherwise shall use commercially reasonable efforts to provide any additional documentation or information related to the supply of Gas to the Buyer to the Delivery Point, as reasonably required in connection with Buyer's compliance as determined by Buyer in its sole reasonable discretion. Seller shall cooperate during any audit by any regulatory agency at Seller's cost. Seller represents and warrants that Seller holds the rights to all attributes of the Gas necessary for electric generation with the Gas to enable compliance with N.C.G.S. § 62-133.8(e) and all such rights are unencumbered. Seller further represents and warrants that all such attributes have not been purchased or otherwise acquired by Seller from third parties or other sources. Buyer shall have the exclusive right to report to any supranational, federal, or state authority, or any other person or entity, that Buyer owns such attributes purchased and sold hereunder for any and all purposes. Seller covenants not to seek, verify, or obtain Renewable Energy Certificates under N.C.G.S. § 62-133.8 from use or disposition of Gas. Buyer may from time to time require Seller to provide documentation which verifies that Buyer is receiving all attributes of the Gas necessary for electric generation with the Gas to enable compliance with N.C.G.S. § 62-133.8(e) for Gas sold to Buyer and that Seller has not sought or sold RECs or attributes necessary to comply with N.C.G.S. § 62-133.8(e) from use or disposition of Gas. Seller agrees to retain all documents relating to the Contract and the Gas until the tenth (10th) anniversary of the last date of the Term.

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

8.5. The parties agree that the delivery of and the transfer of title to all Gas under the Contract shall take place within the State of North Carolina.

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

8.7. Seller shall complete and deliver to PWC within 15 days after the conclusion of each calendar quarter of the Term an Attestation.

## SECTION 9. NOTICES

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

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

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

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten (10) Business Days after receipt of such Notice.

## SECTION 10. FINANCIAL RESPONSIBILITY, DEFAULT, AND TERMINATION

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

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

not the subject of a bona fide dispute, pursuant to Section 7.4; (ix) make any representation or warranty herein that was false or misleading in any material respect when made or when deemed made or repeated; (x) with respect to a party's Guarantor only, the failure of such Guarantor's guaranty to be in full force and effect for purposes of the Contract prior to the satisfaction of all obligations of such party under each transaction to which such guaranty relates; (xi) fail to perform any material covenant or obligation set forth in the Contract (except to the extent constituting a separate Event of Default, and except for such party's obligations to deliver or receive Gas, the exclusive remedy for which is provided in Section 3.3, unless the failure to deliver is a Prolonged Non-Delivery), and fail to cure such failure within ten days of written notice thereof; (xii) fail to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Obligation, if such failure is continuing after any applicable grace period has elapsed; (xiii) the expiration or termination of a Credit Support Obligation or the failing or ceasing of such Credit Support Obligation, or any security interest granted by Seller or a Guarantor to Buyer pursuant to any such Credit Support Obligation, to be in full force and effect for the purpose of the Contract (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Specified Transaction to which such Credit Support Obligation relates without the written consent of the other party; or (xiv) a party or any Guarantor of such party defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction after giving effect to any applicable notice requirement or grace period, then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

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

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.3), for which payment has not yet been made by the party that owes such payment under the Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions). For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner. Notwithstanding the foregoing or any other provisions of this Section 10, in no event shall the Non-Defaulting Party owe any amounts to the Defaulting Party on account of the Market Value of this Transaction Confirmation as a Terminated Transaction, whatever the difference between Market Value and Contract Value.

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

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

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of

the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) twelve percent (12%) per annum. Notwithstanding any provision to the contrary contained in the Contract but subject to the limitations set forth below, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of the Defaulting Party to make payment to the Non-Defaulting Party under the Contract or otherwise have been fully performed.

10.5. The Parties agree and intend that: (i) all transactions constitute a "forward contract" between "forward contract merchants" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code"); (ii) all payments made or to be made by one party to the other party pursuant to the Contract constitute "settlement payments" within the meaning of the Bankruptcy Code; (iii) all transfers of Adequate Assurance of Performance by one party to the other party under the Contract constitute "margin payments" within the meaning of the Bankruptcy Code; and (iv) the Contract, subject to terms hereof, constitutes a "master netting agreement" as defined in 11 U.S.C. 101(38A) and a "master agreement" for purposes of 12 U.S.C. 1821(e)(8)(D)(vii) or any successor provisions. The parties further agree that each party's contractual rights under the Contract (including, without limitation as set forth under Sections 10.2, 10.3, 10.3.1, 10.3.2, 10.3.3, and 10.4) constitute contractual rights "to liquidate, terminate, accelerate or offset" under the Bankruptcy Code.

