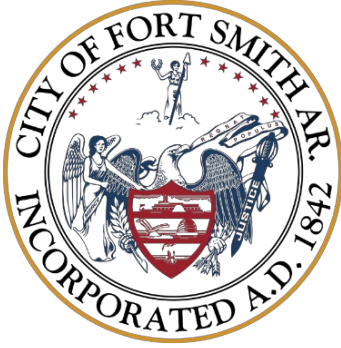




MAYOR

George B McGill

**ACTING CITY
ADMINISTRATOR**

Jeff Dingman

CITY CLERK

Sherri Gard

BOARD OF DIRECTORS

Ward 1 - Jarred Rego

Ward 2 - Andre' Good

Ward 3 - Lee Kemp

Ward 4 - George Catsavis

At-Large Position 5 - Christina Catsavis

At-Large Position 6 - Kevin Settle

At-Large Position 7 - Neal Martin

AGENDA

Fort Smith Board of Directors

REGULAR MEETING

October 21, 2025 ~ 6:00 p.m.

Blue Lion

101 North 2nd Street

Fort Smith, Arkansas

**THIS MEETING IS BEING TELECAST LIVE ON THE
CITY OF FORT SMITH GOVERNMENT ACCESS CHANNEL (COX CHANNEL 214)
AND ONLINE AT THE FOLLOWING LINK:**

https://fortsmithar.granicus.com/ViewPublisher.php?view_id=1

INVOCATION & PLEDGE OF ALLEGIANCE

ROLL CALL

**PRESENTATION BY MEMBERS OF THE BOARD OF DIRECTORS OF ANY ITEMS OF
BUSINESS NOT ALREADY ON THE AGENDA FOR THIS MEETING**

APPROVE MINUTES OF OCTOBER 14, 2025 REGULAR MEETING

ITEMS OF BUSINESS

1. Consent Agenda
 - 1A. Resolution authorizing the City Administrator to execute all necessary agreements for employee insurance coverage (*Human Resources*)
 - 1B. Resolution accepting bid for the purchase of liquid chlorine for 2025-2026 (*Annual Bid / Budgeted / Various Departments*) ~ Ordinance waiving competitive bidding tabled at the September 2, 2025 regular meeting pending solicitation of additional bids ~ (*Finance*)

- 1C. Resolution authorizing partial payment to TLS Group, Inc. for construction of the 2024 Traffic Signal Detection Improvements, Project No. 24-09-B (\$1,559,421.30 / Budgeted / Engineering - Sales Tax Program) (Engineering) ♦
- 1D. Resolution authorizing the Mayor to execute an agreement with Steve Beam Construction, Inc. for construction of the Solid Waste Services Department Vehicle Wash Bay (\$1,649,700.00 / Budgeted / Solid Waste Services - Sinking Fund/Capital Outlay - Buildings) (Solid Waste Services)
- 1E. Resolution authorizing the Mayor to execute a contract for purchase of renewable natural gas from Clean Energy Fuels (Solid Waste Services)

OFFICIALS FORUM - presentation of information requiring no official action

- Mayor
- Directors
- City Administrator

EXECUTIVE SESSION

- Advertising and Promotion Commission (1)
- Fire Code Board of Appeals & Adjustments (1)
- National League of Cities (NLC) Voting Delegate (1)
NLC City Summit / November 19-22, 2025 / Salt Lake, Utah

ADJOURN



MEMORANDUM

TO: Honorable Mayor & Members of the Board of Directors
CC: Jeff Dingman, Acting City Administrator
FROM: Eric Garvin, Director of Human Resources
DATE: October 15, 2025
SUBJECT: Resolution to finalize employee benefit providers

SUMMARY

OneDigital Health and Benefits, the City of Fort Smith's insurance broker, has worked diligently to secure competitive pricing for our medical stop-loss insurance coverage and to secure competitive pricing and improve our dental, life, disability and supplemental insurance for 2026.

Everest Reinsurance Company, through Evolution Risk Partners (a managing general underwriter), is the City's current specific excess insurance and aggregate excess insurance (stop-loss) carrier. Everest/Evolution Risk has agreed to offer a one-year agreement for our 2026 coverage. Our individual stop-loss deductible will remain \$250,000. The estimated annual fixed cost will increase approximately 49% from \$953,674 to \$1,421,073 based on our current census. This agreement with Everest Reinsurance is good through December 31, 2026.

QCA Health Plan, Inc. (QualChoice), our current third-party administrator (TPA) for our self-insured medical plan, has offered a one-year agreement to remain our TPA. The estimated annual fixed administrative fees will increase 3% from \$351,160 to \$361,750 based on our current census. This agreement with QCA Health Plan is good through December 31, 2026.

Delta Dental, our current administrator for our self-insured dental insurance plan, has offered a 3-year agreement for our administrative fees. The individual annual dental maximum has increased from \$1,500 to \$2,500. The estimated annual fixed administrative fees will increase 15% from \$43,140 to \$49,600 based on our current census. This agreement with Delta Dental is good through December 31, 2028.

Mutual of Omaha, our current provider of life insurance, disability insurance and supplemental insurance, has offered a 3-year hold on the premiums, and decreased LTD rates by 20%. The estimated annual LTD cost will decrease from \$280,735 to \$223,440 based on our current census. This agreement with Mutual of Omaha is good through December 31, 2028.

The attached resolution authorizes the City Administrator to execute all necessary agreements for medical stop-loss coverage, dental, life, disability and supplemental insurance coverage. I recommend the resolution be approved.

ATTACHMENTS

1. [Insurance_Renewal_Resolution_10212025.pdf](#)

RESOLUTION NO. _____**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE ALL
NECESSARY AGREEMENTS FOR EMPLOYEE INSURANCE COVERAGE**

WHEREAS, the City of Fort Smith desires to provide medical, prescription, dental, vision, disability and life insurance to its current employees; and,

WHEREAS, the City of Fort Smith also desires to provide supplemental insurance benefits to its current employees; and,

WHEREAS, the City of Fort Smith through its benefits broker, One Digital, issued requests for competitive quotes and negotiated rates for the following coverages for 2026 – medical stop-loss, third party administrator (TPA), dental, basic life and accidental death and dismemberment, long-term disability, voluntary short-term disability, voluntary critical illness, voluntary accident and voluntary life; and,

WHEREAS, the contribution strategy and reserve fund balance should be reviewed and potentially updated on no less than a biennial basis based on stop-loss and actuarial data provided by the benefits broker and third-party administrator; and,

WHEREAS, the contribution strategy for fund 9106 is an overall range of 70%-80% employer funded and 30%-20% employee funded; and,

WHEREAS, each year during preparation for the upcoming year's budget, the employer/employee contribution amounts will be adjusted to reflect employer/employee contribution percentages based on the projected cost of the insurance and to adjust for any deficit or surplus in the reserve balance in fund 9106.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF
THE CITY OF FORT SMITH, THAT:**

SECTION 1: Everest Reinsurance Company through Evolution Risk Partners, LLC, a Managing General Underwriter, is selected to provide the City's Specific Excess Insurance and Aggregate Excess Insurance (stop-loss) for the year 2026 for the self-funded medical plan for employees of the City of Fort Smith. Everest Reinsurance Company/Evolution Risk Partners, LLC is the current provider of stop-loss coverage. The stop-loss agreement with Everest Reinsurance Company/Evolution Risk Partners, LLC is a one-year agreement expiring December 31, 2026 and such agreement is hereby approved.

SECTION 2: QCA Health Plans (Qualchoice) is selected as the TPA for the City's medical plan. QCA Health Plans (Qualchoice) is the City's current TPA. The TPA agreement is a one-year agreement expiring December 31, 2026 and such agreement

is hereby approved.

SECTION 3: Delta Dental is selected as the City's dental coverage provider for the City's self-insured dental plan. Delta Dental is the City's current dental coverage provider. The agreement with Delta Dental is for a three-year rate agreement expiring 12/31/2028 and such agreement is hereby approved.

SECTION 4: Mutual of Omaha Insurance Company is selected as the City's provider of basic life and accidental death and dismemberment insurance. Mutual of Omaha is the current basic life and accidental death and dismemberment provider. The agreement with Mutual of Omaha is a three-year agreement expiring 12/31/2028 and such agreement is hereby approved.

SECTION 5: Mutual of Omaha Insurance Company is selected as the City's provider of long-term disability insurance. Mutual of Omaha is the current long-term disability provider. The agreement with Mutual of Omaha is a three-year agreement expiring 12/31/2028 and such agreement is hereby approved.

SECTION 6: Mutual of Omaha Insurance Company is selected as the City's provider of voluntary short-term disability insurance. Mutual of Omaha is the current short-term disability provider. The agreement with Mutual of Omaha is a three-year agreement expiring 12/31/2028 and such agreement is hereby approved.

