File ID: 2026-00644 5/5/2026

[Contract] Cooperative Purchase Contract for Compressed Natural Gas and Renewable Natural Gas [Published for 10-Day Review 04/24/2026]

File ID: 2026-00644

Location: Citywide

Recommendation: Pass a **Motion**: 1) authorizing, through "piggybacking" City Code Section 3.56.240, the use of the San Diego Metropolitan Transit System ("MTS") contract with Clean Energy (MTS Doc. No. G2627.0-22)) for the provision of gas service for Compressed Natural Gas (CNG) and Renewable Natural Gas (RNG) fuel, in an amount not-to-exceed $6,000,000 with a full five year term and four additional one year options; and 2) authorizing the City Manager or designee to execute the City of Sacramento form cooperative purchase/piggybacking agreement, all other documents necessary to effectuate this agreement, and, any renewal options specified above provided that sufficient funds are available in the budget adopted for the applicable fiscal year.

Contact: Stacey Chatman, Program Specialist, (916) 808-6711, schatman@cityofsacramento.org; Alison Kerstetter, Fleet Manager, (916) 808-1163, akerstetter@cityofsacramento.org; Department of Public Works

Presenter: None

Attachments:
1-Description/Analysis
2-Contract

Description/Analysis
Issue Detail: The Department of Public Works' Fleet Management Division maintains responsibility for ensuring that all City departments have the fuel, services, and materials necessary to effectively operate and maintain the municipal fleet. As part of this ongoing operational requirement, the City must routinely procure Compressed Natural Gas (CNG) and Renewable Natural Gas (RNG) to fuel 113 City fleet assets that rely on these energy sources for daily operations. These vehicles include essential service units that support waste collection, street maintenance, infrastructure repair, and other critical public functions. Securing a reliable supply of CNG and RNG ensures continuity of service delivery, maintains compliance with fleet sustainability goals, and supports safe and efficient City operations.

Policy Considerations: The recommendations in this report are in accordance with Sacramento City Code Chapter 3.56. which requires City Council approval of actions of $250,000 or more and which provides for the use of cooperative purchase/piggybacking agreements without competitive bidding (Section 3.56.240). Additionally, in accordance with the Sacramento City Code Section 4.04.020 and Council's Rules of Procedure (Chapter 7, Section E.2.d) unless waived by a 2/3 vote of the City Council, all labor agreements and all agreements greater than $1,000,000 shall be posted on the City's website and be made available to the public at least 10 days prior to council action.

Economic Impacts: None.

Environmental Considerations:
California Environmental Quality Act: No environmental review is necessary because the recommendations in this report involve the purchasing of renewable natural gas and are not considered to be a project in accordance with Section 15378(b)(2) of the California Environmental Quality Act guidelines.

Sustainability: The purchase of CNG and RNG directly supports the City's Fleet Sustainability Policy (Resolution 2017-0478), adopted by the City Council on December 12, 2017. Utilizing CNG and particularly RNG provides measurable environmental benefits when compared with conventional gasoline and diesel fuels, including reductions in greenhouse gas emissions, lower particulate matter output, and improved regional air quality. RNG, in particular, can achieve carbon-neutral or carbon-negative lifecycle emissions because it captures methane generated from organic waste streams. Piggybacking through the MTS contract with Clean Energy ensures access to cleaner fuel options consistent with Citywide sustainability, climate action, and emission-reduction goals.

Commission/Committee Action: None.

Rationale for Recommendation: The Department of Public Works recommends approval of this action based on three core considerations: **Policy Alignment and Environmental Benefits**, **Procurement Leveraging Strategy**, and **Operational Need**.

1. Policy Alignment and Environmental Benefits
Using CNG and RNG for appropriate fleet assets advances the City's sustainability objectives and aligns with the adopted Fleet Sustainability Policy. RNG significantly reduces lifecycle greenhouse gas emissions, mitigates methane release, and supports the City's commitment to reducing its carbon footprint. This fuel strategy complements the City's broader efforts to transition toward lower-emission technologies, maintain environmental compliance, and promote climate-forward municipal operations.

2. Procurement Leveraging Strategy

Leveraging the MTS competitively bid purchase agreement with Clean Energy allows Sacramento to benefit from pricing advantages associated with significantly higher fuel volumes. Using this approach maximizes taxpayer value, reduces administrative burden, and achieves more favorable pricing and terms than the City could secure through an independent solicitation. Piggybacking is a best-practice procurement strategy that enables government agencies to reduce cost and risk while increasing efficiency.

3. Operational Need
A dependable supply of CNG and RNG is essential to the uninterrupted operation of critical City vehicles, including solid-waste collection trucks, pavement maintenance dump trucks, patching equipment, and other heavy-duty units. Without these fuel purchases, the City would be unable to maintain core public services such as waste removal, street repair, and infrastructure maintenance. The recommended procurement ensures continuity of operations and supports the City's ability to meet service delivery expectations.

Financial Considerations: Adequate funding is available in the Department of Public Works, Fleet Management Division's Fiscal Year 2025/26 operating budget (Fleet Fund, Fund 6501) to support purchases through June 30, 2026. Any purchases made after this date will be contingent upon future budget appropriations as approved by the City Council during subsequent budget cycles. No additional appropriations are required at this time.

Local Business Enterprise (LBE): Clean Energy is not an LBE. The minimum LBE participation requirement is waived for the City's use of cooperative purchase agreements that have been competitively bid, evaluated, and awarded by other governmental agencies that may or may not have similar LBE programs.

CONTRACT #: PRC004133
CONTRACT NAME: CNG AND RNG FUEL
AGREEMENT TERM: 5/5/26-12/31/28
AUTHORIZED RENEWALS: Option of 4 year renewal
DEPARTMENT/DIVISION: Public Works / Fleet Management

PROJECT: N/A
NOT-TO-EXCEED AMOUNT: $6,000,000
SOLICITATION: COOPERATIVE
LBE (Y/N): N
COUNCIL FILE ID: 2026-00644

CITY OF SACRAMENTO

COOPERATIVE/PIGGYBACKING AGREEMENT

The City of Sacramento ("City") and CLEAN ENERGY RENEWABLE FUELS, LLC ("Contractor"), hereby agree to this Cooperative/Piggybacking Purchase Agreement ("Agreement"), effective as of 05/05/2026.

WHEREAS, the City wishes to purchase GAS SERVICE PROVIDER SERVICES, pursuant to the terms of this Agreement and Contract No. MTS G2627.0-22 , dated 01/01/2023 (the "Cooperative Contract," which is incorporated herein by this reference), with SAN DIEGO METROPOLITAN TRANSIT SYSTEM ("MTS") ("Cooperative Purchasing Organization").

NOW THEREFORE, Contractor and the City agree as follows:

1. The City agrees to purchase, pursuant to the terms of this Agreement and the Cooperative Contract, GAS SERVICE PROVIDER SERVICES. In no way shall payment from City to Contractor under this Agreement exceed $6,000,000.

2. Scope of work. [***To be completed by the City representative***] [***Check one or both***]:
   [_X__] City's purchase of the goods and/or services described herein shall be as set forth in Exhibit _A and B. The goods and/or services shall be delivered to the City no later than the end of the Delivery Period, as defined in Exhibit B. The terms of this Agreement and the Cooperative Contract shall control over any contrary terms included in Exhibit C; and/or
   [_] City's purchase of the goods and/or services described herein, including the date(s) of delivery, shall be as set forth in purchase order(s) issued by the City. The terms of this Agreement and the Cooperative Contract shall control over any contrary terms included in a purchase order.

3. The City shall have all the same pricing, terms, conditions, rights, and obligations as the Cooperative Purchasing Organization under the Cooperative Contract except as provided in Section 2 and Exhibits A and B which shall supersede.

4. Term. [***To be completed by the City representative***] [***Check one***]:
   [_X__] The term of this Agreement shall run through the end of the Delivery Period, as defined in Exhibit B.
   [__] The term of this Agreement shall run concurrent with the term of the Cooperative Contract. If the Cooperative Purchasing Organization renews or extends the Cooperative Contract by written amendment, then this Agreement will automatically extend, not to go beyond a total term of five years.
   In addition to whichever line above in this Section 4 is checked, (i) the City may terminate this Agreement upon notice to Contractor, and (ii) at any time prior to expiration of this Agreement, the

City has the option to extend the term of this Agreement through the term of the Cooperative Contract, inclusive of any renewals and extensions to the Cooperative Contract.

5. Contractor shall defend, hold harmless and indemnify City, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or off the site of the work or services performed under this Agreement or the Cooperative Contract, including, any fees and costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including Liabilities for personal injury or death, damage to personal, real or intellectual property, damage to the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement or the Cooperative Contract by Contractor, any subcontractor (including lower-tier subcontractors) or agent of Contractor, their respective officers and employees, and anyone else for whose acts or omissions any of them may be liable, whether or not the Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damages for death or bodily injury to persons, injury to property, or other loss, damage, or expense, to the extent arising from the negligence or willful misconduct of, or defects in design furnished by, City, its agents, servants, or independent contractors who are directly responsible to City, except when such agents, servants, or independent contractors are under the supervision and control of Contractor or any subcontractor (including lower-tier subcontractors) or agent of Contractor.

6. Insurance Requirements. [***To be completed by the City representative***].
Contractor shall, at Contractor's sole cost and expense and for the full term of this Agreement or any extension thereof, satisfy the following insurance requirements which shall apply to Contractor's performance under this Agreement. [***Check one***]:
[_X__] the insurance limits and obligations contained in the Cooperative Contract. The City shall have all the same rights as the Cooperative Purchasing Organization under the Cooperative Contract. Contractor shall provide the City with certificates of insurance evidencing the insurance required upon request.
[___] the insurance requirements contained in the document titled "Cooperative Agreement Insurance Exhibit" located at: https://www.cityofsacramento.gov/finance/procurement/standard-agreements, which is incorporated herein by reference.

7. Public Work Requirements. [***To be completed by the City representative***].

The services provided under this Agreement include [***Check any if applicable***]:

[___] Construction work in an amount exceeding $25,000;

[___] Land surveying, material testing, or inspection services provided for a City construction project during the design, pre-construction, construction, or post-construction phases of the project; or

[___] Alteration, demolition, repair, or maintenance work in an amount exceeding $15,000.

If any lines above in this section 7 is checked, this Agreement includes "Public Work" under the California Labor Code and is subject to the additional terms and conditions specified in the document titled "Public Work Requirements" located at: https://www.cityofsacramento.gov/finance/procurement/standard-agreements, which is incorporated herein by reference.

8. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California, except that the rule of interpretation in California Civil Code section 1654 will not apply. Venue of any litigation arising out of or related to this Agreement will lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts. All disputes arising out of or relating to this Agreement shall be resolved exclusively in the courts identified above. No party shall be required to submit to arbitration, mediation, or any other form of alternative dispute resolution, and no waiver of the right to a jury trial shall apply. Each party shall bear its own attorneys' fees and costs in connection with any claim, dispute, or litigation arising out of or relating to this Agreement.

9. The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished under this Agreement, including the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.

10. Contractor warrants and represents that the person or persons executing this Agreement on behalf of Contractor has or have been duly authorized by Contractor to sign this Agreement and bind Contractor to the terms hereof.

11. Except as specifically modified herein, all terms and conditions of the Cooperative Contract shall remain in full force and effect, and Contractor shall perform all of the services, duties, obligations, and conditions of the Cooperative Contract as modified by this Agreement. In the event of any conflict or inconsistency between the Cooperative Contract and this Agreement, this Agreement shall govern. In the event of any conflict or inconsistency between this Agreement and any document provided by Contractor, including but not limited to quotes, invoices, order forms, and acknowledgements, this Agreement shall govern. City's signature on, or approval of, any of Contractor's documents shall not constitute agreement to any term conflicting or inconsistent with this Agreement.

Exhibit A - NAESB
Exhibit B - RNG TC
Exhibit C - SAN DIEGO METROPOLITAN TRANSIT SYSTEM AGREEMENT

EXHIBIT A - NAESB

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 Sacramento**	***PARTY NAME***	**PARTY B** **Clean Energy Renewable Fuels, LLC**
2812 Meadowview Road Sacramento, CA 95832	***ADDRESS***	4675 MacArthur Court, Suite 800 Newport Beach, CA 92660
www.cityofsacramento.gov	***BUSINESS WEBSITE***	**www.cleanenergyfuels.com**
	CONTRACT NUMBER	SAC001
	D-U-N-S® NUMBER	
☒ US FEDERAL: 33-0171945 ☐ OTHER:	***TAX ID NUMBERS***	☒ US FEDERAL: 27-5411503 ☐ OTHER:
	JURISDICTION OF ORGANIZATION	Delaware
☐ Corporation ☐ LLC ☐ Limited Partnership ☐ Partnership ☐ LLP ☒ Other: Municipal corporation	***COMPANY TYPE***	☐ Corporation ☒ LLC ☐ Limited Partnership ☐ Partnership ☐ LLP ☐ Other: _____
	GUARANTOR **(IF APPLICABLE)**	

CONTACT INFORMATION

City of Sacramento **ATTN: Alison Kerstetter** **TEL#: (916) 808-1163** **EMAIL: akerstetter@cityofsacramento.org**	■ **COMMERCIAL**	**Clean Energy Renewable Fuels, LLC** **ATTN: Jen Hodgkinson** **TEL#: (949) 437-1328** **EMAIL: john.hodgkinson@cleanenergyfuels.com**
City of Sacramento **ATTN: Alison Kerstetter** **TEL#: (916) 808-1163** **EMAIL: akerstetter@cityofsacramento.org**	■ **SCHEDULING**	**Clean Energy Renewable Fuels, LLC** **ATTN: Jen Hodgkinson** **TEL#: (949) 437-1328** **EMAIL: john.hodgkinson@cleanenergyfuels.com**
City of Sacramento **ATTN: Alison Kerstetter** **TEL#: (916) 808-1163** **EMAIL: akerstetter@cityofsacramento.org**	■ **CONTRACT AND LEGAL NOTICES**	**Clean Energy Renewable Fuels, LLC** **ATTN: Jen Hodgkinson** **TEL#: (949) 437-1328** **EMAIL: john.hodgkinson@cleanenergyfuels.com**
City of Sacramento **ATTN: Alison Kerstetter** **TEL#: (916) 808-1163** **EMAIL: akerstetter@cityofsacramento.org**	■ **CREDIT**	**Clean Energy Renewable Fuels, LLC** **ATTN: Jen Hodgkinson** **TEL#: (949) 437-1328** **EMAIL: john.hodgkinson@cleanenergyfuels.com**
City of Sacramento **ATTN: Alison Kerstetter** **TEL#: (916) 808-1163** **EMAIL: akerstetter@cityofsacramento.org**	■ **TRANSACTION CONFIRMATIONS**	**Clean Energy Renewable Fuels, LLC** **ATTN: Jen Hodgkinson** **TEL#: (949) 437-1328** **EMAIL: john.hodgkinson@cleanenergyfuels.com**

ACCOUNTING INFORMATION

City of Sacramento **ATTN: Julie Baldovino** **TEL#: (916) 808-6926** **EMAIL: jbaldovino@cityofsacramento.org**	■ **INVOICES** ■ **PAYMENTS** ■ **SETTLEMENTS**	**Clean Energy Renewable Fuels, LLC** **ATTN: Jen Hodgkinson** **TEL#: (949) 437-1328** **EMAIL: john.hodgkinson@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: City of Sacramento **ADDRESS: 5730 24th St, Building 1** **Sacramento, CA 95822**	**CHECKS (IF APPLICABLE)**	**ATTN:** Clean Energy Renewable Fuels, LLC **ADDRESS:** 4675 MacArthur Ct, Suite 800 Newport Beach, CA 92660

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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 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

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 6 Taxes
☒ Buyer Pays At and After Delivery Point (default)
OR
☐ Seller Pays Before and At Delivery Point

Section 7.2 Payment Date
☒ 25th Day of Month following Month of delivery (default)
OR
☐ Day of Month following Month of delivery

Section 7.2 Method of Payment
☐ Wire transfer (default)
☐ Automated Clearinghouse Credit (ACH)
☒ Check

Section 7.7 Netting
☒ Netting applies (default)
OR
☐ Netting does not apply

Section 10.2 Additional Events of Default
☒ No Additional Events of Default (default)
☐ Indebtedness Cross Default
☐ Party A: _____
☐ Party B: _____
☐ Transactional Cross Default
Specified Transactions:
_____
_____

Section 10.3.1 Early Termination Damages
☒ Early Termination Damages Apply (default)
OR
☐ Early Termination Damages Do Not Apply

Section 10.3.2 Other Agreement Setoffs
☒ Other Agreement Setoffs Apply (default)
☒ Bilateral (default)
☐ Triangular
OR
☐ Other Agreement Setoffs Do Not Apply

Section 15.5 Choice Of Law
California

Section 15.10 Confidentiality
☒ Confidentiality applies (default)
OR
☐ Confidentiality does not apply

☐ **Special Provisions:** Number of pages: 0
☐ **Addendum(s): None**

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

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

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.**

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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:	**BUYER:**
_____ _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	_____ _____ _____ 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)

Firm (Fixed Quantity):	**Firm (Variable Quantity):**	**Interruptible:**
_____ MMBtus/day □ EFP	_____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of □ Buyer or □ Seller	Up to _____ MMBtus/day

Delivery Point(s): _____
(If a pooling point is used, list a specific geographic and pipeline location):

Special Conditions:

Seller: _____	Buyer: _____
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

Exhibit B - RNG TC

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

	Date: _____, 2026 Transaction Confirmation #: SAC001-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:	**BUYER:**
Clean Energy Renewable Fuels, LLC Attn: John Hodgkinson Phone: 949-437-1328 Base Contract No. SAC001	City of Sacramento Attn: Alison Kerstetter Phone: 916-808-1163

Contract Price:

Contract Price ($/MMBtu)
The **"Contract Price"** for Conventional Gas or Biogas per MMBtu shall be equal to the PG&E Citygate First of the Month Index as published by Natural Gas Intelligence.

Delivery Period: The initial term shall begin on the Start Date and shall end on the five (5) year anniversary of the Start Date. Thereafter, Buyer may at its sole discretion extend this Transaction Confirmation for one (1) 4-year option period by providing written notice to Seller at least ninety (90) days prior to the end of the initial term. The initial term and the 4-year option period, if exercised, are collectively referred to herein as the "Delivery Period".

The "Start Date" 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)

Firm (Fixed Quantity):	**Firm (Variable Quantity):**	**Interruptible:**
_____ MMBtus/day	0 MMBtus/day Minimum	Up to _____ MMBtus/day.
☐ EFP	500 MMBtus/day Maximum ("**Max Daily Quantity**")	

Performance Obligation: Subject to the Max Daily Quantity, during the Delivery Period, Seller will deliver Biogas and/or Conventional Gas to the Delivery Point to meet Buyer's full requirements. Buyer acknowledges that the delivered quantities of Gas will fluctuate and agrees to receive all Gas, up to the Max Daily Quantity. Sell shall be

the exclusive provider of Biogas and Conventional Gas to Buyer at the Delivery Point for the Delivery Period.

Subject to the terms of this Transaction Confirmation and the Max Daily Quantity described above, during each consecutive twelve (12) month period beginning on the first day of the Delivery Period and ending on the last day of the Delivery Period, and as long as such twelve (12) month period does not contain a Missed Month (as defined below), Seller shall use reasonable efforts to provide an amount of Biogas to the Delivery Point which is equal to Buyer's Gas Quantity (as defined below) for the applicable rolling twelve (12) month period (the "**Minimum Commitment**"). "**Buyer's Gas Quantity**" means the total amount of natural gas provided to the Station (as defined below) during the applicable time period based on the invoices (which are related to the Delivery Point and the applicable rolling twelve (12) month period) Buyer receives from the natural gas utility (and provides to Seller pursuant to Section 2(a) below) but limited to such portion of the gas which is deemed to have been actually consumed as a Vehicle Fuel (as determined in accordance with Seller's LCFS and RFS compliance protocol).

Delivery Point: The Delivery Point shall be Buyer's Pacific Gas and Electric Company ("**PG&E**") meter interconnect at Buyer's California compressed natural gas ("CNG") station listed in Exhibit A ("**Station**"), which is attached hereto and incorporated herein by reference.

Definitions:

"**Advanced Biofuel**" has the same meaning as under the EPA RFS.

"**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 bundled pipeline quality Gas and Green Attributes that represent Gas derived from the decomposition of organic matter that meets the definition of "RNG" and the EPA RFS eligibility requirements as either an Advanced Biofuel or Cellulosic Biofuel under the EPA RFS.

"**Buyer's Collective Payment**" shall have the meaning given to such term in Exhibit B.

"**Buyer's LCFS Payment**" shall have the meaning given to such term in Exhibit B.

"**Buyer's RIN Payment**" shall have the meaning given to such term in Exhibit B.

"**CARB**" means the California Air Resources Board or its successor agency and policies established under the California Low Carbon Fuel Standard Regulation, (Cal. Code Regs. tit. 17, §§ 95480 – 90 (2010).), (collectively, the "**LCFS**") applying to any transportation fuel that is sold, supplied, or offered for sale in California.

"**Cellulosic Biofuel**" has the same meaning as under the EPA RFS.

"**CI**" or "**Carbon Intensity**" means the quantity of life cycle greenhouse gas emissions, per unit of fuel energy, expressed in grams of carbon dioxide equivalent per megajoule (gCO2e/ML) as defined in the LCFS (as amended or replaced with a subsequent program).

"**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 or the CARB LCFS.

"**EPA**" means the United States Environmental Protection Agency and its successor agencies.

"**EPA Renewable Fuels Standard**" or "**EPA RFS**" means the renewable fuel program established under the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007 and implementing regulations, including without limitation 40 C.F.R. Part 80, Subparts A, E and M.

"First Fuel Reporting Entity" means the first entity responsible for reporting in the LRT-CBTS (LCFS reporting tool-credit and banking transfer system) for a given amount of fuel. This is the entity that initially holds the status as the fuel reporting entity and the credit or deficit generator but may transfer either status pursuant to sections 95483 or 95483.1 of Title 17 of the California Code of Regulations for the Low Carbon Fuel Standard.

"**Green Attributes**" means any and all attributes, including Lifecycle Greenhouse Gas Emissions, associated with the production, sale and use of RNG as an Advanced Biofuel, Cellulosic Biofuel, low carbon fuel or Alternative Fuel as necessary to generate or claim applicable EPA RINs; however that the term "Green Attributes" does not and will not include: (a) tax credits; (b) RNG Credits; (c) grants, loans, or subsidies; or (d) emission reduction credits encumbered or used by an RNG production facility for compliance with local, state, or federal operating and/or air quality permits.

"**Greenhouse Gas**" means carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydroflourocarbons, 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. Governmental Authority includes, without limitation, the EPA, CARB and the California Public Utilities Commission or its successor agency.

"**Incremental LCFS Credits**" means the number of LCFS Credits generated from the use of Biogas Vehicle Fuel that exceed the number of LCFS Credits (if any) that would have been generated using the lesser of: (a) the CI of the default CNG pathway used for Conventional Gas; or (b) the compliance curve set by CARB: "Benchmarks for Diesel Fuel and Fuels used as a Substitute for Diesel Fuel" (as defined from time to time in Title 17 of the California Code of Regulations for the Low Carbon Fuel Standard).

"**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 or CARB, 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.

"**LCFS Account**" means an account containing an entity's LCFS Credits, established and maintained in accordance with the LCFS.

"**Low Carbon Fuel Standard Credits**" or "**LCFS Credits**" shall mean credits generated and traded under the California Air Resources Board Low Carbon Fuel Standard, with each credit equal to one metric tonne of Carbon Dioxide reductions as compared to the baseline CO2 emissions under the Low Carbon Fuel Standard.

"**LCFS Credits Resale Price**" shall be calculated by reference to the volume weighted average price of all LCFS Credits of the same annual and quarterly vintage realized by Seller within the same calendar quarter.

"**LRT**" means the reporting tool established in accordance with LCFS and required by CARB to submit annual compliance and quarterly progress reports and track LCFS Credits.

"**Renewable Identification Number**" or "**RIN**" has the same meaning as under the EPA RFS.

"**RIN Resale Price**" shall be calculated by reference to the volume weighted average price of all RINs which is realized by Seller in the Month in which Seller separates RINs from the Contract Quantity.

"**RNG Credit(s)**" means a credit, number or certificate generated from, attributable to, or representing the Green Attributes associated with the RNG transferred under this Transaction Confirmation and generated under an applicable regulatory or voluntary program, including without limitation: RINs, renewable thermal credits, low carbon fuel standard credits and clean fuel program credits.

"**Seller's LCFS Payment**" means all revenue generated by or received by Seller from the sale of LCFS Credits generated on the Contract Quantity minus Buyer's LCFS Payment.

"**Seller's RIN Payment**" means all revenue generated by or received by Seller from the sale of RINs generated on the Contract Quantity minus Buyer's RIN Payment.

"**Vehicle Fuel**" has the same meaning as the term "Transportation Fuel" under the EPA RFS.

Special Conditions:

1. Representations.

(a) Buyer represents, warrants and covenants that it shall distribute all Conventional Gas and Biogas purchased from Seller hereunder as Vehicle Fuel at Buyer's Station in the same Month in which Buyer purchases the Conventional Gas and Biogas from Seller.

(b) Buyer represents, warrants and covenants that it shall not generate any RNG Credits, including any RINs and LCFS Credits, generated on the Contract Quantity and shall take no action to cause the invalidity of such RNG Credits.

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

(a) Between the 10th and 20th day of each Month, Buyer shall provide Seller with: (i) a copy of its natural gas invoices related to the Delivery Point(s) for the prior Month (when such prior Month is during the Delivery Period of this Transaction Confirmation) and (ii) all information and written documentation supporting the amount of Gas dispensed by Buyer as Transportation Fuel in the Month that is reasonably necessary to support separation of the RINs under the EPA RFS.

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 such invoices, information and written documentation 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 Buyer's Collective Payment) which relates to the month in which it did not receive a corresponding natural gas invoice or such other information and written documentation described above (the "**Missed Month**"); (2) not have any obligation to supply Biogas during the Missed Month, and therefore, shall not generate any credits (neither RINs nor LCFS 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 invoices, information and written documentation 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. Buyer shall maintain all records relevant to the purchase of Biogas from Seller and use of such Biogas as a Vehicle Fuel in accordance with the requirements of CARB for the creation and sale of LCFS Credits.

(b) Seller shall maintain records relevant to the production and purchase and sale of Conventional Gas and Biogas and transportation and distribution of the Conventional Gas and Biogas purchased hereunder as it applies to the creation and sale of LCFS Credits in accordance with the requirements of CARB.

(c) Buyer shall provide reasonable cooperation to Seller with respect to the requirements for the generation and separation 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 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 and CARB Low Carbon Fuels Standard, together with regulations and decisions promulgated thereunder, are applicable to the purchase and sale of Conventional Gas and Biogas.

4. CARB LCFS Fuel Reporting Entity Status.

Pursuant to the California Code of Regulations for the Low Carbon Fuel Standard, Seller will retain the Low Carbon Fuel Standard (LCFS) First Fuel Reporting Entity status as set forth in Title 17, California Code of Regulations in § 95483 with respect to all Biogas sold by Seller to Buyer hereunder (the "Purchased Biogas").

Buyer will elect to not be the First Fuel Reporting Entity for Conventional Gas (referred to as "Fossil CNG" in the California Code of Regulations in §§ 95483) as set forth in Title 17, California Code of Regulations in § 95483, and designates Seller as the First Fuel Reporting Entity for Conventional Gas under the California Air Resources Board as set forth in Title 17, California Code of Regulations § 95480.3 with respect to all Conventional Gas purchased by Buyer at the Delivery Point during the Delivery Period (the "Purchased Conventional Gas").

Buyer and Seller agree that: (A) for Conventional Gas, the original First Fuel Reporting Entity (Buyer) per subsections (1)(A) through (1)(E) of § 95483(b) will not generate credits or deficits in the LCFS and will instead provide the amount of fuel dispensed, and other required information pursuant to sections 95483.2(b)(8), 95491 and 95491.1, to the contractually designated entity (Seller) for the purpose of LCFS reporting and credit or deficit generation; and (B) the contractually designated entity (Seller) accepts all LCFS responsibilities as the First Fuel Reporting Entity for Conventional Gas and as a credit or deficit generator, as applicable.

Any deficits generated based on Seller's status as the First Fuel Reporting Entity for the Purchased Biogas or the Purchased Conventional Gas shall be deemed to be Buyer's sole financial responsibility; and therefore, in the event any deficits are generated based on Seller's status as the First Fuel Reporting Entity for the Purchased Biogas or the Purchased Conventional Gas, notwithstanding anything to the contrary in this Transaction Confirmation or the Base Contract, Seller may: (1) offset any deficits with Incremental LCFS Credits or other LCFS Credits generated by Seller based on the Purchased Biogas and Purchased Conventional Gas (if any), a portion or all of which would have been paid to Buyer pursuant to Buyer's Collective Payment; and/or (2) purchase LCFS Credits equal to the deficit with Buyer being financial responsible (Seller will invoice Buyer) for all costs incurred by Seller to purchase such LCFS Credits (including, without limitation, the price per LCFS Credit paid by Seller to the applicable third party

credit seller multiplied by the number of LCFS Credits that need to be purchased to satisfy the deficit); and/or (3) invoice Buyer for all amounts (including, without limitation, any attorney's fees or broker fees) Seller incurred based on such deficit(s). Buyer shall remit payment to Seller within fifteen (15) days of its receipt of a Seller invoice pursuant to this Section. Buyer shall be deemed to have received an invoice from Seller three (3) days after the invoice is sent to Buyer.

5. LCFS Credit and RIN Sales.

(a) Seller shall retain Seller's RIN Payment and Seller's LCFS Payment as consideration for its obligations under this Transaction Confirmation and shall remit Buyer's Collective Payment 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 LCFS Credits and/or as an agent with respect to LCFS Credits 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 LCFS Credits generated and/or sold hereunder. Seller and /or its affiliates and control persons shall owe no fiduciary obligation to Buyer with respect to the LCFS Credits generated and sold. Seller and its affiliate's sole obligation with respect to the sale of LCFS Credits generated and/or sold in this transaction shall be to use commercially reasonable efforts to sell such credits alongside other LCFS Credits that Seller and/or its affiliates may market or sell based on the calendar quarter in which such credits are generated.

(c) 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.

6. 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 and LCFS Credit creation in compliance with CARB requirements.

7. Regulatory Hinderance.

In the event that: (a) the RFS and/or LCFS are 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 and/or LCFS Credits 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.

8. RNG Credits and Alternative Fueler

Buyer is not entitled to any RINS, LCFS Credits 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 and/or LCFS Credits 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.

The parties agree that Buyer will be considered the "Alternative Fueler" 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.

9. 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.

10. Failure to Dispense Transportation Fuel or Breach of this Transaction Confirmation

In addition to all other remedies under the Base Contract and hereunder, if Biogas sold by Seller and purchased by Buyer hereunder is not dispensed as Transportation Fuel, Seller will be entitled to receive from Buyer: (i) a refund of any Buyer's RIN Payment and Buyer's LCFS Payment made to Buyer for the volume of RNG that was not dispensed as Transportation Fuel; and (ii) a payment equal to Seller's RIN Payment and Seller's LCFS Payment that Seller would have received from the sale of RINs and LCFS Credits on the Contract Quantity if Buyer had dispensed the Contract Quantity as Transportation Fuel. Further, if Buyer breaches this Transaction Confirmation and such breach causes the invalidation of RNG Credits generated on the Contract Quantity, Seller will be entitled to receive from Buyer: (i) a refund of any Buyer's RIN Payment and Buyer's LCFS Payment made to Buyer that were based on the sale of invalidated RNG Credits; and (ii) a payment equal to Seller's RIN Payment and Seller's LCFS Payment that Seller would have received from the sale of the invalidated RNG Credits. These obligations shall survive the termination or expiration of this Transaction Confirmation.

11. Further Assurances

Each party will provide the other party such cooperation, access to facilities, 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 and for Seller to validate, separate, transfer and monetize RNG Credits generated on the Contract Quantity.

12. Additional Terms Applicable to Deliveries to PG&E

Buyer and Seller acknowledge and agree that Buyer will designate Seller as the PG&E NBAA Supplier (Noncore Balancing Aggregation Agreement/Agent) for the Delivery Point. Upon Seller's request, in writing, Buyer will assist Seller in completing all required Onboarding documents including but not limited to prior billing history, account numbers, meter numbers, etc.

By executing this Transaction Confirmation, Buyer understands and agrees that: (i) it shall at all times, notwithstanding anything to the contrary herein, remain responsible for payment of its NBAA service received from PG&E; (ii) it will continue to receive an invoice from PG&E for transportation and other access charges and Buyer will be responsible for payment of all invoices it receives from PG&E; and (iii) it is responsible for all Franchise Fee under Tariff Rate Schedule G-NGV4 and any Utility Users Tax that a city or county may require as a result of Buyer receiving its gas commodity through Seller. Buyer agrees to release and hold harmless, defend and indemnify the applicable utility from and against any liability, claims, demands, causes of action, damages and/or expenses resulting from or in connection with any improper use of its gas consumption information.

13. 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 EPA 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 EPA 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 EPA 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 EPA RFS as amended by the BRRR.

Buyer and Seller acknowledge that assigned RINs may not be separated from RNG and become separated RINs ("K2 RINs") until the RNG is used as a transportation fuel as defined by the EPA 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. 7 of this Transaction Confirmation.

Seller: **Clean Energy Renewable Fuels, LLC**	Buyer: **City of Sacramento**
By: _____	By: _____
Name:	Name:
Title:	Title:
Date: _____	Date: _____

EXHIBIT A

CNG Station Location		
Address	**Local Distribution Channel**	**Meter Number**
2812 Meadowview Road, Sacramento, CA	PG&E	61858729

EXHIBIT B

Payment Schedule

Calendar Year	RNG MMBtu	CI Number Used by Seller to Determine Payment to Buyer. (The actual CI of the RNG supplied to the Station(s) may be different).	Buyer Percentage of LCFS Credit Generation Rate	Incremental LCFS Credits generated per RNG MMBtu based on corresponding CI Number (as shown in this table) for such RNG ("LCFS Credit Generation Rate")	Bu Percen RIN C Generat
2026	1	-250	15%	0.3069	15
2027	1	-250	15%	0.3056	15
2028	1	-250	15%	0.3043	15
2029	1	-250	15%	0.3030	15
2030	1	-250	15%	0.3016	15
2031	1	-250	15%	0.2976	15
2032*	1	-250	15%	0.2935	15
2033*	1	-250	15%	0.2894	15
2034*	1	-250	15%	0.2879	15
2035*	1	-250	15%	0.2812	15

*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 "**Bu** 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 (as det
LCFS and RFS compliance protocol) during the applicable calendar month where such month is within the Delivery Period)] x

(2) Within forty-five (45) days of Seller's receipt of payment for all LCFS Credits generated during the prior calendar quarter, Seller will p **Payment**" which is described below:

[LCFS Credits Resale Price] x [(applicable Calendar Year Buyer Percentage of LCFS Credit Generation Rate as shown in the
Credit Generation Rate) x ((cumulative Gas MMBtus dispensed from the Station (as determined in accordance with Seller's L
during the applicable calendar quarter where such calendar quarter is within the Delivery Period)]].

(3) The Buyer's RIN Payment and the Buyer's LCFS Payment shall collectively be referred to as the "**Buyer's Collective Payment**". Spe
of determining the Buyer's Collective Payment, and subject to Buyer's compliance with Section 2(a) of the Special Conditions, all Bio
deemed to be RNG with the applicable CI Number shown in the table above for the applicable calendar year. Buyer acknowledges and
Biogas supplied by Seller to Buyer pursuant to this Transaction Confirmation will vary over the Delivery Period, however, the CI numb
Collective Payment will not vary from the applicable numbers described above except in the event of a Missed Month as described in S
Conditions.

(4) In the event CARB modifies the LCFS CI benchmarks for diesel during the term of this Transaction Confirmation, the numbers above
Seller to maintain the economic intent of the parties as of the day they entered into this Transaction Confirmation. Upon the determinat
Seller shall provide Buyer with a new table which upon Seller's transmission of such updated table to Buyer shall be deemed to automa
table above.

EXHIBIT C - SAN DIEGO METROPOLITAN TRANSIT SYSTEM AGREEMENT

Metropolitan Transit System

STANDARD AGREEMENT

FOR

MTS DOC. NO. G2627.0-22

THIS AGREEMENT is entered into this 1st day of January 2023 in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: Clean Energy Renewable Fuels, LLC

Address: 4675 MacArthur Court, Suite 800

Newport Beach | CA | 92660
City | State | Zip

Form of Business: Limited Liability Company
(Corporation, Partnership, Sole Proprietor, etc.)

Email: robert.vreeland@cleanenergyfuels.com

Telephone: 949-437-1272

Authorized person to sign contracts

Robert M. Vreeland (Name) | Chief Financial Officer (Title)

The Contractor agrees to provide services as specified in the conformed Scope of Work/Technical Specification (Exhibit A), Contractor's Cost/Pricing Form (Exhibit B), and in accordance with the Standard Agreement, including Standard Conditions (Exhibit C), Federal Requirements (Exhibit D), Forms (Exhibit E), NAESB Terms and Conditions (Exhibit F), and Transaction Confirmation SDMTS001-TC01 (Exhibit G).

In the event of any conflicts or discrepancies between the documents listed above, the following order of precedence shall apply:

1. Exhibit G
2. Exhibit F
3. All other documents

The contract term is for a six (6) year base period with one (1) 4-year option period, exercisable at MTS's sole discretion, for a total of ten (10) years. Base period shall be effective January 1, 2023 through December 31, 2028 and option years shall be effective January 1, 2029 through December 31, 2032, if exercised by MTS.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CLEAN ENERGY RENEWABLE FUELS, LLC
By: Karen Landers 2022.12.22 14:16:54 -08'00' Sharon Cooney, Chief Executive Officer Approved as to form: By: Karen Landers 2022.12.22 14:17:10 -08'00' Karen Landers, General Counsel	By Robert McCheeland Title: Chief Financial Officer

EXHIBIT A
SCOPE OF WORK

1.1. GENERAL

The San Diego Metropolitan Transit System, hereinafter referred to as "MTS", is seeking proposals from certified Gas Service Providers ("GSPs") who are currently providing service to commercial and industrial customers under San Diego Gas & Electric ("SDG&E") Core Aggregation Transportation ("CAT") program. MTS is seeking a GSP to provide index-based gas supply pursuant to the CAT Program in connection with gas utilized for MTS's CNG powered bus fleet for a ten (10) year period (six (6) base years and one (1) four-year option term, exercisable at MTS' sole discretion) from January 1, 2023 through December 31, 2032.

1.2. BACKGROUND

MTS was initially formed in 1975 as the San Diego Metropolitan Transit Development Board (MTDB) under California Public Utilities Code sections 120000 et seq.. In 2005, the MTDB changed its name to the San Diego Metropolitan Transit System (MTS) following a reorganization and consolidation of services. Additional information regarding MTS, including recent Annual Comprehensive Financial Reports (ACFR), is available on the MTS website at http://www.sdmts.com.

MTS Bus Operations are a consolidation of services operated by San Diego Transit Corporation and MTS Contracted Services. These entities operate and maintain a fleet of 764 buses, 78% of which are powered by environmentally friendly compressed natural gas. In fiscal year (FY) 2023, MTS expects to consume 10.6 million therms (1,060,000 MMBtu) of natural gas to operate its bus services that include 100 fixed routes, including traditional urban shuttle-type routes, express routes and bus rapid transit routes, plus paratransit services. MTS fuels its buses with fueling facilities it owns and operates at four of its bus divisions. The specific delivery points are as follows:

Meter Number	Address
01000670	1213 N Johnson Ave A, El Cajon, CA 92020
00968018	3650 Main Street, Chula Vista, CA 91911
00908056	4630 Ruffner Street, San Diego, CA 92111
00968019	3650 Main Street, Chula Vista, CA 91911
01451630	122 16th Street, San Diego, CA 92101
01052825	120 16th Street, San Diego, CA 92101

1.3. ENERGY CREDIT BACKGROUND

The California Air Resources Board (CARB) created the Low Carbon Fuel Standard (LCFS) designed to reduce greenhouse gas emissions associated with the life cycle of transportation fuels used in California. Each type of fuel has been assessed a carbon intensity (CI) score. Fuel providers are required to ensure their overall CI score meets the annual CI target. The LCFS program has incentives in the form of credits that are generated, tracked, and can be traded to obligated entities. MTS is not an obligated entity, but does generate LCFS credits as a transportation provider that utilizes alternative fuels.

On the federal side, Congress enacted the Energy Policy Act of 2005, which required a

mandated volume of biofuel use in the United States called the Renewable Fuel Standard (RFS). The Energy Independence and Security Act of 2007 increased the overall RFS and created sub-mandates for advanced biofuels, biomass-based diesel, and certain cellulosic biofuels such as renewable natural gas (RNG). The obligated parties are petroleum refiners and importers and not end users (i.e. not MTS). Renewable Identification Numbers (RINs) are the mechanism used to make sure each of the obligated parties meet its share of all of the mandates. These RINs generated as renewable fuels are sold and can be traded like any other commodity. This allows obligated parties to purchase RINs from outside sources in order to meet their obligation.

The generation of energy credits brings along with it many compliance requirements from both the Environmental Protection Agency (EPA) as well as CARB. CARB reauthorized and amended the LCFS program in January 2019, with many new legislative requirements that will go into effect for calendar year 2020, most notably the requirement of external third-party audits.

1.4. SCOPE OF WORK

1.4.1. Description of services

MTS is seeking proposals from qualified firms to supply 100 percent of guaranteed non-interruptible supply of RNG for MTS's transportation needs by displacing conventional CNG using the current on-demand pipeline infrastructure provided through SDG&E; and (2) deliver comprehensive environmental commodities brokerage services that make all mandated reports to regulatory agencies and obtain best market returns, including the LCFS program as outlined in California Assembly Bill AB32 and RIN credits generated through the use of green gas.

GSP must guaranty delivery of required volumes of RNG at all times, including any periods during which supply is curtailed or restricted in any way by the local utility company or any other entity.

GSP will hold and maintain independent contracts between their company and all relevant companies for the introduction of RNG by use of the utility's piping, connections, any and all infrastructure, dispenser equipment, valves, meters and natural gas gating to include inter-state fuel pipelines that may be used by MTS.

In addition, the GSP will be required to provide the following services:

- Daily monitoring of RNG usage
- Daily balancing as required by RNG supplier
- Billing services
- RNG information and consulting services
- Handle all gas supply and delivery arrangements (both gas suppliers and utility companies)
- Monitor gas infrastructure issues (gas supply, reliability) and strategies for curtailment protection
- Maintain an auditable "paper trail"
- Act as an advocate on relevant issues before the Public Utilities Commission

1.4.2. Compliance with LCFS and RIN Program Regulatory Requirements

MTS shall for the term of the agreement, and in return for compensation, provide the Contractor with rights to all LCFS and RIN credits generated as a result of RNG being dispensed from the MTS CNG fueling stations. The GSP shall compensate MTS based on the revenue sharing percentages provided in the pricing proposal and index prices as outlined in the LCFS and RIN Credit Sharing sections below.

At no time will MTS be charged a service fee for brokerage services, instead compensation for brokerage services will be derived from the mutually agreed upon share of revenue generated from LCFS and RIN credits.

In addition, the selected vendor will be required to provide the following services:

- GSP shall provide MTS with all necessary information for any CARB LCFS Reporting Tool and Credit Bank and Transfer System (LRT-CBTS) reporting.
- GSP shall take all necessary steps to register with EPA Moderated Transaction System (EMTS) and Fuels Reporting System (DCFUELS) and comply with EPA guidelines for administration by reporting fuel usage by MTS.
- Manage all regulatory and reporting requirements including regulatory filings required by any applicable law (including filings to CARB and EPA)
- Submit all required quarterly and annual reports, and the information required therein, to MTS, CARB and the EPA per established deadlines as given by the respective regulatory agency. These reports will accurately reflect MTS's data in order to ensure compliance with CARB and EPA regulations for fuel reporting entities. The reports will be submitted to the respective agencies' online database.
- Keep MTS informed of LCFS and RIN market conditions.

GSPs must maintain all records and calculations relied upon for data reported in LRT-CBTS, EMTS, DCFUELS, or any other reporting database requirements now or in the future. These records include, but are not limited to:

- Product transfer documents;
- Copies of all data reports submitted to regulatory agencies;
- Chain of custody evidence for produced fuel;
- Records relating to fuel transactions;
- Records used for each fuel transaction;
- Attestation regarding environmental attributes associated with book-and-claim accounting for biomethane pursuant to applicable state and federal law and regulations; and
- Records used for compliance or credit and deficit calculations

The GSP will retain records for a 10-year period and provide copies of auditable records to MTS on a quarterly basis alongside or as an attachment to quarterly summaries.

GSP shall participate in any and all audits by a regulatory agency and GSP will represent MTS as needed during the course of the audit to satisfy or rectify any inquiries or findings from a regulatory agency. This may include travel to MTS at the GSP's expense. MTS will work collaboratively with the GSP to comply with the audit. The GSP will keep MTS

informed on the status of an audit and its outcome.

Compliance obligations from CARB and the EPA are subject to change dependent upon the actions their respective legislative bodies take. It will be the responsibility of the GSP to stay informed on the laws and regulations, to include changes and revisions, in order to meet current and future obligations to ensure compliance at all times.

1.4.3. Commodity Contract Price

The GSP's Contract Price for gas quantities delivered to the Delivery Point shall be equal to the Posted Price plus the GSP's Index Premium, per MMBtu. The Posted Price for daily Biogas deliveries ($/MMBtu) shall be the SoCal Citygate First of the Month Index ("SoCal Citygate") as published by Natural Gas Intelligence ("NGI") or any successor thereto plus SoCal Backbone Transmission System Tariff ("BTS") plus Fuel. "Fuel" means the cost for incremental quantity of Gas consumed by a local distribution company, in this case, SoCal Gas, in transporting Gas and includes any provision by such SoCal Backbone Transmission System Tariff for lost and unaccounted for Gas, as determined in accordance with the approved pipeline tariff or governing documents of such pipeline or local distribution company. The Contract Price set forth above includes only the natural gas commodity. GSP shall pass through to MTS all other charges associated with gas delivery to the Delivery Point. For each month that MTS's Gas consumption exceeds the nominated Baseload Quantity, MTS shall purchase the incremental gas quantity from GSP at the applicable Spot Price plus the GSP's Index Premium, per MMBTU.

For each month that MTS's Gas consumption is less than the nominated Baseload Quantity for such month, MTS shall receive a credit from the GSP equal to the difference between the nominated Baseload Quantity for such month and the actual Gas consumed at the respective Delivery Point multiplied by the applicable Spot Price.

The Spot Price shall mean the Monthly Average of the Gas Daily Midpoint price as published in Gas Daily Publication or any successor thereto, Daily Price Survey, Citygates – SoCal Gas Citygate Midpoint.

1.4.4. LCFS Credit Sharing

In exchange for all of MTS LCFS Credits, MTS shall receive a quarterly payment that is sum of the three Monthly LCFS Value in that quarter. Monthly LCFS Value will be the product of (i) Total gas consumed in MMBtu in the month of delivery, (ii) the MTS LCFS revenue sharing credits per MMBtu, and (iii) the Monthly LCFS Market Price. The Monthly LCFS Market Price shall be the simple average of the daily spot price of California LCFS credits as reported daily by OPIS under the name "CA LCFS Carbon Credit", priced in $/mt (dollars per metric ton), or its successor.

1.4.5. RIN Credit Sharing

In exchange for all of MTS' RIN Credits, MTS shall receive a monthly payment that is sum of the Monthly RIN Value in that month. "Monthly RIN Value" is the product of (i) Total gas consumed in MMBtu in the month of delivery, (ii) the MTS RIN revenue sharing credits per MMBtu, and (iii) the Monthly RIN Market Price. The Monthly RIN Market

Price shall be the simple average of the daily Argus D3 Cellulosic Biofuel RIN Index in the Argus US Products daily report.

1.4.6. Period of Performance

This contract is for up to a ten (10) year period (6-year base with an option to renew for another 4-year engagement, which shall be exercisable at MTS' sole discretion).

Service for the 6-year base term shall commence for each account on the first meter read date in January 2023, and terminate with the December 2028 meter read date. If MTS exercises the option to renew the contract for another 4-year term, service shall commence for each account on the first meter read date in January 2029, and terminate with the December 2032 meter read date.

1.5. INVOICE/PAYMENT

Payment will be made only on receipt of an invoice meeting the requirements described herein. Terms of service on invoices must correlate with utility cycle dates. Invoices shall be submitted monthly, by email to an email address to be indicated. Prompt invoicing is important for MTS to be able to manage its utility budget. Invoices must be submitted within 30 days of receipt of data from the utility. Adjustments to prior service periods must be clearly itemized, and must indicate the period covered and basis of the adjustment. Invoices may be submitted in a document format.

1.5.1 Invoices must contain the following information for the billing month:

- Baseload quantity;
- Balancing quantity;
- Posted Index Price;
- Spot Index Price;
- Pass through charges such as Transportation, Fuel Charges and Local Sales Taxes should be itemized separately;
- Billing cycle dates (start date and end date).

1.6. OBLIGATION TO MANAGE COSTS

The GSP shall make all reasonable efforts to manage costs efficiently for pass-through charges.

No overhead or profit may be applied to pass-through charges; MTS will only pay the GSP's actual costs of obtaining such products or services. The GSP must maintain records documenting cost of pass-through charges, and make such records available to MTS upon request. These records must be maintained for three (3) years following termination or completion of this contract.

1.7. TRANSITION

In the event there is a need to transition from the current Contractor to a new Contractor, the process will be as shown below:

a. Current Agreement terminates on December 31, 2022.

b. On or about December 1, 2022, current Contractor shall start a transition of the services to new Contractor, without any interruption of or adverse impact on services (at a minimum 30 days prior to termination of current agreement).

c. The current and new Contractor shall select a time that has the least impact to client services.

d. Under MTS direction and guidance, new Contractor and current Contractor shall be required to provide full cooperation and transition all the services on an expedited basis. The transition period shall be complete and detailed and allow for a smooth transition with no interruption of services. The entire conversion shall be completed by on or about December 31, 2022.

1.8. DISENTANGLEMENT

1.8.1 Disentanglement Process:

1. The Disentanglement process for the Agreement awarded from this RFP shall begin on any of the following dates:

   - the date designated by MTS not earlier than sixty (60) days prior to the end of current term, that MTS has elected not to exercise option year/s; the date MTS notifies Contractor that no funds or insufficient funds have been appropriated so that the Agreement shall be terminated for convenience;

   - the date any Termination Notice is delivered, if MTS or Contractor elects to terminate any or all of the services pursuant to the Agreement.

2. Contractor shall be required to perform its Disentanglement obligations on an expedited basis, as determined by MTS, if MTS terminates the Agreement for cause.

3. Contractor shall be required to provide full cooperation. Information shall be complete and detailed to enable MTS or designee to fully assume and continue a smooth transition with no interruption of services.

1.8.2 General Obligations:

1. All services related to Disentanglement shall be deemed a part of the base services and shall be performed by Contractor at no additional cost to MTS. Contractor's obligation to provide the services shall not cease until Disentanglement is satisfactory to MTS, and delivered in writing.

2. Contractor shall provide all information regarding the services, including data conversion, files, interface specifications, training staff assuming responsibility, and

related professional services (if applicable).

3. Contractor shall provide for the prompt and orderly conclusion of all work including documentation of work in process to assure an orderly transition to MTS or designee.

1.8.3 Delivery of Documentation:

Contractor shall deliver to MTS or designee all documentation and data related to the service, in format as requested by MTS, and Contractor shall destroy all copies not turned over to MTS, all at no cost to MTS.

EXHIBIT B
CONTRACTOR'S COST/PRICING FORM

Natural Gas Service Provider - Pricing Form

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Contract Period:	Base	Base	Base	Base	Base	Base
Year Starts:	1/1/2023	1/1/2024	1/1/2025	1/1/2026	1/1/2027	1/1/2028
Year Ends:	12/31/2023	12/31/2024	12/31/2025	12/31/2026	12/31/2027	12/31/2028
Estimated MMBtu:	1,060,000	1,090,000	1,090,000	1,090,000	1,090,000	1,090,000

	Year 7	Year 8	Year 9	Year 10
Contract Period:	Option	Option	Option	Option
Year Starts:	1/1/2029	1/1/2030	1/1/2031	1/1/2032
Year Ends:	12/31/2029	12/31/2030	12/31/2031	12/31/2032
Estimated MMBtu:	1,090,000	1,090,000	1,090,000	1,090,000

GSP Index Premium:	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Adjustment to Posted and/or Spot Price ($/MMBtu)	$ (0.08)	$ (0.08)	$ (0.08)	$ (0.08)	$ (0.08)	$ (0.08)

GSP Index Premium:	Year 7	Year 8	Year 9	Year 10
Adjustment to Posted and/or Spot Price ($/MMBtu)	(0.0800)	(0.0800)	(0.0800)	(0.0800)

MTS share of energy credits generated:	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
RIN credits per MMBtu	1.7591	1.7591	1.7591	1.7591	1.7591	1.7591
LCFS credits per MMBtu	0.04802	0.04703	0.04687	0.04671	0.04654	0.04638

MTS share of energy credits generated:	Year 7	Year 8	Year 9	Year 10
RIN credits per MMBtu	1.7591	1.7591	1.7591	1.7591
LCFS credits per MMBtu	0.0462	0.0461	0.0461	0.0461

Definitions:
The "Posted Price" for daily Biogas deliveries ($/MMBtu) shall be the SoCal Citygate First of the Month Index as published by Natural Gas Intelligence ("NGI")
The "Spot Price" shall mean the Monthly Average of the Gas Daily Midpoint price as published in Gas Daily Publication, Daily Price Survey, Citygates – SoCal Gas Citygate Midpoint

Clean Energy Renewables Pricing clarifications:
MTS will receive 15% of the RIN share; 100% of the equivalent fossilCNG LCFS credit share, & 15% of the incremental green LCFS share based on a carbon intensity of -250g CO2e/MJ for settlement purposes
The LCFS compliance curve tightens every year through 2030 which is why the credit yield changes. Further, in 2024 fossilCNG is no longer a credit generating fuel based on the LCFS.
The carbon intensity of the RNG delivered to MTS will be based on the weighted average carbon intensity (WACI) of our California RNG portfolio as reported to CARB.
The natural gas commodity discount will be based on SoCal Citygate First of the Month Index. MTS will be responsible for any over and/or under nomintated commodity and charged accordingly.
RNG supplied to MTS will be based on actual consumption at MTS' stations using the utility gas meter as the offical meter of record.

Clean Energy Renewables recommends MTS allow us to provide monetization services on MTS's RINs and LCFS credits

EXHIBIT C
STANDARD CONDITIONS

2.1. COMPLETE AGREEMENT

This Agreement, including all applicable terms, conditions, and specifications, is the entire agreement of the parties and no attempted modification shall be binding unless in writing and signed by MTS and the Contractor.
MTS reserves the right to use alternative vendors/contractors at any time for any reason.

2.2. COUNTERPARTS

This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original thereof.

2.3. SURVIVAL

Notwithstanding MTS's acceptance of the services and payment therefore, Contractor shall remain obligated under all clauses of this Agreement which expressly, or by their nature, extend beyond and survive such acceptance and payment.

2.4. DUTY TO CLARIFY OBVIOUS AMBIGUITY

The Contractor is required to seek clarification of any obvious ambiguity contained in the contract documents. Failure to do so will result in an interpretation of the ambiguous provision favorable to MTS should a dispute later arise concerning that provision.

2.5. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To MTS:

San Diego Metropolitan Transit System (MTS)
Attention: Chief Executive Officer
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
To Contractor:

As shown on front page.

2.6. CHANGES IN WORK

No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the MTS Project Manager and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The written notice of potential change in work be given to MTS prior to the time Contractor shall have performed the work within fifteen (15) days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential change in work.

The MTS Project Manager may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Contractor or ordered by the MTS Project Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved

change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract.

2.7. SEVERABILITY

If any term, provision, or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

2.8. TERMINATION OF AGREEMENT

2.8.1. TERMINATION FOR CONVENIENCE

Performance under this agreement may be terminated by MTS in accordance with this clause in whole or, from time-to-time, in part, whenever MTS shall elect. Any such termination shall be affected by delivery to Contractor of a Notice of Termination specifying the extent to which performance under this agreement is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

A. immediately discontinue performance on the date and to the extent specified in the notice;

B. place no further orders for materials other than as may be necessarily required for completion of such portion of the agreement that is not terminated;

C. promptly make every reasonable effort to either obtain cancellation on terms satisfactory to MTS of all orders to Contractor's suppliers to the extent they relate to the performance of that portion terminated, or upon MTS concurrence assign to MTS those orders; and

D. assist MTS, upon request, in the maintenance, protection and disposition of property acquired by MTS under this agreement.

If claimed in writing within 30 calendar days after Notice of Termination, MTS will pay to Contractor an equitable adjustment to include (without duplication of any item):

A. all amounts due and not previously paid to Contractor for goods completed in accordance with this agreement prior to such notice;

B. a reasonable amount for any goods and materials then in production; provided that no such adjustment be made in favor of Contractor with respect to any goods which are Contractor's standard stock;

C. costs of settling and paying supplier's claim arising out of the canceled orders; and

D. a reasonable profit for costs incurred in the performance of that portion terminated; provided, however, that if it appears that Contractor would have sustained a loss on the entire agreement had it been completed, no profit shall be included.

The total sum to be paid to Contractor under this clause, shall not exceed the total order price as reduced by the amount of payments otherwise made, and as further reduced by the order price of that portion not terminated, and will not include any consideration for loss of anticipated profits on the terminated portion all claims for which seller agrees to waive.

2.8.2. TERMINATION FOR DEFAULT

In case of Contractor breach or failure to perform, MTS reserves the right to terminate the contract for default. MTS may award the contract to the next lowest responsive, responsible Proposer, solicit new bids, or pursue any other remedy authorized by law.

In addition to any remedy authorized by law, money due to the Contractor under and by virtue of contract, as shall be considered necessary by MTS, may be retained by MTS until disposition has been made of such suits or claims for damages. The retention of money due to the Contractor shall be subject to the following:

A. MTS will give the Contractor ten (10) days' notice of its intention to retain funds from any partial payment, which may become due to the Contractor prior to acceptance by MTS of the contract. Retention of funds from any payment made after acceptance may be made without such prior notice to the Contractor.

B. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments.

C. If MTS has retained funds, and it is subsequently determined that MTS is not entitled to be indemnified and saved harmless by the Contractor in connection with the matter for which such retention was made, MTS shall be liable for interest earned on the amount retained for the period of such retention.

MTS may terminate the contract by serving a notice of termination on the Contractor. Notice shall set forth the manner in which the Contractor is in default, and provide the Contractor with ten (10) days' time to cure the default to the satisfaction of MTS. This cure period may be adjusted if the parties so agree in writing. If MTS determines after the cure period that the default is not cured, MTS will issue a "show cause" letter to the Contractor requesting from the Contractor reasons why this contract should not be terminated. If MTS does not find that the Contractor has demonstrated sufficient reason for its failure to cure, the contract shall be deemed terminated. The Contractor shall only be paid the contract price for supplies received and accepted, or services performed in accordance with the manner set forth in the contract. If MTS determines that the Contractor had an excusable reason for not performing such as a strike, fire, flood, or other events, which are not the fault of, or beyond the control of the Contractor, MTS may allow the Contractor to continue work or terminate the contract for convenience.

2.9. ASSIGNABILITY

A. By MTS. This contract is assignable, in whole or in part, to any other government agency, including the North County Transit District and/or the San Diego Association of Governments and/or the Metropolitan Transit System. The party wishing to exercise the assignment (also known as a "piggyback") shall perform an independent cost estimate to determine fair and reasonable pricing, and shall enter into its own contract with the vendor

based upon the terms and conditions of this Request for Proposal. Any assignment or piggyback shall comply with Federal Transit Administration (FTA) requirements if applicable. MTS shall have no responsibility or liability for any such assignment or piggyback.

B. By Contractor. Any attempt by Contractor to assign, subcontract, or transfer all or part of this Agreement shall be void and unenforceable without MTS' prior written consent; which consent shall not be unreasonably withheld. Any such consent shall not relieve Contractor from full and direct responsibility for all services performed prior to the date of assigning, subcontracting, or transferring this Agreement. In the event of an authorized assignment by MTS or applicable law, all terms, conditions, and provisions of this contract shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties.

Any assignment of this Agreement or of any rights hereunder of hypothecation thereof in any manner, in whole or in part, without the prior written consent of MTS shall be null and void. Notwithstanding the foregoing, Contractor may assign monies due or to become due under this Agreement, and such assignments will be recognized by MTS, provided that written notice thereof is given to MTS at least ten (10) calendar days before payment is due. Any assignment of monies shall be subject to proper setoffs in favor of MTS to all deductions provided for in this Agreement. All money withheld, whether assigned or not, shall be subject to being used by MTS for the completion of the Agreement, in the event Contractor should be in default therein.

In the event of an authorized assignment by MTS or applicable law, all terms, conditions, and provisions hereof shall inure to and bind hereto their and each of their respective heirs, executors, administrators, successors, and assigns.

2.10. STANDARD OF PERFORMANCE

Contractor's services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this contract and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Contract.

2.11. TIME

The Contractor acknowledges that timely performance is an important element of this Agreement. Accordingly, the Contractor shall put forth its best professional effort to complete its services in accordance with the agreed-upon schedule.

2.12. EXCUSABLE DELAYS / FORCE MAJEURE

Timely performance and deliveries are essential to this Agreement. However, Contractor will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition, which is beyond Contractor's reasonable control, without Contractor's

fault or negligence. Acts of God, such as storms or floods, as well as government priorities, acts of civil or military authorities, fires, strikes, epidemics, war or riot, are examples of events which will be excusable for being beyond Contractor's reasonable control only upon fulfillment of the following conditions: (a) within seven (7) calendar days of the commencement of any excusable delay, Contractor shall provide MTS with written notice of the cause and extent thereof, as well as request for a schedule extension for the estimated duration thereof; and (b) within seven (7) calendar days of the cessation of the event causing delay, Contractor shall provide MTS with written notice of the actual delay incurred, upon receipt of which the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay.

2.13. SUSPENSION OF WORK

MTS may at any time and for any reason within its sole discretion issue a written order to the Contractor suspending, delaying or interrupting all or any part of the Work for a specified period of time. The Contractor shall comply immediately with any such written order and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of work stoppage. Contractor shall continue the Work that is not included in the suspension and shall continue such ancillary activities as are not suspended. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction from MTS. The Contractor shall be allowed an equitable adjustment in the Contract price and/or an extension of the Contract time, to the extent that cost or delays are shown by the Contractor to be directly attributable to any suspension. However, no adjustment shall be made under this section for any suspension, delay or interruption due to the fault or negligence of the Contractor, or for which an equitable adjustment is provided for, or excluded under any other term or condition of the Contract. As soon as reasonably possible but no later than forty-five (45) calendar days, or any other period of time agreed to by the parties, after receipt of the written suspension of work notice, the Contractor shall submit to the Contracting Officer a detailed price and schedule Proposal for the suspension, delay or interruption.

2.14. INSPECTION AND TESTING

Except as otherwise expressly provided herein, Contractor shall be responsible for all inspection and testing, and agrees to strictly follow the standards of quality specified by MTS in addition to those customary in the industry. MTS shall be afforded free access to plants of Contractor and its suppliers in order to make surveillance inspections to monitor compliance with contractual quality requirements, and MTS's right to inspect, examine, and test the goods shall extend through the manufacturing process, the time and shipment, and a reasonable time after arrival at the ultimate destination. Contractor's failure to adhere to the standards of quality required under this Agreement shall be deemed to be reasonable grounds for insecurity justifying a written demand from MTS that Contractor provide adequate assurance of Contractor's ability to meet said standards.

Goods shall not be deemed accepted until finally inspected and examined at final destination.

The making or failure to make any surveillance inspection or examination of, payment for, or acceptance of the goods shall in no way impair MTS's right to reject nonconforming goods, or to avail itself of any other remedies to which MTS may be entitled, notwithstanding MTS's knowledge of the nonconformity, its substantiality, or the ease of its discovery.

2.15. INDEPENDENT CONTRACTOR

Contractor hereby declares that it is engaged in an independent business and agrees that in the performance of this Agreement it shall act as an independent contractor and not as an employee of MTS. Contractor has and hereby retains full control of all the employment, compensation, and discharge of all employees of Contractor assisting in its performance hereunder. Contractor shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. MTS shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. Except as otherwise specifically provided, as an independent contractor, Contractor is solely responsible for determining the means and methods of performing the services described in the scope of work. Contractor shall perform the work contemplated with resources available within its own organization.

2.16. THIRD PARTY BENEFICIARIES

No provisions of the Contract shall in any way inure to the benefit of any third party, including the public at large, so as to constitute such person a third-party beneficiary of the Contract or of any one or more of the terms and conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract, except as expressly provided elsewhere in the Contract

2.17. SUBCONTRACTORS

Contractor agrees to bind every subcontractor to the terms of the Agreement as far as such terms are applicable to subcontractor's portion of the Work. Contractor shall be as fully responsible to MTS for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and MTS. MTS reserves the right to approve all subcontractors. MTS's approval of any subcontractor under this Agreement shall not in any way relieve Contractor of its obligations under this Agreement.