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

10.7. Throughout the term of the Contract Seller shall provide Buyer with Seller's or its Guarantor's, as applicable, annual audited financial statements prepared in accordance with generally accepted accounting principles ("GAAP") and quarterly unaudited consolidated financial statements prepared in accordance with GAAP (subject to normal year-end adjustments and the omission of footnotes) within 60 days after the end of each fiscal year and 45 days after the end of each fiscal quarter, as applicable, and in each case fairly presenting the financial condition of the applicable entity or entities (which such providing party hereby represents and warrants as such) and certified by the chief financial officer of the applicable entity; provided, however, in the event such entity is required to make its annual audited and quarterly unaudited financial statements available to the public, then the other party shall use public sources to obtain such information.

## SECTION 11. FORCE MAJEURE

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

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

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

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

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



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

## SECTION 12. TERM

The term of the Contract begins on the Execution Date and ends at the conclusion of the period specified in Exhibit C (Directed Biogas Derived from Swine Waste Bid Form) but shall remain in effect until the expiration of the latest Delivery Period of any pending transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation to indemnify, pursuant hereto shall survive the termination of the Base Contract or any transaction.

## SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. Notwithstanding any provision in the Contract to the contrary, Seller's indemnification obligations under the Contract and each party's confidentiality obligations to the other party under any Nondisclosure Agreement executed by the parties shall not be subject to the limitations set forth in this Section 13,

## SECTION 14. SPECIFIC PERFORMANCE

Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of Seller's obligation to perform the Contract, including any Transaction Confirmation. Seller agrees that in view of the nature of the unique and special characteristics of the Gas, specific performance (including temporary and preliminary relief) and injunctive and other equitable relief are proper, and that any liability limits contained in the Agreement shall not limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations to deliver Gas under the Contract, including any Transaction Confirmation.

## SECTION 15. MISCELLANEOUS

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

15.2. If any provision in the Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of the Contract. The Contract shall be considered for all purposes as prepared through the joint efforts of the parties, and nothing herein shall be construed against either party as a result of the preparation or drafting by such party. Each party waives the benefit of any rule that disfavors the drafter.

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

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

15.5. The interpretation and performance of the Contract shall be governed by the laws of North Carolina, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

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

15.7. There is no third-party beneficiary to the Contract.

15.8. Each party to the Contract represents and warrants that it has full and complete authority to enter into and perform the Contract. Each person who executes the Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby. Further, as of the date of the Base Contract and as of the date of entering into each transaction hereunder, each party represents and warrants to the other party that: (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation; (b) it has all then-current valid and applicable state and federal regulatory authorizations, consents, or approvals required for it to legally perform its obligations under the Contract; (c) the Contract, and each other document executed and delivered in accordance with the Contract constitutes its legally valid and binding obligations enforceable against it in accordance with their respective terms; (d) there are no proceedings described in Section 10.2 (i) through (v) pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its Affiliates (to the extent applicable) any legal proceedings that could materially adversely affect its ability to perform its obligations under the Contract; (f) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under the Contract; (g) it is acting for its own account, has made its own independent decision to enter into the Contract, it is not relying upon the advice or recommendations of the other party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of the Contract, and agrees to perform in accordance with the Contract; (h) it is an "eligible commercial entity" within the meaning of Section 1a(11) of the Commodity Exchange Act; and (i) it is an "eligible contract participant" within the meaning of Section 1 (18) of the Commodity Exchange Act. Further, as of the date of the Base Contract and as of the date of entering into each transaction hereunder, Party B represents and warrants to Party A that it is not a "special entity" within the meaning of Section 4s(h)(2)(C) Commodity Exchange Act, as amended, or the rules and regulations of the Commodity Futures Trading Commission, and, notwithstanding any limitations of liability provided in this Agreement, covenants to indemnify Party A and its affiliates, and their officers, directors, employees and contractors, from and against any and all harm, damages, liability, and other consequences of any kind to any of them should this representation and warranty be untrue.

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

15.10. Any confidentiality obligation of the parties shall be as set forth in a separately executed Nondisclosure Agreement (NDA); provided, however, notwithstanding anything to the contrary herein or in such NDA, in the event of the establishment of a docket or proceeding before any public service commission, public utility commission, or other agency having jurisdiction over Buyer, Buyer's obligations shall automatically be governed solely by the rules and procedures governing such docket to the extent such rules or procedures are additional to, different from or inconsistent with the NDA. The parties acknowledge that Buyer is or may become regulated by various regulatory and market monitoring entities. In regulatory proceedings in all state and federal jurisdictions in which it does business, Buyer will from time to time be required to produce information relating to the Gas and the Contract and may do so without prior notice to Seller and use its business judgment in its compliance and the appropriate level of confidentiality it seeks for such disclosures. Further, specifically, Buyer may disclose any information concerning the Gas and the Contract to the North Carolina Utilities Commission (and its staff), the North Carolina Public Staff, the Federal Energy Regulatory Commission (and its staff), the North American Electric Reliability Council (and its staff), any market monitor, regional transmission organization, or system operator without prior notice to Seller, using its business judgment, and the appropriate level of confidentiality it seeks for such disclosures. The parties further acknowledge that Buyer is required by law or regulation to report certain information that could embody information concerning the Contract and the Gas from time to time and may from time to time make such reports without providing prior notice to Seller, using its reasonable business judgment, and the appropriate level of confidentiality it seeks for such disclosures. Such reports include, without limitation, models, filings, and reports of net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as the North American Electric Reliability Council, or similar or successor organizations, or similar or successor forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation.

