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CONFIDENTIAL

November 10, 2022

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Ms. Sara Hardgrave, Acting Commission Secretary

Dear Ms. Hardgrave:

Re: FortisBC Energy Inc. (FEI)

Utilities Commission Act (UCA) – Section 71 Filing of Amending Agreement No. 1 to the Biomethane Purchase Agreement (BPA) with the Capital Regional District (CRD) – CONFIDENTIAL

In accordance with Section 71 of the UCA and Sections 2.0 and 6.0 of the British Columbia Utilities Commission (BCUC) Rules for Natural Gas Energy Supply Contracts, FEI hereby files for BCUC acceptance of an Amending Agreement dated August 10, 2022 (Amending Agreement No. 1), to the original BPA between FEI and CRD dated February 17, 2021 for the supply of biomethane (renewable natural gas or RNG)¹ (Application). Attached in Appendix A is a copy of Amending Agreement No. 1.

The original BPA between FEI and CRD (included in Appendix B) was accepted by BCUC in Order E-15-21. Amending Agreement No. 1 makes only one material amendment to the original BPA, which is to increase the maximum amount of RNG that FEI will acquire from the CRD by an additional [REDACTED] gigajoules (GJ) per contract year for a total maximum of [REDACTED] GJ per contract year.

FEI requests acceptance of Amending Agreement No. 1 on or before December 10, 2022. A draft form of order sought is attached in Appendix C.

¹ RNG or Renewable Natural Gas is interchangeable with the term "biomethane" for this Application. In previous regulatory decisions, FEI and the BCUC have used biomethane and RNG, while the GGRR uses the term "renewable natural gas."

Request for Confidentiality:

FEI is requesting that this information be filed on a confidential basis pursuant to Section 19 of the BCUC's Rules of Practice and Procedure regarding confidential documents as set out in Order G-178-22, and section 71(5) of the *Utilities Commission Act*. FEI requests that the BCUC exercise its discretion under Section 6.0 of the Rules for Natural Gas Energy Supply Contracts and allow these documents to remain confidential. FEI believes this will ensure that market sensitive information is protected, and FEI's ability to obtain favourable commercial terms for future natural gas contracting strategies is not impaired. FEI operates within a competitive environment when securing commodity to serve customers. If FEI's supply purchasing strategies are released to the public, this could prejudice or influence the negotiations of contracts between FEI and suppliers or counterparties, which could result in higher commodity costs for customers.

1. LEGISLATIVE AND REGULATORY FRAMEWORK

On April 18, 2010, the Province of BC enacted the Clean Energy Act (CEA). The CEA established a number of energy objectives and provided that the Lieutenant Governor in Council (LGIC) can prescribe undertakings to encourage public utilities to pursue certain greenhouse gas (GHG) reducing initiatives. Section 18 of the CEA states:

18 (1) In this section, "prescribed undertaking" means a project, program, contract or expenditure that is in a class of projects, programs, contracts or expenditures prescribed for the purpose of reducing greenhouse gas emissions in British Columbia.

(2) In setting rates under the Utilities Commission Act for a public utility carrying out a prescribed undertaking, the commission must set rates that allow the public utility to collect sufficient revenue in each fiscal year to enable it to recover its costs incurred with respect to the prescribed undertaking.

(3) The commission must not exercise a power under the Utilities Commission Act in a way that would directly or indirectly prevent a public utility referred to in subsection (2) from carrying out a prescribed undertaking.

(4) A public utility referred to in subsection (2) must submit to the minister, on the minister's request, a report respecting the prescribed undertaking.

(5) A report to be submitted under subsection (4) must include the information the minister specifies and be submitted in the form and by the time the minister specifies.

On May 14, 2012, the LGIC issued Order in Council (OIC) 295/2012 approving the GGRR, which described classes of prescribed undertakings pursuant to section 18 of the CEA.

On March 21, 2017, the LGIC issued OIC 161/2017 approving an amendment to the GGRR related to RNG as follows:

(3.7) A public utility's undertaking that is in the class defined in subsection (3.8) is a prescribed undertaking for the purposes of section 18 of the Act.

(3.8) The public utility acquires renewable natural gas

- (a) for which the public utility pays no more than \$30 per GJ [gigajoule], and
- (b) that, subject to subsection (3.9), in a calendar year, does not exceed 5% of the total volume of natural gas provided by the public utility to its non-bypass customers in 2015.

(3.9) The volume referred to in subsection (3.8) (b) does not include renewable natural gas acquired by the public utility that the public utility provides to a customer in accordance with a rate under which the full cost of the following is recovered from the customer:

- (a) the acquisition of the renewable natural gas;
- (b) the service related to the provision of the renewable natural gas.

The Ministry has stated that the “amendments were made to the Greenhouse Gas Reduction (Clean Energy) Regulation in the spring of 2017 to increase incentives for using renewable natural gas in transportation and to establish measures to increase the supply of RNG.”²

The BCUC in its Decision and Order G-122-19³ determined that for a project to qualify as a prescribed undertaking under section 2(3.8) of the GGRR as written at that time, it must satisfy the following three-part test:

- The public utility must be acquiring renewable natural gas (as opposed to some other form of commodity);
- The utility must pay no more than \$30 per GJ for that renewable natural gas; and

² In the Matter of FEI's Application for Acceptance of the Biogas Purchase Agreement between FEI and the City of Vancouver, Exhibit C1-2.

³ In the Matter of FEI's Application for Acceptance of the Biogas Purchase Agreement between FEI and the City of Vancouver.

- Subject to certain exceptions, the annual volume of renewable natural gas acquired must not exceed 5% of the total volume of natural gas the utility provided to its non-bypass customers in 2015.⁴

On May 25, 2021 the LGIC issued OIC 306/2021 which further amended section 2 to the GGRR related to RNG, including as follows:

(a) by adding the following subsection:

(3.71) For the purposes of subsection (3.8), “acquires renewable natural gas” includes producing renewable natural gas by producing or purchasing biogas and upgrading it to renewable natural gas, and

(b) by repealing subsection (3.8) and substituting the following:

(3.8) The public utility acquires renewable natural gas

(a) at costs that meet the following criteria, as applicable:

(i) if the public utility acquires renewable natural gas by purchasing it, the price of the renewable natural gas does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the contract for purchase is signed;

(ii) if the public utility acquires renewable natural gas by producing it, the levelized cost of production reasonably expected by the public utility does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the public utility decides to construct or purchase the production facility, and

(b) that, in a calendar year, does not exceed 15% of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, subject to subsection (3.9) and section 10.

OIC 306/2021 also added section 9 of the GGRR, which sets a maximum price of \$31 dollars for fiscal year 2021/22.⁵ The maximum price increases each fiscal year.

OIC 306/2021 also added section 10 of the GGRR, which indicates that acquisitions of hydrogen, synthesis gas, and lignin under sections 6, 7 and 8 of the GGRR also count towards the maximum volume.

⁴ Decision and Order G-122-19, page 8.

⁵ Beginning April 1, 2021 and ending March 31, 2022.

The maximum volume of 15 percent in the GGRR is the implementation of the Province's CleanBC plan. The CleanBC plan stated that there would be a minimum requirement for 15 per cent renewable content in natural gas by 2030, stating:⁶

As part of CleanBC, we will work with natural gas providers to put in place a minimum requirement for 15 per cent renewable content in natural gas by 2030. That means the gas we use in our furnaces, water heaters, dryers, stoves and other gas appliances will have less impact on the environment, and the methane that is wasted from agriculture, sewage and landfills will be significantly reduced. Waste hydrogen can also be mixed with the natural gas we use in our homes and will provide additional renewable natural gas for our needs.

In its RNG Inquiry - Final Phase 1 Report, the BCUC found (at p. 28):

The Panel is persuaded that the actual delivered volume of RNG in a calendar year is the appropriate quantity on which to base the calculation for the annual volume test as set out in section 2(3.8)(b) of the GGRR.

The purpose of this class of prescribed undertaking is to facilitate FEI acquiring RNG, or other renewable gases, up to the maximum amount so that the Province can realize its greenhouse gas reduction goals in the CleanBC plan.

2. THE PROJECT CONTINUES TO BE A PRESCRIBED UNDERTAKING

The original BPA between FEI and CRD was accepted by BCUC Order E-15-21. Recital G of Order E-15-21 states that the BPA is a prescribed undertaking under section 18(1) of the CEA.

Amending Agreement No. 1 makes only one material amendment to the original BPA, which is to increase the maximum amount of RNG that FEI will acquire from the CRD by an additional [REDACTED] GJ per contract year for a total maximum of [REDACTED] GJ per contract year. Specifically, Amending Agreement No. 1 deletes the phrase "[REDACTED] GJ per Contract Year" from section 1.1(a) of Schedule D to the BPA and replacing it with the phrase "[REDACTED] GJ per Contract Year".

Under the GGRR, as amended, the three-part test for a BPA or project to qualify as a prescribed undertaking can be restated as follows:

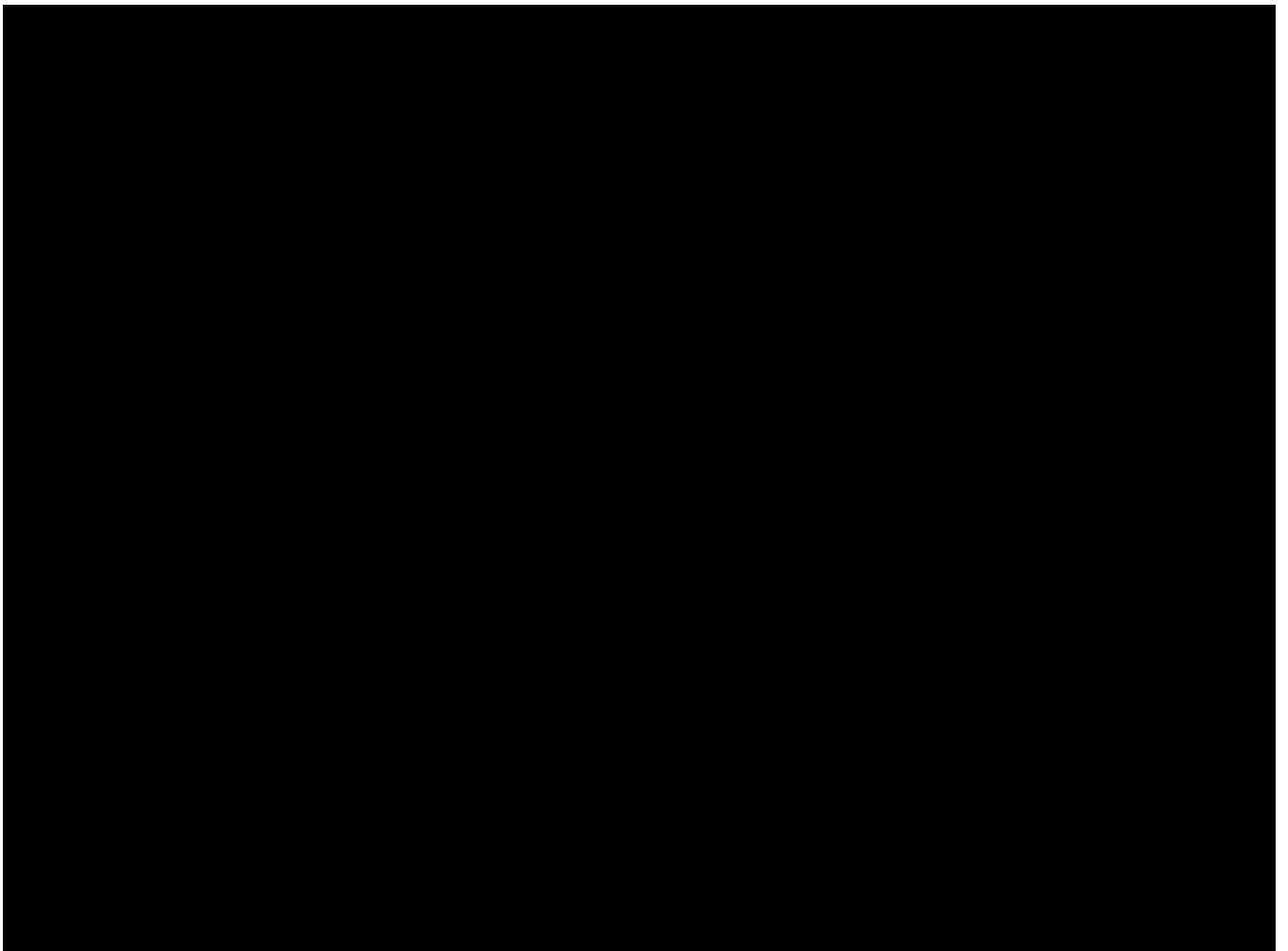
1. The public utility must be acquiring RNG (as opposed to some other form of commodity);

⁶ CleanBC plan, at page 36. Online: [CleanBC: our nature. our power. our future. \(gov.bc.ca\)](https://www2.gov.bc.ca/gov2/energy/energy_strategy/cleanbc/cleanbc_plan.pdf).

2. The public utility must pay no more than the applicable maximum price for that RNG; and
3. The actual delivered volume of RNG, hydrogen, synthesis gas, and lignin that the public utility acquires in a calendar year must not exceed 15 percent of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, subject to subsection (3.9) and section 10 of the GGRR.