SECTION 7: Mutual of Omaha Insurance Company is selected as the City's provider of voluntary life insurance. Mutual of Omaha is the current voluntary life provider. The agreement with Mutual of Omaha is a three-year agreement expiring 12/31/2028 and such agreement is hereby approved.

SECTION 8: Mutual of Omaha Insurance Company is selected as the City's provider of voluntary critical illness insurance. Mutual of Omaha is the current voluntary critical illness provider. The agreement with Mutual of Omaha is a three-year agreement expiring 12/31/2028 and such agreement is hereby approved.

SECTION 9: Mutual of Omaha Insurance Company is selected as the City's provider of voluntary accident insurance. Mutual of Omaha is the current voluntary accident provider. The agreement with Mutual of Omaha is a three-year agreement expiring 12/31/2028 and such agreement is hereby approved.

SECTION 10: The City Administrator, or their designee, is hereby authorized to execute all documents necessary to contract for coverage and services as authorized by Sections 1 through 9 of this Resolution.

This Resolution adopted this _____ day of _____, 2026.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form:



No Publication Required



MEMORANDUM

TO: Jeff Dingman, Acting City Administrator
CC: Maggie Rice, Deputy City Administrator
FROM: Andrew Richards, Chief Financial Officer
DATE: October 16, 2025
SUBJECT: 2025 - 2026 Liquid Chlorine Bid Tabulation

SUMMARY

Attached you will find the bid tabulation for the 2025-2026 purchase of Liquid Chlorine. Liquid Chlorine is used in the water treatment process. The chemical will be used at the Lake Fort Smith & Lee Creek Water Treatment Plants.

This bid was procured according to the City of Fort Smith Purchasing Procedure. According to this procedure, known vendors & the incumbent were emailed the Invitation to Bid directly. These vendors included: Brenntag Southwest, Hawkins, Inc. and Harcros Chemicals. The bid was also posted to the general public on the City website. It was posted online from September 26, 2025 until bid opening. Also, it was advertised in two newspapers, the NW Arkansas Gazette and the River Valley Democrat Gazette.

The public bid opening was held at 10:30 a.m. on October 14 at the Blue Lion. Only one vendor submitted a bid—Brenntag Southwest, the incumbent provider for Liquid Chlorine.

Purchases for this chemical have been budgeted for by the Water Resources Department.

I recommend that the bid noted by enclosure on the attached tabulation be accepted. Please let me know if you should have any questions.

Enclosure:
 Bid Tabulation 5501-2526LC-BA

ATTACHMENTS

1. [10-21-25__ITEM_ID_2148__Resolution_Liquid_ChlorineI_Bid_2025-2026.pdf](#)
2. [10_21_2025 Item 2148_ Bid Tab.pdf](#)

FISCAL IMPACT: *Annual Bid*
BUDGET INFORMATION: *Budgeted / Various Departments*

RESOLUTION NO. _____

RESOLUTION ACCEPTING BID FOR THE PURCHASE OF LIQUID CHLORINE
FOR 2025-2026

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT
SMITH, ARKANSAS THAT:

The Bid, as indicated by enclosure on the attached Bid Tabulation 5501-2526LC-BA, for
the purchase of liquid chlorine for 2025-2026 is hereby accepted.

This Resolution adopted this _____ day of October, 2025.

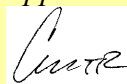
APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form:



No Publication Required

Interoffice Memorandum

TO: Jeff Dingman, Interim City Administrator
COPY TO: Lance McAvoy, Director of Water Resources
FROM: Andrew Richards, Chief Financial Officer
SUBJECT: Bid Tabulation-Liquid Chlorine Delivery and Supply
DATE: October 14, 2025
Bid Tab: 5501-2526LC-BA



The below bid tabulation indicates each vendor's price for the delivery and supply of liquid chlorine in one (1) ton cylinders, per cylinder, for Water Resources.

I recommend that the bid indicated below be accepted.

VENDOR	BID
BRENNTAG SOUTHWEST	\$2,924.00✓
HAWKINS	<u>No Bid</u>
HARCROS	<u>No Bid</u>

Date Advertised: 9/28/2025
Date Opened: 10/14/2025
✓Bid Award

Approved and Accepted by:

Andrew Richards, Chief Financial Officer



MEMORANDUM



TO: Jeff Dingman, Acting City Administrator
CC: Maggie Rice, Deputy City Administrator
FROM: Ben Marts, Interim Director of Engineering
DATE: October 15, 2025
SUBJECT: 2024 Traffic Signal Detection Project No. 24-09-B

SUMMARY

The work in this project included upgrading outdated detection equipment at 19 intersections along Rogers Avenue and at six intersections along Phoenix Avenue. This new equipment will provide additional analytics to allow us to enhance service performance by allowing City personnel to utilize the latest software. These upgrades will help provide better progression of traffic and aid in identifying problem areas more quickly and efficiently. In addition, the new equipment will assist alleviating issues that hampered the old video equipment such as sunlight, fog, shadows and lack of light. A location map is attached along with a summary sheet which provides project cost and contract time information.

Periodic pay estimate number 1 is in the amount of \$1,559,421.30. A summary sheet which provides project cost information is also attached. The City Municipal Code (Section 2-162) requires that all payments in excess of \$750,000.00 be approved by the Board of Directors.

This project aligned with the comprehensive plan policies FLU-1.4 (Ensure adequate, well maintained infrastructure, public safety, and public facilities for all development and prevent development ahead of infrastructure and service provision) and TI-4.2 (Ensure that utility and infrastructure systems can meet the city's long-term needs).

A Resolution authorizing this payment is attached. I recommend that this payment be approved.

ATTACHMENTS

1. [24-09-B_Partial_Pay_Resolution_Pay_Estimate_1_10-15-25_SE.pdf](#)
2. [24-09-B Partial Payment Summary \(Pay Estimate 1\).pdf](#)
3. [24-09-B Signal Detection Location Map.pdf](#)

FISCAL IMPACT: \$1,559,421.30
BUDGET INFORMATION: Budgeted / Engineering - Sales Tax Program

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING PARTIAL PAYMENT TO
TLS GROUP, INC., FOR CONSTRUCTION OF THE
2024 TRAFFIC SIGNAL DETECTION IMPROVEMENTS
PROJECT NO. 24-09-B**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH,
ARKANSAS, THAT:

Payment in the amount of \$1,559,421.30 for Periodic Pay Estimate No. 1 to TLS Group, Inc., is
hereby approved for construction of the 2024 Traffic Signal Detection Improvements, Project No. 24-
09-B.

This resolution adopted this _____ day of October, 2025.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form