2.18. INDEMNITY

As between MTS and Contractor, Contractor is deemed to assume responsibility and liability for, and Contractor shall defend, indemnify and hold harmless, MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which MTS, SDTI, SDTC, SD&AE, SD&IV or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or subcontractors in its or their performance under this Agreement. In addition to any other remedy authorized by law, so much of the money due Contractor under this Agreement as shall be considered necessary by MTS may be retained until disposition has been made of any claim for damages.

2.19. DISPUTES, CLAIMS, AND RESOLUTION

MTS and the Contractor agree that every effort shall be made to resolve any dispute arising under this Agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind the Contractor or MTS. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the parties agree in writing to submit the dispute to binding arbitration.

Should the Contractor suffer any injury or damage to person or property because of any alleged act or omission of MTS, or if any of Contractor's employees, agents, or others for whose acts the Contractor is legally liable suffers any injury or damages to person or property because of any alleged act or omission of MTS, a written claim for damages shall be filed with the MTS Office of General Counsel in accordance with the provisions of California Government Code section 900 et seq.

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by MTS or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed to in writing.

2.20. NONWAIVER

Failure of MTS to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein, or by law, or to properly notify Contractor in the event of breach, or the acceptance of payment for any goods hereunder, or review of design, shall not release Contractor from any of the warranties or obligations of this agreement, and shall not be deemed a waiver of any right of MTS to insist regardless when shipped, received, or accepted or as to any prior or subsequent default hereunder, nor shall any revision of this agreement by MTS operate as a waiver of any of the terms hereof. A requirement that a Contractor's document be submitted for or subject to "authorization to proceed," "approval," "acceptance," "review," "comment," or combinations of such words or words of like import shall mean, unless the context clearly indicates otherwise, that Contractor shall, before implementing the information in the document, submit the document, obtain resolution of any comments, and obtain written authorization from MTS to proceed, and shall mean that a complete check will be performed. Authorization to proceed shall not constitute acceptance or approval of design details, calculations, analyses, test methods, or materials developed or selected by Contractor and shall not relieve Contractor from full compliance with contractual obligations.

2.21. GOVERNING LAW AND CHOICE OF FORUM

The definition of terms used, interpretation of this Agreement, and rights of all parties hereunder shall be determined in accordance with the laws of the State of California.

Any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the federal or state courts located in San Diego County, California, and the Contractor and MTS hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

2.22. LITIGATION EXPENSES

Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

2.23. INSURANCE

Contractor will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself.

All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best.

MTS utilizes the services of a third party insurance monitoring company. As a condition of contract award, Contractor shall submit any required insurance policies to the third party monitoring company of MTS' choosing.

2.23.1. COVERAGE REQUIRED - ALL CONTRACTS

A. Liability

1) Commercial General Liability: At all times during this contract and, with respect to Products and Completed Operations Liability, for twelve (12) months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work.

   All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees as additional insureds as their interests may appear.

2) Automobile Liability: At all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles.

3) Workers' Compensation/Employer Liability: At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

2.23.2. ADDITIONAL COVERAGES REQUIRED (AS INDICATED)

☒ (1) Primary and Non-Contributory Insurance

REQUIRED

Contractor agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required).

☐ (2) Owner-Provided Builder's Risk

PROVIDED

MTS will provide Builder's Risk Insurance on a special form basis, excluding the perils of earthquake and flood, at a limit of not less than the full replacement value of the work and covering the work and all materials and equipment to be incorporated therein, including property in transit elsewhere, and insuring the interests of the Contractor, subcontractors, materialmen, and MTS, SDTI, SD&AE, SD&IV, SDTC, MTS's contractor for design, and MTS's contractor for construction management. However, Contractor is responsible for the portion of any loss that is within the deductible amount of this Builder's Risk Insurance, which is currently at $50,000 but is subject to change.

☐ (3) Railroad Protective or Equivalent

REQUIRED

Any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing must be deleted. Option: purchase separate Railroad Protective Liability Policy as required.

☐ (4) Professional Liability

REQUIRED

At all times during this contract, and for twelve (12) months following acceptance of work by owner, Contractor agrees to maintain Professional Liability Insurance with respect to services or operations under this Agreement.

☐ (5) Pollution Legal Liability

REQUIRED

At all times during this contract, and for twenty four (24) months following, Contractor agrees to maintain Pollution Legal Liability Insurance with respect to services or

operations under this Agreement. The extended discovery period must be no less than twenty four (24) months.

☐ (6) Contractor Equipment

REQUIRED

At all times during this contract, Contractor agrees to maintain Contractor's Equipment Insurance on a special form basis covering equipment owned, leased, or used by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless MTS for any loss or damage to its equipment.

☐ (7) Installation Floater

REQUIRED

At all times during this contract, Contractor agrees to maintain Installation Floater Insurance on a special form basis covering property owned or provided by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless these entities for any loss or damage to its property.

☐ (8) Garage Keeper's Legal Liability & Automobile Portion

REQUIRED

At all times during this contract, Contractor agrees to maintain Garage Keeper's Legal Liability as well Automobile Portion which covers the risk of loss or damage to MTS vehicles while in the care, custody or control of Contractor. Automobile portion shall cover the Contractor in the event of a vehicle accident while they are driving a MTS vehicle, which results in a third party claim of physical damage or bodily injury.

☐ (9) Crime Fidelity Insurance

REQUIRED

At all times during this contract, Contractor agrees to maintain Crime Fidelity Insurance with respect to services or operations under this agreement. The coverage should include the following:

- Employee dishonesty/theft
- Theft, disappearance and destruction on the premises
- Theft, disappearance and destruction while in transit
- Forgery/alteration

☐ (10) Umbrella or Excess Liability (if required to meet liability limits above)

REQUIRED

Contractor agrees that any Umbrella or Excess Liability Policy utilized to provide the required limits of liability shall contain coverage at least as broad as that provided by the General Liability Policy, and be written for a term concurrent with the General Liability Policy.

2.23.3. MINIMUM POLICY LIMITS REQUIRED

	Combined Single Limit (CSL)
Commercial General Liability (Per Occurrence):	$2,000,000
(General Aggregate)	$4,000,000
(Completed Operations & Products Aggregate)	$2,000,000
Automobile Liability: (Combined Single Limit)	$2,000,000
Worker's Compensation:	Statutory Limits
Employer's Liability per Accident /or Disease:	$1,000,000

Additional Coverages (as indicated under Additional Coverages Required Section):

☐ B (1) Primary and Non-Contributory Insurance	
☐ B (2) Owner Provided Builder's Risk	Replacement Cost
☐ B (3) Railroad Protective or Equivalent	$
☐ B (4) Professional Liability	$
☐ B (5) Pollution and Legal Liability	$
☐ B (6) Contractor Equipment	Replacement Cost
☐ B (7) Installation Floater	Replacement Cost
☐ B (8) Garage Keeper's Legal Liability & Automobile Portion (Combined Single Limit (CSL)	(Per Occurrence)
☐ B (9) Crime Fidelity Insurance	$
☐ B (10) Umbrella or Excess Liability (if required to meet liability limits above)	$

2.23.4. NOTICE OF POLICY CHANGES

Contractor shall not amend or cancel the insurance policy and coverage required by this Agreement without providing MTS with at least thirty (30) days prior written notice. Contractor shall notify MTS within ten (10) days of insurer-initiated material amendments or cancellations to the insurance coverage required by this Agreement. Under no circumstances shall these notice provisions be deemed a waiver of the insurance

requirements set for herein. Any material changes in or cancellation of the insurance policy on file with MTS pursuant to the insurance requirements will result in an immediate stop work order until proof of substitute coverage meeting the requirements of this Agreement is provided to MTS. In the alternative, in MTS' sole discretion, MTS retains the right to declare Contractor in default and immediately terminate this Agreement if the insurance coverage required is cancelled, otherwise lapses or fails to meet the coverage limits at any time, and for any duration, during the term of this Agreement.

2.23.5. EVIDENCE REQUIRED

Within ten (10) working days following receipt of notice that a contract has been awarded, Contractor shall have provided the MTS Contracts Specialist with satisfactory certification by a qualified representative of the Insurer(s) that Contractor's insurance complies with all provisions in this insurance section.

2.23.6. SPECIAL PROVISIONS

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by MTS, SDTI, SD&AE, SD&IV, and SDTC, or their insurance Contractor(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

MTS reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

2.24. PRICE AND PAYMENT

The total price herein specified, unless otherwise expressly stated, shall include all taxes of any kind which either party is required to pay with respect to the sale of the goods covered by this Agreement, including sales and use taxes, and shall include all charges and expenses for customs duties, freight charges, inspection, testing, packaging and loading unless specifically excluded.

Payment will be made as set forth in this Agreement; however, payments may be withheld or portions thereof may be deducted or setoffs may be made against Contractor if Contractor is not performing work in accordance with the applicable provisions of this Agreement. The time for payment of invoices or for accepting any discounts offered shall run only from the date of receipt of correct invoices with required certification documents by MTS.

ADVANCE PAYMENT IS NOT ALLOWABLE.

2.25. CONSIDERATION PAID

Payment will be made as set forth in this Agreement; however, payments may be withheld or portions thereof may be deducted or setoffs may be made against Contractor if Contractor is not performing work in accordance with the applicable provisions of this Agreement. The time for payment of invoices or for accepting any discounts offered shall run only from the date of receipt of correct invoices with required certification documents by MTS.

MTS does not reimburse travel expenses unless expressly permitted within the scope. If travel expense reimbursement is permitted within the scope, reimbursement for transportation and subsistence costs shall be in accordance with MTS Board Policy No. 44-C.

2.26. COST PRINCIPLES

The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, shall be used to determine the allowability of individual items of cost.

The Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments.

Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments, are subject to repayment by the Contractor to MTS.

2.27. PROMPT PROGRESS PAYMENT AND RETENTION

Contractor or Subcontractor shall pay any Subcontractor no later than seven (7) business days from the receipt of each progress payment from MTS. No retainage will be held by MTS from progress payments due to the Contractor. Any retainage kept by the Contractor or by a Subcontractor must be paid in full to the Subcontractor in seven (7) business days after the Subcontractor's work is satisfactorily completed. Any delay or postponement of a progress payment or retainage to the Subcontractor over 30 calendar days may take place only for good cause and with MTS's prior written approval. Failure to comply with this provision will constitute noncompliance, which may result in the application of legal and contract remedies, including, but not limited to, prime contractor not being reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late or nonpayment by the Contractor, deficient Subcontractor performance or noncompliance by a Subcontractor.

Prime Contractor must submit the MTS Prompt Payment Certification Form to the MTS Contracts Administrator if any Subcontractors. The form is available for download at https://www.sdmts.com/business-center/procurement. The form certifies that all Subcontractors were paid within seven (7) business days of receiving payment from MTS for work performed during the previous month. The prime contractor must submit the completed certification, as required on the form, and the month following final acceptance of the project. In addition, seven (7) business day prompt payment requirement prevails over contract language between a Prime Contractor and a Subcontractor.

2.28. RECORDS RETENTION

The Contractor and any Subcontractor shall retain complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type and supporting materials related to those records. The Contractor agrees to comply

with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, Comptroller General of the U.S., FTA, DOT Office of Inspector General, the State, MTS or any of their authorized representatives to inspect and audit records pertaining to the performance of this Contract as reasonably may be required. The Contractor shall also permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

2.29. INTELLECTUAL PROPERTY WARRANTY

MTS shall advise the Contractor of any impending patent suit related to this Contract against MTS and provide all information available. The Contractor shall defend any suit or proceeding brought against MTS based on a claim that any services or goods furnished under this Contract constitutes an infringement of any patent, and the Contractor shall pay all damages and costs awarded therein, excluding incidental and consequential damages against MTS. In case said services or good, or any part thereof, is in such suit held to constitute infringement and use of said services or goods is enjoined, the Contractor shall, at its own expense and at its option, either procure for MTS the right to continue using said services or goods, or replace same with non-infringing services or goods, or modify it so it becomes non-infringing.

2.30. DATA RIGHTS

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Agreement. It includes the proprietary rights of the following:

- Shop drawings and working drawings
- Technical data including manuals or instruction materials, computer or microprocessor software
- Patented materials, equipment, devices or processes
- License requirements

MTS shall protect proprietary information provided by the Contractor to the fullest extent of the law. The Contractor shall grant a non-exclusive license to allow MTS to utilize such information. In the event that the Contractor no longer provides the information, MTS has the right to reverse engineer patented parts and software.

MTS reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the following subject data for its purposes: (1) any subject data required to be developed and first produced in the performance of the Contract and specifically paid for as such under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright to which the Contractor, Subcontractor or Supplier purchases ownership for the purpose of performance of the Contract and specifically paid for as such under

the Contract. The Contractor agrees to include the requirements of this clause, modified as necessary to identify the affected parties, in each subcontract and supply order placed under the Contract.

2.31. EXCLUSIVE USE

The services hereunder are provided for the exclusive use of MTS and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Contractor, are not to be used or relied upon by other parties except as authorized by MTS.

2.32. OWNERSHIP OF DOCUMENTS

Tracings, plans, specifications, and maps prepared or obtained under the terms of this Agreement shall be delivered to and become the property of MTS. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under this Agreement shall be made available, upon request, to MTS without restriction or limitation on its use.

2.33. LANGUAGE AND MEASURE UNITS

Unless specified otherwise, manuals, specifications, drawings, plans, purchase orders, subcontract documents, and invoices submitted in accordance with this Agreement shall be in metric ("Systems International d' Units," or "SI units") with the United States equivalents clearly shown.

2.34. DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND OTHER SMALL BUSINESS PARTICIPATION

This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR Part 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation (DOT) Financial Assistance Programs." MTS' DBE program has an aspirational goal of 6.3% participation by certified DBE's over Federal Fiscal years 2021 to 2024 (October 1, 2021 – September 30, 2024) time period. There is no specific DBE contract goal for this project.

In order to help MTS, achieve its federally mandated overall DBE goal, MTS encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed, in whole or in part, with federal funds. It is the policy of MTS to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in MTS DOT-assisted contracts. It is also our policy to:

1. Ensure nondiscrimination in the award and administration of all MTS contracts and subcontracts; Create a level playing field by which DBEs can compete for and perform in MTS DOT-assisted contracts;
2. Ensure that the MTS DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in Western States Paving vs. Washington State Department of Transportation;
3. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
4. Help remove procurement and contracting barriers, which impede DBE participation in MTS DOT-assisted contracts;

5. Monitor and enforce contractors' compliance in meeting established goal objectives and program requirements;

6. Assist in the development of DBEs and Small Businesses to increase their ability to compete successfully in the market place outside the DBE Program;

7. Ensure MTS contractors and subcontractors take all necessary; and reasonable steps to comply with these policy objectives.

To ascertain whether its overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid contracts. Therefore, all Proposers and successful Contractors are required to:

- Complete MTS's Designation of Subcontractors and DBE Program - Information for MTS's Bidder List.

MTS encourages the proposer to outreach to DBEs and other small business enterprises for any potential subcontracting opportunities on this project. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs. If interested in learning about bonding or financial assistance that may be available for small businesses, visit www.sba.gov.

Contractor shall be fully informed in respect to the requirements of the DBE regulations. The DBE regulations in their entirety are incorporated herein by this reference (see 49 CFR 26). Contractor's attention is directed to the following matters:

1. A DBE may participate as a prime contractor, subcontractor, joint-venture partner with a prime or subcontractor, vendor of materials or supplies, manufacturer, regular dealer or trucking company. DBE participation will be counted toward MTS's overall DBE goal per the DOT Regulations stated in 49 CFR 26.55.

2. A DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.

3. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: To view the CUCP statewide DBE Directory, please use the following link: http://dot.ca.gov/hq/bep/find_certified.htm.

4. If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification.

5. The contractor must promptly notify MTS whenever a DBE subcontractor performing work related to this contract is terminated, substituted or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MTS.

2.35. AMERICANS WITH DISABILITIES ACT

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; as well as all applicable regulations and guidelines issued pursuant to the ADA

2.36. SUBSTANCE ABUSE

Pursuant to the rules and regulations of the Department of Transportation to the extent applicable to this Contract, Contractor will be required to comply with all applicable drug and alcohol testing requirements, including the amendments to 49 C.F.R. parts 655.

As a condition of this Contract, the following are the Contractor's Drug and Alcohol Testing Obligations:

2.36.1. CONTRACTORS CERTIFICATION:

Contractor certifies that it will comply with all applicable drug and alcohol testing requirements provided by law, including, but not limited to, the drug and alcohol testing requirements set forth in the Department of Transportation's regulations.

2.36.2. INDEMNIFICATION OF MTS:

Contractor agrees to indemnify, defend and hold harmless MTS, SDTI and SDTC, and their directors, employees and agents from and against any loss, damage, expense and liability that MTS, SDTI or SDTC, may incur as a result of Contractor's failure to comply with any applicable drug and alcohol testing obligations.

2.36.3. SURVIVAL OF MTS' INDEMNIFICATION RIGHTS:

The rights and obligations contained in "B" (Indemnification of MTS) will survive any termination or expiration of this Agreement.

2.36.4. FAILURE TO COMPLY WITH DRUG AND ALCOHOL TESTING OBLIGATIONS MAY RESULT IN TERMINATION OF CONTRACT:

If, at any time during the period of this Agreement, Contractor fails to comply with any applicable drug and alcohol testing requirements, MTS will consider such failure a material breach of this Agreement, and MTS may terminate this Agreement immediately.

2.37. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

2.37.1. MTS'S EQUAL EMPLOYMENT OPPORTUNITY PROGRAM:

MTS is an Equal Opportunity Employer. As such, MTS agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, MTS agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. MTS' Equal Employment Opportunity Program for Contractors, MTS Policy No. 25, is part of this Agreement (a copy can be obtained from MTS' Clerk of the Board).

2.37.2. CONTRACTOR'S EQUAL EMPLOYMENT OPPORTUNITY PLAN:

Each Contractor who provides MTS labor, equipment, materials and services of $50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an

Equal Employment Opportunity Plan to the Director of Human Resources and Labor Relations for MTS each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract. The objective of this plan is to assure that the Contractor will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, sexual orientation, gender identity, religion, disability, age or status as a parent. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2.37.3. COMPLIANCE WITH REGULATIONS:

Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; Comply with federal transit law, specifically 49 U.S.C. § 5332; FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients,"; and Follow any other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination.

2.38. COVENANT AGAINST CONTINGENT FEES

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that she or he has not agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, MTS shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the Agreement a price or consideration, or otherwise recover the full amount of such fee, percentage, brokerage fee, gift, or contingent fee.

2.39. CALIFORNIA POLITICAL REFORM ACT

Contractor acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that Contractors hired by a public agency, such as MTS, may be deemed to be a "public official" subject to the Act if the Contractor advises MTS on decisions or actions to be taken by MTS. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act and the conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.

EXHIBIT D
FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

As a Federal Transit Administration (FTA) grantee, the San Diego Metropolitan Transit System (MTS), a California Public Agency, is required to inform the Contractor and any Subcontractor of the following information:

3.1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTS requests which would cause MTS to be in violation of the FTA terms and conditions.

3.2. FEDERAL CHANGES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between MTS and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor shall also ensure compliance by subcontractors at any tier of any applicable change to federal requirements.

3.3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

3.4. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems

appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

False Claims Act *(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)*

The Contractor and any Subcontractor acknowledges that the False Claims Act, 31 U.S.C. 3729 et seq., pertains to the underlying contract or the FTA assisted project for which this contract work is performed. If the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA, or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance, the Contractor must notify MTS, U.S. DOT Inspector General, and the FTA Chief Counsel or FTA Region 9 Counsel. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

Notice to FTA on Legal Matters *(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING $25,000)*

The Contractor and any Subcontractor shall notify MTS and the FTA Chief Counsel or FTA Region 9 Counsel if a current or prospective legal matter that may affect the Federal Government emerges. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in an award of federal funding, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

3.5. ACCESS TO RECORDS, REPORTS AND SITES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor and any Subcontractor shall retain complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type and supporting materials related to those records. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period

of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, Comptroller General of the U.S., FTA, DOT Office of Inspector General, the State, MTS or any of their authorized representatives to inspect and audit records pertaining to the performance of this Contract as reasonably may be required. The Contractor shall also permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

3.6. DEBARMENT AND SUSPENSION

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING $25,000)

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: a) Debarred from participation in any federally assisted Award; b) Suspended from participation in any federally assisted Award; c) Proposed for debarment from participation in any federally assisted Award; d) Declared ineligible to participate in any federally assisted Award; e) Voluntarily excluded from participation in any federally assisted Award; or f) Disqualified from participation in ay federally assisted Award. The Contractor agrees to include a provision requiring compliance to this section in its lower tier covered transactions.

3.7. RESTRICTIONS ON LOBBYING

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING $100,000)

The Contractor and their subcontracts at every tier certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The Contractor and their subcontracts at every tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

3.8. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING $100,000)

The Contractor and any Subcontractor agrees: 1) It will not use any violating facilities; 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;" 3) It will report violations of use of prohibited facilities to FTA; and 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

3.9. ENERGY CONSERVATION

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor and any Subcontractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq and 49 C.F.R. part 622, subpart C.

3.10. ENVIRONMENTAL PROTECTIONS

(APPLICABLE TO ALL CONTRACTS)

3.10.1. GENERAL

Contractor agrees to comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

3.10.2. NATIONAL ENVIRONMENTAL POLICY ACT

An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Contractor agrees that it will: (1) Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139, (b) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508, (c) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622, (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note, and (e) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto. (2) Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation: (a) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013, (b) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006, and (c) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.

3.10.3. ENVIRONMENTAL JUSTICE

Contractor agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit

Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

3.10.4. OTHER ENVIRONMENTAL FEDERAL LAWS

Contractor agrees that it will comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."

3.10.5. USE OF CERTAIN PUBLIC LANDS

Contractor agrees it will comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.

3.10.6. HISTORIC PRESERVATION.

The Contractor agrees that it will: (1) Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places. (2) Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108. (3) Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq. (4) Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. part 800. (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.

3.10.7. INDIAN SACRED SITES

The Contractor agrees that it will facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note.

3.11. ADA ACCESS

(APPLICABLE TO ALL CONTRACTS)

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d)., which prohibit discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the

Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act.

3.12. CIVIL RIGHTS

(APPLICABLE TO ALL CONTRACTS)

3.12.1. SUBCONTRACT

The Contractor shall include these requirements in each subcontract entered into as part thereof.

3.12.2. NONDISCRIMINATION

In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, gender identity, sexual orientation, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

3.12.3. RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3.12.4. AGE

In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3.12.5. DISABILITIES

In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3.13. VETERANS EMPLOYMENT

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

3.14. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

Apart from inconsistent requirements imposed by federal statute or regulations, MTS shall comply with the requirements of 49 U.S.C. § 5323 (h)(2) by refraining from using any federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

3.15. CONTRACTOR ASSURANCE

(APPLICABLE TO ALL CONTRACTS)

The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MTS deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph.

3.16. SAFE OPERATION OF MOTOR VEHICLES

(APPLICABLE TO ALL CONTRACTS)

3.16.1. SEAT BELT USE

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or MTS.

3.16.2. DISTRACTED DRIVING

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

3.17. GEOGRAPHIC RESTRICTIONS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

MTS shall refrain from using state or local geographic preferences, except those expressly mandated or encouraged by federal statute, and as permitted by federal procurement rules.

3.18. DOMESTIC PREFERENCES FOR PROCUREMENTS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

3.19. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

(APPLICABLE TO ALL CONTRACTS)

In accordance with 2 CFR part 200.216, Contractor and its subcontractors are prohibited from expending funds under this Contract to: procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). This includes: for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); telecommunications or video surveillance services provided by such entities or using such equipment; and

telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

EXHIBIT E

FORMS

CONTACT INFORMATION

Read attached General Provisions carefully. They are a part of your proposal. Unit prices will prevail regardless of extensions submitted by the Proposer.

Company Information:

The Official, Legal Name of Proposing Firm:	Clean Energy Renewable Fuels, LLC
Doing Business As:	N/A
Legal Structure (Corp./Partner/Proprietor):	Limited Liability Company
Company Mailing Address:	4675 MacArthur Court, Suite 800
	Street
	Newport Beach CA 92660
	City State Zip

Person Authorized to sign:

Point of Contact:	Robert M. Vreeland
Title:	Chief Financial Officer
E-Mail Address:	robert.vreeland@cleanenergyfuels.com
Phone Number:	(949) 437-1272

Accounts Receivable

Point of Contact:	Eric Albrecht
Title:	Senior Manager Credit & Collections
E-Mail Address:	credit@cleanenergyfuels.com
Phone Number:	(949) 437-1226

DESIGNATION OF SUBCONTRACTORS

List Subcontractor participants below. If 100% of item is not to be performed or furnished by subcontractor, describe exact portion of item to be performed or furnished by subcontractor. The successful bidder must execute and return this form even if no subcontractor participation will be reported.

	Subcontractor 1
Company Name:	BP Energy Company
Contractor License or Certificate Number	B2011022782
DBE, DVBE LGBT, MBE, SB, WBE:	N/A
% of Work:	10
Department of Industrial Relations (DIR) Number:	N/A
Point of Contact	Sean Reavis
Email:	Sean.Reavis@bp.com
Phone Number:	(402) 203-2911
Address:	201 Helios Way Street
	Houston / TX / 77079 City / State / Zip

Description of Work:

Having provided RNG services to MTS for years, BP's new role will be to ensure a seamless transition to Clean Energy Renewables and to secure RNG supply going forward.

COPY THIS FORM IF NEEDED FOR ADDITIONAL SUBCONTRACTORS.

Subcontractor

Company Name: _____

Contractor License or Certificate Number _____

DBE, DVBE LGBT, MBE, SB, WBE: _____

% of Work: _____

Department of Industrial Relations (DIR) Number: _____

Point of Contact _____

Email: _____

Phone Number: _____

Address: _____
Street

_____
City State Zip

Description of Work:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

DBE PROGRAM – INFORMATION FOR MTS'S PROPOSAL LIST

Per U.S. Department of Transportation's (DOT's) DBE Regulation 49 CFR 26.11, MTS must obtain the following information about contractors and subcontractors whom bid on MTS's federally assisted contracts: company name; company address; company's status as a DBE or non-DBE; age of firm; and the annual gross receipts of the company. This information will be maintained in MTS's proposer list. The purpose for maintaining a proposer list is to derive data on the relative availability of DBEs in the local market. MTS may use this data in the future to help set MTS's overall DBE participation goals on federally assisted contracts.

INSTRUCTIONS: Each prime contractor and each subcontractor bidding on a MTS federally assisted contract is required to complete this form as part of their bid/proposal.

1. What is your company's name? **Clean Energy Renewable Fuels, LLC**
2. What is your company's address? **4675 MacArthur Court, Suite 800 Newport Beach, CA 92660**
3. What type of work does your company perform? (list NAICS Codes if known) **Delivery of RNG for vehicles**

Is your company a certified DBE WBE, DVBE, SB or LGBT? If yes, please check the applicable box and state the corresponding certification number.

- ☐ DBE
- ☐ DVBE
- ☐ MBE
- ☐ SB
- ☐ WBE
- ☐ LGBT

5. How many years has your company been in business? **11 years**
6. What are the annual gross receipts of your company (please check the applicable bracket)?

- ☐ Less than $1,000,000
- ☐ $1,000,001 – $15,000,000
- ☐ $15,000,001 - $26,290,000*
- ☐ $26,290,001– $50,000,000
- ☐ $50,000,001 - $100,000,000
- ☑ Greater than $100,000,000

*The DOT annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous 3 fiscal years has had average annual gross receipts below $26,290,000, your company may be eligible for DBE Certification. *

7. Do you want MTS to provide your company additional guidance on how to become DBE certified?

- ☐ Yes
- ☑ No

ACKNOWLEDGED AND AGREED

SUBCONTRACTOR
(Copy this form if needed for additional subcontractors)

Print Name: _____
Title: _____
Signature: _____
Date: _____

PRIME CONTRACTOR

Print Name: Robert M. Vreeland
Title: Chief Financial Officer
Signature: Robert M Vreeland
Date: August 9, 2022

DBE PROGRAM – INFORMATION FOR MTS'S PROPOSAL LIST

Per U.S. Department of Transportation's (DOT's) DBE Regulation 49 CFR 26.11, MTS must obtain the following information about contractors and subcontractors whom bid on MTS's federally assisted contracts: company name; company address; company's status as a DBE or non-DBE; age of firm; and the annual gross receipts of the company. This information will be maintained in MTS's proposer list. The purpose for maintaining a proposer list is to derive data on the relative availability of DBEs in the local market. MTS may use this data in the future to help set MTS's overall DBE participation goals on federally assisted contracts.

INSTRUCTIONS: Each prime contractor and each subcontractor bidding on a MTS federally assisted contract is required to complete this form as part of their bid/proposal.

1. What is your company's name? **BP Energy Company**
2. What is your company's address? **201 Helios Way, Houston, TX 77079**
3. What type of work does your company perform? (list NAICS Codes if known) **Natural Gas Trading and Marketing**

Is your company a certified DBE WBE, DVBE, SB or LGBT? If yes, please check the applicable box and state the corresponding certification number.

- ☐ DBE
- ☐ DVBE
- ☐ MBE
- ☐ SB
- ☐ WBE
- ☐ LGBT

5. How many years has your company been in business? **30+ years**
6. What are the annual gross receipts of your company (please check the applicable bracket)?

- ☐ Less than $1,000,000
- ☐ $1,000,001 – $15,000,000
- ☐ $15,000,001 - $26,290,000*
- ☐ $26,290,001– $50,000,000
- ☐ $50,000,001 - $100,000,000
- ☑ Greater than $100,000,000

*The DOT annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous 3 fiscal years has had average annual gross receipts below $26,290,000, your company may be eligible for DBE Certification. *

7. Do you want MTS to provide your company additional guidance on how to become DBE certified?

- ☐ Yes
- ☑ No

ACKNOWLEDGED AND AGREED

SUBCONTRACTOR
(Copy this form if needed for additional subcontractors)

Print Name: Ronald Vogel
Title: Attorney In Fact
Signature: Ronald Vogel
Date: July 21, 2022

PRIME CONTRACTOR

Print Name: Robert M. Vreeland
Title: Chief Financial Officer
Signature: Robert M Vreeland
Date: August 9, 2022

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBLE AND VOLUNTARY EXCLUSIONS LOWER THAN TIER COVERED TRANSACTIONS

CONTRACTOR AND SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

(Provide one completed Form for the Prime Contractor and any Subcontractors)

MTS may not permit a contractor or subcontractor to bid on, be awarded, or perform work on a public works project if the contractor or subcontractor is ineligible to bid on, be awarded or perform work on a public works project pursuant to California Labor Code sections 1777.1 or 1777.7.

In addition, MTS may not award any federally funded contract over $25,000 to a contractor or subcontractor that is excluded or disqualified pursuant to 2 CFR Part 180 Subpart C.

The prime/subcontractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification.

QUESTIONNAIRE

Has the Contractor, or any officer, principal, affiliates or employee of the Contractor ever been debarred, suspended, proposed for debarment, declared ineligible or otherwise prevented from bidding on, or completing a federal, state, or local government project?

☐ Yes
☑ No

If the answer is yes, or where the prime/subcontractor is unable to certify any of the statements in the above certifications, such prime/subcontractor shall attach an explanation (i.e. date, background, resolution) with this form.

Note: Failure to provide this form at the time of Bid/Proposal will not result in a finding of a non-responsive bid/proposal. Submittal of this form for The Prime Contractor and all Subcontractors is required for a Proposer to be deemed "Responsible." MTS encourages Proposers to complete and submit all forms at the time of bid/proposal.

SUBCONTRACTOR (Copy this form if needed for additional subcontractors)		PRIME CONTRACTOR	
Business Name:		Business Name:	Clean Energy Renewable Fuels, LLC
License No. (if applicable):		License No. (if applicable):	B2022008369
DUNS No.:		DUNS No.:	07-933-6714

ACKNOWLEDGED AND AGREED

Print Name:		Print Name:	Robert M. Vreeland
Title:		Title:	Chief Financial Officer
Signature:		Signature:	Robert M Vreeland
Date:		Date:	August 9, 2022

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBLE AND VOLUNTARY EXCLUSIONS LOWER THAN TIER COVERED TRANSACTIONS

CONTRACTOR AND SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

(Provide one completed Form for the Prime Contractor and any Subcontractors)

MTS may not permit a contractor or subcontractor to bid on, be awarded, or perform work on a public works project if the contractor or subcontractor is ineligible to bid on, be awarded or perform work on a public works project pursuant to California Labor Code sections 1777.1 or 1777.7.

In addition, MTS may not award any federally funded contract over $25,000 to a contractor or subcontractor that is excluded or disqualified pursuant to 2 CFR Part 180 Subpart C.

The prime/subcontractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification.

QUESTIONNAIRE

Has the Contractor, or any officer, principal, affiliates or employee of the Contractor ever been debarred, suspended, proposed for debarment, declared ineligible or otherwise prevented from bidding on, or completing a federal, state, or local government project?

☐ Yes
☑ No

If the answer is yes, or where the prime/subcontractor is unable to certify any of the statements in the above certifications, such prime/subcontractor shall attach an explanation (i.e. date, background, resolution) with this form.

Note: Failure to provide this form at the time of Bid/Proposal will not result in a finding of a non-responsive bid/proposal. Submittal of this form for The Prime Contractor and all Subcontractors is required for a Proposer to be deemed "Responsible." MTS encourages Proposers to complete and submit all forms at the time of bid/proposal.

SUBCONTRACTOR (Copy this form if needed for additional subcontractors)		PRIME CONTRACTOR	
Business Name:	BP Energy Company	Business Name:	Clean Energy Renewable Fuels, LLC
License No. (if applicable):	B2011022782	License No. (if applicable):	B2022008369
DUNS No.:	62-527-5755	DUNS No.:	07-933-6714

ACKNOWLEDGED AND AGREED

Print Name:	Ronald Vogel	Print Name:	Robert M. Vreeland
Title:	Attorney In Fact	Title:	Chief Financial Officer
Signature:	Ron Vogel	Signature:	Robert M Vreeland
Date:	July 21, 2022	Date:	August 9, 2022

EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT

Metropolitan Transit System (MTS) enforces an Equal Opportunity (EEO) program established under MTS policies and procedures No. 25. This program prohibits discrimination in employment and requires MTS Contractors to be equal opportunity employers. You may submit a copy of the Employer Information Report, EEO-1, in lieu of the **Equal Opportunity Program Workforce Report Continued Form**. The undersigned hereby certifies that the foregoing data contained herein is true and correct:

COMPLETE ALL SECTIONS OF THIS FORM:

1. The Official, Legal Name of Proposing Firm: **Clean Energy Renewable Fuels, LLC**
2. Doing Business As: **N/A**
3. Legal Structure (Corp./Partner/Proprietor): **Limited Liability Company**
4. Address of Establishment in San Diego County: **N/A** (Street)

   (City / State / Zip)
5. If there is no office in San Diego County, or if there are less than 15 employees in that office, include an address for your regional office that will oversee the work under MTS' contract: **4675 MacArthur Court, Suite 800** (Street)

   Newport Beach (City) **CA** (State) **92660** (Zip)

Employment Data - Include the employees located in San Diego County only, unless your firm employs fewer than fifteen (15) people locally. In the event, you should list the workforce of the regional office that will oversee the work under MTS' contract. Report all permanent full-time and part-time employees including apprentices and on-the-job trainees. Blank spaces will be considered as zeros

ACKNOWLEDGED AND AGREED

6. Name, Address, and Phone Number of Person to Contact Regarding this Report:

Name of Signee: **Rosemaria Altieri**
Title: **Director Human Resources**
Phone Number: **(949) 437-9169**
Address: **4675 MacArthur Court, Suite 800** (Street)

Newport Beach (City) **CA** (State) **92660** (Zip)

Name of Signee: **Robert M. Vreeland**
Authorized Signature: Robert M Vreeland
Date: **August 9, 2022**

EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT CONTINUED

OCCUPATIONAL CATEGORY	African American		Hispanic		Asian or Pacific Islander		Native American		Other		Overall Total	
	M	F	M	F	M	F	M	F	M	F	M	F
Executive/Managerial												
Engineers/Architects/ Surveyors												
Professionals (N.E.C.)												
Technicians			SEE ATTACHED SHEETS									
Sales												
Administrative Support												
Protective Services												
Services (N.E.C.)												
Craft Workers (Skilled)												
Machine Operators, Assemblers & Inspectors												
Transportation and Material Moving												
Laborers (Unskilled)												
TOTALS FOR EACH COLUMN												

Indicate by gender and ethnic code the number of the above workforce, which are persons with disabilities:

DISABLED												

COMPID = BP95927
UNITID = BP95927

EQUAL EMPLOYMENT OPPORTUNITY
2020 EMPLOYER INFORMATION REPORT EEO-1
Consolidated Report

SECTION B – COMPANY IDENTIFICATION

1. CLEAN ENERGY
4675 MACARTHUR COURT
SUITE 800
NEWPORT BEACH, CA 92660

2.a. CLEAN ENERGY
4675 MACARTHUR COURT
SUITE 800
NEWPORT BEACH, CA 92660

c. EIN= 954803747

SECTION C – TEST FOR FILING REQUIREMENT

1- Y 2- N 3- Y DUNS= 829953988

SECTION E – ESTABLISHMENT INFORMATION
NAICS: 221210 - Natural Gas Distribution

SECTION D – EMPLOYMENT DATA

JOB CATEGORIES	Hispanic or Latino		Non-Hispanic or Latino												Overall Totals
			---------- Male ----------						---------- Female ----------						
	Male	Female	White	Black or African American	Native Hawaiian Or Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	White	Black or African American	Native Hawaiian Or Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	
Exec/Sr. Officials & Mgrs	0	0	5	0	0	0	0	0	1	0	0	0	0	0	6
First/Mid Officials & Mgrs	4	2	56	0	0	4	0	3	12	0	0	4	0	2	87
Professionals	6	4	29	0	0	13	0	2	19	1	0	12	0	0	86
Technicians	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sales Workers	0	1	10	0	0	0	0	0	3	1	0	0	0	0	15
Administrative Support	3	7	10	2	0	3	0	0	9	1	0	3	0	3	41
Craft Workers	28	1	98	7	0	4	0	6	0	0	0	0	0	0	144
Operatives	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Laborers & Helpers	2	0	4	1	0	0	0	0	0	0	0	0	0	0	7
Service Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	43	15	213	10	0	24	0	11	44	3	0	19	0	5	387
Previous Year Total	37	13	248	11	1	16	0	8	42	1	0	20	0	5	402

SECTION F – REMARKS

DATES OF PAYROLL PERIOD: 10/10/2020 THRU 10/23/2020

SECTION G – CERTIFICATION: CERTIFIED DATE: 8/18/2021 9:29 PM

CERTIFYING OFFICIAL: Bernadette Abrenica TITLE: Sr. Benefits Specialist
EMAIL: bernadette.abrenica@cleanenergyfuels.com PHONE: 949-437-1000
EEO-1 REPORT CONTACT PERSON: Bernadette Abrenica TITLE: Senior Benefits Specialist
EMAIL: bernadette.abrenica@cleanenergyfuels.com PHONE: 949-437-1000

ETHNIC IDENTIFICATION

African American: (NOT OF HISPANIC ORIGIN): All persons having origins in any of the black racial groups of Africa.
Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
Asian or Pacific Islander: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area, includes, China, Japan, Korea, the Philippine Islands, and Samoa.
Native American: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
Other: Caucasian and others not falling into one of the designated categories.
DISABLED DEFINITION
Any person who 1) has a physical or mental condition which limits one or more of such person's major life activities, 2) has a history of such a condition, or 3) is regarded as having such a condition. For purposes of this definition, "major life activity" means any mental or physical function or activity, which if impaired, creates a substantial barrier to employment.

OCCUPATIONAL CATEGORY LIST

Executive/Managerial
Executive, Management Related
Engineers/Architects/Surveyors
Professionals (N.E.C.)*
Mathematical and Computer Scientists
Natural Scientists
Health Diagnosing
Health Assessment and Treating
Teachers, Postsecondary
Teachers, except Postsecondary
Counselors, Educational and Vocational
Librarians, Archivists, Curators
Social Scientists and Urban Planners
Social, Recreation and Religious Workers
Lawyers and Judges
Writers, Artists Entertainers & Athletes
Technicians
Health Technologists and Technicians
Engineering and Related Technologists and Technicians
Science Technicians
Technicians, Except Health, Engineering, and Service
Sales
Supervisors and Proprietors
Sales Representatives, Finance, and Business Services
Sales Representatives, Commodities except Retail
Sales Workers, Retail, and Personal Services
Other Sales Related
Administrative Support
Supervisors of Administrative Support
Computer Equipment Operators
Secretaries, Stenographers, Typists
Information Clerks
Records Processing, Except Financial
Financial Records Processing
Duplicating and Other Office Machine Operators
Communications Equipment Operators
Mail and Message Distributing
Material Recording and Distributing Clerks
Adjusters and Investigators
Other Office/Clerical
*N.E.C.: Not Elsewhere Classified
Protective Services
Supervisors of Protective Services
Firefighting and Fire Prevention
Police and Detectives
Guards & Other Protective Services
Services (N.E.C.)*
Private Households
Food Preparation and Services
Health Services
Cleaning and Building Services
Personal Services
Craft Workers (Skilled)
Supervisors of Mechanics and Repairers
Vehicle and Mobile Equipment Mechanics and Repairers
Heating, Air Conditioning, Refrigeration, Mechanics
Other Mechanics and Repairers
Supervisors of Construction Trades
Construction Trades, Except Supervisors
Extractive Occupations
Precision Production Occupations
Machine Operators, Assemblers & Inspectors
Metalworking and Plastic Working Machine Operator
Metal and Plastic Processing Machine Operators
Woodworking Machine Operators
Printing Machine operators
Textile, Apparel, and furnishing Machine Operators
Machine Operators, Assorted Materials
Fabricators, Assembler and Hand Working Occupations
Production Inspector, Tester, Sampler, Weigher
Transportation and Material Moving
Motor Vehicle Operators
Rail Transportation Occupations
Water Transportation Occupations
Material Moving Equipment Operators
Laborers (Unskilled)
Handlers
Equipment Cleaners
Helpers & Laborers

CALIFORNIA PUBLIC RECORD ACT (CPRA) AKNOWLEDGEMENT

I/We hereby represent, acknowledge, and agree as follows:

1. MTS is a California public agency established by California Public Utilities Code, Section 120000. et. seq., and is subject to the California Public Records Act (Government Code sec. 6250 et seq.) which provides generally that all records relating to a public agency's business are open to public inspection unless exempted from disclosure by law.

2. The proposal I/we have submitted to MTS is open to public inspection under CPRA unless it is exempted from disclosure by law.

3. To the extent the proposal includes materials that I/we believe are exempt from disclosure under CPRA, I/we understand that I/we must provide a letter identifying the materials that I/we believe are exempt from disclosure and explaining the basis for exemption.

4. Any materials not identified as exempt from disclosure are open to public inspection, and I/we waive any right to subsequently claim exemption from disclosure for such materials.

5. MTS at all times retains the right to make the final determination regarding what, if any, portion of a proposal is subject to disclosure under CPRA.

6. Use of headers/footers bearing designations such as "confidential", "proprietary", or "trade secret" on all or nearly all of a proposal which would prohibit or limit public inspection is not acceptable and may deem the proposal non-responsive and may be rejected; labeling a page as such does not prohibit MTS from disclosing the page in response to a Public Records Act (PRA) response or in the ordinary cause of business if MTS concludes it is obligated to so by applicable law.

7. To defend and indemnify MTS in any action on a PRA request for any of the contents of a Proposal marked TRADE SECRET, CONFIDENTIAL or PROPRIETARY.

8. Marking a document as "trade secret", "confidential" or "proprietary" without the express written permission of MTS does not exempt a document from disclosure to third parties under state or federal law, or in the normal course of MTS's business operations. MTS has no obligation to get a respondent's permission before producing such documents.

9. The bid I/we have submitted *(check one of the following)* materials that we believe are exempt from disclosure under CPRA.

INCLUDES ☑

DOES NOT INCLUDE ☐

ACKNOWLEDGED AND AGREED

Company Name: Clean Energy Renewable Fuels, LLC

Title: Chief Financial Officer

Signature: Robert M Vreeland

Date: Robert M. Vreeland
August 9, 2022

NONCOLLUSION DECLARATION

TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH OFFER

(23 U.S.C. § 112(c) and California Public Contract Code § 7106)

The undersigned declares:

I am the Chief Financial Officer of Clean Energy Renewable Fuels, LLC, the party making the foregoing offer.

The offer is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The offer is genuine and not collusive or sham. The proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham offer. The proposer has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham offer, or to refrain from submitting an offer. The proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the offer price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the offer price, or of that of any other proposer. All statements contained in the offer are true. The proposer has not, directly or indirectly, submitted his or her offer price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, offer depository, or to any member or agent thereof, to effectuate a collusive or sham offer, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of the proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on August 9, 2022 (date), at Newport Beach (city), California (state).

ACKNOWLEDGED AND AGREED

Name of Contractor: Clean Energy Renewable Fuels, LLC

Signature: Robert M Vreeland

Date: Robert M. Vreeland
August 9, 2022

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code Section 2200 *et seq.*)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) is true and correct:

1. The Contractor is not:

   a. identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or

   b. a financial institution that extends, for 45 days or more, credit in the amount of $20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran. ☑

2. MTS has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, MTS will be unable to obtain the goods and/or services to be provided pursuant to the Contract. ☐

3. The amount of the Contract payable to the Contractor for the Project does not exceed $1,000,000. ☐

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of $250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

ACKNOWLEDGED AND AGREED

Company Name: Clean Energy Renewable Fuels, LLC

Title: Chief Financial Officer

Signature: Robert M Vreeland

Date: Robert M. Vreeland
August 9, 2022

SAFETY DEPARTMENT STANDARD OPERATING PROCEDURES

FOR CONTRACTORS SAFETY AND HEALTH REQUIREMENTS

(SAF 016-03)

January 2003

SAF 016-03

Purpose: To establish environmental, safety and health requirements for the San Diego Metropolitan Transit System (MTS) Contractors.

Background: MTS is committed in providing and maintaining a safe work place, safe plant and equipment, and a safe and competent workforce as required by legislation and best industrial practice for our employees, customers, visitors, and general public.

To support this commitment, we require our Contractors to provide adequate leadership and safety training for their employees and require the same of their sub-Contractors.

Objectives: This SOP requires all MTS Contractors to:

- Comply with the environmental, safety and health requirements of the contract as per FTA, OSHA, Cal OSHA, and San Diego Metropolitan Transit System (MTS).
- Assign a competent person the responsibility for the implementation of the safety regulations, personal protective equipment usage, and compliance with hazardous materials/environmental policies, and drug and alcohol program.
- Ensure that all Contractor employees and sub-Contractors are trained and educated in safety and support on-site Contractors on safe work and MTS safety programs.
- Sign the MTS Contractual Agreement with Outside Agencies (Safety Rules).

MTS Representatives are required to:

- Pro-actively monitor the Contractors' workplace to identify all occupational health and safety hazards – Departmental/Safety representative.
- Safety and contract requirements compliance – Audit/Inspection conducted and documented (schedule and spot check) by Quality Assurance Department.

NOTE: Copies of both MTS Illness and Injury Prevention Program (IIPP) and the MTS Maintenance Department Code of Safe Practices are available in the Safety Department's office. MTS handles the Engineering/Construction site safety plans.

SAFETY DEPARTMENT SAFETY RULES

MTS Contractual Agreement with Outside Agencies

Work on MTS Premises

A. Safety Rules

These safety rules apply specifically to Contractors, Contractor's employees, or sub-Contractors working on Metropolitan Transit System (MTS) property. Any loss or damage, including death, resulting from Contractors, Contractor's employees, or subcontractor's negligence shall hold MTS management and employees harmless from any such loss. No work shall be performed on MTS property without approval and proper permits, when required. Requirements:

1. Comply with Cal OSHA, state, local and MTS' safety, and environmental policies.
2. Observe and follow all posted facilities safety regulations.
3. Use the proper Personal Protective Equipment required for the job.
4. No illegal drugs or alcohol will be consumed on site or off the premises while working for MTS.

B. Use of Tools and Equipment (when required)

1. Required Tools and Equipment must be in good condition, safe for use and calibrated (if required).
2. Follow safe engineering work practices/procedures.
3. Wear the required personal protective equipment when using tools.

C. Machinery and Vehicles (when required)

1. Do not attempt to operate MTS machinery or equipment without special permission.
2. Only licensed operators may operate Forklift Trucks and other equipment on MTS occupied spaces.

D. Contractor Requirements (when required)

1. Valid Contractor's license number.

ACKNOWLEDGED AND AGREED

Company Name: Clean Energy Renewable Fuels, LLC

Print Name: Robert M. Vreeland

Title: Chief Financial Officer

Signature: Robert M Vreeland

Date: August 9, 2022

CERTIFICATE OF RESTRICTIONS ON LOBBYING

The CONTRACTOR hereby certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

3. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Check one of the following Boxes.

Does NOT Apply	☑
Applies	☐

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Executed this 9th day of August, 2022.

ACKNOWLEDGED AND AGREED

Name of Contractor: Clean Energy Renewable Fuels, LLC

Signature: Robert M Vreeland

Date: Robert M. Vreeland
August 9, 2022

EXHIBIT F

NAESB TERMS AND CONDITIONS

Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: December 27, 2022

The parties to this Base Contract are the following:

PARTY A		PARTY B
San Diego Metropolitan Transit System	*PARTY NAME*	Clean Energy Renewable Fuels, LLC
1255 Imperial Avenue, Suite 1000 San Diego, CA 92101	*ADDRESS*	4675 MacArthur Court, Suite 800 Newport Beach, CA 92660
www.sdmts.com	*BUSINESS WEBSITE*	www.cleanenergyfuels.com
G2627.0-22	*CONTRACT NUMBER*	SDMTS001
	D-U-N-S® NUMBER	
☒ US FEDERAL: 95-3041463 ☐ OTHER:	*TAX ID NUMBERS*	☒ US FEDERAL: 27-5411503 ☐ OTHER
	JURISDICTION OF ORGANIZATION	Delaware
☐ Corporation ☐ LLC ☐ Limited Partnership ☐ Partnership ☐ LLP X Other: Transit Agency	*COMPANY TYPE*	☐ Corporation ☒ LLC ☐ Limited Partnership ☐ Partnership ☐ LLP ☐ Other:
	GUARANTOR (IF APPLICABLE)	

CONTACT INFORMATION

1255 Imperial Avenue, Suite 1000 San Diego, CA 92101 ATTN: Larry Marinesi TEL#: 619-557-4542 EMAIL: larry.marinesi@sdmts.com	▪ COMMERCIAL	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
1255 Imperial Avenue, Suite 1000 San Diego, CA 92101 ATTN: Larry Marinesi TEL#: 619-557-4542 EMAIL: larry.marinesi@sdmts.com	▪ SCHEDULING	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
1255 Imperial Avenue, Suite 1000 San Diego, CA 92101 ATTN: Larry Marinesi TEL#: 619-557-4542 EMAIL: larry.marinesi@sdmts.com	▪ CONTRACT AND LEGAL NOTICES	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
1255 Imperial Avenue, Suite 1000 San Diego, CA 92101 ATTN: Larry Marinesi TEL#: 619-557-4542 EMAIL: larry.marinesi@sdmts.com	▪ CREDIT	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
1255 Imperial Avenue, Suite 1000 San Diego, CA 92101 ATTN: Larry Marinesi TEL#: 619-557-4542 EMAIL: larry.marinesi@sdmts.com	▪ TRANSACTION CONFIRMATIONS	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com

ACCOUNTING INFORMATION

1255 Imperial Avenue, Suite 1000 San Diego, CA 92101 ATTN: Debra Gonzales TEL#: 619-234-4578 EMAIL: debra.gonzales@sdmts.com	▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
BANK: JP Morgan Chase Bank National Association ABA: 021000021 ACCT: 452237048 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: Clean Energy Renewable Fuels, LLC ADDRESS: 4675 MacArthur Ct, Suite 800 Newport Beach, CA 92660

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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 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

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 6 Taxes
☒ Buyer Pays At and After Delivery Point (default)
OR
☐ Seller Pays Before and At Delivery Point

Section 7.2 Payment Date
☒ 25th Day of Month following Month of delivery (default)
OR
☐ Day of Month following Month of delivery

Section 7.2 Method of Payment
☐ Wire transfer (default)
☐ Automated Clearinghouse Credit (ACH)
☒ Check

Section 7.7 Netting
☒ Netting applies (default)
OR
☐ Netting does not apply

Section 10.2 Additional Events of Default
☒ No Additional Events of Default (default)
☐ Indebtedness Cross Default
☐ Party A: _____
☐ Party B: _____
☐ Transactional Cross Default
Specified Transactions:
_____
_____

Section 10.3.1 Early Termination Damages
☒ Early Termination Damages Apply (default)
OR
☐ Early Termination Damages Do Not Apply

Section 10.3.2 Other Agreement Setoffs
☒ Other Agreement Setoffs Apply (default)
☒ Bilateral (default)
☐ Triangular
OR
☐ Other Agreement Setoffs Do Not Apply

Section 15.5 Choice Of Law California

Section 15.10 Confidentiality
☐ Confidentiality applies (default)
OR
☒ Confidentiality does not apply

☐ **Special Provisions** Number of sheets attached: 8
☐ **Addendum(s):**

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

SAN DIEGO METROPOLITAN TRANSIT SYSEM	PARTY NAME	Clean Energy Renewable Fuels, LLC
By: Sharon Cooney (Digitally signed by Sharon Cooney DN: cn=Sharon Cooney, o=San Diego Metropolitan Transit System, ou, email=sharon.cooney@sdmts.com, c=US Date: 2021.01.05 06:18:49 -08'00')	SIGNATURE	By: Robert M. Vreeland
Sharon Cooney	PRINTED NAME	Robert M. Vreeland
Chief Executive Officer	TITLE	Chief Financial Officer

Copyright © 2006 North American Energy Standards Board, Inc
All Rights Reserved

NAESB Standard 6.3.1
September 5, 2006

(CE rev 06 05 2020)

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.**

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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:	**BUYER:**
_____ _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No.: _____ Transporter: _____ Transporter Contract Number: _____	_____ _____ _____ 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)

Firm (Fixed Quantity):	**Firm (Variable Quantity):**	**Interruptible:**
_____ MMBtus/day ☐ EFP	_____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2 at election of ☐ Buyer or ☐ Seller	Up to _____ MMBtus/day

Delivery Point(s): _____
(If a pooling point is used, list a specific geographic and pipeline location)

Special Conditions:

Seller: _____	Buyer: _____
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

EXHIBIT G

TRANSACTION CONFIRMATION SDMTS001-TC01

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

	Date: 12/27, 2022 Transaction Confirmation #: SDMTS001-TC01

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated December 27, 2022. The terms of this Transaction Confirmation are binding upon execution by the parties.

SELLER:	**BUYER:**
Clean Energy Renewable Fuels, LLC Attn: Jen Komonchak Phone: 949-437-1251 Base Contract No. SDMTS001	San Diego Metropolitan Transit System Attn: Larry Marinesi Phone: 619-557-4542

Contract Price:

Contract Price (S/MMBtu)
The "Contract Price" for Conventional Gas or Biogas per MMBtu shall be equal to the SoCal Citygate First of the Month Index as published by Natural Gas Intelligence ("NGI") less $0.08 per MMBtu.

Delivery Period: The initial term of this Transaction Confirmation shall begin on January 1, 2023 and shall end on December 31, 2028. Thereafter, Buyer may extend this Transaction Confirmation for one (1) 4-year option period by providing written notice to Seller at least ninety (90) days prior to the end of the initial term. The initial term and the 4-year option period, if applicable, are collectively referred to herein as the "Delivery Period".

Performance Obligation and Contract Quantity: (Select One)

Firm (Fixed Quantity):	**Firm (Variable Quantity):**	**Interruptible:**
_____ MMBtus/day	0 MMBtus/day Minimum	Up to _____ MMBtus/day.
EFP	3,300 MMBtus/day Maximum (**"Max Daily Quantity"**)	

Performance Obligation: Subject to the Max Daily Quantity, during the Delivery Period, Seller will deliver Biogas and/or Conventional Gas to the Delivery Points to meet Buyer's full requirements. Buyer acknowledges that the delivered quantities of Gas will fluctuate and agrees to receive all Gas, up to the Max Daily Quantity. Seller shall be the exclusive provider of Biogas and Conventional Gas to Buyer at the Delivery Points for the Delivery Period.

Subject to the terms of this Transaction Confirmation and the Max Daily Quantity described above, during each consecutive twelve month (12) month period beginning on the first day of the Delivery Period and ending on the last day of the Delivery Period, Seller shall provide an amount of Biogas to the Delivery Points which is equal to Buyer's Gas Quantity (as defined below) for the applicable rolling twelve (12) month period (the "**Minimum**

Commitment"). "**Buyer's Gas Quantity**" means the total amount of natural gas provided to the Stations (as defined below) during the applicable time period but limited to such portion of the gas which is deemed to have been actually consumed as a Vehicle Fuel (as determined in accordance with Seller's LCFS and RFS compliance protocol).

Delivery Points: The Delivery Points shall be Buyer's San Diego Gas & Electric Company ("SDG&E") meter interconnects at Buyer's California compressed natural gas ("CNG") stations listed in Exhibit A (each, a "**Station**", and collectively, the "**Stations**"), 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).).

"**Blue Gas LCFS Credits**" means LCFS Credits which are generated by Seller when Conventional Gas is dispensed from the Stations as a Blue Gas Vehicle Fuel.

"**Blue Gas Vehicle Fuel**" means CNG derived from Conventional Gas and used in transportation vehicles.

"**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.

"**CARB**" means the California Air Resources Board or its successor agency and policies established under the California Low Carbon Fuel Standard Regulation, (Cal. Code Regs. tit. 17, §§ 95480 – 90 (2010).), (collectively, the "**LCFS**") applying to any transportation fuel that is sold, supplied, or offered for sale in California.

"**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)).

"**CI**" or "**Carbon Intensity**" means the quantity of life cycle greenhouse gas emissions, per unit of fuel energy, expressed in grams of carbon dioxide equivalent per megajoule (gCO2e/ML) as defined in the LCFS (as amended or replaced with a subsequent program).

"**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 or the CARB LCFS.

"**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.

"**First Fuel Reporting Entity**" means the first entity responsible for reporting in the LRT-CBTS (LCFS reporting tool-credit and banking transfer system) for a given amount of fuel. This is the entity that initially holds the status as

the fuel reporting entity and the credit or deficit generator but may transfer either status pursuant to sections 95483 or 95483.1.

"**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 CARB LCFS Credits and EPA RINs.

"**Greenhouse Gas**" means carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydroflourocarbons, 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. Governmental Authority includes, without limitation, the EPA, CARB and the California Public Utilities Commission or its successor agency.

"**Incremental LCFS Credits**" means the number of LCFS Credits generated from the use of Biogas Vehicle Fuel that exceed the number of LCFS Credits (if any) that would have been generated using the lesser of: (a) the CI of the default CNG pathway used for Conventional Gas; or (b) the compliance curve set by CARB: "Benchmarks for Diesel Fuel and Fuels used as a Substitute for Diesel Fuel" (as defined from time to time in Title 17 of the California Code of Regulations for the Low Carbon Fuel Standard).

"**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 or CARB, 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.

"**LCFS Account**" means an account containing an entity's LCFS Credits, established and maintained in accordance with the LCFS.

"**Low Carbon Fuel Standard Credits**" or "**LCFS Credits**" shall mean credits generated and traded under the California Air Resources Board Low Carbon Fuel Standard, with each credit equal to one metric tonne of Carbon Dioxide reductions as compared to the baseline CO2 emissions under the Low Carbon Fuel Standard.

"**LCFS Credits Resale Price**" shall be calculated by reference to the volume weighted average price of all LCFS Credits of the same annual and quarterly vintage realized by Seller within the same calendar quarter.

"**LRT**" means the reporting tool established in accordance with LCFS and required by CARB to submit annual compliance and quarterly progress reports and track LCFS Credits.

"**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.

"**Spot Price**" means the Monthly Average of the Gas Daily Midpoint price as published in Gas Daily Publication, Daily Price Survey, Citygate – SoCal Gas Citygate Midpoint.

"**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 Conventional Gas and Biogas purchased from Seller hereunder into Vehicle Fuel which shall be distributed as Vehicle Fuel through Buyer's Stations.

(b) When applicable, Buyer represents that it is not aware of any reason that would cause the Blue Gas LCFS Credits not to comply with the LCFS.

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

(a) Intentionally left blank.

(b) Seller shall maintain records relevant to the production and purchase and sale of Conventional Gas and Biogas and transportation and distribution of the Conventional Gas and Biogas purchased hereunder as it applies to the creation and sale of LCFS Credits in accordance with the requirements of CARB.

(c) 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 Stations 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 and CARB Low Carbon Fuels Standard, together with regulations and decisions promulgated thereunder, are applicable to the purchase and sale of Conventional Gas and Biogas.

4. CARB LCFS Fuel Reporting Entity Status.

Pursuant to the California Code of Regulations for the Low Carbon Fuel Standard, Seller will retain the Low Carbon Fuel Standard (LCFS) First Fuel Reporting Entity status as set forth in Title 17, California Code of Regulations in § 95483 with respect to all Biogas sold by Seller to Buyer hereunder (the "Purchased Biogas").

Buyer will elect to not be the First Fuel Reporting Entity for Conventional Gas (referred to as "Fossil CNG" in the California Code of Regulations in §§ 95483) as set forth in Title 17, California Code of Regulations in § 95483, and designates Seller as the First Fuel Reporting Entity for Conventional Gas under the California Air Resources Board as set forth in Title 17, California Code of Regulations § 95480.3 with respect to all Conventional Gas purchased by Buyer at the Delivery Points during the Delivery Period (the "Purchased Conventional Gas").

Buyer and Seller agree that: (A) for Conventional Gas, the original First Fuel Reporting Entity (Buyer) per subsections (1)(A) through (1)(E) will not generate credits or deficits in the LCFS and will instead provide the amount of fuel dispensed, and other required information pursuant to sections 95483.2(b)(8), 95491 and 95491.1, to the contractually designated entity (Seller) for the purpose of LCFS reporting and credit or deficit generation; and (B) the contractually designated entity (Seller) accepts all LCFS responsibilities as the First Fuel Reporting Entity for Conventional Gas and as a credit or deficit generator, as applicable.

Any deficits generated based on Seller's status as the First Fuel Reporting Entity for the Purchased Biogas or the Purchased Conventional Gas shall be deemed to be Buyer's sole financial responsibility; and therefore, in the event any deficits are generated based on Seller's status as the First Fuel Reporting Entity for the Purchased Biogas or the Purchased Conventional Gas, notwithstanding anything to the contrary in this Transaction Confirmation or the Base Contract, Seller may: (1) offset any deficits with Incremental LCFS Credits or other LCFS Credits generated by Seller based on the Purchased Biogas and Purchased Conventional Gas (if any), a portion or all of which would have paid to Buyer pursuant to the Seller's Payment; and/or (2) purchase LCFS Credits equal to the deficit with Buyer being financial responsible (Seller will invoice Buyer) for all costs incurred by Seller to purchase such LCFS Credits (including, without limitation, the price per LCFS Credit paid by Seller to the applicable third party credit seller multiplied by the number of LCFS Credits that need to be purchased to satisfy the deficit); and/or (3) invoice Buyer for all amounts (including, without limitation, any attorney's fees or broker fees) Seller incurred based on such deficit(s). Buyer shall remit payment to Seller within fifteen (15) days of its receipt of a Seller invoice pursuant to this Section. Buyer shall be deemed to have received an invoice from Seller three (3) days after the invoice is sent to Buyer.

5. LCFS Credit and 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 LCFS Credits and/or as an agent with respect to LCFS Credits 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 LCFS Credits generated and/or sold hereunder. Seller and /or its affiliates and control persons shall owe no fiduciary obligation to Buyer with respect to the LCFS Credits generated and sold. Seller and its affiliate's sole obligation with respect to the sale of LCFS Credits generated and/or sold in this transaction shall be to use commercially reasonable efforts to sell such credits alongside other LCFS Credits that Seller and/or its affiliates may market or sell based on the calendar quarter in which such credits are generated.

(c) 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.

6. 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 and LCFS Credit creation in compliance with CARB requirements.

7. Regulatory Hinderance.

In the event that: (a) the RFS and/or LCFS are 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 and/or LCFS Credits 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.

8. Environmental Attributes and Alternative Fuel Credit

Buyer is not entitled to any RINS, LCFS Credits 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 and/or LCFS Credits 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 Stations. The parties agree that Buyer will be considered the "Alternative Fueler" 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.

9. 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.

10. 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.

11. 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.

12. Intentionally Left Blank

13. Nominations

At least 7 days prior to the first day of each calendar month during the Delivery Period, Buyer shall provide Seller with its Gas nominations for the following month (the "Monthly Nomination"). In the event Buyer does not provide the Monthly Nomination to Seller at least 7 days prior to the first day of the month, Seller shall determine the applicable month's Monthly Nominations for the Delivery Points based on the most recently available historical usage.

When Buyer's Gas consumption at the Delivery Points exceeds the Monthly Nomination for such month, Buyer shall be deemed to have purchased the excess Gas from Seller for the applicable Spot Price per MMBtu for the delivery month.

When Buyer's Gas consumption at the Delivery Points is less than the Monthly Nomination for such month, Buyer will be deemed to have sold the excess Gas to Seller for the applicable Spot Price per MMBtu for the delivery month.

The Contract Price and Spot Price set forth above include only the natural gas commodity. Seller shall pass through to Buyer all other charges associated with gas delivery to the Delivery Points, including, without limitation, imbalance charges.