The CRD BPA continues to satisfy the three-part test and qualifies as a prescribed undertaking:

1. FEI continues to acquire RNG from the CRD. Amending Agreement No. 1 makes no changes to the RNG that FEI will be acquiring from the CRD.
2. Amending Agreement No. 1 does not amend the price at which FEI is acquiring RNG from CRD, and the price remains below the \$30 per GJ maximum acquisition price as was in place when the BPA was initially found to be a prescribed undertaking.
3. With the increases in the volume of RNG that FEI will purchase from the CRD under Amending Agreement No. 1, the annual delivered volume RNG that FEI expects to acquire each year is still below the calculated maximum of 15% of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, which is approximately 30 PJ. FEI has not yet acquired any hydrogen, lignin or synthesis gas. A summary of FEI's accepted BPAs and contracted volumes is included in Table 1 below. As shown in the table, both FEI's contractual maximum supply and expected annual supply is below the 30 PJ (or 30,000 TJ) maximum in the GGRR. In the future, if FEI's current capacity to acquire RNG, hydrogen, synthesis gas, and lignin approaches the maximum volume in the GGRR, FEI will manage its volumes of RNG supply to be within the maximum volume allowed by the GGRR each calendar year.



3. FEI FACILITIES

In order to monitor the quantity and quality of the biomethane supplied to FEI from the CRD facility, and to inject the supplied biomethane into FEI's pipeline, FEI will construct, own, and operate the FEI Facilities, which include an interconnection station and interconnection pipeline. The interconnection station will be located adjacent to the CRD facilities on the landfill property. Amending Agreement No. 1 requires no change to FEI's interconnection facilities planned for this project.

4. CONCLUSION

The CRD BPA (including Amending Agreement No. 1) continues to satisfy the three-part test to be a prescribed undertaking under section 2(3.8) of the GGRR. The CRD BPA is for the acquisition of RNG at an acquisition price that cannot exceed the GGRR maximum price. FEI's current capacity to acquire RNG, hydrogen, synthesis gas, and lignin does not

approach the maximum volume in the GGRR at this time and, in the future, FEI will manage its volumes of RNG supply to be within the maximum volume allowed by the GGRR each calendar year.

FEI has filed a copy of Amending Agreement No. 1 with the BCUC pursuant to FEI's obligation under section 71 of the UCA to file energy supply contracts. As the acquisition of RNG under the CRD BPA is a prescribed undertaking, FEI respectfully submits that the BCUC must accept the BPA under section 71 of the UCA due to section 18 of the CEA, which prohibits the BCUC from exercising its powers in any way that would directly or indirectly prevent FEI from carrying out a prescribed undertaking. Therefore, FEI respectfully requests that the BCUC accept Amending Agreement No. 1 without further regulatory process.

If further information is required, please contact Scott Gramm, Senior Manager, Renewable & Low Carbon Fuel Development, at (604) 576-7242.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachments

Appendix A

CAPITAL REGIONAL DISTRICT AMENDED BPA

~~FILED CONFIDENTIALLY~~

FIRST AMENDMENT TO
BIOMETHANE PURCHASE AGREEMENT

August 10, 2022

THIS AMENDMENT is dated for reference [10], 2022 (the "Execution Date"),

BETWEEN:

FORTISBC ENERGY INC., 16705 Fraser Highway, Surrey, BC V4N 0E8

("FEI")

AND:

CAPITAL REGIONAL DISTRICT, 625 Fisgard Street, Victoria, BC V8W 1R7

(the "Supplier")

WHEREAS:

- A. FEI and the Supplier have entered into a biomethane purchase agreement made as of February 17, 2021 (the "BPA"); and
- B. Subject to BCUC Acceptance, the Parties wish to amend the BPA as set out in this Amendment.

NOW THEREFORE, in consideration of \$1.00 paid by each party to the other and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Parties), the Parties agree as follows:

1. Definitions

All capitalized words and phrases used in this Amendment and its recitals have the meanings attributed to them in the BPA unless otherwise defined herein.

2. Amendment to BPA

Subject to section 3(a) of this Amendment, the BPA is hereby amended by deleting the phrase [REDACTED] GJ per Contract Year" from section 1.1(a) of Schedule D to the BPA and replacing it with the phrase "[REDACTED] GJ per Contract Year".

3. BCUC Acceptance

- (a) The amendment to the BPA provided for in section 2 of this Amendment is subject to BCUC acceptance of the BPA as amended by this Amendment as a "prescribed undertaking" under section 18 of the *Clean Energy Act* and section 2(3.8) of the *Greenhouse Gas Reduction (Clean Energy) Regulation* ("BCUC Acceptance"). For greater certainty, the Parties acknowledge and agree that if BCUC Acceptance is not obtained for any reason whatsoever, the BPA will remain in full force and effect unamended by this Amendment.

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- (b) FEI will file this Amendment with the BCUC within a reasonable period of time, but no later than 90 days after the Execution Date, or at a later date as agreed to in writing by the Parties. FEI will thereafter take all steps reasonably required to secure BCUC Acceptance, including those procedural steps related to filing this Amendment and providing argument and witnesses in support of BCUC Acceptance.
- (c) The Supplier will, at the request of FEI, provide any assistance reasonably required by FEI to secure BCUC Acceptance, including filing documents with the BCUC and providing argument and witnesses in support of the filing.
- (d) At least ten (10) business days before filing this Amendment with the BCUC, FEI will provide to the Supplier for review and comment an un-redacted copy of the documentation FEI intends to submit to the BCUC in connection with this Amendment. Notwithstanding the foregoing, FEI may redact from the documentation any information that is subject to existing confidentiality obligations of FEI to any third parties. The Supplier will have five (5) business days from the date of receipt of the documentation to provide any comments with respect to the same to FEI. If the Supplier does not provide any comments within the five (5) business day period, then the Supplier will be deemed to have accepted the documentation and FEI may submit the same to BCUC in the form provided. If the Supplier provides comments within the five (5) business day period, then FEI will consider amendments to the documentation in response to the Supplier's comments.
- (e) If FEI intends to submit any additional information to the BCUC in connection with this Amendment, FEI will provide this information, un-redacted, to the Supplier for an opportunity to review prior to FEI submitting the information to the BCUC. Notwithstanding the foregoing, FEI may redact any such information that is subject to existing confidentiality obligations of FEI to any third parties.

4. Ratification

Except as specifically amended by this Amendment, the BPA will remain in full force and effect and is hereby ratified and confirmed. In the event of any inconsistency or conflict between the BPA and this Amendment, the terms and conditions of this Amendment will govern.

5. Enurement

This Amendment enures to the benefit of and is binding on the Parties and their respective successors and permitted assigns.

6. Further Assurances

The Parties will sign such further and other documents and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Amendment.

7. Time

Time remains of the essence of the BPA.

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8. Execution and Counterparts

This Amendment may be executed and delivered by electronic means and in counterparts with the same effect as if the Parties had signed the same original document. All counterparts will be construed together and will constitute one and the same instrument.

IN WITNESS WHEREOF the Parties have executed this Amendment as of the day and year first above written.

FORTISBC ENERGY INC.

by its authorized signatory:

A handwritten signature in black ink, appearing to read 'RD', is written over a horizontal line.

Name: Roger Dall'Antonia

Title: President & CEO

CAPITAL REGIONAL DISTRICT

by its authorized signatory:

A handwritten signature in blue ink, appearing to read 'Bob Lapham', is written over a horizontal line.

Name: Bob Lapham

Title: Chief Administrative
officer, CRD.

Appendix B

CAPITAL REGIONAL DISTRICT FINAL BPA

~~FILED CONFIDENTIALLY~~

BIOMETHANE PURCHASE AGREEMENT

THIS AGREEMENT made as of February 17, 2021 (the "**Execution Date**")

BETWEEN:

FORTISBC ENERGY INC., 16705 Fraser Highway, Surrey, BC, V4N 0E8

("FEI")

AND:

CAPITAL REGIONAL DISTRICT, 625 Fisgard Street, Victoria, BC, V8W 1R7

(the "**Supplier**")

WHEREAS:

- A. The Supplier owns and operates a landfill at the Supplier's premises located at 1 Hartland Ave, Victoria, BC V9E 1L7 (the "**Lands**") which produces biogas through the anaerobic digestion process, and further owns and operates a landfill gas collection system on the Lands to capture the biogas.
- B. The Supplier intends to finance, design, construct, operate and maintain a landfill gas processing facility on the Lands to purify and upgrade the biogas for injection into FEI's existing natural gas distribution system and may, in future, develop additional sources of Biomethane. In this Agreement, "**Biomethane**" means pipeline quality biomethane.
- C. To monitor the quality and quantity of Biomethane supplied by the Supplier and to inject such Biomethane into FEI's existing natural gas distribution system adjacent to the Lands, FEI intends to finance, construct and operate facilities on and/or adjacent to the Lands, including a pipeline, to connect the Supplier's facilities to FEI's gas distribution system (the "**Project**"). The Supplier has agreed, on the terms and conditions provided in this Agreement, to grant FEI continued access to, and use of a portion of, the Lands to operate and maintain its facilities on the Lands.
- D. FEI wishes to purchase and the Supplier wishes to sell Biomethane to FEI on the terms and conditions provided in this Agreement.
- E. It is the intent of the Parties that FEI's acquisition of Biomethane pursuant to this Agreement shall be a "prescribed undertaking" under section 18 of the British Columbia *Clean Energy Act* and section 2(3.8) of the Greenhouse Gas Reduction (Clean Energy) Regulation, B.C. Reg. 102/2012, as that term is defined as at the Execution Date.

NOW THEREFORE, in consideration of the mutual promises set out herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the Supplier and FEI (collectively the "**Parties**" and either of them a "**Party**") agree as follows:

ARTICLE 1 – REGULATORY REVIEW

- 1.1 **Application of *Utilities Commission Act*.** The Supplier acknowledges FEI is a public utility as defined in the British Columbia *Utilities Commission Act* and this Agreement, and any amendments thereto, must be filed with the British Columbia Utilities Commission ("**BCUC**") in

accordance with section 71(1) of the *Utilities Commission Act*, [RSBC 1996] Chapter 473.

1.2 Filing with BCUC.

- (a) FEI will file this Agreement with the BCUC within a reasonable period of time, but no later than 90 days after the Execution Date, or at a later date as agreed to in writing by the parties. FEI will thereafter take all steps reasonably required to secure BCUC acceptance of this Agreement as a "prescribed undertaking" under section 18 of the *Clean Energy Act* and section 2(3.8) of the *Greenhouse Gas Reduction (Clean Energy) Regulation* ("**BCUC Acceptance**"), including those procedural steps related to filing this Agreement and providing argument and witnesses in support of BCUC Acceptance.
- (b) The Supplier will, at the request of FEI, provide any assistance reasonably required by FEI to secure BCUC Acceptance, including filing documents with the BCUC and providing argument and witnesses in support of the filing.
- (c) At least ten (10) business days before filing this Agreement with the BCUC, FEI will provide to the Supplier for review and comment an un-redacted copy of the documentation FEI intends to submit to the BCUC in connection with this Agreement. Notwithstanding the foregoing, FEI may redact from the documentation any information that is subject to existing confidentiality obligations of FEI to any third parties. The Supplier will have five (5) business days from the date of receipt of the documentation to provide any comments with respect to the same to FEI. If the Supplier does not provide any comments within the five (5) business day period, then the Supplier will be deemed to have accepted the documentation and FEI may submit the same to BCUC in the form provided. If the Supplier provides comments within the five (5) business day period, then FEI will consider amendments to the documentation in response to the Supplier's comments.
- (d) If FEI intends to submit any additional information to the BCUC in connection with this Agreement, FEI will provide this information, un-redacted, to the Supplier for an opportunity to review prior to FEI submitting the information to the BCUC. Notwithstanding the foregoing, FEI may redact any such information that is subject to existing confidentiality obligations of FEI to any third parties.

- 1.3 Costs Incurred Prior to BCUC Acceptance.** Subject to section 2.5 [*Reimbursement of FEI Costs*], the Parties acknowledge and agree that if either Party elects to undertake any work or incur any costs with respect to this Agreement prior to BCUC Acceptance or satisfaction or waiver of the Supplier's Conditions Precedent as described in section 2.3 [*Conditions Precedent of Supplier*], such Party will be solely responsible for all its costs so incurred.

ARTICLE 2 – CONDITIONS PRECEDENT

- 2.1 FEI Conditions Precedent.** FEI's obligation(s) to carry out the Project and the transactions contemplated by this Agreement is subject to the following conditions (the "**FEI Conditions Precedent**") being declared satisfied or waived in writing by FEI, on or before 18 months from the Execution Date (the "**FEI Conditions Precedent Deadline**"), which conditions are for the sole and absolute benefit of FEI and which may be satisfied or waived by FEI in whole or in part:

- (a) FEI being satisfied, in its sole discretion, that it reasonably believes that the Acquisition

Price Per GJ for all Biomethane to be purchased by FEI under this Agreement will not exceed the Maximum Acquisition Price, where "**Acquisition Price Per GJ**" means the sum of the Purchase Price plus the FEI Cost of Service Per GJ (as those terms are defined in Schedule D) and Maximum Acquisition Price means the sum of the Purchase Price and the Threshold Amount (as those terms are defined in Schedule D), and such excess cost would not be adequately addressed by the Cost of Service Adjustment Payments provided for under section 2.2 [*Cost of Service Adjustment*] of Schedule D;

- (b) FEI having agreed upon a Project Schedule (defined in section 4.10(b) [*Cooperation*]);
- (c) FEI having obtained approval from the Oil and Gas Commission for FEI Facilities and municipal approval for the location of the FEI pipeline on terms acceptable to FEI, in its sole and absolute discretion acting reasonably; and
- (d) BCUC Acceptance having been granted on terms and conditions, if any, satisfactory to FEI in its sole and absolute discretion acting reasonably.