No Publication Required

SUMMARY SHEET

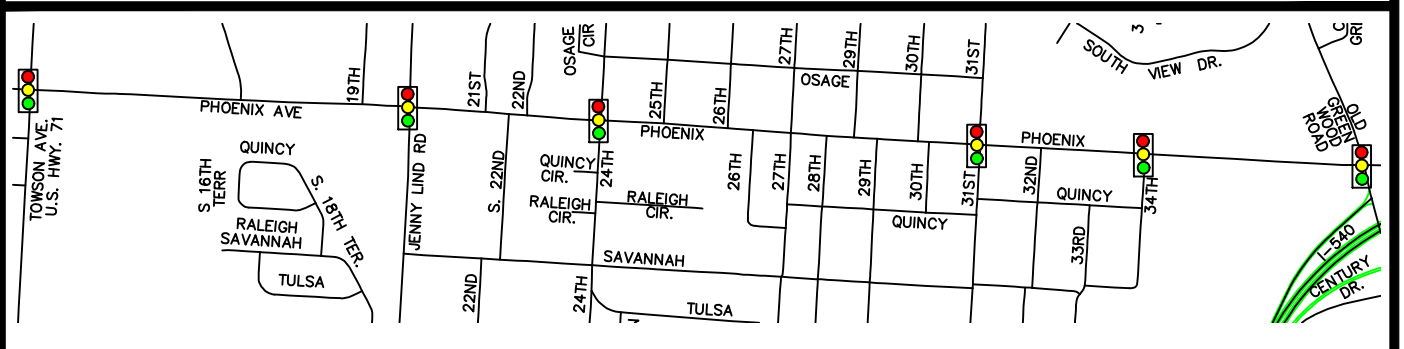
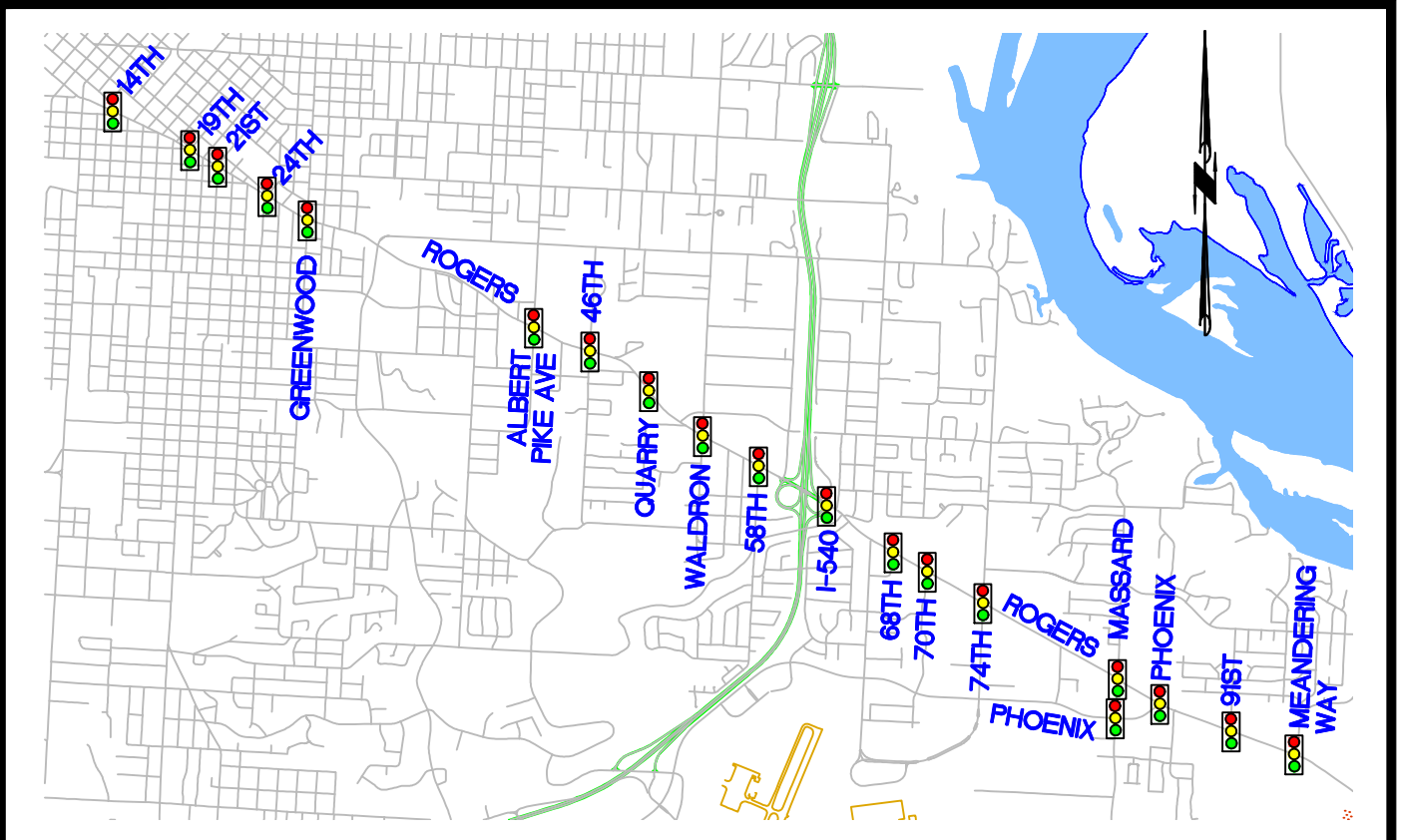
Project Status: Ongoing
Today's Date: 10/15/2025
Staff Contact Name: Ben Marts
Staff Contact Phone: (479) 784-2243
Contract Time (no of days): 180
Notice to Proceed Issued: 5/19/2025

Project Name: 2024 Traffic Signal Detection
Improvements
Project Number: 24-09-B
Project Engineer: Traffic Engineering Consultants, Inc
Project Contractor: TLS Group, Inc.

	Dollar Amount	Contract Completion Date
Original bid award	\$1,812,317.00	N/A
Contract Revision:	\$ -	
Adjusted contract amount	<u>\$1,812,317.00</u>	
Work Completed to Date	\$1,641,496.11	
Materials Stored	\$0.00	
Total Work Completed to Date/Materials Stored	\$1,641,496.11	
Retainage held (5%)	-\$82,074.81	
Net amount Earned to Date	\$1,559,421.30	
Amount of previous payment	\$0.00	
Amount of this payment (Pay Estimate #1)	\$1,559,421.30	
Contract balance remaining	\$170,820.89	

Final Comments:

The City Municipal Code requires that all payments in excess of \$750,000.00 be approved by the Board of Directors.



2024 CAPITAL IMPROVEMENTS PROGRAM TRAFFIC SIGNAL DETECTION IMPROVEMENTS		Project:	24-09-B
		Date:	JAN 2025
		Scale:	NONE
		Drawn By:	RBR



MEMORANDUM

TO: Jeff Dingman, Acting City Administrator
FROM: Duane McDonald, Director of Solid Waste Services
DATE: October 16, 2025
SUBJECT: AIA Document A101 - 2017 agreement dated October 2, 2025 for the Solid Waste Services Department Vehicle Wash Bay

SUMMARY

A drive-through Vehicle Wash Bay was approved as part of the Solid Waste Services Department's 2025 Capital Improvement Plan. Design of the wash bay has been completed, 3 competitive bids received for construction, and the attached contract prepared for the low bidder. This contract is for construction of the enclosed wash bay, equipment room, exterior wash and required utility improvements.

Purchase and installation of wash bay equipment will be contracted separately and is not included in this contract.

Please contact me if you or Board members have any comments, questions or require further information.

ATTACHMENTS

1. AIA Document A101 – 2017, Standard Form of Contract between Owner and Contractor for Solid Waste Department Vehicle Wash Bay, dated Oct. 2, 2025

ATTACHMENTS

1. [10-21-25_Item_ID_2240_Solid_Waste_Services.pdf](#)
2. [Printable AIA Document.pdf](#)

FISCAL IMPACT: \$1,649,700.00

BUDGET INFORMATION: Budgeted / Solid Waste Services - Sinking Fund/Capital Outlay - Buildings

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT
WITH STEVE BEAM CONSTRUCTION, INC FOR CONSTRUCTION OF THE
SOLID WASTE SERVICES DEPARTMENT VEHICLE WASH BAY**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: The AIA Document A101-2017 agreement dated October 2, 2025 between the City of Fort Smith and Steve Beam Construction, Inc. for construction of the Solid Waste Services Department Vehicle Wash Bay, to include an enclosed wash bay, equipment room, and an exterior wash bay along with the associated site utility improvements, is hereby approved.

SECTION 2: The Mayor, his signature being attested by the City Clerk, is hereby authorized to execute the Agreement approved by Section 1, which is incorporated herein by reference, in the amount of \$1,649,700.00 and for a contract period of 180 days for performing said construction.

This Resolution adopted this _____ day of October, 2025.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form:



No Publication Required

AIA[®] Document A101[®] – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Second day of October in the year Two Thousand Twenty-Five
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Fort Smith
623 Garrison Avenue
Fort Smith, AR 7290
479-784-2201

and the Contractor:
(Name, legal status, address and other information)

Steve Beam Construction, Inc.
7201 South 28th Street
Fort Smith, AR 72908
479-484-1634

for the following Project:
(Name, location and detailed description)

Solid Waste Department Vehicle Wash Bay
5900 Commerce Road
Fort Smith, AR 72916
New construction of an enclosed wash bay, equipment room, and an exterior wash bay, and associated site utility improvements. The wash bay equipment will be contracted for separately by the Owner and is not included in this contract.

The Architect:
(Name, legal status, address and other information)

Studio 6 Architects
1120 Garrison Avenue, Suite 1A
Fort Smith, AR 72901
(479)782-4085

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☐ The date of this Agreement.
- ☒ A date set forth in a notice to proceed issued by the Owner.
- ☐ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

- ☒ Not later than One Hundred Eighty (180) calendar days from the date of commencement of the Work.
- ☐ By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Six Hundred and Nineteen Thousand Seven Hundred Dollars and Zero Cents (\$ 1,619,700.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

The following Alternates are listed as **CONDITIONAL**, meaning the acceptance of the Alternate depends on existing conditions to be discovered once the Work proceeds.

Item	Price	Conditions for Acceptance
Alternate No. 1: Reroute and Casing of Existing 6" Water Line (CONDITIONAL)	\$25,000	
Alternate No. 2: Reroute and Casing of Existing 8" Water Line (CONDITIONAL)	\$30,000	

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
------	-------

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
Unit Price No. 1: Removal of unsatisfactory soil and replacement with satisfactory soil material.	One cubic yard, based on in-place surveys of volume before and after removal.	\$50.00
Unit Price No. 2: Rock excavation and replacement with satisfactory soil material.	One cubic yard, based on in-place surveys of volume before and after removal.	\$250.00
Unit Price No. 3: Trench rock excavation and replacement with satisfactory soil material.	One cubic yard, based on in-place surveys of volume before and after removal.	\$350.00

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

\$250.00 under the conditions described in the INSTRUCTIONS TO BIDDERS.