14. Additional Terms Applicable to Deliveries to SDG&E

Buyer and Seller acknowledge and agree that Buyer will designate Seller as the Energy Service Provider for the Delivery Points. Upon Seller's request, in writing, Buyer will assist Seller in completing all required Direct Access Service Request forms.

By executing this Transaction Confirmation, Buyer understands and agrees that: (i) it shall at all times, notwithstanding anything to the contrary herein, remain responsible for payment of its core gas transportation service received from SDG&E; (ii) it will continue to receive an invoice from SDG&E for transportation and other access charges and Buyer will be responsible for payment of all invoices it receives from SDG&E; and (iii) it is responsible for all Franchise Fees under Tariff Rate Schedule G-NGV and any Utility Users Tax that a city or county may require as a result of Buyer receiving its gas commodity through Seller. Buyer agrees to release and hold harmless, defend and indemnify the applicable utility from and against any liability, claims, demands, causes of action, damages and/or expenses resulting from or in connection with any improper use of its gas consumption information.

Seller:	**Clean Energy Renewable Fuels, LLC**	Buyer:	**San Diego Metropolitan Transit System**
By:	Robert M Vreeland	By:	Sharon Cooney Digitally signed by Sharon Cooney DN: cn=Sharon Cooney, o=San Diego Metropolitan Transit System, ou, email=sharon.cooney@sdmts.com, c=US Date: 2023.01.05 06:20:36 -08'00'
Name:	Robert M. Vreeland	Name:	Sharon Cooney
Title:	Chief Financial Officer	Title:	Chief Executive Officer
Date:	12-27-2022	Date:	1/5/2023

EXHIBIT A

CNG Station Locations		
Address	**Local Distribution Channel**	**Meter Number**
1213 N Johnson Ave A, El Cajon, CA 92020	SDG&E	01000670
3650 Main Street, Chula Vista, CA 91911	SDG&E	00968018
4630 Ruffner Street, San Diego, CA 92111	SDG&E	00908056
3650 Main Street, Chula Vista, CA 91911	SDG&E	00968019
122 16th Street, San Diego, CA 92101	SDG&E	01451630
120 16th Street, San Diego, CA 92101	SDG&E	01052826

EXHIBIT B

Payment Schedule

Calendar Year*	RNG MMBtu	CI Number Used by Seller to Determine Payment to Buyer. (This CI Number is allocated at the gas meter for the determination of payment to Buyer regardless of the actual CI of the RNG supplied.)	LCFS Compliance Curve CI	Number of LCFS Credits generated per MMBtu of Conventional Gas ("Brown Gas Credit Generation Rate")	Number of Incremental LCFS Credits generated per RNG MMBtu based on corresponding CI number (as shown in this table) for such RNG ("LCFS Credit Generation Rate")	Buyer Percentage of LCFS Credit Generation Rate	Number of RINs generated per RNG MMBtu ("RIN Generation Rate")	Buyer Percentage of RIN Credit Generation Rate
2023	1	(250 00)	89 15	0 0 097648	0 313627	15%	11 727	15%
2024	1	(250 00)	87 89	0 00000000	0 313523	15%	11 727	15%
2025	1	(250 00)	86 64	0 00000000	0 312451	15%	11 727	15%
2026	1	(250 00)	85 38	0 00000000	0 311371	15%	11 727	15%
2027	1	(250 00)	84 13	0 00000000	0 310299	15%	11 727	15%
2028	1	(250 00)	82 87	0 00000000	0 309219	15%	11 727	15%
2029	1	(250 00)	81 62	0 00000000	0 308147	15%	11 727	15%
2030	1	(250 00)	80 36	0 00000000	0 307067	15%	11 727	15%

**The LCFS Compliance Curve does not extend beyond 2030, therefore, LCFS Compliance Curve CIs beyond 2030 will be deemed the same as 2030.*

Terms and Conditions:

(1) Within thirty (30) 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
(11 727 x [(cumulative Gas MMBtus dispensed from the Stations (as determined in accordance with Seller's LCFS and RFS compliance protocol) during the applicable calendar month where such month is within the Delivery Period)] x [RIN Resale Price])]

(2) Within thirty (30) days of Seller's receipt of payment for all LCFS Credits generated during the prior calendar quarter, Seller will pay Buyer the "**LCFS Payment**" which is described below

(i) [LCFS Credits Resale Price] x
[(Brown Gas Credit Generation Rate) x (cumulative Gas MMBtus dispensed from the Stations (as determined in accordance with Seller's LCFS and RFS compliance protocol) during the applicable calendar quarter where such calendar quarter is within the Delivery Period)].

plus

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

(3) The RIN Payment and the LCFS Payment shall collectively be referred to as the "**Seller Payment**" Specifically, and only, for the purposes of determining the Seller Payment, all Gas supplied to the Stations is deemed to be RNG with the applicable CI Number shown in the table above for the applicable calendar year Buyer acknowledges and agrees that the CI for the actual Biogas supplied by Seller to Buyer pursuant to this Transaction Confirmation will vary over the Delivery Period, however, the CI number used to determine the Seller Payments will not vary from the applicable numbers described above

(4) In the event CARB modifies the LCFS CI benchmarks for diesel during the term of this Transaction Confirmation, the numbers above shall be proportionally adjusted by Seller to maintain the economic intent of the parties as of the day they entered into this Transaction Confirmation. Upon the determination of such adjustment by Seller, Seller shall provide Buyer with a new table which upon Seller's transmission of such updated table to Buyer shall be deemed to automatically supersede and replace the table above

EXHIBIT 2: MTS REQUEST FOR PROPOSAL GAS SERVICE PROVIDER NO. G2627.0-22, ADDENDA 1 & 2

Metropolitan Transit System

REQUEST FOR PROPOSALS

GAS SERVICE PROVIDER (GSP)
MTS DOC. NO. G2627.0-22



San Diego Metropolitan Transit System
1255 Imperial Avenue, Suite 1000, San Diego, CA 92101

TABLE OF CONTENTS

1. INTRODUCTION 8

1.1. CALENDAR OF EVENTS 8

1.2. MTS POINT OF CONTACT 9

1.3. ENCOURAGEMENT OF DISADVANTAGED BUSINESS ENTERPRISES AND OTHER SMALL BUSINESSES 9

2. PROPOSER INSTRUCTIONS 10

2.1. MTS'S RIGHTS UNDER THIS SOLICITATION 10

2.2. PRE-PROPOSAL MEETING 10

2.3. INTERVIEWS 10

2.4. EXAMINATION OF PROPOSAL DOCUMENTS 10

2.5. ADDENDA 11

2.6. CLARIFICATIONS 11

2.6.1. EXAMINATION OF DOCUMENTS 11
2.6.2. SUBMITTING REQUESTS 11
2.6.3. MTS RESPONSES 11

2.7. SUBMISSION OF PROPOSALS 12

2.7.1. DUE DATE AND TIME 12
2.7.2. SUBMITTAL FORMAT 12
2.7.3. ACCEPTANCE OF PROPOSALS 12

2.8. PRE-CONTRACTUAL EXPENSES 12

2.9. PRE-AWARD AUDIT 13

2.10. JOINT OFFERS 13

2.11. SINGLE PROPOSAL RESPONSE 13

2.12. TAXES 13

2.13. CONTRACT TYPE 13

2.14. PROPOSED AGREEMENT 14

2.15. PROTESTS 14

2.15.1. PROTESTS BASED ON CONTENT OF PROCUREMENT SOLICITATION 14
2.15.2. PROTESTS RECEIVED AFTER PROPOSAL DUE DATE 14
2.15.3. CONTENTS OF PROTESTS 14
2.15.4. REPLIES TO PROTESTS 15
2.15.5. REQUEST FOR RECONSIDERATION OF PROTESTS 15
2.15.6. ADMINISTRATIVE APPEAL HEARING 15
2.15.7. FTA Review of Protests 15

2.16. CHANGES 15

2.16.1. PRE-AWARD 15
2.16.2. POST-AWARD 16

2.17. DUTY TO CLARIFY OBVIOUS AMBIGUITY 17

2.18. CONFIDENTIALITY, THE CALIFORNIA PUBLIC RECORDS ACT, AND THE FREEDOM OF INFORMATION ACT 17

2.18.1. EXCLUSIVE PROPERTY 17
2.18.2. DISCLOSURE OF RECORDS 17
2.18.3. EXEMPTION FROM DISCLOSURE MAY BE DEEMED UNRESPONSIVE 18
2.18.4. INDEMNIFICATION OF MTS BY CONTRACTOR 18
2.18.5. PUBLIC INTEREST 18

2.19. NO PUBLIC OPENING OF PROPOSALS 18

3. PROPOSER CONTENT, REQUIREMENTS AND FORMAT 19

3.1. PRESENTATION 19

3.2. LETTER OF TRANSMITTAL 19

3.3. TECHNICAL PROPOSAL 19

3.3.1. QUALIFICATIONSAND RELATED EXPERIENCE OF THE PROPOSER & PROPOSED STAFFING OF THE FIRM OR INDIVIDUAL 19
3.3.2. WORK PLAN AND SERVICE COMMITMENT 21
3.3.3. INSURANCE 22
3.3.4. EXCEPTIONS/DEVIATIONS 22

3.4. COST AND PRICE PROPOSAL – A Pricing/Cost Form is provided in this RFP 22

3.5. APPENDICES 22

3.6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY PARTICIPANT AND LOWER-TIER PARTICIPANTS 23

3.7. RESTRICTIONS ON LOBBYING 23

3.8. COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY PROGRAM 23

4. EVALUATION AND AWARD 25

4.1. EVALUATION CRITERIA 25

4.2. PROPOSAL EVALUATION 26

4.3. AWARD AND EXECUTION 27

4.4. W-9 FORMS 27

4.5. CALIFORNIA WITHHOLDING FORMS 27

4.6. NOTIFICATION OF INTENT (NIA) TO AWARD AND DEBRIEFING 27

5. SCOPE OF WORK/TECHNICAL SPECIFICATIONS 28

5.1. GENERAL 28

5.2. BACKGROUND 28

5.3. ENERGY CREDIT BACKGROUND 28

5.4. SCOPE OF WORK 29

5.4.1. Description of services 29
5.4.2. Compliance with LCFS and RIN Program Regulatory Requirements 30

5.4.3. Commodity Contract Price 31
5.4.4. LCFS Credit Sharing 31
5.4.5. RIN Credit Sharing 31
5.4.6. Period of Performance 31
5.5. INVOICE/PAYMENT 32
5.6. OBLIGATION TO MANAGE COSTS 32
5.7. TRANSITION 32
5.8. DISENTANGLEMENT 33
5.8.1 Disentanglement Process: 33
5.8.2 General Obligations: 33
5.8.3 Delivery of Documentation: 34
6. ATTACHMENTS 35
7. SAMPLE OF STANDARD AGREEMENT, STANDARD CONDITIONS 36
7.1. COMPLETE AGREEMENT 38
7.2. COUNTERPARTS 38
7.3. SURVIVAL 38
7.4. DUTY TO CLARIFY OBVIOUS AMBIGUITY 38
7.5. NOTICES 38
7.6. CHANGES IN WORK 38
7.7. SEVERABILITY 39
7.8. TERMINATION OF AGREEMENT 39
7.8.1. TERMINATION FOR CONVENIENCE 39
7.8.2. TERMINATION FOR DEFAULT 40
7.9. ASSIGNABILITY 40
7.10. STANDARD OF PERFORMANCE 41
7.11. TIME 41
7.12. EXCUSABLE DELAYS / FORCE MAJEURE 41
7.13. SUSPENSION OF WORK 42
7.14. INSPECTION AND TESTING 42
7.15. INDEPENDENT CONTRACTOR 42
7.16. THIRD PARTY BENEFICIARIES 43
7.17. SUBCONTRACTORS 43
7.18. INDEMNITY 43
7.19. DISPUTES, CLAIMS, AND RESOLUTION 43
7.20. NONWAIVER 44
7.21. GOVERNING LAW AND CHOICE OF FORUM 44

7.22. LITIGATION EXPENSES 45

7.23. INSURANCE 45

7.23.1. COVERAGE REQUIRED - ALL CONTRACTS 45
7.23.2. ADDITIONAL COVERAGES REQUIRED (AS INDICATED) 46
7.23.3. MINIMUM POLICY LIMITS REQUIRED 48
7.23.4. NOTICE OF POLICY CHANGES 48
7.23.5. EVIDENCE REQUIRED 49
7.23.6. SPECIAL PROVISIONS 49

7.24. PRICE AND PAYMENT 49

7.25. CONSIDERATION PAID 49

7.26. COST PRINCIPLES 50

7.27. PROMPT PROGRESS PAYMENT AND RETENTION 50

7.28. RECORDS RETENTION 51

7.29. INTELLECTUAL PROPERTY WARRANTY 51

7.30. DATA RIGHTS 51

7.31. EXCLUSIVE USE 52

7.32. OWNERSHIP OF DOCUMENTS 52

7.33. LANGUAGE AND MEASURE UNITS 52

7.34. DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND OTHER SMALL BUSINESS PARTICIPATION 52

7.35. AMERICANS WITH DISABILITIES ACT 54

7.36. SUBSTANCE ABUSE 54

7.36.1. CONTRACTORS CERTIFICATION: 54
7.36.2. INDEMNIFICATION OF MTS: 54
7.36.3. SURVIVAL OF MTS' INDEMNIFICATION RIGHTS: 54
7.36.4. FAILURE TO COMPLY WITH DRUG AND ALCOHOL TESTING OBLIGATIONS MAY RESULT IN TERMINATION OF CONTRACT: 54

7.37. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM 54

7.37.1. MTS'S EQUAL EMPLOYMENT OPPORTUNITY PROGRAM: 54
7.37.2. CONTRACTOR'S EQUAL EMPLOYMENT OPPORTUNITY PLAN: 54
7.37.3. COMPLIANCE WITH REGULATIONS: 55

7.38. COVENANT AGAINST CONTINGENT FEES 55

7.39. CALIFORNIA POLITICAL REFORM ACT 55

8. FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS 56

8.1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS 56

8.2. FEDERAL CHANGES 56

8.3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES 56

8.4. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS 56

8.5. ACCESS TO RECORDS, REPORTS AND SITES 57
8.6. DEBARMENT AND SUSPENSION 58
8.7. RESTRICTIONS ON LOBBYING 58
8.8. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT 58
8.9. ENERGY CONSERVATION 59
8.10. ENVIRONMENTAL PROTECTIONS 59
8.10.1. GENERAL 59
8.10.2. NATIONAL ENVIRONMENTAL POLICY ACT 59
8.10.3. ENVIRONMENTAL JUSTICE 59
8.10.4. OTHER ENVIRONMENTAL FEDERAL LAWS 60
8.10.5. USE OF CERTAIN PUBLIC LANDS 60
8.10.6. HISTORIC PRESERVATION. 60
8.10.7. INDIAN SACRED SITES 60
8.11. ADA ACCESS 60
8.12. CIVIL RIGHTS 61
8.12.1. SUBCONTRACT 61
8.12.2. NONDISCRIMINATION 61
8.12.3. RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX 61
8.12.4. AGE 61
8.12.5. DISABILITIES 61
8.13. VETERANS EMPLOYMENT 62
8.14. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS 62
8.15. CONTRACTOR ASSURANCE 62
8.16. SAFE OPERATION OF MOTOR VEHICLES 62
8.16.1. SEAT BELT USE 62
8.16.2. DISTRACTED DRIVING 62
8.17. GEOGRAPHIC RESTRICTIONS 63
8.18. DOMESTIC PREFERENCES FOR PROCUREMENTS 63
8.19. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment 63
9. FORMS 64
CONTACT INFORMATION 65
COST/PRICING FORM 66
DESIGNATION OF SUBCONTRACTORS 67
DBE PROGRAM – INFORMATION FOR MTS'S PROPOSAL LIST 69
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBLE AND VOLUNTARY EXCLUSIONS LOWER THAN TIER COVERED TRANSACTIONS 70
EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT 71
EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT CONTINUED 72
ETHNIC IDENTIFICATION 73
STATUS OF CURRENT AND PAST CONTRACTS 74
FINANCIAL QUESTIONNAIRE FORM 77
CALIFORNIA PUBLIC RECORD ACT (CPRA) AKNOWLEDGEMENT 79

NONCOLLUSION DECLARATION 80
IRAN CONTRACTING ACT CERTIFICATION 81
SAFETY DEPARTMENT STANDARD OPERATING PROCEDURES 82
SAFETY DEPARTMENT SAFETY RULES 83
CERTIFICATE OF RESTRICTIONS ON LOBBYING 84
SAMPLE PROMPT PAYMENT CERTIFICATION FORM 85

1. INTRODUCTION

The San Diego Metropolitan Transit System (MTS) is seeking offers for GAS SERVICE PROVIDER for a contract for up to a ten (10) year term (six (6) base years and four (4) option years, exercisable at MTS' sole discretion).

MTS is a California public agency established under Section 120000 et seq. of the California Public Utilities Code. MTS and its subsidiaries are subject to the California Tort Claims Act as codified in California Public Utilities Code § 120202.

The services described in these specifications may be purchased with the assistance of a grant from the Federal Transit Administration (FTA), Moving Ahead for Progress in the 21st Century (MAP-21) or Fixing America's Surface Transportation Act (FAST-ACT), Public Law 112-141, as amended. The successful Proposer will be required to comply with all terms and conditions prescribed for third-party contracts in a grant contract between the United States of America and MTS.

MTS strongly encourages bidders to register to become a vendor on PlanetBids. Vendors can receive information about proposal notices, addenda, bid awards, submit proposals online (when applicable), and view and update in their portal. Proposers are advised that the MTS website link above is the only true source if information for MTS procurements. MTS shall not be held responsible for other third party websites that may post some or all of MTS's solicitation documents.

This document, together with its attachments, comprises the formal Request for Proposals (RFP). Responses to this RFP should be submitted in accordance with the instructions provided.

1.1. CALENDAR OF EVENTS

The schedule of events leading from the issuance of the RFP to award of a contract is as follows:

Event	Date
MTS Issues Request for Proposals	June 17, 2022
Pre-Proposal Meeting	**2:00 P.M., Prevailing Local Time, on June 24, 2022**
Deadline for Submitting Written Questions/ Clarifications or Request for Approved Equals (RFAs)	**5:00 P.M., Prevailing Local Time, on July 5, 2022**
Proposal Due Date	***4:00 P.M., Prevailing Local Time July 29, 2022***
Proposal Presentations, Demonstrations, Interviews	**Week of September 19, 2022**
Anticipated Contract Award (MTS Board)	November 10, 2022

*These dates are tentative and subject to change by MTS.

Submissions arriving later that the Proposal Due date and time listed above Prevailing Local Time, or at a different location will not be considered.

1.2. MTS POINT OF CONTACT

Brianda Diaz, Procurement Specialist is the sole point of contact for this solicitation. She can be reached via telephone at (619)557-4580 or via email at Brianda.Diaz@sdmts.com Proposers are directed to not contact other MTS staff, or MTS Board members in connection with this RFP. Failure to follow this instruction will result in disqualification of any potential Proposer.

1.3. ENCOURAGEMENT OF DISADVANTAGED BUSINESS ENTERPRISES AND OTHER SMALL BUSINESSES

In furtherance of MTS's Disadvantaged Business Enterprise (DBE) Program and MTS's program to foster small business participation, MTS highly encourages Proposer to include participation of DBEs, minority owned businesses (MBEs), women owned businesses (WBEs), disabled veteran business enterprises (DVBEs), lesbian gay bisexual transgender owned businesses (LGBTs) or small businesses (SB) for any potential subcontracting opportunities on this Contract. If assistance is needed to locate these certified firms, please contact Samantha Leslie, MTS DBE Liaison Officer, at Samantha.Leslie@sdmts.com.

2. PROPOSER INSTRUCTIONS

2.1. MTS'S RIGHTS UNDER THIS SOLICITATION

In soliciting proposals under this Request for Proposals, MTS reserves the rights to exclusively:

1) Reject any and all Offers
2) Reject conditional Offers;
3) Issue a subsequent solicitation;
4) Cancel the entire solicitation;
5) Remedy technical errors in the solicitation process;
6) Appoint evaluation committee members;
7) Reassign evaluation committee members;
8) Seek the assistance of outside technical experts in evaluation of Proposals;
9) Approve or disapprove the use of particular subcontractors;
10) Establish a short list of eligible Proposers after review of Proposals;
11) Negotiate with any, all or none of the Proposers;
12) Solicit best and final offers from all or some of the Proposers;
13) Award contract (s) for all or part of the Specifications or Scope of Work'
14) Award a contract to one or more Proposers;
15) Award other than the lowest cost offer;
16) Waive minor informalities and irregularities in Proposals

2.2. PRE-PROPOSAL MEETING

A Non-mandatoryPre-Proposal meeting will be held on the date listed on the Calendar of Events, via WebEx. Additional information can be found via PlanetBids. While attendance at this meeting is not mandatory, prospective bidders are encouraged to attend.

2.3. INTERVIEWS

During the evaluation period, MTS may interview some or all proposers. MTS has identified the week listed on the Calendar of Events for interviews. Proposers will be asked to keep this date available. As no other interview dates will be available Proposers who are unable to attend their interviews as scheduled may be eliminated from further participation in this competitive procurement. The interview may consist of a short presentation by the Proposer after which the Evaluation Committee may solicit information relative to the Proposer's proposal and qualification. The committee will use pre-established criteria during the interview to score and develop a final recommendation.

2.4. EXAMINATION OF PROPOSAL DOCUMENTS

By submitting a proposal, Proposer represents that it has thoroughly examined and become familiar with the requirements of this RFP, especially the Instructions to Proposers and the Scope of Work, and that it is capable of performing the quality of work necessary for the MTS to achieve its objectives as described in this Solicitation.

2.5. ADDENDA

MTS reserves the right to amend the RFP at any time. Any amendments to or interpretations of any content of this RFP shall be via written addenda. MTS shall provide copies of Addenda to all prospective Proposers officially known to have received the RFP through MTS' online bid portal on PlanetBids. Failure of any prospective Proposer to receive the notification or addendum shall not relieve the Proposer from any obligation under its proposal as submitted under the RFP. All addenda issued shall become part of the RFP. Prospective Proposers shall acknowledge the receipt of each individual addendum and all prior addenda in their proposals, using the Addenda tab through MTS' online bid portal on PlanetBids. Proposers who fail to follow this instruction may be disqualified from further participation in this competitive procurement.

If MTS determines that the addenda may require significant additional time for the preparation of proposals, the deadline for submittal may be postponed by a number of days that MTS determines will allow Proposers adequate time to revise their proposals. Any new due date shall be included in the addenda.

2.6. CLARIFICATIONS

2.6.1. EXAMINATION OF DOCUMENTS

Should a Proposer require clarifications of this RFP, the Proposer shall notify MTS in writing via the Q&A tab through MTS' online bid portal on PlanetBids. Should it be found that the point in question is not clearly expressed in the Solicitation, MTS will publish an addendum of clarification.

2.6.2. SUBMITTING REQUESTS

A. Questions, including those that could not be specifically answered at the pre-proposal meeting, clarifications, or comments must be submitted in writing through MTS' online bid portal on PlanetBids and, must be received by MTS no later than the date and time listed on the Calendar of Events.

B. All requests must provide a sufficient amount of information, such that MTS is able to craft an appropriate response, based upon the initial submittals. Any information considered by Proposers to be Proprietary, Trade Secret, or otherwise Confidential shall also be clearly identified. MTS will develop its response from its interpretation of the content of the request. Thus, inadequate or irrelevant information may cause MTS to decline the request.

2.6.3. MTS RESPONSES

MTS' responses will be provided in writing to all prospective Proposers via MTS' online bid portal on PlanetBids. To the extent possible, MTS will not disclose such proprietary information to other Proposers or "interested parties."

2.7. SUBMISSION OF PROPOSALS

2.7.1. DUE DATE AND TIME

Proposals must be submitted by no later than the date and time listed on the Calendar of Events. Proposals received after the above-specified date and time will be returned to the Proposer unopened.

2.7.2. SUBMITTAL FORMAT

Electronic Copies:

Proposers are to upload an electronic copy of their proposal to MTS' online bid portal on PlanetBids. The proposal and the cost proposal shall be submitted as separate documents. The cost proposal shall be submitted in Excel file format and the Proposal shall be submitted in PDF file format.

Proposers shall be entirely responsible for any consequences of inadvertent opening of unsealed or improperly identified packages. It is the Proposer's sole responsibility to see that its proposal is received as required. Proposals arriving late due to a delay in delivery will not be accepted.

2.7.3. ACCEPTANCE OF PROPOSALS

A. MTS reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.

B. MTS reserves the right to withdraw this RFP at any time without prior notice, and MTS makes no representations that any contract will be awarded to any Proposer responding to this RFP.

C. MTS reserves the right to postpone proposal openings for its own convenience.

D. MTS reserves the right to require confirmation of information furnished by Proposer, or to ask the Proposer for additional evidence of qualifications to perform the work, or to obtain information from any source that has the potential to improve the understanding and evaluation of the proposals.

E. Proposals received by MTS are public information, and will be made available to the public upon request after award.

F. Proposals submitted are not to be copyrighted.

2.8. PRE-CONTRACTUAL EXPENSES

Pre-contractual expenses are defined as expenses incurred by Proposer in:

A. Preparing its proposal in response to this RFP

B. Submitting that proposal to MTS;

C. Negotiating with MTS any matter related to its proposal; or

D. Any Other expenses incurred by Proposer prior to award of the Contract.

MTS shall not, in any event, be liable for any pre-contractual expenses incurred by Proposer in the preparation of its proposal. Proposer shall not include any such expenses in its proposal.

2.9. PRE-AWARD AUDIT

Prior to award of a Contract, short-listed Proposers may be required to undergo an audit of their proposed costs and prices. MTS, at its sole discretion and expense, will conduct the audit to determine if such Proposers' prospective prices are fair and reasonable.

2.10. JOINT OFFERS

Where two (2) or more Proposers intend to submit a single proposal to this RFP, they shall do so on a prime-subcontractor basis rather than as a joint venture. MTS intends to contract with a single Proposer and not with joint ventures.

2.11. SINGLE PROPOSAL RESPONSE

If only one (1) proposal is received in response to this RFP, and it is found by MTS to be responsive and responsible, a detailed cost/price proposal may be requested of the single Proposer. A price or cost analysis, or both, possibly including an audit, may be performed by or for MTS of the detailed cost/price proposal to determine if the price is fair and reasonable. The Proposer has agreed to such analysis by submitting a proposal in response to this RFP.

A price analysis is an evaluation of a proposed price that does not involve an in-depth evaluation of all the separate cost elements, and the profit factors that comprise a Proposer's price proposal. It should be recognized that a price analysis through comparison to other similar procurements, must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity, involving similar specifications and in a similar timeframe. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary to conduct a cost analysis of the proposed price.

A cost analysis is a more detailed evaluation of the cost elements in the Proposer's Offer to Perform. It is conducted to form an opinion as to the degree to which the proposed costs represent what the Proposer's performance should cost. A cost analysis is generally conducted to determine whether the Proposer is applying sound management in proposing the application of resources to the contracted effort, and whether costs are allowable, allocable, and reasonable. Any such analyses and the results there from, shall not obligate MTS to accept such a single proposal; and MTS may reject such proposal at its sole discretion.

2.12. TAXES

Price proposals are subject to state and local sales taxes. However, MTS is exempt from the payment of federal excise and transportation taxes.

2.13. CONTRACT TYPE

MTS intends to award a firm-fixed price contract to the successful Proposer whose Proposal presents the most advantageous terms to the Agency, price, and scope of work/technical elements having been considered.

2.14. PROPOSED AGREEMENT

As a condition of award, the successful Proposer agrees that it will sign MTS's Standard Agreement and not insist upon the Agency signing any other agreement document.

The successful Proposer will be subject to the provisions contained in the Sample Standard Agreement, Standard Conditions, and Federal Requirements, and this includes any changes that may be made to reflect the terms of the successful Proposer's proposal. The final Agreement shall also incorporate other pertinent terms and conditions set forth in this RFP.

The Proposer's attention is directed to Section 7. Insurance which specifies the minimum insurance requirements that must be met by the successful Proposer. The Proposer is required to provide evidence of its ability to acquire the required insurance with its proposal. Should the Proposer be unable to provide evidence of insurance within fourteen (14) days after notification of award by MTS, award may be made to an alternative Proposer.

The Proposers inability or unwillingness to meet any requirements set forth in herein, as a condition of contract award, must be stated as an exception in the proposal.

Any exceptions to or deviations from the requirements of this RFP must be submitted on or before the proposal submission deadline or proposal may be deemed non-responsive.

2.15. PROTESTS

Any protests by an interested party regarding this procurement shall be made in accordance with the protest procedures of MTS:

2.15.1. PROTESTS BASED ON CONTENT OF PROCUREMENT SOLICITATION

Protests based on the content of the procurement solicitation, must be in writing, and received by MTS within ten (10) calendar days after the first advertisement of the RFP. The Chief Executive Officer or his designee, will notify all Proposers that a protest has been filed, and will issue a written decision on the protest prior to the due date. A protest may be renewed by refilling the protest with MTS within fifteen (15) calendar days from the postmark date of the Notice of Intent to Award. The protest must be received by MTS no later than 4:00 p.m. PST on the due date.

2.15.2. PROTESTS RECEIVED AFTER PROPOSAL DUE DATE

MTS will evaluate all proposals and determine the best-qualified proposers. A Notice of Intent to Award will be emailed to all proposers. Any protest to the notice must be in writing and received by MTS within fifteen (15) calendar days from the postmark date of the notice. The protest must be received by MTS no later than 4:00 p.m. PST on the due date. The protest must be received by MTS no later than 4:00 p.m. PST on the due date.

2.15.3. CONTENTS OF PROTESTS

The protestor must demonstrate or establish a clear violation of a specific law or regulation, e.g., a violation of the prohibition against exclusionary or unduly restrictive specifications. The protest must contain a full and complete written statement of the grounds for protest and all supporting documentation. MTS may, but is not obligated to, request additional information concerning the grounds for protest.

2.15.4. REPLIES TO PROTESTS

MTS will review all protests as soon as possible. All material submitted by the protestor will be considered. Such material will not be withheld from any interested party outside of MTS or any agency, which may be involved with the procurement except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor considers that the protest contains proprietary material, which should be withheld, a statement advising of this fact may be affixed to the front page of the protest document and alleged proprietary information shall be so identified wherever it appears.

The MTS Procurement Manager will reply to all protests in writing with its determination.

2.15.5. REQUEST FOR RECONSIDERATION OF PROTESTS

Upon receipt of the decision by the MTS Procurement Manager, the protestor may file a Request for Protest Reconsideration. A Request for Protest Reconsideration must be directed to the Chief Executive Officer in writing and received within five (5) full working days from the postmark date of the reply from MTS. The Chief Executive Officer shall respond to the protest in writing with his or her determination. The protest must be received by MTS no later than 4:00 p.m. PST on the due date.

All protests shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest.

2.15.6. ADMINISTRATIVE APPEAL HEARING

Protestors shall have an opportunity to appear and be heard before the Board prior to the opening of the proposals, in the case of protests based on the content of the procurement solicitation or prior to final award, in the case of protests based on other grounds or the renewal of protests based on the content of the solicitation. A request for an Administrative Hearing regarding a protest shall be in writing and directed to the General Counsel. A request for an Administrative Hearing shall be received within five (5) business days of the Chief Executive Officer's written decision. The protest must be received by MTS no later than 4:00 p.m. PST on the due date.

The decision on the protest by the Board shall be in writing, and constitutes a final administrative decision for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure.

2.15.7. FTA Review of Protests

Subject to FTA rules and as permitted by 2 C.F.R. 200.318(k), a protestor may appeal to the FTA within five (5) working days of MTS's final decision.

2.16. CHANGES

2.16.1. PRE-AWARD

A. Requests for Clarification and Addenda

Prior to award of a contract, the Scope of Work/Technical Specifications, Addenda, Sample Standard Agreement, Standard Conditions, Federal Requirements. Forms, and all certification documents of this RFP constitute the potential contract. Any inquiry regarding this solicitation must be in writing except that MTS will

entertain oral inquiries at the Pre-Proposal meeting, if one is held. To be considered, inquiries must be addressed to the Procurement Officer. Any requests to change these documents after the Pre-Proposal meeting must be submitted in writing to MTS via the Q&A tab on MTS' online bid portal on PlanetBids and all changes to this RFP will be made by written addendum. ***There will be no oral changes - oral communications are not binding***. Proposers are advised that MTS is not able to ensure that it will be able to respond to inquiries received later than fifteen (15) business days prior to proposal due date. MTS shall issue responses to inquiries and any other corrections, amendments, etc., which it deems necessary in written Addenda issued at least seven (7) days prior to the proposal due date.

2.16.2. POST-AWARD

Upon contract award, the RFP in its entirety, all addenda, MTS' response to questions/clarifications, the final proposal determined to be the most advantageous to MTS, the conformed Scope of Work/Technical Specifications, Sample Standard Agreement, Standard Conditions, Forms and Federal Requirements, constitute the contract. Changes to the contract shall be conducted as follows:

A. Changes by Proposer(s):

Proposed changes must be submitted in writing to the Contracting Officer for prior approval. The request must state the reason, any possible changes to the project schedule, and any impacts to the cost of the project.

The Contract Officer shall respond in writing to the proposed change. All approved changes shall be confirmed by written addendum or change order. Oral changes are not permitted or binding. The Proposer shall be liable for all costs resulting from and/or for satisfactorily correcting any specification change not properly ordered or approved by written modification to the contract. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract dispute clause herein.

B. Changes by MTS:

In the event that work, materials, or equipment shall be required that are not specified, indicated, or otherwise provided for herein, the Proposer shall, if ordered in writing by the Chief Executive Officer or his designee, perform such work and furnish such materials or equipment at the Contractor's normal prices, less discounts ordinarily allowed to users of such materials or equipment or at regular labor charges less customary discount, or both.

If any work, materials, or equipment specified, indicated or otherwise provided for in the contract or in the specifications forming a part of the contract, is required to be omitted from, in, or about the work, the Proposer shall, if ordered by the Chief Executive Officer or his designee, omit the performance of such work and the furnishing of such materials or equipment. There shall be deducted from the amount to be paid to the Proposer an amount, which the Chief Executive Officer or his designee, and the Proposer shall determine and mutually agree to be the

reasonable value of such work, materials or equipment, and such determination and agreement shall be final and conclusive upon the Proposer.

It is understood, however, that the amount of work, materials, or equipment required by the contract shall not, in accordance with above provisions referring to additions or omissions, be so increased or diminished as to substantially alter the general character or extent of the contract.

2.17. DUTY TO CLARIFY OBVIOUS AMBIGUITY

The Proposer is required to seek clarification of any obvious ambiguity contained in the Solicitation. Failure to do so will result in an interpretation of the ambiguous provision favorable to MTS should a dispute later arise concerning that provision.

2.18. CONFIDENTIALITY, THE CALIFORNIA PUBLIC RECORDS ACT, AND THE FREEDOM OF INFORMATION ACT

2.18.1. EXCLUSIVE PROPERTY

Responses to this RFP shall become the exclusive property of MTS and are subject to disclosure under the California Public Records Act.

Those elements of each Proposal that are trade secrets, as the term is defined in Civil Code Section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as TRADE SECRET, CONFIDENTIAL or PROPRIETARY may not be subject to disclosure. This may include private financial information about a Proposer, but does not include the proposed price submitted as part of the Proposal.

The California Public Contract Code section 20216 provides that other than proprietary information, the content of any request for proposal, any proposal received, and any other communications between a transportation agency and a potential Proposer on a contract that is subject to subdivision (a) shall be made available to the public no later than the same time that a recommendation for awarding a contract is made to the governing board or persons responsible for approving the award of a contract to a Proposer, except that the price proposed in any proposer's initial proposal shall be available upon the opening of the proposal by the agency requesting the proposal.

2.18.2. DISCLOSURE OF RECORDS

A. Unless a State or Federal law or regulation requires that information or a document is exempt from disclosure to third parties, MTS does not consent to withhold information, merely because it is accompanied by a routine confidentiality statement.

B. As provided by State and Federal laws, regulations, and guidance, MTS will review information and documents that are the subject of each confidentiality request to determine the extent to which MTS must withhold the information or those documents.

C. Any genuinely confidential or privileged information should be:

1) Marked clearly and specifically as "TRADE SECRET" or CONFIDENTIAL" or "PROPRIETARY," and

2) Accompanied by a statement detailing why the information is exempt from public disclosure under State and Federal law. Simply restating the Civil Code definition of a "TRADE SECRET" is not sufficient. The statement must include a factual and legal analysis supporting the Proposer's conclusion that the specific document marked is exempt from disclosure.

2.18.3. EXEMPTION FROM DISCLOSURE MAY BE DEEMED UNRESPONSIVE

MTS will take into consideration, documents that the Proposer deems exempt from disclosure, which must be marked "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY."

Proposers who indiscriminately identify all or most of their Proposals as exempt from disclosure without justification may be deemed unresponsive and disqualified from further participation in this competitive procurement.

2.18.4. INDEMNIFICATION OF MTS BY CONTRACTOR

The Proposer agrees to defend and indemnify MTS in any action on a Public Records Act request for any of the contents of a Proposal marked TRADE SECRET, CONFIDENTIAL or PROPRIETARY.

Proposer agrees to absorb all costs and expenses, including attorneys' fees, in any action or liability arising from Proposer's claim that its documents are exempt from disclosure under the Public Records Act.

2.18.5. PUBLIC INTEREST

The public interest exemption of the California Public Records Act provides that an agency may withhold the disclosure of a record by showing that the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

Proposers must sign the attached California Public Records Act Acknowledgement form and submit with the proposal.

2.19. NO PUBLIC OPENING OF PROPOSALS

There will be no public opening of the proposals. Proposals will be treated as confidential until the contract is approved by the MTS Board of Directors for award.

3. PROPOSER CONTENT, REQUIREMENTS AND FORMAT

3.1. PRESENTATION

Proposals shall not include any unnecessarily elaborate graphics, art work or promotional materials. Lengthy narratives are discouraged. The proposal should be brief and concise. Appendices should provide information directly relevant to the needs of the solicitation and not consist of the Proposer's general marketing materials.

3.2. LETTER OF TRANSMITTAL

The Letter of Transmittal shall be addressed to the MTS Point of Contact as Described in Section 1.2.

Identification of Proposer, including name, address, and telephone number.

1. Proposed working relationship between Proposer and subcontractors, if applicable.
2. Acknowledgment of receipt of all RFP addenda, if any. Please use MTS Addenda Acknowledgement Form provided.
3. Name, title, address, and telephone number of contact person during period of proposal evaluation.
4. A statement to the effect that the proposal shall remain valid for a period of not less than one-hundred (120) days from the date of submittal.
5. Signature of a person authorized to bind Proposer to the terms of the proposal.

3.3. TECHNICAL PROPOSAL

3.3.1. QUALIFICATIONSAND RELATED EXPERIENCE OF THE PROPOSER & PROPOSED STAFFING OF THE FIRM OR INDIVIDUAL

This section of the proposal should establish the ability of the Proposer to satisfactorily perform the services by presenting evidence of:

- Experience in performing work of a similar nature;
- Demonstrated competence in the services to be provided;
- Proposer's financial strength and stability;
- Staffing capability;
- Workload concurrent with the performance period under this Solicitation;
- Record of meeting performance standards on similar agreements; and
- Supportive client references.

Particular attention should be given to the requirements of the Scope of Work, to ensure the Proposer's ability to fulfill all requirements is demonstrated in its submittal. Proposers must identify the service category(ies) to which their proposal applies. For each category, demonstrate that Proposers (and others who will be participating in the Work, if applicable)

are qualified to perform the pertinent responsibilities described therein. Qualifications are demonstrated by the following:

Proposer shall:

A. Provide a brief profile of the Proposer (individual or firm), identify the types of services offered as described in each category outlined in the scope of work; the year the business was founded; form of the organization (corporation, partnership, sole proprietorship); number, size, and location of offices; and number of employees. The Proposer must provide the number of years of experience for each service area identified.

B. Proposer shall provide a general description of the individual or firm's financial condition in the *Financial Questionnaire Form* located the Forms section of this RFP. Proposers shall identify any conditions; e.g., bankruptcy, pending litigation, planned office closures, impending merger, which may impede Proposer's ability to provide services.

Provide Proposer's latest Audited Financial Statements (to be submitted with the proposal as **Appendix (A**) and financial references to allow MTS to determine firm's financial capacity and stability.

C. Describe the firm's experience in performing like services of a similar nature for public transportation agencies, municipalities, or other government agencies. Include, at a minimum, the name of the contracting agency, type of services provided, the contract period, and the name, address, email, and telephone number of a contact person. Highlight the participation in such work by the key personnel proposed for assignment to the services described in this RFP. Describe your experience in working with the various government agencies identified in this RFP.

D. Identify subcontractors by name, address, contact person, telephone number, email and project function. Describe Proposer's experience working with each subcontractor. Describe role of proposed subcontractor.

E. "Status of Current and Past Contracts Form," Proposer shall provide as a minimum three (3) references of current and past contracts where the firm has either provided services as a prime contractor or a subcontractor during the past five (5) years, for projects cited as related experience. A separate form must be completed for each contract. All fields on the form must be filled in. Proposer shall ensure it is providing an accurate contact name, telephone number and email of the person(s) at the organization most knowledgeable about the services performed. Inaccurate references may be a factor in the overall evaluation of the proposal. Each reference must specifically address start/end dates of the project and services provided that should be correlated with the requirements of this RFP. If Proposer is no longer providing the service, Proposer is to identify if a new contract was awarded to a different firm through the procurement process, or if the contract was terminated by either procuring agency or by the contractor for cause or convenience. If the contract was terminated, list the reason for termination. Proposer must identify and state the status of any litigation, claims or settlement

agreements related to any of the contracts. Each form must be signed by the Proposer confirming that the information provided is true and accurate. Any requests for a conflicts waiver must be submitted with your proposal. MTS reserves the right to contact any and all clients listed as part of the reference verification.

F. Provide details and task responsibilities of proposed Project Manager and key staff that would be assigned to MTS's account, including education, experience; course work, training, special qualifications, and applicable professional credentials.

G. Provide information on staffs' experience with Retail Direct Access in California, including number and type of customers currently served; information on licenses held as required by the State of California in support of the scope of services.

H. Include an organizational chart, which clearly depicts communication/ reporting relationships among the proposed staff, the subcontractors, and their assigned tasks in relation to MTS' requirements (to be submitted with the proposal as **Appendix B**).

I. Include a statement that key personnel proposed will be available to perform the proposed services for the duration of the contract acknowledging that no person designated as "key" to the proposed service shall be removed or replaced without the prior written concurrence of MTS.

J. Describe the process to be used to attract qualified personnel and office staff (to be submitted with the proposal as **Appendix C**). Describe the firm's participation in their staffs continued education and training. Also describe the firm's drug and alcohol testing procedures and policy.

3.3.2. WORK PLAN AND SERVICE COMMITMENT

Proposer shall fully describe its plan on how to achieve the MTS' objectives as detailed in this Solicitation through a narrative. The narrative must be able to illustrate the Proposer's understanding of MTS' needs. On key points, Proposer may wish to include verifiable references that will serve to highlight Proposer's level of experience and knowledge relative to each.

Specific areas that should be addressed:

- Describe GSP's process for setting the baseload each month, balancing with the utility, and invoicing.
- Describe GSP's experience with LCFS and RIN Program regulatory requirements, differentiating between the responsibilities of MTS and the GSP.
- Describe how the GSP stays current on LCFS and RIN Program regulatory changes.
- Describe the documentation the GSP will require from MTS for LCFS and RIN credit generation and compliance purposes.

- Please provide document samples for:
    - Monthly natural gas invoices
    - Monthly RIN credits generated
    - Quarterly LCFS credits generated
    - Product Transfers
    - Pipeline Injections
    - Attestations to be completed by MTS

Proposer shall:

A. Records Retention

Proposers should discuss the process used to establish and maintain MTS' data collected or generated while performing the services. The processes used to ensure confidentiality and the storage terms, where applicable.

3.3.3. INSURANCE

Submit a statement in the cover letter, or provide proof that the required insurance coverage contained in the Sample Agreement can be obtained by the Proposer (to be submitted with the proposal as **Appendix D**). Should Proposer be unable to provide evidence of insurability, MTS may remove that Proposer's proposal from consideration.

3.3.4. EXCEPTIONS/DEVIATIONS

Proposer shall state any exceptions to or recommended deviations from the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions, and including RFP sections and page numbers. Where Proposer wishes to submit alternative approaches to meeting MTS' technical or contractual requirements, these should be thoroughly explained (to be submitted with the proposal as **Appendix E**).

Proposer may also propose procedural or technical enhancements/innovations to the Scope of Work which do not materially deviate from the objectives of the project.

3.4. COST AND PRICE PROPOSAL – A Pricing/Cost Form is provided in this RFP

This section shall include all costs anticipated to perform the work. Proposers may also include any additional documents as information to further explain the proposed costs.

Proposer shall provide pricing using the form(s) attached as ATT 1 Cost Pricing Form.

3.5. APPENDICES

Information considered by Proposer to be pertinent to this project, and which has not been specifically solicited in any of the previous sections, may be submitted as a separate attachment. Proposers are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief. Such additional suggestions will only be considered acceptable to the MTS if they are included in the resultant Agreement.

3.6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY PARTICIPANT AND LOWER-TIER PARTICIPANTS

Each awarded contract may be a covered transaction for purposes of 2 C.F.R. Part 180 and Part 1200 in the event that federal funding is utilized for payment by MTS. As such, the successful Proposer or Proposers is required to verify that the successful Proposer or Proposers, its principals, as defined at 2 C.F.R. 180.995, or affiliates, as defined at 2 C.F.R. 180.905, are not excluded or disqualified as defined at 2 C.F.R. 180.940 and 180.935.

The successful Proposer or Proposers is required to comply with 2 C.F.R. 180, Subpart C, and must include the requirement to comply with 2 C.F.R. 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its proposal, the successful Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by MTS. If it is later determined that the successful Proposer knowingly rendered an erroneous certification, in addition to remedies available to MTS, the Federal Government may pursue available remedies, including, but not limited to, suspension and/or debarment. The successful Proposer agrees to comply with the requirements of 2 C.F.R. 180, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The successful Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- Submission Requirements

  Each Proposer and its proposed subcontractor consultants shall complete the certification form, *Certification of Primary Participant Regarding Debarment, Suspension, and other Responsibility Matters*, included in this RFP for itself and its principals and submit this certification with its proposal. Failure to do so may result in rejection of the proposal.

3.7. RESTRICTIONS ON LOBBYING

As a recipient of federal funds, MTS is required to certify compliance with the influencing restrictions and efforts of Proposer to influence federal officials regarding specific procurements in excess of $100,000 that must be disclosed pursuant to section 1352, Title 31, U.S. Code.

This RFP includes the following: a certification form entitled "Certification of Restrictions on Lobbying," the Office of Management and Budget (OMB) Standard Form LLL entitled "Disclosure of Lobbying Activities," and a document entitled "Limitation on Payments to Influence Certain Federal Transactions."

The Proposer to this solicitation will be required to complete and submit to MTS the certification form entitled "Certification of Restrictions on Lobbying" whether or not any lobbying efforts took place – see Restrictions on Lobbying Section. If the successful Proposer did engage in lobbying activities, then OMB Standard Form LLL "Disclosure of Lobbying Activities" must also be completed and submitted to MTS. This form should be completed and submitted with the proposal. Failure to provide the completed and signed forms will result in the proposal being removed from consideration.

3.8. COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

The MTS Equal Employment Opportunity (EEO) Program will be a part of this agreement (The policies are located here: https://www.sdmts.com/about-mts-reports-records-and-policies/policies-and-procedures)

). A Workforce Report form signed by the Proposer is a condition for the award of this contract.

1. Prior to the award of this contract, a Proposer must complete and submit a Workforce Report (Equal Opportunity Workforce Report Form included in the Forms Section of the RFP).

2. If MTS determines that there is underutilization of women and minorities in a Proposer's workforce, the Proposer shall be required to submit to MTS for its review and approval a written EEO Plan.

3. The Proposer's EEO Plan is to include goals and timetables for employment on a line-by-line (job title) basis. Goals and timetables must be designed to correct any identifiable deficiencies. Where deficiencies exist, the Proposer shall establish and set forth specific goals and timetables separately.

4. No Proposer will be required to discharge members of its workforce in order to increase the number of minority or female workers employed.

4. EVALUATION AND AWARD

4.1. EVALUATION CRITERIA

MTS will evaluate the offers based on the following criteria:

A. Pass/Fail Criteria

1. Proposer has demonstrated the ability to meet the insurance requirements described in the Agreement. Proof of ability should be attached to proposal. (P/F)

2. Proposer has demonstrated previous experience working for or with public agencies, transit entities, or corporations on a similar project as stated in the Scope of Work. (P/F)

If the Proposer does not meet any of the criteria mentioned above, their proposal may not be considered for evaluation.

The following sections will be scored, based on the totality of the proposal and its ability to best meet MTS's needs. Each of the individual factors listed in the descriptions below are example of the items that will be evaluated or scored. The weight for each item is subject to the discretion of the evaluation team, based on the relevance to MTS's overall needs.

Award will be based upon criteria listed below, and may not necessarily be made to the Proposer offering the lowest price.

B. Qualifications and Experience of the Proposer & Proposed Staffing of the Firm or Individual — 25%

Technical experience in performing work on services of a similar nature; experience working with public agencies; strength and stability of the firm or management personnel; strength, stability, experience, and technical competence of subcontractors; assessment by client references; references with demonstrated success in providing similar services.

Qualifications and experience of proposed staff, particularly key personnel and the responsible management; key personnel's level of involvement in performing related work described in the scope of work; logic of firm organization; technical resources to implement the scope of services, knowledge of regulatory compliance and updates, and adequacy of labor commitment.

C. Work Plan and Service Commitment — 35%

Depth of Proposer's understanding of MTS' requirements as set forth in the Scope of Work Section, and within this RFP; overall quality of work plan; logic, clarity, and specificity of work plan; appropriateness of labor distribution among the activities; ability to meet services proposed; reasonableness of the services proposed; methods or processes used for data retention and confidentiality; evidence of insurability.

D. Cost and Price — 40%

The reasonableness of the total cost proposal and the competitiveness of the proposed price in comparison with other offers received; adequacy of market data that in support

of proposed costs and prices; reasonableness of unit prices and labor rates; logical market basis of proposed prices.

4.2. PROPOSAL EVALUATION

MTS uses a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include experience and qualifications, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine the offer deemed most advantageous to MTS.

An evaluation committee will be appointed to review all proposals. The committee will be comprised of MTS staff and may include outside personnel. Committee members will initially evaluate each proposal using the pass or fail criteria identified in this RFP. Proposers who pass this first stage of testing will progress to the next step in the evaluation.

On the completion of the initial Pass/Fail review, the committee will evaluate proposals using the two-step process. Technical proposals will be reviewed and scored first without consideration for price. The committee will then open the cost and price proposals and evaluate and score them accordingly. During the technical evaluation, the committee, at its sole discretion may contact any or all of the Proposers with specific questions or requests for clarification. After both the technical and cost/price proposals have been evaluated and scored, the committee will arrive at a "comprehensive proposal score" for each proposal. A list of top ranked proposals within a competitive range will be developed based upon the total comprehensive scores provided by committee members. At this time, the committee may decide that the evaluation process is complete and submit a final recommendation to the CEO.

If the committee determined it to be necessary, it may then conduct interviews and negotiations with short-listed Proposers. MTS has established the dates listed in the Calendar of Events for interviews and negotiations if needed. Proposers are asked to keep these date(s) available. As no other interview dates are available. Proposers who are unable to attend their interview as scheduled may be eliminated from further participation. The interview may consist of a short presentation by the Proposer after which MTS may ask questions and/or request clarification related to any element of a proposal and its qualifications. MTS may also enter into negotiations with the Proposer.

At the conclusion of interviews and negotiations, the evaluation committee may choose to proceed using one of the following processes:

1. The committee may find it necessary to re-score the proposals in light of information gained during the interviews and negotiations process. The proposals will be scored in the same manner as the original proposals.

2. The committee may ask the Proposers to consider the dialog of negotiations and revise their proposals. A deadline will be set for submission of the revised proposals. If a Proposer is unable to meet the deadline or chooses not to revise its proposal, its existing proposal will be rescored along with revised proposals in the same manner as the original proposals. (Both Options A and B may result in a new ranking and competitive range.)

3. The committee may also elect to bypass both Options A and B, and move forward to Best and Final Offers (BAFO).

   Proposers remaining within the competitive range may be asked to submit a BAFO. In the BAFO request, the Proposers may be asked to provide additional information, confirm or clarify issues and submit a final cost/price offer. A deadline for submission will be stipulated. The BAFO's will be scored in the same manner as the original proposals.

   After the BAFO's are evaluated and scored, the evaluation committee may recommend to the Chief Executive Officer, a proposal with the highest final ranking or a short list of top ranked proposals within the competitive range whose offers(s) are the most advantageous to MTS. The Chief Executive Officer will review the evaluation committee's recommendation and may enter into further negotiations with the Proposer(s) or forward its decision to the full Board of Directors for final action.

4.3. AWARD AND EXECUTION

At the conclusion of evaluation, the evaluation committee will submit (with concurrence of the Chief Executive Officer) a recommendation for award to the MTS' Board of Directors for consideration and approval. MTS may also negotiate contract terms with the selected Proposer prior to award and expressly reserves the right to negotiate with several Proposers simultaneously, and to award contracts to multiple Proposers offering the most favorable terms to MTS.

MTS reserves the right to award its total requirements to one Proposer or to apportion those requirements among several Proposers as MTS may deem to be in its best interest. In addition, negotiations may or may not be conducted with Proposers; Proposals should contain the Proposer's most favorable terms and conditions. Prior to award of the contract, the selected Proposer may be required to submit a pre-award audit of their financial records to confirm claims of financial stability and to ascertain the capacity of the Proposer's accounting system to properly administer the Agreement.

4.4. W-9 FORMS

Prior to award, all Contractors must have a W9 on file with MTS. Completed forms must be submitted to vendors@sdmts.com upon request by the Contract Officer.

4.5. CALIFORNIA WITHHOLDING FORMS

Prior to award, all Contractors must complete the Form 590 Withholding Exemption Certificate if they have a permanent place of business in California, or Form 587 Non-Resident Withholding Allocation Worksheet if they do not have a place of business in California. Completed forms must be submitted to vendors@sdmts.com upon request by the Contract Officer.

4.6. NOTIFICATION OF INTENT (NIA) TO AWARD AND DEBRIEFING

Proposers who submit a proposal in response to this RFP will be notified of MTS' intent to award a Contract. Any protest with this notice must comply with the protest requirements shown in the RFP. Proposers who were not awarded the contract may obtain a prompt explanation concerning the strengths and weaknesses of their proposal. Unsuccessful Proposers who wish to be debriefed must request the debriefing in writing, and MTS must receive it no later than three (3) days after the NIA is issued.

5. SCOPE OF WORK/TECHNICAL SPECIFICATIONS

5.1. GENERAL

The San Diego Metropolitan Transit System, hereinafter referred to as "MTS", is seeking proposals from certified Gas Service Providers ("GSPs") who are currently providing service to commercial and industrial customers under San Diego Gas & Electric ("SDG&E") Core Aggregation Transportation ("CAT") program. MTS is seeking a GSP to provide index-based gas supply pursuant to the CAT Program in connection with gas utilized for MTS's CNG powered bus fleet for a ten (10) year period (six (6) base years and four (4) option year term, exercisable at MTS' sole discretion) from January 1, 2023 through December 31, 2032.

5.2. BACKGROUND

MTS was initially formed in 1975 as the San Diego Metropolitan Transit Development Board (MTDB) under California Public Utilities Code sections 120000 et seq.. In 2005, the MTDB changed its name to the San Diego Metropolitan Transit System (MTS) following a reorganization and consolidation of services. Additional information regarding MTS, including recent Annual Comprehensive Financial Reports (ACFR), is available on the MTS website at http://www.sdmts.com.

MTS Bus Operations are a consolidation of services operated by San Diego Transit Corporation and MTS Contracted Services. These entities operate and maintain a fleet of 764 buses, 78% of which are powered by environmentally friendly compressed natural gas. In fiscal year (FY) 2023, MTS expects to consume 10.6 million therms (1,060,000 MMBtu) of natural gas to operate its bus services that include 100 fixed routes, including traditional urban shuttle-type routes, express routes and bus rapid transit routes, plus paratransit services. MTS fuels its buses with fueling facilities it owns and operates at four of its bus divisions. The specific delivery points are as follows:

Meter Number	Address
01000670	1213 N Johnson Ave A, El Cajon, CA 92020
00968018	3650 Main Street, Chula Vista, CA 91911
00847747	4630 Ruffner Street, San Diego, CA 92111
00968019	3650 Main Street, Chula Vista, CA 91911
00962517	122 16th Street, San Diego, CA 92101
01052825	120 16th Street, San Diego, CA 92101

5.3. ENERGY CREDIT BACKGROUND

The California Air Resources Board (CARB) created the Low Carbon Fuel Standard (LCFS) designed to reduce greenhouse gas emissions associated with the life cycle of transportation fuels used in California. Each type of fuel has been assessed a carbon intensity (CI) score. Fuel providers are required to ensure their overall CI score meets the annual CI target. The LCFS program has incentives in the form of credits that are generated, tracked, and can be traded to obligated entities. MTS is not an obligated entity, but does generate LCFS credits as

a transportation provider that utilizes alternative fuels.

On the federal side, Congress enacted the Energy Policy Act of 2005, which required a mandated volume of biofuel use in the United States called the Renewable Fuel Standard (RFS). The Energy Independence and Security Act of 2007 increased the overall RFS and created sub-mandates for advanced biofuels, biomass-based diesel, and certain cellulosic biofuels such as renewable natural gas (RNG). The obligated parties are petroleum refiners and importers and not end users (i.e. not MTS). Renewable Identification Numbers (RINs) are the mechanism used to make sure each of the obligated parties meet its share of all of the mandates. These RINs generated as renewable fuels are sold and can be traded like any other commodity. This allows obligated parties to purchase RINs from outside sources in order to meet their obligation.

The generation of energy credits brings along with it many compliance requirements from both the Environmental Protection Agency (EPA) as well as CARB. CARB reauthorized and amended the LCFS program in January 2019, with many new legislative requirements that will go into effect for calendar year 2020, most notably the requirement of external third-party audits.

5.4. SCOPE OF WORK

5.4.1. Description of services

MTS is seeking proposals from qualified firms to supply 100 percent of guaranteed non-interruptible supply of RNG for MTS's transportation needs by displacing conventional CNG using the current on-demand pipeline infrastructure provided through SDG&E; and (2) deliver comprehensive environmental commodities brokerage services that make all mandated reports to regulatory agencies and obtain best market returns, including the LCFS program as outlined in California Assembly Bill AB32 and RIN credits generated through the use of green gas.

GSP must guaranty delivery of required volumes of RNG at all times, including any periods during which supply is curtailed or restricted in any way by the local utility company or any other entity.

GSP will hold and maintain independent contracts between their company and all relevant companies for the introduction of RNG by use of the utility's piping, connections, any and all infrastructure, dispenser equipment, valves, meters and natural gas gating to include inter-state fuel pipelines that may be used by MTS.

In addition, the GSP will be required to provide the following services:

- Daily monitoring of RNG usage
- Daily balancing as required by RNG supplier
- Billing services
- RNG information and consulting services
- Handle all gas supply and delivery arrangements (both gas suppliers and utility companies)
- Monitor gas infrastructure issues (gas supply, reliability) and strategies for curtailment protection
- Maintain an auditable "paper trail"
- Act as an advocate on relevant issues before the Public Utilities Commission

5.4.2. Compliance with LCFS and RIN Program Regulatory Requirements

MTS shall for the term of the agreement, and in return for compensation, provide the Contractor with rights to all LCFS and RIN credits generated as a result of RNG being dispensed from the MTS CNG fueling stations. The GSP shall compensate MTS based on the revenue sharing percentages provided in the pricing proposal and index prices as outlined in the LCFS and RIN Credit Sharing sections below.

At no time will MTS be charged a service fee for brokerage services, instead compensation for brokerage services will be derived from the mutually agreed upon share of revenue generated from LCFS and RIN credits.

In addition, the selected vendor will be required to provide the following services:

- GSP shall provide MTS with all necessary information for any CARB LCFS Reporting Tool and Credit Bank and Transfer System (LRT-CBTS) reporting.
- GSP shall take all necessary steps to register with EPA Moderated Transaction System (EMTS) and Fuels Reporting System (DCFUELS) and comply with EPA guidelines for administration by reporting fuel usage by MTS.
- Manage all regulatory and reporting requirements including regulatory filings required by any applicable law (including filings to CARB and EPA)
- Submit all required quarterly and annual reports, and the information required therein, to MTS, CARB and the EPA per established deadlines as given by the respective regulatory agency. These reports will accurately reflect MTS's data in order to ensure compliance with CARB and EPA regulations for fuel reporting entities. The reports will be submitted to the respective agencies' online database.
- Keep MTS informed of LCFS and RIN market conditions.

GSPs must maintain all records and calculations relied upon for data reported in LRT-CBTS, EMTS, DCFUELS, or any other reporting database requirements now or in the future. These records include, but are not limited to:

- Product transfer documents;
- Copies of all data reports submitted to regulatory agencies;
- Chain of custody evidence for produced fuel;
- Records relating to fuel transactions;
- Records used for each fuel transaction;
- Attestation regarding environmental attributes associated with book-and-claim accounting for biomethane pursuant to applicable state and federal law and regulations; and
- Records used for compliance or credit and deficit calculations

The GSP will retain records for a 10-year period and provide copies of auditable records to MTS on a quarterly basis alongside or as an attachment to quarterly summaries.

GSP shall participate in any and all audits by a regulatory agency and GSP will represent MTS as needed during the course of the audit to satisfy or rectify any inquiries or findings from a regulatory agency. This may include travel to MTS at the GSP's expense. MTS will work collaboratively with the GSP to comply with the audit. The GSP will keep MTS informed on the status of an audit and its outcome.

Compliance obligations from CARB and the EPA are subject to change dependent upon

the actions their respective legislative bodies take. It will be the responsibility of the GSP to stay informed on the laws and regulations, to include changes and revisions, in order to meet current and future obligations to ensure compliance at all times.

5.4.3. Commodity Contract Price

The GSP's Contract Price for gas quantities delivered to the Delivery Point shall be equal to (i) the Posted Price plus the GSP's Index Premium, per MMBtu. The Posted Price for daily Biogas deliveries ($/MMBtu) shall be the SoCal Citygate First of the Month Index ("SoCal Citygate") as published by Natural Gas Intelligence ("NGI") or any successor thereto plus SoCal Backbone Transmission System Tariff ("BTS") plus Fuel. "Fuel" means the cost for incremental quantity of Gas consumed by a local distribution company, in this case, SoCal Gas, in transporting Gas and includes any provision by such SoCal Backbone Transmission System Tariff for lost and unaccounted for Gas, as determined in accordance with the approved pipeline tariff or governing documents of such pipeline or local distribution company. The Contract Price set forth above includes only the natural gas commodity. GSP shall pass through to MTS all other charges associated with gas delivery to the Delivery Point.

For each month that MTS's Gas consumption exceeds the nominated Baseload Quantity, MTS shall purchase the incremental gas quantity from GSP at the applicable Spot Price plus the GSP's Index Premium, per MMBTU.

For each month that MTS's Gas consumption is less than the nominated Baseload Quantity for such month, MTS shall receive a credit from the GSP equal to the difference between the nominated Baseload Quantity for such month and the actual Gas consumed at the respective Delivery Point multiplied by the applicable Spot Price.

The Spot Price shall mean the Monthly Average of the Gas Daily Midpoint price as published in Gas Daily Publication or any successor thereto, Daily Price Survey, Citygates – SoCal Gas Citygate Midpoint.

5.4.4. LCFS Credit Sharing

In exchange for all of MTS LCFS Credits, MTS shall receive a quarterly payment that is sum of the three Monthly LCFS Value in that quarter. Monthly LCFS Value will be the product of (i) Total gas consumed in MMBtu in the month of delivery, (ii) the MTS LCFS revenue sharing credits per MMBtu, and (iii) the Monthly LCFS Market Price. The Monthly LCFS Market Price shall be the simple average of the daily spot price of California LCFS credits as reported daily by OPIS under the name "CA LCFS Carbon Credit", priced in $/mt (dollars per metric ton), or its successor.

5.4.5. RIN Credit Sharing

In exchange for all of MTS' RIN Credits, MTS shall receive a monthly payment that is sum of the Monthly RIN Value in that month. "Monthly RIN Value" is the product of (i) Total gas consumed in MMBtu in the month of delivery, (ii) the MTS RIN revenue sharing credits per MMBtu, and (iii) the Monthly RIN Market Price. The Monthly RIN Market Price shall be the simple average of the daily Argus D3 Cellulosic Biofuel RIN Index in the Argus US Products daily report.

5.4.6. Period of Performance

This contract is for up to a ten (10) year period (6-year base with an option to renew for another 4-year engagement, which shall be exercisable at MTS' sole discretion).

Service for the 6-year base term shall commence for each account on the first meter read date in January 2023, and terminate with the December 2028 meter read date. If MTS exercises the option to renew the contract for another 4-year term, service shall commence for each account on the first meter read date in January 2029, and terminate with the December 2032 meter read date.