FEI will use reasonable diligence to satisfy or waive the FEI Conditions Precedent by the FEI Conditions Precedent Deadline and, upon the FEI Conditions Precedent being satisfied or waived, will promptly declare the same in writing to the Supplier.

2.2 **Failure to Deliver Notice (FEI).** If the FEI Conditions Precedent have not been declared satisfied or waived in writing by FEI, by the FEI Conditions Precedent Deadline, this Agreement will be null and void without liability between the Parties and neither Party will be under further obligation to the other to complete the Project or the transactions contemplated by this Agreement.

2.3 **Conditions Precedent of Supplier.** The Supplier's obligation to carry out the transactions contemplated by this Agreement is subject to the following conditions (the "**Supplier's Conditions Precedent**") being declared satisfied or waived in writing by the Supplier on or before 18 months from the Execution Date, or such later date as agreed between the Parties (the "**Supplier's Conditions Precedent Deadline**"), which conditions are for the sole and absolute benefit of the Supplier and which may be waived by the Supplier in whole or in part:

- (a) the Supplier being satisfied in its sole discretion as to (i) the costs, economic impact, and feasibility of the construction and operation of the Supplier Facilities and of the Project after undertaking a formal design and procurement process for the construction of the Supplier Facilities; and (ii) the FEI Facilities Costing Data (as defined in section 4.2 [*FEI Facilities*]), including without limitation the bid price(s) from a tender or tenders for the construction of the FEI Facilities;
- (b) this Agreement and the transactions contemplated hereby being approved by the CRD Board in its sole and unfettered discretion;
- (c) the Supplier having entered into a construction contract for the construction of the Supplier Facilities on terms satisfactory to the Supplier in its sole discretion;
- (d) the Supplier and FEI having agreed upon a Project Schedule (defined in section 4.10(b) [*Cooperation*]); and

- (e) BCUC Acceptance having been granted.

The Supplier will use reasonable diligence to satisfy the Supplier's Conditions Precedent and, upon the Supplier's Conditions Precedent being satisfied or waived, will promptly declare the same satisfied or waived.

- 2.4 **Failure to Deliver Notice (Supplier).** If the Supplier's Conditions Precedent have not been declared satisfied or waived in writing by the Supplier by the Supplier's Conditions Precedent Deadline, this Agreement will be null and void without liability between the Parties, save and except as provided in section 2.5 [*Reimbursement of FEI Costs*] and neither Party will be under further obligation to the other to complete the transactions contemplated by this Agreement.
- 2.5 **Reimbursement of FEI Costs.** If the Supplier's Conditions Precedent have not been satisfied or waived by the Supplier's Conditions Precedent Deadline and FEI has waived or declared satisfied the FEI Conditions Precedent and is not in default of any of its obligations under this Agreement, the Supplier will reimburse FEI for any documented costs incurred by FEI for any work undertaken with respect to this Agreement prior to that date but after the Execution Date, up to a maximum of \$200,000. The foregoing reimbursement will be made by the Supplier within thirty (30) days of receipt of invoice from FEI. This section 2.5 does not apply where this Agreement is terminated pursuant to section 2.1(d) [*BCUC Acceptance*].

ARTICLE 3 - TERM

- 3.1 **Term.** The term of this Agreement will commence on the Execution Date and expire on the last day of the month following the [REDACTED] anniversary of the In-Service Date (the "**Initial Term**"), unless terminated earlier or renewed in accordance with the terms of this Agreement (the "**Term**"), where "**In-Service Date**" means the earlier of:
- (a) the business day after FEI Facilities have accepted at least 250 gigajoules ("**GJ**") of Biomethane per day for seven (7) consecutive days; and
 - (b) the business day after the FEI Facilities have accepted Biomethane for a cumulative period of thirty (30) days.
- 3.2 **Delay in In-Service Date.** If the In-Service Date does not occur within thirty (30) months of BCUC Acceptance, or such later date as agreed by the Parties in writing, FortisBC may terminate this Agreement by written notice to the Supplier effective the date set out in such notice and the provisions of section 9.2 [*Effect of Default*] shall apply. Notwithstanding the foregoing, FEI will not be entitled to terminate this Agreement under this section 3.2 if the In-Service Date has not occurred within thirty (30) months of BCUC Acceptance due to (i) a delay in construction or installation of the Supplier Facilities, if the Supplier is continuing with reasonable diligence to undertake the work necessary to construct and install the Supplier Facilities or the delay results from an event of Force Majeure; or (ii) a delay in construction or installation of the FEI Facilities; or (iii) a default of FEI under this Agreement.
- 3.3 **Renewal.** This Agreement will renew automatically for one additional term of [REDACTED] (the "**Renewal Term**"), unless a Party provides the other Party with written notice, at least one (1) year prior to the expiry of the Initial Term, of its intention to terminate this Agreement effective on the expiry of the Initial Term.

ARTICLE 4 - DIVISION OF RESPONSIBILITIES

- 4.1 **Supplier Facilities.** The Supplier will design, build, operate, maintain, repair, upgrade, replace and support facilities on the Lands, as more particularly identified in Schedule C (the “**Supplier Facilities**”), to produce, capture and purify biogas and deliver Biomethane to the FEI Facilities.
- 4.2 **FEI Facilities.** FEI will design, build, operate, maintain, repair, upgrade, replace and support facilities, as more particularly identified in Schedule C (the “**FEI Facilities**”), to connect to the Supplier Facilities, measure and monitor Biomethane quantity and quality and inject the accepted Biomethane into FEI’s existing gas distribution system. Certain of the FEI Facilities will be located within the Licence Area (defined below). In accordance with the timing agreed to by the Parties in the Project Schedule, FEI will (i) perform a detailed costing analysis of constructing and operating the FEI Facilities, including the bid price(s) from a tender or tenders for construction of the FEI Facilities; and (ii) provide full details of such analysis and tender(s) to the Supplier, together with any supporting documentation reasonably requested by the Supplier. The information and documentation required to be provided by FEI to the Supplier under this section 4.2 are referred to in this Agreement as the “**FEI Facilities Costing Data**”.
- 4.3 **Project Milestones.** The Parties will design, construct and install their respective facilities with reasonable diligence to meet each of the project milestones identified in the Project Schedule (the “**Milestones**”). If either Party’s work falls behind schedule according to the Milestones, the Party will promptly notify the other Party, and use reasonable diligence to get their work back on schedule and meet the next Milestone.
- 4.4 **Prime Contractor.** For the purposes of the *Workers Compensation Act* [RSBC 2019] Chapter 1 (the “**Act**”), FEI is designated the prime contractor in relation to the construction, operation, maintenance and support of the FEI Facilities. For the purposes of the the Act, the Supplier is designated the Prime Contractor in relation to the construction, operation, maintenance and support of the Supplier Facilities. As prime contractor, either Party may designate a qualified third party to act as the Prime Contractor for its respective facilities.
- 4.5 **FEI Approvals.** FEI shall obtain and maintain any consents, permits, filings, orders or other approvals, including governmental consents and approvals, building and construction permits, environmental permits, zoning changes or variances (collectively the “**Approvals**”) required, affecting or necessary for the ownership, installation, use, maintenance and operation of the FEI Facilities.
- 4.6 **Supplier Approvals.** The Supplier shall obtain and maintain the Approvals required, affecting or necessary for the ownership, installation, maintenance and operation of the Supplier Facilities.
- 4.7 **Ownership of FEI Facilities.** The FEI Facilities are, and shall at all times remain, personalty and the property of FEI, despite the degree to which they may be annexed or affixed to the Lands and despite any rule of law or equity to the contrary and shall be freely alienable by FEI as its own property. FEI shall be entitled to install notices on the FEI Facilities identifying FEI’s ownership.
- 4.8 **Existing Supplier Approvals.** If any existing Approvals issued to the Supplier need to be updated to reflect the operation of the FEI Facilities on the Lands, and FEI is not able to update such Approvals in accordance with section 4.5 [*FEI Approvals*], the Supplier shall ensure such approvals are updated as required.

- 4.9 **Utilities.** The Supplier will, at no cost to FEI, provide the electrical connections to the limits of the FEI Facilities within the Interconnection Station Area, but will not provide telephone connections. FEI will contract for service directly from the service provider and pay for utility consumption as directly invoiced to FEI by the service provider. The Supplier shall not be liable for any disruptions in such services, unless caused by any negligent act or omission of the Supplier.
- 4.10 **Cooperation.** To facilitate the connectivity between the Supplier Facilities and the FEI Facilities and manage the monitoring and injection of Biomethane into FEI's natural gas distribution system, the Parties agree to:
- (a) cooperate in the design, permitting, construction and connection of the respective facilities, including any upgrades and modifications to such facilities; provided that despite the exchange or review of, or comment on, any design drawings, by the other Party, each Party shall be solely responsible for the design and construction of their respective facilities;
 - (b) cooperate to create a timeline for the Project (the "**Project Schedule**"), including design, permitting, procurement (including a timeline for tendering for construction of the FEI Facilities and finalizing and delivering the FEI Facilities Costing Data), construction, connection and first delivery, and setting out clear project milestones;
 - (c) share operating data and data related to the interface between the FEI Facilities and the Supplier Facilities, and work together to optimize operation of their respective facilities;
 - (d) notify each other at least thirty (30) days in advance of proposed operational changes and at least ninety (90) days in advance of proposed system modifications or upgrades to their respective facilities and cooperate in the design of upgrades and modifications to the respective facilities, to ensure such changes, modifications or upgrades do not negatively impact the operation of the other Party's facilities; provided that despite the exchange or review of, or comment on, any design drawings, by the other Party, each Party shall be solely responsible for the design, construction, maintenance and operation of their own facilities;
 - (e) prior to the commencement of construction of the FEI Facilities or any other activities to be carried out by FEI on the Lands, cooperate with the Supplier to develop a site orientation protocol and site access procedure, including reporting requirements for FEI's contractors attending on the Lands, as well as a to develop a standard operating procedure and/or emergency response plan (collectively, the "**Access and Operating Procedures**");
 - (f) after construction of their respective facilities and at the request of either Party, meet from time to time to coordinate scheduled maintenance of their respective facilities;
 - (g) promptly notify each other of any circumstance or event which causes or may reasonably be expected to cause their respective facilities to cease to be or to operate in accordance with applicable laws;
 - (h) provide each other with twenty-four (24) hour emergency contact numbers which can be used to notify the other Party of emergencies; and

- (i) in the event of emergency repair, provide verbal notice to the other Party as soon as possible and follow up with written details as soon as practical thereafter.

4.11 Purchase of Biomethane from FEI.

- (a) In consideration of the sale of Biomethane to FEI pursuant to this Agreement, for each Contract Year (as defined in section 1.1, Schedule D), FEI will reserve for purchase by the Supplier and/or its Designated Entities (defined below) an amount of Biomethane (the “**Reserved Supply**”) equal to the amount of Biomethane that FEI purchased from the Supplier under this Agreement in the previous Contract Year, except that for the first Contract Year following the In-Service Date, FEI will be obligated to provide a Reserved Supply of 80% of the Minimum Yearly Quantity for the the first Contract Year as set out at section 3 of Schedule D. If the Supplier delivers less than 80% of the Minimum Yearly Quantity in the first Contract Year, then the Reserved Supply in the second Contract Year will be reduced by the difference between the amount of Biomethane actually delivered by the Supplier in the first Contract Year and 80% of the Minimum Yearly Quantity for the first Contract Year.
- (b) The Supplier may, by providing written notice to FEI prior to the In-Service Date, designate itself and/or any number of third parties (collectively, the “**Designated Entities**” and each, a “**Designated Entity**”), including without limitation any other British Columbia municipalities, regional agencies, public authorities or educational institutions, within the Capital Regional District to have the first right to purchase a portion or all of the Reserved Supply from FEI in accordance with the applicable FEI Tariff and Rate Schedule(s), and may designate the priority of each Designated Entity’s right to purchase Reserved Supply (provided that in the absence of a designation to the contrary, the Supplier will be deemed to have first priority to purchase the Reserved Supply). For each Contract Year, the Supplier and its Designated Entities will each notify FEI through the commercial Biomethane purchase program of the respective amounts of Biomethane they wish to purchase.
- (c) Effective on the 10th and 15th anniversaries of the In-Service Date (each, a “**Re-designation Date**”), the Supplier may, by providing written notice to FEI at least 24-months prior to the Re-designation Date, change any or all of its designations of Designated Entities and the priority of each Designated Entity’s right to purchase Reserved Supply.
- (d) Neither the Supplier nor its Designated Entities are obliged to subscribe for the entire Reserved Supply. If the Reserved Supply or any of it is not purchased from FEI by Designated Entities from time to time, FEI may sell such portion of the Reserved Supply to FEI customers that are not Designated Entities.
- (e) Any purchase of Biomethane from FEI by a Designated Entity will be subject to the terms and conditions of the applicable FEI Tariff and Rate Schedules as established or amended from time to time.