§ 4.6 Other:
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the First day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the Fifteenth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Forty-Five (45) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

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User Notes:

(68de8dc3e639213fbd79fac4)

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

5%

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

General Conditions, Insurance, Permits

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

Upon reaching 50% completion, if the Work is progressing to the satisfaction of the Owner, the Contractor may with the approval of the Owner cease withholding retainage on the remaining progress payments.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

None.

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

Shannon Reith, AIA
Studio 6 Architects
1120 Garrison Avenue, Suite 1A
Fort Smith, AR 72901
479-782-4085

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

None.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

Terry Rankin
Solid Waste Department
5900 Commerce Road
Fort Smith, AR 72916
(479) 784-2350
trankin@FortSmithAR.gov

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

Steve Beam
7201 South 28th Street
Fort Smith, AR 72908
479-484-1634
sbeam@stevebeamconstruction.com

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007 and the Supplementary General Conditions.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 Drawings- as listed in Section 000115 - LIST OF DRAWING SHEETS of the Project Manual.
- .6 Specifications- the complete Project Manual book, dated 07/30/2025, with sections as listed in the Table of Contents.
- .7 Addenda, if any:

Number	Date	Pages
009113.01 - ADDENDUM NO. 01	09/17/2025	2 pages (8-1/2 x 11); Sheets C1 & C2, dated 07-15-2024.
009113.02 - ADDENDUM NO. 02	09/22/2025	1 page (8-1/2 x 11), 14 pages (Whiting Systems, Inc. wash equipment drawings.
009113.03 - ADDENDUM NO. 03	09/24/2025	1 page (8-1/2 x 11)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

[X] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Supplementary General Conditions	Included in the Project Manual	07/30/2025	1-8

- .9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals,

are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

The Invitation to Bid, Instructions to Bidders, Sample forms, and the Contractor's Bid Proposal.

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

BY: Jeff Dingman, Interim City Administrator

(Printed name and title)

CONTRACTOR *(Signature)*

BY: Steve Beam, President

(Printed name and title)

Additions and Deletions Report for AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:26:59 CDT on 10/02/2025.

Changes to original AIA text

PAGE 3

§ 4.2.1 Alternates, if any, included in the Contract Sum:

The following Alternates are listed as CONDITIONAL, meaning the acceptance of the Alternate depends on existing conditions to be discovered once the Work proceeds.

Item	Price	Conditions for Acceptance
Alternate No. 1: Reroute and Casing of Existing 6" Water Line (CONDITIONAL)	\$25,000	
Alternate No. 2: Reroute and Casing of Existing 8" Water Line (CONDITIONAL)	\$30,000	
Item	Units and Limitations	Price per Unit (\$0.00)
Unit Price No. 1: Removal of unsatisfactory soil and replacement with satisfactory soil material.	One cubic yard, based on in-place surveys of volume before and after removal.	\$50.00
Unit Price No. 2: Rock excavation and replacement with satisfactory soil material.	One cubic yard, based on in-place surveys of volume before and after removal.	\$250.00
Unit Price No. 3: Trench rock excavation and replacement with satisfactory soil material.	One cubic yard, based on in-place surveys of volume before and after removal.	\$350.00

PAGE 5

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PAGE 7

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents, and provide bonds as

set forth in Article 11 of AIA Document A201-2007 and the Supplementary General Conditions.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™ 2017 Exhibit A, and elsewhere in the Contract Documents.

~~2~~ — AIA Document A101™ 2017, Exhibit A, Insurance and Bonds

~~5~~ Drawings- as listed in Section 000115 - LIST OF DRAWING SHEETS of the Project Manual.

~~6~~ Specifications- the complete Project Manual book, dated 07/30/2025, with sections as listed in the Table of Contents.

Number	Date	Pages
009113.01 - ADDENDUM NO. 01	09/17/2025	2 pages (8-1/2 x 11); Sheets C1 & C2, dated 07-15-2024.
009113.02 - ADDENDUM NO. 02	09/22/2025	1 page (8-1/2 x 11), 14 pages (Whiting Systems, Inc. wash equipment drawings.
009113.03 - ADDENDUM NO. 03	09/24/2025	1 page (8-1/2 x 11)

~~8~~ Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ — AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ — The Sustainability Plan:

Document	Title	Date	Pages
Supplementary General Conditions	Included in the Project Manual	07/30/2025	1-8-

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The Invitation to Bid, Instructions to Bidders, Sample forms, and the Contractor's Bid Proposal.

A201

Variable Information

PAGE 1

AGREEMENT made as of the Second day of October in the year Two Thousand Twenty-Five
(In words, indicate day, month and year.)

City of Fort Smith

623 Garrison Avenue
Fort Smith, AR 7290

479-784-2201

Steve Beam Construction, Inc.

7201 South 28th Street
Fort Smith, AR 72908

479-484-1634

Solid Waste Department Vehicle Wash Bay

5900 Commerce Road
Fort Smith, AR 72916

New construction of an enclosed wash bay, equipment room, and an exterior wash bay, and associated site utility improvements. The wash bay equipment will be contracted for separately by the Owner and is not included in this contract.

Studio 6 Architects

1120 Garrison Avenue, Suite 1A
Fort Smith, AR 72901

(479)782-4085

PAGE 2

- ☐ The date of this Agreement.
- ☒ A date set forth in a notice to proceed issued by the Owner.
- ☐ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)
- ☒ Not later than One Hundred Eighty (180) calendar days from the date of commencement of the Work.
- ☐ By the following date:

PAGE 3

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Six Hundred and Nineteen Thousand Seven Hundred Dollars and Zero Cents (\$ 1,619,700.00), subject to additions and deductions as provided in the Contract Documents.

PAGE 4

\$250.00 under the conditions described in the INSTRUCTIONS TO BIDDERS.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the First day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the Fifteenth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Forty-Five (45) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

PAGE 5

5%

General Conditions, Insurance, Permits

Upon reaching 50% completion, if the Work is progressing to the satisfaction of the Owner, the Contractor may with the approval of the Owner cease withholding retainage on the remaining progress payments.

None.

PAGE 6

Shannon Reith, AIA

Studio 6 Architects
1120 Garrison Avenue, Suite 1A
Fort Smith, AR 72901

479-782-4085

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other (*Specify*)

None.

Terry Rankin

Solid Waste Department
5900 Commerce Road
Fort Smith, AR 72916

(479) 784-2350

trankin@FortSmithAR.gov

Steve Beam

7201 South 28th Street
Fort Smith, AR 72908

479-484-1634

sbeam@stevebeamconstruction.com

PAGE 7

- ☒ Supplementary and other Conditions of the Contract:

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Shannon Reith, AIA, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:26:59 CDT on 10/02/2025 under Order No. 20250147017 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

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User Notes:

(68de8dc3e639213fbd79fac4)



MEMORANDUM

TO: Jeff Dingman, Acting City Administrator
FROM: Duane McDonald, Director of Solid Waste Services
DATE: October 16, 2025
SUBJECT: Contract for Purchase of Renewable Natural Gas from Clean Energy Fuels

SUMMARY

The Fort Smith Solid Waste Services Department operates a growing fleet of compressed natural gas (CNG) trash and recycling collection trucks, and a CNG fueling station at the landfill. The station draws natural gas from the Arkansas Oklahoma Gas (AOG) network, and we currently purchase the gas directly from AOG.

Clean Energy Renewable Fuels, LLC, (CERF), a nationwide producer and retailer of renewable natural gas from landfills and dairy farms across the South and Midwest, has proposed to set up a fuel swap and supply renewable gas for our CNG fueling station. Essentially, we would be buying back from CERF a portion of the renewable gas we provide to the network from the landfill at the same market price we would pay AOG, and since it will be used as vehicle fuel, it qualifies for Renewable Identification Numbers (RINs). RINs are traded on an open market to fossil fuel producers who need renewable energy credits to meet U.S. EPA requirements. CERF proposes sharing with the City 5% of the market value of the RINs generated by our use.

In 2024, Solid Waste vehicles used \$59,200 in natural gas. In 2025, with additional vehicles added to the fleet, we are tracking to spend about \$100,000 on natural gas. CERF estimates that the City's share of the RINs for this usage at recent market values would be worth approximately \$20,000. This potential is expected to increase 10-20% annually in the near term along with our usage as new CNG trash trucks replace diesel trucks in accordance with our Capital Improvement Plan. An additional advantage to the arrangement would be a 95% decrease in the carbon footprint of the CNG fleet due to use of renewable fuel in place of fossil fuel.

This fuel swap and RIN rebate will not change our purchase price for CNG nor require any infrastructure changes. CERF's business references include operators of large CNG-fueled truck and transit fleets including J.B. Hunt, Waste Management, Republic Services, DHL, Dallas Area Rapid Transit, Los Angeles Transit, and regional solid waste companies. CERF and Tomorrow RNG, which collects and processes Fort Smith's landfill gas, are both Enbridge Inc. companies.