15.11. The parties may agree to dispute resolution procedures in a Transaction Confirmation executed in writing by both parties.

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

15.13. This Base Contract and any Transaction Confirmation may be executed in several counterparts, and all such counterparts shall constitute one agreement fully binding on both parties hereto.

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

For: Fayetteville Public Works Commission  
By: \_\_\_\_\_  
Name: Elaina L. Ball,  
Title: CEO/General Manager  
Date: \_\_\_\_\_

For: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act (N.C. Gen. Stat. § 159-1 et seq.).

By: \_\_\_\_\_  
Rhonda Haskins, Chief Financial Officer

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

EXHIBIT 1

Letterhead/Logo	Date: _____, _____ Transaction Confirmation #: _____
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.	
<b>SELLER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	<b>BUYER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____
Contract Price: \$ _____ /MMBtu or _____	
Delivery Period: Begin: _____, _____ End: _____, _____	
<b>Performance Obligation and Contract Quantity:</b> (Select One)  <input type="checkbox"/> <b>Firm (Fixed Quantity):</b> _____ MMBtus/day	
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):	
<b>Special Conditions:</b>    	
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____

**Exhibit C**

**DIRECTED BIOGAS DERIVED FROM SWINE WASTE BID FORM**

[Insert Seller's full legal name and principal office address]	Date: _____, 20__
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This completed Bid Form is submitted in response to the Request for Bids for Directed Biogas Derived from Swine Waste issued by the Fayetteville Public Works Commission on January 24, 2022 and is intended to be a part of the Contract between the Fayetteville Public Works and the bidder (Seller), along with the Base Contract. The bidder understands and agrees that the terms of this Bid Form are binding on the bidder as of the execution date below and for 180 days after the bid due date in accordance with the Request for Bids.

<b>SELLER:</b> _____  Attn: _____ Phone: _____ Fax: _____ E-mail: _____ Base Contract No. _____	<b>BUYER:</b> Fayetteville Public Works Commission  Attn: _____ Phone: _____ Fax: _____ E-mail: _____ Base Contract No. _____
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**Contract Quantity (Daily Average and Annual Total):**  
  
**Seasonal Variability (Identify Season(s) and Applicable Daily Average(s)):**

**Contract Price (per MMBtu):**  
  
**Contract Term (Total Number of Years):**  
  
**Delivery Start Date:**  
  
**Injection Point(s):**

**Special Conditions and Other Performance Obligations:**

Seller: \_\_\_\_\_  
  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit 1.1**  
**FORM OF ATTESTATION**

Calendar Quarter: \_\_\_\_\_

Capitalized terms used in this Attestation have the meaning ascribed to them in the Contract between the Fayetteville Public Works Commission (“FPWC”) and \_\_\_\_\_ (the “Seller” or “Renewable Fuel Supplier” or “RFS”). Renewable Fuel Supplier hereby attests and warrants as follows with respect to the quarterly period referenced above:

1. All directed biogas (“Biogas”) sold to FPWC by RFS was derived from “swine waste,” as defined for purposes of compliance with G.S. 62-133.8(e).
2. All Biogas sold to FPWC by RFS was derived from swine waste collected by or on behalf of RFS from the following location(s) in North Carolina: \_\_\_\_\_.
3. All Biogas sold to FPWC by RFS was extracted and processed by RFS at facilities it owns or operates located at \_\_\_\_\_ in North Carolina.
4. All Biogas sold to FPWC by RFS was injected into a pipeline of the natural gas local distribution company serving FPWC, nominated for delivery, and delivered to FPWC at the DeliveryPoint.
5. The total quantity of Biogas delivered by RFS to FPWC during the calendar quarter was: \_\_\_\_ MMBtu.
6. RFS has not sold or otherwise transferred, and will not sell or otherwise transfer, to any other person or entity the attributes of the Biogas required for compliance with G.S. 62-133.8(e) (the “Attributes”) sold to FPWC under the Contract or use the Attributes for any other purpose, including but not limited to another voluntary or mandatory program in any state, at the federal level, or otherwise.
7. RFS will not report the Attributes of the Biogas sold or intended to be sold to FPWC under the Contract for RFS’s own account.
8. The representations, warranties and covenants in each Transaction Confirmation issued during the calendar quarter remain true, correct, and performed.

Signature \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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