5.5. INVOICE/PAYMENT

Payment will be made only on receipt of an invoice meeting the requirements described herein. Terms of service on invoices must correlate with utility cycle dates. Invoices shall be submitted monthly, by email to an email address to be indicated. Prompt invoicing is important for MTS to be able to manage its utility budget. Invoices must be submitted within 30 days of receipt of data from the utility. Adjustments to prior service periods must be clearly itemized, and must indicate the period covered and basis of the adjustment. Invoices may be submitted in a document format.

5.5.1 Invoices must contain the following information for the billing month:

- Baseload quantity;
- Balancing quantity;
- Posted Index Price;
- Spot Index Price;
- Pass through charges such as Transportation, Fuel Charges and Local Sales Taxes should be itemized separately;
- Billing cycle dates (start date and end date).

5.6. OBLIGATION TO MANAGE COSTS

The GSP shall make all reasonable efforts to manage costs efficiently for pass-through charges.

No overhead or profit may be applied to pass-through charges; MTS will only pay the GSP's actual costs of obtaining such products or services. The GSP must maintain records documenting cost of pass-through charges, and make such records available to MTS upon request. These records must be maintained for three (3) years following termination or completion of this contract.

5.7. TRANSITION

In the event there is a need to transition from the current Contractor to a new Contractor, the process will be as shown below:

a. Current Agreement terminates on December 31, 2022.

b. On or about December 1, 2022, current Contractor shall start a transition of the services to new Contractor, without any interruption of or adverse impact on services (at a minimum 30 days prior to termination of current agreement).

c. The current and new Contractor shall select a time that has the least impact to client services.

d. Under MTS direction and guidance, new Contractor and current Contractor shall be required to provide full cooperation and transition all the services on an expedited basis. The transition period shall be complete and detailed and allow for a smooth transition with no interruption of services. The entire conversion shall be completed by on or about December 31, 2022.

5.8. DISENTANGLEMENT

5.8.1 Disentanglement Process:

1. The Disentanglement process for the Agreement awarded from this RFP shall begin on any of the following dates:

   - the date designated by MTS not earlier than sixty (60) days prior to the end of current term, that MTS has elected not to exercise option year/s; the date MTS notifies Contractor that no funds or insufficient funds have been appropriated so that the Agreement shall be terminated for convenience;

   - the date any Termination Notice is delivered, if MTS or Contractor elects to terminate any or all of the services pursuant to the Agreement.

2. Contractor shall be required to perform its Disentanglement obligations on an expedited basis, as determined by MTS, if MTS terminates the Agreement for cause.

3. Contractor shall be required to provide full cooperation. Information shall be complete and detailed to enable MTS or designee to fully assume and continue a smooth transition with no interruption of services.

5.8.2 General Obligations:

1. All services related to Disentanglement shall be deemed a part of the base services and shall be performed by Contractor at no additional cost to MTS. Contractor's obligation to provide the services shall not cease until Disentanglement is satisfactory to MTS, and delivered in writing.

2. Contractor shall provide all information regarding the services, including data conversion, files, interface specifications, training staff assuming responsibility, and related professional services (if applicable).

3. Contractor shall provide for the prompt and orderly conclusion of all work including documentation of work in process to assure an orderly transition to MTS or designee.

5.8.3 Delivery of Documentation:

Contractor shall deliver to MTS or designee all documentation and data related to the service, in format as requested by MTS, and Contractor shall destroy all copies not turned over to MTS, all at no cost to MTS.

6. ATTACHMENTS

ATT 1 Cost Pricing Form (See Attached on PlanetBids)

7. SAMPLE OF STANDARD AGREEMENT, STANDARD CONDITIONS

STANDARD AGREEMENT

FOR

MTS DOC. NO. G2627.0-22

GAS SERVICE PROVIDER

THIS AGREEMENT is entered into this _____ day of _____, 2023 in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: _____ Address: _____

_____
City State Zip

Form of Business: _____
(Corporation, Partnership, Sole Proprietor, etc.)

Email: _____

Telephone: _____

Authorized person to sign contracts _____
Name Title

The Contractor agrees to provide services as specified in the conformed Scope of Work/Technical Specification (Exhibit A), Contractor's Cost/Pricing Form (Exhibit B), and in accordance with the Standard Agreement, including Standard Conditions (Exhibit C), Federal Requirements (Exhibit D), and Forms (Exhibit E).

The contract term is for up to # base years and # option years, exercisable at MTS's sole discretion, for a total of # years. Base period shall be effective MM/DD/YYYY through MM/DD/YYYY and option years shall be effective MM/DD/YYYY through MM/DD/YYYY, if exercised by MTS.

Payment terms shall be net 30 days from invoice date. The total cost of this contract shall not exceed $____ for the base years and $____ for the option years, for a contract total not to exceed $____ without the express written consent of MTS.

SAMPLE

1255 Imperial Avenue, Suite 1000, San Diego, CA 92101-7490 • (619) 231-1466 • sdmts.com

San Diego Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc. and San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations). MTS member agencies include the cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, Santee, and the County of San Diego. MTS is also the For-Hire Vehicle administrator for nine cities.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR NAME
By: _____ Sharon Cooney, Chief Executive Officer Approved as to form: By: _____ Karen Landers, General Counsel	By _____ Title: _____

STANDARD CONDITIONS

7.1. COMPLETE AGREEMENT

This Agreement, including all applicable terms, conditions, and specifications, is the entire agreement of the parties and no attempted modification shall be binding unless in writing and signed by MTS and the Contractor.
MTS reserves the right to use alternative vendors/contractors at any time for any reason.

7.2. COUNTERPARTS

This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original thereof.

7.3. SURVIVAL

Notwithstanding MTS's acceptance of the services and payment therefore, Contractor shall remain obligated under all clauses of this Agreement which expressly, or by their nature, extend beyond and survive such acceptance and payment.

7.4. DUTY TO CLARIFY OBVIOUS AMBIGUITY

The Contractor is required to seek clarification of any obvious ambiguity contained in the contract documents. Failure to do so will result in an interpretation of the ambiguous provision favorable to MTS should a dispute later arise concerning that provision.

7.5. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To MTS:

San Diego Metropolitan Transit System (MTS)
Attention: Chief Executive Officer
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490

To Contractor:

As shown on front page.

7.6. CHANGES IN WORK

No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the MTS Project Manager and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The written notice of potential change in work be given to MTS prior to the time Contractor shall have performed the work within fifteen (15) days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential change in work.

The MTS Project Manager may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Contractor or ordered by the MTS

Project Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract.

7.7. SEVERABILITY

If any term, provision, or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

7.8. TERMINATION OF AGREEMENT

7.8.1. TERMINATION FOR CONVENIENCE

Performance under this agreement may be terminated by MTS in accordance with this clause in whole or, from time-to-time, in part, whenever MTS shall elect. Any such termination shall be affected by delivery to Contractor of a Notice of Termination specifying the extent to which performance under this agreement is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

A. immediately discontinue performance on the date and to the extent specified in the notice;

B. place no further orders for materials other than as may be necessarily required for completion of such portion of the agreement that is not terminated;

C. promptly make every reasonable effort to either obtain cancellation on terms satisfactory to MTS of all orders to Contractor's suppliers to the extent they relate to the performance of that portion terminated, or upon MTS concurrence assign to MTS those orders; and

D. assist MTS, upon request, in the maintenance, protection and disposition of property acquired by MTS under this agreement.

If claimed in writing within 30 calendar days after Notice of Termination, MTS will pay to Contractor an equitable adjustment to include (without duplication of any item):

A. all amounts due and not previously paid to Contractor for goods completed in accordance with this agreement prior to such notice;

B. a reasonable amount for any goods and materials then in production; provided that no such adjustment be made in favor of Contractor with respect to any goods which are Contractor's standard stock;

C. costs of settling and paying supplier's claim arising out of the canceled orders; and

D. a reasonable profit for costs incurred in the performance of that portion terminated; provided, however, that if it appears that Contractor would have sustained a loss on the entire agreement had it been completed, no profit shall be included.

The total sum to be paid to Contractor under this clause, shall not exceed the total order price as reduced by the amount of payments otherwise made, and as further

reduced by the order price of that portion not terminated, and will not include any consideration for loss of anticipated profits on the terminated portion all claims for which seller agrees to waive.

7.8.2. TERMINATION FOR DEFAULT

In case of Contractor breach or failure to perform, MTS reserves the right to terminate the contract for default. MTS may award the contract to the next lowest responsive, responsible Proposer, solicit new bids, or pursue any other remedy authorized by law.

In addition to any remedy authorized by law, money due to the Contractor under and by virtue of contract, as shall be considered necessary by MTS, may be retained by MTS until disposition has been made of such suits or claims for damages. The retention of money due to the Contractor shall be subject to the following:

A. MTS will give the Contractor ten (10) days' notice of its intention to retain funds from any partial payment, which may become due to the Contractor prior to acceptance by MTS of the contract. Retention of funds from any payment made after acceptance may be made without such prior notice to the Contractor.

B. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments.

C. If MTS has retained funds, and it is subsequently determined that MTS is not entitled to be indemnified and saved harmless by the Contractor in connection with the matter for which such retention was made, MTS shall be liable for interest earned on the amount retained for the period of such retention.

MTS may terminate the contract by serving a notice of termination on the Contractor. Notice shall set forth the manner in which the Contractor is in default, and provide the Contractor with ten (10) days' time to cure the default to the satisfaction of MTS. This cure period may be adjusted if the parties so agree in writing. If MTS determines after the cure period that the default is not cured, MTS will issue a "show cause" letter to the Contractor requesting from the Contractor reasons why this contract should not be terminated. If MTS does not find that the Contractor has demonstrated sufficient reason for its failure to cure, the contract shall be deemed terminated. The Contractor shall only be paid the contract price for supplies received and accepted, or services performed in accordance with the manner set forth in the contract. If MTS determines that the Contractor had an excusable reason for not performing such as a strike, fire, flood, or other events, which are not the fault of, or beyond the control of the Contractor, MTS may allow the Contractor to continue work or terminate the contract for convenience.

7.9. ASSIGNABILITY

A. By MTS. This contract is assignable, in whole or in part, to any other government agency, including the North County Transit District and/or the San Diego Association of Governments and/or the Metropolitan Transit System. The party wishing to exercise the assignment (also known as a "piggyback") shall perform an independent cost estimate to determine fair and reasonable pricing, and shall enter into its own contract with the vendor based upon the terms and conditions of this Request for Proposal. Any assignment or piggyback shall comply with Federal Transit Administration (FTA) requirements if

applicable. MTS shall have no responsibility or liability for any such assignment or piggyback.

B. By Contractor. Any attempt by Contractor to assign, subcontract, or transfer all or part of this Agreement shall be void and unenforceable without MTS' prior written consent; which consent shall not be unreasonably withheld. Any such consent shall not relieve Contractor from full and direct responsibility for all services performed prior to the date of assigning, subcontracting, or transferring this Agreement. In the event of an authorized assignment by MTS or applicable law, all terms, conditions, and provisions of this contract shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties.

Any assignment of this Agreement or of any rights hereunder of hypothecation thereof in any manner, in whole or in part, without the prior written consent of MTS shall be null and void. Notwithstanding the foregoing, Contractor may assign monies due or to become due under this Agreement, and such assignments will be recognized by MTS, provided that written notice thereof is given to MTS at least ten (10) calendar days before payment is due. Any assignment of monies shall be subject to proper setoffs in favor of MTS to all deductions provided for in this Agreement. All money withheld, whether assigned or not, shall be subject to being used by MTS for the completion of the Agreement, in the event Contractor should be in default therein.

In the event of an authorized assignment by MTS or applicable law, all terms, conditions, and provisions hereof shall inure to and bind hereto their and each of their respective heirs, executors, administrators, successors, and assigns.

7.10. STANDARD OF PERFORMANCE

Contractor's services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this contract and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Contract.

7.11. TIME

The Contractor acknowledges that timely performance is an important element of this Agreement. Accordingly, the Contractor shall put forth its best professional effort to complete its services in accordance with the agreed-upon schedule.

7.12. EXCUSABLE DELAYS / FORCE MAJEURE

Timely performance and deliveries are essential to this Agreement. However, Contractor will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition, which is beyond Contractor's reasonable control, without Contractor's fault or negligence. Acts of God, such as storms or floods, as well as government priorities, acts of civil or military authorities, fires, strikes, epidemics, war or riot, are examples of events which will be excusable for being beyond Contractor's reasonable control only upon fulfillment of the

following conditions: (a) within seven (7) calendar days of the commencement of any excusable delay, Contractor shall provide MTS with written notice of the cause and extent thereof, as well as request for a schedule extension for the estimated duration thereof; and (b) within seven (7) calendar days of the cessation of the event causing delay, Contractor shall provide MTS with written notice of the actual delay incurred, upon receipt of which the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay.

7.13. SUSPENSION OF WORK

MTS may at any time and for any reason within its sole discretion issue a written order to the Contractor suspending, delaying or interrupting all or any part of the Work for a specified period of time. The Contractor shall comply immediately with any such written order and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of work stoppage. Contractor shall continue the Work that is not included in the suspension and shall continue such ancillary activities as are not suspended. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction from MTS. The Contractor shall be allowed an equitable adjustment in the Contract price and/or an extension of the Contract time, to the extent that cost or delays are shown by the Contractor to be directly attributable to any suspension. However, no adjustment shall be made under this section for any suspension, delay or interruption due to the fault or negligence of the Contractor, or for which an equitable adjustment is provided for, or excluded under any other term or condition of the Contract. As soon as reasonably possible but no later than forty-five (45) calendar days, or any other period of time agreed to by the parties, after receipt of the written suspension of work notice, the Contractor shall submit to the Contracting Officer a detailed price and schedule Proposal for the suspension, delay or interruption.

7.14. INSPECTION AND TESTING

Except as otherwise expressly provided herein, Contractor shall be responsible for all inspection and testing, and agrees to strictly follow the standards of quality specified by MTS in addition to those customary in the industry. MTS shall be afforded free access to plants of Contractor and its suppliers in order to make surveillance inspections to monitor compliance with contractual quality requirements, and MTS's right to inspect, examine, and test the goods shall extend through the manufacturing process, the time and shipment, and a reasonable time after arrival at the ultimate destination. Contractor's failure to adhere to the standards of quality required under this Agreement shall be deemed to be reasonable grounds for insecurity justifying a written demand from MTS that Contractor provide adequate assurance of Contractor's ability to meet said standards.

Goods shall not be deemed accepted until finally inspected and examined at final destination.

The making or failure to make any surveillance inspection or examination of, payment for, or acceptance of the goods shall in no way impair MTS's right to reject nonconforming goods, or to avail itself of any other remedies to which MTS may be entitled, notwithstanding MTS's knowledge of the nonconformity, its substantiality, or the ease of its discovery.

7.15. INDEPENDENT CONTRACTOR

Contractor hereby declares that it is engaged in an independent business and agrees that in the performance of this Agreement it shall act as an independent contractor and not as an employee of MTS. Contractor has and hereby retains full control of all the employment, compensation, and

discharge of all employees of Contractor assisting in its performance hereunder. Contractor shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. MTS shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. Except as otherwise specifically provided, as an independent contractor, Contractor is solely responsible for determining the means and methods of performing the services described in the scope of work. Contractor shall perform the work contemplated with resources available within its own organization.

7.16. THIRD PARTY BENEFICIARIES

No provisions of the Contract shall in any way inure to the benefit of any third party, including the public at large, so as to constitute such person a third-party beneficiary of the Contract or of any one or more of the terms and conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract, except as expressly provided elsewhere in the Contract

7.17. SUBCONTRACTORS

Contractor agrees to bind every subcontractor to the terms of the Agreement as far as such terms are applicable to subcontractor's portion of the Work. Contractor shall be as fully responsible to MTS for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and MTS. MTS reserves the right to approve all subcontractors. MTS's approval of any subcontractor under this Agreement shall not in any way relieve Contractor of its obligations under this Agreement.

7.18. INDEMNITY

As between MTS and Contractor, Contractor is deemed to assume responsibility and liability for, and Contractor shall defend, indemnify and hold harmless, MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which MTS, SDTI, SDTC, SD&AE, SD&IV or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or subcontractors in its or their performance under this Agreement. In addition to any other remedy authorized by law, so much of the money due Contractor under this Agreement as shall be considered necessary by MTS may be retained until disposition has been made of any claim for damages.

7.19. DISPUTES, CLAIMS, AND RESOLUTION

MTS and the Contractor agree that every effort shall be made to resolve any dispute arising under this Agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind the Contractor or MTS. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute

resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the parties agree in writing to submit the dispute to binding arbitration.

Should the Contractor suffer any injury or damage to person or property because of any alleged act or omission of MTS, or if any of Contractor's employees, agents, or others for whose acts the Contractor is legally liable suffers any injury or damages to person or property because of any alleged act or omission of MTS, a written claim for damages shall be filed with the MTS Office of General Counsel in accordance with the provisions of California Government Code section 900 et seq.

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by MTS or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed to in writing.

7.20. NONWAIVER

Failure of MTS to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein, or by law, or to properly notify Contractor in the event of breach, or the acceptance of payment for any goods hereunder, or review of design, shall not release Contractor from any of the warranties or obligations of this agreement, and shall not be deemed a waiver of any right of MTS to insist regardless when shipped, received, or accepted or as to any prior or subsequent default hereunder, nor shall any revision of this agreement by MTS operate as a waiver of any of the terms hereof. A requirement that a Contractor's document be submitted for or subject to "authorization to proceed," "approval," "acceptance," "review," "comment," or combinations of such words or words of like import shall mean, unless the context clearly indicates otherwise, that Contractor shall, before implementing the information in the document, submit the document, obtain resolution of any comments, and obtain written authorization from MTS to proceed, and shall mean that a complete check will be performed. Authorization to proceed shall not constitute acceptance or approval of design details, calculations, analyses, test methods, or materials developed or selected by Contractor and shall not relieve Contractor from full compliance with contractual obligations.

7.21. GOVERNING LAW AND CHOICE OF FORUM

The definition of terms used, interpretation of this Agreement, and rights of all parties hereunder shall be determined in accordance with the laws of the State of California.

Any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the federal or state courts located in San Diego County, California, and the Contractor and MTS

hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

7.22. LITIGATION EXPENSES

Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

7.23. INSURANCE

Contractor will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself.

All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best.

MTS utilizes the services of a third party insurance monitoring company. As a condition of contract award, Contractor shall submit any required insurance policies to the third party monitoring company of MTS' choosing.

7.23.1. COVERAGE REQUIRED - ALL CONTRACTS

A. Liability

1) Commercial General Liability: At all times during this contract and, with respect to Products and Completed Operations Liability, for twelve (12) months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work.

   All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees as additional insureds as their interests may appear.

2) Automobile Liability: At all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles.

3) Workers' Compensation/Employer Liability: At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

7.23.2. ADDITIONAL COVERAGES REQUIRED (AS INDICATED)

☒ (1) Primary and Non-Contributory Insurance

REQUIRED

Contractor agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required).

☐ (2) Owner-Provided Builder's Risk

PROVIDED

MTS will provide Builder's Risk Insurance on a special form basis, excluding the perils of earthquake and flood, at a limit of not less than the full replacement value of the work and covering the work and all materials and equipment to be incorporated therein, including property in transit elsewhere, and insuring the interests of the Contractor, subcontractors, materialmen, and MTS, SDTI, SD&AE, SD&IV, SDTC, MTS's contractor for design, and MTS's contractor for construction management. However, Contractor is responsible for the portion of any loss that is within the deductible amount of this Builder's Risk Insurance, which is currently at $50,000 but is subject to change.

☐ (3) Railroad Protective or Equivalent

REQUIRED

Any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing must be deleted. Option: purchase separate Railroad Protective Liability Policy as required.

☐ (4) Professional Liability

REQUIRED

At all times during this contract, and for twelve (12) months following acceptance of work by owner, Contractor agrees to maintain Professional Liability Insurance with respect to services or operations under this Agreement.

☐ (5) Pollution Legal Liability

REQUIRED

At all times during this contract, and for twenty four (24) months following, Contractor agrees to maintain Pollution Legal Liability Insurance with respect to services or operations under this Agreement. The extended discovery period must be no less than twenty four (24) months.

☐ (6) Contractor Equipment

REQUIRED

At all times during this contract, Contractor agrees to maintain Contractor's Equipment Insurance on a special form basis covering equipment owned, leased, or used by

Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless MTS for any loss or damage to its equipment.

☐ (7) Installation Floater

REQUIRED

At all times during this contract, Contractor agrees to maintain Installation Floater Insurance on a special form basis covering property owned or provided by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless these entities for any loss or damage to its property.

☐ (8) Garage Keeper's Legal Liability & Automobile Portion

REQUIRED

At all times during this contract, Contractor agrees to maintain Garage Keeper's Legal Liability as well Automobile Portion which covers the risk of loss or damage to MTS vehicles while in the care, custody or control of Contractor. Automobile portion shall cover the Contractor in the event of a vehicle accident while they are driving a MTS vehicle, which results in a third party claim of physical damage or bodily injury.

☐ (9) Crime Fidelity Insurance

REQUIRED

At all times during this contract, Contractor agrees to maintain Crime Fidelity Insurance with respect to services or operations under this agreement. The coverage should include the following:

- Employee dishonesty/theft
- Theft, disappearance and destruction on the premises
- Theft, disappearance and destruction while in transit
- Forgery/alteration

☐ (10) Umbrella or Excess Liability (if required to meet liability limits above)

REQUIRED

Contractor agrees that any Umbrella or Excess Liability Policy utilized to provide the required limits of liability shall contain coverage at least as broad as that provided by the General Liability Policy, and be written for a term concurrent with the General Liability Policy.

7.23.3. MINIMUM POLICY LIMITS REQUIRED

	Combined Single Limit (CSL)
Commercial General Liability (Per Occurrence):	$2,000,000
(General Aggregate)	$4,000,000
(Completed Operations & Products Aggregate)	$2,000,000
Automobile Liability: (Combined Single Limit)	$2,000,000
Worker's Compensation:	Statutory Limits
Employer's Liability per Accident /or Disease:	$1,000,000

Additional Coverages (as indicated under Additional Coverages Required Section):

☐ B (1) Primary and Non-Contributory Insurance	
☐ B (2) Owner Provided Builder's Risk	Replacement Cost
☐ B (3) Railroad Protective or Equivalent	$
☐ B (4) Professional Liability	$
☐ B (5) Pollution and Legal Liability	$
☐ B (6) Contractor Equipment	Replacement Cost
☐ B (7) Installation Floater	Replacement Cost
☐ B (8) Garage Keeper's Legal Liability & Automobile Portion (Combined Single Limit (CSL)	(Per Occurrence)
☐ B (9) Crime Fidelity Insurance	$
☐ B (10) Umbrella or Excess Liability (if required to meet liability limits above)	$

7.23.4. NOTICE OF POLICY CHANGES

Contractor shall not amend or cancel the insurance policy and coverage required by this Agreement without providing MTS with at least thirty (30) days prior written notice. Contractor shall notify MTS within ten (10) days of insurer-initiated material amendments or cancellations to the insurance coverage required by this Agreement. Under no circumstances shall these notice provisions be deemed a waiver of the insurance requirements set for herein. Any material changes in or cancellation of the insurance policy on file with MTS pursuant to the insurance requirements will result in an immediate stop work order until proof of substitute coverage meeting the requirements of this Agreement is provided to MTS. In the alternative, in MTS' sole discretion, MTS retains the right to declare Contractor in default and immediately terminate this Agreement if the insurance

coverage required is cancelled, otherwise lapses or fails to meet the coverage limits at any time, and for any duration, during the term of this Agreement.

7.23.5. EVIDENCE REQUIRED

Within ten (10) working days following receipt of notice that a contract has been awarded, Contractor shall have provided the MTS Contracts Specialist with satisfactory certification by a qualified representative of the Insurer(s) that Contractor's insurance complies with all provisions in this insurance section.

7.23.6. SPECIAL PROVISIONS

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by MTS, SDTI, SD&AE, SD&IV, and SDTC, or their insurance Contractor(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

MTS reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

7.24. PRICE AND PAYMENT

The total price herein specified, unless otherwise expressly stated, shall include all taxes of any kind which either party is required to pay with respect to the sale of the goods covered by this Agreement, including sales and use taxes, and shall include all charges and expenses for customs duties, freight charges, inspection, testing, packaging and loading unless specifically excluded.

Payment will be made as set forth in this Agreement; however, payments may be withheld or portions thereof may be deducted or setoffs may be made against Contractor if Contractor is not performing work in accordance with the applicable provisions of this Agreement. The time for payment of invoices or for accepting any discounts offered shall run only from the date of receipt of correct invoices with required certification documents by MTS.

ADVANCE PAYMENT IS NOT ALLOWABLE.

7.25. CONSIDERATION PAID

MTS shall reimburse the Contractor for actual costs (including labor costs, employee benefits, overhead, and other direct costs) incurred by the Contractor in performance of the work, in an amount not to exceed $____. Actual costs shall not exceed the estimated wage rates and other costs set forth in the Contractor's proposal.

In addition, MTS shall pay the Contractor a fixed fee of $____. Said fixed fee shall not be altered unless there is a significant alteration in scope, complexity, or character of the work to be performed.

Fees and all other charges will be billed monthly as the work progresses, and the net amount shall be due at the time of billing.

Total expenditures made under this contract, including the fixed fee, shall not exceed the sum of $____.

Payment will be made as set forth in this Agreement; however, payments may be withheld or portions thereof may be deducted or setoffs may be made against Contractor if Contractor is not performing work in accordance with the applicable provisions of this Agreement. The time for payment of invoices or for accepting any discounts offered shall run only from the date of receipt of correct invoices with required certification documents by MTS.

MTS does not reimburse travel expenses unless expressly permitted within the scope. If travel expense reimbursement is permitted within the scope, reimbursement for transportation and subsistence costs shall be in accordance with MTS Board Policy No. 44-C.

7.26. COST PRINCIPLES

The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, shall be used to determine the allowability of individual items of cost.

The Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments.

Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments, are subject to repayment by the Contractor to MTS.

7.27. PROMPT PROGRESS PAYMENT AND RETENTION

Contractor or Subcontractor shall pay any Subcontractor no later than seven (7) business days from the receipt of each progress payment from MTS. No retainage will be held by MTS from progress payments due to the Contractor. Any retainage kept by the Contractor or by a Subcontractor must be paid in full to the Subcontractor in seven (7) business days after the Subcontractor's work is satisfactorily completed. Any delay or postponement of a progress payment or retainage to the Subcontractor over 30 calendar days may take place only for good cause and with MTS's prior written approval. Failure to comply with this provision will constitute noncompliance, which may result in the application of legal and contract remedies, including, but not limited to, prime contractor not being reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late or nonpayment by the Contractor, deficient Subcontractor performance or noncompliance by a Subcontractor.

Prime Contractor must submit the MTS Prompt Payment Certification Form to the MTS Contracts Administrator if any Subcontractors. The form is available for download at https://www.sdmts.com/business-center/procurement. The form certifies that all Subcontractors were paid within seven (7) business days of receiving payment from MTS for work performed during the previous month. The prime contractor must submit the completed certification, as required on the form, and the month following final acceptance of the project. In addition, seven (7) business day prompt payment requirement prevails over contract language between a Prime Contractor and a Subcontractor.

7.28. RECORDS RETENTION

The Contractor and any Subcontractor shall retain complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type and supporting materials related to those records. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, Comptroller General of the U.S., FTA, DOT Office of Inspector General, the State, MTS or any of their authorized representatives to inspect and audit records pertaining to the performance of this Contract as reasonably may be required. The Contractor shall also permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

7.29. INTELLECTUAL PROPERTY WARRANTY

MTS shall advise the Contractor of any impending patent suit related to this Contract against MTS and provide all information available. The Contractor shall defend any suit or proceeding brought against MTS based on a claim that any services or goods furnished under this Contract constitutes an infringement of any patent, and the Contractor shall pay all damages and costs awarded therein, excluding incidental and consequential damages against MTS. In case said services or good, or any part thereof, is in such suit held to constitute infringement and use of said services or goods is enjoined, the Contractor shall, at its own expense and at its option, either procure for MTS the right to continue using said services or goods, or replace same with non-infringing services or goods, or modify it so it becomes non-infringing.

7.30. DATA RIGHTS

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Agreement. It includes the proprietary rights of the following:

- Shop drawings and working drawings
- Technical data including manuals or instruction materials, computer or microprocessor software
- Patented materials, equipment, devices or processes
- License requirements

MTS shall protect proprietary information provided by the Contractor to the fullest extent of the law. The Contractor shall grant a non-exclusive license to allow MTS to utilize such information. In the event that the Contractor no longer provides the information, MTS has the right to reverse engineer patented parts and software.

MTS reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the following subject data for its purposes: (1) any

subject data required to be developed and first produced in the performance of the Contract and specifically paid for as such under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright to which the Contractor, Subcontractor or Supplier purchases ownership for the purpose of performance of the Contract and specifically paid for as such under the Contract. The Contractor agrees to include the requirements of this clause, modified as necessary to identify the affected parties, in each subcontract and supply order placed under the Contract.

7.31. EXCLUSIVE USE

The services hereunder are provided for the exclusive use of MTS and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Contractor, are not to be used or relied upon by other parties except as authorized by MTS.

7.32. OWNERSHIP OF DOCUMENTS

Tracings, plans, specifications, and maps prepared or obtained under the terms of this Agreement shall be delivered to and become the property of MTS. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under this Agreement shall be made available, upon request, to MTS without restriction or limitation on its use.

7.33. LANGUAGE AND MEASURE UNITS

Unless specified otherwise, manuals, specifications, drawings, plans, purchase orders, subcontract documents, and invoices submitted in accordance with this Agreement shall be in metric ("Systems International d' Units," or "SI units") with the United States equivalents clearly shown.

7.34. DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND OTHER SMALL BUSINESS PARTICIPATION

This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR Part 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation (DOT) Financial Assistance Programs." MTS' DBE program has an aspirational goal of 6.3% participation by certified DBE's over Federal Fiscal years 2021 to 2024 (October 1, 2021 – September 30, 2024) time period. There is no specific DBE contract goal for this project.

In order to help MTS, achieve its federally mandated overall DBE goal, MTS encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed, in whole or in part, with federal funds. It is the policy of MTS to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in MTS DOT-assisted contracts. It is also our policy to:

1. Ensure nondiscrimination in the award and administration of all MTS contracts and subcontracts; Create a level playing field by which DBEs can compete for and perform in MTS DOT-assisted contracts;

2. Ensure that the MTS DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in Western States Paving vs. Washington State Department of Transportation;

3. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;

4. Help remove procurement and contracting barriers, which impede DBE participation in MTS DOT-assisted contracts;
5. Monitor and enforce contractors' compliance in meeting established goal objectives and program requirements;
6. Assist in the development of DBEs and Small Businesses to increase their ability to compete successfully in the market place outside the DBE Program;
7. Ensure MTS contractors and subcontractors take all necessary; and reasonable steps to comply with these policy objectives.

To ascertain whether its overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid contracts. Therefore, all Proposers and successful Contractors are required to:

- Complete MTS's Designation of Subcontractors and DBE Program - Information for MTS's Bidder List.

MTS encourages the proposer to outreach to DBEs and other small business enterprises for any potential subcontracting opportunities on this project. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs. If interested in learning about bonding or financial assistance that may be available for small businesses, visit www.sba.gov.

Contractor shall be fully informed in respect to the requirements of the DBE regulations. The DBE regulations in their entirety are incorporated herein by this reference (see 49 CFR 26). Contractor's attention is directed to the following matters:

1. A DBE may participate as a prime contractor, subcontractor, joint-venture partner with a prime or subcontractor, vendor of materials or supplies, manufacturer, regular dealer or trucking company. DBE participation will be counted toward MTS's overall DBE goal per the DOT Regulations stated in 49 CFR 26.55.
2. A DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.
3. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: To view the CUCP statewide DBE Directory, please use the following link: http://dot.ca.gov/hq/bep/find_certified.htm.
4. If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification.
5. The contractor must promptly notify MTS whenever a DBE subcontractor performing work related to this contract is terminated, substituted or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MTS.

7.35. AMERICANS WITH DISABILITIES ACT

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; as well as all applicable regulations and guidelines issued pursuant to the ADA

7.36. SUBSTANCE ABUSE

Pursuant to the rules and regulations of the Department of Transportation to the extent applicable to this Contract, Contractor will be required to comply with all applicable drug and alcohol testing requirements, including the amendments to 49 C.F.R. parts 655.

As a condition of this Contract, the following are the Contractor's Drug and Alcohol Testing Obligations:

7.36.1. CONTRACTORS CERTIFICATION:

Contractor certifies that it will comply with all applicable drug and alcohol testing requirements provided by law, including, but not limited to, the drug and alcohol testing requirements set forth in the Department of Transportation's regulations.

7.36.2. INDEMNIFICATION OF MTS:

Contractor agrees to indemnify, defend and hold harmless MTS, SDTI and SDTC, and their directors, employees and agents from and against any loss, damage, expense and liability that MTS, SDTI or SDTC, may incur as a result of Contractor's failure to comply with any applicable drug and alcohol testing obligations.

7.36.3. SURVIVAL OF MTS' INDEMNIFICATION RIGHTS:

The rights and obligations contained in "B" (Indemnification of MTS) will survive any termination or expiration of this Agreement.

7.36.4. FAILURE TO COMPLY WITH DRUG AND ALCOHOL TESTING OBLIGATIONS MAY RESULT IN TERMINATION OF CONTRACT:

If, at any time during the period of this Agreement, Contractor fails to comply with any applicable drug and alcohol testing requirements, MTS will consider such failure a material breach of this Agreement, and MTS may terminate this Agreement immediately.

7.37. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

7.37.1. MTS'S EQUAL EMPLOYMENT OPPORTUNITY PROGRAM:

MTS is an Equal Opportunity Employer. As such, MTS agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, MTS agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. MTS' Equal Employment Opportunity Program for Contractors, MTS Policy No. 25, is part of this Agreement (a copy can be obtained from MTS' Clerk of the Board).

7.37.2. CONTRACTOR'S EQUAL EMPLOYMENT OPPORTUNITY PLAN:

Each Contractor who provides MTS labor, equipment, materials and services of $50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an

Equal Employment Opportunity Plan to the Director of Human Resources and Labor Relations for MTS each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract. The objective of this plan is to assure that the Contractor will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, sexual orientation, gender identity, religion, disability, age or status as a parent. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

7.37.3. COMPLIANCE WITH REGULATIONS:

Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; Comply with federal transit law, specifically 49 U.S.C. § 5332; FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients,"; and Follow any other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination.

7.38. COVENANT AGAINST CONTINGENT FEES

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that she or he has not agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, MTS shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the Agreement a price or consideration, or otherwise recover the full amount of such fee, percentage, brokerage fee, gift, or contingent fee.

7.39. CALIFORNIA POLITICAL REFORM ACT

Contractor acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that Contractors hired by a public agency, such as MTS, may be deemed to be a "public official" subject to the Act if the Contractor advises MTS on decisions or actions to be taken by MTS. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act and the conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.

8. FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

As a Federal Transit Administration (FTA) grantee, the San Diego Metropolitan Transit System (MTS), a California Public Agency, is required to inform the Contractor and any Subcontractor of the following information:

8.1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

(*APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)*

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTS requests which would cause MTS to be in violation of the FTA terms and conditions.

8.2. FEDERAL CHANGES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between MTS and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor shall also ensure compliance by subcontractors at any tier of any applicable change to federal requirements.

8.3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

8.4. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification,

the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

False Claims Act (*APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)*

The Contractor and any Subcontractor acknowledges that the False Claims Act, 31 U.S.C. 3729 et seq., pertains to the underlying contract or the FTA assisted project for which this contract work is performed. If the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA, or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance, the Contractor must notify MTS, U.S. DOT Inspector General, and the FTA Chief Counsel or FTA Region 9 Counsel. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

Notice to FTA on Legal Matters *(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING $25,000)*

The Contractor and any Subcontractor shall notify MTS and the FTA Chief Counsel or FTA Region 9 Counsel if a current or prospective legal matter that may affect the Federal Government emerges. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in an award of federal funding, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

8.5. ACCESS TO RECORDS, REPORTS AND SITES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor and any Subcontractor shall retain complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type and supporting materials related to those records. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor

shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, Comptroller General of the U.S., FTA, DOT Office of Inspector General, the State, MTS or any of their authorized representatives to inspect and audit records pertaining to the performance of this Contract as reasonably may be required. The Contractor shall also permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

8.6. DEBARMENT AND SUSPENSION

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING $25,000)

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: a) Debarred from participation in any federally assisted Award; b) Suspended from participation in any federally assisted Award; c) Proposed for debarment from participation in any federally assisted Award; d) Declared ineligible to participate in any federally assisted Award; e) Voluntarily excluded from participation in any federally assisted Award; or f) Disqualified from participation in ay federally assisted Award. The Contractor agrees to include a provision requiring compliance to this section in its lower tier covered transactions.

8.7. RESTRICTIONS ON LOBBYING

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING $100,000)

The Contractor and their subcontracts at every tier certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The Contractor and their subcontracts at every tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

8.8. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING $100,000)

The Contractor and any Subcontractor agrees: 1) It will not use any violating facilities; 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;" 3) It will report violations of use of prohibited facilities to FTA; and 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

8.9. ENERGY CONSERVATION

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor and any Subcontractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq and 49 C.F.R. part 622, subpart C.

8.10. ENVIRONMENTAL PROTECTIONS

(APPLICABLE TO ALL CONTRACTS)

8.10.1. GENERAL

Contractor agrees to comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

8.10.2. NATIONAL ENVIRONMENTAL POLICY ACT

An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Contractor agrees that it will: (1) Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139, (b) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508, (c) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622, (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note, and (e) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto. (2) Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation: (a) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013, (b) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006, and (c) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.

8.10.3. ENVIRONMENTAL JUSTICE

Contractor agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

8.10.4. OTHER ENVIRONMENTAL FEDERAL LAWS

Contractor agrees that it will comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."

8.10.5. USE OF CERTAIN PUBLIC LANDS

Contractor agrees it will comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.

8.10.6. HISTORIC PRESERVATION.

The Contractor agrees that it will: (1) Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places. (2) Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108. (3) Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq. (4) Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. part 800. (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.

8.10.7. INDIAN SACRED SITES

The Contractor agrees that it will facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note.

8.11. ADA ACCESS

(APPLICABLE TO ALL CONTRACTS)

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d)., which prohibit discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that

buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act.

8.12. CIVIL RIGHTS

(APPLICABLE TO ALL CONTRACTS)

8.12.1. SUBCONTRACT

The Contractor shall include these requirements in each subcontract entered into as part thereof.

8.12.2. NONDISCRIMINATION

In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, gender identity, sexual orientation, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

8.12.3. RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

8.12.4. AGE

In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

8.12.5. DISABILITIES

In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 et seq.,

and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

8.13. VETERANS EMPLOYMENT

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

8.14. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

Apart from inconsistent requirements imposed by federal statute or regulations, MTS shall comply with the requirements of 49 U.S.C. § 5323 (h)(2) by refraining from using any federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

8.15. CONTRACTOR ASSURANCE

(APPLICABLE TO ALL CONTRACTS)

The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MTS deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph.

8.16. SAFE OPERATION OF MOTOR VEHICLES

(APPLICABLE TO ALL CONTRACTS)

8.16.1. SEAT BELT USE

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or MTS.

8.16.2. DISTRACTED DRIVING

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official

business in connection with the work performed under this Contract. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

8.17. GEOGRAPHIC RESTRICTIONS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

MTS shall refrain from using state or local geographic preferences, except those expressly mandated or encouraged by federal statute, and as permitted by federal procurement rules.

8.18. DOMESTIC PREFERENCES FOR PROCUREMENTS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

8.19. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

(APPLICABLE TO ALL CONTRACTS)

In accordance with 2 CFR part 200.216, Contractor and its subcontractors are prohibited from expending funds under this Contract to: procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). This includes: for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); telecommunications or video surveillance services provided by such entities or using such equipment; and telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

9. FORMS

The following forms/information are required to be submitted with your proposal as a matter of responsiveness. All proposals (and accompanying information) must be received by MTS' Procurement Department prior to the scheduled time and date as specified in the Calendar of Events. Submit the proposal following instructions as specified in Submission Requirements Section.

- ☐ Contact Information Form
- ☐ Cost/Pricing Forms
- ☐ Designation of Subcontractors
- ☐ DBE Program - Information for MTS's Bidder List
- ☐ Certification Regarding Debarment, Suspension and Other Ineligible and Voluntary Exclusions Lower-Tier Covered Transactions Contractor and Subcontractor's Statement of Eligibility Form and Questionnaire
- ☐ Equal Opportunity Program Workforce Report
- ☐ Equal Opportunity Program Workforce Report Continued
- ☐ Status of Current and Past Contracts Form
- ☐ Financial Questionnaire Form
- ☐ California Public Records Act Acknowledgement Form
- ☐ Noncollusion Declaration Form
- ☐ Iran Contracting Act Certification Form
- ☐ Safety Department Standard Operating Procedures and Form
- ☐ Certification of Restrictions on Lobbying Form

CONTACT INFORMATION

Read attached General Provisions carefully. They are a part of your proposal. Unit prices will prevail regardless of extensions submitted by the Proposer.

Company Information:

The Official, Legal Name of Proposing Firm: _____

Doing Business As: _____

Legal Structure (Corp./Partner/Proprietor): _____

Company Mailing Address: _____

Street

_____

City State Zip

Person Authorized to sign:

Point of Contact: _____

Title: _____

E-Mail Address: _____

Phone Number: _____

Accounts Receivable

Point of Contact: _____

Title: _____

E-Mail Address: _____

Phone Number: _____

COST/PRICING FORM

Refer to Attachment: ATT 1 Cost Pricing Form

Proposer shall submit pricing for all the work described in the Scope of Work section. In preparing a cost proposal, Proposers are requested to provide a total all-inclusive cost for each year of service. Estimated quantities are for proposal purposes only. The quantities do not reflect guaranteed usage by MTS and may be more or less than indicated.

Read attached General Provisions carefully. They are a part of your proposal. Unit prices will prevail regardless of extensions submitted by the Proposer.

All proposers must complete proposal forms as provided, failure to do so will deem the proposal non-responsive.

Proposer accepts responsibility for accuracy and presentation of the numbers included in the cost/price form.

Submit the proposal following instructions as specified in Submission Requirements section.

DESIGNATION OF SUBCONTRACTORS

List Subcontractor participants below. If 100% of item is not to be performed or furnished by subcontractor, describe exact portion of item to be performed or furnished by subcontractor. The successful bidder must execute and return this form even if no subcontractor participation will be reported.

	Subcontractor 1
Company Name:	
Contractor License or Certificate Number	
DBE, DVBE LGBT, MBE, SB, WBE:	
% of Work:	
Department of Industrial Relations (DIR) Number:	
Point of Contact	
Email:	
Phone Number:	
Address:	
	Street
	City State Zip

Description of Work:

COPY THIS FORM IF NEEDED FOR ADDITIONAL SUBCONTRACTORS.

Subcontractor

Company Name: _____

Contractor License or Certificate Number _____

DBE, DVBE LGBT, MBE, SB, WBE: _____

% of Work: _____

Department of Industrial Relations (DIR) Number: _____

Point of Contact _____

Email: _____

Phone Number: _____

Address: _____
Street

_____
City State Zip

Description of Work:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

DBE PROGRAM – INFORMATION FOR MTS'S PROPOSAL LIST

Per U.S. Department of Transportation's (DOT's) DBE Regulation 49 CFR 26.11, MTS must obtain the following information about contractors and subcontractors whom bid on MTS's federally assisted contracts: company name; company address; company's status as a DBE or non-DBE; age of firm; and the annual gross receipts of the company. This information will be maintained in MTS's proposer list. The purpose for maintaining a proposer list is to derive data on the relative availability of DBEs in the local market. MTS may use this data in the future to help set MTS's overall DBE participation goals on federally assisted contracts.

INSTRUCTIONS: Each prime contractor and each subcontractor bidding on a MTS federally assisted contract is **required** to complete this form as part of their bid/proposal.

1. What is your company's name? _____
2. What is your company's address? _____
3. What type of work does your company perform? (list NAICS Codes if known) _____

Is your company a certified DBE WBE, DVBE, SB or LGBT? If yes, please check the applicable box and state the corresponding certification number.

- ☐ DBE
- ☐ DVBE
- ☐ MBE
- ☐ SB
- ☐ WBE
- ☐ LGBT

5. How many years has your company been in business? _____
6. What are the annual gross receipts of your company (please check the applicable bracket)?

- ☐ Less than $1,000,000
- ☐ $1,000,001 – $15,000,000
- ☐ $15,000,001 - $26,290,000*
- ☐ $26,290,001– $50,000,000
- ☐ $50,000,001 - $100,000,000
- ☐ Greater than $100,000,000

*The DOT annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous 3 fiscal years has had average annual gross receipts below $26,290,000, your company may be eligible for DBE Certification. *

7. Do you want MTS to provide your company additional guidance on how to become DBE certified?

- ☐ Yes
- ☐ No

ACKNOWLEDGED AND AGREED

SUBCONTRACTOR (Copy this form if needed for additional subcontractors)		**PRIME CONTRACTOR**	
Print Name:	_____	Print Name:	_____
Title:	_____	Title:	_____
Signature:	_____	Signature:	_____
Date:	_____	Date:	_____

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBLE AND VOLUNTARY EXCLUSIONS LOWER THAN TIER COVERED TRANSACTIONS

CONTRACTOR AND SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

(Provide one completed Form for the Prime Contractor and any Subcontractors)

MTS may not permit a contractor or subcontractor to bid on, be awarded, or perform work on a public works project if the contractor or subcontractor is ineligible to bid on, be awarded or perform work on a public works project pursuant to California Labor Code sections 1777.1 or 1777.7.

In addition, MTS may not award any federally funded contract over $25,000 to a contractor or subcontractor that is excluded or disqualified pursuant to 2 CFR Part 180 Subpart C.

The prime/subcontractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification.

QUESTIONNAIRE

Has the Contractor, or any officer, principal, affiliates or employee of the Contractor ever been debarred, suspended, proposed for debarment, declared ineligible or otherwise prevented from bidding on, or completing a federal, state, or local government project?

☐ Yes

☐ No

If the answer is yes, or where the prime/subcontractor is unable to certify any of the statements in the above certifications, such prime/subcontractor shall attach an explanation (i.e. date, background, resolution) with this form.

Note: Failure to provide this form at the time of Bid/Proposal will not result in a finding of a non-responsive bid/proposal. Submittal of this form for The Prime Contractor and all Subcontractors is required for a Proposer to be deemed "Responsible." MTS encourages Proposers to complete and submit all forms at the time of bid/proposal.

SUBCONTRACTOR (Copy this form if needed for additional subcontractors)		PRIME CONTRACTOR	
Business Name:		Business Name:	
License No. (if applicable):		License No. (if applicable):	
DUNS No.:		DUNS No.:	

ACKNOWLEDGED AND AGREED

Print Name:		Print Name:	
Title:		Title:	
Signature:		Signature:	
Date:		Date:	

EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT

Metropolitan Transit System (MTS) enforces an Equal Opportunity (EEO) program established under MTS policies and procedures No. 25. This program prohibits discrimination in employment and requires MTS Contractors to be equal opportunity employers. You may submit a copy of the Employer Information Report, EEO-1, in lieu of the **Equal Opportunity Program Workforce Report Continued Form**. The undersigned hereby certifies that the foregoing data contained herein is true and correct:

COMPLETE ALL SECTIONS OF THIS FORM:

1. The Official, Legal Name of Proposing Firm: _____

2. Doing Business As: _____

3. Legal Structure (Corp./Partner/Proprietor):

4. Address of Establishment in San Diego County: _____
   Street
   _____
   City State Zip

5. If there is no office in San Diego County, or if there are less than 15 employees in that office, include an address for your regional office that will oversee the work under MTS' contract: _____
   Street
   _____
   City State Zip

Employment Data - Include the employees located in San Diego County only, unless your firm employs fewer than fifteen (15) people locally. In the event, you should list the workforce of the regional office that will oversee the work under MTS' contract. Report all permanent full-time and part-time employees including apprentices and on-the-job trainees. Blank spaces will be considered as zeros

ACKNOWLEDGED AND AGREED

6. Name, Address, and Phone Number of Person to Contact Regarding this Report:

Name of Signee: _____

Title: _____

Phone Number

Address: _____
Street
_____
City State Zip

Name of Signee: _____

Authorized Signature: _____

Date:

EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT CONTINUED

OCCUPATIONAL CATEGORY	African American		Hispanic		Asian or Pacific Islander		Native American		Other		Overall Total	
	M	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**
Executive/Managerial												
Engineers/Architects/ Surveyors												
Professionals (N.E.C.)												
Technicians												
Sales												
Administrative Support												
Protective Services												
Services (N.E.C.)												
Craft Workers (Skilled)												
Machine Operators, Assemblers & Inspectors												
Transportation and Material Moving												
Laborers (Unskilled)												
TOTALS FOR EACH COLUMN												

Indicate by gender and ethnic code the number of the above workforce, which are persons with disabilities:

DISABLED												

ETHNIC IDENTIFICATION

African American: (NOT OF HISPANIC ORIGIN): All persons having origins in any of the black racial groups of Africa.
Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
Asian or Pacific Islander: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area, includes, China, Japan, Korea, the Philippine Islands, and Samoa.
Native American: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition
Other: Caucasian and others not falling into one of the designated categories.
DISABLED DEFINITION
Any person who 1) has a physical or mental condition which limits one or more of such person's major life activities, 2) has a history of such a condition, or 3) is regarded as having such a condition. For purposes of this definition, "major life activity" means any mental or physical function or activity, which if impaired, creates a substantial barrier to employment.

OCCUPATIONAL CATEGORY LIST

Executive/Managerial
Executive, Management Related
Engineers/Architects/Surveyors
Professionals (N.E.C.)*
Mathematical and Computer Scientists
Natural Scientists
Health Diagnosing
Health Assessment and Treating
Teachers, Postsecondary
Teachers, except Postsecondary
Counselors, Educational and Vocational
Librarians, Archivists, Curators
Social Scientists and Urban Planners
Social, Recreation and Religious Workers
Lawyers and Judges
Writers, Artists Entertainers & Athletes
Technicians
Health Technologists and Technicians
Engineering and Related Technologists and Technicians
Science Technicians
Technicians, Except Health, Engineering, and Service
Sales
Supervisors and Proprietors
Sales Representatives, Finance, and Business Services
Sales Representatives, Commodities except Retail
Sales Workers, Retail, and Personal Services
Other Sales Related
Administrative Support
Supervisors of Administrative Support
Computer Equipment Operators
Secretaries, Stenographers, Typists
Information Clerks
Records Processing, Except Financial
Financial Records Processing
Duplicating and Other Office Machine Operators
Communications Equipment Operators
Mail and Message Distributing
Material Recording and Distributing Clerks
Adjusters and Investigators
Other Office/Clerical
*N.E.C.: Not Elsewhere Classified
Protective Services
Supervisors of Protective Services
Firefighting and Fire Prevention
Police and Detectives
Guards & Other Protective Services
Services (N.E.C.)*
Private Households
Food Preparation and Services
Health Services
Cleaning and Building Services
Personal Services
Craft Workers (Skilled)
Supervisors of Mechanics and Repairers
Vehicle and Mobile Equipment Mechanics and Repairers
Heating, Air Conditioning, Refrigeration, Mechanics
Other Mechanics and Repairers
Supervisors of Construction Trades
Construction Trades, Except Supervisors
Extractive Occupations
Precision Production Occupations
Machine Operators, Assemblers & Inspectors
Metalworking and Plastic Working Machine Operator
Metal and Plastic Processing Machine Operators
Woodworking Machine Operators
Printing Machine operators
Textile, Apparel, and furnishing Machine Operators
Machine Operators, Assorted Materials
Fabricators, Assembler and Hand Working Occupations
Production Inspector, Tester, Sampler, Weigher
Transportation and Material Moving
Motor Vehicle Operators
Rail Transportation Occupations
Water Transportation Occupations
Material Moving Equipment Operators
Laborers (Unskilled)
Handlers
Equipment Cleaners
Helpers & Laborers

STATUS OF CURRENT AND PAST CONTRACTS

Proposers shall list the status of **at least three (3)** current and past contracts where the subject scope of work has been performed within the past five years.

Proposer shall provide an accurate contact name, telephone number, and email for each contract, the terms and scope of the contract, the original contract value and if the contract has been completed or is still in progress. The Proposer must also indicate if the contract was terminated by either the procuring agency or by the Contractor for cause or convenience. If the contract was terminated, list the reason for termination. Identify and state the status of any litigation, claims, or settlement agreements related to any of the contracts.

REFERENCE NO.1

Company Name: _____

Point of Contact: _____

Phone: _____

Email: _____

Project Award Date: _____

Original Contract Value: _____

Status of Contract: _____

A. Terms and Scope of Contract

_____

_____

_____

B. Identify Claims / Litigation or Settlements Associated with each Contract:

_____

_____

_____

_____

REFERENCE NO.2

Company Name: _____

Point of Contact: _____

Phone: _____

Email: _____

Project Award Date: _____

Original Contract Value: _____

Status of Contract: _____

A. Terms and Scope of Contract

_____

_____

_____

B. Identify Claims / Litigation or Settlements Associated with each Contract:

_____

_____

_____

_____

REFERENCE NO.3

Company Name: _____

Point of Contact: _____

Phone: _____

Email: _____

Project Award Date: _____

Original Contract Value: _____

Status of Contract: _____

A. Terms and Scope of Contract

_____

_____

_____

B. Identify Claims / Litigation or Settlements Associated with each Contract:

_____

_____

_____

_____

FINANCIAL QUESTIONNAIRE FORM

This organization is organized under the laws of the State of: _____

1.

2. Principal Financial institution. The information bellow will be used to assess financial responsibility.

Name of Bank: _____

Address: _____

Street

_____

City State Zip

Telephone: _____

Officer Familiar with Proposer's Account: _____

3. Business License

NOTE: The representations regarding the Proposer's license are made under penalty of perjury.

Proposer's Business License No.: _____

Original Date Issued: _____

Expiration Date: _____

Proposer's DUNS No.: _____

Expiration Date: _____

Proposer's System for Award Management (SAM) No.: _____

Expiration Date: _____

4. The date of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this proposal are as follows:

5. All current and prior DBAs, alias, and/or fictitious business names for any principal having an interest in this proposal are as follows:

6. Has Proposer ever failed to complete any work awarded to it? If so, when, where, and why?

7. Identify any conditions bankruptcy, pending litigation, planned office closures, impending merger:

8. Provide a general description of the individual or firm's financial condition:

CALIFORNIA PUBLIC RECORD ACT (CPRA) AKNOWLEDGEMENT

I/We hereby represent, acknowledge, and agree as follows:

1. MTS is a California public agency established by California Public Utilities Code, Section 120000. et. seq., and is subject to the California Public Records Act (Government Code sec. 6250 et seq.) which provides generally that all records relating to a public agency's business are open to public inspection unless exempted from disclosure by law.

2. The proposal I/we have submitted to MTS is open to public inspection under CPRA unless it is exempted from disclosure by law.

3. To the extent the proposal includes materials that I/we believe are exempt from disclosure under CPRA, I/we understand that I/we must provide a letter identifying the materials that I/we believe are exempt from disclosure and explaining the basis for exemption.

4. Any materials not identified as exempt from disclosure are open to public inspection, and I/we waive any right to subsequently claim exemption from disclosure for such materials.

5. MTS at all times retains the right to make the final determination regarding what, if any, portion of a proposal is subject to disclosure under CPRA.

6. Use of headers/footers bearing designations such as “confidential”, “proprietary”, or “trade secret” on all or nearly all of a proposal which would prohibit or limit public inspection is not acceptable and may deem the proposal non-responsive and may be rejected; labeling a page as such does not prohibit MTS from disclosing the page in response to a Public Records Act (PRA) response or in the ordinary cause of business if MTS concludes it is obligated to so by applicable law.

7. To defend and indemnify MTS in any action on a PRA request for any of the contents of a Proposal marked TRADE SECRET, CONFIDENTIAL or PROPRIETARY.

8. Marking a document as “trade secret”, “confidential” or “proprietary” without the express written permission of MTS does not exempt a document from disclosure to third parties under state or federal law, or in the normal course of MTS’s business operations. MTS has no obligation to get a respondent’s permission before producing such documents.

9. The bid I/we have submitted *(check one of the following)* materials that we believe are exempt from disclosure under CPRA.

INCLUDES ☐

DOES NOT INCLUDE ☐

ACKNOWLEDGED AND AGREED

Company Name: _____

Title: _____

Signature: _____

Date: _____

NONCOLLUSION DECLARATION

TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH OFFER

(23 U.S.C. § 112(c) and California Public Contract Code § 7106)

The undersigned declares:

I am the _____ of _____, the party making the foregoing offer.

The offer is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The offer is genuine and not collusive or sham. The proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham offer. The proposer has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham offer, or to refrain from submitting an offer. The proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the offer price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the offer price, or of that of any other proposer. All statements contained in the offer are true. The proposer has not, directly or indirectly, submitted his or her offer price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, offer depository, or to any member or agent thereof, to effectuate a collusive or sham offer, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of the proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____(date), at _____(city), _____(state).

ACKNOWLEDGED AND AGREED

Name of Contractor: _____

Signature: _____

Date: _____

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code Section 2200 *et seq.*)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) is true and correct:

1. The Contractor is not:

   a. identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or

   b. a financial institution that extends, for 45 days or more, credit in the amount of $20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran. ☐

2. MTS has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, MTS will be unable to obtain the goods and/or services to be provided pursuant to the Contract. ☐

3. The amount of the Contract payable to the Contractor for the Project does not exceed $1,000,000. ☐

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of $250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

ACKNOWLEDGED AND AGREED

Company Name: _____

Title: _____

Signature: _____

Date: _____

SAFETY DEPARTMENT STANDARD OPERATING PROCEDURES

FOR CONTRACTORS SAFETY AND HEALTH REQUIREMENTS

(SAF 016-03)

January 2003

SAF 016-03

Purpose: To establish environmental, safety and health requirements for the San Diego Metropolitan Transit System (MTS) Contractors.

Background: MTS is committed in providing and maintaining a safe work place, safe plant and equipment, and a safe and competent workforce as required by legislation and best industrial practice for our employees, customers, visitors, and general public.

To support this commitment, we require our Contractors to provide adequate leadership and safety training for their employees and require the same of their sub-Contractors.

Objectives: This SOP requires all MTS Contractors to:

- Comply with the environmental, safety and health requirements of the contract as per FTA, OSHA, Cal OSHA, and San Diego Metropolitan Transit System (MTS).
- Assign a competent person the responsibility for the implementation of the safety regulations, personal protective equipment usage, and compliance with hazardous materials/environmental policies, and drug and alcohol program.
- Ensure that all Contractor employees and sub-Contractors are trained and educated in safety and support on-site Contractors on safe work and MTS safety programs.
- Sign the MTS Contractual Agreement with Outside Agencies (Safety Rules).

MTS Representatives are required to:

- Pro-actively monitor the Contractors' workplace to identify all occupational health and safety hazards – Departmental/Safety representative.
- Safety and contract requirements compliance – Audit/Inspection conducted and documented (schedule and spot check) by Quality Assurance Department.

NOTE: Copies of both MTS Illness and Injury Prevention Program (IIPP) and the MTS Maintenance Department Code of Safe Practices are available in the Safety Department's office. MTS handles the Engineering/Construction site safety plans.

SAFETY DEPARTMENT SAFETY RULES

MTS Contractual Agreement with Outside Agencies

Work on MTS Premises

A. Safety Rules

These safety rules apply specifically to Contractors, Contractor's employees, or sub-Contractors working on Metropolitan Transit System (MTS) property. Any loss or damage, including death, resulting from Contractors, Contractor's employees, or subcontractor's negligence shall hold MTS management and employees harmless from any such loss. No work shall be performed on MTS property without approval and proper permits, when required. Requirements:

1. Comply with Cal OSHA, state, local and MTS' safety, and environmental policies.
2. Observe and follow all posted facilities safety regulations.
3. Use the proper Personal Protective Equipment required for the job.
4. No illegal drugs or alcohol will be consumed on site or off the premises while working for MTS.

B. Use of Tools and Equipment (when required)

1. Required Tools and Equipment must be in good condition, safe for use and calibrated (if required).
2. Follow safe engineering work practices/procedures.
3. Wear the required personal protective equipment when using tools.

C. Machinery and Vehicles (when required)

1. Do not attempt to operate MTS machinery or equipment without special permission.
2. Only licensed operators may operate Forklift Trucks and other equipment on MTS occupied spaces.

D. Contractor Requirements (when required)

1. Valid Contractor's license number.

ACKNOWLEDGED AND AGREED

Company Name: _____

Print Name: _____

Title: _____

Signature: _____

Date: _____

CERTIFICATE OF RESTRICTIONS ON LOBBYING

The CONTRACTOR hereby certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

3. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Check one of the following Boxes.

Does NOT Apply ☐

Applies ☐

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Executed this _____ day of _____, 20___.

ACKNOWLEDGED AND AGREED

Name of Contractor: _____

Signature: _____

Date: _____

SAMPLE PROMPT PAYMENT CERTIFICATION FORM

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
PROMPT PAYMENT CERTIFICATION FORM

PURPOSE: This certification is used to monitor compliance by prime contractors to promptly pay its subcontractors. In accordance with DOT's DBE Regulations and MTS's DBE Program, prime contractors must pay its subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of payment from MTS. Any delay or postponement of payment over thirty (30) days must be for good cause and after receipt of prior written approval from a MTS Project Manager.

INSTRUCTIONS: Please complete the below Prompt Payment Certification Form and return to MTS within **14 days** after receipt of payment from MTS at the following email address: antonio.monreal@sdmts.com. If there is more than one subcontractor on the contract, please complete a separate Prompt Payment Certification Form for each subcontractor.

1. CONTRACTOR INFORMATION

Contractor Name: _____ Contract No. _____ Work Order No. _____

Telephone No. _____ Email Address _____

2. PAYMENT INFORMATION

a) Name of Subcontractor: _____

b) Type of Services or Materials Provided by Subcontractor (state NAICS code if known)

_____

c) Date Last Payment Received from MTS?

_____

d) Was any of that payment for services/materials provided by the subcontractor? If YES, please answer questions e-g. If NO, proceed to Part 3 Certification.

_____

e) When was the Subcontractor paid for the services/materials it provided? * Prime contractors must pay its subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of payment from MTS*

_____

f) If payment was delayed or postponed over thirty (30) days, was the reason for good cause? (Explain) _____

_____

g) If payment was delayed or postponed over thirty (30) days, **who** at MTS pre-authorized the delay or postponement and **when** was such pre-authorization given? _____

_____

3. CERTIFICATION

The contractor hereby certifies that the foregoing Prompt Payment Certification Form is true and correct.

Signature _____ Title _____ Date _____

_____

***** FOR MTS USE ONLY *****

Date Certification Received _____ Contractor Compliant _____
Contract Administrator _____ Date Reviewed _____

SAMPLE

EXHIBIT 3: CLEAN ENERGY RENEWABLE FUELS LLC RESPONSE TO REQUEST FOR PROPOSAL



San Diego Metropolitan Transit System

Request for Proposals
Gas Service Provider (GSP)
MTS Doc. No. G2627.0-22

Technical Proposal

Sean Wine
Vice President, Renewables Distribution
949.437.1319
Sean.Wine@cleanenergyfuels.com

August 12, 2022

Clean Energy

4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
949.437.1000

CleanEnergyFuels.com

August 12, 2022

Brianda Diaz
Procurement Specialist
San Diego Metropolitan Transit System
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

Re: Letter of Transmittal for RFP for Gas Service Provider (GSP) MTS Doc. No. G2627.0-22

Dear Ms. Diaz:

Clean Energy Renewable Fuels, LLC (Clean Energy Renewables), in conjunction with our strategic subcontractor, bp, is pleased to present the enclosed Renewable Natural Gas (RNG) and commodity services proposal to San Diego Metropolitan Transit System (MTS).

Clean Energy Renewables and bp have worked together since 2013, as more fully described throughout this proposal, helping to deliver RNG to transportation markets across North America. bp is MTS' current RNG service provider and will continue to be involved in MTS' contract, but our two companies felt it would be better for Clean Energy Renewables to be the prime for this RFP for reasons described throughout this proposal. Rest assured, the same level of service will continue to be provided to MTS along with several enhancements over your existing agreement. MTS can expect:

- **Continued Reliable RNG Supply.** bp has provided MTS with uninterrupted RNG and natural gas commodity, in addition to Low Carbon Fuel Standard (LCFS) program management since 2013. As part of this proposal, bp will deliver RNG to Clean Energy Renewables who will in-turn supply it to MTS effective January 1, 2023. This new approach was the result of bp and Clean Energy Renewables forming a co-marketing agreement in 2018 aimed at leveraging both companies core strengths: long-term working capital for project development, supply origination, trading and credit monetization, and RNG marketing and distribution to support fleet conversion. Combined, bp and Clean Energy Renewables maintain the largest RNG supply portfolio in the industry – nearly 100 active and in-development projects at dairy farms, wastewater treatment facilities, and landfills nationwide.

- **Increased Revenue Through Dairy Project Investments.** In 2020, Clean Energy Renewables and bp formed a joint venture to build and own anaerobic digesters at dairy farms whereby we capture and purify methane emissions from manure and convert it into RNG. This process provides a tremendous environmental benefit and increased revenue streams under the LCFS. Partnering with us allows MTS to maximize its revenue earning potential through negative carbon intensity fuel settlements, which are only unlocked when using dairy gas RNG.