Clean Energy has provided a set of 5-year contracts to accomplish the swap, reviewed by the City Attorney, of which I recommend approval.

FISCAL IMPACT: estimated \$99,760 credit over 5 years, with potential for significant growth.

ATTACHMENTS

1. [10-21-25_Item_ID_2246_Solid_Waste_Services.pdf](#)
2. [CERF NAESB Base Contract - City of Fort Smith.pdf](#)
3. [CERF RNG Transaction Confirmation SWAP - City of Fort Smith.pdf](#)
4. [NAESB Special Provisions_062725.pdf](#)

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT BETWEEN THE
CITY OF FORT SMITH AND CLEAN ENERGY RENEWABLE FUELS, LLC FOR THE
PURCHASE OF RENEWABLE NATURAL GAS**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: The contract with Clean Energy Renewable Fuels, LLC for the purchase of renewable gas, which is incorporated herein by reference, is hereby approved.

SECTION 2: The Mayor, his signature being attested by the City Clerk, is authorized to execute the contract with Clean Energy Renewable Fuels, LLC approved by Section 1 hereof.

This Resolution adopted this _____ day of October, 2025.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form:



No Publication Required

Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: _____

The parties to this Base Contract are the following:

PARTY A City of Fort Smith	PARTY NAME	PARTY B Clean Energy Renewable Fuels, LLC
5900 Commerce Rd Fort Smith, AR 72908	ADDRESS	4675 MacArthur Court, Suite 800 Newport Beach, CA 92660
https://www.fortsmithar.gov/	BUSINESS WEBSITE	www.cleanenergyfuels.com
FTS001	CONTRACT NUMBER	FTS001
	D-U-N-S® NUMBER	
☒ US FEDERAL: ☐ OTHER:	TAX ID NUMBERS	☒ US FEDERAL: 27-5411503 ☐ OTHER:
Arkansas	JURISDICTION OF ORGANIZATION	Delaware
☐ Corporation ☐ Limited Partnership ☐ LLP ☐ LLC ☐ Partnership ☒ Other: <u>Arkansas municipality</u>	COMPANY TYPE	☐ Corporation ☐ Limited Partnership ☐ LLP ☒ LLC ☐ Partnership ☐ Other: _____
	GUARANTOR (IF APPLICABLE)	
CONTACT INFORMATION		
City of Fort Smith ATTN: Duane McDonald TEL#: (479) 784-2350 EMAIL: duane.mcdonald@fortsmithar.gov	☒ COMMERCIAL	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
City of Fort Smith ATTN: Duane McDonald TEL#: (479) 784-2350 EMAIL: duane.mcdonald@fortsmithar.gov	☒ SCHEDULING	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
City of Fort Smith ATTN: Duane McDonald TEL#: (479) 784-2350 EMAIL: duane.mcdonald@fortsmithar.gov	☒ CONTRACT AND LEGAL NOTICES	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
City of Fort Smith ATTN: Duane McDonald TEL#: (479) 784-2350 EMAIL: duane.mcdonald@fortsmithar.gov	☒ CREDIT	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
City of Fort Smith ATTN: Duane McDonald TEL#: (479) 784-2350 EMAIL: duane.mcdonald@fortsmithar.gov	☒ TRANSACTION CONFIRMATIONS	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
ACCOUNTING INFORMATION		
City of Fort Smith ATTN: Duane McDonald TEL#: (479) 784-2350 EMAIL: duane.mcdonald@fortsmithar.gov	☒ INVOICES ☒ PAYMENTS ☒ SETTLEMENTS	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____
BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____	ACH NUMBERS (IF APPLICABLE)	BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____
ATTN: _____ ADDRESS: _____	CHECKS (IF APPLICABLE)	ATTN: <u>Clean Energy Renewable Fuels, LLC</u> ADDRESS: <u>4675 MacArthur Ct, Suite 800</u> <u>Newport Beach, CA 92660</u>

Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

Section 1.2 Transaction Procedure ☐ Oral (default) OR ☒ Written	Section 10.2 Additional Events of Default ☒ No Additional Events of Default (default) ☐ Indebtedness Cross Default ☐ Party A: _____ ☐ Party B: _____ ☐ Transactional Cross Default <u>Specified Transactions:</u> _____ _____
Section 2.7 Confirm Deadline ☒ 2 Business Days after receipt (default) OR ☐ 5 Business Days after receipt	
Section 2.8 Confirming Party ☒ Seller (default) OR ☐ Buyer ☐ _____	
Section 3.2 Performance Obligation ☒ Cover Standard (default) OR ☐ Spot Price Standard	Section 10.3.1 Early Termination Damages ☐ Early Termination Damages Apply (default) OR ☒ Early Termination Damages Do Not Apply
Note: The following Spot Price Publication applies to both of the immediately preceding.	
Section 2.31 Spot Price Publication ☒ Gas Daily Midpoint (default) OR ☐ _____	Section 10.3.2 Other Agreement Setoffs ☒ Other Agreement Setoffs Apply (default) ☒ Bilateral (default) ☐ Triangular OR ☐ Other Agreement Setoffs Do Not Apply
Section 6 Taxes ☒ Buyer Pays At and After Delivery Point (default) OR ☐ Seller Pays Before and At Delivery Point	
Section 7.2 Payment Date ☒ 25 th Day of Month following Month of delivery (default) OR ☐ Day of Month following Month of delivery	Section 15.5 Choice Of Law <u>Arkansas</u>
Section 7.2 Method of Payment ☐ Wire transfer (default) ☐ Automated Clearinghouse Credit (ACH) ☒ Check	Section 15.10 Confidentiality ☒ Confidentiality applies (default) OR ☐ Confidentiality does not apply
Section 7.7 Netting ☒ Netting applies (default) OR ☐ Netting does not apply	
☒ Special Provisions: 1 page ☐ Addendum(s):	

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

City of Fort Smith	PARTY NAME	Clean Energy Renewable Fuels, LLC
By: _____	SIGNATURE	By: _____
	PRINTED NAME	
	TITLE	

General Terms and Conditions

Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

- 2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

- 2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.
- 2.31. "Spot Price " as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.
- 2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.
- 2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

- 3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.

Cover Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Spot Price Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

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

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

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

SECTION 5. QUALITY AND MEASUREMENT

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

SECTION 6. TAXES

The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

SECTION 7. BILLING, PAYMENT, AND AUDIT

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

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

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

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

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

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

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

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

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

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

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

SECTION 9. NOTICES

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

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

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is

not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

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

SECTION 10. FINANCIAL RESPONSIBILITY

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

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Supper Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

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

The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early

Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

Early Termination Damages Do Not Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

Other Agreement Setoffs Apply:

Bilateral Setoff Option:

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

Triangular Setoff Option:

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

Other Agreement Setoffs Do Not Apply:

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

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

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

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

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 11. FORCE MAJEURE

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

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

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

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

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

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

SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

SECTION 15. MISCELLANEOUS

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

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

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

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

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

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

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

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

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall

cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

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

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____, ____ Transaction Confirmation #: _____			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.				
SELLER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	BUYER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____			
Contract Price: \$_____/MMBtu or _____				
Delivery Period: Begin: _____, ____ End: _____, ____				
Performance Obligation and Contract Quantity: (Select One) <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP </td> <td style="width: 33%; vertical-align: top;"> Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of ☐ Buyer or ☐ Seller </td> <td style="width: 33%; vertical-align: top;"> Interruptible: Up to _____ MMBtus/day </td> </tr> </table>		Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of ☐ Buyer or ☐ Seller	Interruptible: Up to _____ MMBtus/day
Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of ☐ Buyer or ☐ Seller	Interruptible: Up to _____ MMBtus/day		
Delivery Point(s): _____ (If a pooling point is used, list a specific geographic and pipeline location):				
Special Conditions:				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