ARTICLE 5 – ACCESS TO AND USE OF LANDS

- 5.1 **Grant of Licence.** The Supplier hereby grants to FEI, for the Term, at no cost, a non-exclusive irrevocable license to the Licence Area at all times and from time to time, with or without vehicles,

machinery and equipment, for FEI and its authorized employees, contractors and agents, to excavate, install, place, construct, renew, alter, repair, maintain, use, abandon, remove or replace the FEI Facilities, in whole or in part. In this Agreement, "**Licence Area**" means, collectively: (a) that portion of the Lands shown as "Potential Licence Area" at Insert 1 on the drawings attached as Schedule B (the "**Interconnection Station Area**"); and (b) that portion of the Lands being a corridor four (4) metres wide running the length of the proposed routing of the pipeline forming part of the FEI Facilities, the centre line of such corridor being delineated by such proposed pipeline routing (which, as of the Execution Date, is shown as "Potential FEI Pipeline Routing" on the drawings attached as Schedule B but which is subject to change from time to time) (the "**Pipeline Area**"). Notwithstanding the foregoing, upon completion of construction of the pipeline, the centre line of the Pipeline Area corridor will be delineated by the actual routing of the pipeline.

- 5.2 **Access over the Lands.** The Supplier, hereby grants to FEI, at no cost, the free and unobstructed right to access over and across the Lands, with or without vehicles, machinery and equipment, as required from time to time, for FEI and its authorized employees, contractors and agents to access the FEI Facilities; provided however this right shall in no way restrict the Supplier from maintaining, changing or improving the Lands as long as FEI and its authorized employees, contractors and agents continue to have access to the FEI Facilities. FEI's right of access over the Lands is subject to FEI's compliance with the reasonable requirements of the Supplier for the safety and security of the Lands, including access points, limitations on access during normal working hours except in the case of emergency, and site access and safety requirements applicable to a working landfill and resource facility.
- 5.3 **Grant of Rights to Third Parties.** Subject to section 5.6 [*Non-Interference by Supplier*], the grant of rights to FEI hereunder does not preclude or prevent the Supplier from granting easements, statutory rights of way or other grants, leases or licences over the Lands to any other person. Notwithstanding section 5.6 [*Non-Interference by Supplier*], FEI's rights under this Agreement are subject to any easements, statutory rights or way or other interests registered against the Lands as of the Execution Date (collectively, the "**Existing Rights**"). FEI shall be solely responsible, for obtaining any third party consents or authorizations required under any Existing Rights in connection with FEI's use of the Lands and exercise of the rights granted to FEI hereunder.
- 5.4 **Use of Lands and Licence Area.** FEI shall:
- (a) not do, suffer or permit anything in, on or from the Lands (including the Licence Area) that may be or become a nuisance or annoyance to the owners, occupiers or users of land or premises adjacent to or near the Lands or to the public, including the accumulation of rubbish or unused personal property of any kind;
 - (b) not do, suffer or permit any act or neglect that may in any manner directly or indirectly cause injury to the Lands (including the Licence Area);
 - (c) promptly repair any damage or injury caused by FEI to the Lands (including the Licence Area), whether or not such damage or injury is caused by the negligence of FEI; or, at the request of the Supplier, immediately pay the Supplier's reasonable costs to repair such damage or injury;
 - (d) use the Lands (including the Licence Area) only for the purposes set out in this Agreement;

- (e) except as otherwise provided in this Agreement, pay when due all costs and expenses of any kind whatsoever associated with and payable in respect of FEI's use of the Licence Area, the FEI Facilities and all equipment, furniture and other personal property brought onto the Licence Area by FEI, including without limitation, property taxes, levies, charges and assessments, permit and license fees, repair and maintenance costs, administration and service fees, gas, water, sewage disposal and other utility and service charges and payments for work and materials; and to the extent that any of the foregoing costs and expenses are incurred by the Supplier, FEI will reimburse the same within thirty (30) days of invoice;
- (f) carry on and conduct its activities in, on and from the Lands (including the Licence Area) in compliance with any and all applicable laws from time to time in force, and to obtain all required approvals and permits thereunder, and not to do or omit to do anything in, on or from the Lands (including the Licence Area in) contravention thereof;
- (g) not erect or place any sign or advertising within the Licence Area (save and except signage identifying FEI's ownership of the FEI Facilities in accordance with section 4.7 [*Ownership of FEI Facilities*] without the prior written approval of the Supplier, acting reasonably; not to bring on or deposit any soil or fill onto the Licence Area except with the written consent of the Supplier;
- (h) co-ordinate all installation and construction activities on the Lands with the Supplier;
- (i) cover all below ground works and restore the surface of the Lands (including the Licence Area) to the same condition that existed at the commencement of the works to the reasonable satisfaction of the Supplier;
- (j) discharge any builders' lien which may be filed against the title to the Lands within 30 days of filing, and comply at all times with the *Builders Lien Act* (British Columbia), in respect of any improvements, work or other activities undertaken by or on behalf of FEI;
- (k) control access to the Interconnection Station Area by locked gates in the fence installed around the perimeter of the Interconnection Station Area, and provide keys and/or access codes for such gates, as applicable, to the Supplier;
- (l) comply with, and cause its contractors to comply with, the Access and Operating Procedures; and
- (m) immediately comply with the reasonable directions of the Supplier with respect to FEI's use of and access to the Lands.

5.5 **Existing and Future Utilities and Improvements.** FEI acknowledges and agrees that: (i) an existing Supplier-owned water pipeline, as the same may be repaired or replaced from time to time (the "**Water Pipeline**"), occupies part of the Licence Area; (ii) the Supplier may from time to time construct new or additional utilities (collectively, the "**New Utilities**" and, together with the Water Pipeline, the "**Utilities**") and related infrastructure within the Licence Area; (iii) existing roads (collectively, "**Existing Roads**") cross the Licence Area; and, (iv) the Supplier may from time to time construct new roads (collectively, the "**New Roads**" and, together with the Existing Roads, the "**Roads**") crossing the Licence Area, in which case FEI will promptly retrofit the FEI Facilities as

reasonably necessary to accommodate such New Roads and the reasonable costs incurred by FEI in connection with such retrofitting will be added to the FEI Cost of Service determined under section 2.2 [*Cost of Service Adjustment*] of Schedule D. In exercising its rights in the Licence Area, FEI shall use commercially reasonable efforts not to damage or disturb any Utilities and/or any Roads. FEI acknowledges that the Supplier is entitled to construct, maintain, repair and replace the Utilities and the Roads from time to time and to use the Licence Area for such purposes and all things reasonably necessary in connection therewith or ancillary thereto. Each of the Supplier and FEI will cooperate in good faith with the other to minimize any interference to the other party caused by their respective permitted activities within the Licence Area.

5.6 **Non-Interference by Supplier.** The Supplier will not do or knowingly permit to be done anything in, under, over, upon or with respect to the Lands which, in the reasonable opinion of FEI, may unreasonably interfere with, diminish or injure FEI's rights hereunder or the installation, maintenance use or operation of the FEI Facilities, including but not limited to, anything which:

- (a) interrupts, endangers, impedes, disturbs or causes damage to the FEI Facilities or its operation, use, security or functionality;
- (b) removes, diminishes or impairs any vertical or lateral support for, or causes the movement or settlement of, the FEI Facilities; and
- (c) causes, permits or suffers any structure, equipment, act or function to exert any vertical load or lateral load upon or against, or impair the structural integrity of, the FEI Facilities,

without the prior written consent of FEI and in accordance with any conditions FEI may reasonably specify as a condition of such consent.

5.7 **Non-Interference by FEI.** FEI will not do or knowingly permit to be done anything in, under, over, upon or with respect to the Lands which, in the reasonable opinion of the Supplier, may unreasonably interfere with, diminish or injure the installation, maintenance use or operation of any of the Lands, the Supplier Facilities, the Utilities or the Roads, including but not limited to, anything which:

- (a) interrupts, endangers, impedes, disturbs or causes damage to the Lands, the Supplier Facilities, the Utilities, the Roads or their operation, use, security or functionality;
- (b) removes, diminishes or impairs any vertical or lateral support for, or causes the movement or settlement of, the Supplier Facilities, the Utilities or the Roads; and
- (c) causes, permits or suffers any structure, equipment, act or function to exert any vertical load or lateral load upon or against, or impair the structural integrity of, the Supplier Facilities, the Utilities or the Roads,

without the prior written consent of the Supplier and in accordance with any conditions Supplier may reasonably specify as a condition of such consent.

5.8 **Sale or Transfer of the Lands.** The Supplier shall not sell or otherwise transfer its interest in and to the Lands, unless, with the written consent of FEI in accordance with section 18.9 [*Assignment*], the transferee assumes all the terms and conditions of this Agreement.

ARTICLE 6 – QUALITY, QUANTITY, TITLE AND INDEMNITY

6.1 Biomethane Quality and Delivery Quantity.

- (a) FEI will monitor and measure the Biomethane quality and quantity at the interconnection point between the Supplier Facilities and the FEI Facilities, as generally shown in the schematic drawing attached as part of Schedule C (the “**Interconnection Point**”) to determine whether the Biomethane meets the Specifications and the Volumetric Limits. Upon the Supplier’s request from time to time, FEI will provide the Supplier with copies of the raw data collected from such monitoring and measurement.
- (b) FEI agrees to accept any Biomethane made available by the Supplier which:
 - (i) meets the specifications (the “**Specifications**”) as set out in Schedule A; and
 - (ii) is subject to the volumetric requirements set out in Schedule D (the “**Volumetric Limits**”).

Notwithstanding section 6.5 [*Excuse from Non-Performance for Maintenance*], the Minimum Yearly Quantity for each Contract Year will be prorated on a per diem basis for each day during such Contract Year that FEI fails to accept all Biomethane available by the Supplier during such day which meets the criteria in this paragraph (b).

- (c) Any Biomethane not accepted by FEI will be returned to the Supplier Facilities or will be prevented from entering the FEI Facilities at the Interconnection Point. The Supplier may use, store, sell to any third parties or otherwise dispose of any such Biomethane in a commercially and environmentally reasonable manner in the Supplier’s sole discretion.
- (d) FEI may change the Specifications from time to time on at least 180 days’ notice in writing to the Supplier provided that any such changes must be required as a result of a regulatory requirement imposed by a government authority and must be in accordance with the as-built design and capacity of the Supplier Facilities.
- (e) Notwithstanding sections 6.3 [*Increased Production Volume*] and 6.4 [*Exclusivity and Other Source Biomethane*], the Supplier may retain and use for research and testing purposes Biomethane in an amount determined by the Supplier from time to time in its discretion.

6.2 Acceptance of Non-Compliant Biomethane. FEI, at its sole discretion and without any obligation to do so, may accept Biomethane that does not meet the Specifications or is outside the Volumetric Limits. Any such Biomethane accepted by FEI into the FEI Facilities will be deemed to meet the Specifications and FEI shall be deemed to have waived any failure to satisfy the Volumetric Limits in relation thereto.

6.3 Increased Production Volume. The Supplier will notify FEI of any proposed changes or improvements to the Supplier Facilities or the Lands or any other activity or circumstance which may result in a long-term increase to Biomethane flow by more than 10% above the Maximum Yearly Quantity to allow FEI to evaluate the impacts of such increase on the FEI Facilities and its gas distribution system and FEI’s ability to accommodate and accept such increased production

volume. Provided such Biomethane meets the Specifications, FEI may, in its discretion and upon notice to the Supplier, accept and purchase all or any portion of the additional production volume at the rates determined by Schedule D [*Commercial Terms*] either temporarily or permanently. Nothing in this section 6.3 obligates the Supplier to sell to FEI any Biomethane other than the Excess Biomethane that is subject to the exclusivity rights in section 6.4 [*Exclusivity and Other Source Biomethane*].