Clean Energy
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
949.437.1000
CleanEnergyFuels.com

- **Expanded LCFS Program Management Adherence.** Clean Energy Renewables was the first to establish a D3 RIN generating landfill project under US Environmental Protection Agency's (EPA) Renewable Fuel Standard (RFS), and actively manages more RNG pathways under the LCFS than any other company. We take great pride in our experience working with regulators at the California Air Resources Board (CARB) and the EPA. To provide incremental value and free up MTS staff time from having to adhere to LCFS pathway work, our dedicated compliance and operations teams recommend transitioning MTS' reporting procedures to Clean Energy Renewables, including allowing us to become the First Fuel Reporting Entity as allowable under the LCFS.

- **Ongoing Commodity Management.** Our experienced team manages one of the largest storage allocations throughout the entire SoCalGas system, of which SDG&E is a part. We are in frequent and regular communication with the utility to balance customer pools, provide supply and monitor pipeline conditions. MTS will never have to worry about the reliability of your physical gas supply for fueling your bus fleet.

We acknowledge receipt of the addenda issued for this RFP as noted in the attached Addenda Acknowledgement Form. Our proposal and pricing are valid for 120 days from the date of submittal to MTS. Please contact Sean Wine at (949) 437-1319 or Sean.Wine@cleanenergyfuels.com for questions about this proposal. Sean is located at Clean Energy headquarters: 4675 MacArthur Court, Suite 800, Newport Beach, CA 92660.

I, Robert M. Vreeland, am authorized to bind Clean Energy Renewables to the terms of the proposal.

Sincerely,

Robert M Vreeland

Robert M. Vreeland
Chief Financial Officer

Clean Energy
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
949.437.1000
CleanEnergyFuels.com

Table of Contents

3.3.1. QUALIFICATIONS, EXPERIENCE, AND STAFFING 5

3.3.2. WORK PLAN AND SERVICE COMMITMENT 18

3.3.3 INSURANCE 23

3.3.4 EXCEPTIONS AND DEVIATIONS 24

3.4 COST AND PRICE PROPOSAL 25

3.5 APPENDIX 26

3.3.1. Qualifications, Experience, and Staffing

A. About Clean Energy Renewables

Clean Energy was incorporated in October 1996 and has been a publicly traded company since 2007 (Nasdaq: CLNE). We provide RNG/CNG/LNG/Hydrogen fueling station design, build, operation, and maintenance services to our North American customers. Clean Energy Renewables is a subsidiary of Clean Energy that engages with biogas producers to secure reliable, high-quality RNG for transportation. We have been providing RNG supply, natural gas commodity, credit monetization and custom compliance solutions to customers since 2009.

Our company provides fuel to over 1,000 fleet customers operating 48,000 natural gas vehicles, including 9,000 transit buses. We employ 443 professionals to serve our nationwide customer base. Our local team supports your contract from our Newport Beach headquarters.

Clean Energy Renewables works closely with bp on a number of RNG supply contracts identical to MTS' current agreement. Our direct knowledge of contract requirements and transit operations will allow us to continue to maximize MTS' revenue, guarantee 100% uninterrupted fuel supply, assure LCFS and RFS compliance, and make a seamless transition to this new contract term.



bp Trading & Shipping (T&S) is one of the world's leading energy marketing, operations, and trading teams. Working with its partners to buy, sell and move energy, bp serves 12,000 customers in over 140 countries with solutions for their energy needs.



bp's Gas and Power Trading Americas (GPTA) team sits within T&S, serving as an energy supplier and asset manager across North America. bp is North America's largest natural gas marketer at nearly 16bcf/day, moving gas across 235 pipelines in the US and Canada.

bp's biogas team is involved in the entire supply chain, offering its customers unique products, a global reach and access to dedicated resource teams with deep expertise in low carbon markets. bp sources and delivers RNG from a large portfolio of third party and bp owned facilities across North America, along with two joint ventures that are actively developing biogas supply. Through the combination of third party and joint venture supply, bp currently has over 36 producing projects and another 45 under construction.

B. Financial Strength

As of December 31, 2021, Clean Energy's current assets are $410 million, including $229 million of cash and cash equivalents. Given our strong financial position and strategic subcontractor relationship with bp, there are no conditions that will impede our ability to provide to MTS the services outlined in this RFP.

Please also refer to our attached Financial Questionnaire Form and our latest audited financial statements, our 2021 Audited Financials (10-K), in Appendix A. Additional financial information may be found at: https://investors.cleanenergyfuels.com/.

As Clean Energy's partner, bp has invested more than $215 million into joint venture RNG production projects. bp's full financial information is available here: https://www.bp.com/en/global/corporate/investors.html.

C. RNG Supply and GSP Experience

With over 13 years of experience, Clean Energy Renewables is the RNG market leader in terms of volume of RNG delivered and years of experience in the industry. Many of our largest customers are public transit agencies and municipalities.

MTS can count on a reliable supply of RNG, white-glove assistance with compliance obligations, and best value environmental credit monetization and management when using our dedicated group.

As a partner on over 60 LCFS fuel pathways, we understand the complexities of navigating the RFS and the LCFS. We maintain excellent working relationships with staff at the CARB and EPA.

Clean Energy Renewables has led the market in sourcing and distributing RNG as a transportation fuel since 2013. Today, we are supplying approximately 60% of the RNG delivered to the California natural gas vehicle market.

Transit RNG Customer Experience

Clean Energy Renewables currently provides RNG services to 56 customer owned station customers, including the 15 public transit agencies shown below, in addition to thousands of customers that use our company-owned retail fueling station network. Many of our RNG customers are long-term partners that depend on us for additional services, including station design/build, operations, or maintenance (denoted with an asterisk next to the project scope.)

Clean Energy's Transit Customer List **CONFIDENTIAL - Trade Secret**		
Customer	RNG Contract Start	Project Scope
Foothill Transit – Arcadia, CA	2014	RNG*
City of Torrance, CA	2016	RNG*
UCLA Transit Services, CA	2016	RNG
City of Culver City, CA	2018	RNG
City of Union City, CA	2018	RNG
Kings County Area Public Transit Agency, CA	2018	RNG*

LA Metro – Los Angeles, CA	2018	RNG*
North County Transit District, CA	2018	RNG
City of Santa Clarita, CA	2019	RNG*
City of Santa Monica, CA	2019	RNG*
City of Lodi, CA	2020	RNG*
City of Redondo Beach, CA	2020	RNG*
NYMTA, NY	2020	RNG
Gold Coast Transit District, CA	2021	RNG*
Morongo Basin Transit Authority, CA	2022	RNG*

Key Personnel Involvement

All key personnel assigned as the project team members for MTS' contract in section 3.3.1, F. Project Manager and Key Personnel Responsibilities participated in the contracts listed in this proposal and will perform the roles described in the RFP. We have processes, procedures, and adequate staffing in place to serve MTS throughout the new contract term.

D. Our Subcontractor, bp

bp has provided RNG to MTS since 2013 under the existing contract. bp's new role will be to ensure a seamless transition to Clean Energy Renewables and to secure and provide upstream RNG supply going forward. MTS' current contacts at bp will work closely with Clean Energy Renewables to ensure a smooth transition in RNG supply and compliance obligations.

bp and Clean Energy Renewables Working Timeline

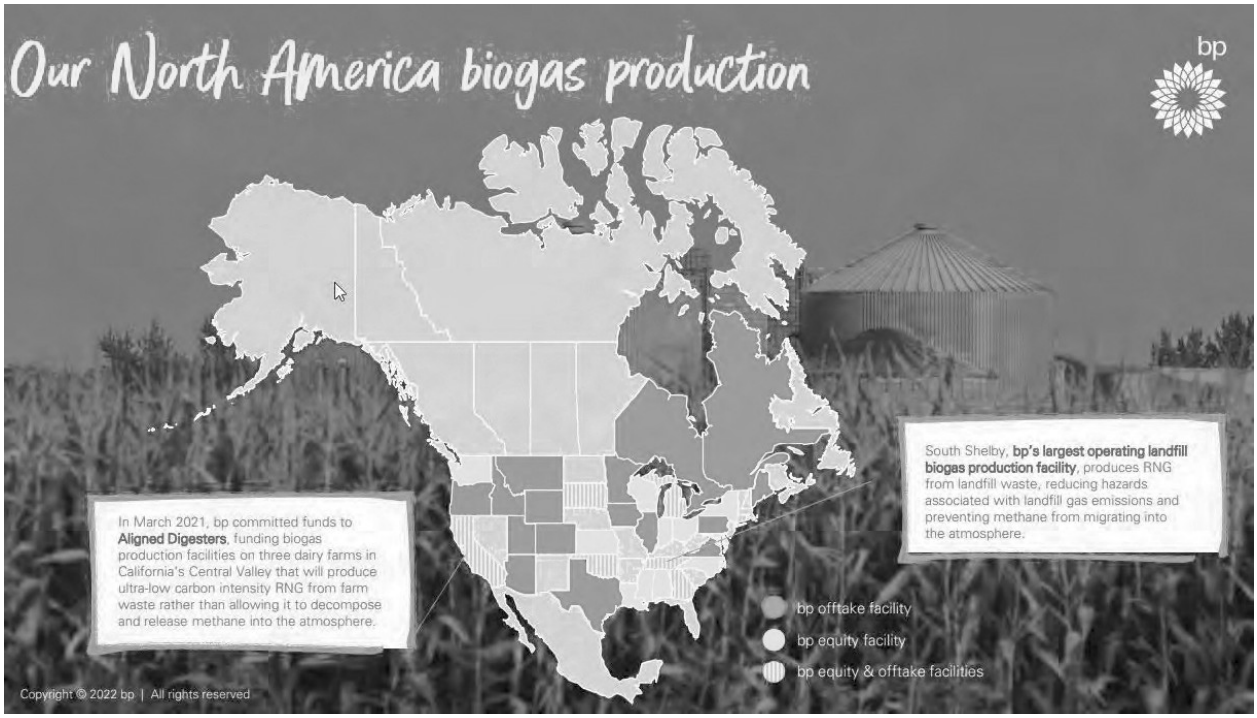
bp has traded low carbon products since 2003 and has been actively involved in RNG since 2009, when they first started marketing it in California. In 2017, bp acquired two operating landfill gas assets and a portfolio of third-party supply contracts from Clean Energy Renewables. This strategic acquisition expanded bp's footprint in RNG while also giving Clean Energy Renewables greater access to an energy major familiar with RNG markets. bp continued to market the gas through Clean Energy stations.

In 2018, bp and Clean Energy Renewables formed a co-marketing agreement to further align the capital and trading strengths of bp with Clean Energy Renewables' compliance management, marketing, and distribution strengths to grow the RNG industry. The

relationship then expanded in 2020 with the creation of a joint venture between bp and Clean Energy Renewables, focused on financing and developing new digester projects at dairy farms across the US. This joint venture will bring the lowest carbon intensity RNG to strategic fleet customers in California, like MTS.

Clean Energy Renewables is pleased to have a longstanding working relationship with bp across its various teams and is confident that the combined resources of both companies will deliver the expected results for MTS. Provided below is a view of bp's biogas production in North America, all of which is directed to Clean Energy Renewables.

Best in Class Production and Distribution Capabilities





bp's Contact: Sean Reavis, Senior Biogas Origination

Address: 201 Helios Way, Houston, TX 77079

Phone: 402.203.2911

Email: Sean.Reavis@bp.com

E. Status of Current and Past Contracts

Clean Energy Renewables has provided reliable RNG supply, environmental credit management and regulatory reporting services – of a similar scope proposed to MTS here – to the following transit customers during the past five years. Our subcontractor bp has provided reliable RNG and commodity management services to MTS since 2013; for more information on bp's performance we recommend contacting Mike Thompson, Director of Financial Planning and Analysis, at MTS at mike.thompson@sdmts.com. Additional information may be found in the reference form in Appendix G.

Clean Energy's Customer References CONFIDENTIAL - Trade Secret	
LA Metro	**Type of Service:** Design, build operate and maintain CNG stations, RNG and commodity gas supply, Management of LCFS and RIN credit programs **Service Description:** Clean Energy has worked with LA Metro for years as a key partner in their transit bus operations, as a station design-build and maintenance provider, ensuring their buses meet rollout each-and-every day. In 2017, we signed our first RNG and natural gas commodity supply agreement, and in 2020 signed a second RNG only supply agreement with LA Metro. We also monetize the RINs associated with their RNG consumption. **Project Dates:** 2017-Present (RNG) **Contact:** Craig Reiter, Senior Director, Sustainability and Energy Executive **Address:** One Gateway Plaza, Los Angeles **Telephone:** (213) 418-3476 **Email:** reiterC@metro.net
City of Lodi	**Type of Service:** RNG supply and fueling station maintenance **Service Description:** Clean Energy has maintained the City of Lodi's CNG fueling station since July 2015. In 2020, Clean Energy Renewables began providing RNG fuel supply and LCFS and RIN credit services. Ms. Georgia Graham provided feedback on our services, "They are leaders in the Renewable Natural Gas credit program. Clean Energy Renewables has proven their expertise in this field." **Project Dates:** 2020-Present (RNG) **Contact:** Julia Tyack, Transportation Manager **Address:** 221 W. Pine Street, Lodi, CA 95240 **Telephone:** (209) 269-4960 **Email:** jtyack@lodi.gov
Kings County Area Public Transit Agency (KCAPTA)	**Type of Service:** RNG supply and station design, construction, operation, and maintenance. **Service Description:** Clean Energy has provided KCAPTA with CNG fueling station maintenance and upgrade services since 2014 and Clean Energy Renewables has provided the agency with RNG since 2018. In 2022, we were awarded a new 5-year maintenance contract. **Project Dates:** 2018-Present (RNG) **Contact:** Angie Dow, Executive Director **Address:** 610 W 7th St, Hanford, CA 93230 **Telephone:** (559) 852-2691

	Email: angie.dow@co.kings.ca.us
Foothill Transit	**Type of Service:** RNG supply and station design, construction, operation, and maintenance. **Service Description:** In 2001, Foothill Transit awarded Clean Energy a 5-year contract to design, build, operate and maintain a CNG fueling facility at their Pomona facility. Due to Clean Energy's reliable service throughout the years, we were awarded contracts to design, build, operate and maintain Foothill Transit's second CNG station in Arcadia, provide RNG supply and manage their LCFS program for RNG and CNG, and extend our maintenance contracts. Clean Energy has upgraded these two stations, which currently run a total of 15 compressors to fuel over 300 CNG buses and dispense five million combined annual gallons. We also monetize the LCFS credits Foothill Transit generates at their EV stations. In 2021, Foothill Transit awarded Clean Energy a contract to design, build, operate, maintain and supply fuel for their new hydrogen fueling station. Ms. Bailey provided this comment on Clean Energy, "Clean Energy's RNG has allowed the agency to operate and provide bus service with clean and sustainable bus service since 2014. Foothill Transit has enjoyed the partnership with Clean Energy for over 20 years. They respond timely when issues arise with our CNG fueling infrastructure, which has been far and few over the last 20 years." **Project Dates:** 2014-Present (RNG) **Contact:** Sharlane Bailey, Director of Facilities **Address:** 100 S. Vincent Avenue, Suite 200, West Covina, CA 91790 **Telephone:** (626) 931-7253 **Email:** sbailey@foothilltransit.org
University of California San Diego	**Type of Service:** RNG supply and station design, construction, operation and maintenance **Project Description:** In April 2009, the University of California, San Diego (UCSD) awarded Clean Energy a 10-year contract to design, build, operate and maintain a CNG fueling station. The station fuels UCSD's transit buses, street sweepers, delivery trucks, and various light-to-medium-duty campus vehicles, as well as third-party fleets and the public. On behalf of UCSD, we are responsible for marketing, retailing, billing, tax collection, and remittance. In 2014, Clean Energy began supplying UCSD with RNG, which has significantly reduced their carbon footprint. Mr. Gregory Nishihira commented on our RNG services in October 2021, "Clean Energy has worked collaboratively with us on the renewable CNG product. Clean Energy provides excellent guidance and support of our renewable CNG product, acting as our proxy for LCFS and RIN credit reporting and fiscal deliverables. They are transparent with providing us with fuel credit funds when the agencies approve them. This has amounted to hundreds of thousands of dollars over the years." **Project Dates:** September 2014-Present (RNG) **Contact:** Gregory Nishihira, Operations Manager, Fleet Services

	Address: 9500 Gilman Dr, La Jolla, CA 92093 **Telephone:** (858) 822-4443 **Email:** gnishihira@ucsd.edu

F. Project Manager and Key Personnel Responsibilities

Clean Energy Renewable has assisted bp throughout the term of MTS' current fueling contract with compliance and regulatory guidance behind the scenes. Because Clean Energy Renewables is a Credit Generator and Fuel Pathway Holder in some instances, we have direct working experience with CARB on all pathway related requirements under the LCFS. As such, we have worked with bp to ensure they know the most updated regulatory requirements so they can better serve the customers they contract with directly. We do not require additional resources to administer the new direct contract with MTS. **Sean Wine will serve as the Project Manager for MTS' RNG contract.** Information about our team is on the following pages and an organization chart is in Appendix B.

Key Personnel	Title (Company)	Role	Location	Industry Experience
Sean Wine 	Vice President, Renewables, Distribution (Clean Energy)	**Project Manager**/ Executive oversight, adherence to contract requirements and regulatory representation	Newport Beach, CA	16 years' natural gas and RNG management
Ryan Maes 	Biogas Operations Manager (Clean Energy)	Manages RNG supply and demand allocations, LCFS and RFS reporting, reconciliation, generation, and monetization	Newport Beach, CA	15 years' compliance & financial experience

Danielle Illig 	Director of Compliance & Sales Operations (Clean Energy)	Compliance adherence and customer reporting	Newport Beach, CA	12 years' natural gas operations experience
Alphonse Anderson 	Account Manager (Clean Energy)	Contract negotiations and account management	Newport Beach, CA	14 years' experience with account management, contracts, oil & gas
William Han 	Vice President, Commodities (Clean Energy)	Manage natural gas supply and storage positions	Newport Beach, CA	15 years' natural gas industry experience
Sean Reavis 	Sr. Biogas Originator (bp)	Clean Energy Renewables' primary contact at bp	Houston, TX	18 years' gas and biogas industry experience

Detailed Role Descriptions

The Clean Energy Renewables team has an extensive background in renewables and traditional natural gas markets and will leverage our vertically integrated organization to provide seamless service to MTS on this contract.

Sean Wine, Vice President, Renewables Distribution. Sean will serve as MTS' Project Manager, providing executive oversight over the MTS relationship. He manages the RNG distribution group at Clean Energy, which includes operations, compliance, sales, budgeting, and sustainability reporting. Leveraging his 16 years of experience in the renewable and natural gas markets, Sean identifies and leads strategic business initiatives for the distribution group and is one of six members of the Executive Committee that oversees and administers the bp/Clean Energy Co-Marketing agreement. Sean has a B.S. in Political Science and Government from the University of California, Santa Barbara.

Danielle Illig, Director of Compliance & Sales Operations. Danielle reports directly to the Vice President, Renewables Distribution and works in close coordination with internal and external management to direct compliance and sales operations obligations. Danielle leads all compliance activities for Clean Energy Renewables related to the LCFS and RFS credit programs.

Danielle oversees the team responsible for CARB and EPA reporting and works with the policy team to monitor changes to these programs. Danielle and her team will manage the reporting process on behalf of MTS.

Danielle's 12 years of natural gas industry experience include a specialization in account management and contract adherence for multiple departments such as IT, accounting, sales operations, and compliance where she has implemented company best practices and standardization. Danielle has a B.S. in Communications and a M.S. in Instructional Technology, all from California State University-Chico.

Ryan Maes, Biogas Operations Manager. Ryan manages our portfolio of RNG suppliers and works directly with bp's operations teams on the monthly supply/demand allocations. This includes pipeline balancing and gas storage, along with coordination of our third-party regulatory audit firms to ensure our operations comply with the EPA's RFS Quality Assurance Program (QAP) requirements.

Ryan will be responsible for overseeing credit management for the LCFS and RFS programs on behalf of MTS, including tracking, registering, trading the credits, generating monthly revenue, optimizing LCFS credit and RIN values and monetization, and remitting a share of the proceeds to MTS.

Ryan has 15 years' experience in analyzing historical transactions and trends, and market data. Ryan is a Chartered Financial Analyst (CFA) and a Certified Public Accountant (CPA). Ryan has a B.A. in Drama and Management from the University of California, Irvine and a degree in Accounting from UCLA.

William Han, Vice President Commodities – LNG/NG Supply. William oversees Clean Energy's natural gas supply and management of physical commodities. William has 15 years of experience in the natural gas industry managing physical assets, optimizing hedging portfolios, and performing risk management duties for energy majors including Constellation Energy, Barclays Bank, and Sempra Energy. William has a B.S. in Economics and Mathematics from the University of Maryland.

Alphonse Anderson, Account Manager. Alphonse serves as account manager and contract manager for Clean Energy's transit customers in the western US. He will work with Sean Wine to support contract negotiations and account management. Alphonse has 14+ years of professional experience with project management, engineering, sales,

and account management in the automotive, energy, policy, oil & gas, and industrial products sectors. Alphonse has a B.S. in Mechanical Engineering from Michigan State University and an M.S.E. in Mechanical Engineering from the University of Michigan.

Sean Reavis, Biogas Originator (bp). Sean serves as the Project Manager for MTS' current RNG contract, ensuring MTS receives reliable RNG supply and consistent revenues. If awarded, Sean Reavis will work closely with Sean Wine to ensure a smooth transition into the new contract.

Sean Reavis works in North American Biogas Origination for bp's Carbon Trading and Shipping team. Over the last 18 years with bp Sean has held positions in bp's North American Gas and Power team both in Canada and the US. Sean has led the biogas team to be one of the largest suppliers of RNG to the US transportation market and led bp's efforts to form a co-marketing agreement with Clean Energy Renewables. In addition, Sean is a Board Member of a bp affiliate non-operated Joint Venture named Clean Energy bp Renew Co where bp owns and develops RNG production facilities focused on capturing GHG emissions from landfills and dairy farms. Like Sean Wine, Sean Reavis is also a member of the Executive Committee that oversees the co-marketing agreement between bp and Clean Energy Renewables. Sean has a B.S. in Education from the University of Nebraska-Lincoln.

G. Experience with Core Aggregation Transportation (CAT)

As an experienced GSP, Clean Energy serves 52 customers aggregated using SoCalGas Service Territory, which includes San Diego. We have been a Core Transportation Aggregator (CTA) and physical transporter/marketer of natural gas under SoCalGas and PG&E Service territories for over six years, and we deliver and transport approximately 6,000,000 therms (~4.8M GGEs) per month into our SoCalGas Core Transportation Aggregator customer pools. Clean Energy Renewables provides services with our California license No. B2022008369.

If awarded, MTS' six meters would be added to our SDG&E core pool SD244. Clean Energy's commodity desk, operations group and finance team would manage the daily contract quantity and balancing with the pipeline, and invoice MTS separately for the natural gas commodity used.

H. Organizational Chart

Refer to Appendix B, Project Team Organizational chart.

I. Commitment of Key Personnel

Clean Energy Renewables acknowledges that no person designated as "key" to this contract shall be removed or replaced without the prior written concurrence of MTS.

J. Personnel Quality and Development

Refer to Appendix C for Clean Energy Renewables' Recruitment and Training Process.

3.3.2. Work Plan and Service Commitment

MTS can expect these deliverables from Clean Energy Renewables and bp:

- Debriefing and handover meeting where a complete overview of the co-marketing agreement will be provided
- Smooth transition to new contract
- Delivery of 100% uninterrupted RNG
- Assurance that all RFS and LCFS compliance obligations are met, including a step-by-step overview of how Clean Energy Renewables manages all compliance obligations on behalf of customers as a First Fuel Reporting Entity
- Continued maximization of revenue to MTS

Transition Plan

We will comply with the contract conversion and contract start date of December 31, 2022. The process will be simple for MTS, because your current provider is our subcontractor for this contract. bp will share existing account information to streamline this process.

After contract award, we will execute a/an:

- Base Contract for the Sale and Purchase of Natural Gas (NAESB, example provided upon request)
- RNG transaction confirmation between MTS and Clean Energy Renewables
- Affidavit confirming contract details

Upon receipt of the updated affidavit, Clean Energy Renewables will update all relevant pathways and registrations with the respective agencies for RNG delivery to MTS' six delivery points (four fueling facilities).

RNG Delivery

RNG Fuel Production/Sourcing

Clean Energy Renewables' strategic relationships will grant MTS access to continuous and plentiful RNG from an ever-growing portfolio of biogas producers. In 2021, Clean Energy Renewables executed two significant joint ventures, one with bp (described previously) and one with TotalEnergies, to actively develop dairy digester RNG production projects throughout North America. To date, Clean Energy Renewables has secured nearly 100 low carbon RNG supply projects (third party offtake and investment projects) to meet the demand from our customers and station network. When coupled

with bp, these upstream projects allow us to guarantee reliable, uninterrupted RNG supply to downstream customers. bp will continue in its role as integrated biogas originator to bring on new projects that will benefit MTS.

Portfolio Approach = Guaranteed RNG Supply

As an expanded offering to MTS, we propose to move all pathway related activities and reporting under Clean Energy Renewables. In doing so, MTS will not be limited to a receive RNG from a small selection of producers with direct pathways to MTS. All Clean Energy Renewables and bp's RNG facilities have pathways to Clean Energy, which allows us to allocate RNG to best serve our customers. We do not put our customers at risk by matching a single supply source pathway to a station. The LCFS affords us the flexibility to pool gas under our LRT account for allocation throughout California. MTS can count on redundancy of RNG supply through our robust and growing biogas portfolio in addition to receiving some of the lower carbon intensity fuel available in the market over time.

GSP Process

If awarded, Clean Energy Renewables will be responsible for managing the natural gas supply and delivery arrangements to MTS' six delivery points (four fueling facilities). Our commodity desk, led by William Han, will manage the daily contract quantity and balancing with the pipeline. Clean Energy engages in frequent and regular communication with the utility to balance customer pools, supply and monitor pipeline conditions. We hold a large variety of baseload agreements that vary in size and term based on customer's needs.

As an ESP with SDG&E, Clean Energy Renewables entered a pooling contract that requires monthly balancing based on MTS' monthly consumption. We actively manage any imbalance in the pool to remain within the contractual threshold limits at the end of each month.

Clean Energy Renewables monitors customer's natural gas usage as accurately as possible. Please note that only certain types of meters (i.e., "Smart Meters") are capable of monitoring natural gas usage daily. Without such meters, Clean Energy Renewables checks the natural gas consumption monthly through final month-end utility bills and readings from SDG&E. Clean Energy Renewables uses the month-end bills to trend natural gas usage and forecast future consumption.

Curtailment Protection

Clean Energy Renewables stays abreast of all developments and conditions within the SDG&E and SoCalGas systems and will relay this information to MTS as part of our RNG management services. Should there be a gas reliability issue on the SDG&E system, we will work closely with MTS to effectively construct a solution to circumvent any disruptions to your operations. Please note that any gas infrastructure issues would be identical to those that would occur with gas service to MTS from SDG&E in all circumstances. Choosing an ESP to deliver gas instead of the local utility will not affect MTS' gas infrastructure, supply, or reliability.

Billing Services for Natural Gas Commodity

Billing services will be maintained monthly, and MTS will receive two separate bills. Clean Energy Renewables' dedicated downstream customer accounting team will invoice MTS for the natural gas delivered to the meter during the delivery month. SDG&E will invoice MTS for the applicable transmission and utility charges associated with the delivery of that gas. Clean Energy Renewables proposes to bill MTS for monthly gas consumption, based upon monthly meter reads, within 15 days of the end of the delivery month and with payment due within 30 days after the delivery month. A sample invoice is provided in Appendix F.

LCFS and RFS Compliance

Clean Energy Renewables proposes to take on the LCFS First Fuel Reporting Entity role on behalf of MTS and manage all regulatory and reporting requirements related thereto. We will provide comprehensive management of all aspects of providing RNG to your sites and generating the resulting credits; MTS would simply receive regular payments from sales of the credits, according to the contract rates.

With this approach, Clean Energy Renewables will handle all reporting in the LRT-CBTS portal ahead of LCFS quarterly and annual deadlines. No documentation would be required from MTS, and we will provide auditable records for your use.

Clean Energy Renewables proposes marketing and monetizing the LCFS credits and RINs attributed to MTS' RNG usage to increase value. LCFS credits are monetized on a quarterly basis and RINs on a monthly basis. Settlement files will be sent to MTS on a monthly (RFS) and quarterly (LCFS) basis. Samples of the credit settlement files are included in Appendix F.

While our preference is to provide complete turnkey service as described above, we are also flexible in accommodating our customer's needs and preferences. If MTS would

like to continue generating credits and handling LRT reporting as is currently done, we can customize our process and duties to comply with your own.

Keeping Current

MTS will stay apprised of any changes to LCFS and RFS regulations and credit market trends with the help of Clean Energy Renewables' Policy and Compliance teams. Our Policy team helps shape future changes to the regulations through industry group leadership and interaction with legislators. Staff participate in LCFS workshops, chair committees and serve on the board of the Low Carbon Fuels Coalition and Bioenergy Coalition of California.

Clean Energy Renewables Compliance team works closely with the Policy team and regularly reviews CARB and EPA guidance, communicates with agency staff, and monitors environmental credit market conditions. Sean Wine is a board member of the American Biogas Council, a leading north American biogas trade group, while Tyler Henn, VP Business Development & RNG Origination is actively involved with the leadership of the Renewable Natural Gas Coalition, a leading global RNG trade group.

Together the teams will provide regular quarterly updates to MTS on LCFS and RIN market conditions, as well as timely information on any upcoming changes to the regulations, including the currently proposed changes to the LCFS under the 2022 CARB Scoping Plan.

Recordkeeping

Clean Energy Renewables maintains an auditable "paper trail" of all our natural gas contracts and transactions in accordance with federal and state regulations. All supporting spreadsheets for quarterly LCFS and monthly RIN reports are maintained on a secure network drive with back-ups of final data stored by the accounting department. These recordkeeping protocols are necessary to remain in compliance with various Air Quality and Regulatory programs including, but not limited to, EPA's RFS2 program, GHG reporting under Cap and Trade, and California's LCFS program. In addition, Clean Energy has a system of internal controls that adds several layers of review to all fuel pathway data and reports. Pursuant to section 95491.1 of the LCFS, we retain records in our secure server for a period of 10 years.

Should MTS require it, Clean Energy Renewables' can supply documentation pertaining to your RNG supply arrangement with Clean Energy within 20 business days. Although we do not foresee any issue as a result of this contract, Clean Energy Renewables will work with MTS on any interaction required with the Public Utilities Commission.

Continue to Maximize MTS Revenue

Credit Monetization. Clean Energy Renewables has been selling RNG since 2013, and as such, has longstanding relationships with obligated parties throughout the US seeking LCFS credits and RINs. This direct access to RIN and LCFS markets means Clean Energy Renewables can obtain the best price for LCFS credits and RINs generated and can pay out index pricing. Further, we also leverage bp for these services at times too. bp has one of the largest and most successful trading groups that specializes in the environmental commodities markets.

ESP savings. As previously described, Clean Energy Renewables is an ESP with SDG&E as well as with SoCalGas and can leverage our large storage position to maximize value for customers. Through a partnership with Clean Energy Renewables, MTS will receive a discount per MMBtu on its natural gas commodity supply as described in our price proposal.

3.3.3 Insurance

Please refer to Appendix D, Sample Insurance Certificate as proof of Clean Energy Renewables' ability to meet MTS' insurance requirements for this contract.

3.3.4 Exceptions and Deviations

Clean Energy reserves the right to negotiate terms after award. Refer to Appendix E for technical or contractual requirements.

3.4 Cost and Price Proposal

Separately uploaded.

3.5 Appendix

- Appendix A, 10-K Audited Financials
- Appendix B, Project Team Organizational Chart
- Appendix C, Clean Energy's Recruitment Process
- Appendix D, Sample Insurance Certificate
- Appendix E, Exceptions/Deviations
- Appendix F, Sample Documents
    - Monthly natural gas invoices
    - Monthly RIN credits generated
    - Quarterly LCFS credits generated
    - Product Transfers
    - Pipeline Injections
    - Attestations to be completed by MTS
- Appendix G, RFP Forms

Appendix A, 10-K Audited Financials

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended: December 31, 2021

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: 001-33480

CLEAN ENERGY FUELS CORP.

(Exact name of registrant as specified in its charter)

Delaware	**33-0968580**
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)

4675 MacArthur Court, Suite 800, Newport Beach, CA 92660
(Address of principal executive offices, including zip code)

(949) 437-1000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, $0.0001 par value per share	CLNE	The Nasdaq Stock Market LLC (Nasdaq Global Select Market)

Securities registered pursuant to section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting stock held by non-affiliates of the registrant as of June 30, 2021, the last business day of the registrant's most recently completed second fiscal quarter, was approximately $1,793,811,286. The treatment of persons as affiliates of the registrant for purposes of this calculation is not, and shall not be considered, a determination as to whether any such person is an affiliate of the registrant for any other purpose.

As of February 18, 2022, there were 222,503,640 shares of the registrant's common stock, par value $0.0001 per share, issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement for its 2022 annual meeting of stockholders are incorporated by reference in Part III of this report.

Clean Energy Fuels Corp.

Annual Report on Form 10-K

For the Fiscal Year Ended December 31, 2021

TABLE OF CONTENTS

		Page
Cautionary Note Regarding Forward-Looking Statements		2
Part I		3
Item 1.	Business	3
Item 1A.	Risk Factors	16
Item 1B.	Unresolved Staff Comments	31
Item 2.	Properties	31
Item 3.	Legal Proceedings	31
Item 4.	Mine Safety Disclosures	32
Part II		33
Item 5.	Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	33
Item 6.	[Reserved]	34
Item 7.	Management's Discussion and Analysis of Financial Condition and Results of Operations	34
Item 7A.	Quantitative and Qualitative Disclosures About Market Risk	54
Item 8.	Financial Statements and Supplementary Data	55
Item 9.	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	109
Item 9A.	Controls and Procedures	109
Item 9B.	Other Information	110
Item 9C.	Disclosure Regarding Foreign Jurisdictions that Prevent Inspections	110
Part III		111
Item 10.	Directors, Executive Officers and Corporate Governance	111
Item 11.	Executive Compensation	111
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	111
Item 13.	Certain Relationships and Related Transactions, and Director Independence	111
Item 14.	Principal Accountant Fees and Services	111
Part IV		112
Item 15.	Exhibits and Financial Statement Schedules	112
Item 16.	Form 10-K Summary	112

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This annual report on Form 10-K contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Forward-looking statements are statements other than historical facts. These statements relate to future events or circumstances or our future performance, and they are based on our current assumptions, expectations and beliefs concerning future developments and their potential effect on our business. In some cases, you can identify forward-looking statements by the following words: "if," "may," "might," "shall," "will," "can," "could," "would," "should," "expect," "intend," "plan," "goal," "objective," "initiative," "anticipate," "believe," "estimate," "predict," "project," "forecast," "potential," "continue," "ongoing" or the negative of these terms or other comparable terminology. The absence of these words, however, does not mean that a statement is not forward-looking. The forward-looking statements we make in this report include statements about, among other things, our future financial and operating performance, our growth strategies, including expectations regarding our delivery and sales of renewable natural gas and sale of U.S. federal, state and local government credits, and anticipated trends in our industry and our business.

The preceding list is not intended to be an exhaustive list of all of the topics addressed by our forward-looking statements. Although the forward-looking statements we make reflect our good faith judgment based on available information, they are only predictions of future events and conditions. Accordingly, our forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our or our industry's actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by our forward-looking statements. Factors that might cause or contribute to such differences include, among others, those discussed in Item 1A. Risk Factors of this report, as such factors may be amended, supplemented or superseded from time to time by other reports we file with the Securities and Exchange Commission (the "SEC"). In addition, we operate in a competitive and rapidly evolving industry in which new risks emerge from time to time, and it is not possible for us to predict all of the risks we may face. Nor can we assess the impact of all factors on our business or the extent to which any factor or combination of factors could cause actual results to differ from our expectations. As a result of these and other potential risks and uncertainties, our forward-looking statements should not be relied on or viewed as guarantees of future events or conditions.

All of our forward-looking statements speak only as of the date they are made and, except as required by law, we undertake no obligation to update publicly any forward-looking statements for any reason, including to conform these statements to actual results or to changes in our expectations. You should, however, review the factors and risks we describe in the reports we will file from time to time with the SEC for the most recent information about our forward-looking statements and the risks and uncertainties related to these statements.

We qualify all of our forward-looking statements by this cautionary note.

* * * * * * *

Unless the context indicates otherwise, all references to "Clean Energy," the "Company," "we," "us," or "our" in this report refer to Clean Energy Fuels Corp., together with its majority and wholly owned subsidiaries.

We own registered or unregistered trademark or service mark rights to Clean Energy™ and Clean Energy Renewables™. Although we do not use the "®" or "™" symbol in each instance in which one of our trademarks appears in this report, this should not be construed as any indication that we will not assert our rights thereto to the fullest extent under applicable law. Any other service marks, trademarks and trade names appearing in this report are the property of their respective owners.

Investors and others should note that we disseminate information to the public about our Company, our products, services and other matters through various channels, including our website (www.cleanenergyfuels.com), SEC filings, press releases, public conference calls and webcasts, in order to achieve broad, non-exclusionary distribution of information to the public. We encourage investors and others to review the information we make public through these channels, as such information could be deemed to be material information.

PART I

Item 1. Business.

Overview

Clean Energy Fuels Corp., a Delaware corporation, is a leading renewable energy company focused on the procurement and distribution of renewable natural gas ("RNG") and conventional natural gas, in the form of compressed natural gas ("CNG") and liquefied natural gas ("LNG"), for the United States and Canadian transportation markets. RNG, which is delivered as either CNG or LNG, is created by the recovery and processing of naturally occurring, environmentally detrimental waste methane ("biogas") from non-fossil fuel sources - such as dairy and other livestock waste and landfills - for beneficial use as a replacement for fossil-based transportation fuels. Methane is one of the most potent climate-harming greenhouse gases ("GHG") with a comparative impact on global warming that is about 25 times more powerful than that of carbon dioxide. We are focused on developing, owning, and operating dairy and other livestock waste RNG projects and supplying RNG (procured from our own projects or from third parties) to our customers in the heavy and medium-duty commercial transportation sector. We have participated in the alternative vehicle fuels industry for over 20 years. We believe we are in a unique position because the valuable Environmental Credits (as defined below) are generated by the party that dispenses RNG into vehicle fuel tanks, and we believe we have access to more dispensers than any other market participant.

We believe we were the first organization to supply RNG for vehicle fuel use in the U.S., and sales of our RNG for such purpose have increased from 13.0 million gasoline gallon equivalents ("GGEs") in 2013 to 167.0 million GGEs in 2021. We are North America's leading provider of the cleanest fuel for the commercial transportation market, based on both the number of stations we operate and the amount of GGEs delivered of RNG, CNG and LNG, which amounted to a total of 402.6 million GGEs in 2021. With the Company's focus on RNG, our sales of RNG have grown from 12% of our vehicle fuel sales in 2013 to 78% of our vehicle fuel sales in 2021 (excluding GGEs from O&M (as defined below) sales and non-vehicle sales). We believe that during 2021 we provided 58% and 47% of the RNG used for transportation fuel in California and the United States, respectively.

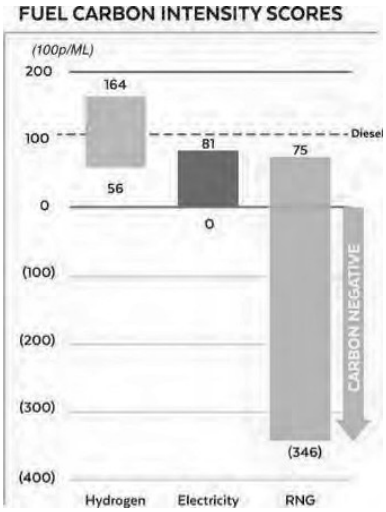
As a comprehensive clean energy solutions provider, we also design and build, as well as operate and maintain ("O&M"), public and private vehicle fleet customer stations in the United States and Canada; sell and service compressors and other equipment used in RNG production and at fueling stations; transport and sell RNG and conventional natural gas via "virtual" natural gas pipelines and interconnects; sell U.S. federal, state and local government credits (collectively, "Environmental Credits") we generate by selling RNG as a vehicle fuel, including Renewable Identification Numbers ("RIN Credits" or "RINs") under the federal Renewable Fuel Standard Phase 2 and credits under the California and the Oregon Low Carbon Fuel Standards (collectively, "LCFS Credits"); and obtain federal, state and local tax credits, grants and incentives. We serve fleet vehicle operators in a variety of markets, including heavy-duty trucking, airports, refuse, public transit, industrial and institutional energy users, and government fleets. We believe these fleet markets will continue to present a growth opportunity for our vehicle fuels for the foreseeable future.

Commercial transportation, including heavy-duty trucking, generates a significant portion of the emissions of overall carbon dioxide and other climate-harming GHGs, and transitioning this sector to low and negative carbon fuels is a critical step towards reducing overall global GHG emissions. According to the Global Carbon Project's Global Carbon Budget published in November 2021, 34.8 billion metric tons of carbon dioxide were emitted globally in 2020, of which 7.3 billion metric tons, or 21%, came from the transportation sector. There is a global demand for reducing GHG emissions, as evidenced by 96% of the world's countries having committed to the Paris Agreement according to The United Nations Framework Convention in Climate Change, and 92% of S&P 500 companies focusing on sustainability metrics, including GHG emissions, according to the Governance & Accountability Institute's Flash Report published in 2021.

Biogas, the primary source of RNG, is produced by microbes as they break down organic matter in the absence of oxygen. Our sources of commercial scale biogas are anaerobic digester gas ("ADG"), which is produced inside an airtight tank used to breakdown organic matter such as dairy and other livestock waste, and landfill gas ("LFG"), which is produced by the decomposition of organic waste at landfills.

Given the potential growth and positive environmental impact of RNG, our mission is to obtain as much RNG supply as possible. To that end we are pursuing development and ownership of dairy and other livestock waste ADG projects on our own and with partners including TotalEnergies S.E. ("TotalEnergies") and BP Products North America ("bp"). Further, we enter long-term RNG supply offtake agreements with well-known third parties that own RNG production facilities. Because our business transforms waste methane into a renewable source of energy, our RNG generates valuable Environmental Credits under federal and state initiatives.

Depending on the source, the California Air Resources Board ("CARB") has determined that RNG can have a significantly negative carbon intensity score, enabling our customers to achieve a net carbon negative emissions profile.



California Air Resources Board "Current Fuel Pathways" 2018 – 2020 (5th-95th percentile)

At present, we see the best use of RNG as a replacement for fossil-based fuel in the transportation sector. We believe the most attractive market for RNG is U.S. heavy-duty Class 8 trucking and, based on information from the American Trucking Association and our own internal estimates, we believe there are approximately 3.9 million Class 8 heavy-duty trucks operating in the U.S. that use over 40 billion gallons of diesel fuel per year. As of December 31, 2021, we deliver RNG to the transportation market through 548 fueling stations we own, operate or supply in 42 states and the District of Columbia in the U.S., including over 200 stations in California. We also own, operate, or supply 25 fueling stations in Canada. Critically, to generate valuable Environmental Credits, the RNG must be placed in vehicle fuel tanks. We believe our stations and customer relationships allow us to deliver substantially more RNG to vehicle operators than any other participant in the market – we calculate that we have access to more fueling stations and vehicle fleets than all our competitors combined. As of December 31, 2021, we serve over 1,000 fleet customers operating over 48,000 vehicles on our fuels. We believe we are the only company in the U.S. that provides RNG vehicle fuel at scale in California and nationally.

Longer term, we plan to provide hydrogen fuel to vehicle fleets. As operators deploy more hydrogen powered vehicles, we can modify our fueling stations to reform our RNG and deliver clean hydrogen to customers. We also believe our RNG can be used to generate clean electricity to power electric vehicles, and we have the capability to add electric vehicle charging at our station sites.

Our Principal Products, Services and Other Business Activities

Our principal products, services and other business activities are described below. Information about the revenue we receive from these activities is discussed in this report in Item 7. "Management's Discussion and Analysis of Results of Operations and Financial Condition."

RNG, CNG and LNG Sales.

- Unlike other renewables, RNG is easily stored, distributed, and replenished. RNG can be injected into the existing natural gas distribution network and delivered to vehicle fuel stations and liquefaction facilities. While other sources of green and renewable energy require significant infrastructure buildout to be implemented, RNG is affordable and easily used in existing infrastructure and vehicles today. Further, CARB has determined that RNG holds the lowest carbon intensity of any on-road vehicle fuel, including fully renewable electric from solar and wind.

- CNG is RNG or conventional natural gas that is compressed and dispensed in gaseous form. CNG is typically delivered by obtaining RNG or conventional natural gas from the pipeline and then compressing and storing it at a fueling station and dispensing it directly into a vehicle. Our CNG vehicle fuel sales are made primarily through contracts with our customers or on a per fill-up basis at prices we set at public access fueling stations based on prevailing market conditions. Through our subsidiary NG Advantage, LLC ("NG Advantage"), we also transport and sell CNG for non-vehicle purposes via virtual natural gas pipelines and interconnects to industrial and institutional energy users that do not have direct access to pipelines. NG Advantage also has the capability to transport RNG from production facilities to pipeline injection sites using its fleet of 98 high-capacity trailers.

- LNG is RNG or conventional natural gas that is cooled at a liquefaction facility to approximately -260 degrees Fahrenheit until it condenses into a liquid. We obtain LNG from our own liquefaction plants and from third-party suppliers. We own and operate LNG liquefaction plants near Boron, California and Houston, Texas, which we refer to as the "Boron Plant" and the "Pickens Plant," respectively. In 2021, we purchased 9.2% of our LNG from third-party suppliers, and we produced the remainder of our LNG at our plants. We sell LNG for use as a vehicle fuel on a bulk basis to fleet customers and through our network of public access fueling stations. We deliver LNG with our fleet of 74 tanker trailers to fueling stations, where it is stored and then dispensed in liquid form into vehicles. The need to liquefy and transport LNG generally causes LNG to cost more than CNG. We sell LNG through supply contracts and on a per fill-up basis at prices we set at public access fueling stations based on prevailing market conditions. Additionally, we sell LNG for non-vehicle purposes, including to customers who use LNG in rocket propulsion and oil fields, and for utility, industrial, marine and rail applications.

Sales of Environmental Credits. We generate Environmental Credits consisting of RINs, as well as LCFS Credits, when we sell RNG for use as a vehicle fuel in the United States, California, and Oregon, respectively. We sell these Environmental Credits to third parties who must comply with federal and state emissions requirements. Generally, the amount of Environmental Credits we generate increases as we sell higher volumes of RNG as a vehicle fuel. The number of Environmental Credits we sell and our revenue from these sales can vary depending on a number of factors, including the market for these credits, which has been volatile and subject to significant price fluctuations in recent periods (for example, in 2021, market prices for RINs were as high as $3.81 and as low as $1.95), any changes to the federal and state programs under which the credits are generated and sold, and our ability to strictly comply with these programs.

O&M Services. We perform maintenance service on Clean Energy-owned and customer-owned fueling stations. Our maintenance program is backed by nearly 200 company employed service technicians and support personnel, an in-house 24/7 remote monitoring center, technician training center, computerized maintenance management system and inventory warehouses throughout the United States and Canada. For maintenance services, we generally charge a fixed fee or per gallon fee based on volume of fuel dispensed at the station.

Station Construction and Engineering. We design and construct fueling stations and sell or lease some of these stations to our customers. Since 2008, we have served as the general contractor or supervised qualified third-party contractors to build over 440 natural gas fueling stations.

Grant Programs. We apply for and help our fleet customers apply for federal, state and local grant programs in areas in which we operate. These programs can provide funding for vehicle purchases, fueling station construction and vehicle fuel sales.

Our Company's Sustainability Program

Our vision is to deliver renewable transportation fuel for a cleaner, safer, more equitable tomorrow. We have a bold program, supported by ambitious goals to drive progress across four key pillars: fueling the transition to renewable energy in transportation, building the workforce for the future of renewable energy, advancing smart policies that drive the transformation to zero carbon fuels, and earning stakeholder trust.

Fueling transportation's transition to renewable energy.

The fuel we provide enables our customers to transition from diesel to a solution with significantly lower GHG emissions and air quality impacts ***today***. We are committed to pushing ourselves and our partners further by helping to produce and distribute 100% RNG fuels, which can have a negative net carbon emissions profile. We are also committed to doing our part to reduce our own emissions across our operations and supply chain.

Building the workforce for the future of renewable energy.

At Clean Energy we have always had a strong focus on employee and contractor safety and strive to be a zero-incident workplace for our service technicians and staff, as well as our customers using our facilities. Looking towards the future, we will continue to focus on employee recruitment, retention, and engagement, with a specific emphasis on diversity, equity, and inclusion in all areas of our company. It is important that we build and maintain a diverse and inclusive workforce, leadership team and supplier base that are reflective of the communities in which we operate. We acknowledge the lack of diversity in the energy sector and strive to be part of the solution.

Advancing smart policies that drive the transformation to zero carbon fuels.

Widespread change will be necessary across all industries to achieve our collective climate goals. We recognize that some physical climate impacts are unavoidable in the near-term and that the transition to a low carbon economy may bring new risks to our business. We also recognize that natural gas extraction and processing causes environmental and social impacts that must be appropriately managed. By investing in the energy transition, our aim is to reduce our own risks and provide lasting benefits to society. To enable lasting change, we must ensure the adoption of performance-driven state and federal policies that accelerate the shift from diesel and other transportation fuels with high GHG emissions and negative air quality impacts to zero net carbon emission transportation fuels. We are also committed to contributing to quality of life improvement and economic development in the communities where we conduct business, many of which are disadvantaged communities that suffer from poor air quality due to the use of transportation fuels, including diesel, that have high GHG emissions and significantly negative air quality impacts.

Earn stakeholder trust.

To realize our ambitious goals we are building trusted partnerships with our stakeholders. We strive to act ethically and responsibly in all aspects of our business, seeking to meet expectations related to human rights, labor standards, air quality, water stewardship, operational energy efficiency, biodiversity and land use, disaster preparedness, business ethics, and other material topics.

Market Opportunity

Increasing demand for RNG

Demand for RNG produced from biogas is significant and growing in large part due to an increased focus by the U.S. public and investors, as well as federal, state, and local regulatory authorities, on reducing the emission of GHG, such as methane. According to the U.S. Environmental Protection Agency ("EPA"), methane is a significant GHG, which accounted for roughly 10% of all U.S. GHG emissions from human activities in 2019 and which has a comparative impact on global warming that is about 25 times more powerful than that of carbon dioxide. Biogas processing facilities substantially reduce methane emissions at livestock farms and landfills, which together accounted for approximately 53% of U.S. methane emissions in 2019 according to the EPA.

Over the past decade we have seen the transportation sector be the fastest growing end market for RNG, where RNG is used as a replacement for fossil-based fuel. This growth has been principally driven by an increased focus on reducing GHGs, as well as Environmental Credits to support the production of renewable transportation fuels. According to NGV America, a national organization dedicated to the development of a growing, profitable, and sustainable market for vehicles powered by RNG, from 2015 to 2020, "RNG use as a transportation fuel increased 267%, and, in 2020, RNG use as a motor fuel displaced 3.5 million tons of carbon dioxide equivalent." Further, RNG engines now commercially available for heavy-duty, regional-haul, refuse, transit, and vocational applications have been certified to satisfy CARB's optional low nitrogen oxide ("NOx") emission standard of 0.02 g/bhp-hr. This means that these engines emit 90% less smog-forming NOx than the existing regulatory standards, making them the lowest certified ultra-low NOx emission engines in the U.S.

Given public and investor calls for, and U.S. federal, state, and local regulatory trends and policies aimed at, reducing GHG emissions, we expect continued regulatory support for RNG as a replacement for fossil-based fuels and therefore continued and growing demand for RNG in the foreseeable future.

Increasing vehicle availability

RNG is a replacement for fossil-based fuel consumed by vehicles that use internal combustion engines like those used in gasoline- or diesel-powered vehicles. Virtually any car, truck, bus, or other vehicle is capable of being manufactured to run on RNG. Many types and models of heavy- and medium-duty RNG vehicles and engines are available in the U.S., including, among others, long-haul tractors, refuse trucks, regional tractors, transit buses, ready-mix trucks, delivery trucks, vocational work trucks, school buses, shuttles, pickup trucks and cargo and passenger vans.

More broadly, many companies are developing and commercializing hydrogen and electric commercial vehicles, particularly as the commercial transportation sector increasingly shifts toward low-emission, zero-emission, or carbon neutral vehicle solutions. Cummins, Daimler, Dana, Navistar, PACCAR, Toyota, Volvo, XOS, Tesla and Nikola have announced their plans to bring long-haul Class 8 commercial hydrogen- and battery-powered vehicles to the market over the coming years.

Availability of long-term feedstock supply

Biogas is collected and processed to remove impurities for use as RNG and injected into existing natural gas pipelines. RNG is fully interchangeable with and chemically identical to conventional natural gas. Common sources of biogas include livestock farms, landfills, and wastewater resource recovery facilities.

Livestock- and landfill-sourced biogas represent a significant opportunity to produce RNG and reduce GHG emissions. Although LFG has accounted for most of the growth in biogas projects to date, biogas from dairy and other livestock farm waste represents significant opportunities for RNG production that remain largely untapped. According to ICF Consulting, Inc., the global consulting services company, by 2040, the U.S. has the technical potential to annually produce up to 34.4 billion GGEs of RNG, including up to 20.6 billion GGEs of ADG RNG.

All-in prices paid for RNG from livestock farms can be significantly higher than prices for RNG from landfills due to higher value available from state-level low-carbon fuel incentives for these projects. Given our market leadership in RNG, we believe we are well-positioned to take advantage of this market.

TotalEnergies Joint Venture

On March 3, 2021, we entered an agreement ("TotalEnergies JV Agreement") with TotalEnergies that created a 50/50 joint venture ("TotalEnergies JV") to develop ADG RNG production facilities in the United States. The TotalEnergies JV Agreement contemplates that the TotalEnergies JV will invest up to $400 million of equity in production projects, and TotalEnergies and the Company each committed to initially provide $50 million for the TotalEnergies JV. Pursuant to the TotalEnergies JV Agreement, the Company and TotalEnergies have given the TotalEnergies JV a limited right of first opportunity to invest in ADG RNG projects they respectively originate. On October 12, 2021, we entered into an LLC agreement (the "DR Development Agreement") with TotalEnergies to develop a dairy ADG RNG production facility project (the "DR JV"). Under the DR Development Agreement, we and TotalEnergies have each committed to contribute $7.0 million to the DR JV. On November 1, 2021, we and TotalEnergies have each contributed an initial $4.8 million capital contribution to the DR JV.

bp Joint Venture

On April 13, 2021, pursuant to a memorandum of understanding we entered into with bp in December 2020, we entered an agreement ("bp JV Agreement") with bp that created a 50/50 joint venture (the "bpJV") to develop, own and operate new ADG RNG production facilities in the United States. Pursuant to the bp JV Agreement, bp and the Company each committed to provide $50.0 million and $30.0 million, respectively, with an option available to the Company, exercisable prior to August 31, 2021, to commit an additional $20.0 million to the bpJV. bp's initial $50.0 million contribution was made on April 13, 2021 and consisted of all unpaid principal outstanding under the loan agreement dated December 18, 2020 (see Note 12), pursuant to which bp advanced $50.0 million to the Company to fund capital costs and expenses incurred prior to formation of the bpJV, including capital costs and expenses for permitting, engineering, equipment, leases and feed stock rights. On June 21, 2021, we contributed $50.2 million to the bpJV. In December 2021, the bpJV authorized a capital call (the "bpJV Capital Call") for additional funding of $143.2 million to construct ADG RNG projects under the bpJV. Pursuant to the bpJV Capital Call, we and bp are each required to contribute $71.6 million to the bpJV. As of December 31, 2021, we and bp have contributed $20.0 million and $71.6 million, respectively, to the bpJV in connection with the bpJV Capital Call. The remaining contribution balance of $51.6 million due from us will be paid on or prior to June 30, 2022. As of December 31, 2021, we and bp each own 50% of the bpJV. 100% of the RNG produced from projects developed and owned by the bpJV will be provided to the vehicle fuels market pursuant to our existing marketing agreement with bp.

Use of environmental credits to promote RNG growth

When used as a transportation fuel, RNG generates additional revenue streams through Environmental Credits. These Environmental Credits are provided under a variety of programs, including the national Renewable Fuel Standards ("RFS"), and state-level Low Carbon Fuel Standard ("LCFS") programs.

The RFS program requires transportation fuel to contain a minimum volume of renewable fuel. To fulfill this regulatory mandate, the EPA obligates refiners and importers ("Obligated Parties") to blend renewable fuel with standard fuel to meet renewable volume obligations ("RVOs"). Obligated Parties can comply with RVOs by either blending RNG into their existing fuel supply or purchasing Renewable Identification Numbers, or RINs. RINs are generated when eligible renewable fuels are produced or imported and blended with a petroleum product for use as a transportation fuel. The RFS program has been a key driver of growth in the RNG industry since 2014 when the EPA ruled that RNG, when used as a transportation fuel, would qualify for D3 RINs (for cellulosic biofuels), which are generally the most valuable among the four categories of RINs. In 2021, we generated 47% of all D3 RINs in the U.S.

The monetization of RNG also benefits from low-carbon fuel initiatives at the state-level, specifically from established programs in California and Oregon. California's LCFS ("CA LCFS") program requires fuel producers and importers to reduce the carbon intensity ("CI") of their products, with goals of a 10% reduction in carbon emissions from 1990 levels

by 2020 and a 20% reduction by 2030. CARB awards CA LCFS credits to RNG projects based on each project's CI score relative to the target CI score for gasoline and diesel fuels. The CI score represents the overall net impact of carbon emissions for each RNG pathway and is determined on a project-by-project basis. Because our business involves the capture and transformation of waste methane into a renewable source of energy, our customers are able to significantly reduce, if not eliminate, GHG emissions from their commercial transportation activities. Further, CARB calculates that RNG produced by livestock farms as carbon negative, generating substantial incremental CA LCFS credits. Multiple other states, including New York, Washington, and New Mexico are considering LCFS initiatives like those implemented in California and Oregon. In 2021, we generated 37% of all LCFS credits under Bio-CNG and Bio-LNG pathways in the CA LCFS.

Our Strategy

We aim to maintain and increase our position as the leading provider of RNG to the commercial vehicle market in North America, and our goal is to deliver 100% RNG to our entire fueling infrastructure by 2025. We support this objective through a multi-pronged strategy of:

- promoting the reduction of GHG emissions and expanding the use of renewable fuels to displace fossil-based fuels;
- increasing supply of RNG through the development of new project investment opportunities, expanding our existing supplier portfolio, and leveraging our existing fuel network and customer relationships;
- empowering our customers to achieve their sustainability and carbon reduction objectives;
- leveraging our management expertise; and
- utilizing our environmental, health and safety and compliance leadership.

Promoting the reduction of methane emissions and expanding the use of renewable fuels to displace fossil-based fuels.

We share the renewable fuel industry's commitment to provide sustainable renewable energy solutions and to offer products with high economic and ecological value. By simultaneously replacing fossil-based fuels and reducing overall methane emissions, our business has a substantial positive environmental impact. We are committed to the sustainable development, deployment, and utilization of RNG to reduce the country's dependence on fossil fuels. In addition to its methane emission benefits, the increased production and use of RNG has several other environmental benefits. Anaerobically digested livestock waste produces significantly less odor than conventional storage and land application systems. The odor of stored livestock waste mainly comes from volatile organic acids and hydrogen sulfide, which has a "rotten egg" smell. In an anaerobic digester, volatile organic compounds are reduced to methane and carbon dioxide, which are odorless gases. The volatized fraction of hydrogen sulfide is captured with the collected ADG and destroyed. Anaerobic digestion provides several water quality and land conservation benefits as well. Digesters, particularly heated digesters, can destroy more than 90% of disease-causing bacteria that might otherwise enter surface waters and pose a risk to human and animal health. Digesters also reduce biochemical oxygen demand ("BOD"). BOD is one measure of the potential for organic wastes to reduce dissolved oxygen in natural waters. Because fish and other aquatic organisms need minimum levels of dissolved oxygen for survival, farm practices that reduce BOD protect the health of aquatic ecosystems. In addition to protecting local water resources, implementing anaerobic digesters on livestock facilities improves soil health. Adding digestate to soil increases the organic matter content, reduces the need for chemical fertilizers, improves plant growth and alleviates soil compaction. Further, digestion converts nutrients in manure to a more accessible form for plants to use. The risks of water and soil contamination from flooding of open lagoons are also mitigated by digesters.

Increasing supply of RNG through the development of new project opportunities, expanding our existing supplier portfolio, and leveraging our extensive fueling station network and customer relationships.

In our view, the market has not yet unlocked the full potential of RNG. We believe we were the first to deliver RNG to the commercial vehicle fuels market, have the most extensive RNG fueling infrastructure and customer relationships,

and our stations and customer relationships allow us to obtain and deliver substantially more RNG to vehicle operators than any other participant in the market. This is important because RNG must be placed in vehicle fuel tanks to generate the valuable Environmental Credits.

Dependable and economic sources of RNG are critical to our success. We continue to leverage our relationships built over the past several decades to identify and execute new RNG project development and supply offtake opportunities. These come from our relationships with feedstock owners and project developers who value our long operating history, strong reputation in the industry and unmatched access to fueling infrastructure and vehicle operators for certainty of Environmental Credit generation. Based on the foregoing, we believe that we are presented with nearly every material development, supply and distribution opportunity in the market.

We exercise financial discipline in pursuing projects by targeting project returns that are in line with the relative risk of the specific projects and associated feedstock costs and any related attributes that can be monetized. We also support third parties that own RNG production facilities by entering into long-term RNG supply offtake agreements. As these facility owners expand their operations, we provide additional access to our fueling infrastructure and customer relationships.

As of December 31, 2021, we obtain RNG from over 60 supply sources. We believe that we have one of the largest and most diverse supply portfolios in the RNG industry, which allows us to provide certainty of RNG supply to our vehicle operator customers.

In our view, all the foregoing gives us a competitive advantage relative to existing and new market entrants.

Empowering our customers to achieve their sustainability and carbon reduction objectives.

In November 2021, global leaders met in Glasgow for the United Nations Climate Change Conference ("COP26") to draw up a successor plan to the Paris Agreement. With evidence indicating that the Paris Agreement targets may fall short of limiting global warming to 1.5°C, governments and regulators globally face mounting public pressure to address the threat of climate change. The United States has re-joined the Paris Agreement and key investors have made climate change risk management a key priority: BlackRock stated in its 2021 stewardship expectations guidelines that "[t]he events of [2020] have intensified our conviction that sustainability risk—and climate risk in particular—is investment risk" and plans to expand its engagement to the over 1,000 companies that are responsible for producing 90% of GHG emissions in its investment portfolio. Similarly, in his 2021 letter to boards, Cyrus Taraporevala, State Street's CEO and President, said the asset manager will be elevating its focus on climate risk, noting that ahead of COP26, "policymakers are assessing progress on climate change action . . . many jurisdictions are signaling their intentions to make climate risk disclosure mandatory." Vanguard has determined that "it is critical that public company boards fully understand and own climate-related risks."

We are uniquely positioned to empower our customers to achieve their sustainability and carbon reduction goals. Because our business involves the capture and transformation of waste methane into a renewable source of energy, we believe our customers can significantly reduce, if not eliminate, GHG emissions from their commercial transportation activities. Further, our RNG is available today to reduce climate harming GHG and meet sustainability objectives and at a cost to customers that is very competitive to other fuels like diesel. We also assist our customers in their transition to cleaner transportation fuels by helping them obtain federal, state and local tax credits, grants and incentives, providing vehicle financing, including through our *Zero Now* and Chevron Adopt-a-Port programs, engineering and constructing fueling stations, and facilitating customer selection of vehicle specifications that best meet their needs.

Management expertise

Our management team has decades of combined experience in the alternative vehicle fueling industry. We believe our team's proven track record in alternative vehicle fuels and focus on RNG gives us a strategic advantage in continuing to grow our business profitably. Our diverse experience and integration of key technical, environmental, and administrative support functions, along with our first-to-market advantage, further our ability to successfully deliver RNG to the commercial vehicle fuels market.

Environmental, health and safety and compliance leadership

Our executive team places the highest priority on the health and safety of our staff and third parties, as well as the preservation of the environment. Our corporate culture is built around supporting these priorities, as reflected in our well-established practices and policies. By setting and maintaining high standards in the renewable energy field, we are often able to contribute positively to the safety practices and policies of our partners and customers. Our high safety standards include use of wireless gas monitoring safety devices, active monitoring of all field workers, performing environmental health and safety ("EHS") audits and using technology throughout our safety processes from employee training in compliance with operational processes and procedures to emergency preparedness. By extension, we incorporate our EHS standards into our subcontractor selection qualifications to ensure that our commitment to high EHS standards is shared by our subcontractors. For 2021, our Total Recordable Incident Rate ("TRIR") was 1.55, which is lower than the 2020 national average of 3.00 TRIR for all industries. As of December 31, 2021, we have not received any U.S. Occupational Health and Safety Administration ("OSHA") or state OSHA citations in the last five years.