	Date: _____ Transaction Confirmation #: FTS001-TC01			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding upon execution by the parties.				
SELLER: Clean Energy Renewable Fuels, LLC Attn: Jen Komonchak Phone: 949-437-1251 Base Contract No. FTS001	BUYER: City of Fort Smith Attn: Duane McDonald Phone: 479-784-2350			
Contract Price: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Contract Price (\$/MMBtu)</td> </tr> <tr> <td style="padding: 10px;"> The “Contract Price” (per MMBtu) means the First of the Month Index Price for Monthly Deliveries at the Delivery Point as published by the McGraw-Hill Companies, or any successor-in-interest thereto, in the Platt publication, <i>Inside FERC Gas Market Report</i>, first of month publication, under the table “Market Center Spot Prices”, for the delivery Month under the column “Index”, under the table “South Louisiana”, in the row labeled “Henry Hub”. </td> </tr> </table>		Contract Price (\$/MMBtu)	The “ Contract Price ” (per MMBtu) means the First of the Month Index Price for Monthly Deliveries at the Delivery Point as published by the McGraw-Hill Companies, or any successor-in-interest thereto, in the Platt publication, <i>Inside FERC Gas Market Report</i> , first of month publication, under the table “Market Center Spot Prices”, for the delivery Month under the column “Index”, under the table “South Louisiana”, in the row labeled “Henry Hub”.	
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Delivery Period: The Delivery Period shall begin on the Start Date and shall end on the five (5) year anniversary of the Start Date (the “<u>Initial Delivery Period</u>”). Thereafter, the Delivery Period shall automatically renew for consecutive one (1) year renewal terms (each a “<u>Renewal Delivery Period</u>”) unless either party provides the other party with written notice of termination at least six (6) months prior to the applicable renewal date. The Initial Delivery Period and any Renewal Delivery Period(s) shall be collectively referred to as the “<u>Delivery Period</u>”). The “<u>Start Date</u>” shall be (a) within forty-five (45) days following the day this Transaction Confirmation is executed by Seller and Buyer, and (b) reasonably determined by Seller and stated in a written notice (email to suffice) provided by Seller to Buyer at least five (5) days in advance.				
Performance Obligation and Contract Quantity: (Select One) <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP </td> <td style="width: 33%; vertical-align: top;"> Firm (Variable Quantity): 0 MMBtus/day Minimum 200 MMBtus/day Maximum (“Max Daily Quantity”) </td> <td style="width: 33%; vertical-align: top;"> Interruptible: Up to _____ MMBtus/day. </td> </tr> </table> Performance Obligation: During each month of the Delivery Period of this Transaction Confirmation, Seller will deliver to Buyer, and Buyer will purchase, Biogas in identical corresponding volumes to Seller’s purchases of Conventional Gas (as defined below) from Buyer under Transaction Confirmation # FTS001--TC02 (between the		Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP	Firm (Variable Quantity): 0 MMBtus/day Minimum 200 MMBtus/day Maximum (“ Max Daily Quantity ”)	Interruptible: Up to _____ MMBtus/day.
Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP	Firm (Variable Quantity): 0 MMBtus/day Minimum 200 MMBtus/day Maximum (“ Max Daily Quantity ”)	Interruptible: Up to _____ MMBtus/day.		

parties and dated _____) during such month.

The Variable Quantity shall be made up of Biogas. Buyer acknowledges that the delivered quantities of Biogas will fluctuate and agrees to receive all Biogas, up to the Max Daily Quantity. Seller shall be the exclusive provider of Biogas to Buyer at the Delivery Point(s) during the Delivery Period.

Buyer and Seller acknowledge and agree that Seller will use commercially reasonable efforts to deliver Biogas to the Delivery Point(s) during the Delivery Period, but there is no minimum amount of Biogas that Seller is required to deliver, and Seller shall determine, in Seller's sole discretion, the amount of Biogas Seller delivers to the Delivery Point(s). However, regardless of the amount of Biogas that Seller delivers to the Delivery Point(s) during any given month during the Delivery Period, Seller shall pay Buyer a RIN Payment (as defined below) for that month in accordance with Exhibit B, provided that such month is not a Missed Month (as defined below in Section 2(a)).

Delivery Point(s): The Delivery Point(s) shall be the Arkansas Oklahoma Gas Corporation ("AOG") meter interconnect(s) at the compressed natural gas ("CNG") station listed in Exhibit A ("Station"), which is attached hereto and incorporated herein by reference.

Definitions:

"Advanced Biofuel" means a renewable fuel as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012)), other than ethanol derived from corn starch, and which must achieve a Lifecycle Greenhouse Gas Emission displacement of fifty percent (50%) compared to the baseline Lifecycle Greenhouse Gas Emissions.

"Alternative Fuel" means any transportation fuel that is not California reformulated gasoline or a diesel fuel, including but not limited to, those fuels specified in the California Low Carbon Fuel Standard (Cal. Code Regs. tit. 17, § 95480.1(a)(12) (2010)).

"Biogas" or **"RNG"** means pipeline quality Gas derived from the decomposition of organic matter that meets the EPA RFS eligibility requirements as either an Advanced Biofuel or Cellulosic Biofuel.

"Cellulosic Biofuel" means a renewable fuel derived from any cellulose, hemi-cellulose or lignin that has lifecycle greenhouse gas emissions that are at least sixty percent (60%) less than the Baseline Lifecycle Greenhouse Gas emissions (as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012))).

"Conventional Gas" means Gas other than Biogas.

"Disqualified Biogas" means Gas that was initially determined by the parties upon delivery to be Biogas but subsequently becomes disqualified as Biogas by not satisfying the requirements of the EPA Renewable Fuels Standard.

"EPA" means the United States Environmental Protection Agency.

"EPA Renewable Fuels Standard" or **"EPA RFS"** means the renewable energy program and policies established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and which became effective on July 1, 2010.

"Green Attributes" means any and all attributes, including Lifecycle Greenhouse Gas Emissions, associated with the production, sale and use of Biogas as an Advanced Biofuel, Cellulosic Biofuel, low carbon fuel or Alternative Fuel as necessary to generate or claim applicable EPA RINs.

"Greenhouse Gas" means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, or any other substance or combination of substances that may become

regulated or designated as Greenhouse Gases under any federal, state or local law or regulation, or any emission reduction registry, trading system, or reporting or reduction program for Greenhouse Gas emission reductions that is established, certified, maintained, or recognized by any international, governmental (including U.N., federal, state, or local agencies), or non-governmental agency from time to time, in each case measured in increments of one metric tonne of carbon dioxide equivalent.

“Governmental Authority” means any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority, including, without limitation, the EPA or its successor agency.

“Lifecycle Greenhouse Gas Emissions” means the aggregate quantity of Greenhouse Gas emissions (including direct emissions and significant indirect emissions from land use changes), as determined by the EPA RFS, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

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

“RIN Resale Price” shall be calculated by reference to the volume weighted average price of all RINs which is realized by Seller that were generated within the same calendar month.

“Vehicle Fuel” means CNG or liquefied natural gas (LNG) derived from Gas and used in transportation vehicles.

Special Conditions:

1. Representations.

(a) Buyer represents that it shall process all Biogas purchased from Seller hereunder into Vehicle Fuel which shall be distributed as Vehicle Fuel through the Station(s).

2. Records and Documentation Related to Biogas and RIN Credits Creation.

(a) Buyer shall provide Seller with a copy of its natural gas invoices related to the Delivery Point(s) for the prior month (when such prior month is during the term of this Transaction Confirmation) between the 10th and 20th day of each month.

Notwithstanding anything to the contrary in this Transaction Confirmation, including without limitation, the terms in the “Performance Obligation and Contract Quantity” Section above, in the event Seller does not receive the invoice within the time period identified above, Seller shall: (1) not have any obligation to Buyer to make any payment to Buyer (including, without limitation, the RIN Payment) which relates to the month in which Seller did not receive a corresponding natural gas invoice (the **“Missed Month”**); (2) not have any obligation to supply Biogas during the Missed Month, and therefore, shall not generate any RIN credits; and (3) treat such Missed Month as if Seller sold, and Buyer purchased, 0 MMBtus of Biogas during such month and such treatment shall not be considered a breach of any of the obligations of Seller pursuant to this Transaction Confirmation. In the event there are three (3) consecutive Missed Months, Seller may terminate this Transaction Confirmation, based on Buyer’s default, upon a written notice to Buyer which shall specify the effective date of termination.

This obligation to provide the relevant invoice(s) shall survive the termination or expiration of this Transaction Confirmation until the last day of the full calendar month following the month in which this Transaction Confirmation expired or terminated.

(b) Buyer shall provide reasonable cooperation to Seller with respect to the requirements for the generation of RINS under the EPA RFS including, without limitation, by signing periodic attestations regarding the use of the Biogas sold hereunder as a Vehicle Fuel. Further, on at least a quarterly basis, and at any other time requested by Seller, Buyer shall provide Seller with attestations executed by an authorized officer of Buyer which indicate that the volume of Conventional Gas and Biogas (as applicable) delivered to the Station(s) is consumed as a Vehicle Fuel. Buyer shall provide Seller with such attestations no later than thirty (30) days after Seller's written request.

3. Hierarchy and Governing Law.

In the event of any inconsistency between the Base Contract and this Transaction Confirmation, this Transaction Confirmation shall govern. The law governing the Base Contract shall apply to this Transaction Confirmation, except to the extent that the EPA RFS, together with regulations and decisions promulgated thereunder, are applicable to the purchase and sale of Biogas.

4. RIN Sales.

(a) Seller shall remit payments to Buyer as described in this Transaction Confirmation and **Exhibit B**, Payment Schedule.