- 6.4 **Exclusivity and Other Source Biomethane.** In addition to its obligations to supply the minimum quantities of Biomethane as established in Schedule D [*Commercial Terms*], the Supplier covenants and agrees to exclusively sell to FEI any additional Biomethane available and produced from biogas captured from the Supplier's landfill site on the Lands (the "**Excess Biomethane**"); provided that if FEI is, from time to time, unable to or elects not to accommodate and accept the Excess Biomethane at the time it is offered for sale by the Supplier, then the Supplier shall be entitled to use, store, sell or otherwise dispose of the excess production in a commercially and environmentally reasonable manner in the Supplier's sole discretion. For clarity, Excess Biomethane includes only Biomethane produced from biogas created by and captured from the Supplier's landfill site on the Lands and does not apply to Biomethane produced from biogas created by or captured from other sources on the Lands (collectively, "**Other Source Biomethane**"), including anaerobic digesters and facilities other than the Supplier Facilities, notwithstanding that the biogas from such other sources may be purified and upgraded by the Supplier Facilities. Nothing in this Agreement obligates the Supplier to sell Other Source Biomethane to FEI; however, the Biomethane sold to FEI under this Agreement may, at the Supplier's option, include Other Source Biomethane.
- 6.5 **Excuse from Non-Performance for Maintenance.** Neither Party will be considered to be in default under this Agreement where such Party's non-performance is as a result of undertaking maintenance or repair on their respective facilities provided that such Party is diligently undertaking such maintenance or repair to minimize its impacts and it being the intention of the Parties that routine maintenance or repair work will not exceed 5 days per month and 20 days per year in aggregate.
- 6.6 **Title and Warranty.** Provided the Biomethane meets the Specifications, or having failed to meet the Specifications, is accepted by FEI pursuant to section 6.2 [*Acceptance of Non-Compliant Biomethane*], title to and responsibility for that Biomethane shall pass from the Supplier to FEI at the Interconnection Point. Any Biomethane rejected by FEI will be redirected back to the Supplier Facilities and title to and responsibility for such Biomethane shall remain with the Supplier and shall be deemed not to have passed to FEI. The Supplier warrants that it has the right to convey and will transfer good and merchantable title to the Biomethane free and clear of all liens, encumbrances and claims.
- 6.7 **Anniversary Reviews.**
- (a) At the fifth (5th), tenth (10th), fifteenth (15th) and twentieth (20th) anniversaries of the In-Service Date, the Parties will undertake a review of the Project, which review will not exceed 90 days, including quantity, flow and quality of the Biomethane made available to FEI throughout the Term, and the future projections of quantity, flow and quality to determine Project financial viability for the balance of the Term based on historic and projected supply of Biomethane.

- (b) If, as a result of the review, the Parties determine the Supplier will be unable to consistently supply the Minimum Yearly Quantity for the balance of the Term and that, as a result, that the project is not financially viable, the Parties may negotiate amendments to the Agreement that are commercially reasonable to the Supplier and, in respect of FEI, that are acceptable to BCUC and in compliance with the *Utilities Commission Act* (British Columbia), including as to price payable by FEI.

- 6.8 **Indemnity.** The Supplier hereby agrees to indemnify and save FEI harmless from all losses, liabilities or claims, including reasonable legal fees and costs of court, arising from or out of claims of title, personal injury or property damage from the Biomethane or other charges thereon ("**Claims**") in each case which attach before title passes to FEI. FEI hereby agrees to indemnify and save the Supplier harmless from all Claims which attach after title passes to FEI. Despite the foregoing, the Supplier will be liable for all Claims arising from the failure to deliver title to the Biomethane to FEI free and clear of any encumbrances.
- 6.9 **Audit and Verification.** Each Party will provide access to the other Party, from time to time during ordinary business hours, to its records and measurement equipment as reasonably requested by the other Party to verify compliance with the terms of this Agreement, including to verify the quality and quantity of Biomethane.

ARTICLE 7 -- PURCHASE PRICE AND PAYMENT

- 7.1 **Payment for Biomethane.** Commencing from the In-Service Date and each month during the Term thereafter, FEI shall pay the Supplier for the quantity of Biomethane accepted by FEI into the FEI Facilities, as determined by meter readings, at the rates and subject to the adjustments and any deductions set out in Schedule D, plus applicable taxes thereon. The Supplier shall not be entitled to receive any payment from FEI for any Biomethane rejected by FEI and returned to the Supplier Facilities.
- 7.2 **Payment Terms.**
 - (a) On or about the 15th day of each month, FEI shall generate a statement for the preceding month showing the quantity of Biomethane accepted by FEI in GJ, the applicable rates and adjustments, the net amount payable and the cumulative quantity of Biomethane accepted for the then current year up to that month. If the quantity of Biomethane accepted is not known by the billing date, FEI will issue the statement based on a reasonable estimate of the quantity accepted and make the necessary adjustments as soon as practical and in any event by the next billing date.
 - (b) FEI will pay the net amount payable within 30 days of delivery of the statement to the Supplier.
 - (c) Any errors in any statement or disputes as to amounts due shall be promptly reported to FEI and any resulting underpayments or overpayments identified will be refunded or repaid with accrued interest at the rate of 1.5% per month (19.56% per annum).

ARTICLE 8 – ENVIRONMENTAL ATTRIBUTES AND REPORTING

- 8.1 **Definitions.** For the purposes of this Article, the following definitions apply:

(a) **"FEI Environmental Attributes"** means:

- (i) all attributes associated with, or that may be derived from, the displacement of traditional natural gas by biomethane in FEI's natural gas distribution system including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right, whether or not tradable;
- (ii) any existing or future instrument, including any environmental emission allowances and reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and resulting from or otherwise related to the actual or assumed reduction, displacement or offset of emissions associated with, or that may be derived from the displacement of traditional natural gas by biomethane in FEI's natural gas distribution system; and
- (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing.

(b) **"Supplier Environmental Attributes"** means:

- (i) all attributes associated with, or that may be derived from, the reduction of greenhouse gas emissions from the Lands as a result of the capture of biogas from the landfill site on the Lands by the Supplier Facilities (but not as a result of the capture of biogas created by or captured from other sources on the Lands, including anaerobic digesters and facilities other than the Supplier Facilities, notwithstanding that the biogas from such other sources may be purified and upgraded by the Supplier Facilities), including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right, whether or not tradable;
- (ii) any existing or future instrument, including any environmental emission allowances and reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable, and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual or assumed reduction, displacement or offset of emissions associated with or that may be derived from the elimination of methane discharges into the atmosphere from the Lands as a result of the capture of biogas by the Supplier Facilities; and
- (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing.

8.2 **FEI Offsets.** FEI shall have the sole right, benefit, title and interest in and to, arising out of or resulting from the FEI Environmental Attributes, whether such right, benefit, title or interest is in existence as of the Execution Date. The Supplier will, at FEI's expense, support FEI in all applications for the FEI Environmental Attributes and provide any assistance, authorizations, documentation and information FEI reasonably requires in this regard, including:

- (a) the quantification and verification of the carbon intensity of the Biomethane produced at the Supplier's Facilities; and
 - (b) authorization enabling FEI to apply on the Supplier's behalf for designation as a Part 3 fuel supplier with respect to resulting Biomethane for the purposes of the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act* and its regulations.
- 8.3 **Supplier Offsets.** The Supplier (or third parties with whom the Supplier has entered into agreements) shall have the sole right, benefit, title and interest in and to, arising out of or resulting from the Supplier Environmental Attributes, whether such right, benefit, title or interest is in existence as of the Execution Date or arises thereafter. FEI will, at the Supplier's expense, support the Supplier in all applications for the Supplier Environmental Attributes and provide any authorizations, documentation and information the Supplier reasonably requires in this regard, including providing the Supplier with reasonable access to data with respect to the FEI Facilities required to determine the amount of Biomethane injected into FEI's natural gas distribution system.
- 8.4 **Reporting Requirements.** Each Party shall be responsible to comply with reporting requirements of all applicable environmental laws with respect to emissions from their respective facilities.
- 8.5 **Right of First Refusal.** The Supplier hereby grants to FEI a right of first refusal to purchase any of the Supplier Environmental Attributes that the Supplier, in its sole discretion, decides to offer for sale to third parties. If the Supplier wishes to sell any Supplier Environmental Attributes, it will provide notice (the "**ROFR Notice**") in writing to FEI describing the Supplier Environmental Attributes offered for sale, the purchase price of the same, and any other terms of the sale. FEI will have thirty (30) days from the date of receipt of the ROFR Notice to elect, by notice in writing to the Supplier, to purchase the Supplier Environmental Attributes described in the ROFR Notice for the purchase price and on the terms and conditions set out in the ROFR Notice, which sale will complete thirty (30) days after the date of such election or on such other date as agreed to by the Parties in writing. If FEI elects not to purchase the offered Supplier Environmental Attributes or does not make an election within the time allowed, the Supplier may at any time thereafter sell such Supplier Environmental Attributes to any third party for the purchase price (or greater) and terms and conditions set out in the ROFR Notice. If the Supplier wishes to sell the Supplier Environmental Attributes for less than the purchase price less than and/or on terms and conditions different than those set out in the ROFR Notice, the Supplier will repeat the procedure set out in this section 8.5.

ARTICLE 9 – DEFAULT

- 9.1 **Default.** Either Party (the "**Defaulting Party**") shall be in default of this Agreement if the Defaulting Party is in breach of any term, covenant, agreement, condition or obligation imposed on it under this Agreement, provided that:
 - (a) the other Party (the "**Non-Defaulting Party**") provides the Defaulting Party with a written notice of such default and a 30-day period within which to cure such a default (the "**Cure Period**"); and
 - (b) the Defaulting Party fails to cure such default during the Cure Period, or if such default is not capable of being cured within the Cure Period, fails in good faith to commence the

curing of such default upon receipt of notice of default and to continue to diligently pursue the curing of such default thereafter until cured.

9.2 **Effect of Default.** Upon default, the Non-Defaulting Party may, at its option and in addition to and without liability therefore or prejudice to any other right or remedy it may have:

- (a) cease performing its obligations under this Agreement, including suspending or refusing to make any payment due hereunder, (save and except, if the Supplier is the Defaulting Party, FEI shall continue to make payments due to the Supplier under ARTICLE 7 [*Purchase Price and Payment*] if FEI accepts Biomethane during the period of the Supplier's default) until the default has been fully remedied, and no such action shall relieve the Defaulting Party from any of its obligations under this Agreement;
- (b) undertake the necessary steps to remedy the default at the Defaulting Party's expense, and such action shall not relieve the Defaulting Party from any of its obligations under this Agreement; or
- (c) terminate this Agreement immediately upon notice to the other Party, whereupon the provisions of ARTICLE 10 [*Effect of Expiry or Termination*] shall apply.

ARTICLE 10 - EFFECT OF EXPIRY OR TERMINATION.

10.1 **Removal of FEI Facilities.** Upon the expiry or early termination of this Agreement, unless otherwise agreed by the Parties, FEI will, within 90 days following the expiry date or termination date, as the case may be, remove the FEI Facilities from the Lands and repair any damage to the Lands arising from such removal; provided that FEI will be obligated to remove only those portions of the FEI Facilities located above surface level and may leave any un-removed portions located below surface level of the Lands (the "**Abandoned FEI Facilities**"), provided it does so in a safe manner in accordance with FEI standard practice and industry standards. The Abandoned FEI Facilities will become the property of the Supplier at no cost to the Supplier.

10.2 **Termination Payment.** If, during the Initial Term:

- (a) FEI terminates this Agreement pursuant to section 9.2(c) [*Effect of Default*] as a result of default of the Supplier; or
- (b) the Supplier sells or otherwise transfers its interest in and to the Lands in contravention of section 5.8 [*Sale or Transfer of the Lands*],

then, in addition to any other amounts due and owing by the Supplier to FEI, the Supplier shall pay to FEI, within thirty (30) days of invoicing, the following amounts (plus applicable taxes thereon):

- [REDACTED]
- [REDACTED]

ARTICLE 11 - INSURANCE REQUIREMENTS

11.1 Supplier Insurance. The Supplier shall obtain and maintain the following insurance coverage:

- (a) All-Risk Property loss covering the full insurance replacement cost of the Supplier Facilities without deduction for depreciation and with reasonable deductibles;
- (b) General Commercial Liability Insurance from insurers registered in and licensed to underwrite insurance in British Columbia for bodily injury, death and property damage in the amount of \$5,000,000 per occurrence naming FEI as an additional insured with respect to this Agreement; and
- (c) Third Party Legal Liability Insurance in an amount not less then \$2,000,000 per occurrence in respect of all vehicles owned and/or operated by the Supplier in connection with this Agreement.

Maintenance of such insurance and the performance by the Supplier of its obligations shall not receipt the Supplier of liability under the indemnity provisions set forth in this Agreement.

11.2 FEI Insurance. FEI shall obtain and maintain the following insurance coverage from insurers registered in and licensed to underwrite insurance in British Columbia:

- (a) All-Risk Property loss covering the full insurable replacement cost of the FEI Facilities without deduction for depreciation and with reasonable deductibles;
- (b) General Commercial Liability Insurance for bodily injury, death and property damage and unlicensed vehicle and attached equipment operations in an amount not less than \$5,000,000 per occurrence naming the Supplier as an additional insured, and containing the separation of insureds, cross liability clause in the conditions of the policy;
- (c) Third Party Legal Liability Insurance in an amount not less than \$2,000,000 per occurrence in respect of all vehicles owned and/or operated by FEI in connection with this Agreement, in the following forms: (i) standard non-owned automobile policy including standard contractual liability endorsement; and (ii) standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned and/or operated by or on behalf of FEI; and
- (d) Builder's Risk insurance acceptable to the Owner, in the joint names of FEI and the Supplier, which policy shall preclude subrogation claims by the insurer against anyone insured thereunder.

Maintenance of such insurance and the performance by FEI of its obligations shall not relieve FEI of liability under the indemnity provisions set forth in this Agreement.

11.3 General. Each Party shall be responsible for payment of any deductibles of their policies. All such policies shall provide that the insurance shall not be cancelled or changed in any way without the

insurer giving at least thirty (30) days' written notice to the other Party. Each Party shall provide evidence of the foregoing insurance to the other Party from time to time upon request.