How We Generate Revenue

We generate revenue from selling RNG and conventional natural gas as a vehicle fuel, as well as by selling the associated Environmental Credits. RNG made up 78% of our vehicle fuel sales in 2021, and we expect 100% of our vehicle fuel sales to be RNG by 2025. Although RNG has the same chemical composition as natural gas from fossil sources, it has unique Environmental Credits assigned to it due to its origin from low- and negative-carbon, renewable sources. The Environmental Credits that we sell are composed of RINs and state low-carbon fuel credits, including CA LCFS credits, which are generated from the conversion of biogas to RNG that is used as a transportation fuel.

In addition to revenues generated from sales of RNG and conventional natural gas as a vehicle fuel and Environmental Credits, we also generate revenues by providing O&M services for public and private RNG, natural gas and hydrogen vehicle fleet customer stations; selling and servicing compressors and other equipment used in RNG production and at RNG, natural gas and hydrogen stations; and obtaining federal, state and local tax credits, grants and incentives.

We are experts in the engineering, design and construction of fueling stations. When we build stations for customers, we charge construction, other fees, or lease rates based on the size and complexity of the project. Since 2008, we have served as the general contractor or supervised qualified third-party contractors to build over 440 fueling stations.

- Equipment for RNG stations consists of compressors, storage tanks, and dispensers.
- As operators deploy hydrogen-powered vehicles, we can modify our fueling stations and build additional stations to dispense clean hydrogen produced from our RNG. The equipment for hydrogen stations includes compressors, storage tanks, and dispensers, provided that the cost of adding hydrogen fueling may be significant.
- We also have the capability to add high speed level 3 electric vehicle charging at our station sites, and our RNG can be used as a clean resource to power electric vehicles via on-site generation and/or routing to the electric grid serving our stations, although the cost of adding electric vehicle charging capacity may be significant.

Key Customer Markets

We serve customers in a variety of markets, including trucking, airports, refuse and public transit. We believe these customer markets are well-suited for the adoption of RNG and other alternative vehicle fuels because they consume relatively high volumes of fuel, refuel at centralized locations or along well-defined routes and/or are facing increasingly stringent emissions or other environmental requirements. During the years ended December 31, 2019, 2020 and 2021, no single customer accounted for 10% or more of our total revenue.

Trucking

We believe heavy-duty trucking represents the greatest opportunity for RNG and other alternatives to be used as a vehicle fuel. We estimate there are over 3.9 million Class 8 heavy-duty trucks operating in the U.S. using over 40 billion

gallons of diesel fuel each year. As of December 31, 2021, we provided our fuels to over 4,000 heavy-duty trucks. Because these high-mileage vehicles consume substantial amounts of fuel, operators can derive significant benefits from the carbon and GHG reductions associated with our vehicle fuels. We are focused on fueling more heavy-duty trucks, and many well-known shippers, manufacturers, retailers and other truck fleet operators have started to use RNG fueled trucks to move their freight, including, among others, Amazon, Pepsi Frito-Lay, FedEx, Anheuser-Busch, USPS, UPS, Kroger, KeHe Distributors, Kenan Advantage Group, and Estes Express.

Zero Now

To help facilitate the transition of trucking fleets to our fuels, we have launched the *Zero Now* truck financing program, which is intended to increase the deployment of the commercially available RNG heavy-duty trucks in the U.S. The *Zero Now* program generally involves the following:

- One or more truck leasing or finance companies lease or sell RNG heavy-duty trucks to vehicle fleets pursuant to lease or sale agreements with the fleet operators and with us, providing for periodic payments by the fleet operators of amounts equal to the payments that will be made for the lease or purchase of an equivalent truck that operates on diesel fuel, and providing for payment by us of the incremental cost of the RNG truck over and above the diesel-equivalent truck; and
- The fleet operators participating in the program enter into fueling agreements with us, under which the operators agree to purchase from us, and we agree to supply, minimum monthly volumes of RNG at prices (which are lower than diesel prices per GGE) to operate the trucks leased or purchased in the program and allow us to recoup our payment of the incremental cost of the RNG trucks.

We previously entered into the following agreements to implement the *Zero Now* program:

- In January 2019, we entered into a term credit agreement with Société Générale ("SG"), as lender, under which we were permitted to draw, from time to time, through January 2, 2022, up to an aggregate of $100.0 million to satisfy our payment obligations for the incremental cost of RNG trucks under the truck lease or sale agreements described above; and
- In January 2019, we entered into a credit support agreement with TotalEnergies Holdings USA Inc. ("THUSA"), a wholly owned subsidiary of TotalEnergies (which indirectly through another of its subsidiaries, holds approximately 19% of our outstanding common stock), pursuant to which THUSA guaranteed our obligations under the term credit agreement with SG. In consideration for such guaranty, we agreed to pay to THUSA a quarterly fee at a rate per annum equal to 10% of the average amount owed by us under the term credit agreement during the preceding quarter.

In addition, we are supporting the growth of the RNG heavy-duty truck market through commodity swap arrangements under which we have locked in a discount price to diesel for customers fueling with us; our negotiation of favorable fuel tank pricing from manufacturers, which we are passing along to our customers; and our network of truck-friendly fueling stations (we refer to this network as "America's Natural Gas Highway" or "ANGH"), which we have built in key locations nationwide. Many existing ANGH stations are located at Pilot Travel Centers, the largest truck fueling operator in the United States.

Chevron Adopt-a-Port Program

In 2020, we partnered with Chevron on Adopt-a-Port, an initiative that provides truck operators serving the ports of Los Angeles and Long Beach with RNG to reduce emissions. For its part, Chevron provides funding for Adopt-a-Port and supplies RNG to Clean Energy stations near the ports. Chevron's funding allows truck operators to subsidize the cost of buying new RNG-powered trucks. We manage the program, including offering fueling services for qualified truck operators. Truck operators participating in the program, which supports the ports' Clean Trucks Program and Clean Air Action Plan, fuel at our stations supplied with Chevron RNG. Importantly, Adopt-a-Port provides a meaningful air quality improvement for the adversely impacted communities around the port – such communities typically have the worst air

quality in the nation. As of December 31, 2021, customers had ordered 211 trucks under Adopt-a-Port, and we expect over 300 additional trucks to be ordered in 2022.

Airports

We estimate that vehicles serving airports in the United States, including airport delivery fleets, rental car and parking passenger shuttles and taxis, consume an aggregate of approximately two billion gallons of fuel per year. Additionally, many U.S. airports face emissions challenges and are under regulatory directives and political pressure to reduce pollution, particularly as part of any expansion plans. As a result, many of these airports have adopted various strategies to address tailpipe emissions, including rental car and hotel shuttle consolidation and requiring or encouraging service vehicle operators to switch their fleets to our vehicle fuels. As of December 31, 2021, we serve customers at 32 airports.

Refuse

We believe that there are nearly 200,000 refuse trucks in the United States that collect and haul refuse and recyclables, which aggregately consume approximately two billion gallons of fuel per year. We estimate that approximately 60% of new refuse trucks are capable of operating on RNG, up from approximately 3% of new refuse trucks in 2008. Refuse haulers are increasingly adopting trucks that run on our vehicle fuels to realize operational savings and to address demands for reduced emissions from the public, investors, and governmental agencies. As of December 31, 2021, we fuel approximately 14,000 refuse vehicles for customers including Waste Management, Republic Services, Waste Connections, GFL Environmental, Atlas Disposal, Burrtec, CR&R, Recology and Waste Pro, among others. We also provide vehicle fueling services to municipal refuse fleets.

Public Transit

We believe that there are over 72,000 municipal transit buses operating in the United States. In many areas, increasingly stringent emissions standards have limited the fueling options available to public transit operators. Also, transit agencies typically fuel at a central location and use high volumes of fuel. We estimate that transit agencies in the United States consume approximately one billion gallons of fuel per year. Many transit agencies have been early adopters of vehicles using our fuels, and over 25% of existing transit buses and approximately 35% of new transit buses can operate on RNG. As of December 31, 2021, we fuel over 9,000 transit vehicles for customers including Los Angeles County Metropolitan Transit Authority, New York MTA, Foothill Transit (Los Angeles County, California), Orange County Transit Authority, Santa Monica Big Blue Bus, Dallas Area Rapid Transit, Phoenix Transit, New Jersey Transit, Jacksonville Transportation Authority, NICE Bus (Nassau County, New York) and Washington Metro Area Transportation Authority.

Competition

There are many other companies operating in the renewable energy and waste-to-energy space. Regarding RNG production and supply, our primary competition is from other companies or solutions for access to biogas from waste. Evolving consumer preferences, regulatory conditions, ongoing waste industry trends, and project economics have a strong effect on the competitive landscape. We have demonstrated a track record of strategic flexibility across our history which has allowed us to pivot towards projects and markets that we believe deliver optimal returns and stockholder value in response to changes in market, regulatory and competitive pressures. The biogas and RNG markets are heavily fragmented. We believe we are in a strong position to compete for new project development and supply opportunities. Competition for such opportunities, however, including the prices being offered for fuel supply, affect the profitability of the opportunities we pursue, and may make opportunities unsuitable to pursue.

The market for vehicle fuels is highly competitive. The biggest competition for RNG use as a vehicle fuel is gasoline and diesel because most vehicles in our key markets are powered by these fuels. Many established businesses are in the market for RNG and other alternatives for use as vehicle fuel, including alternative vehicle and alternative fuel companies, refuse collectors, industrial gas companies, truck stop and fuel station owners, fuel providers, utilities and their affiliates and other organizations. We also compete with suppliers of other alternative vehicle fuels, including renewable diesel, biodiesel and ethanol, as well as producers and fuelers of alternative vehicles, including hybrid, electric and hydrogen-

powered vehicles. Additionally, our stations compete directly with other natural gas fueling stations and indirectly with electric vehicle charging stations and fueling stations for other vehicle fuels. In addition, we transport and sell CNG through NG Advantage's virtual natural gas pipelines and interconnects and compete with other participants in this market.

If the alternative vehicle fuel market grows then the number and type of participants in this market and their level of capital and commitments to alternative vehicle fuel programs will increase. We compete for vehicle fuel users based on demand for the type of fuel, which may be affected by a variety of factors, including, among others, cost, supply, availability, quality, cleanliness, and safety of the fuel; cost, availability and reputation of vehicles and engines; convenience and accessibility of fueling stations; regulatory mandates and other requirements; and recognition of the brand. We believe we compare favorably with our competitors based on these factors; however, some of our competitors have substantially greater financial, marketing, and other resources than we have. As a result, these competitors may be able to respond more quickly to changes in customer preferences, legal requirements or other industry or regulatory trends; devote greater resources to the development, promotion and sale of their products; adopt more aggressive pricing policies, dedicate more effort to infrastructure and systems development in support of their business or product development activities; implement more robust or creative initiatives to advance consumer acceptance of their products; or exert more influence on the regulatory landscape that impacts the vehicle fuels market.

Governmental Regulation

We are subject to a variety of federal, state and local laws and regulations relating to the environment, health and safety, labor and employment, building codes and construction, zoning and land use, the government procurement process, any political activities or lobbying in which we may engage, public reporting and taxation, among others. Many of these laws and regulations are complex, change frequently and have become more stringent over time. Any changes to existing regulations, adoption of new regulations or failure by us to comply with applicable regulations may result in significant additional expense to us or our customers or a variety of administrative, civil, and criminal enforcement measures, any of which could have a material adverse effect on our business, reputation, financial condition and results of operations. Certain regulations that significantly affect our various operating activities are described below. Compliance with these regulations has not had a material effect on our capital expenditures, earnings, or competitive position to date, but new regulations or amendments to existing regulations to make them more stringent could have such an effect in the future. We cannot estimate the expenses we may incur to comply with potential new laws or changes to existing laws, or the other potential effects these laws may have on our business, and these unknown costs and effects are not specifically contemplated by our existing customer agreements or our budgets and cost estimates.

We are subject to federal, state, and local air quality, solid waste, and water quality regulations and permitting requirements. Specific construction and operating permit requirements may differ among states. Specific permits we frequently must obtain include air permits, nonhazardous waste management permits, pollutant discharge elimination permits, and beneficial use permits. We must also maintain compliance with relevant federal, state and local environmental, health and safety requirements.

RNG projects are subject to federal RFS program regulations. The EPA administers the RFS program with volume requirements for several categories of renewable fuels. The EPA's RFS regulations establish rules for fuel supplied and administer the RIN system for compliance, trading credits and rules for waivers. The EPA calculates a blending standard for each year based on estimates of gasoline usage from the Department of Energy's Energy Information Agency. Separate quotas and blending requirements are determined for cellulosic biofuels, biomass-based diesel, advanced biofuels, and total renewable fuel. Further, we are required to register each RNG project with the EPA and relevant state regulatory agencies. We qualify our RINs through a voluntary Quality Assurance Plan, which typically takes from three to five months from first injection of RNG into the commercial pipeline system. Further, we may make a large project investment prior to receiving the regulatory approval and RIN qualification. In addition to registering each RNG project, we are subject to quarterly audits under the Quality Assurance Plan of our projects to validate our qualification.

Our operations are also subject to state renewable fuel standard regulations. The CA LCFS program requires producers of petroleum-based fuels to reduce the CI of their products, which began with a quarter of a percent in 2011 to a 10% total reduction by 2020, and a 20% total reduction by 2030. Petroleum importers, refiners and wholesalers can either develop their own low-carbon fuel products or buy CA LCFS credits from other companies that develop and sell low-

carbon alternative fuels, such as biofuels, electricity, natural gas, or hydrogen. We are subject to a qualification process like that for RINs, including verification of CI levels and other requirements, existing for CA LCFS credits.

Before an RNG project can be developed, all Resource Conservation and Recovery Act ("RCRA") Subtitle D requirements (requirements for nonhazardous solid waste management) must be satisfied. In particular, because methane is explosive in certain concentrations and poses a hazard if it migrates, biogas collection systems must meet RCRA Subtitle D standards for gas control. RNG projects may be subject to other federal, state and local regulations that impose requirements for nonhazardous solid waste management.

Certain of our operations may be subject to federal requirements to prepare for and respond to spills or releases from tanks and other equipment and provide training on operation, maintenance and discharge prevention procedures and the applicable pollution control laws. We may be required to develop spill prevention, control and countermeasure plans to memorialize our preparation and response plans and to update them on a regular basis.

Our operations may result in liability for hazardous substances or other materials placed into soil or groundwater. Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other federal, state, or local laws governing the investigation and cleanup of sites contaminated with hazardous substances, we may be required to investigate and/or remediate soil and groundwater contamination at our projects, contiguous and adjacent properties and other properties owned and/or operated by third parties.

Additionally, biogas projects may need to obtain National Pollutant Discharge Elimination System permits if wastewater is discharged directly to a receiving water body. If wastewater is discharged to a local sewer system, biogas projects may need to obtain an industrial wastewater permit from a local regulatory authority for discharges to a Publicly Owned Treatment Works. The authority to issue these permits may be delegated to state or local governments by the EPA. The permits, which typically last five years, limit the quantity and concentration of pollutants that may be discharged. Permits may require wastewater treatment or impose other operating conditions to ensure compliance with the limits. In addition, the Clean Water Act and implementing state laws and regulations require individual permits or coverage under general permits for discharges of storm water runoff from certain types of facilities.

On September 23, 2020, the California Governor issued an Executive Order N-79-20 setting goals for expanding the sale and use of zero-emission vehicles within California, including 100% of in-state sales of new passenger cars and trucks to be zero-emission by 2035, and 100% of medium- and heavy-duty truck vehicles in California to be zero-emission by 2045 for all operations where feasible. The Governor also directed CARB to develop and propose regulations to achieve these goals consistent with state and federal law. This order is the latest in a series of targets set by California to transform the energy and transportation fuel sectors and reduce GHG emissions. Executive Order B55-18 sets a statewide target to achieve carbon neutrality no later than 2045. The transitioning of California's energy markets to increased reliance on renewable and carbon-free sources has the potential to create favorable market conditions for RNG but could also harm our vehicle fueling business. Future regulatory actions will be required to meet the state's zero-emission and carbon neutrality targets.

Employees and our Human Capital

As of December 31, 2021, we employed 482 people. We have not experienced any work stoppages, and none of our employees are subject to collective bargaining agreements.

The success and growth of our business is significantly correlated with our ability to recruit, train, promote and retain talented individuals at all levels of our organization. To succeed in a competitive labor market, we have developed and maintain key recruitment and retention strategies. These include competitive salary structures, including bonus compensation programs, and competitive benefits policies, including paid time off for vacations, sick leave and holidays, short-term disability coverage, group term life insurance, and various retirement savings and incentive plans.

Safety of our personnel is a core value of Clean Energy and maintaining a safe work environment is critical to an energy company's ability to attract and retain employees. To support the health and safety of our employees during the COVID-19 pandemic, we have enhanced our safety protocols to promote social distancing, implemented more

extensive cleaning and sanitation processes, incorporated temperature checks, required facial covering, instituted employee questionnaires, restricted corporate travel and visitor access to facilities, and implemented work-from-home and work-flex initiatives for certain employees.

Sales and Marketing

We market our brands, products and services primarily through our direct sales force, which includes sales representatives covering all of our major geographic and customer markets, as well as attendance at trade shows and participation in industry conferences and events. Our sales and marketing team also works closely with federal, state and local government agencies to provide education about the value of our vehicle fuels and to keep abreast of proposed and newly adopted regulations that affect our industry.

Seasonality

To some extent, our business may experience seasonality. For more information, see the discussion under "Seasonality and Inflation" in Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Intellectual Property

Our intellectual property rights primarily consist of trade secrets, patents, know-how and trademarks, and we rely on a combination of trademark laws, trade secret laws, confidentiality provisions and other contractual provisions to protect these rights and our proprietary information. These intellectual property rights help us to retain existing business and secure new relationships with customers.

More Information

Our website is located at www.cleanenergyfuels.com. We make available, free of charge on our website, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The SEC maintains a website at www.sec.gov that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC, including us. All references to our website in this report are inactive textual references, and the contents of our website are not incorporated into this report.

Item 1A. Risk Factors

An investment in our Company involves a high degree of risk of loss. You should carefully consider the risk factors discussed below and all of the other information included in this report before you make any investment decision regarding our securities. We believe the risks and uncertainties described below are the most significant we face, but additional risks and uncertainties not known to us or that we currently deem immaterial could also be or become significant. The occurrence of any of these risks could harm our business, financial condition, results of operations, prospects and reputation and could cause the trading price of our common stock to decline.

Risks Related to Our Business

The COVID-19 pandemic and measures intended to reduce its spread has, and may continue to, adversely affect our business, results of operations and financial condition.

Given the dynamic nature of the novel coronavirus ("COVID-19") pandemic, including the travel bans, quarantines, business limitations and other governmental restrictions that were previously instituted and may in the future be reinstituted, and the related adverse impact these restrictions have had, and may continue to have, on the economy generally, our business and financial results may continue to be adversely affected by the COVID-19 pandemic.

Our operations have been designated "essential critical infrastructure work" in the energy sector by the U.S. Department of Homeland Security, meaning that we have been able to continue full operations. Despite our essential designation and our continued operations, however, we are subject to various risk and uncertainties because of the COVID-19 pandemic that could materially adversely affect our business, results of operations and financial condition, including the following:

- a further delay in the adoption of our RNG and natural gas vehicle fuels by heavy-duty trucks and/or a delay in increasing the use of our vehicle fuels;
- a continued or further decrease in the volume of truck and fleet operations, including shuttle buses at airports, and lower-than-normal levels of public transportation generally, which have resulted and may continue to result in decreased demand for our vehicle fuels; and
- the impact of business disruptions on the production of vehicles and engines that use our fuels, which has resulted in, and may continue to result in, plant closures, decreased manufacturing capacity, and delays in deliveries.

The duration and extent of the impact of the COVID-19 pandemic on our business and financial results will depend on future developments, including the duration, severity and spread of the pandemic, actions taken to contain its spread, any further resurgence of COVID-19, the severity and transmission rates of new variants of COVID-19, the availability, distribution, public acceptance and efficacy of vaccines and therapeutics for COVID-19, and how quickly and to what extent normal economic and operating conditions can resume within the markets in which we operate, each of which are highly uncertain at this time and outside of our control. Even after the COVID-19 pandemic subsides, we may continue to experience adverse effects to our business and financial results because of its global economic impact, including any economic downturn or recession that has occurred or may occur. The adverse effect of the COVID-19 pandemic on our business, results of operations and financial condition could be material.

Our success is dependent on the willingness of fleets and other consumers to adopt our vehicle fuels, which may not occur in a timely manner, at expected levels or at all.

Our success is highly dependent on the adoption by fleets and other consumers of our RNG and conventional natural gas vehicle fuels. The market for our vehicle fuels has experienced slow, volatile and unpredictable growth in many sectors. For example, adoption and deployment of our vehicle fuels in heavy-duty trucking has been slower and more limited than we anticipated. Also, other important fleet markets, including airports and public transit, had slower volume and customer growth in 2019, 2020 and 2021 that may continue. If the market for our vehicle fuels does not develop at improved rates or levels, or if a market develops but we are not able to capture a significant share of the market or the market subsequently declines, our business, prospects, financial condition, and operating results would be harmed.

Factors that may influence the adoption of our vehicle fuels, many of which are beyond our control, include, among others:

- Lack of demand for trucks that use our vehicle fuels;
- Adoption of government policies or programs or increased publicity or popular sentiment in favor of vehicles or fuels other than RNG and natural gas, including long-standing support for gasoline and diesel-powered vehicles, changes to emissions requirements applicable to vehicles powered by gasoline, diesel, RNG, natural gas, or other vehicle fuels and/or growing support for electric and hydrogen-powered vehicles;
- Perceptions about the benefits of our vehicle fuels relative to gasoline, diesel and other alternative vehicle fuels, including with respect to factors such as supply, cost savings, environmental benefits and safety;
- Increases, decreases or volatility in the supply, demand, use and prices of crude oil, gasoline, diesel, RNG, natural gas and other vehicle fuels, such as electricity, hydrogen, renewable diesel, biodiesel and ethanol;
- Inertia among fleets and fleet vehicle operators, who may be unable or unwilling to prioritize converting a fleet to our vehicle fuels over an operator's other general business concerns, particularly if the operator is not

sufficiently incentivized by emissions regulations or other requirements or lacks demand for the conversion from its customers or drivers;

- Vehicle cost, fuel efficiency, availability, quality, safety, convenience (to fuel and service), design, performance and residual value, as well as operator perception with respect to these factors, generally and in our key customer markets and relative to comparable vehicles powered by other fuels;
- The development, production, cost, availability, performance, sales and marketing and reputation of engines that are well-suited for the vehicles used in our key customer markets, including heavy-duty trucks and other fleets;
- Increasing competition in the market for vehicle fuels generally, and the nature and effect of competitive developments in this market, including improvements in or perceived advantages of other vehicle fuels and engines powered by these fuels;
- The availability and effect of environmental, tax or other government regulations, programs or incentives that promote our products or other alternatives as a vehicle fuel, including certain programs under which we generate credits by selling RNG as a vehicle fuel, as well as the market prices for such credits; and
- Emissions and other environmental regulations and pressures on producing, transporting, and dispensing our fuels.

In June 2020, CARB adopted the Advanced Clean Trucks regulation, which requires manufacturers to sell a gradually increasing proportion of zero-emission electric trucks, vans and pickup trucks from 2024 onwards. By the year 2045, the Advanced Clean Trucks regulation seeks to have every new commercial vehicle sold in California be zero-emissions. Further, in September 2020, the Governor of the State of California issued an executive order (the "September 2020 Executive Order") providing that it shall be the goal of California that (i) 100% of in-state sales of new passenger cars and trucks will be zero-emission by 2035, (ii) 100% of medium- and heavy-duty vehicles in California will be zero-emission by 2045 for all operations, where feasible, and by 2035 for drayage trucks, and (iii) the state will transition to 100% zero-emission off-road vehicles and equipment by 2035 where feasible. The September 2020 Executive Order also directed CARB to develop and propose regulations and strategies aimed at achieving the foregoing goals. Among other things, we believe the intent of the Advanced Clean Trucks regulation and the September 2020 Executive Order is to limit and ultimately discontinue the production and use of internal combustion engines because such engines have "tailpipe" emissions. If either the Advanced Clean Trucks regulation or any additional regulations adopted by CARB, including pursuant to the September 2020 Executive Order, is permitted to take effect, it may slow, delay or prevent the adoption by fleets and other commercial consumers of our vehicle fuels, particularly in California. Moreover, because of the adoption of the Advanced Clean Trucks regulation and the issuance of the September 2020 Executive Order, other states have taken steps to enact similar regulations, which actions may accelerate if either regulation is permitted to take effect, thereby slowing, delaying or preventing the adoption of our vehicle fuels in those states as well. In December 2021, President Biden signed an executive order (the "2021 Executive Order") that directs the federal government to achieve certain goals, including purchasing 100% zero-emission vehicles by 2035 for its fleet of over 600,000 cars and trucks.

Our RNG business may not be successful.

Our RNG business consists of procuring RNG from projects we plan to develop and own or from projects owned by third-party producers and reselling this RNG through our fueling infrastructure.

The success of our RNG business depends on our ability to secure, on acceptable terms, a sufficient supply of RNG; sell this RNG in adequate volumes and at prices that are attractive to customers and produce acceptable margins for us; and sell Environmental Credits we may generate under applicable federal or state programs from our sale of RNG as a vehicle fuel at favorable prices.

Our ability to maintain an adequate supply of RNG is subject to risks affecting RNG production. Projects that produce RNG often experience unpredictable production levels or other difficulties due to a variety of factors, including, among others, problems with equipment, severe weather, droughts, financial condition of the applicable ADG and LFG source owner, health crises, including the ongoing COVID-19 pandemic, construction delays, technical difficulties, high operating costs, limited availability, or unfavorable composition of collected feedstock gas, and plant shutdowns caused

by upgrades, expansion or required maintenance. In addition, increasing demand for RNG will result in more robust competition for supplies of RNG, including from other vehicle fuel providers, gas utilities (which may have distinct advantages in accessing RNG supply including potential use of ratepayer funds to fund RNG purchases if approved by a utility's regulatory commission) and other users and providers. If we or any of our RNG suppliers experience these or other difficulties in RNG production processes, or if competition for RNG development projects and supply increases, then our supply of RNG and our ability to resell it as a vehicle fuel could be jeopardized.

Our ability to generate revenue from our sale of RNG or our generation and sale of Environmental Credits depends on many factors, including the markets for RNG as a vehicle fuel and for Environmental Credits. The markets for Environmental Credits have been volatile and unpredictable in recent periods, and the prices for these credits are subject to fluctuations. For example, in 2021, market prices for RINs have been as high as $3.81 and as low as $1.95. Additionally, the value of Environmental Credits, and consequently the revenue levels we may receive from our sale of these credits, may be adversely affected by changes to the federal and state programs under which these credits are generated and sold, prices for and use of oil, diesel or gasoline, the inclusion of additional qualifying fuels in the programs, increased production and use of other fuels in the programs, or other conditions. Our ability to generate revenue from sales of Environmental Credits depends on our strict compliance with these federal and state programs, which are complex and can involve a significant degree of judgment. If the agencies that administer and enforce these programs disagree with our judgments, otherwise determine we are not in compliance, conduct reviews of our activities or make changes to the programs, then our ability to generate or sell these credits could be restricted permanently limited or lost entirely, and we could also be subject to fines or other sanctions. Any of these outcomes could force us to purchase credits in the open market to cover any credits we have contracted to sell, retire credits we may have generated but not yet sold, reduce or eliminate a significant revenue stream or incur substantial additional and unplanned expenses. We experienced many of these effects in connection with the administrative review by CARB of our generation of LCFS Credits in the third and fourth quarters of 2017, during which we were restricted from selling and transferring accumulated LCFS Credits, we were required to make cash payments to third parties to settle preexisting commitments to transfer LCFS Credits, and certain of our LCFS Credits were invalidated. Any permanent or temporary discontinuation or suspension of federal and state programs to provide credits, grants and incentives, such as an alternative fuel tax credit ("AFTC"), would also adversely impact our revenue. Moreover, in the absence of programs that allow us to generate and sell Environmental Credits or other federal and state programs that support the RNG vehicle fuel market, or if our customers are not willing to pay a premium for RNG, we may be unable to operate our RNG business profitably or at all.

Our commercial success depends on our ability and the ability of our third-party supply sources to successfully develop and operate projects and produce expected volumes of RNG.

Our specific focus on RNG exposes us to risks related to the supply of and demand for RNG and Environmental Credits, the cost of capital expenditures, government regulation, and economic conditions, among other factors. As an RNG supplier we may also be negatively affected by lower RNG production resulting from lack of feedstock, mechanical breakdowns, faulty technology, competitive markets or changes to the laws and regulations that mandate the use of renewable energy sources.

In addition, other factors related to the development and operation of renewable energy projects could adversely affect our business, including: (i) changes in pipeline gas quality standards or other regulatory changes that may limit our ability to transport RNG on pipelines for delivery to vehicles or increase the costs of processing RNG to allow for such deliveries; (ii) construction risks, including the risk of delay, that may arise because of inclement weather, labor disruptions or increases in costs for equipment and construction materials; (iii) operating risks; (iv) weather conditions, including droughts; (v) financial condition of the applicable ADG and LFG source owner; (vi) health of the applicable dairy herd; (vii) consolidation in the dairy industry; (viii) budget overruns; (ix) possible liabilities because of unforeseen environmental, construction, technological or other complications; (x) failures or delays in obtaining desired or necessary rights, including leases and feedstock agreements; and (xi) failures or delays in obtaining and keeping in good standing permits, authorizations and consents from local city, county, state and U.S. federal governments as well as local and U.S. federal governmental organizations. Any of these factors could prevent completion or operation of projects, or otherwise adversely affect our business, financial condition, and results of operations.

Acquisition, financing, construction, and development of projects by us or our partners that own projects may not commence on anticipated timelines or at all.

Our strategy is to continue to expand, including through the acquisition of additional projects and by signing additional supply agreements with third-party project owners. From time to time we and our partners enter into nonbinding letters of intent for projects. Until the negotiations are final, however, and the parties have executed definitive documentation, we or our partners may not be able to consummate any development or acquisition transactions, or any other similar arrangements, on the terms set forth in the applicable letter of intent or at all.

The acquisition, financing, construction and development of projects involves numerous risks, including:

- the ability to obtain financing for a project on acceptable terms or at all;
- difficulties in identifying, obtaining, and permitting suitable sites for new projects;
- failure to obtain all necessary rights to land access and use;
- inaccuracy of assumptions with respect to the cost and schedule for completing construction;
- inaccuracy of assumptions with respect to the biogas potential, including quality, volume, and asset life;
- delays in deliveries or increases in the price of equipment;
- permitting and other regulatory issues, license revocation and changes in legal requirements;
- increases in the cost of labor, labor disputes and work stoppages;
- failure to receive quality and timely performance of third-party services;
- unforeseen engineering and environmental problems;
- cost overruns;
- accidents involving personal injury or the loss of life; and
- weather conditions, catastrophic events, including fires, explosions, earthquakes, droughts and acts of terrorism, and other force majeure events.

We are dependent on the production of vehicles and engines in our key customer and geographic markets by vehicle and engine manufacturers, over which we have no control.

Vehicle and engine manufacturers control the development, production, quality assurance, cost and sales and marketing of their products, which shapes the performance, availability and reputation of these products in the marketplace. We are dependent on these manufacturers to succeed in our target markets, and we have no influence or control over their activities. For example, Cummins Westport is the only engine manufacturer for the RNG and natural gas heavy-duty truck market in the United States, and Cummins Westport and other original equipment manufacturers currently produce a relatively small number of engines and vehicles that use our vehicle fuels. These manufacturers may decide not to expand or maintain, or may decide to discontinue or curtail, their engine or vehicle product lines for a variety of reasons, including as a result of the adoption of government policies or programs such as the Advanced Clean Trucks regulation and the September 2020 Executive Order. Further, the supply of engines or vehicle product lines by these manufacturers has been be disrupted/delayed due to the COVID-19 pandemic. The limited production of engines and vehicles that use our fuels increases their cost and limits availability, which restricts large-scale adoption, and may reduce resale value, which may contribute to operator reluctance to convert their vehicles to our fuels. In addition, some operators have communicated to us that the first-generation models of heavy-duty truck engines using our fuels have a reputation for unsatisfactory performance, and that this reputation or their first-hand experiences of such performance may be a factor in operator decisions regarding whether to convert their fleets to vehicles that use our fuels.

To secure ADG RNG from new projects we develop, we typically face a long and variable development cycle that requires significant resource commitments and a long lead time before we realize revenue.

The development, design and construction process for ADG RNG projects generally lasts between 12 to 18 months on average. Prior to entering into a letter of intent with respect to an ADG RNG project, we typically conduct a preliminary assessment of whether the site is commercially viable based on our expected return on investment, investment payback period, and other operating metrics, as well as the necessary permits to develop a project on that site. After entering a project letter of intent, we perform a more detailed review of the site's facilities, which serves as the basis for the final specifications of the project. Finally, we negotiate and execute contracts with the site owner. This extended development process requires the dedication of significant time and resources from our personnel, with no certainty of success or recovery of our expenses. Further, upon commencement of operations, it takes about 12 months for the project to ramp up to expected production level, receive necessary registrations and approvals from the Environmental Protection Agency (the "EPA") and CARB, and begin generating revenue. All these factors, and in particular, expenditures on development of projects that will not generate significant revenue in the near term, can contribute to fluctuations in our quarterly financial performance and increase the likelihood that our operating results in a particular period will fall below investor expectations.

Livestock waste and dairy farm projects have different economic models and risk profiles than landfill facilities, and we may not be able to achieve the operating results we expect from these projects.

Livestock waste and dairy farm projects produce significantly less RNG and have higher operating costs than landfill facilities. As a result, these projects are even more dependent on the LCFS credits and, to a lesser extent, RINs for commercial viability. If CARB reduces the CI score that it applies to waste conversion projects, such as dairy digesters, the number of LCFS credits for RNG generated at livestock waste and dairy farm projects will decline. Additionally, revenue from LCFS credits also depends on the price per LCFS credit, which is driven by various market forces, including the supply of and demand for LCFS credits, which in turn depends on the demand for traditional transportation fuel and the supply of renewable fuel from other renewable energy sources, and mandated CI targets, which determine the number of LCFS credits required to offset LCFS deficits. Fluctuations in the price of LCFS credits or the number of LCFS credits assigned will have a significantly greater effect on the success of livestock waste and dairy farm projects. A significant decline in the value of LCFS credits adversely affect our business, financial condition, and results of operations.

We have a history of losses and may incur additional losses in the future.

We incurred pre-tax losses in 2018, 2020 and 2021. During 2019, 2020 and 2021, our results were positively affected by $47.1 million, $19.8 million, and $20.7 million of AFTC revenue, respectively. We may incur losses in future periods, and we may never sustain profitability, either of which would adversely affect our business, prospects and financial condition and may cause the price of our common stock to fall. Furthermore, historical losses may not be indicative of future losses due to the unpredictability of the COVID-19 pandemic, and our future losses may be greater than our past losses. In addition, to try to achieve or sustain profitability, we may choose or be forced to take actions that result in material costs or material asset or goodwill impairments. For instance, in the third and fourth quarters of 2017, we recorded significant charges in connection with our former fueling compressor manufacturing business (which we combined with another company's fueling compressor manufacturing business in the CEC Combination (as defined in Note 3 to the Consolidated Financial Statements)), our closure of certain fueling stations, our determination that certain assets were impaired because of the foregoing, and other actions. We review our assets for impairment whenever events or changes in circumstances indicate that the carrying value of an asset or asset group may not be recoverable, and we perform a goodwill impairment test on an annual basis and between annual tests in certain circumstances, in each case in accordance with applicable accounting guidance and as described in the financial statements and related notes included in this report. Changes to the use of our assets, divestitures, changes to the structure of our business, significant negative industry or economic trends, disruptions to our operations, inability to effectively integrate any acquired businesses, further market capitalization declines, or other similar actions or conditions could result in additional asset impairment or goodwill impairment charges or other adverse consequences, any of which could have material negative effects on our financial condition, our results of operations and the trading price of our common stock.

Our plans for hydrogen and electric vehicle stations will require significant cash investments and management resources and may not meet our expectations.

As operators deploy hydrogen powered vehicles, we plan to modify our fueling stations to reform our RNG, build additional hydrogen stations, and deliver clean hydrogen. Further, we have the capability to add electric charging at our sites, and we believe our RNG can be used to generate clean electricity to power vehicles.

Our plans will require significant cash investments and management resources and may not meet our expectations with respect to additional sales of our vehicle fuels. We have experience constructing hydrogen fueling stations, but such facilities cost significantly more than traditional RNG vehicle fueling stations. In addition, we have not yet added electric charging capability to any of our stations, and the cost of such capability may be significant. We will need to ensure compliance with all applicable regulatory requirements, including obtaining any required permits and land use rights, which could take considerable time and expense and is subject to the risk that government support in certain areas may be discontinued. If we are unable to modify our stations to provide hydrogen or add electric charging to our stations, or experience delays, our stations may be unable to meet our customer demand, which may negatively impact our business, prospects, financial condition, and operating results.

Cummins, Daimler, Dana, Navistar, PACCAR, Toyota, Volvo, XOS, Tesla and Nikola have announced their plans to bring long-haul Class 8 commercial hydrogen- and battery- powered vehicles to the market. We will, however, be dependent on these manufacturers to succeed in our target markets, and we will have no influence over their activities. See the risks discussed under "*We are dependent on the production of vehicles and engines in our key customer and geographic markets by vehicle and engine manufacturers, over which we have no control*," above and elsewhere in these risk factors.

Increases, decreases and general volatility in oil, gasoline, diesel, natural gas and RNG prices could adversely affect our business.

The prices of RNG, natural gas, crude oil, gasoline and diesel can be volatile and this volatility may continue to increase. Factors that may cause volatility in the prices of RNG, natural gas, crude oil, gasoline and diesel include, among others, changes in supply and availability of crude oil, RNG, natural gas, government regulations, inventory levels, consumer demand, price and availability of alternatives, weather conditions, negative publicity about crude oil or natural gas drilling, production or transportation techniques and methods, economic, health and political conditions, transportation costs and the price of foreign imports. If the prices of crude oil, gasoline and diesel are low or decline, or if the price of RNG or natural gas increases without corresponding increases in the prices of crude oil, gasoline and diesel or Environmental Credits, then we may not be able to offer our customers an attractive price for our vehicle fuels, market adoption of our vehicle fuels could be slowed or limited and/or we may be forced to reduce the prices at which we sell our vehicle fuels in order to try to attract new customers or prevent the loss of demand from existing customers. Natural gas and crude oil prices are expected to remain volatile for the near future because of market uncertainties over supply and demand, including due to the state of the world economies, energy infrastructure and other factors. Fluctuations in natural gas prices affect the cost to us of the natural gas commodity. High natural gas prices adversely affect our operating margins when we cannot pass the increased costs through to our customers. Conversely, lower natural gas prices reduce our revenue when the commodity cost is passed through to our customers.

Pricing conditions may also exacerbate the cost differential between vehicles that use our fuels and gasoline or diesel-powered vehicles, which may lead operators to delay or refrain from purchasing or converting to our vehicle fuels. Generally, vehicles that use our fuels cost more initially than gasoline or diesel-powered vehicles because the components needed for a vehicle to use our fuels add to the vehicle's base cost. Operators then seek to recover the additional base cost over time through a lower cost to use our fuels. Operators may, however, perceive an inability to timely recover these additional initial costs if our vehicle fuels are not available at prices sufficiently lower than gasoline and diesel. Such an outcome could decrease our potential customer base and harm our business prospects.

We face increasing competition from competitors, many of which have far greater resources, experience, customer bases and brand awareness than we have, and we may not be able to compete effectively with these businesses.

The market for vehicle fuels is highly competitive. The biggest competition for our products is gasoline and diesel because most vehicles in our key markets are powered by these fuels. We also compete with suppliers of other alternative vehicle fuels, including renewable diesel, biodiesel, and ethanol, as well as producers and fuelers of alternative vehicles, including hybrid, electric and hydrogen-powered vehicles. Additionally, our stations compete directly with other natural gas fueling stations and indirectly with electric vehicle charging stations and fueling stations for other vehicle fuels.

Many businesses are in the market for RNG and other alternatives for use as vehicle fuel, including alternative vehicle and alternative fuel companies, refuse collectors, industrial gas companies, private equity groups, commodity traders, truck stop and fuel station owners, fuel providers, gas marketers, utilities and their affiliates and other organizations. If the alternative vehicle fuel market grows, then the number and type of participants in this market and their level of capital and other commitments to alternative vehicle fuel programs could increase. Many of our competitors have substantially greater experience, customer bases, brand awareness and financial, marketing and other resources than we have. As a result, these competitors may be able to respond more quickly to changes in customer preferences, legal requirements or other industry or regulatory trends; devote greater resources to the development, promotion and sale of their products; adopt more aggressive pricing policies; dedicate more effort to infrastructure and systems development in support of their business or product development activities; implement more robust or creative initiatives to advance consumer acceptance of their products; or exert more influence on the regulatory landscape that affects the vehicle fuels market.

We expect competition to increase in the vehicle fuels market generally. In addition, if the demand for alternative vehicle fuels, including RNG, increases, then we expect competition to also increase. Any such increased competition may reduce our customer base and revenue and may lead to increased pricing pressure, reduced operating margins and fewer expansion opportunities.

NG Advantage may not be successful.

NG Advantage provides "virtual pipelines" to transport CNG by truck from compression facilities to pipeline interconnects and to industrial and commercial customer users that do not have direct access to natural gas pipelines. NG Advantage faces unique risks, including among others: (i) it has a history of net losses and has incurred substantial indebtedness; (ii) NG Advantage will need to raise additional capital, which may not be available, may only be available on onerous terms, or may only be available from the Company; (iii) the labor market for truck drivers is very competitive, which increases NG Advantage's difficulty in meeting its delivery obligations; (iv) NG Advantage often transports CNG in trailers over long distances and these trailers may be involved in accidents; and (v) NG Advantage's CNG trailers may become subject to new or changed regulations that could adversely affect its business. If NG Advantage fails to manage any of these risks, our business, financial condition, liquidity, results of operations, prospects and reputation may be harmed. In addition, we have been a significant source of financing for NG Advantage, consisting of loans of $18.4 million and $12.9 million in the years ended December 31, 2021 and 2020, respectively, and a $5.0 million equity investment in the year ended December 31, 2018. If NG Advantage is not able to obtain financing from external sources, we will need to provide additional debt or equity capital to allow NG Advantage to satisfy its commitments and maintain operations.

Our station construction activities subject us to business and operational risks.

As part of our business activities, we design and construct vehicle fueling stations that we either own and operate ourselves or sell to our customers. These activities require a significant amount of judgment in determining where to build and open fueling stations, including predictions about fuel demand that may not be accurate for any of the locations we target. As a result, we have built stations that we may not open for fueling operations, and we may open stations that fail to generate the volume or profitability levels we anticipate, either or both of which could occur due to a lack of sufficient customer demand at the station locations or for other reasons. For any stations that are completed but unopened, we would have substantial investments in assets that do not produce revenue, and for any stations that are open and underperforming, we may decide to close the stations. We determined to close a number of underperforming stations in the third and fourth quarters of 2017 and recorded impairment charges in connection with these closures and other related actions. As of December 31, 2021, we had 30 nearly completed stations with a carrying amount of $54.2 million that were not open for

fueling operations. We expect to open these stations when we have sufficient customers to fuel at the locations, but we do not know when or if this will occur and some of these stations are subject to agreements that may expire prior to us being able to open such stations. Closure of these and/or any other stations could result in substantial additional costs and non-cash asset impairments or other charges and could cause the price of our common stock to decline.

We also face many operational challenges in connection with our station design and construction activities. For example, we may not be able to identify suitable locations for the stations we or our customers seek to build. Additionally, even if preferred sites can be located, we may encounter land use or zoning difficulties, problems with utility services, challenges obtaining and retaining required permits and approvals or local resistance, including due to reduced operations of permitting agencies because of the ongoing COVID-19 pandemic, any of which could prevent us or our customers from building new stations on these sites or limit or restrict the use of new or existing stations. Any such difficulties, resistance or limitations or any failure to comply with local permit, land use or zoning requirements could restrict our activities or expose us to fines, reputational damage or other liabilities, which would harm our business and results of operations. In addition, we act as the general contractor and construction manager for new station construction and facility modification projects, and we typically rely on licensed subcontractors to perform the construction work. We may be liable for any damage we or our subcontractors cause or for injuries suffered by our employees or our subcontractors' employees during the course of work on our projects. Additionally, shortages of skilled subcontractor labor could significantly delay a project or otherwise increase our costs. Further, our expected profit from a project is based in part on assumptions about the cost of the project, and cost overruns, delays or other execution issues may, in the case of projects we complete and sell to customers, result in our failure to achieve our expected margins or cover our costs, and in the case of projects we build and own, result in our failure to achieve an acceptable rate of return. If any of these events occur, our business, operating results and liquidity could be negatively affected.

We have significant contracts with government entities, which are subject to unique risks.

We have, and expect to continue to seek, long-term fueling station construction, maintenance and fuel sale contracts with various government bodies, which accounted for 21%, 22%, and 31% of our revenue in 2019, 2020 and 2021, respectively. In addition to normal business risks, including the other risks discussed in these risk factors, our contracts with government entities are often subject to unique risks, some of which are beyond our control. For example, long-term government contracts and related orders are subject to cancellation if adequate appropriations for subsequent performance periods are not made. Further, the termination of funding for a government program supporting any of our government contracts or any other governmental action that results in reduced support for our government contracts could result in the loss of anticipated future revenue attributable to the contract. Moreover, government entities with which we contract are often able to modify, curtail or terminate contracts with us at their convenience and without prior notice, and would only be required to pay for work completed and commitments made at or prior to the time of termination.

In addition, government contracts are frequently awarded only after competitive bidding processes, which are often protracted. In many cases, unsuccessful bidders for government contracts are provided the opportunity to formally protest the contract awards through various agencies or other administrative and judicial channels. The protest process may substantially delay a successful bidder's contract performance, result in cancellation of the contract award entirely and distract management. As a result, we may not be awarded contracts for which we bid, and substantial delays or cancellation of contracts may follow any successful bids as a result of any protests by other bidders. The occurrence of any of these risks would have a material adverse effect on our results of operations and financial condition.

We may from time to time pursue acquisitions, divestitures, investments or other strategic relationships or transactions, which could fail to meet expectations or otherwise harm our business.

We may acquire or invest in other companies or businesses or pursue other strategic transactions or relationships, such as joint ventures, collaborations, divestitures, or other similar arrangements. For example, in 2021 we created joint ventures with each of TotalEnergies and bp to develop and own dairy RNG production projects. These strategic transactions and relationships and any others we may pursue in the future involve numerous risks, any of which could harm our business, performance and liquidity, including, among others, the following: (i) difficulties integrating the operations, personnel, contracts, service providers and technologies of an acquired company or partner; (ii) diversion of financial and management resources from existing operations or alternative acquisition, investment, strategic or other opportunities; (iii)

failure to realize the anticipated synergies or other benefits of a transaction or relationship; (iv) risks of entering new customer or geographic markets in which we may have limited or no experience; (v) potential loss of an acquired company's or partner's key employees, customers or vendors in the event of an acquisition or investment, or potential loss of our assets (and their associated revenue streams), employees or customers in the event of a divestiture or other strategic transaction; and (vi) incurrence of substantial costs or debt or equity dilution to fund an acquisition, investment or other transaction or relationship, as well as possible write-offs or impairment charges relating to any businesses we partner with, invest in or acquire.

Our partners may choose to invest in renewable or low carbon vehicle fuels other than RNG.

Our partners, including TotalEnergies, bp and Chevron, may reallocate their resources from RNG to other renewable or low carbon vehicle fuels. Any such action would have a material adverse effect on our plans, results of operations and financial condition.

Our results of operations fluctuate significantly and are difficult to predict.

Our results of operations have historically experienced, and may continue to experience, significant fluctuations as a result of a variety of factors, including, among others, the amount and timing of our vehicle fuel sales, Environmental Credit sales and recognition of government credits, station construction sales, grants and incentives, such as AFTC (for example, we recorded all of the AFTC revenue associated with our vehicle fuel sales made in 2017 during the first quarter of 2018, and we recorded all of the AFTC revenue associated with our vehicles fuel sales made in 2018 and 2019 in the fourth quarter of 2019); fluctuations in commodity, station construction and labor costs; variations in the fair value of certain of our derivative instruments that are recorded in revenue; sales of compressors and other equipment used in RNG production and at fueling stations; the amount and timing of our billing, collections and liability payments; and the other factors described in these risk factors.

Our performance in certain periods has also been affected by transactions or events that have resulted in significant cash or non-cash gains or losses. For example, our results for 2017 were positively affected by gains related to repurchases or retirements of our outstanding convertible debt at a discount and by a gain related to bp, but were also negatively affected by significant charges in connection with our closure of certain fueling stations, the decreased operating performance of our former fueling compressor manufacturing business, our determination of an impairment of assets as a result of the foregoing, and certain other actions. These or other similar gains or losses may not recur, in the same amounts or at all in future periods.

These significant fluctuations in our operating results may render period-to-period comparisons less meaningful, especially given the current uncertainties related to the ongoing COVID-19 pandemic, and investors in our securities should not rely on the results of one period as an indicator of performance in any other period. Additionally, these fluctuations in our operating results could cause our performance in any period to fall below the financial guidance we may have provided to the public or the estimates and projections of the investment community, which could negatively affect the price of our common stock.

Our warranty reserves may not adequately cover our warranty obligations, which could result in unexpected costs.

We provide product warranties with varying terms and durations for the stations we build and sell, and we establish reserves for the estimated liability associated with these warranties. Our warranty reserves are based on historical trends and any specifically identified warranty issues known to us, and the amounts estimated for these reserves could differ materially from the warranty costs we may actually incur. We would be adversely affected by an increase in the rate or volume of warranty claims or the amounts involved in warranty claims, any of which could increase our costs beyond our established reserves and cause our cash position and financial condition to suffer.

Risks Related to Our Indebtedness and Other Capital Resources.

We may need to raise additional capital to continue to fund our business, which could have negative effects and may not be available when needed, on acceptable terms or at all.

We require capital to pay for capital expenditures, operating expenses, any mergers, acquisitions or strategic investments, transactions or relationships we may pursue, and to make principal and interest payments on our indebtedness. If we cannot fund any of these activities with capital on-hand or cash provided by our operations, we may seek to obtain additional capital from other sources, such as by selling assets or pursuing debt or equity financing.

Asset sales and equity or debt financing may not be available when needed, on terms favorable to us or at all. Any sale of our assets to generate cash proceeds may limit our operational capacity and could limit or eliminate any revenue streams or business plans that are dependent on the sold assets. Any issuances of our common stock or securities convertible into our common stock to raise capital would dilute the ownership interest of our existing stockholders. Any debt financing we may pursue could require us to make significant interest or other payments and to pledge some or all of our assets as security. In addition, higher levels of indebtedness could increase our risk of non-repayment, adversely affect our creditworthiness, and amplify the other risks associated with our existing debt, which are discussed elsewhere in these risk factors. Further, we may incur substantial costs in pursuing any capital-raising transactions, including investment banking, legal and accounting fees. On the other hand, if we are unable to obtain capital in amounts sufficient to fund our obligations, expenses, and strategic initiatives, we could be forced to suspend, delay or curtail our business plans or operating activities or could default on our contractual commitments. Any such outcome could negatively affect our business, performance, liquidity, and prospects.

We may not generate sufficient cash flow from our business to pay our debt.

As of December 31, 2021, we have consolidated indebtedness of $39.3 million, and we are permitted to incur significant additional debt. Our outstanding and permitted indebtedness could make us more vulnerable to adverse changes in general U.S. and worldwide economic, regulatory, and competitive conditions, limit our flexibility to plan for or react to changes in our business or industry, place us at a disadvantage compared to our competitors that have less debt or limit our ability to borrow or otherwise raise additional capital as needed.

Our payments of amounts owed under our various debt instruments will reduce our cash resources available for other purposes, including pursuing strategic initiatives, transactions or other opportunities, satisfying our other commitments and generally supporting our operations. Moreover, our ability to make these payments depends on our future performance, which is subject to economic, financial, competitive and other factors, including those described in these risk factors, and many of which are beyond our control. Our business may not generate sufficient cash from operations to service our debt.

If we cannot meet our debt obligations from our operating cash flows, we may pursue one or more alternative measures. Any repayment of our debt with equity, however, would dilute the ownership interests of our existing stockholders. Additionally, because the agreements governing much of our existing indebtedness contain minimal restrictions on our ability to incur additional debt and do not require us to maintain financial ratios or specified levels of net worth or liquidity, we may seek capital from other sources to service our debt, such as selling assets, restructuring or refinancing our existing debt or obtaining additional equity or debt financing. Our ability to engage in any of these activities, if we decide to do so, would depend on the capital markets and the state of our industry, business and financial condition at the time, and could also subject us to significant risks, which are discussed elsewhere in these risk factors. Moreover, we may not be able to obtain any additional capital we may pursue on desirable terms, at a desirable time or at all. Any failure to pay our debts when due could result in a default on our debt obligations. In addition, certain of our debt agreements contain restrictive covenants, and any failure by us to comply with these covenants could also cause us to be in default under these agreements.

In the event of any default on our debt obligations, the holders of the indebtedness could, among other things, declare all amounts owed immediately due and payable. Any such declaration could deplete all or a large portion of our available cash flow, and thereby reduce the amount of cash available to pursue our business plans or force us into bankruptcy or liquidation.

Risks Related to Environmental Health and Safety and Governmental and Environmental Regulations

Our business is influenced by environmental, tax and other government regulations, programs and incentives that promote our vehicle fuels, and their modification or repeal could negatively affect our business.

Our business is influenced by federal, state, and local tax credits, rebates, grants and other government programs and incentives that promote the use of our vehicle fuels. These include various government programs that make grant funds available from the purchase of vehicles and construction of fueling stations, as well as the AFTC under which we generate revenue for our vehicle fuel sales. The AFTC expired at the end of 2021. If the AFTC is not extended after 2021, the AFTC would not be available for vehicle fuel sales, and our revenue would be materially adversely affected. Additionally, our business is influenced by laws, rules and regulations that require reductions in carbon emissions and/or the use of renewable fuels, such as the programs under which we generate Environmental Credits.

These programs and regulations, which have the effect of encouraging the use of RNG as a vehicle fuel, could expire or be repealed or amended for a variety of reasons. For example, parties with an interest in gasoline and diesel, electric or other alternative vehicles or vehicle fuels, including lawmakers, regulators, policymakers, environmental or advocacy organizations, producers of alternative vehicles or vehicle fuels, or other powerful groups, may invest significant time and money in efforts to delay, repeal or otherwise negatively influence regulations and programs that promote RNG. Many of these parties have substantially greater resources and influence than we have. Further, changes in federal, state or local political, social or economic conditions, including a lack of legislative focus on these programs and regulations, could result in their modification, delayed adoption or repeal. Any failure to adopt, delay in implementing, expiration, repeal or modification of these programs and regulations, or the adoption of any programs or regulations that encourage the use of other alternative fuels or alternative vehicles over RNG (such as the September 2020 Executive Order or the 2021 Executive Order), would reduce the market for RNG as a vehicle fuel and harm our operating results, liquidity, and financial condition.

For instance, California lawmakers and regulators have implemented various measures designed to increase the use of electric, hydrogen and other zero-emission vehicles, including establishing firm goals for the number of these vehicles operating on state roads by specified dates and enacting various laws and other programs in support of these goals. Although the influence and applicability of these or similar measures on our business remains uncertain, a focus on "zero tailpipe emission" vehicles over vehicles with an overall net carbon negative emissions profile, but with some tailpipe emissions operating on RNG, would adversely affect the market for our fuels.

To benefit from Environmental Credits, RNG projects are required to be registered and are subject to audit.

RNG projects are required to register with the EPA and relevant state regulatory agencies. Further, we qualify our RINs through a voluntary Quality Assurance Plan, which typically takes from three to five months from first injection of RNG into the commercial pipeline system. Delays in obtaining registration, RIN qualification, and any LCFS credit qualification of a new project could delay future revenues from a project and could adversely affect our cash flow. Further, we may make large investments in projects prior to receiving the regulatory approval and RIN qualification. By registering RNG projects with the EPA's voluntary Quality Assurance Plan, we are subject to quarterly third-party audits and semi-annual on-site visits of projects to validate generated RINs and overall compliance with the federal renewable fuel standard. We are also subject to a separate third party's annual attestation review. The Quality Assurance Plan provides a process for RIN owners to follow, for an affirmative defense to civil liability, if used or transferred Quality Assurance Plan verified RINs were invalidly generated. A project's failure to comply could result in remedial action by the EPA, including penalties, fines, retirement of RINs, or termination of the project's registration, any of which could adversely affect our business, financial condition and results of operations.

Our business could be negatively affected by federal or state laws, orders or regulations mandating new or additional limits on GHG emissions, "tailpipe" emissions or internal combustion engines.

Federal or state laws, orders or regulations have been adopted, such as California's AB 32 cap and trade law and the 2021 Executive Order, and may in the future be adopted that impose limits on GHG emissions or otherwise require the adoption of zero-emission electric vehicles. The effects of GHG emission limits on our business are subject to significant

uncertainties based on, among other things, the timing of any requirements, the required levels of emission reductions, the nature of any market-based or tax-based mechanisms adopted to facilitate reductions, the relative availability of GHG emission reduction offsets, the development of cost-effective, commercial-scale carbon capture and storage technology and supporting regulations and liability mitigation measures, the range of available compliance alternatives, and our ability to demonstrate that our vehicle fuels qualify as a compliance alternative under any statutory, regulatory, or standards-based organization (such as WBCSD) programs to limit GHG emissions. If our vehicle fuels are not able to meet GHG emission limits or perform as well as other alternative fuels and vehicles, our solutions could be less competitive. Furthermore, additional federal or state taxes could be implemented on "tailpipe" emissions, which would have a negative impact on the cost of our vehicle fuels, as compared to vehicle fuels that do not generate tailpipe emissions. See also the discussion above regarding the Advanced Clean Trucks regulation, the September 2020 Executive Order and the 2021 Executive Order under "*Our success is dependent on the willingness of fleets and other consumers to adopt our vehicle fuels, which may not occur in a timely manner, at expected levels or at all.*"

Our business is subject to a variety of government regulations, which may restrict our operations and result in costs and penalties or otherwise adversely affect our business and ability to compete.

We are subject to a variety of federal, state and local laws and regulations relating to the environment, health and safety, labor and employment, building codes and construction, zoning and land use, the government procurement process, any political activities or lobbying in which we may engage, public reporting and taxation, among others. It is difficult and costly to manage the requirements of every authority having jurisdiction over our various activities and to comply with their varying standards. Many of these laws and regulations are complex, change frequently, may be unclear and difficult to interpret and have become more stringent over time. Any changes to existing regulations or adoption of new regulations may result in significant additional expense to us or our customers. For example, in June 2020, California passed the Advanced Clean Trucks regulation, which seeks to have all new commercial vehicles sold in California have zero-emissions by 2045, in September 2020, California's Governor issued the September 2020 Executive Order, which seeks to have 100% of medium- and heavy-duty vehicles in California be zero emission by 2045, and in December 2021, President Biden signed the 2021 Executive Order, which seeks to achieve 100% zero-emission vehicle acquisitions by the federal government by 2035. Further, from time to time, as part of the regular evaluation of our operations, including newly acquired or developing operations, we may be subject to compliance audits by regulatory authorities, which may distract management from our revenue-generating activities and involve significant costs and use of other resources. Also, we often need to obtain facility permits or licenses to address, among other things, storm water or wastewater discharges, waste handling and air emissions in connection with our operations, which may subject us to onerous or costly permitting conditions or delays if permits cannot be timely obtained. Our failure to comply with any applicable laws and regulations could result in a variety of administrative, civil and criminal enforcement measures, including, among others, assessment of monetary penalties, imposition of corrective requirements or prohibition from providing services to government entities. If any of these enforcement measures were imposed on us, our business, financial condition, and performance could be negatively affected.

We are subject to various environmental laws and regulations that could impose substantial costs upon us.

Our operations are and will be subject to federal, state and local environmental laws and regulations, including laws relating to the use, handling, storage, disposal of and human exposure to hazardous materials. Moreover, we expect that we will be affected by future amendments to such laws or other new environmental and health and safety laws and regulations which may require us to change our operations, potentially resulting in a material adverse effect on our business, prospects, financial condition, and operating results. These laws can give rise to liability for administrative oversight costs, cleanup costs, property damage, bodily injury, fines, and penalties. Capital and operating expenses needed to comply with environmental laws and regulations can be significant, and violations may result in substantial fines and penalties, third-party damages, suspension of production or a cessation of our operations.

Contamination at properties we own or operate, will own or operate, or formerly owned or operated or to which hazardous substances were sent by us, may result in liability for us under environmental laws and regulations, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, which can impose liability for the full amount of remediation-related costs without regard to fault, for the investigation and cleanup of contaminated soil and ground water, for impacts to human health and for damages to natural resources. The costs of

complying with environmental laws and regulations and any claims concerning noncompliance, or liability with respect to contamination in the future, could have a material adverse effect on our financial condition or operating results. We may face unexpected delays in obtaining the required permits and approvals in connection with our planned RNG production facilities that could require significant time and financial resources and delay our ability to operate these facilities, which would adversely impact our business, prospects, financial condition and operating results.

Our operations entail inherent safety and environmental risks, which may result in substantial liability to us.

Our operations entail inherent safety risks, including risks associated with equipment defects, malfunctions, failures, and misuses. For example, operation of LNG pumps requires special training because of the extremely low temperatures of LNG. Also, LNG tanker trailers and CNG fuel tanks and trailers could rupture if involved in accidents or improper maintenance or installation. Further, improper refueling of vehicles that use our fuels or operation of vehicle fueling stations could result in sudden releases of pressure that could cause explosions. In addition, our operations may result in the venting of methane, a potent GHG. These safety and environmental risks could result in uncontrollable flows of our fuels, fires, explosions, death, or serious injury, any of which may expose us to liability for personal injury, wrongful death, property damage, pollution and other environmental damage. We may incur substantial liability and costs if any such damages are not covered by insurance or are more than policy limits, or if environmental damage causes us to violate applicable GHG emissions or other environmental laws. Additionally, the occurrence of any of these events with respect to our fueling stations or our other operations could materially harm our business and reputation. Moreover, the occurrence of any of these events to any other organization in our vehicle fuel business could harm our industry generally by negatively affecting perceptions about, and adoption levels of, our vehicle fuels.

Risks Related to Our Common Stock

A significant portion of our outstanding common stock is owned or otherwise subject to acquisition by two equityholders, each of which may have interests that differ from the Company's other stockholders and which now or in the future may be able to influence the Company's corporate decisions, including a change of control.

After giving effect to the issuance of the Amazon Warrant, TotalEnergies Marketing Services, SAS ("TMS"), a wholly owned subsidiary of TotalEnergies, owns 42,581,801 shares of our common stock, or 19.1% of our outstanding shares of common stock as of December 31, 2021 (excluding 7,930,508 shares of our common stock that are the subject of a voting agreement, dated May 9, 2018, among TMS, the Company and all of the Company's directors and officers then in office); the Amazon Warrant is immediately exercisable by Amazon Holdings for shares of our common stock representing 4.999% of our outstanding common stock. Subject to vesting of the Amazon Warrant, the Amazon Warrant will be exercisable for up to 19.999% of our outstanding common stock on a fully diluted basis (determined at the time of issuance of the Amazon Warrant), subject to certain anti-dilution provisions, and Amazon Holding's beneficial ownership will initially be contractually limited to the Beneficial Ownership Limitation unless Amazon Holdings gives the Company sixty one (61) days' notice that it is waiving such limitation. In addition, TotalEnergies was granted certain special rights that our other stockholders do not have in connection with its acquisition of this ownership position, including the right to designate two individuals to serve as directors of our Company and a third individual to serve as an observer on certain of our board committees.

TotalEnergies or other large stockholders may be able to influence or control matters requiring approval by our stockholders, including the election of directors and mergers, acquisitions, or other extraordinary transactions. Amazon, through ownership by Amazon Holdings, could become a large stockholder if the Amazon Warrant were to vest further through additional fuel purchases from the Company pursuant to the Fuel Agreement, and Amazon Holdings were to exercise the Amazon Warrant to purchase vested Warrant Shares or Additional Warrant Shares and waive the Beneficial Ownership Limitation. Large stockholders may have interests that differ from other stockholders and may vote or otherwise act in ways with which the Company or other stockholders disagree or that may be adverse to your interests. A concentration of stock ownership may also have the effect of delaying, preventing or deterring a change of control of our Company, which could deprive our stockholders of an opportunity to receive a premium for their shares of our common stock as part of a sale of our Company and could affect the market price of our common stock. Conversely, such a concentration of stock ownership may facilitate a change of control under terms other stockholders may not find favorable or at a time when other stockholders may prefer not to sell.

Sales of our common stock, or the perception that such sales may occur, could cause the market price of our stock to drop significantly, regardless of the state of our business.

All outstanding shares of our common stock are eligible for sale in the public market, subject in certain cases to the requirements of Rule 144 under the Securities Act. Also, shares of our common stock that may be issued upon the exercise, vesting or conversion of our outstanding stock options and restricted stock units may be eligible for sale in the public market, to the extent permitted by Rule 144 and the provisions of the applicable stock option and restricted stock unit agreements or if such shares have been registered under the Securities Act.