(b) Buyer acknowledges that Seller and/or its affiliates will act as a principal with respect to their own RINs and/or as an agent with respect to RINs generated and/or sold hereunder and Buyer hereby waives any claim against Seller and/or its affiliates based on any conflict of interest or alleged conflict of interest of Seller and/or its affiliates with respect to the manner, price or terms of the sale of any of the RINs generated and/or sold hereunder. Seller and/or its affiliates and control persons shall owe no fiduciary obligation to Buyer with respect to the RINs generated and sold. Seller and its affiliate's sole obligation with respect to the sale of RINs generated and/or sold in this transaction shall be to use commercially reasonable efforts to sell such credits alongside other RINs that Seller and/or its affiliates may market or sell based on the calendar month in which such credits are generated.

5. Consultant Support.

Buyer and Seller shall work with Seller's consultant and/or RIN quality assurance plan (QAP) provider to ensure that it has created documentation necessary for Biogas and RIN creation in compliance with EPA requirements.

6. Regulatory Hinderance.

In the event that: (a) the RFS is materially modified, repealed, stayed, enjoined, or end prior to the end of the Delivery Period; or (b) a regulatory change (1) makes the sale of the Biogas and conversion thereto into vehicle fuel and the coincident generation of RINs illegal or impossible, or (2) hinders Seller's performance of its obligations under this Transaction Confirmation; (each event shall be referred to as a "**Regulatory Hinderance**"), then Buyer and Seller shall work together to renegotiate the affected terms of this Transaction Confirmation. If Buyer and Seller do not agree on an amendment to the Transaction Confirmation within sixty (60) days from the date the Seller initiated renegotiation, then either Buyer or Seller shall have the right to terminate the Transaction Confirmation. In the event of termination, the process described in Section 10.3 of the Base Contract shall be followed except that (y) references therein to the "Defaulting Party" and to the "Non-Defaulting Party" will be deemed references to Buyer and to Seller, respectively, and (z) no early termination damages will apply to the termination, and therefore, the process described in "Early Termination Damages Do Not Apply" in Section 10.3.1 of the Base Contract shall be

followed. As used herein, “**Biogas Supply Source**” means a third party who sells Biogas to Seller which Seller sells to Buyer hereunder.

7. Environmental Attributes and Alternative Fuel Credit

Buyer is not entitled to any RINS generated from Biogas provided under this Transaction Confirmation, or other environmental attributes that may be attributed to or generated from the Biogas delivered under this Transaction Confirmation other than as specifically stated herein. Seller’s retention and/or sale of RINS generated from the Biogas delivered under this Transaction Confirmation shall not limit Buyer’s ability to report the purchase of Biogas and applicable reductions in greenhouse gases or emissions directly associated with the use of Biogas in its transportation fleet. Seller represents and warrants that no other entity is entitled to claim the reductions in greenhouse gases or emissions directly associated with the use of the Biogas provided hereunder as a transportation fuel other than Buyer.

As between the parties, to the extent available, Buyer shall be solely entitled to claim 100% of the federal Alternative Fuel Credit (defined below) revenue as allowed or may be allowed under Sections 6426 and 6427 of the Internal Revenue Code of 1986 (“Alternative Fuel Credit”), as may be amended, for each gasoline gallon equivalent of Conventional Gas or Biogas dispensed from the Station(s). The parties agree that Buyer will be considered the “Alternative Fueller” as defined in Proposed Treasury Regulation Section 48-6426-1 and is responsible for remitting any federal or state fuel taxes, if any, imposed on the subsequent sale or use of such fuel.

8. Adjustment for Disqualified Biogas

In addition to other remedies available under the Base Contract and hereunder, if Gas sold by Seller and purchased by Buyer hereunder originally deemed to be Biogas becomes classified as Disqualified Biogas and such disqualification did not occur based on an act or omission of Seller, Seller will be entitled to a refund of any payment made to Buyer which is related to such Gas. This obligation shall survive the termination or expiration of this Transaction Confirmation.

9. Failure to Produce Vehicle Fuel

In addition to all other remedies under the Base Contract and hereunder, if Gas sold by Seller and purchased by Buyer hereunder originally deemed to be Biogas is not processed into a Vehicle Fuel, Seller will be entitled to a refund of any payment made to Buyer for the volume of Biogas that was not processed into a Vehicle Fuel. Further, if any Purchased Conventional Gas is not processed into a Vehicle Fuel, Seller will be entitled to a refund of any payment made to Buyer which relates to the volume of Purchased Conventional Gas that was not processed into a Vehicle Fuel. This obligation shall survive the termination or expiration of this Transaction Confirmation.

10. Further Assurances

Each party will provide the other party such cooperation, additional documentation, certifications or other information as may be reasonably necessary to carry out the purposes of this Transaction Confirmation (including pursuant to any audit of this Transaction Confirmation by a Governmental Authority) and in order for title to the conveyed Green Attributes to vest in the Seller in connection with the purchase and sale of the Contract Quantity of Biogas.

11. Biogas Regulatory Reform Rule

The parties acknowledge that on July 12, 2023, the EPA published a final rulemaking known as the Biogas Regulatory Reform Rule, 88 Fed. Reg. 44468 (“BRRR”), that makes certain amendments to the regulations governing the EPA RFS related to the generation of RINs on RNG. The parties agree that they shall cooperate with each other, share documentation and provide access to facilities owned or operated by each party such that RINs can be validly generated under the RFS as amended by the BRRR. Such cooperation shall include, but is not limited to,

sharing, completing and assisting the other party or third parties with product transfer documents, affidavits, reports, records, measurement records, sampling and testing requirements of the RFS as amended by the BRRR.

The parties acknowledge that the BRRR requires entities owning RNG or biogas on which RINs are generated to register with the EPA under the RFS in accordance with their respective roles. The parties agree that Seller shall register with the EPA as the RIN separator in accordance with the BRRR, and that the producer of the RNG that is the subject of this Transaction Confirmation shall be the generator of the RINs on the RNG as required by the RFS as amended by the BRRR.

The parties acknowledge that assigned RINs may not be separated from RNG and become separated RINs (known as "K2 RINs") until the RNG is used as a transportation fuel as defined by the RFS. The parties agree that Seller will separate assigned RINs into K2 RINs when the RNG is withdrawn from the natural gas commercial pipeline system or used or dispensed as transportation fuel at the Station(s).

To the extent not expressly addressed herein and recognizing that guidance and practical custom will be received by the EPA and will be developed by commercial parties during the implementation of the BRRR, the parties shall, without undue delay, implement any other or further amendments, modifications, or changes reasonably necessary to conform their performance to the requirements of the BRRR, and the parties shall conduct any such actions in accordance with Special Condition No. 6 of this Transaction Confirmation.

Seller: **Clean Energy Renewable Fuels, LLC**

Buyer: **City of Fort Smith**

By: _____

By: _____

Name: Robert M. Vreeland

Name:

Title: Chief Financial Officer

Title:

Date: _____

Date: _____

EXHIBIT A

CNG Station Location(s)			
Street Address	City and State	Local Distribution Channel	Meter Number
5900 Commerce Road	Fort Smith, AR	Arkansas Oklahoma Gas Corporation	A0215413

EXHIBIT B
Payment Schedule

Calendar Year	RNG MMBtu	Number of RINs generated per RNG MMBtu ("RIN Generation Rate")	Buyer Percentage of RIN Credit Generation Rate
2025	1	11.6935	5%
2026	1	11.6935	5%
2027	1	11.6935	5%
2028	1	11.6935	5%
2029	1	11.6935	5%
2030	1	11.6935	5%
2031*	1	11.6935	5%
2032*	1	11.6935	5%

*Subject to the renewal provisions of the Delivery Period section of this Transaction Confirmation

Terms and Conditions:

- (1) Within forty-five (45) days of Seller's receipt of payment for all RINs generated during the prior month, Seller will pay Buyer the "**RIN Payment**" which is described below:

[[applicable Calendar Year Buyer Percentage of RIN Credit Generation Rate as shown in the table above] x (applicable RIN Generation Rate as shown in the table above x [(cumulative Gas MMBtus dispensed from the Station(s) (as determined in accordance with Seller's RFS compliance protocol) during the applicable calendar month where such month is within the Delivery Period)] x [RIN Resale Price]]]

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Dated _____, 2025

by and between

City of Fort Smith

and

Clean Energy Renewable Fuels, LLC

These Special Provisions shall supplement and, where applicable, modify and supersede, the Base Contract for Sale and Purchase of Natural Gas (the “Base Contract”) by and between City of Fort Smith (“Fort Smith”) and Clean Energy Renewable Fuels, LLC (the “Contractor”). Capitalized terms used but not defined in these Special Provisions shall have the meanings ascribed to them in the Base Contract. Sections referenced in these Special Provisions refer to a Section of the General Terms and Conditions of the Base Contract, unless stated otherwise.