ARTICLE 12 - ENVIRONMENTAL RELEASE AND INDEMNITY

12.1 Definition of Contaminants. "Contaminants" means collectively, any contaminant, toxic substances, dangerous goods, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated by law.

12.2 Supplier Release and Indemnity. Despite any other provision of this Agreement, the Supplier acknowledges and agrees that FEI is not and shall not be responsible for any Contaminants now present, or present in the future, in, on or under the Lands, or that may or may have migrated on or off the Lands and hereby releases and agrees to indemnify FEI and its directors, officers, employees, successors and permitted assigns, from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis) arising from or in connection with:

- (a) any release or alleged release of any Contaminants at or from the Lands;
- (b) the presence of any Contaminants on or off the Lands before or after the Execution Date;

except with respect to any Contaminants brought onto the Lands by FEI, its affiliates, or their respective employees, contractors, agents or other persons for whom FEI or its affiliates are responsible at law (the "FEI Parties") or any Contaminants released from the Lands by the FEI Parties.

12.3 FEI Release and Indemnity. Despite any other provision of this Agreement, FEI shall release and indemnify the Supplier and its directors, officers, employees, successors and permitted assigns, from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis) arising from or in connection with to any Contaminants brought onto the Lands by the FEI Parties or any Contaminants released from the Lands by the FEI Parties or released by or from the FEI Facilities.

ARTICLE 13 - INDEMNIFICATION AND LIMITATION OF LIABILITY

13.1 Indemnification. Each Party hereby indemnifies and holds harmless the other Party and its employees, directors and officers from and against any and all adverse claims, losses, suits, actions, judgments, demands, debts, accounts, damages, costs, penalties and expenses (including all legal fees and disbursements) arising from or out of:

- (a) the negligence or wilful misconduct of such Party, its employees, directors, officers or contractors; or
 - (b) the breach by such Party of any of the provisions contained in this Agreement.
- 13.2 **Limitation of Liability.** Each Party's liability to the other Party under this ARTICLE 13 shall be limited to the payment of direct compensatory damages. Except with respect to third party claims and as otherwise provided in this Agreement, in no event shall either Party be liable for any indirect, consequential, punitive, exemplary, incidental, or special damages, including loss of profits, future income, reduction in earnings, increased costs, business interruption and other remote, non-foreseeable, non-direct compensation, even if the loss is directly attributable to the gross negligence or wilful misconduct of such Party, its employees, or contractors.
- 13.3 **Duty to Mitigate.** Each Party has a duty to mitigate the damages that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

ARTICLE 14 - FORCE MAJEURE

- 14.1 **Effect of Force Majeure.** Neither Party will be in default of this Agreement by reason only of any failure in the performance of such Party's obligations pursuant to this Agreement if such failure arises without the fault or negligence of such Party and is caused by any event of Force Majeure (as defined below) that makes it commercially impracticable or unreasonable for such Party to perform its obligations under this Agreement and, in such event, the obligations of the Parties will be suspended to the extent necessary for the period of the Force Majeure condition, save and except neither Party will be relieved of or released from its obligations to make payments to the other Party as a result of an event of Force Majeure. In this Agreement, "**Force Majeure**" means any cause which is unavoidable or beyond the reasonable control of any Party to this Agreement and which, by the exercise of its reasonable efforts, such Party is unable to prevent or overcome, including, acts of God, war, riots, epidemics, pandemics, quarantines, intervention by civil or military authority, strikes, lockouts, accidents, acts of civil or military authority, or orders of government or regulatory bodies having jurisdiction, or breakage or accident to machinery or lines of pipes, freezing of wells or pipelines or the failure of gas supply, temporary or otherwise, or the occurrence or development of certain environmental or atmospheric conditions at or affecting the Lands (not including conditions directly caused by a breach of applicable environmental laws by the party seeking to rely on the event of Force Majeure) which are materially different from those conditions in existence at the Lands on the Execution Date and which materially adversely affect the natural and organic production of biogas at the Lands such that, in the reasonable opinion of either party, the intended business operations of the parties upon entering into this Agreement are no longer feasible; provided however, the lack of funds or other financial cause shall not be an event of Force Majeure.
- 14.2 **Notice of Force Majeure.** The Party whose performance is prevented by an event of Force Majeure must provide notification to the other Party of the occurrence of such event as soon as reasonably possible.

ARTICLE 15 - DISPUTE RESOLUTION

- 15.1 **Dispute Resolution.** The Parties will make a *bona fide* attempt to settle any dispute which may arise under, out of, in connection with or in relation to this Agreement by amicable negotiations between their respective senior representatives and will provide frank and timely disclosure to one another of all relevant facts and information to facilitate negotiations. If the Parties are unable to resolve the dispute within fifteen (15) days or agree to waive such discussions with respect to a particular issue, the Parties shall, subject to section 15.3 [*Litigation*], use the following procedure as a condition precedent to any such Party pursuing other available remedies:
- (a) Any Party may notify the other Party by written notice ("**Mediation Notice**") of that Party's wish to resolve the dispute by mediation, in which case the Parties agree to submit the dispute to mediation.
 - (b) Within two (2) business days of receipt of the Mediation Notice, the Parties shall jointly appoint a mutually acceptable mediator, who must be an independent third party knowledgeable in the subject matter of the dispute.
 - (c) The Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of ten (10) business days following appointment of the mediator or for such longer period as the Parties may agree.
 - (d) If the Parties are not successful in resolving the dispute through mediation or if the mediation has not commenced within ten (10) business days following the appointment of the mediator or if the Parties cannot agree on the appointment of a mediator within the time referred to in paragraph (b) or such longer period as the Parties may agree in writing, then the Parties agree that the dispute shall be determined by arbitration before a single arbitrator.
 - (e) Within ten (10) days of the expiry of the applicable time period in paragraph (d), the Parties shall jointly appoint a mutually acceptable arbitrator. Failing agreement of the Parties on a single arbitrator within such ten (10) day period, either Party may apply to a judge of the British Columbia Supreme Court under the *Arbitration Act* (British Columbia) for the appointment of a single arbitrator. The arbitrator shall be an independent third party knowledgeable in the subject matter of the dispute.
 - (f) The arbitrator shall render a decision in accordance with the then current "Domestic Commercial Arbitration Shorter Rules of Procedure" or similar rules of the British Columbia International Commercial Arbitration Centre ("**BCICAC**"). The decision of the arbitrator shall be final and binding. The costs and expenses of the arbitration, but not those incurred by the Parties, shall be shared equally, unless the arbitrator determines that a specific Party prevailed, and in such a case the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party. The arbitration will take place in Vancouver, British Columbia and be conducted in English.
- 15.2 **Performance of Obligations.** The Parties shall continue to fulfill their respective obligations pursuant to this Agreement during the resolution of any dispute in accordance with this section 15.2.

15.3 **Litigation.** Nothing contained in this Article precludes either Party from:

- (a) having a dispute determined by the BCUC if the dispute is within the jurisdiction of the BCUC; and
- (b) having a dispute that has not been referred to mediation or arbitration be determined by a court of competent jurisdiction in the Province of British Columbia.

ARTICLE 16 - CONFIDENTIALITY

16.1 **Confidentiality.** All information or documentation (no matter in what form or media) received by a Party (the "**Receiving Party**") which has been specifically marked by other Party (the "**Disclosing Party**") as confidential (the "**Information**") shall be deemed to be confidential and proprietary to the Disclosing Party. Except as otherwise provided herein, the Receiving Party shall not directly or indirectly disclose the Information to any third party without the prior written consent of the Disclosing Party. Such consent is not required where the Receiving Party discloses such Confidential Information:

- (a) to its directors, officers, employees, agents, accountants, lawyers, consultants or financial advisers or those of its affiliates; or
- (b) to a third party that is another contractor or consultant retained by the Disclosing Party for the purposes of this MOU and the activities described herein;

who need to know such information for the proper performance of the Parties' respective obligations contemplated herein.

16.2 **Exception for Regulatory Submission.** Despite the foregoing, the Receiving Party may use the Information in connection with the preparation for and conduct of submissions to regulatory agencies, subject to requesting that the regulatory agency treat the Information as confidential in accordance with the agency's rules of procedure for confidential filings.

16.3 **Exclusions** The obligation of confidentiality set out above shall not apply to material, data or information which: (1) is known to the Receiving Party prior to its receipt thereof; (2) is generally available to the public; (3) has been obtained from a third party which has the right to disclose the same; and (4) is required by law to be disclosed, provided that where disclosure is required by law, the Receiving Party will, unless prohibited by law, forthwith notify the Disclosing Party to enable the Disclosing Party to mount a defense to such disclosure.

ARTICLE 17 – REPRESENTATIONS AND WARRANTIES

17.1 **Mutual Representations and Warranties.** Subject to receipt of approval of this Agreement by BCUC, each Party represents and warrants to the other Party that, as of the Execution Date:

- (a) it has the full right, power and authority to enter into this Agreement and all necessary corporate action has been taken to authorize and approve the execution and delivery of this Agreement and performance of obligations hereunder;

- (b) to the best of its knowledge, this Agreement and the performance of its obligations hereunder do not breach any provisions of any other agreement or law that is binding on or applicable to such Party;
 - (c) it is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to such Party which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against such Party before or by any governmental authority, which could affect its ability to perform its obligations under this Agreement.
- 17.2 **Additional Representation and Warranty of Supplier.** The Supplier further represents and warrants it has the necessary power, capacity and authority to provide the property use and access rights to FEI as contemplated in this Agreement.

ARTICLE 18 – GENERAL

- 18.1 **Costs.** Except as otherwise set out in this Agreement, each Party will be responsible for the payment of its own costs related to performing its obligations under this Agreement.
- 18.2 **Publicity.** Neither Party shall initiate any media releases, interviews, or presentations to the media regarding the terms of this Agreement without the agreement and approval of the other Party, not to be unreasonably withheld or delayed.
- 18.3 **Compliance with Laws.** Each Party covenants, as a material provision of this Agreement, it will comply with all applicable codes, statutes, by-laws, regulations or other laws in force in British Columbia during the Term.
- 18.4 **Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada. To the extent ARTICLE 15 [*Dispute Resolution*] is not applicable to a dispute between the Parties, the Parties hereby attorn to the jurisdiction of the courts of British Columbia and all courts competent to hear appeals therefrom.
- 18.5 **Notice.** Any invoices, payments, notices or other communication required to be given or made pursuant to the Agreement shall, unless otherwise expressly provided herein, shall be in writing and shall be personally delivered to or sent by facsimile to either Party at its address set forth below and deemed to have been received the next business day following delivery or facsimile transmittal:
- | | |
|---|---|
| If to: FortisBC Energy Inc.
16705 Fraser Highway, Surrey, BC V4N 0E8
Attention: Director, Renewable Gas
Fax: 604 592 7444
With a copy to:
Biogasprogram@fortisBC.com | If to: Capital Regional District
625 Fisgard Street, Victoria, BC V8W 1R7
Attention: General Manager, Parks and
Environmental Services
Fax: (250) 360-3245 |
|---|---|
- 18.6 **Schedules.** The schedules attached to this Agreement are an integral Part of this Agreement and are hereby incorporated into this Agreement as a part thereof.

- 18.7 **Amendments to be in writing.** Except as set out in this Agreement, no amendment or variation of the Agreement shall be effective or binding upon the Parties unless such amendment or variation is set forth in writing and duly executed by the Parties, and accepted by the BCUC if required pursuant to the *Utilities Commission Act*.
- 18.8 **Waiver.** No Party is bound by any waiver of any provision of this Agreement unless such waiver is consented to in writing by that Party. No waiver of any provisions of this Agreement constitutes a waiver of any other provision, nor does any waiver constitute a continuing waiver unless otherwise provided.
- 18.9 **Assignment.** Neither Party shall assign its rights and obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned. Despite the foregoing, FEI may assign this Agreement, or parts thereof, to any of its affiliates (as defined in the British Columbia *Business Corporations Act*). The Supplier may assign this Agreement to any public body (including any municipality or regional district) without the consent of FEI.
- 18.10 **Relationship.** Nothing in this Agreement will be construed as creating any relationship of partnership, joint venture or agency between the Parties.
- 18.11 **Enurement.** This Agreement enures to the benefit of and is binding on the Parties and their respective successors and permitted assigns.
- 18.12 **Survival.** The following provisions shall survive the termination or expiration of this Agreement: section 2.5 [*Reimbursement of FEI Costs*], section 6.8 [*Indemnity*], ARTICLE 12 [*Environmental Release and Indemnity*], ARTICLE 13 [*Indemnification and Limitation of Liability*], ARTICLE 15 [*Dispute Resolution*], ARTICLE 16 [*Confidentiality*], section 18.4 [*Governing Law*] and section 18.5 [*Notice*].
- 18.13 **Remedies Cumulative.** All rights and remedies of each Party under this Agreement are cumulative and may be exercised at any time and from time to time, independently and in combination.
- 18.14 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination does not impair or affect the validity, legality or enforceability of any other provision of this Agreement.
- 18.15 **Further Assurances.** The Parties shall sign such further and other documents and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable to give full effect to this Agreement.
- 18.16 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, covenants, representations, warranties or other provisions, whether express or implied, collateral, statutory or otherwise, relating to the subject matter of this Agreement except as provided in this Agreement.
- 18.17 **Time is of the essence.** Time is of the essence of this Agreement.