Sales of large amounts of our common stock by large stockholders, or the perception that such sales may occur, could cause the market price of our common stock to decline, regardless of the state of the Company's business. Our common stock held by TMS and our common stock underlying the Amazon Warrant may be sold in the public market under Rule 144 or in registered sales or offerings pursuant to registration rights held by each stockholder. For instance, we filed a registration statement with the SEC to cover the resale of the shares of our common stock issued and sold to TMS, which registration statement was declared effective in August 2018. If these shares are sold, or if it is perceived that they may be sold, in the public market, the trading price of our common stock could decline. For instance, in the year ended December 31, 2021, TMS sold 8,274,495 shares of our common stock, which we believe caused downward pressure on the trading price of our common stock.

General Risk Factors

We rely on information technology in our operations, and any material failure, inadequacy, interruption, or security failure of that technology could harm our business.

Increased global IT security threats and more sophisticated and targeted computer crime pose a risk to the security of our systems and networks and the confidentiality, availability and integrity of our data. There have been several recent, highly publicized cases in which organizations of various types and sizes have reported the unauthorized disclosure of customer or other confidential information, as well as cyber incidents involving the dissemination, theft and destruction of corporate information, intellectual property, cash or other valuable assets. There have also been several highly publicized cases in which hackers have requested "ransom" payments in exchange for not disclosing customer or other confidential information or for not disabling the target company's computer or other systems. Implementing security measures designed to prevent, detect, mitigate or correct these or other IT security threats involves significant costs. Although we have taken steps to protect the security of our information systems and the data maintained in those systems, we have, from time to time, experienced cyberattacks or other cyber incidents that have threatened our data and systems, including malware and computer virus attacks and it is possible that future cyber incidents we may experience may materially and adversely affect our business. We cannot provide assurance that our safety and security measures will prevent our information systems from improper functioning or damage, or the improper access or disclosure of personally identifiable information such as in the event of cyber incidents. Any IT security threats that are successful against our security measures could, depending on their nature and scope, lead to the compromise of confidential information, improper use of our systems and networks, manipulation and destruction of data, operational disruptions, and substantial financial outlays. Further, a cyber incident could occur and persist for an extended period of time without detection, and an investigation of any successful cyber incident would likely require significant time, costs and other resources to complete. We may be required to expend significant financial resources to protect against or to remediate such cyber incidents. In addition, our technology infrastructure and information systems are vulnerable to damage or interruption from natural disasters, power loss and telecommunications failures. Any failure to maintain proper function, security and availability of our information systems and the data maintained in those systems could interrupt our operations, damage our reputation, subject us to liability claims or regulatory penalties, harm our business relationships or increase our security and insurance costs, which could have a material adverse effect on our business, financial condition and results of operations.

The price of our common stock may continue to fluctuate significantly, and you could lose all or part of your investment.

The market price of our common stock has experienced, and may continue to experience, significant volatility. Factors that may cause volatility in the price of our common stock, many of which are beyond our control, include, among others, the following: (i) the factors that may influence the adoption of our vehicle fuels, as discussed elsewhere in these risk factors; (ii) our ability to implement our business plans and initiatives and their anticipated, perceived or actual level of success; (iii) failure to meet or exceed any financial guidance we have provided to the public or the estimates and projections of the investment community; (iv) the market's perception of the success and importance of any of our acquisitions, divestitures, investments or other strategic relationships or transactions; (v) the amount of and timing of sales of, and prices for, Environmental Credits; (vi) actions taken by state or federal governments to mandate or otherwise promote or incentivize alternative vehicles or vehicle fuels over, or to the exclusion of, RNG; (vii) technical factors in the public trading market for our common stock that may produce price movements that may or may not comport with macro, industry or company-specific fundamentals, including, without limitation, the sentiment of retail investors (including as may be expressed on financial trading and other social media sites), the amount and status of short interest in our common stock, access to margin debt, and trading in options and other derivatives on our common stock; (viii) changes in political, regulatory, health, economic and market conditions; and (ix) a change in the trading volume of our common stock.

In addition, the securities markets have from time-to-time experienced significant price and volume fluctuations that are unrelated to the operating performance of particular companies, but which have affected the market prices of these companies' securities. These market fluctuations may also materially and adversely affect the market price of our common stock.

Volatility or declines in the market price of our common stock could have other negative consequences, including, among others, further impairments to our assets (following the asset impairment charges we recorded in the third and fourth quarters of 2017 related to our former fueling compressor manufacturing business and our closure of certain fueling stations), potential impairments to our goodwill and a reduced ability to use our common stock for capital-raising, acquisitions or other purposes. The occurrence of any of these risks could materially and adversely affect our financial condition, results of operations and liquidity and could cause further declines in the market price of our common stock.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

Our corporate headquarters are located at 4675 MacArthur Court, Suite 800, Newport Beach, California 92660, where we occupy approximately 48,000 square feet of office space. Our lease for this facility expires in June 2028.

We own and operate the Boron Plant in Boron, California, approximately 125 miles from Los Angeles. In November 2006, we entered into a 30-year ground lease for the 36 acres on which this plant is situated.

We own and operate the Pickens Plant located in Willis, Texas, approximately 50 miles north of Houston. We own approximately 24 acres of land on which this plant is situated, along with approximately 34 acres surrounding the plant.

Item 3. Legal Proceedings.

From time to time, we may become involved in various legal proceedings that arise in the ordinary course of our business, including lawsuits, claims, audits, government enforcement actions and related matters. It is not possible to predict when or if these proceedings may arise, nor is it possible to predict the outcome of any proceedings that do arise, including, among other things, the amount or timing of any liabilities we may incur, and any such proceedings could have a material effect on us regardless of outcome. In the opinion of management, however, we are not a party, and our properties are not subject, to any pending legal proceedings that are material to us.

Item 4. Mine Safety Disclosures.

None.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market Information

Our common stock trades on The Nasdaq Global Select Market under the symbol "CLNE."

Holders

There were approximately 49 holders of record of our common stock as of February 18, 2022. The actual number of holders of our common stock is greater than this number of record holders and includes stockholders who are beneficial owners, but whose shares are held in street name by brokers or held by other nominees.

Issuer Purchases of Equity Securities

On March 12, 2020, our Board of Directors approved a share repurchase program of up to $30.0 million (exclusive of fees and commissions) of our outstanding common stock (the "Repurchase Program"). On December 7, 2021, our Board of Directors approved an increase in the aggregate amount of our common stock to be repurchased under the Repurchase Program from $30.0 million to $50.0 million (exclusive of fees and commissions). The Repurchase Program does not have an expiration date, and may be suspended or discontinued at any time. As of December 31, 2021, approximately $32.6 million remained available under the Repurchase Program.

The Repurchase Program does not obligate us to acquire any specific number of shares. Repurchases under the Repurchase Program may be effected from time to time through open market purchases, privately negotiated transactions, structured or derivative transactions, including accelerated share repurchase transactions, or other methods of acquiring shares, in each case subject to market conditions, applicable securities laws and other relevant factors. Repurchases may also be made under plans set up pursuant to Rule 10b5-1 promulgated under the Exchange Act ("Rule 10b5-1 plans").

The following table summarizes the Company's share repurchase activity during the three months ended December 31, 2021 (in thousands, except share and per share amounts):

Period	Total Number of Shares Purchased	Average Price Paid per Share (a)	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares That May Yet Be Purchased Under the Plans or Program
October 1, 2021 through October 31, 2021	—	$ —	—	$ 15,508
November 1, 2021 through November 30, 2021	—	$ —	—	15,508
December 1, 2021 through December 31, 2021	452,700	$ 6.42	452,700	32,601
Total	452,700	$ 6.42	452,700	$ 32,601

(a) Exclusive of fees and commissions.

Performance Graph

This performance graph shall not be deemed "soliciting material" or "filed" with the SEC or subject to Regulation 14A or 14C or to the liabilities of Section 18 of the Exchange Act, or incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that we specifically request that such information be treated as soliciting material or specifically incorporate it by reference into such a filing. The graph is required by applicable rules of the SEC and is not intended to forecast, predict or be indicative of the possible future performance of our common stock.

The following graph compares the five-year total return to holders of our common stock relative to the cumulative total returns of the Nasdaq Global Market Index and the Russell 2000 Index. The graph assumes that $100 was invested in our common stock and in each of these indices at the close of market on December 30, 2016 (the last trading day before the beginning of our fifth preceding fiscal year). We chose to include the Russell 2000 Index because it includes issuers with similar market capitalizations and due to the lack of a comparable industry or line-of-business index or peer group, as we are the only actively traded public company whose only line of business is to sell natural gas for use as a vehicle fuel and the associated equipment and services necessary to use natural gas as a vehicle fuel.



Item 6. [Reserved].

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following Management's Discussion and Analysis of Financial Condition and Results of Operations (this discussion, as well as discussions under the same heading in our other periodic reports, are referred to as the "MD&A") should be read together with our audited consolidated financial statements and the related notes included in this report, and all cross references to notes included in this MD&A refer to the identified note in such consolidated financial statements. This section of the Form 10-K generally discusses 2021 and 2020 items and year-to-year comparisons of 2021 to 2020. Discussions of 2019 items and year-to-year comparisons of 2020 and 2019 that are not included in this Form 10-K can be found in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2020, filed with the SEC on March 9, 2021.

Cautionary Note Regarding Forward-Looking Statements

This MD&A contains forward-looking statements. See the discussion about these statements under "Cautionary Note Regarding Forward-Looking Statements" at the beginning of this report.

Overview

We are North America's leading provider of the cleanest fuel for the transportation market, based on the number of stations operated and the amount of gasoline gallon equivalents ("GGEs") of renewable natural gas ("RNG") and conventional natural gas delivered. Through our sales of RNG, which is derived from biogenic methane produced by the

breakdown of organic waste, we help thousands of vehicles, from airport shuttles to city buses to waste and heavy-duty trucks, reduce their amount of climate-harming greenhouse gas from 60% to over 400% based on determinations by the California Air Resources Board ("CARB"), depending on the source of the RNG, while also reducing criteria pollutants such as Oxides of Nitrogen, or NOx. RNG is delivered as compressed natural gas ("CNG") and liquefied natural gas ("LNG").

As a clean energy solutions provider, we supply RNG and conventional natural gas, in the form of CNG and LNG, for medium and heavy-duty vehicles; design and build, as well as operate and maintain ("O&M"), public and private fueling stations in the United States and Canada; develop and own dairy ADG RNG production facilities; sell and service compressors and other equipment used in RNG production and at fueling stations; transport and sell RNG and conventional natural gas via "virtual" natural gas pipelines and interconnects; sell U.S. federal, state and local government credits (collectively, "Environmental Credits") we generate by selling RNG as a vehicle fuel, including Renewable Identification Numbers ("RIN Credits" or "RINs") under the federal Renewable Fuel Standard Phase 2 and credits under the California and the Oregon Low Carbon Fuel Standards (collectively, "LCFS Credits"); and obtain federal, state and local tax credits, grants and incentives.

At present, we see the best use of RNG as a replacement for fossil-based fuel in the transportation sector. We believe the most attractive market for RNG is U.S. heavy-duty Class 8 trucking; based on information from the American Trucking Association and our own internal estimates, we believe there are approximately 3.9 million Class 8 heavy-duty trucks operating in the U.S. that use over 40 billion gallons of diesel fuel per year. As of December 31, 2021, we deliver RNG to the transportation market through 548 fueling stations we own, operate or supply in 42 states and the District of Columbia in the U.S., including over 200 stations in California. We also own, operate, or supply 25 fueling stations in Canada.

Critically, to generate valuable Environmental Credits, RNG must be placed in vehicle fuel tanks. We believe our stations and customer relationships allow us to deliver substantially more RNG to vehicle operators than any other participant in the market – we calculate that we have access to more fueling stations and vehicle fleets than all our competitors combined. As of December 31, 2021, we served over 1,000 fleet customers operating over 48,000 vehicles on our fuels.

Longer term, we plan to provide hydrogen fuel to vehicle fleets. As operators deploy more hydrogen powered vehicles, we can modify our fueling stations to reform our RNG and deliver clean hydrogen to customers. We also believe our RNG can be used to generate clean electricity to power electric vehicles, and we have the capability to add electric vehicle charging at our station sites, although the cost of adding electric vehicle charging capacity may be significant.

Impact of COVID-19

The COVID-19 pandemic has had an adverse impact on the volume of our sales, which we saw bottom in the second quarter of 2020. We have since seen improvement in volumes, with volumes delivered for the fourth quarter of 2021 9% higher compared to the fourth quarter of 2020, and 1% higher compared to the fourth quarter of 2019. We saw significant improvement in our volumes delivered in the public transit customer markets and airports (fleet services), which increased by 12% and 34%, respectively, during the three months ended December 31, 2021, compared to the prior year period. Our volume of GGEs delivered for the year ended December 31, 2021 increased 5% compared to the prior year. The increase in volumes delivered in the fourth quarter of 2021 and in fiscal year 2021 was primarily due to COVID-19 restrictions being lifted and an increase in travel generally.

Although we are experiencing gradual improvements since the onset of the COVID-19 pandemic, there is no guarantee this will continue due to uncertainties regarding the continuance of the COVID-19 pandemic. It is possible that the prolonged effect of the COVID-19 pandemic could negatively affect our volumes. Lower volumes since the onset of the COVID-19 pandemic have resulted in and could again result in lower gross margin dollars and likely a lower gross margin per GGE due to lower output on fixed operating costs and the effect of less revenue from Environmental Credits. Lower volumes have affected and may again affect our federal alternative fuel excise tax credit ("AFTC") revenue as this leads to lower AFTC-eligible volumes. Given the dynamic nature of these circumstances, significant uncertainty exists concerning the duration of business disruption and the full extent of the effect of COVID-19 on our business, results of operations and financial condition. Additionally, the effects of COVID-19, commodity prices and the adoption of

government policies and programs, or increased popular sentiment, in favor of other vehicle technologies or fuels may delay adoption of natural gas vehicles, particularly heavy-duty natural gas trucks, by new or existing customers. For more information, see "Risk Factors" in Part I, Item 1A of this report.

We believe we have sufficient liquidity to support business operations through this volatile period, including total cash and cash equivalents and short-term investments of $229.2 million as of December 31, 2021 and $13.7 million of current debt. We expect to collect receivables relating to AFTC credits generated from fuel sales during 2021 in the first half of 2022. We also expect AFTC to be reinstated during 2022 and apply retroactively to vehicle fuel sales made beginning January 1, 2022 and we anticipate AFTC revenue to be approximately $21.2 million for 2022 after giving consideration to the effect of COVID-19 described above.

Performance Overview

This performance overview discusses matters on which our management focuses in evaluating our financial condition and our operating results.

Sources of Revenue

The following tables represent our sources of revenue:

	Year Ended December 31,		
Revenue (in millions)	**2019**	**2020**	**2021**
Volume-related [1] [2]	$ 273.6	$ 245.3	$ 218.5
Station construction sales	23.1	26.6	16.4
AFTC [3]	47.1	19.8	20.7
Other	0.3	—	—
Total	$ 344.1	$ 291.7	$ 255.6

(1) Our volume-related revenue primarily consists of sales of RNG and conventional natural gas, in the form of CNG and LNG, performance of O&M services, and sales of RINs and LCFS Credits in addition to changes in fair value of our derivative instruments. More information about our volume of fuel and O&M services delivered in the periods is included below under "Key Operating Data," and more information about our derivative instruments, which consist of commodity swap and customer fueling contracts, is included in Note 7. Additionally, a discussion of volume-related revenue is included below under "Results of Operations." The following table summarizes our volume-related revenue in the periods:

	Year Ended December 31,		
Revenue (in millions)	**2019**	**2020**	**2021**
Fuel sales and performance of O&M services [2]	$ 248.8	$ 209.2	$ 173.5
Change in fair value of derivative instruments [a]	(6.6)	2.1	(3.5)
RIN Credits	18.1	15.3	31.7
LCFS Credits	13.3	18.7	16.8
Total volume-related revenue	$ 273.6	$ 245.3	$ 218.5

a. The change in fair value of derivative instruments is related to the Company's commodity swap and customer fueling contracts. The amounts are classified as revenue because the Company's commodity swap contracts are used to economically offset the risk associated with the diesel-to-natural gas price spread resulting from customer fueling contracts under the Company's *Zero Now* truck financing program.

(2) Includes $83.6 million of non-cash stock-based sales incentive contra-revenue charges related to the Amazon Warrant (as defined below) for the year ended December 31, 2021.

(3) Represents the federal alternative fuel tax credit, that we refer to as AFTC. AFTC was available for vehicle fuel sales made through December 31, 2021. AFTC may not be reinstated for vehicle fuel sales made after December 31, 2021.

Key Operating Data

In evaluating our operating performance, we focus primarily on: (1) the amount of RNG, CNG and LNG GGEs delivered (which we define as (i) the volume of GGEs we sell to our customers as fuel, plus (ii) the volume of GGEs

dispensed at facilities we do not own but where we provide O&M services on a per-gallon or fixed fee basis, plus (iii) our proportionate share of the GGEs sold as CNG by our joint venture with Mansfield Ventures, LLC and Mansfield Clean Energy Partners, LLC ("MCEP"), (2) our station construction cost of sales, (3) our gross margin (which we define as revenue minus cost of sales), and (4) net income (loss) attributable to us. The following tables present our key operating data for the years ended December 31, 2019, 2020 and 2021:

	Year Ended December 31,		
GGEs delivered (in millions)	2019	2020	2021
CNG [1]	335.7	321.0	347.4
LNG	65.1	61.5	55.2
Total	400.8	382.5	402.6

RNG sold as vehicle fuel is included in the CNG or LNG amounts in the table above as applicable based on the form in which it was sold. GGEs of RNG sold as vehicle fuel for the years ended December 31, 2019, 2020 and 2021, were as follows:

	Year Ended December 31,		
GGEs of RNG delivered (in millions)	2019	2020	2021
CNG	112.5	124.4	146.0
LNG	30.8	28.9	21.0
Total	143.3	153.3	167.0

	Year Ended December 31,		
GGEs delivered (in millions)	2019	2020	2021
O&M services	158.5	138.5	148.4
Fuel [1]	162.4	157.6	164.1
Fuel and O&M services [2]	79.9	86.4	90.1
Total	400.8	382.5	402.6

RNG sold as vehicle fuel is included in the table above as applicable based on the services provided. GGEs of RNG sold as vehicle fuel for the years ended December 31, 2019, 2020 and 2021, were as follows:

	Year Ended December 31,		
GGEs of RNG delivered (in millions)	2019	2020	2021
Fuel	87.3	86.2	88.0
Fuel and O&M services [2]	56.0	67.1	79.0
Total	143.3	153.3	167.0

	Year Ended December 31,		
Other operating data (in millions)	2019	2020	2021
Station construction cost of sales	$ 23.5	$ 24.0	$ 15.0
Gross margin [3] [4] [5]	$ 132.0	$ 106.3	$ 40.0
Net income (loss) attributable to Clean Energy Fuels Corp. [3] [5]	$ 20.4	$ (9.9)	$ (93.1)

(1) As noted above, amounts include our proportionate share of the GGEs sold as CNG by our joint venture with MCEP. GGEs sold by this joint venture were 0.4 million, 0.3 million, and 0.4 million for the years ended December 31, 2019, 2020 and 2021, respectively.

(2) Represents GGEs at stations where we provide both fuel and O&M services.

(3) Includes $47.1 million, $19.8 million, and $20.7 million of AFTC revenue for the years ended December 31, 2019, 2020, and 2021, respectively.

(4) Gross margin includes an unrealized gain (loss) from the change in fair value of commodity swap and customer fueling contracts of $(6.6) million, $2.1 million, and $(3.5) million for the years ended December 31, 2019, 2020 and 2021, respectively. See Note 7 for more information regarding the commodity swap and customer contracts.

(5) Includes $0.0 million, $0.0 million, and $83.6 million of non-cash stock-based sales incentive contra-revenue charges related to the Amazon Warrant (as defined below) for the years ended December 31, 2019, 2020 and 2021, respectively.

2019 -2021 Developments

TotalEnergies Joint Venture. On December 21, 2020, we announced a memorandum of understanding with TotalEnergies S.E. ("TotalEnergies") to create a joint venture to develop carbon negative RNG production facilities in the United States, as well as credit support to build additional downstream RNG infrastructure. TotalEnergies will provide $50.0 million, and we will provide $30.0 million for the proposed joint venture. TotalEnergies will also be providing credit support of $65.0 million to support our development in the RNG value chain, including $45.0 million for contracted RNG fueling infrastructure.

On March 3, 2021, we entered an agreement ("TotalEnergies JV Agreement") with TotalEnergies that created a 50/50 joint venture ("TotalEnergies JV") to develop anaerobic digester gas ("ADG") RNG production facilities in the United States. Each ADG RNG production facility project under the TotalEnergies JV will be formed as a separate limited liability company ("LLC") that is owned 50/50 by us and TotalEnergies, and contributions to such LLCs count toward the TotalEnergies JV Equity Obligations (as defined below). The TotalEnergies JV Agreement contemplates that the TotalEnergies JV will invest up to $400.0 million of equity in production projects, and TotalEnergies and the Company each committed to initially provide $50.0 million for the TotalEnergies JV (the "TotalEnergies JV Equity Obligations"). To fund our TotalEnergies JV Equity Obligations, we had the option to borrow $20.0 million from Société Générale, a company incorporated as a société anonyme under the laws of France ("SG"), pursuant to the SG Credit Agreement (as defined below). See Note 12 for additional information.

On October 12, 2021, we entered into an LLC agreement (the "DR Development Agreement") with TotalEnergies to develop a dairy ADG RNG production facility project (the "DR JV"). Under the DR Development Agreement, we and TotalEnergies have each committed to contribute $7.0 million to the DR JV. On November 1, 2021, we and TotalEnergies have each contributed an initial $4.8 million capital contribution to the DR JV.

SG Credit Agreement. On March 12, 2021, we amended the credit agreement (as amended, the "SG Credit Agreement") with SG, to permit us to use up to $45.0 million of loan proceeds to fund certain station build costs and up to $20.0 million to fund TotalEnergies JV Equity Obligations. Our ability to draw under the SG Credit Agreement ended on January 2, 2022.

bp Joint Venture. On December 18, 2020, we entered a memorandum of understanding ("MOU") with bp Products North America Inc. ("bp"). Pursuant to the MOU, we and bp intend to create a joint venture to develop, own, and operate RNG production facilities at dairies. Contemporaneous with the execution of the MOU, we and bp executed a loan agreement whereby bp advanced $50.0 million (in the form of a loan) to fund capital costs and expenses incurred prior to formation of the joint venture. We expect that all unpaid principal and accrued interest outstanding under the loan agreement will be contributed to the joint venture, provided that if the joint venture is not formed by April 30, 2022, we are obligated to repay the outstanding principal and accrued interest within five days of April 30, 2022.

On April 13, 2021, we entered an agreement ("bp JV Agreement") with bp that created a 50/50 joint venture ("bpJV") to develop, own and operate new ADG RNG production facilities in the United States. Pursuant to the bp JV Agreement, we and bp have each committed to provide $30.0 million and $50.0 million, respectively, with bp and us each receiving 30.0 million of Class A Units in the bpJV and bp also receiving 20.0 million of Class B Units in the bpJV. bp's initial $50.0 million contribution was made on April 13, 2021 and consisted of all unpaid principal outstanding under the loan agreement dated December 18, 2020 (see Note 12), pursuant to which bp advanced us $50.0 million to fund capital costs and expenses incurred prior to formation of the bpJV, including capital costs and expenses for permitting, engineering, equipment, leases and feed stock rights. 100% of the RNG produced from the projects developed and owned by the bpJV will be provided to the vehicle fuels market pursuant to our existing marketing agreement with bp.

Pursuant to the bp JV Agreement, we had the option, exercisable prior to August 31, 2021 (the "bp Option"), to commit an additional $20.0 million to the bpJV upon which bp's Class B Units would convert into Class A Units. On June 21, 2021, we contributed $50.2 million consisting of our initial contribution commitment of $30.0 million, the $20.0 million additional contribution to exercise our bp Option, plus $0.2 million of interest in accordance with the bp JV Agreement to effect the conversion of bp's Class B Units into Class A Units. In December 2021, the bpJV authorized a capital call (the "bpJV Capital Call") for additional funding of $143.2 million to construct ADG RNG projects under the bpJV. Pursuant to the bpJV Capital Call, we and bp are each required to contribute $71.6 million to the bpJV. As of December 31, 2021, we and bp have contributed $20.0 million and $71.6 million, respectively, to the bpJV in connection with the bpJV Capital Call. The remaining contribution balance of $51.6 million due from us will be paid on or prior to June 30, 2022. As of December 31, 2021, we and bp each own 50% of the bpJV.

Amazon. On April 16, 2021, we entered into a Project Addendum to Fuel Pricing Agreement ("Fuel Agreement") with Amazon Logistics, Inc., a subsidiary of Amazon.com, Inc. ("Amazon"), and a Transaction Agreement with Amazon (the "Transaction Agreement"), pursuant to which, among other things, we issued to Amazon.com NV Investment Holdings LLC, a subsidiary of Amazon ("Amazon Holdings"), a warrant to purchase up to an aggregate of 53,141,755 shares (the "Warrant Shares") of our common stock at an exercise price of $13.49 per share, which was a 21.3% premium to the $11.12 closing price of our common stock on April 15, 2021.

The Warrant Shares vest in multiple tranches, the first of which for 13,283,445 Warrant Shares vested upon execution of the Fuel Agreement. Subsequent tranches will vest over time based on fuel purchases by Amazon and its affiliates, up to a total of $500 million in fuel purchases, excluding any payments attributable to "Pass Through Costs," which consist of all costs associated with the delivered cost of gas and applicable taxes determined by reference to the selling price, gallons or gas sold. Importantly, in order for all the vesting conditions of the warrant to be satisfied, Amazon would have to purchase hundreds of millions of GGEs of RNG from us.

Under the Transaction Agreement, we were required to use commercially reasonable efforts to obtain the approval of our stockholders with respect to the issuance of Warrant Shares in excess of 50,595,531 shares of our common stock, pursuant to The Nasdaq Stock Market LLC's Listing Rule 5635(b) (the "Stockholder Approval"). On June 14, 2021, we obtained the Stockholder Approval at our 2021 annual meeting of stockholders.

In accordance with the terms of the warrant, as a result of the issuance of shares of our common stock pursuant to the ATM Programs (as defined below), on June 14, 2021, the number of shares of our common stock that may be purchased pursuant to the warrant, at an exercise price of $13.49 per share, increased by an aggregate of 5,625,959 shares (the "Additional Warrant Shares"). The Additional Warrant Shares vest in multiple tranches, the first of which for 1,406,490 Additional Warrant Shares vested on June 14, 2021. Subsequent tranches of the Additional Warrant Shares will vest over time based on fuel purchases by Amazon and its affiliates, consistent with the vesting schedule for the Warrant Shares as described above. The right to exercise the warrants and receive the Warrant Shares and Additional Warrant Shares (the "Amazon Warrant") that have vested expires April 16, 2031.

We believe our commercial partnership with Amazon will enhance our strategies, initiatives and efforts to achieve our goals to grow fleet and other consumer support for the use of RNG as a vehicle fuel for our target customers and geographies. We also believe the proceeds from the issuance of our common stock to Amazon in the event Amazon were to vest and then exercise the Amazon Warrant in part or as a whole for cash would enhance our liquidity in support of our operations, as well as our ability to execute our business plans and pursue opportunities for further growth. Accordingly, we believe securing this commercial partnership and incentiving Amazon to purchase the maximum amount of fuel under the Fuel Agreement is important for our business trajectory.

As a result of the immediate vesting of a portion of the Warrant Shares and Additional Warrant Shares, we recognized non-cash stock-based sales incentive contra-revenue charges ("Amazon Warrant Charges") in the second quarter of 2021 of $76.6 million and a customer incentive asset of $38.4 million representing Amazon Warrant Charges associated with future contractually required minimum fuel purchases which will be recognized as the fuel is purchased.

For the year ended December 31, 2021, Amazon Warrant Charges were $83.6 million, which included $76.6 million from the immediate vesting of a portion of the Warrant Shares and Additional Warrant Shares and $7.0 million associated

with fuel purchases. As of December 31, 2021, we had a customer incentive asset of $12.4 million and $22.1 million, classified in "Prepaid expenses and other current assets" and "Notes receivable and other long-term assets, net," respectively, in the accompanying consolidated balance sheets.

At-The-Market Offerings. On May 10, 2021, we entered into an equity distribution agreement with Goldman Sachs & Co. LLC, as sales agent, to sell shares of our common stock having an aggregate offering price of up to $100.0 million in an at-the-market offering program (the "May ATM Program"). As of June 3, 2021, we sold 12,362,237 shares of our common stock under the May ATM Program, which exhausted the May ATM Program. On June 7, 2021, we entered into a new equity distribution agreement with Goldman Sachs & Co. LLC, as sales agent, to sell additional shares of our common stock having an aggregate offering price of up to $100.0 million in a new at-the-market offering program (the "June ATM Program" and, together with the May ATM Program, the "ATM Programs"). On June 8, 2021, we sold 10,473,946 shares of our common stock under the June ATM Program, which exhausted the June ATM Program.

For the year ended December 31, 2021, we issued 22,836,183 shares of our common stock under the ATM Programs for gross proceeds of $200.0 million, and incurred transaction costs of $6.5 million, including $6.0 million in commissions paid to Goldman Sachs & Co. LLC.

Share Repurchase Program. On March 12, 2020, our Board of Directors approved the Repurchase Program for up to $30.0 million (exclusive of fees and commissions) of our outstanding common stock. On December 7, 2021, our Board of Directors approved an increase in the aggregate purchase amount under the Repurchase Program from $30.0 million to $50.0 million (exclusive of fees and commissions). The Repurchase Program does not have an expiration date, does not obligate us to acquire any specific number of shares, and may be suspended or discontinued at any time. As of December 31, 2021, we had utilized $17.4 million under the Repurchase Program to purchase 8,197,086 shares of our common stock for a total cost of $17.6 million.

Plains Credit Facility. On May 1, 2021, we entered into a Loan and Security Agreement (the "Plains LSA") with PlainsCapital Bank ("Plains") which provides us a $20.0 million revolving line of credit through May 1, 2022. The interest rate on amounts outstanding under the Plains LSA is the greater of the Prime Rate or 3.25%. As of December 31, 2021, no amounts were outstanding under the Plains LSA. On September 16, 2021, Plains issued an irrevocable standby letter of credit on behalf of the Company to the Chevron Products Company, a division of Chevron U.S.A. Inc. ("Chevron"), for $2.0 million relating to the Company's Adopt-A-Port program with Chevron. The standby letter of credit is valid until cancelled and is collateralized by the Company's revolving line of credit with Plains, reducing the amount available under the line of credit from $20.0 million to $18.0 million. As of December 31, 2021, no amounts have been drawn under the standby letter of credit.

Chevron Adopt-a-Port. In June 2020, we entered into an agreement with Chevron Corp. ("Chevron") to provide truck operators serving the ports of Los Angeles and Long Beach with cleaner, carbon negative RNG to reduce emissions. Under the agreement, Chevron will provide funding to allow truck operators to subsidize the cost of buying new RNG-powered trucks and will supply RNG to our stations near the ports.

AFTC. On December 20, 2019, the AFTC was retroactively extended beginning January 1, 2018 through December 31, 2020. As a result, AFTC revenue for vehicle fuel we sold in 2018 and 2019, which totaled $47.1 million, was recognized during the year ended December 31, 2019. AFTC revenue recognized during the year ended December 31, 2020 totaled $19.8 million. The AFTC credit for 2018, 2019 and 2020 was equal to $0.50 per GGE of CNG that we sold as vehicle fuel, and $0.50 per diesel gallon of LNG that we sold as vehicle fuel. In December 2020 AFTC was extended for vehicle fuel sales made through December 31, 2021. We expect AFTC to be reinstated during 2022 and apply retroactively to vehicle fuel sales made beginning January 1, 2022.

Zero Now Truck Financing Program. We launched the *Zero Now* truck financing program, which is intended to facilitate and increase the deployment of commercially available RNG heavy-duty trucks in the United States and encourage these operators to fuel their trucks at our stations. The *Zero Now* program is unique and complex, and has involved our entry into various arrangements in order to launch the program, including a term credit agreement for delayed draw loans of up to $100.0 million, which we could draw through January 2, 2022; a credit support agreement with THUSA, a wholly owned subsidiary of TotalEnergies, under which THUSA has guaranteed our obligations under the term

credit agreement in exchange for a quarterly fee; and commodity swap arrangements with an affiliate of THUSA and TotalEnergies covering five million diesel gallons of natural gas fuel volume annually from April 2019 through June 2024, which are intended to manage diesel price fluctuation risks related to the natural gas fuel supply commitments we expect to make in our anticipated fueling agreements with fleet operators that participate in the *Zero Now* program. See the disclosure under "Key Customer Markets-Zero Now" in Item 1. "Business" of this report for information about these agreements and the structure of the program.

Debt Repurchase and Repayment. In May 2020, we repaid the remaining $50.0 million of 7.5% Notes and related accrued and unpaid interest thereon. Upon such payment, the 7.5% Notes were paid in full. See Note 12 for more information about our outstanding debt.

NG Advantage. In February 2020, we converted the principal and accrued interest under the November 2019 Convertible Note (as defined in Note 4) into common units of NG Advantage, LLC ("NG Advantage") and received common units pursuant to the guaranty agreement entered in February 2018, resulting in an increase in our controlling interest in NG Advantage to 93.3%.

Debt Level and Debt Compliance

As of December 31, 2021, we had total indebtedness, excluding finance lease obligations, of $36.1 million in principal amount, of which $12.9 million is expected to become due in 2022. Certain of the agreements governing our outstanding debt, which are discussed in Note 12, have certain financial and non-financial covenants with which we must comply. As of December 31, 2021, we were in compliance with all of these covenants.

Key Trends

Market for RNG, CNG and LNG as a Vehicle Fuel

According to CARB, RNG and conventional natural gas are cleaner than gasoline and diesel fuel based on the greenhouse gas emissions produced by vehicles operated by these fuels. Additionally, RNG and conventional natural gas are generally less expensive for vehicle operators than gasoline and diesel on an energy equivalent basis. According to the U.S. Energy Information Administration, demand for renewable and conventional natural gas fuels in the United States has increased in recent years and is expected to continue to increase. We expect our sales of RNG and conventional natural gas to grow as more companies look to operate in an increasingly sustainable way. In addition to pressure from politicians, regulators and non-governmental organizations, the investment community has dramatically increased demands on companies to diminish their contributions to climate change. We believe that RNG is the best tool available today to reduce climate-harming greenhouse gas and meet sustainability objectives.

The market for our vehicle fuels, however, is a relatively new and developing market. As a result, it is difficult to accurately predict demand for our vehicle fuels, in general and in any specific geographic and customer markets, and consequently our timing and level of investment in particular markets may not be consistent with any growth in demand in these markets. Further, the new and developing nature of the market for our vehicle fuels has led to slow, volatile or unpredictable growth in many sectors. For example, to date, adoption and deployment of natural gas vehicles, both in general and in certain of our key customer markets, including heavy-duty trucking, have been slower than we anticipated.

We believe challenging market conditions are caused by a number of factors, including the following:

- Volatile prices for oil, diesel and gasoline, which decreases the price advantage of our fuels. In addition, these pricing conditions have led us to reduce the prices we charge some customers for our fuels, which has reduced our profit margins.

- There has been increased focus by some parties, including lawmakers, regulators, policymakers, environmental and advocacy organizations and other powerful groups, on electric or other alternative vehicles or vehicle fuels. For example, the 2021 Executive Order directs the federal government to achieve certain goals, including achieving 100% zero-emission vehicle acquisitions by 2035. In addition, California lawmakers and regulators

have implemented various measures designed to increase the use of electric, hydrogen and other zero-emission vehicles, including establishing firm goals for the number of these vehicles operating on state roads by specified dates and enacting various laws and other programs in support of these goals. Among other things, we believe many California lawmakers and regulators desire to limit and ultimately discontinue the production and use of internal combustion engines because such engines have "tailpipe" emissions.

- We believe the lack of substantial growth in the heavy-duty trucking market has been driven in part by the experience of operators with, or perceptions of, unsatisfactory performance by prior models of heavy-duty natural gas truck engines, actual or perceived insufficiencies in the financial incentives to convert, and improvements in diesel engine technology. If these conditions continue, then the growth levels in this market will continue to be low. We believe the newest models of heavy-duty natural gas truck engines have substantially addressed concerns with prior models. Further, we have launched our *Zero Now* truck financing program and the Chevron Adopt-a-Port program to combat operator concerns, but these programs may not ultimately be successful.

To the extent these or other factors have contributed to curtailed demand or slowing growth in the market for our vehicle fuels, we believe they have also contributed to decreases in station construction activity in certain periods, as the success of this activity is dependent on the success of the market for our vehicle fuels generally. Moreover, we believe these factors have materially contributed to the volatility and declines in our stock price and market capitalization in recent years, which has and could in the future lead to decreased cash flows and indications of asset or goodwill impairment. If these adverse macroeconomic conditions and other uncertainties in our industry persist, our financial results and stock price may continue to be adversely affected.

In spite of these market conditions, we believe our key customer markets, including heavy-duty trucking, airports, refuse, and public transit, are well-suited for the adoption of our vehicle fuels because they consume relatively high volumes of fuel, refuel at centralized locations or along well-defined routes and/or are facing increasingly stringent emissions or other environmental requirements. We also expect the lower greenhouse gas emissions associated with our RNG vehicle fuel will result in increased demand for this fuel, resulting in our continued delivery of increasing volumes of RNG to our vehicle fleet customers. Additionally, we anticipate that, over time, cities and communities in the United States and Canada will follow large cities in Europe in banning diesel vehicles. If these projections materialize, we believe there will be growth in the consumption of our vehicle fuels in our key customer and geographic markets, and our goal is to capitalize on this growth if and when it materializes. In that event, we expect our operating costs and capital expenditures would increase in connection with any growth of our business in the future.

Our Performance

Overview. Our gross revenue mostly consists of volume-related revenue, station construction sales, and AFTC revenue. Our revenue can vary between periods due to a variety of factors, including, among others, the amount and timing of vehicle fuel sales, natural gas commodity prices, station construction sales, sales of Environmental Credits, and recognition of government credits, grants and incentives, such as AFTC. In addition, our volume-related revenue has been and may continue to be subject to fluctuations as a result of our entry into certain commodity swap arrangements in October 2018, because the changes in fair value of these and certain other derivative instruments, including existing and anticipated fueling contracts under our *Zero Now* truck financing program, are included in volume-related revenue. Furthermore, our volume-related revenue has been affected by the Amazon Warrant Charges resulting from immediate vesting of a portion of the Warrant Shares and Additional Warrant Shares and subsequent vesting associated with fuel purchases made by Amazon and its affiliates.

Our cost of sales can also vary between periods due to a variety of factors, including fluctuations in natural gas commodity prices, station construction and labor costs, as well as the other factors that impact our revenue levels described above.

In addition, our performance in certain periods has been affected by transactions or events that have resulted in significant cash or non-cash gains or losses. Such gains or losses may not recur regularly, in the same amounts or at all in future periods and, with respect to non-cash gains and losses, do not impact our liquidity.

These significant fluctuations in our operating results may render period-to-period comparisons less meaningful, especially given the current uncertainties related to the ongoing COVID-19 pandemic, and investors in our securities should not rely on the results of one period as an indicator of performance in any other period. Additionally, these fluctuations in our operating results could cause our performance in any period to fall below the financial guidance we may have provided to the public or the estimates and projections of the investment community, which could negatively affect the price of our common stock.

See "Results of Operations" below for more information about our performance in 2020 and 2021.

Volume. The amount of RNG and conventional natural gas, in the form of CNG and LNG, that we delivered increased by 5.3% from 2020 to 2021 primarily due to the effect of COVID-19 restrictions being lifted and increase in travel generally.

The amount of RNG we sell as vehicle fuel, which is delivered in the form of CNG or LNG, has continued to experience robust growth, and increased by 8.9% from 2020 to 2021. We believe the increased demand for RNG is attributable to the dramatic reduction in the amount of climate-harming greenhouse gas that can be achieved through the use of RNG and pressure from politicians, regulators, non-governmental organizations and the investment community directed at companies to reduce their contributions to climate change. To the extent demand for RNG continues to increase, we expect our TotalEnergies JV and our expanded supply agreement and bpJV could increase our volume-related revenue due to increased volumes of RNG vehicle fuel sold and increased generation of RINs and LCFS Credits. In addition, such an increase in RNG demand could also result in more robust competition for supplies of RNG, including from other vehicle fuel providers, gas utilities (which may have distinct advantages in accessing RNG supply, including potential use of ratepayer funds to fund RNG purchases if approved by a utility's regulatory commission) and other users and providers. We expect to invest in production projects to help ensure that we have adequate supply of RNG, and we are pursuing development and ownership of livestock waste ADG projects on our own and with partners including TotalEnergies and bp.

Environmental Credits. When we sell RNG and conventional natural gas for use as a vehicle fuel, we are eligible to generate RINs and LCFS Credits, which we then seek to sell to third parties.

The markets for RINs and LCFS Credits have been volatile and unpredictable in recent periods, and the prices for these credits have been subject to significant fluctuations. For example, in 2021, market prices for RINs have been as high as $3.81 and as low as $1.95. Additionally, the value of RINs and LCFS Credits, and consequently the revenue levels we may receive from our sale of these credits, may be adversely affected by changes to the federal and state programs under which these credits are generated and sold, prices for and use of oil, diesel or gasoline, the inclusion of additional qualifying fuels in the programs, increased production levels of other fuels in the programs, or other conditions. Further, our ability to generate revenue from sales of these credits depends on our strict compliance with these federal and state programs, which are complex and can involve a significant degree of judgment. If the agencies that administer and enforce these programs disagree with our judgments, otherwise determine we are not in compliance, conduct reviews of our activities or make changes to the programs, then our ability to generate or sell these credits could be temporarily restricted pending completion of reviews or as a penalty, permanently limited or lost entirely, and we could be subject to fines or other sanctions. Any of these outcomes could force us to purchase credits in the open market to cover any credits we have contracted to sell, retire credits we may have generated but not yet sold, reduce or eliminate a significant revenue stream or incur substantial additional and unplanned expenses.

Risk Management Activities

From time to time, we enter into fuel sales contracts that require us to sell CNG or LNG to our customers at a fixed price. These contracts expose us to the risk that the price of natural gas commodity may increase above the natural gas commodity cost component included in the price at which we are committed to sell the natural gas to our customers.

In an effort to mitigate the volatility of our earnings related to any futures contracts and to reduce our risk related to our fixed price sales contracts, we operate under a hedging policy pursuant to which we purchase futures contracts to hedge our exposure to variability in expected future cash flows related to a particular fixed price contract or bid. Subject to the

conditions set forth in the policy, we purchase futures contracts in quantities reasonably expected to effectively hedge our exposure to cash flow variability related to fixed price sales contracts entered into after the date of the policy. Unless otherwise agreed in advance by our board of directors and the derivatives committee thereof, we will conduct our futures contract activities and enter into fixed price sales contracts only in accordance with our hedging policy.

Due to the restrictions of our hedging policy, we expect to offer few fixed price sales contracts to our customers. If we do offer a fixed price sales contract, we anticipate including a price component that would cover our estimated cash requirements over the duration of the underlying futures contracts. The amount of this price component will vary based on the anticipated volume and the natural gas price component to be covered under the fixed price sales contract.

In October 2018, in support of our *Zero Now* truck financing program, we executed two commodity swap contracts with TotalEnergies Gas & Power North America, an affiliate of TotalEnergies and THUSA, for a total of five million diesel gallons annually from April 1, 2019 to June 30, 2024. These commodity swap contracts are intended to manage risks related to the diesel-to-natural gas price spread in connection with the natural gas fuel supply commitments we have made and expect to make in our current and anticipated fueling agreements with fleet operators that participate in the *Zero Now* program.

Critical Accounting Policies and Estimates

This discussion is based upon our consolidated financial statements included in this report, which have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates and may result in material effects on our operating results and financial position.

We believe the critical accounting policies discussed below affect our more significant estimates made in preparing our consolidated financial statements. See Notes 1 and 2 for more information about these and our other significant accounting policies.

Revenue Recognition

In general, revenue is recognized when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration to which we expect to be entitled in exchange for the goods or services. To achieve that core principle, a five-step approach is applied: (1) identify the contract with a customer, (2) identify the performance obligations in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract, and (5) recognize revenue allocated to each performance obligation when we satisfy the performance obligation. A performance obligation is a promise in a contract to transfer a distinct good or service to the customer and is the unit of account for revenue recognition.

We recognize revenue on various products and services.

Our volume-related revenue primarily consists of sales of RNG and conventional natural gas, in the form of CNG and LNG, O&M services, and RINs and LCFS Credits in addition to Amazon Warrant Charges and changes in fair value of our derivative instruments.

Fuel and O&M services are sold pursuant to contractual commitments over defined goods-and-service delivery periods. These contracts typically include a stand-ready obligation to supply natural gas and/or provide O&M services daily based on a committed and agreed upon routine maintenance schedule or when and if called upon by the customer.

We recognize fuel and O&M services revenue in the amount to which we have the right to invoice. We have a right to consideration based on the amount of GGEs of natural gas dispensed by the customer and current pricing conditions, which are typically billed to the customer on a monthly basis. Since payment terms are less than a year, we have elected the practical expedient which allows us to not assess whether a customer contract has a significant financing component.

We sell RIN Credits and LCFS Credits to third parties that need the credits to comply with federal and state requirements. Revenue is recognized on these credits when there is an agreement in place to monetize the credits at a determinable price.

Changes in fair value of derivative instruments relates to our commodity swap and certain customer fueling contracts under our *Zero Now* truck financing program. The contracts are measured at fair value with changes in the fair value recorded in our consolidated statements of operations in the period incurred. The amounts are classified as revenue because our commodity swap contracts are used to economically offset the risk associated with the diesel-to-natural gas price spread resulting from existing and anticipated customer fueling contracts under our *Zero Now* truck financing program.

Amazon Warrant Charges are determined based on the grant date fair value of the award, and the associated non-cash stock-based sales incentive charges, which is recorded as a reduction of revenue, are recognized as the customer purchases fuel and vesting conditions become probable of being achieved. See Note 1 for additional information.

Station construction contracts are generally short-term, except for certain larger and more complex stations, which can take up to 24 months to complete. For most of our station construction contracts, the customer contracts with us to provide a significant service of integrating a complex set of tasks and components into a single station. Hence, the entire contract is accounted for as one performance obligation.

We recognize station construction revenue over time as we perform under these contracts because of the continual transfer of control of the goods to the customer, which typically controls the work in process. Revenue is recognized based on the extent of progress towards completion of the performance obligation and is recorded proportionally as costs are incurred. Costs to fulfill our obligations under these contracts typically include labor, materials and subcontractors' costs, other direct costs and an allocation of indirect costs.

Refinements of estimates to account for changing conditions and new developments are continuous and characteristic of the process. Many factors that can affect contract profitability may change during the performance period of the contract, including differing site conditions, the availability of skilled contract labor, the performance of major suppliers and subcontractors, and unexpected changes in material costs. Because a significant change in one or more of these estimates could affect the profitability of these contracts, the contract price and cost estimates are reviewed periodically as work progresses and adjustments proportionate to the cost-to-cost measure of progress are reflected in contract revenues in the reporting period when such estimates are revised as discussed above. Provisions for estimated losses on uncompleted contracts are recorded in the period in which the losses become known.

In certain contracts with our customers, we agree to provide multiple goods or services, including construction of and sale of a station, O&M services, and sale of fuel to the customer. These contracts have multiple performance obligations because the promise to transfer each separate good or service is separately identifiable and distinct. This evaluation requires significant judgment and the decision to combine a group of contracts or separate the combined or single contract into multiple performance obligations could change the amount of revenue recognized in one or more periods.

We allocate the contract price to each performance obligation using best estimates of the standalone selling price of each distinct good or service in the contract. The primary method used to estimate the standalone selling price for fuel and O&M services is observable standalone sales, and the primary method used to estimate the standalone selling price for station construction sales is the expected cost plus a margin approach because we sell customized customer-specific solutions. Under this approach, we forecast expected costs of satisfying a performance obligation and then add an appropriate margin for the good or service.

AFTC is considered variable consideration because it can either increase or decrease the transaction price based on volumes of vehicle fuel sold. Additionally, AFTC is not recognized as revenue until it is authorized through federal legislation, which also provides a determinable price. We recognize revenue in the period the credit is authorized through federal legislation.

We collect and remit taxes assessed by various governmental authorities that are imposed on and concurrent with revenue-producing transactions between us and our customers. These taxes may include, among others, fuel, sales and

value-added taxes. We report the collection of these taxes on a net basis and they are excluded from revenue and cost of goods sold.

Impairment of Goodwill and Long-Lived Assets

Goodwill represents the excess of costs incurred over the fair value of the net assets of acquired businesses. We assess our goodwill using either a qualitative or quantitative approach to determine whether it is more likely than not that the fair value of our reporting unit is less than its carrying value. We are required to use judgment when applying the goodwill impairment test, including, among other considerations, the identification of reporting unit(s), the assessment of qualitative factors, and the estimation of fair value of a reporting unit in the quantitative approach. We determined that we are a single reporting unit for the purpose of goodwill impairment tests. We perform the impairment test annually on October 1, or more frequently if facts or circumstances change that would indicate that the carrying amount may be impaired.

The qualitative goodwill assessment includes the potential effect on a reporting unit's fair value of certain events and circumstances, including its enterprise value, macroeconomic conditions, industry and market considerations, cost factors, and other relevant entity-specific events. If it is determined, based upon the qualitative assessment, that it is more likely than not that the reporting unit's fair value is less than its carrying amount, then a quantitative impairment test is performed. Alternatively, we may bypass the qualitative assessment for a reporting unit and directly perform the quantitative assessment.

The quantitative assessment estimates the reporting unit's fair value based on its market capitalization plus an assumed control premium as evidence of fair value. The estimates used to determine the fair value of the reporting unit may change based on results of operations, macroeconomic conditions stock price fluctuations or other factors. Changes in these estimates could materially affect our assessment of the fair value and goodwill impairment for the reporting unit.

For our most recent goodwill impairment test, which was our annual test performed on October 1, 2021, we performed a quantitative impairment assessment for the reporting unit as described above. In this test, the fair value of the reporting unit substantially exceeded its carrying value.

We evaluated the volatility in the market price of our common stock subsequent to our annual test date through December 31, 2021, and considered whether there were any other events or circumstances that would more likely than not reduce the fair value of our reporting unit below its carrying value on a sustained basis, and concluded it was not more likely than not that the fair value of our reporting unit decreased below its carrying value, on a sustained basis. As a result, an interim impairment test was not considered necessary during the three months ended December 31, 2021.

If a significant decline in the market price of our common stock and our market capitalization were sustained, or if other events or circumstances change that would more likely than not reduce the fair value of our reporting unit below its carrying value, on a sustained basis, then we may perform impairment tests more frequently, and it is possible that our goodwill could become impaired, which could result in a material charge and adversely affect our results of operations.

We review the carrying value of our long-lived assets, including property and equipment and intangible assets with finite useful lives, for impairment whenever events or changes in circumstances indicate that the carrying value of an asset or asset group may not be recoverable. Events that could result in an impairment review include, among others, a significant decrease in the operating performance of a long-lived asset or asset group or the decision to close a fueling station. Impairment testing involves a comparison of the sum of the undiscounted future cash flows of the asset or asset group to its carrying amount. If the sum of the undiscounted future cash flows exceeds the carrying amount, then no impairment exists. If the carrying amount exceeds the sum of the undiscounted future cash flows, then a second step is performed to determine the amount of impairment, if any, to be recognized. An impairment loss is recognized to the extent that the carrying amount of the asset or asset group exceeds its fair value. The fair value of the asset or asset group is based on estimated discounted future cash flows of the asset or asset group using a discount rate commensurate with the related risk. The estimate of future cash flows requires management to make assumptions and to apply judgment, including forecasting future sales and expenses and estimating useful lives of the assets. These estimates can be affected by a number of factors, including, among others, future results, demand and economic conditions, many of which can be difficult to predict.

Income Taxes

Income taxes are computed using the asset and liability method. Under this method, deferred income taxes are recognized by applying enacted statutory tax rates applicable to future years to differences between the tax bases and financial carrying amounts of existing assets and liabilities. The impact on deferred taxes of changes in tax rates and laws, if any, are applied to the years during which temporary differences are expected to be settled and are reflected in the consolidated financial statements in the period of enactment. Valuation allowances are established when management determines it is more likely than not that deferred tax assets will not be realized. When evaluating the need for a valuation analysis, we use estimates involving a high degree of judgment including projected future U.S. GAAP income and the amounts and estimated timing of the reversal of any deferred tax assets and liabilities.

We have a recognition threshold and a measurement attribute for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination by taxing authorities based on the technical merits of the position. The amount recognized is measured as the largest amount of benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. We recognize potential accrued interest and penalties related to unrecognized tax benefit in income tax expense.

We operate within multiple domestic and foreign taxing jurisdictions and are subject to audit in these jurisdictions. These audits can involve complex issues, which may require an extended period of time to resolve. Although we believe that adequate consideration has been given to these issues, it is possible that the ultimate resolution of these issues could be significantly different than originally estimated.

Fair Value Measurements

We have established a framework that follows the authoritative guidance for fair value measurements with respect to assets and liabilities that are measured at fair value on a recurring basis and non-recurring basis. Under the framework, fair value is defined as the exit price, or the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants, as of the measurement date. The framework also establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs market participants would use in valuing the asset or liability and are developed based on market data obtained from sources independent of our Company. Unobservable inputs are inputs that reflect our assumptions about the factors market participants would use in valuing the asset or liability and are developed based upon the best information available in the circumstances. The hierarchy consists of the following three levels: Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities; Level 2 inputs include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, and inputs (other than quoted prices) that are observable for the asset or liability, either directly or indirectly; Level 3 inputs are unobservable inputs for the asset or liability. Categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

Our significant uses of fair value measurements include the valuation of commodity swaps and customer contracts, and warrants, all of which require significant judgment.

Recently Adopted Accounting Changes and Recently Issued and Adopted Accounting Standards.

See Note 1 for information about recently adopted accounting changes and recently issued accounting standards.

Results of Operations

The discussions below compare our results of operations in 2021 and 2020. Historical results are not indicative of the results to be expected in the current period or any future period.

2021 Compared to 2020

The table below presents, for each period, each line item of our statement of operations as a percentage of our total revenue for the period. The narrative that follows provides a comparative discussion of certain of these line items between periods.

	Year Ended December 31,	
	2020	2021
Statements of Operations Data:		
Revenue:		
Product revenue	86.4 %	83.4 %
Service revenue	13.6	16.6
Total revenue	100.0	100.0
Operating expenses:		
Cost of sales (exclusive of depreciation and amortization shown separately below):		
Product cost of sales	55.4	74.2
Service cost of sales	8.1	10.2
Change in fair value of derivative warrants	—	—
Selling, general and administrative	23.5	35.2
Depreciation and amortization	16.3	17.7
Total operating expenses	103.3	137.3
Operating loss	(3.4)	(37.2)
Interest expense	(2.5)	(1.7)
Interest income	0.5	0.4
Other income, net	1.0	0.4
Loss from equity method investments	(0.1)	(0.2)
Gain from sale of certain assets of subsidiary	0.4	1.5
Gain (loss) from formation of equity method investment	0.2	—
Loss before income taxes	(3.9)	(36.8)
Income tax expense	(0.1)	—
Net loss	(4.0)	(36.8)
Loss attributable to noncontrolling interest	0.6	0.4
Net loss attributable to Clean Energy Fuels Corp.	(3.4)%	(36.4)%

Revenue. Revenue decreased by $36.1 million to $255.6 million for 2021, from $291.7 million for 2020. This decrease was primarily due to the Amazon Warrant Charges of $83.6 million, an unrealized loss from the change in fair value of our commodity swap and customer contracts entered into in connection with our *Zero Now* truck financing program and a decrease in station construction sales, partially offset by an increase in volume-related revenue.

Volume-related revenue, excluding the effect of the change in fair value of our commodity swap and customer contracts entered into in connection with our *Zero Now* truck financing program and the Amazon Warrant Charges, increased by $62.5 million between periods, attributable to an increase in gallons delivered and a higher effective price per gallon delivered. The effect to volume-related revenue as a result of the change in fair value of our commodity swap and customer contracts entered into in connection with our *Zero Now* truck financing program was $5.6 million, as we recognized an unrealized gain of $2.1 million in 2020 compared to an unrealized loss of $3.5 million in 2021 (see Note 7 for more information).

Our effective price per gallon increased by $0.12 per gallon to $0.76 per gallon in 2021 compared to $0.64 in 2020, excluding the effects of the change in fair value of derivative instruments and Amazon Warrant Charges discussed above. Our effective price per gallon is defined as revenue generated from selling RNG and conventional natural gas and any related Environmental Credits and providing O&M services to our vehicle fleet customers at stations we do not own and for which we receive a per-gallon or fixed fee, all divided by the total GGEs delivered less GGEs delivered by non-consolidated entities, such as entities that are accounted for under the equity method. The increase in our effective price

per gallon was primarily due to higher RIN and natural gas prices, and a favorable fuel price mix, which is based on the variation of fuel types and locations where we deliver fuel.

Station construction sales decreased by $10.2 million between periods due to decreased construction activities as a result of construction delays relating to completion of certain projects.

AFTC revenue increased by $0.9 million between periods primarily due to the increase in gallons sold during the year ended December 31, 2021 compared to the year ended December 31, 2020.

Cost of sales. Cost of sales increased by $30.2 million to $215.6 million in 2021, from $185.4 million in 2020. This increase was primarily due to an increase in gallons delivered and an increase in our effective cost per gallon delivered, partially offset by a decrease in the cost of station construction activities.

Our effective cost per gallon increased by $0.08 per gallon to $0.50 per gallon in 2021 from $0.42 per gallon in 2020. Our effective cost per gallon is defined as the total costs associated with delivering our fuels, including commodity costs, transportation fees, liquefaction charges, and other site operating costs, plus the total cost of providing O&M services at stations that we do not own and for which we receive a per-gallon or fixed fee, including direct technician labor, indirect supervisor and management labor, repair parts and other direct maintenance costs, all divided by the total GGEs delivered less GGEs delivered by non-consolidated entities, such as entities that are accounted for under the equity method. The increase in our effective cost per gallon was due to higher commodity prices and transportation costs.

Selling, general and administrative. Selling, general and administrative expenses increased by $21.4 million to $89.9 million in 2021, from $68.5 million in 2020. The increase was primarily driven by an increase of $12.0 million in stock-based compensation expense due to equity awards granted during the year and our higher stock price, an increase of $2.9 million in salaries and benefits, and an increase of $2.0 million in legal and consulting fees.

Depreciation and amortization. Depreciation and amortization decreased by $2.5 million to $45.2 million in 2021, from $47.7 million in 2020, primarily due to a lower amount of depreciable assets.

Interest expense. Interest expense decreased by $2.9 million to $4.4 million in 2021, from $7.3 million in 2020. This decrease was primarily due to a reduction of outstanding indebtedness between periods and a $1.2 million loss on extinguishment of debt in 2020 that is included in interest expense.

Other income, net. Other income, net decreased by $2.1 million to $0.9 million in 2021, from $3.0 million in 2020, primarily due to higher gains recorded for the disposal of certain assets in the prior year period.

Loss from equity method investments. Loss from equity method investments increased by $0.2 million to $0.4 million in 2021, from $0.2 million in 2020, primarily due to the operating results of SAFE&CEC S.r.l., the bpJV, and the TotalEnergies JV.

Gain from sale of certain assets of subsidiary. In 2021, we recorded a gain of $3.9 million compared to a gain of $1.1 million in 2020 as a result of the satisfaction of specified performance criteria in each of 2020 and 2021 related to the assets sold in the bp Transaction in accordance with the related Amended Asset Purchase Agreement.

Gain from formation of equity method investment. In 2020, we recorded a gain of $0.7 million related to the release of costs accrued in satisfaction of commitments made in connection with the CEC Combination (defined in Note 3). There was no comparable gain or loss in 2021.

Income tax expense. Income tax expense decreased by $0.2 million to $0.1 million in 2021 from $0.3 million in 2020, primarily due to a decrease in deferred taxes associated with goodwill and a reduction in the Company's expected foreign tax exposure.

Loss attributable to noncontrolling interest. In 2021 and 2020, we recorded a gain of $1.0 million and $1.7 million, respectively, for the noncontrolling interest in the net loss of NG Advantage. The noncontrolling interest in NG Advantage represents a 6.7% minority interest that was held by third parties during both the 2021 and 2020 periods.

Seasonality and Inflation

To some extent, we experience seasonality in our results of operations. Some of our customers tend to consume more of our vehicle fuels in the summer months, when buses and other fleet vehicles use more fuel to power their air conditioning systems, which typically translate to an increased volume of fuel delivered in the summer months. In addition, natural gas commodity prices tend to be higher in the fall and winter months, due to increased overall demand for natural gas for heating during these periods.

Historically, inflation has not significantly affected our operating results; however, costs for construction, repairs, maintenance, electricity and insurance are all subject to inflationary pressures, which could affect our ability to maintain our stations adequately, build new stations, expand our existing facilities or pursue additional facilities, and could materially impact our operating costs.

Liquidity and Capital Resources

Liquidity

Liquidity is the ability to meet present and future financial obligations through operating cash flows, the sale or maturity of investments or the acquisition of additional funds through capital management. Our financial position and liquidity are, and will continue to be, influenced by a variety of factors, including the level of our outstanding indebtedness and the principal and interest we are obligated to pay on our indebtedness, which could be influenced by the discontinuance of LIBOR for certain of our debt instruments that tie interest rates to this metric; the amount and timing of any additional debt or equity financing we may pursue; our capital expenditure requirements; any merger, divestiture or acquisition activity; and our ability to generate cash flows from our operations. We expect cash provided by our operating activities to fluctuate as a result of a number of factors, including our operating results and the factors that affect these results, including the amount and timing of our vehicle fuel sales, station construction sales, sales of RINs and LCFS Credits and recognition of government credits, the effects of COVID-19, grants and incentives, if any; fluctuations in commodity, station construction and labor costs; Environmental Credit prices; variations in the fair value of certain of our derivative instruments that are recorded in revenue; and the amount and timing of our billing, collections and liability payments, as discussed under “Key Trends-Our Performance” above.

Cash Flows

Operating Activities. Cash provided by operating activities was $41.3 million in 2021, compared to cash provided by operating activities of $61.0 million in 2020. The decrease in cash provided by operating activities was primarily attributable to the collection of AFTC receivables related to 2018 and 2019 volumes in 2020.

Investing Activities. Cash used in investing activities was $207.7 million in 2021, compared to cash provided by investing activities of $24.2 million in 2020. The increase in cash used in investing activities was primarily attributable to $100.2 million in net purchases of short-term investments in 2021, compared to $27.6 million in net maturities of short-term investments in 2020, a $15.6 million increase in capital expenditures in 2021, higher investments in other entities in 2021, including our $70.2 million in contribution to the bpJV, a $1.7 million decrease in proceeds from property and equipment disposals, and $3.9 million in lower net earn-out proceeds received in connection with the bp Transaction.

Financing Activities. Cash provided by financing activities was $152.8 million in 2021, compared to cash used in financing activities of $18.7 million in 2020. Cash provided by financing activities in 2021 was primarily attributable to approximately $193.5 million net proceeds from the issuance of common stock under our ATM Programs, proceeds from the Chevron Adopt-a-Port program, and proceeds from debt instruments, partially offset by repurchases of common stock and repayments of debt instruments and finance lease obligations. Cash used in financing activities in 2020 was primarily

attributable to repayments of debt instruments and finance lease obligations and repurchases of common stock, partially offset by proceeds received from debt instruments.

Capital Expenditures, Indebtedness and Other Uses of Cash

We require cash to fund our capital expenditures, operating expenses and working capital and other requirements, including costs associated with fuel sales; outlays for the design and construction of new fueling stations; additions or other modifications to existing fueling stations; RNG production facilities; debt repayments and repurchases; repurchases of common stock; purchases of heavy-duty trucks that use our fuels; additions or modifications of LNG production facilities; supporting our operations, including maintenance and improvements of our infrastructure; supporting our sales and marketing activities, including support of legislative and regulatory initiatives; financing vehicles for our customers; any investments in other entities; any mergers or acquisitions, including acquisitions to expand our RNG production capacity; pursuing market expansion as opportunities arise, including geographically and to new customer markets; and to fund other activities or pursuits and for other general corporate purposes.

Our business plan calls for approximately $70.9 million in capital expenditures in 2022. These capital expenditures primarily relate to the construction of fueling stations, IT software and equipment and LNG plant costs, and we expect to fund these expenditures primarily through cash on hand and cash generated from operations. Further, in 2022, we anticipate deploying up to approximately $195.0 million to develop ADG RNG production facilities. In 2021, we contributed $70.2 million and $4.8 million to the bpJV and the DR JV, respectively.

In addition, NG Advantage may spend up to $0.6 million in 2022 to purchase additional equipment in support of its operations and customer contracts. Although NG Advantage has sought financing from third parties for capital expenditures, we have provided and may continue to provide financing for these capital expenditures.

We had total indebtedness, consisting of our debt and finance leases, of approximately $39.4 million in principal amount as of December 31, 2021, of which approximately $13.7 million, $10.0 million, $5.6 million, $1.8 million, and $8.3 million is expected to become due in 2022, 2023, 2024, 2025, and 2026, respectively. Based on outstanding debt balances and applicable interest rates as of December 31, 2021, we expect our total interest payment obligations relating to our indebtedness to be $2.1 million for the year ending December 31, 2022. We plan to and believe we are able to make all expected principal and interest payments in the next 12 months.