Section 8.3:

Add the following language to the end of Section 8.3:

“Notwithstanding anything to the contrary herein, the City of Fort Smith shall not provide any indemnity to Clean Energy Renewable Fuels, LLC or any other party hereunder. All references to Seller and Buyer in this Section 8.3 shall be references only to Clean Energy Renewable Fuels, LLC in its relative capacity as seller or buyer under a transaction confirmation.”

IN WITNESS WHEREOF, the parties have executed these Special Provisions to supplement and, where applicable, to modify and supersede, the Base Contract by and between the parties.

CLEAN ENERGY RENEWABLE FUELS, LLC

CITY OF FORT SMITH

By: _____

By: _____

Name:

Name:

Title:

Title:



MEMORANDUM

TO: Mayor and Board of Directors
FROM: Jessica Underwood, Executive Assistant
DATE: October 14, 2025
SUBJECT: Appointment: Advertising and Promotion Commission

SUMMARY

Director Christina Catsavis has resigned from the Advertising and Promotion Commission, creating a vacancy for one of the Board of Directors positions on the commission. The A&P Commission has two Board positions, and Director Jarred Rego currently serves in the second position.

One appointment is needed to fill the vacancy, and the term is indefinite.

ATTACHMENTS

1. [ADVERTISING AND PROMOTION COMMISSION.pdf](#)

ADVERTISING AND PROMOTION COMMISSION

The Advertising and Promotion Commission is authorized to administer and oversee funds received from the three percent Fort Smith lodging tax and is comprised of seven members as follows according to Arkansas Code Ann 26-75-605:

Four members of the commission shall be owners or managers of businesses in the tourism industry and shall reside in either Fort Smith or within Sebastian County. At least three of these four members shall be owners or managers of hotels, motels or restaurants and all of them shall staggered terms of four years. Two members of the commission shall be members of the governing body of the city of Fort Smith and selected by the governing body and shall serve at the will of the governing body. One member of the commission shall be from the public at large who shall reside within Fort Smith or Sebastian County and shall serve for a term of four years. Any vacancy in the four tourism industry positions or the one at large position shall be filled by appointment made by the remaining members of the commission with the approval of the Fort Smith Board of Directors. Meetings are monthly as called.

	<u>DATE APPOINTED</u>	<u>TERM EXPIRES</u>
Daniel Mann 12520 Wilmington Way 479-651-0100 (C) daniel@chaffeecrossing.com	02/15/22	12/31/25
Brandon Goldsmith Professor 8224 Cypress Avenue (08) 858-405-3278 (h) fwrbrandon@hotmail.com	01/03/23	12/31/26
Kaity Gould Owner – FT Smith Coffee Co 10605 Castleton St. 479-650-0702 kaity@fortsmithcoffeeco.com	09/17/24	12/31/26
Storm Nolan CSK Properties Fort Smith Hampton Inn 4320 Industrial Drive (16) 649-6909 snolan@cskhotels.com	11/18/14	12/31/27

10/14/2025

Cheryl Healey
Hotel General Manager
2324 Queensbury Way
479-414-2281 (h)
479-452-2100 (w)
Cheryl.healey@hilton.com

07/19/22

12/31/28

Board of Directors Vacancy

Address

Phone number

Email address

Indefinite

Jarred Rego, City Director
3816 Free Ferry Lane (03)
479-522-3277 (c)
Jarred.rego@fortsmithar.gov

01/03/23

Indefinite



MEMORANDUM

TO: Mayor and Board of Directors
FROM: Jessica Underwood, Executive Assistant
DATE: October 14, 2025
SUBJECT: Appointment: Fire Code Board of Appeals and Adjustments

SUMMARY

The term of Trevor Campbell on the Fire Code Board of Appeals and Adjustments is set to expire on October 30, 2025. Mr. Campbell is not interested in reappointment.

Additionally, there are currently three other vacancies on this board.

An application has been received from Carl Nevin for consideration

Appointments are made by the Board of Directors; one appointment is needed at this time. The new term will expire on October 30, 2029.

ATTACHMENTS

1. [Fire Code Board of Appeals and Adjustments - Appointment.pdf](#)

FIRE CODE BOARD OF APPEALS AND ADJUSTMENTS

The Fire Code Board of Appeals and Adjustments hears appeals of fire codes. The appeals shall be made in writing to the Fire Chief, who will forward them to the chairman. The chairman will notify board members and set up an appeals hearing. Every decision the board makes shall be final, in writing, and indicate the vote.

The board is composed of five members appointed by the **Board of Directors**. After initial staggered terms, the board members will serve four year terms. The Fire Chief is an ex-officio member and acts as secretary (he or she has no vote). The Board meets on call at fire station 1.

	<u>DATE APPOINTED</u>	<u>TERM EXPIRES</u>
Trevor Campbell 120 Martin Cir. (08) 479-831-8420 (h) 479-474-9191 (c) tcampbell@advantage-security.net	7/18/23	10/30/25
Gene Nelson Nelson Insurance Agency P. O. Box 2270 (02) 782-8718 nelsonlns1@aol.com	10/01/85	10/30/26
Ronnie Rogers (vacant) 1512 North 43 Street (04) 883-3131 (h) Rrogers4228@icloud.com	10/15/19	10/30/23
Belva Ross (vacant) 3700 Sandy Point (03) 479-478-9560 (h) 479-462-9623 (w) favoronmylife@aol.com	7/18/23	10/30/23
Marlene Torres (vacant) 300 N 33 rd Circle (03) 479-763-8247 (c) marlene@p-ggroup.com	7/18/23	10/30/24



CITY OF FORT SMITH

Application for Boards /Committees / Commissions

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: SEPT. 24, 2025
Name: CARL NEVIN Home Telephone: 479-739-6073
Home Address: 6107 MEADOW BROOK DR. Work Telephone:
Zip: 72916 FORT SMITH, AR. Email: NEVINBARBARA4@GMAIL.COM

Occupation: RETIRED MANUFACTURING
(If retired, please indicate former occupation or profession)

Education: BETHANY BIBLE COLLEGE
Professional and/or Community Activities: CITY ELDERS, NOON EXCHANGE CLUB, CRIME STOPPERS
Additional Pertinent Information/References: CIVIC LEADERSHIP BREAKFAST

Do you reside within the corporate boundaries of the city of Fort Smith? Yes ☒ No ☐

Are you a registered voter in the city of Fort Smith? Yes ☒ No ☐

Note: Copy of voter registration card must be attached to this application.

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense? Yes ☐ No ☒ Note: "Yes" will not automatically preclude you from consideration.

If yes, please identify the offense and the approximate date.

Drivers License: [REDACTED] Date of Birth: [REDACTED]
(This information will be used to conduct a criminal background check of all applicants).

Please select the board(s), committee(s), or commission(s) on which you would like to serve:

- | | |
|---|---|
| ☐ Advertising & Promotion Commission | ☐ Historic District Commission |
| ☐ Airport Commission | ☐ Housing Assistance Board |
| ☐ Animal Services Advisory Board | ☐ Library Board of Trustees |
| ☐ Arkansas Fair & Exhibition Facilities Board | ☐ Mechanical Board of Adjustments and Appeals |
| ☐ Audit Advisory Committee | ☐ Parks & Recreation Commission |
| ☐ Building Board of Adjustment and Appeals | ☐ Planning Commission |
| ☐ Central Business Improvement District | ☐ Plumbing Advisory Board |
| ☐ Civil Service Commission (3 year residency required) | ☐ Port Authority |
| ☐ Community Development Advisory Committee | ☐ Property Owners Appeals Board |
| ☐ County Equalization Board | ☐ Public Facilities Board Advisory Committee |
| ☐ Electric Code Board of Appeal | ☐ Recycling Advisory Committee |
| ☒ Fire Code Board of Appeals & Adjustments | ☐ Sales Tax Review Committee |
| ☐ Fort Smith Municipal Employees Benevolent Fund Board of Advisors | ☐ Sebastian County Regional Solid Waste Management Board |
| ☐ Future Fort Smith Committee | ☐ Transit Advisory Commission |
| | ☐ Water Advisory Committee |
| | ☐ Utility Advisory Committee |

Please return this form to Jessica Underwood, P.O. Box 1908, Fort Smith, AR 72902
junderwood@fortsmithar.gov



MEMORANDUM

TO: Jeff Dingman, Acting City Administrator
FROM: Sherri Gard, City Clerk
DATE: October 16, 2025
SUBJECT: Voting Delegate to National League of Cities (NLC) City Summit
November 19 - 22, 2025 / Salt Lake, Utah

SUMMARY

Voting delegates must attend the Annual Business Meeting (Saturday, November 22, 2025) in person to cast the city's votes. Per the NLC, each member city is allowed ONE voting delegate with an option to designate an alternate. Once the delegate and any alternate are determined, I will complete the required online Voting Delegate Form on the NLC website.