18.18 **Execution.** This Agreement may be executed in counterparts, each of which shall be deemed as an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission hereof shall be as effective as delivery of an originally executed counterpart hereof.

18.19 **Interpretation.** In and for the purpose of this Agreement:

- (a) this "**Agreement**" means this agreement as the same may from time to time be modified, supplemented or amended in effect,
- (b) the headings are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement, and
- (c) the singular of any term includes the plural, and vice versa, the use of any term is generally applicable to any gender and, where applicable, a corporation, the word "or" is not exclusive and the word "including" is not limiting (whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto).

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first above written.

FORTISBC ENERGY INC.

by its authorized signatory(ies):



Roger Dall'Antonia
President and Chief Executive Officer

CAPITAL REGIONAL DISTRICT

by its authorized signatory(ies):



Robert Lapham
Chief Administrative
Officer

Schedules attached:

Schedule A – Biomethane Acceptance Specifications

Schedule B – Drawing of Licence Area

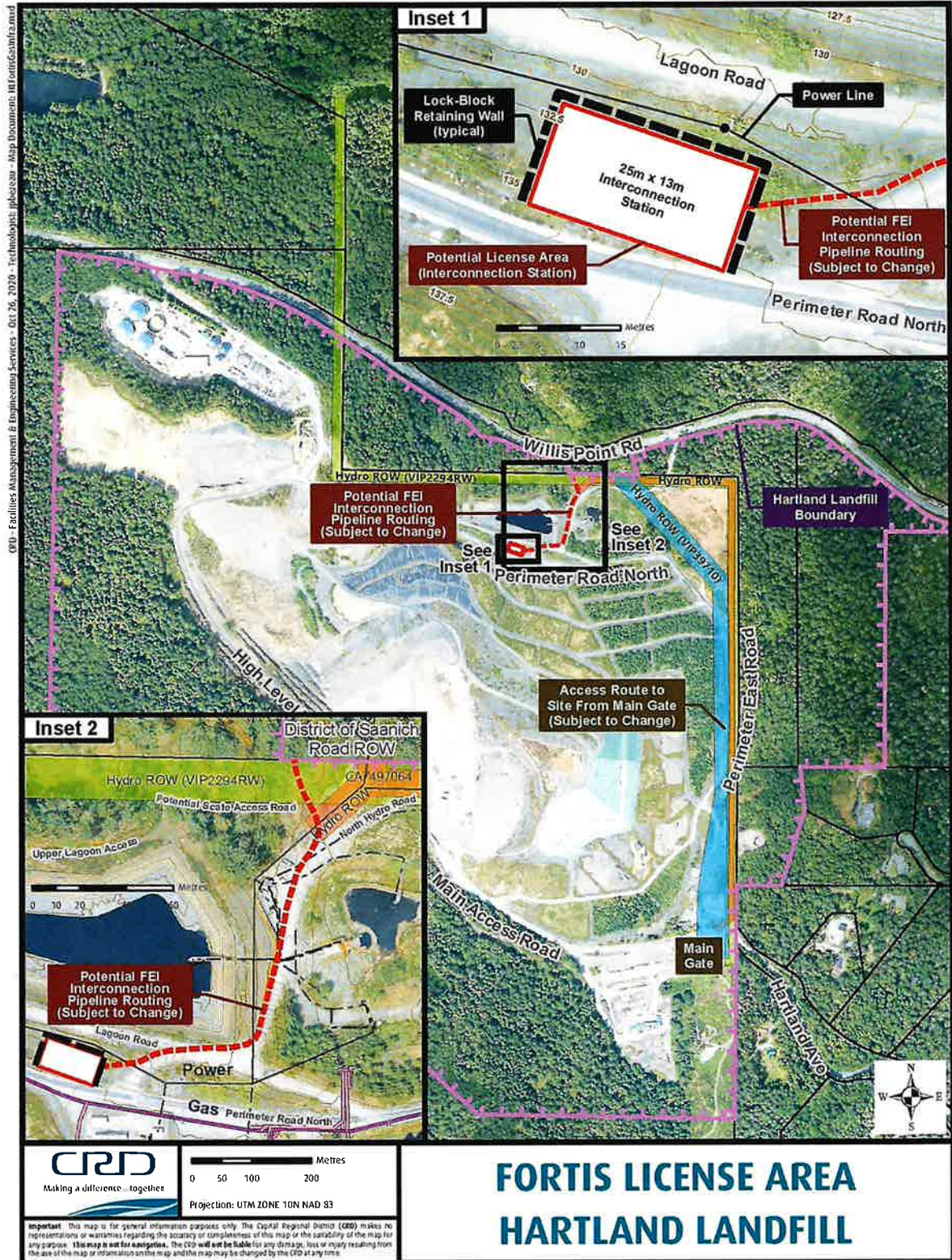
Schedule C – Description of Supplier Facilities and FEI Facilities

Schedule D – Commercial Terms

Schedule A
Biomethane Acceptance Specifications

The Biomethane must be free of contaminants, bacteria and pathogens, and not contain sand, dust, gums, oils and other impurities or other objectionable substances, except in such quantities as approved in writing by FEI and which are not injurious to pipelines or do not interfere with the transmission or commercial utilization of the gas, as determined by FEI. Despite the foregoing, the Biomethane may contain the following properties / contaminants within the limits shown in the table below:

PROPERTY/ CONTAMINANT	LIMITS
Pressure	not less than 3,000 kilopascals
Hydrogen Sulphide (H ₂ S)	Less than 6 mg/m ³
Water	Less than 65 mg/m ³ of water vapour
	No liquid water
Hydrocarbons	Not have a hydrocarbon dewpoint in excess of minus 9°C at the delivery pressure
	No hydrocarbons in liquid form
Sulfur	Less than 23 mg/m ³
Carbon Dioxide (CO ₂)	Less than 2% by volume
Oxygen (O ₂)	Less than 0.4% by volume
Temperature	54°C maximum
Heating value/calorific power	36.00 MJ/m ³ minimum (15°C, 101.3kPa)
Siloxanes	Less than 1 mg/m ³
Carbon monoxide (CO)	Less than 2% by volume
Inert gases	Less than 4% volume
Ammonia (NH ₃)	Less than 3mg/m ³
Bacteria and pathogens	Impurity filter (0.3 to 5 microns)



Schedule C

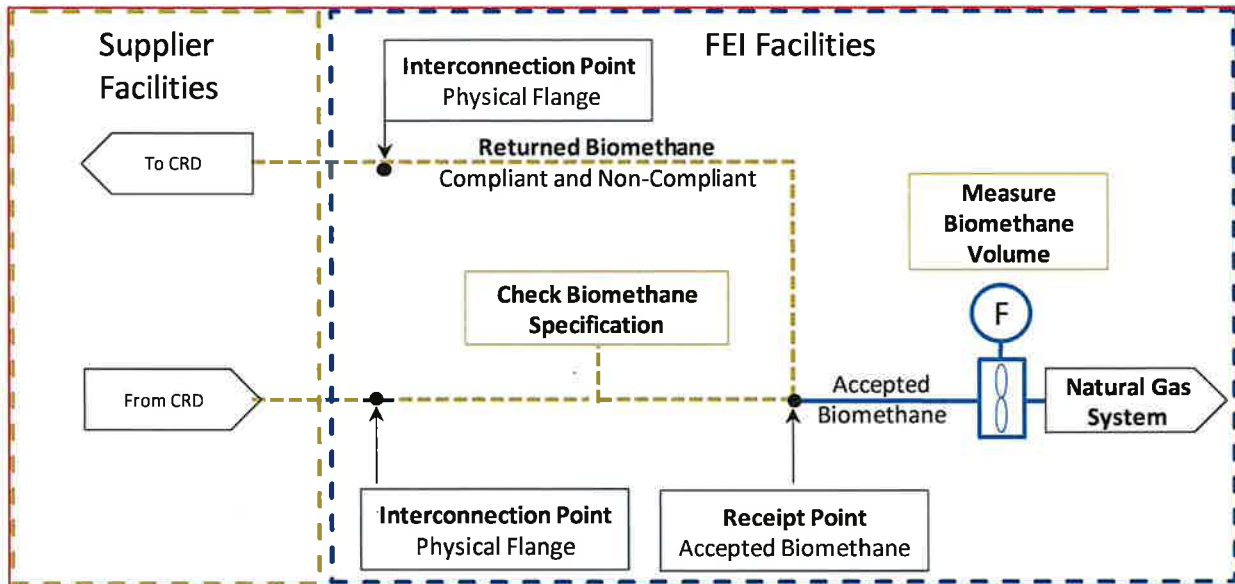
Description of Supplier Facilities and FEI Facilities

- A. **Supplier Facilities** means those facilities necessary to capture and purify biogas and deliver the resulting Biomethane to the FEI Facilities, including but not limited to:
- (d) landfill gas collection system
 - (e) landfill gas purification/upgrading equipment;
 - (f) control systems,
 - (g) compression equipment to reach the minimum delivery pressure;
 - (h) a flare system; and
 - (i) piping between the purification/upgrading equipment and the FEI Facilities.
- B. **FEI Facilities** means those facilities necessary to connect to the Supplier Facilities, measure and monitor Biomethane quantity and quality and inject the accepted Biomethane into FEI's existing gas distribution system, including but not limited to:
- (a) flanged connection (Interconnection Point);
 - (b) inlet shut-off valves located immediately adjacent to fenced area built by FEI;
 - (c) metering;
 - (d) gas quality monitoring;
 - (e) pressure regulation;
 - (f) odorizing equipment;
 - (g) safety shut offs;
 - (h) monitoring sensors and communications equipment capable of automatically re-starting injection of Biomethane into the distribution system once Biomethane has met the Specifications, if the Biomethane has temporarily failed to meet the Specifications;
 - (i) foundation, including a concrete pad;
 - (j) signage;
 - (k) fencing around Interconnection Station Area and otherwise as required;
 - (l) outlet piping from fenced area to FEI's existing natural gas system; and

Schedule C

Description of Supplier Facilities and FEI Facilities

- C. **Interconnection Point** - The Interconnection Point between the Supplier Facilities and the FEI Facilities is within the location shown on the schematic diagram attached to this Schedule C.



1. VOLUMETRIC LIMITS

1.1 The following quantity limitations, as established as a result of the system and capacity limitations of the Supplier Facilities and the limitations and thresholds established by the Greenhouse Gas Reduction (Clean Energy) Regulation and applicable to FEI with respect to acceptance and injection of Biomethane into its natural gas distribution system, as measured by equipment forming part of the FEI Facilities (the "**Volumetric Limits**") apply to this Agreement:

- (a) **Maximum Yearly Quantity:** [REDACTED] GJ per Contract Year, where "**Contract Year**" means the period from January 1st to December 31st of each year during the Term; provided that the Maximum Yearly Quantity will be prorated for part years.
- (b) **Minimum Yearly Quantity:** the Minimum Yearly Quantity for a Contract Year will be the amount set out in the Volume Schedule in section 3 of this Schedule D, such that the average of the Minimum Yearly Quantities for that Contract Year and all prior Contract Years is no less than [REDACTED] GJ per year, provided that the Minimum Yearly Quantity will be prorated for part years and for a Contract Year or Contract Years in which the Commissioning Period occurs in accordance with section 1.1(c) of this Schedule D.
- (c) **Commissioning Period:** The Supplier will have a commissioning period from the In-Service Date until ninety (90) days thereafter (the "**Commissioning Period**"). For the purposes determining whether the Minimum Yearly Quantity has been achieved, the Contract Year or Contract Years in which the Commissioning Period occurs will be treated as partial years, excluding the Commissioning Period, and the Minimum Yearly Quantity will be prorated for such Contract Year or Contract Years.
- (d) **Maximum Hourly Flow Rate:**
 - (i) Summer term - for the months of June, July and August – [REDACTED] per hour at STP; and
 - (ii) At all other times - [REDACTED] per hour at STP,where "**STP**" means standard temperature and pressure and is defined as 15 degrees Celsius and 101.325 kPa.

2. PRICE AND ADJUSTMENTS

2.1 **Purchase Price.** FEI shall pay the Supplier for the quantity of Biomethane accepted by FEI per month, commencing from the In-Service Date, at the following rate, plus applicable taxes thereon, for each Contract Year throughout the Term:

[REDACTED]

2.2 Cost of Service Adjustment.

- (a) **Definitions.** In this Agreement, the following terms have the following meanings:
 - (i) "**Cost of Service Adjustment Payment**" has the meaning given to that term in

paragraph (d) of this section 2.2;

- (ii) **"Cost of Service Differential"** is, in respect of any Contract Year, a positive or negative dollar amount calculated by subtracting the Threshold Amount from the FEI Cost of Service Per GJ and multiplying the difference by the Delivered Volume;
- (iii) **"Delivered Volume"** means, in respect of any Contract Year, the actual volume of Biomethane, in gigajoules, delivered by the Supplier to FEI under this Agreement;
- (iv) **"FEI Cost of Service"** means, in respect of any Contract Year, FEI's total cost of service of the FEI Facilities for that Contract Year, calculated with reference only to the following costs applicable to the FEI Facilities during that Contract Year:
 - (A) the actual cost of the initial construction of the FEI Facilities, amortized over the Term (for clarity, excluding any replacements of the FEI Facilities or other capital expenditures during the Term), including:
 - (I) interest on the debt portion of the actual cost of constructing the FEI Facilities, at FEI's weighted average cost of debt as approved by the British Columbia Utilities Commission;
 - (II) depreciation expense, the rate of which will be calculated on a straight-line basis based on the Term; and
 - (III) return on rate base as approved by the British Columbia Utilities Commission;
 - (B) operating costs reasonably attributable to the FEI Facilities, subject to a maximum of \$20,000 per Contract Year, which maximum will be escalated by 2% for each Contract Year after the first Contract Year;
 - (C) taxes, if any; and
 - (D) reasonable costs incurred by FEI in connection with retrofitting the FEI Facilities as provided for under section 5.5 [*Existing and Future Utilities and Improvements*],

and excluding any portion of the costs applicable to the FEI Facilities that is attributable to any uses of the FEI Facilities other than the purchase of Biomethane by FEI from the Supplier pursuant to this Agreement;

- (v) **"FEI Cost of Service Per GJ"** means, in respect of any Contract Year, an amount, expressed in dollars per gigajoule (\$/GJ), calculated by dividing the FEI Cost of Service for that Contract Year by the Delivered Volume for that Contract Year; provided that, for the purposes of calculating the FEI Cost of Service Per GJ for any part Contract Year, the Delivered Volume will be determined by dividing the total volume of Biomethane delivered by the Supplier to FEI under this Agreement during that part Contract Year by the number of days in that part Contract Year and multiplying the quotient thereof by 365 (or 366 in respect of a

leap year).

- (vi) **"FEI Facilities Account"** means a record to be maintained by FEI containing a running account of the sum of the Cost of Service Differentials for each Contract Year (plus any Reconciliation Payments made by FEI during the Term), as offset by any Cost of Service Adjustment Payments made by the Supplier during the Term;
- (vii) **"Reconciliation Payment"** has the meaning given to that term in paragraph (e) of this section 2.2;
- (viii) **"Threshold Amount"** means the greater of:
 - (A) [REDACTED] and
 - (B) the amount, expressed in dollars per gigajoule, obtained by subtracting [REDACTED] from the maximum price per gigajoule that a public utility may pay for renewable natural gas under a prescribed undertaking, as specified in the *Greenhouse Gas Reduction (Clean Energy) Regulation*, as amended, re-enacted, supplemented or replaced from time to time.
- (b) **Starting Balance of FEI Facilities Account.** The starting balance of the FEI Facilities Account on the In-Service Date will be \$NIL.
- (c) **Annual Calculations of Cost of Service and Differential.** By February 1 of each Contract Year after the first Contract Year, FEI will:
 - (i) calculate the FEI Cost of Service, FEI Cost of Service Per GJ and the Cost of Service Differential for the preceding Contract Year; and
 - (ii) calculate the balance of the FEI Facilities Account as at December 31 of the preceding Contract Year (the **"Reference Date"**) by adding to that balance the Cost of Service Differential for the preceding Contract Year; and
 - (iii) deliver a notice to the Supplier setting out the calculations referred to above in this paragraph (c) and providing reasonable detail to support the calculations.

At the Supplier's request, FEI will provide such documentation and information as the Supplier may reasonably require to verify the calculations referred to above in this paragraph (c).
- (d) **Cost of Service Adjustment Payment.** If the balance in the FEI Facilities Account calculated in accordance with paragraph (c) above is positive as at the Reference Date, the Supplier will pay to FEI in the current Contract Year an amount (a **"Cost of Service Adjustment Payment"**) equal to the positive balance in the FEI Facilities Account, as follows:
 - (i) the Cost of Service Adjustment Payment will be paid in 12 equal installments

payable on the first day of each month during the Contract Year, except that the first two installments will be due on March 1 of the Contract Year; and

- (ii) FEI may offset any Cost of Service Adjustment Payment installments then due and payable against monies payable by FEI to the Supplier hereunder.

The balance of the FEI Facilities Account will be reduced by the amount of any Cost of Service Adjustment Payment made to FEI (including by offset as provided for above) as of the date of payment thereof.

- (e) **Cost of Service Adjustment Reconciliation.** If the balance in the FEI Facilities Account calculated in accordance with paragraph (c) above is negative as at the Reference Date, then within ninety (90) days of FEI delivering the notice referred to in subparagraph (c)(iii) above, FEI will reimburse to the Supplier (a "**Reconciliation Payment**") the lesser of:

- (i) an amount equal to the negative balance of the FEI Facilities Account as at the Reference Date expressed as a positive number (for example, if the account balance is -\$10,000, then this amount will be \$10,000); and
- (ii) the aggregate amount of all Cost of Service Adjustment Payments made by the Supplier as at the Reference Date, less the aggregate amount of all reimbursement payments made by FEI to the Supplier under this paragraph (e) as at the Reference Date.

The amount of any Reconciliation Payment made by FEI to the Supplier will be added to the balance of the FEI Facilities Account as of the date of payment thereof. For clarity, the Supplier will not be entitled to any payments or other compensation in respect of negative balances in the FEI Facilities Account other than the Reconciliation Payments provided for herein.

- (f) **No Interest on Positive and Negative Balances.** Neither positive nor negative balances in the FEI Facilities Account will accrue interest.

- (g) **End of Term Obligations.** Within thirty (30) days following the expiry or earlier termination of the initial Term, FEI will perform the calculations and other obligations described in paragraph (c) above, except that the Reference Date will be deemed to be the date of the expiry or earlier termination of the Term. If the balance in the FEI Facilities Account calculated in accordance with the foregoing is:

- (i) positive, then the Supplier will pay a Cost of Service Adjustment Payment equal to the positive balance in the FEI Facilities Account to FEI within ninety (90) days of the Supplier receiving notice from FEI of the foregoing calculations; or
- (ii) negative, then FEI will pay to the Supplier any Reconciliation Payment to which the Supplier would be entitled under paragraph (e) within one hundred twenty (120) days after the expiry or earlier termination of the initial Term.

- (h) **Application.** The provisions of this section 2.2 will apply not apply during any renewal

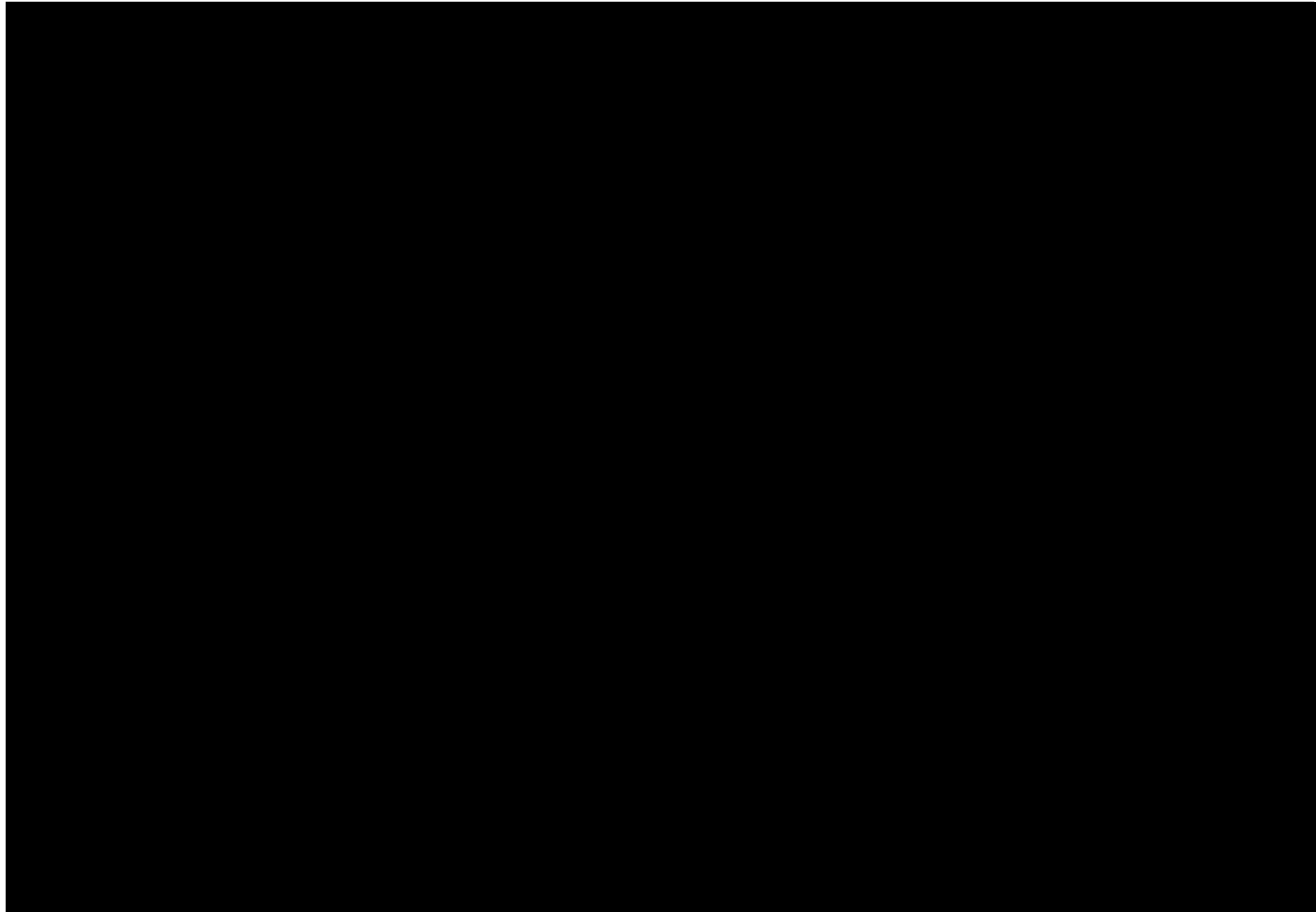
term or any extension of the Term.

- (i) **Sample Calculation.** A sample calculation of the cost of service adjustment mechanism set out in this section 2.2 is attached as Exhibit A to this Schedule D. The Parties acknowledge and agree that the sample calculation is for demonstration purposes only and does not affect the interpretation of or form a part of this Agreement.

3. VOLUME SCHEDULE



Exhibit A to Schedule D



CONFIDENTIAL

Appendix C

DRAFT E ORDER

~~FILED CONFIDENTIALLY~~



ORDER NUMBER

E-xx-xx

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.
Section 71 Filing of an Amending Agreement to the Biomethane Purchase Agreement
between FortisBC Energy Inc. and Capital Regional District

BEFORE:

[Panel Chair]
Commissioner
Commissioner

on Date

ORDER

WHEREAS:

- A. On November 10, 2022, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (BCUC) an application for acceptance of an amending agreement dated August 10, 2022 (Amending Agreement No. 1) to the existing Biomethane Purchase Agreement (BPA) between FEI and the Capital Regional District (CRD), pursuant to section 71 of the *Utilities Commission Act* (UCA) and BCUC Rules for Natural Gas Energy Supply Contracts (Rules) (Application);
- B. Section 18(1) of the *Clean Energy Act* (CEA) defines a prescribed undertaking as “...a project, program, contract or expenditure that is in a class of projects, programs, contracts or expenditures prescribed for the purpose of reducing greenhouse gas emissions in British Columbia”;
- C. Section 18(3) of the CEA states that “the commission must not exercise a power under the UCA in a way that would directly or indirectly prevent a public utility...from carrying out a prescribed undertaking”;
- D. On May 25, 2021, the LGIC, by Order in Council (OIC) 306/2021, approved an amendment to the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR), which among other things, repealed and replaced section 2 (3.8) to state:

(3.8) The public utility acquires renewable natural gas

a) at costs that meet the following criteria, as applicable:

- i. if the public utility acquires renewable natural gas by purchasing it, the price of the renewable natural gas does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the contract for purchase is signed;

- ii. if the public utility acquires renewable natural gas by producing it, the levelized cost of production reasonably expected by the public utility does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the public utility decides to construct or purchase the production facility, and
 - b) that, in a calendar year, does not exceed 15% of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, subject to subsection (3.9) and section 10;
- E. On June 21, 2021, by Order E-15-21, the BCUC accepted the BPA between FEI and CRD, pursuant to section 71 of the UCA, the Rules, section 18 of the CEA and the GGRR;
- F. Amending Agreement No. 1 amends the amount of gigajoules (GJ) per contract year under the BPA;
- G. The BCUC has not reviewed the Application from a public interest perspective as the CRD BPA, as amended, is a prescribed undertakings under section 18(1) of the CEA;
- H. FEI requests that the Application be kept confidential due to their commercially sensitive nature; and
- I. The BCUC has reviewed the Application considers the following determinations are warranted.

NOW THEREFORE pursuant to section 71 of the UCA and section 18 of the CEA and the GGRR, the BCUC orders as follows:

1. The BCUC accepts for filing the BPA between FEI and CRD.
2. The BCUC will keep the Application confidential as requested by FEI as they contain commercially sensitive information.

DATED at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)
Commissioner

Attachment (Yes? No?)