We also have indebtedness, including the amount representing interest, from our operating leases of approximately $68.2 million as of December 31, 2021, of which approximately $6.1 million, $6.0 million, $6.1 million, $6.0 million, $5.8 million and $38.0 million is expected to become due in 2022, 2023, 2024, 2025, 2026 and thereafter, respectively.

In addition, in connection with implementing our *Zero Now* truck financing program, we have entered into agreements that permit us to incur a material amount of additional debt on a delayed draw basis and obligate us to make interest and other fee payments that vary in amount depending on the outstanding principal of this debt and certain other factors; none of this potential debt nor the related interest and other payments are included in the foregoing estimates, other than the principal amount of $9.5 million drawn as of December 31, 2021. Our ability to draw additional debt under these agreements expired on January 2, 2022.

We intend to make payments under our various debt instruments when due and pursue opportunities for earlier repayment and/or refinancing if and when these opportunities arise. Although we believe we have sufficient liquidity and capital resources to repay our debt coming due in the next 12 months, we may elect to suspend, or limit repurchases under, our share repurchase program or pursue alternatives, such as refinancing, or debt or equity offerings, to increase our cash management flexibility.

Sources of Cash

Historically, our principal sources of liquidity have consisted of cash on hand, cash provided by our operations, including, if available, AFTC and other government credits, grants and incentives, cash provided by financing activities,

and sales of assets. As of December 31, 2021, we had total cash and cash equivalents and short-term investments of $229.2 million, compared to $138.5 million as of December 31, 2020.

We expect cash provided by our operating activities to fluctuate depending on our operating results, which can be affected by the factors described above, as well as the other factors described in this MD&A and Item 1A. “Risk Factors” of this report.

Subject to the following paragraph, we believe our cash and cash equivalents and short-term investments and anticipated cash provided by our operating and financing activities will satisfy our business requirements for at least the 12 months following the date of this report. Subsequent to that period, we may need to raise additional capital to fund any planned or unanticipated capital expenditures, investments, debt repayments, share repurchases or other expenses that we cannot fund through cash on-hand, cash provided by our operations or other sources. Moreover, we may use our cash resources faster than we predict due to unexpected expenditures, the effects of COVID-19, or higher-than-expected expenses, in which case we may need to seek capital from alternative sources sooner than we anticipate. The timing and necessity of any future capital raise would depend on various factors, including our rate and volume of, and prices for, natural gas fuel sales and other volume-related activity, the effects of COVID-19, new station construction, debt repayments (either before or at maturity) and any potential mergers, acquisitions, investments, divestitures or other strategic relationships we may pursue, as well as the other factors that affect our revenue and expense levels as described in this MD&A and elsewhere in this report.

If we deploy additional capital to develop ADG RNG production facilities and fueling stations to support contracted RNG fueling volume, we could be required to raise additional capital.

We may raise additional capital through one or more sources, including, among others, obtaining equity capital, including through offerings of our common stock or other securities, obtaining new or restructuring existing debt, selling assets, or any combination of these or other potential sources of capital. We may not be able to raise capital when needed, on terms that are favorable to us or our stockholders or at all. Any inability to raise necessary capital may impair our ability to develop and maintain fueling infrastructure, invest in strategic transactions or acquisitions or repay our outstanding indebtedness and may reduce our ability to support and build our business and generate sustained or increased revenue.

Material Cash Requirements

The table below represents our material cash requirements, including the scheduled maturities of our contractual obligations as of December 31, 2021. This table excludes certain potential cash requirements because they may involve future cash payments that are considered uncertain and cannot be estimated because they vary based upon future conditions; however, the exclusion of these obligations should not be construed as an implication that they are immaterial, as they could significantly affect our short- and long-term liquidity and capital resource needs depending on a variety of future events, facts and conditions.

	Payments Due by Period				
Contractual Obligations: (in thousands)	**Total**	**Less than 1 year**	**1 - 3 years**	**3 - 5 years**	**More than 5 years**
Long-term debt [1]	$ 40,884	$ 14,842	$ 15,844	$ 10,198	$ —
Finance lease obligations [2]	3,578	990	2,198	390	—
Operating lease commitments [3]	68,173	6,148	12,124	11,868	38,033
Long-term take-or-pay contracts [4]	2,565	1,340	1,225	—	—
Long-term supply contract [5]	1,141	1,141	—	—	—
Construction contracts [6]	25,433	25,433	—	—	—
JV capital contribution commitments [7]	51,600	51,600			
Total	$ 193,374	$ 101,494	$ 31,391	$ 22,456	$ 38,033

(1) Consists of long-term debt to finance acquisitions and equipment purchases, including future interest payments. For our variable-rate debt (which consists of the SG Facility, as defined in Note 12), we have assumed an interest rate of 1.4% (LIBOR plus 1.30%) as of December 31, 2021.

(2) Consists of finance lease obligations to finance equipment purchases, including future interest payments.

(3) Consists of various space and ground leases for our Boron Plant, office spaces and fueling stations as well as leases for equipment.

(4) Represents our estimates for long-term and quarterly natural gas purchase contracts with a take-or-pay commitment.

(5) Represents our estimates for one long-term natural gas supply contract for our subsidiary NG Advantage, which entered into an arrangement with bp for the supply, sale and transportation of CNG through February 2022.

(6) Consists of our obligations to fund various fueling station construction projects, net of amounts funded through December 31, 2021 and excluding contractual commitments related to station sales contracts.

(7) Represents outstanding commitments for the bpJV pursuant to the bpJV Capital Call (see Note 15).

Off-Balance Sheet Arrangements

As of December 31, 2021, we had the following off-balance sheet arrangements that have had, or are reasonably likely to have, a material current or future effect on our financial condition, changes in financial condition, revenue or expenses, results of operations, liquidity, capital expenditures or capital resources:

- Outstanding surety bonds for construction contracts and general corporate purposes totaling $43.4 million;
- One long-term natural gas purchase contract with a take-or-pay commitment, the amount of which is shown under “Contractual Obligations” above;
- Quarterly fixed price natural gas purchase contracts with take-or-pay commitments, the amount of which is shown under “Contractual Obligations” above;
- One long-term natural gas sale contract with a fixed supply commitment, the amount of which is shown under “Contractual Obligations” above, along with a guaranty agreement; and
- One long-term natural gas sale contract with a fixed supply commitment.

We provide surety bonds primarily for construction contracts in the ordinary course of our business, as a form of guarantee. No liability has been recorded in connection with our surety bonds because, based on historical experience and available information, we do not believe it is probable that any amounts will be required to be paid under these arrangements for which we will not be reimbursed.

As of December 31, 2021, we had one long-term natural gas purchase contract with a take-or-pay commitment, which requires us to purchase minimum volumes of natural gas at index-based prices and expires in June 2022. Additionally, as of December 31, 2021, we had quarterly fixed-price natural gas purchase contracts with take-or-pay commitments extending through June 2023.

NG Advantage has entered into an arrangement with bp for the supply, sale and reservation of a specified volume of CNG transportation capacity until February 2022. In connection with the arrangement, on February 28, 2018, we entered into a guaranty agreement with NG Advantage and bp, which was amended in June 2020, in which we guarantee NG Advantage’s payment obligations to the customer in the event of a default by NG Advantage under the supply arrangement, in an amount up to $15.0 million plus related fees. Our guaranty is in effect until thirty days following our notice to bp of termination.

In addition, as of December 31, 2021, we have a fixed supply arrangement with UPS for the supply and sale of 170.0 million GGEs of RNG through March 2026.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk.

In the ordinary course of our business, we are exposed to various market risks, including commodity price risks, risks related to foreign currency exchange rates, and risks related to fluctuations in interest rates.

Commodity Price Risk

We are subject to market risk with respect to our sales of natural gas, which have historically been subject to volatile market conditions. Our exposure to market risk is heightened when we have a fixed-price sales contract with a customer that is not covered by a futures contract, or when we are otherwise unable to pass through natural gas price increases to customers. Natural gas prices and availability are affected by many factors, including, among others, drilling activity, supply, weather conditions, overall economic conditions and foreign and domestic government regulations.

Natural gas costs represented $94.0 million, $74.6 million, and $111.8 million of our cost of sales in 2019, 2020, and 2021, respectively.

In October 2018, in support of our *Zero Now* truck financing program, we entered into two commodity swap contracts with TotalEnergies Gas & Power North America, an affiliate of TotalEnergies and THUSA, for a total of five million diesel gallons annually from April 1, 2019 to June 30, 2024. These commodity swap contracts are intended to manage risks related to the diesel-to-natural gas price spread in connection with the natural gas fuel supply commitments we make in our fueling agreements with fleet operators that participate in the *Zero Now* truck financing program.

We have prepared a sensitivity analysis to estimate our exposure to price risk with respect to our commodity swap contracts. If the diesel-to-natural gas price spread were to fluctuate by 10% as of December 31, 2021, we would expect a corresponding fluctuation in the fair value of our commodity swap contracts of approximately $2.5 million.

Foreign Currency Exchange Rate Risk

For the year ended December 31, 2021, our primary exposure to foreign currency exchange rates relates to our other Canadian operations that had certain outstanding accounts receivable and accounts payable denominated in the U.S. dollar, which were not hedged.

We have prepared a sensitivity analysis to estimate our exposure to market risk with respect to our monetary transactions denominated in a foreign currency. If the exchange rates on these assets and liabilities were to fluctuate by 10% from the rates as of December 31, 2021, we would expect a corresponding fluctuation in the value of the assets and liabilities of approximately $0.2 million, net.

Interest Rate Risk

As of December 31, 2021, we had $9.5 million of debt that bears interest at a rate equal to LIBOR or the Prime Rate plus a margin per annum. Thus, our interest expense would fluctuate with a change in LIBOR or the Prime Rate. If these rates were to increase or decrease by 1% for the year, our annual interest expense would increase or decrease by approximately $0.1 million.

The SG Credit Agreement permits us to draw loans from time to time through January 2, 2022. These loans are subject to an interest rate indexed to LIBOR, certain tenors of which were discontinued after 2021 with other tenors being discontinued after June 2023. We intend to monitor the developments with respect to the discontinuance of LIBOR and work with our lenders under the credit agreements, including SG, and any other indebtedness with an interest rate tied to LIBOR to minimize the effect of such a discontinuance on our financial condition and results of operations; however, the effect of the anticipated discontinuance of LIBOR on us and our debt instruments remains uncertain. If our lenders have increased costs due to changes in LIBOR, we may experience potential increases in interest rates on our variable rate debt, which could adversely impact our interest expense, results of operations and cash flows.

Item 8. Financial Statements and Supplementary Data.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

	Page
Consolidated Financial Statements	
Report of Independent Registered Public Accounting Firm *(PCAOB ID 185)*	56
Consolidated Balance Sheets	59
Consolidated Statements of Operations	60
Consolidated Statements of Comprehensive Income (Loss)	61
Consolidated Statements of Stockholders' Equity	62
Consolidated Statements of Cash Flows	63
Notes to Consolidated Financial Statements	64
Financial Statement Schedule	
Schedule II—Valuation and Qualifying Accounts	112

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Clean Energy Fuels Corp.:

Opinions on the Consolidated Financial Statements and Internal Control Over Financial Reporting

We have audited the accompanying consolidated balance sheets of Clean Energy Fuels Corp. and subsidiaries (the Company) as of December 31, 2021 and 2020, the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2021, and the related notes and financial statement schedule II (collectively, the consolidated financial statements). We also have audited the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2021, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021 based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

Basis for Opinions

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's consolidated financial statements and an opinion on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the

transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Critical Audit Matter

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Fair value of embedded derivatives and commodity swaps

As discussed in Note 8 to the consolidated financial statements, the Company used the income approach to value its derivative assets and liabilities associated with its embedded derivatives in fueling agreements under its Zero Now truck financing program and the commodity swap contracts used to manage price risks related to these agreements. As of December 31, 2021, the Company recorded derivative assets and liabilities related to the embedded derivatives and commodity swaps of $6,939 thousand and $4,383 thousand, respectively. The Company used a discounted cash flow model to estimate the fair value of these embedded derivatives and commodity swaps, classified as Level 3 in the fair value hierarchy because they are valued using unobservable inputs.

We identified the assessment of the measurement of fair value for the embedded derivatives and commodity swaps as a critical audit matter due to the significant measurement uncertainty associated with the fair value of such instruments. There was a high degree of subjective auditor judgment in assessing the significant unobservable inputs, such as commodity forward curves and differentials applied to the commodity forward curves.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design and tested the operating effectiveness of certain internal controls related to the Company's derivatives process. This included controls related to the (1) development of the significant unobservable inputs, including monitoring of changes to the inputs, and (2) relevance and reliability of observable inputs reasonably available. We inspected the underlying fueling agreements associated with the embedded derivatives, on a sample basis, to evaluate the existence and accuracy of inputs into the valuation model. We also confirmed directly with the counter-party to the commodity swap contracts and inspected the commodity swap contracts to evaluate the existence and accuracy of inputs into the valuation model, including confirming the relevant terms of the commodity swap contracts. We involved financial instrument valuation professionals with specialized skills and knowledge, who assisted in assessing the fair value of the embedded derivatives and commodity swaps by developing an estimate of the fair values of the embedded derivatives and commodity swaps using commodity forward curves and differentials applied to the commodity forward curves obtained from publicly available market data, and compared the results to the Company's fair value estimates.

Evaluation of the Company's accounting analysis associated with the Amazon Warrant

As discussed in Notes 1 and 13 to the consolidated financial statements, the Company entered into an agreement with certain subsidiaries of Amazon.com, Inc. (Amazon). Pursuant to the agreement, Amazon agreed to purchase a minimum volume of fuel over a contractual period, and, in exchange, the Company issued warrants to Amazon to purchase shares of common stock of the Company. Certain of these warrants vested upon consummation of the agreement, which resulted

in the Company recognizing an initial charge against revenue of $76.6 million and a customer incentive asset of $38.4 million. The customer incentive asset will be recognized as a charge against revenue as the contractually required minimum fuel is purchased.

We identified the evaluation of the Company's accounting for the warrants that immediately vested when issued to Amazon as a critical audit matter. Complex auditor judgment was required in evaluating the provisions of the agreements and the application of the relevant accounting guidance to the provisions of the agreements.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design and tested the operating effectiveness of the internal control related to the Company's evaluation of the accounting for the warrants issued to Amazon and the application of relevant accounting guidance. We inquired of management on the business purpose of the transaction. We evaluated the Company's assessment of the presentation of the warrant expense as a charge against revenue and the determination of equity classification. We also assessed the timing of the recognition of customer incentive asset over the minimum volume of contractual fuel by reading the underlying agreement to understand the relevant terms and conditions of the agreement as well as the rights and features of the warrants. We determined whether the Company's assessment of the contractual terms and conditions was in accordance with the relevant accounting standards.

/s/ KPMG LLP

We have served as the Company's auditor since 2001.

Irvine, California
February 24, 2022

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	December 31, 2020	December 31, 2021
Assets		
Current assets:		
Cash and cash equivalents	$ 108,977	$ 99,448
Short-term investments	29,528	129,722
Accounts receivable, net of allowance of $1,335 and $1,205 as of December 31, 2020 and 2021, respectively	61,784	87,433
Other receivables	23,655	24,447
Inventory	28,100	31,302
Prepaid expenses and other current assets	9,404	37,584
Derivative assets, related party	1,591	—
Total current assets	263,039	409,936
Operating lease right-of-use assets	25,967	42,537
Land, property and equipment, net	290,911	261,761
Restricted cash	11,000	7,008
Notes receivable and other long-term assets, net	27,299	56,189
Long-term portion of derivative assets, related party	4,057	—
Investments in other entities	27,962	109,811
Goodwill	64,328	64,328
Intangible assets, net	464	5,500
Total assets	$ 715,027	$ 957,070
Liabilities and Stockholders' Equity		
Current liabilities:		
Current portion of debt	$ 3,592	$ 12,845
Current portion of finance lease obligations	840	846
Current portion of operating lease obligations	2,822	3,551
Accounts payable	17,310	24,352
Accrued liabilities	52,637	75,159
Deferred revenue	2,642	7,251
Derivative liabilities, related party	—	1,900
Total current liabilities	79,843	125,904
Long-term portion of debt	82,088	23,215
Long-term portion of finance lease obligations	2,552	2,427
Long-term portion of operating lease obligations	23,698	39,431
Long-term portion of derivative liabilities, related party	—	2,483
Other long-term liabilities	3,996	8,199
Total liabilities	192,177	201,659
Commitments and contingencies (Note 17)		
Stockholders' equity:		
Preferred stock, $0.0001 par value. 1,000,000 shares authorized; no shares issued and outstanding	—	—
Common stock, $0.0001 par value. 304,000,000 and 454,000,000 shares authorized; 198,491,204 shares and 222,684,923 shares issued and outstanding as of December 31, 2020 and 2021, respectively	20	22
Additional paid-in capital	1,191,791	1,519,918
Accumulated deficit	(678,096)	(771,242)
Accumulated other comprehensive loss	(209)	(1,622)
Total Clean Energy Fuels Corp. stockholders' equity	513,506	747,076
Noncontrolling interest in subsidiary	9,344	8,335
Total stockholders' equity	522,850	755,411
Total liabilities and stockholders' equity	$ 715,027	$ 957,070

See accompanying notes to consolidated financial statements.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except share and per share data)

	Year Ended December 31,		
	2019	2020	2021
Revenue:			
Product revenue	$ 298,469	$ 251,954	$ 213,133
Service revenue	45,596	39,770	42,513
Total revenue	344,065	291,724	255,646
Operating expenses:			
Cost of sales (exclusive of depreciation and amortization shown separately below):			
Product cost of sales	185,557	161,705	189,600
Service cost of sales	26,550	23,705	26,004
Change in fair value of derivative warrants	(1,039)	(40)	—
Selling, general and administrative	73,444	68,516	89,906
Depreciation and amortization	49,625	47,682	45,184
Total operating expenses	334,137	301,568	350,694
Operating income (loss)	9,928	(9,844)	(95,048)
Interest expense	(7,574)	(7,348)	(4,430)
Interest income	2,437	1,345	1,082
Other income, net	1,990	3,025	905
Loss from equity method investments	(119)	(161)	(430)
Gain from sale of certain assets of subsidiary	7,455	1,063	3,885
Gain from formation of equity method investment	—	700	—
Income (loss) before income taxes	14,117	(11,220)	(94,036)
Income tax expense	(858)	(309)	(119)
Net income (loss)	13,259	(11,529)	(94,155)
Loss attributable to noncontrolling interest	7,162	1,665	1,009
Net income (loss) attributable to Clean Energy Fuels Corp.	$ 20,421	$ (9,864)	$ (93,146)
Net loss attributable to Clean Energy Fuels Corp. per share:			
Basic	$ 0.10	$ (0.05)	$ (0.44)
Diluted	$ 0.10	$ (0.05)	$ (0.44)
Weighted-average common shares outstanding:			
Basic	204,573,287	200,657,912	213,118,694
Diluted	205,987,509	200,657,912	213,118,694

See accompanying notes to consolidated financial statements.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(In thousands)

	Year Ended December 31, 2019			Year Ended December 31, 2020			Year Ended December 31, 2021		
	Clean Energy Fuels Corp.	Noncontrolling Interest	Total	Clean Energy Fuels Corp.	Noncontrolling Interest	Total	Clean Energy Fuels Corp.	Noncontrolling Interest	Total
Net income (loss)	$ 20,421	$ (7,162)	$13,259	$ (9,864)	$ (1,665)	$(11,529)	$ (93,146)	$ (1,009)	$(94,155)
Other comprehensive income (loss), net of tax:									
Foreign currency translation adjustments net of $0 tax in 2019, 2020 and 2021	505	—	505	1,355	—	1,355	(1,394)	—	(1,394)
Unrealized gains on available-for-sale securities, net of $0 tax in 2019, 2020 and 2021	67	—	67	2	—	2	(19)	—	(19)
Total other comprehensive income (loss)	572	—	572	1,357	—	1,357	(1,413)	—	(1,413)
Comprehensive income (loss)	$ 20,993	$ (7,162)	$13,831	$ (8,507)	$ (1,665)	$(10,172)	$ (94,559)	$ (1,009)	$(95,568)

See accompanying notes to consolidated financial statements.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands, except share data)

	Common stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Noncontrolling Interest in Subsidiary	Total Stockholders' Equity
	Shares	Amount					
Balance, January 1, 2019	203,599,892	$ 20	$1,198,769	$(688,653)	$ (2,138)	$ 17,011	525,009
Issuance of common stock	1,123,163	—	309	—	—	—	309
Stock-based compensation	—	—	3,880	—	—	—	3,880
Net income (loss)	—	—	—	20,421	—	(7,162)	13,259
Other comprehensive income	—	—	—	—	572	—	572
Increase in ownership in subsidiary	—	—	228	—	—	(228)	—
Balance, December 31, 2019	204,723,055	20	1,203,186	(668,232)	(1,566)	9,621	543,029
Issuance of common stock	1,512,535	—	1,683	—	—	—	1,683
Repurchase of common stock	(7,744,386)	—	(14,647)	—			(14,647)
Stock-based compensation	—	—	2,957	—	—	—	2,957
Net loss	—	—	—	(9,864)	—	(1,665)	(11,529)
Other comprehensive income	—	—	—	—	1,357	—	1,357
Increase in ownership in subsidiary	—	—	(1,388)	—	—	1,388	—
Balance, December 31, 2020	198,491,204	20	1,191,791	(678,096)	(209)	9,344	522,850
Issuance of common stock, net of issuance costs	24,646,419	2	197,919	—	—	—	197,921
Repurchase of common stock	(452,700)	—	(2,916)	—	—	—	(2,916)
Stock-based compensation	—	—	14,994	—	—	—	14,994
Stock-based sales incentive charges	—	—	118,130	—	—	—	118,130
Net loss	—	—	—	(93,146)	—	(1,009)	(94,155)
Other comprehensive loss	—	—	—	—	(1,413)	—	(1,413)
Balance, December 31, 2021	222,684,923	$ 22	$1,519,918	$(771,242)	$ (1,622)	$ 8,335	$ 755,411

See accompanying notes to consolidated financial statements.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

	Year Ended December 31,		
	2019	2020	2021
Cash flows from operating activities:			
Net income (loss)	$ 13,259	$ (11,529)	$ (94,155)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	49,625	47,682	45,184
Provision for credit losses and inventory	2,586	2,662	1,257
Stock-based compensation expense	3,880	2,957	14,994
Stock-based sales incentive charges	—	—	83,641
Change in fair value of derivative instruments	5,545	(2,175)	3,490
Amortization of discount and debt issuance cost	(728)	(46)	20
Loss (gain) on disposal of property and equipment	(2,536)	(2,875)	1,365
Loss on extinguishment of debt	—	1,249	39
Gain from sale of certain assets of subsidiary	(7,455)	(1,063)	(3,885)
Gain from formation of equity method investment	—	(700)	—
Loss from equity method investments	119	161	430
Non-cash lease expense	3,234	2,756	2,945
Deferred income taxes	738	120	69
Expense reimbursement from JV	—	—	1,640
Changes in operating assets and liabilities:			
Accounts and other receivables	(63,408)	53,784	(24,260)
Inventory	3,439	108	(5,704)
Prepaid expenses and other assets	(16,617)	5,275	(10,498)
Operating lease liabilities	(3,786)	(3,141)	(3,053)
Accounts payable	9,316	(9,337)	6,615
Deferred revenue	(3,528)	(10,976)	4,550
Accrued liabilities and other	18,596	(13,871)	16,614
Net cash provided by operating activities	12,279	61,041	41,298
Cash flows from investing activities:			
Purchases of short-term investments	(171,080)	(74,292)	(324,170)
Maturities and sales of short-term investments	180,704	101,850	223,991
Purchases of and deposits on property and equipment	(27,088)	(13,273)	(23,075)
Disbursements for loans receivable for RNG production projects	—	(535)	(3,905)
Payments on and proceeds from sales of loans receivable	608	1,567	421
Cash received from sale of certain assets of subsidiary, net	7,582	4,830	887
Investments in other entities	—	(650)	(78,919)
Payment and deposits on equipment and manure rights for RNG production projects	—	—	(5,830)
Proceeds from disposal of property and equipment	7,772	4,673	2,941
Net cash provided by (used in) investing activities	(1,502)	24,170	(207,659)
Cash flows from financing activities:			
Issuance of common stock	309	1,683	204,455
Repurchase of common stock	—	(14,647)	(2,916)
Fees paid for issuance of common stock	—	—	(6,534)
Fees paid for debt issuance costs	(123)	(131)	(1,277)
Proceeds for Adopt-a-Port program	—	—	5,815
Repayment of proceeds for Adopt-a-Port program	—	—	(360)
Proceeds from debt instruments	15,294	65,860	4,400
Proceeds from revolving line of credit	—	—	1,450
Repayments of borrowing under revolving line of credit	—	—	(1,450)
Repayments of debt instruments and finance lease obligations	(7,795)	(70,399)	(50,737)
Payments of debt extinguishment costs	—	(1,023)	(14)
Net cash (used in) provided by financing activities	7,685	(18,657)	152,832
Effect of exchange rates on cash, cash equivalents and restricted cash	136	201	8
Net increase (decrease) in cash, cash equivalents and restricted cash	18,598	66,755	(13,521)
Cash, cash equivalents and restricted cash, beginning of period	34,624	53,222	119,977
Cash, cash equivalents and restricted cash, end of period	$ 53,222	$ 119,977	$ 106,456
Supplemental disclosure of cash flow information:			
Income taxes paid	$ 36	$ 8	$ 15
Interest paid, net of $441, $57 and $0 capitalized, respectively	$ 6,788	$ 5,622	$ 3,907

See accompanying notes to consolidated financial statements.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1 —Summary of Significant Accounting Policies

The Company and Nature of Business

Clean Energy Fuels Corp., together with its majority and wholly owned subsidiaries (hereinafter collectively referred to as the "Company," unless the context or the use of the term indicates or requires otherwise) is engaged in the business of selling renewable and conventional natural gas as alternative fuels for vehicle fleets and related fueling solutions to its customers, primarily in the United States and Canada. The Company's principal business is supplying renewable natural gas ("RNG") and conventional natural gas, in the form of compressed natural gas ("CNG") and liquefied natural gas ("LNG"), for medium and heavy-duty vehicles and providing operation and maintenance ("O&M") services for public and private vehicle fleet customer stations. The Company is also focused on developing, owning, and operating dairy and other livestock waste RNG projects and supplying RNG (procured from our own projects or from third parties) to its customers in the heavy and medium-duty commercial transportation sector.

As a comprehensive clean energy solutions provider, the Company also designs and builds, as well as operates and maintains, public and private vehicle fueling stations in the United States and Canada; sells and services compressors and other equipment used in RNG production and at fueling stations; transports and sells CNG and LNG via "virtual" natural gas pipelines and interconnects; sells U.S. federal, state and local government credits it generates by selling RNG as a vehicle fuel, including Renewable Identification Numbers ("RIN Credits" or "RINs") under the federal Renewable Fuel Standard Phase 2 and credits under the California and the Oregon Low Carbon Fuel Standards (collectively, "LCFS Credits"); and obtains federal, state and local tax credits, grants and incentives.

Basis of Presentation

The accompanying consolidated financial statements include the accounts of the Company and its subsidiaries, and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly the Company's consolidated financial position, results of operations, comprehensive income (loss) and cash flows in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). All intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the accompanying consolidated financial statements and these notes. Actual results could differ from those estimates and may result in material effects on the Company's operating results and financial position. Significant estimates made in preparing the accompanying consolidated financial statements include (but are not limited to) those related to revenue recognition, fair value measurements, goodwill and long-lived asset valuations and impairment assessments, income tax valuations, stock-based compensation expense and stock-based sales incentive charges.

Inventory

Inventory consists of raw materials and spare parts, work in process and finished goods and is stated at the lower of cost (first-in, first-out) or net realizable value. The Company evaluates inventory balances for excess quantities and obsolescence by analyzing estimated demand, inventory on hand, sales levels and other information and reduces inventory balances to net realizable value for excess and obsolete inventory based on this analysis.

Inventories consisted of the following as of December 31, 2020 and 2021 (in thousands):

	2020	2021
Raw materials and spare parts	$ 28,100	$ 31,302
Total inventory	$ 28,100	$ 31,302

Derivative Instruments and Hedging Activities

In connection with the Company's *Zero Now* truck financing program, the Company entered into commodity swap contracts in October 2018 intended to manage risks related to the diesel-to-natural gas price spread in connection with the natural gas fuel supply commitments the Company makes in its fueling agreements with fleet operators that participate in the *Zero Now* program. The Company has not designated any derivative instruments as hedges for accounting purposes and does not enter into such instruments for speculative trading purposes. These derivative instruments are recorded in the accompanying consolidated balance sheets and are measured as either an asset or liability at fair value with changes in fair value recognized in earnings. See Note 7 for more information.

Property and Equipment

Property and equipment are recorded at cost. Depreciation and amortization are recognized over the estimated useful lives of the assets using the straight-line method. The estimated useful lives of depreciable assets are three to twenty years for LNG liquefaction plant assets, up to ten years for station equipment and LNG trailers, and three to seven years for all other depreciable assets. Leasehold improvements are amortized over the shorter of their estimated useful lives or related lease terms. Periodically, the Company receives grant funding to assist in the financing of fueling station construction. The Company records the grant proceeds as a reduction of the cost of the respective asset. Total grant proceeds received were approximately $1.6 million, $0.0 million, and $0.5 million for the years ended December 31, 2019, 2020, and 2021, respectively.

Leases

On January 1, 2019, the Company adopted Accounting Standards Codification ("ASC") 842, *Leases*, whereby leases are classified as either operating leases or finance leases.

At the inception of a contract the Company assesses whether the contract is, or contains, a lease. The Company's assessment is based on: (1) whether the contract involves the use of a distinct identified asset, (2) whether the Company obtains the right to substantially all the economic benefit from the use of the asset throughout the period, and (3) whether the Company has the right to direct the use of the asset. The commencement date of the contract is the date the lessor makes the underlying asset available for use by the lessee.

Right-of-use ("ROU") assets represent the Company's right to use an underlying asset during the lease term and lease liabilities represent obligations to make lease payments arising from the lease. ROU assets and lease liabilities are recognized at the commencement date based on the net present value of fixed lease payments over the lease term. ROU assets also include any initial direct costs and advance lease payments made and exclude lease incentives. Lease liabilities also include terminal purchase options when deemed reasonably certain to exercise. The Company's lease term includes options to extend when it is reasonably certain that it will exercise that option. The Company has elected not to recognize ROU assets and lease liabilities for short-term leases that have a term of 12 months or less; the Company recognizes lease expense for these leases on a straight-line basis over the lease term.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

As most of the Company's operating leases do not have an implicit rate that can be readily determined, the Company uses its secured incremental borrowing rate for the same term as the underlying lease based on information available at lease commencement. For finance leases, the Company uses the rate implicit in the lease.

The lease classification affects the expense recognition on the consolidated statements of operations. Operating lease charges are recorded in "Cost of sales, exclusive of depreciation and amortization," and "Selling, general and administrative" expense. Finance lease charges are split, whereby depreciation on assets under finance leases is recorded in "Depreciation and amortization" expense and an implied interest component is recorded in "Interest expense." The expense recognition for operating leases and finance leases is substantially consistent with legacy accounting.

Long-Lived Assets

The Company reviews the carrying value of its long-lived assets, including property and equipment and intangible assets with finite useful lives, for impairment whenever events or changes in circumstances indicate that the carrying value of an asset or asset group may not be recoverable. Events that could result in an impairment review include, among others, a significant decrease in the operating performance of a long-lived asset or asset group or the decision to close a fueling station. Impairment testing involves a comparison of the sum of the undiscounted future cash flows of the asset or asset group to its carrying amount. If the sum of the undiscounted future cash flows exceeds the carrying amount, then no impairment exists. If the carrying amount exceeds the sum of the undiscounted future cash flows, then a second step is performed to determine the amount of impairment, if any, to be recognized. An impairment loss is recognized to the extent that the carrying amount of the asset or asset group exceeds its fair value. The fair value of the asset or asset group is based on estimated discounted future cash flows of the asset or asset group using a discount rate commensurate with the related risk. The estimate of future cash flows requires management to make assumptions and to apply judgment, including forecasting future sales and expenses and estimating useful lives of the assets. These estimates can be affected by a number of factors, including, among others, future results, demand, and economic conditions, many of which can be difficult to predict.

There were no impairments of the Company's long-lived assets in the years ended December 31, 2019, 2020 and 2021.

Intangible assets with finite useful lives are amortized over their respective estimated useful lives using the straight-line method. The estimated useful lives of intangible assets with finite useful lives are from one to eight years for customer relationships, one to twenty years for acquired contracts, two to ten years for trademarks and trade names, and three years for non-compete agreements.

The Company's intangible assets as of December 31, 2020 and 2021 were as follows (in thousands):

	2020	2021
Customer relationships	$ 5,376	$ 5,376
Acquired contracts	4,384	9,884
Trademark and trade names	2,700	2,700
Non-compete agreements	860	860
Total intangible assets	13,320	18,820
Less accumulated amortization	(12,856)	(13,320)
Net intangible assets	$ 464	$ 5,500

Amortization expense for intangible assets was $1.0 million, $0.8 million, and $0.5 million for the years ended December 31, 2019, 2020, and 2021, respectively.

In 2021, the Company acquired contractual rights to manure feedstock for an anaerobic digester gas ("ADG") RNG production project totaling $5.5 million. The acquired manure rights have an initial term of 20 years. Amounts are

classified and included under "Acquired contracts" in the table above. As of December 31, 2021, the Company paid $1.0 million and accrued $4.5 million, which was included in "Accrued liabilities" in the accompanying consolidated balance sheets, related to the acquired manure rights. The $4.5 million was excluded from the accompanying consolidated statements of cash flows as it was a non-cash investing activity. The intangible asset related to manure rights will be amortized over the contractual term of 20 years using the straight-line method with amortization commencing on the date of commercial operation of the ADG RNG facility.

Estimated amortization expense subsequent to the year ended December 31, 2021 is expected to be approximately $0.0 million in 2022, $0.0 million in 2023, $0.3 million in 2024, $0.3 million in 2025, $0.3 million in 2026, and $4.6 million thereafter.

Goodwill

Goodwill represents the excess of costs incurred over the fair value of the net assets of acquired businesses. The Company assesses its goodwill using either a qualitative or quantitative approach to determine whether it is more likely than not that the fair value of its reporting unit is less than its carrying value. The Company is required to use judgment when applying the goodwill impairment test, including, among other considerations, the identification of reporting unit(s), the assessment of qualitative factors, and the estimation of fair value of a reporting unit in the quantitative approach. The Company determined that it is a single reporting unit for the purpose of goodwill impairment tests. The Company performs the impairment test annually on October 1, or more frequently if facts and circumstances warrant a review.

The qualitative goodwill assessment includes the potential impact on a reporting unit's fair value of certain events and circumstances, including its enterprise value, macroeconomic conditions, industry and market considerations, cost factors, and other relevant entity-specific events. If it is determined, based upon the qualitative assessment, that it is more likely than not that the reporting unit's fair value is less than its carrying amount, then a quantitative impairment test is performed.

The quantitative assessment estimates the reporting unit's fair value based on its enterprise value plus an assumed control premium as evidence of fair value. The estimates used to determine the fair value of the reporting unit may change based on results of operations, macroeconomic conditions, stock price fluctuations, or other factors. Changes in these estimates could materially affect our assessment of the fair value and goodwill impairment for the reporting unit.

During the years ended December 31, 2019, 2020 and 2021, the Company utilized the quantitative approach and concluded there were no indicators of impairment to goodwill.

The following table summarizes the activity related to the carrying amount of goodwill (in thousands):

Balance as of December 31, 2019	$	64,328
Balance as of December 31, 2020	$	64,328
Balance as of December 31, 2021	$	64,328

Revenue Recognition

The Company recognizes revenue when control of the promised goods or services is transferred to its customers, in an amount that reflects the consideration to which it expects to be entitled in exchange for the goods or services. To achieve that core principle, a five-step approach is applied: (1) identify the contract with a customer, (2) identify the performance obligations in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract, and (5) recognize revenue allocated to each performance obligation when the Company satisfies the performance obligation. A performance obligation is a promise in a contract to transfer a distinct good or service to the customer and is the unit of account for revenue recognition.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The Company is generally the principal in its customer contracts because it has control over the goods and services prior to them being transferred to the customer, and as such, revenue is recognized on a gross basis. Sales and usage-based taxes are excluded from revenues. Revenue is recognized net of allowances for returns and any taxes collected from customers, which are subsequently remitted to governmental authorities.

Volume-Related

The Company's volume-related revenue primarily consists of sales of RNG and conventional natural gas, in the form of CNG and LNG, O&M services and RINs and LCFS Credits in addition to Amazon Warrant Charges and changes in fair value of the Company's derivative instruments associated with providing fuel to customers under contracts.

Fuel and O&M services are sold pursuant to contractual commitments over defined goods-and-service delivery periods. These contracts typically include a stand-ready obligation to supply natural gas and/or provide O&M services daily based on a committed and agreed upon routine maintenance schedule or when and if called upon by the customer.

The Company applies the 'right to invoice' practical expedient and recognizes fuel and O&M services revenue in the amount to which the Company has the right to invoice. The Company has a right to consideration based on the amount of gasoline gallon equivalents of fuel dispensed by the customer and current pricing conditions, which are typically billed to the customer on a monthly basis. Since payment terms are less than a year, the Company has elected the practical expedient which allows it to not assess whether a customer contract has a significant financing component.

Contract modifications are not distinct from the existing contract and are typically renewals of fuel and O&M service sales. As a result, these modifications are accounted for as if they were part of the existing contract. The effect of a contract modification on the transaction price is recognized prospectively.

The Company sells RINs and LCFS Credits to third parties that need the credits to comply with federal and state requirements. Revenue is recognized on these credits when there is an agreement in place to monetize the credits at a determinable price.

Amazon Warrant Charges (defined in Note 13) are determined based on the grant date fair value of the award and the associated non-cash stock-based sales incentive charges, which are recorded as a reduction of revenue and are recognized as the customer purchases fuel and vesting conditions become probable of being achieved. See discussion under "Amazon Warrant" below and Note 13 for additional information.

The changes in fair value of derivative instruments relate to the Company's commodity swap and customer fueling contracts. The contracts are measured at fair value with changes in fair value recorded in the accompanying consolidated statements of operations in the period incurred. The amounts are classified as revenue because the Company's commodity swap contracts are used to economically offset the risk associated with the diesel-to-natural gas price spread resulting from existing and anticipated customer fueling contracts under the Company's *Zero Now* truck financing program. See Note 7 for more information about these derivative instruments. For the years ended December 31, 2019, 2020 and 2021, changes in the fair value of commodity swaps and customer contracts amounted to a gain (loss) of $(6.6) million, $2.1 million, and $(3.5) million, respectively.

Station Construction Sales

Station construction contracts are generally short-term, except for certain larger and more complex stations, which can take up to 24 months to complete. For most of the Company's station construction contracts, the customer contracts with the Company to provide a significant service of integrating a complex set of tasks and components into a single station. Hence, the entire contract is accounted for as one performance obligation.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The Company recognizes revenue over time as the Company performs under its station construction contracts because of the continual transfer of control of the goods to the customer, who typically controls the work in process. Revenue is recognized based on the extent of progress towards completion of the performance obligation and is recorded proportionally as costs are incurred. Costs to fulfill the Company's obligations under these contracts typically include labor, materials and subcontractors' costs, other direct costs and an allocation of indirect costs.

Refinements of estimates to account for changing conditions and new developments are continuous and characteristic of the process. Many factors that can affect contract profitability may change during the performance period of the contract, including differing site conditions, the availability of skilled contract labor, the performance of major suppliers and subcontractors, and unexpected changes in material costs. Because a significant change in one or more of these estimates could affect the profitability of these contracts, the contract price and cost estimates are reviewed periodically as work progresses and adjustments proportionate to the cost-to-cost measure of progress are reflected in contract revenues in the reporting period when such estimates are revised. Provisions for estimated losses on uncompleted contracts are recorded in the period in which the losses become known.

Contract modifications are typically expansions in scope of an existing station construction project. As a result, these modifications are accounted for as if they were part of the existing contract. The effect of a contract modification on the transaction price and the Company's measure of progress for the performance obligation to which it relates is recognized as an adjustment to revenue (either as an increase or a reduction) on a cumulative catch-up basis.

Under the typical payment terms of the Company's station construction contracts, the customer makes either performance-based payments ("PBPs") or progress payments. PBPs are interim payments of the contract price based on quantifiable measures of performance or the achievement of specified events or milestones. Progress payments are interim payments of costs incurred as the work progresses. For some of these contracts, the Company may be entitled to receive an advance payment. The advance payment typically is not considered a significant financing component because it is used to meet working capital demands that can be higher in the early stages of a construction contract and to protect the Company if the customer fails to adequately complete some or all of its obligations under the contract. In addition, the customer retains a small portion of the contract price until completion of the contract. Such retained portion of the contract price is not considered a significant financing component because the intent is to protect the customer.

In certain contracts with its customers, the Company agrees to provide multiple goods or services, including construction of and sale of a station, O&M services, and sale of fuel to the customer. These contracts have multiple performance obligations because the promise to transfer each separate good or service is separately identifiable and is distinct. This evaluation requires significant judgment and the decision to combine a group of contracts or separate the combined or single contract into multiple performance obligations could change the amount of revenue recognized in one or more periods.

The Company allocates the contract price to each performance obligation using best estimates of the standalone selling price of each distinct good or service in the contract. The primary method used to estimate the standalone selling price for fuel and O&M services is observable standalone sales, and the primary method used to estimate the standalone selling price for station construction sales is the expected cost plus a margin approach because the Company sells customized customer-specific solutions. Under this approach, the Company forecasts expected costs of satisfying a performance obligation and then adds an appropriate margin for the good or service.

AFTC

See discussion under "Alternative Fuel Tax Credit" below for more information about AFTC, which is not recognized as revenue until the period the credit is authorized through federal legislation.

Other

The majority of other revenue is from sales of used natural gas heavy-duty trucks purchased by the Company. Revenue on these contracts is recognized at the point in time when the customer accepts delivery of the truck.

Alternative Fuel Tax Credit

Under separate pieces of U.S. federal legislation, the Company has been eligible to receive a federal alternative fuels tax credit ("AFTC") for its natural gas vehicle fuel sales made between October 1, 2006 and December 31, 2021. The AFTC, which had previously expired on December 31, 2016, was reinstated on February 9, 2018 to apply retroactively to vehicle fuel sales made from January 1, 2017 through December 31, 2017. On December 20, 2019, AFTC was retroactively extended beginning January 1, 2018 through December 31, 2020 and subsequently extended for vehicle fuel sales made through December 31, 2021.

As a result of the legislation authorizing AFTC being signed into law on December 20, 2019, all AFTC revenue for vehicle fuel the Company sold in the 2018 and 2019 calendar years, totaling $47.1 million, was recognized during the year ended December 31, 2019. AFTC was extended in December 2020 and is currently available for vehicle fuel sales made through December 31, 2021. The AFTC credit is equal to $0.50 per gasoline gallon equivalent of CNG that the Company sold as vehicle fuel, and $0.50 per diesel gallon of LNG that the Company sold as vehicle fuel in 2019, 2020 and 2021.

Based on the service relationship with its customers, either the Company or its customer claims the credit. The Company records its AFTC credits, if any, as revenue in its consolidated statements of operations because the credits are fully payable to the Company and do not offset income tax liabilities. As such, the credits are not deemed income tax credits under the accounting guidance applicable to income taxes.

LNG Transportation Costs

The Company records the costs incurred to transport LNG to its customers in "Product cost of sales" in the accompanying consolidated statements of operations.

Advertising Costs

Advertising costs are expensed as incurred. Advertising costs were $1.2 million, $0.0 million and $0.0 million for the years ended December 31, 2019, 2020 and 2021, respectively.

Stock-Based Compensation

The Company recognizes compensation expense for all stock-based payment arrangements over the requisite service period of the award and recognizes forfeitures as they occur. For stock options, the Company determines the grant date fair value using the Black-Scholes option pricing model, which requires the input of certain assumptions, including the expected life of the stock-based payment award, stock price volatility and risk-free interest rate. For restricted stock units, the Company determines the grant date fair value based on the closing market price of its common stock on the date of grant.

Amazon Warrant

The Amazon Warrant (as defined in Note 13) is accounted for as an equity instrument and measured in accordance with Accounting Standards Codification ("ASC") 718, *Compensation – Stock Compensation*. To determine the fair value of the Amazon Warrant, the Company used the Black-Scholes option pricing model, which is based in part on assumptions that require management to use judgment. For awards granted to a customer, which are not in exchange for distinct goods or services, the fair value of the awards earned based on service or performance conditions is recorded as a reduction of

the transaction price in accordance with ASC 606, *Revenue from Contracts with Customers*. Based on the fair value of the award, the Company determines the amount of non-cash stock-based sales incentive charges on the customer's pro-rata achievement of vesting conditions, which is recorded as a reduction of revenue in the consolidated statements of operations.

Income Taxes

Income taxes are computed using the asset and liability method. Under this method, deferred income taxes are recognized by applying enacted statutory tax rates applicable to future years to differences between the tax bases and financial carrying amounts of existing assets and liabilities. The impact on deferred taxes of changes in tax rates and laws, if any, are applied to the years during which temporary differences are expected to be settled and are reflected in the consolidated financial statements in the period of enactment. Valuation allowances are established when management determines it is more likely than not that deferred tax assets will not be realized. When evaluating the need for a valuation analysis, we use estimates involving a high degree of judgment including projected future US GAAP income and the amounts and estimated timing of the reversal of any deferred tax assets and liabilities.

The Company has a recognition threshold and a measurement attribute for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination by taxing authorities based on the technical merits of the position. The amount recognized is measured as the largest amount of benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement. The Company recognizes potential accrued interest and penalties related to unrecognized tax benefit in income tax expense.

The Company operates within multiple domestic and foreign taxing jurisdictions and is subject to audit in these jurisdictions. These audits can involve complex issues, which may require an extended period of time to resolve. Although the Company believes that adequate consideration has been given to these issues, it is possible that the ultimate resolution of these issues could be significantly different from originally estimated.

Net Income (Loss) Per Share

Basic net income (loss) per share is computed by dividing the net income (loss) attributable to Clean Energy Fuels Corp. by the weighted-average number of common shares outstanding and common shares issuable for little or no cash consideration during the period. Diluted net income (loss) per share is computed by dividing the net income (loss) attributable to Clean Energy Fuels Corp. by the weighted-average number of common shares outstanding and common shares issuable for little or no cash consideration during the period and potentially dilutive securities outstanding during the period, and therefore reflects the dilution from common shares that may be issued upon exercise or conversion of these potentially dilutive securities, such as stock options, warrants, convertible notes and restricted stock units. The dilutive effect of stock awards and warrants is computed under the treasury stock method. The dilutive effect of convertible notes and restricted stock units is computed under the if-converted method. Potentially dilutive securities are excluded from the computations of diluted net income (loss) per share if their effect would be antidilutive.

Foreign Currency Translation and Transactions

The Company uses the local currency as the functional currency of its foreign subsidiary and equity method investment. Accordingly, all assets and liabilities outside the United States are translated into U.S. dollars at the rate of exchange in effect at the balance sheet date. Revenue and expense items are translated at the weighted-average exchange rates prevailing during the period. Foreign currency translation adjustments are recorded as accumulated other comprehensive income (loss) in stockholders' equity.

Foreign currency transactions occur when there is a transaction denominated in other than the respective entity's functional currency. The Company records the changes in the exchange rate for these transactions in its consolidated

statements of operations. For each of the years ended December 31, 2019, 2020 and 2021, foreign exchange transaction gains and (losses) were included in "Other income (expense), net" in the accompanying consolidated statements of operations and were $0.0 million.

Comprehensive Income (Loss)

Comprehensive income (loss) is defined as the change in equity (net assets) of a business enterprise during the period from transactions and other events and circumstances from non-owner sources. The difference between net income (loss) and comprehensive income (loss) for the years ended December 31, 2019, 2020 and 2021 was comprised of the Company's foreign currency translation adjustments and unrealized gains and losses on available-for-sale securities.

Concentration of Credit Risk

Credit is extended to all customers based on financial condition, and collateral is generally not required. Concentrations of credit risk with respect to trade receivables are limited because of the large number of customers comprising the Company's customer base and dispersion across many different industries and geographies. Certain international customers, however, have historically been slower to pay on trade receivables. Accordingly, the Company continually monitors collections and payments from its customers and maintains a provision for estimated credit losses based upon its historical experience and any specific customer collection issues that it has identified. Although credit losses have historically been within the Company's expectations and the provisions established, the Company cannot guarantee that it will continue to experience the same credit loss rates that it has in the past.

Recently Adopted Accounting Pronouncements and Recently Issued Accounting Pronouncements

Recently Adopted Accounting Pronouncements

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. This new standard clarifies and simplifies the accounting for income taxes, including guidance related to intraperiod tax allocation, the recognition of deferred tax liabilities for outside basis differences, the methodology for calculating income taxes in an interim period, and the application of income tax guidance to franchise taxes that are partially based on income. This standard is effective for fiscal years, and interim periods within those years, beginning after December 15, 2020, with early adoption permitted in any interim period within that year. The Company adopted this standard in the first quarter of 2021. The adoption of this ASU did not have a material impact on its consolidated financial statements and related disclosures.

Recently Issued Accounting Pronouncements

In July 2021, the FASB issued ASU No. 2021-05, *Leases (Topic 842): Lessors–Certain Leases with Variable Lease Payments*. This new accounting amendment requires a lessor to classify leases with variable lease payments that do not depend on an index or rate as operating leases on the commencement date if classification as a sales-type or direct financing lease would result in a day-one loss. The amendment in this update is effective for fiscal years, and interim periods within those years, beginning after December 15, 2021, with early adoption permitted. The Company is currently evaluating the impact of adopting this new accounting amendment and does not expect the update to have a material impact on its consolidated financial statements and related disclosures.

In November 2021, the FASB issued ASU No. 2021-10, *Government Assistance (Topic 832): Disclosures by Business Entities about Government Assistance*, which requires business entities (except for not-for-profit entities and employee benefit plans) to disclose information about certain government assistance they receive. The Topic 832 disclosure requirements include: (i) the nature of the transactions and the related accounting policy used; (ii) the line items on the balance sheet and income statement that are affected and the amounts applicable to each financial statement line item; and (iii) significant terms and conditions of the transactions. The ASU is effective for fiscal years beginning after December

15, 2021, with early adoption permitted. The Company is currently evaluating the impact of adopting this new ASU and does not expect the update to have a material impact on its consolidated financial statements and related disclosures.

Note 2 —Revenue from Contracts with Customers

Disaggregation of Revenue

The table below presents the Company's revenue disaggregated by revenue source (in thousands):

	Years Ended December 31,		
	2019	2020	2021
Volume-related [1] [2]	$ 273,535	$ 245,300	$ 218,540
Station construction sales	23,120	26,593	16,406
AFTC [3]	47,123	19,831	20,700
Other	287	—	—
Total revenue	$ 344,065	$ 291,724	$ 255,646

(1) Includes changes in fair value of derivative instruments related to the Company's commodity swap and customer fueling contracts. See Note 1 and Note 7 for more information about these derivative instruments. For the years ended December 31, 2019, 2020 and 2021, changes in the fair value of commodity swaps and customer fueling contracts amounted to a loss of $6.6 million, a gain of $2.1 million, and a loss of $3.5 million, respectively.

(2) Includes non-cash stock-based sales incentive contra-revenue charges associated with the Amazon Warrant for the years ended December 31, 2019, 2020 and 2021 of $0.0 million, $0.0 million and $83.6 million, respectively. See Note 13 for more information.

(3) Represents the federal alternative fuel excise tax credit that we refer to as "AFTC," which was extended for vehicle fuel sales made beginning January 1, 2021 through December 31, 2021.

Remaining Performance Obligations

Remaining performance obligations represent the transaction price of customer orders for which the work has not been performed. As of December 31, 2021, the aggregate amount of the transaction price allocated to remaining performance obligations was $19.8 million, which related to the Company's station construction sale contracts. The Company expects to recognize revenue on the remaining performance obligations under these contracts over the next 12 to 24 months.

For volume-related revenue, the Company has elected to apply an optional exemption, which waives the requirement to disclose the remaining performance obligation for revenue recognized through the 'right to invoice' practical expedient.

Costs to Fulfill a Contract

The Company capitalizes costs incurred to fulfill its contracts that (1) relate directly to the contract, (2) are expected to generate resources that will be used to satisfy the Company's performance obligations under the contract, and (3) are expected to be recovered through revenue generated under the contract. Contract fulfillment costs are recorded to depreciation expense as the Company satisfies its performance obligations over the term of the contract. These costs primarily relate to set-up and other direct installation costs incurred by NG Advantage, LLC ("NG Advantage"), for equipment that must be installed on customers' land before NG Advantage is able to deliver CNG to the customer because the customer does not have direct access to the natural gas pipelines. These costs are classified in "Land, property, and equipment, net" in the accompanying consolidated balance sheets. As of December 31, 2020 and 2021, these capitalized costs incurred to fulfill contracts were $10.4 million and $10.1 million with accumulated depreciation of $7.1 million and $7.6 million, respectively, and related depreciation expense of $0.8 million and $0.5 million for the years ended December 31, 2020 and 2021, respectively.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Contract Balances

The timing of revenue recognition, billings and cash collections results in billed accounts receivable, unbilled receivables (contract assets), and customer advances and deposits (contract liabilities) in the accompanying consolidated balance sheets. Changes in the contract asset and liability balances during the year ended December 31, 2021, were not materially affected by any factors outside the normal course of business.

As of December 31, 2020 and 2021, the Company's contract balances were as follows (in thousands):

	2020	2021
Accounts receivable, net	$ 61,784	$ 87,433
Contract assets - current	$ 729	$ 966
Contract assets - non-current	3,998	3,532
Contract assets - total	$ 4,727	$ 4,498
Contract liabilities - current	$ 1,638	$ 5,523
Contract liabilities - non-current	59	—
Contract liabilities - total	$ 1,697	$ 5,523

Accounts Receivable, Net

"Accounts receivable, net" in the accompanying consolidated balance sheets include amounts billed and currently due from customers. The amounts due are stated at their net estimated realizable value. The Company maintains an allowance to provide for the estimated amount of receivables that will not be collected. The allowance is based upon an assessment of customer creditworthiness, historical payment experience, the age of outstanding receivables, and economic conditions that may affect a customer's ability to pay.

Contract Assets

Contract assets include unbilled amounts typically resulting from the Company's station construction sale contracts, when the cost-to-cost method of revenue recognition is utilized and revenue recognized exceeds the amount billed to the customer, and right to payment is not just subject to the passage of time. Amounts may not exceed their net realizable value. Contract assets are classified as current or noncurrent based on the timing of billings. The current portion is included in "Prepaid expenses and other current assets" and the noncurrent portion is included in "Notes receivable and other long-term assets, net" in the accompanying consolidated balance sheets.

Contract Liabilities

Contract liabilities consist of billings in excess of revenue recognized from the Company's station construction sale contracts and payments received primarily from customers of NG Advantage in advance of the performance obligations and are classified as current or noncurrent based on when the revenue is expected to be recognized. The current portion and noncurrent portion of contract liabilities are included in "Deferred revenue" and "Other long-term liabilities," respectively, in the accompanying consolidated balance sheets. Billings in excess of revenue recognized of $1.0 million and $5.4 million and advance payments of $0.6 million and $0.1 million are classified as current as of December 31, 2020 and 2021, respectively.

Revenue recognized during the year ended December 31, 2020 related to the Company's contract liability balances as of December 31, 2019 was $4.8 million. The increase in the contract liability balances for the year ended December 31,

2021 was primarily driven by billings in excess of revenue recognized, offset by $1.5 million of revenue recognized related to the Company's contract liability balances as of December 31, 2020.

Note 3 —Divestitures

bp Transaction

On February 27, 2017, Clean Energy Renewable Fuels ("Renewables") entered into an asset purchase agreement (the "APA") with BP Products North America ("bp"). Pursuant to the APA, Renewables agreed to sell to bp its assets relating to its RNG production business (the "bp Transaction"), consisting of Renewables' two RNG production facilities, Renewables' interest in joint ventures formed with a third-party to develop new RNG production facilities, and Renewables' third-party RNG supply contracts (the "Assets").

Under the APA, bp was required, following the closing of the bp Transaction, to pay Renewables up to an additional $25.0 million in cash over a five-year period if certain conditions relating to the Assets are met. In February 2018, the Company received $0.9 million in cash for its satisfaction of the performance criteria for the first period under the APA, which ended on December 31, 2017. Upon its receipt of such cash, the Company paid $0.1 million in cash and issued 15,877 shares of the Company's common stock with a fair value of $0.0 million to former holders of options to purchase membership units in Renewables. The performance criteria for the second period under the APA, which ended on December 31, 2018, was also satisfied, and the Compre, our volument of $5.4 million in March 2019. During the year ended December 31, 2019, after receipt of the cash payment, the Company paid $0.6 million in cash to former holders of options to purchase membership units in Renewables. In December 2019, the Company and bp entered into an Amendment to the APA ("Amended APA") which amended the earn-out for years four and five and paid the Company an additional $2.8 million for year three of the earn-out period. As a result of the performance criteria for year three under the APA being satisfied, and the additional $2.8 million received by the Company in December 2019 in accordance with the Amended APA, the Company recognized a gross gain of $8.4 million and accrued amounts due to former holders of options to purchase membership units in Renewables of $0.9 million as of December 31, 2019. During the year ended December 31, 2020, the Company recognized a gross gain of $1.0 million and accrued amounts due to former holders of options to purchase membership units in Renewables of $0.1 million as a result of the performance criteria being satisfied for year four under the Amended APA. During the year ended December 31, 2021, the Company recognized a gross gain of $4.4 million and accrued amounts due to former holders of options to purchase membership units in Renewables of $0.5 million as a result of the performance criteria being satisfied for year five under the Amended APA, representing the final earn-out payment under the Amended APA. The Company recognized a net gain of $7.5 million, $1.1 million, and $3.9 million during the years ended December 31, 2019, 2020 and 2021, respectively, which is included in "Gain from sale of certain assets of subsidiary" in the accompanying consolidated statements of operations.

As of December 31, 2021, the Company has paid $10.3 million in cash and issued 770,269 shares of the Company's common stock with a fair value of $2.0 million to former holders of options to purchase membership units in Renewables.

Following the completion of the bp Transaction, Renewables and the Company continue to procure RNG from bp under a long-term supply contract (the "bp Supply Agreement") and from other RNG suppliers and resell such RNG through the Company's fueling infrastructure. On October 1, 2018, Renewables and bp amended the bp Supply Agreement to extend the term and add additional RNG supply. bp and Renewables share in the RINs and LCFS Credits generated from the increased RNG supply sold through the Company's vehicle fueling infrastructure and to other customers. See Note 1 for information on revenue recognition of these credits.

SAFE&CEC S.r.l.

On November 26, 2017, the Company, through its former subsidiary, IMW Industries Ltd. (formerly known as Clean Energy Compression Corp.) ("CEC"), entered into an investment agreement with Landi Renzo S.p.A. ("LR"), an alternative fuels company based in Italy. Pursuant to the investment agreement, the Company and LR agreed to combine

their respective natural gas compressor fueling systems manufacturing subsidiaries, CEC and SAFE S.p.A, in a new company, "SAFE&CEC S.r.l." (such combination transaction is referred to as the "CEC Combination"). SAFE&CEC S.r.l. is focused on manufacturing, selling and servicing natural gas fueling compressors and related equipment for the global natural gas fueling market. At the closing of the CEC Combination on December 29, 2017, the Company owns 49% of SAFE&CEC S.r.l. and LR owns 51% of SAFE&CEC S.r.l.

The Company accounts for its interest in SAFE&CEC S.r.l. using the equity method of accounting because the Company does not control but has the ability to exercise significant influence over SAFE&CEC S.r.l.'s operations. The Company recorded income (loss) from this investment of $0.0 million, $(0.2) million and $0.6 million for the years ended December 31, 2019, 2020 and 2021, respectively. The Company had an investment balance in SAFE&CEC S.r.l. of $24.7 million and $23.9 million as of December 31, 2020 and 2021, respectively.

Note 4 —Investments in Other Entities and Noncontrolling Interest in a Subsidiary

TotalEnergies Joint Venture

On March 3, 2021, the Company entered an agreement ("TotalEnergies JV Agreement") with TotalEnergies S.E. ("TotalEnergies") that created a 50/50 joint venture ("TotalEnergies JV") to develop ADG RNG production facilities in the United States. Each ADG RNG production facility project under the TotalEnergies JV will be formed as a separate limited liability company ("LLC") that is owned 50/50 by the Company and TotalEnergies, and contributions to such LLCs count toward the TotalEnergies JV Equity Obligations (as defined below). The TotalEnergies JV Agreement contemplates that the TotalEnergies JV will invest up to $400.0 million of equity in production projects, and TotalEnergies and the Company each committed to initially provide $50.0 million for the TotalEnergies JV (the "TotalEnergies JV Equity Obligations"). To fund the Company's TotalEnergies JV Equity Obligations, the Company had the option to borrow $20.0 million from Société Générale, a company incorporated as a société anonyme under the laws of France ("SG"), pursuant to the Credit Agreement (defined in Note 12). On October 12, 2021, TotalEnergies and the Company executed a LLC agreement (the "DR Development Agreement") for an ADG RNG production facility project (the "DR JV"). Under the DR Development Agreement, TotalEnergies and the Company have each committed to contribute $7.0 million to the DR JV. On November 1, 2021, TotalEnergies and the Company have each contributed an initial $4.8 million to the DR JV. Assets related to the DR JV were deconsolidated from the Company as of October 12, 2021. No gain or loss was recognized from the transaction. The Company accounts for its interest in the LLCs using the equity method of accounting because the Company does not control but has the ability to exercise significant influence over the LLCs' operations. The Company recorded a loss of $0.1 million from the TotalEnergies JV for the year ended December 31, 2021, related to formation expenses. As of December 31, 2021, the Company had an investment balance in the TotalEnergies JV of $4.7 million.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following table presents combined summarized financial information for the TotalEnergies JV (in thousands):

	Year Ended December 31, 2021
Revenue	$ —
Gross profit	$ —
Operating loss	$ (119)
Net loss	$ (119)

	As of December 31, 2021
Current assets	$ 3,086
Non-current assets	13,103
Total assets	$ 16,189
Current liabilities	$ 6,770
Non-current liabilities	—
Total liabilities	$ 6,770

bp Joint Venture

On April 13, 2021, the Company entered an agreement ("bp JV Agreement") with bp that created a 50/50 joint venture ("bpJV") to develop, own and operate new ADG RNG production facilities in the United States. Pursuant to the bp JV Agreement, bp and the Company committed to provide $50.0 million and $30.0 million, respectively, with bp and the Company each receiving 30.0 million of Class A Units in the bpJV and bp also receiving 20.0 million of Class B Units in the bpJV. bp's initial $50.0 million contribution was made on April 13, 2021 and consisted of all unpaid principal outstanding under the loan agreement dated December 18, 2020, pursuant to which bp advanced $50.0 million to the Company to fund capital costs and expenses incurred prior to formation of the bpJV, including capital costs and expenses for permitting, engineering, equipment, leases and feed stock rights. 100% of the RNG produced from the projects developed and owned by the bpJV will be provided to the vehicle fuels market pursuant to the Company's marketing agreement with bp.

Pursuant to the bp JV Agreement, the Company had the option, exercisable prior to August 31, 2021 (the "bp Option"), to commit an additional $20.0 million to the bpJV upon which bp's Class B Units would convert into Class A Units. On June 21, 2021, the Company contributed $50.2 million to the bpJV, which consisted of (i) its initial contribution commitment of $30.0 million, (ii) the $20.0 million additional contribution to effect the conversion of bp's Class B Units into Class A Units pursuant to the Company's exercise of the bp Option, and (iii) $0.2 million for interest on bp's Class B Units to acquire additional Class A Units. In December 2021, the bpJV authorized a capital call (the "bpJV Capital Call") for additional funding of $143.2 million, requiring bp and the Company each to contribute $71.6 million. As of December 31, 2021, bp and the Company have contributed $71.6 million and $20.0 million, respectively, to the bpJV in connection with the bpJV Capital Call. The remaining contribution balance of $51.6 million due from the Company will be paid on or prior to June 30, 2022. As of December 31, 2021, the Company and bp each own 50% of the bp JV.

The Company accounts for its interest in the bpJV using the equity method of accounting because the Company does not control but has the ability to exercise significant influence over the bpJV's operations. The Company recorded a loss of $0.4 million from this investment for the year ended December 31, 2021, related to formation expenses. The Company had an investment balance in the bpJV of $69.8 million as of December 31, 2021.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Combined summarized financial information for the bpJV is as follows (in thousands):

	Year Ended December 31, 2021
Revenue	$ —
Gross profit	$ —
Operating loss	$ (678)
Net loss	$ (603)
Net loss attributable to bpJV	$ (599)

	As of December 31, 2021
Current assets	$ 152,072
Non-current assets	70,433
Total assets	$ 222,505
Current liabilities	$ 24,932
Non-current liabilities	1,000
Total liabilities	$ 25,932
Equity attributable to shareowners of bpJV	$ 191,170
Equity attributable to noncontrolling interest	5,403
Total equity	$ 196,573

SAFE&CEC S.r.l.

On December 29, 2017, the Company obtained a 49% ownership interest in SAFE&CEC S.r.l. See Note 3 for more information.

Summarized financial information for SAFE&CEC S.r.l. is as follows (in thousands):

	Year Ended December 31,		
	2019	2020	2021
Revenue	$ 80,886	$ 89,535	$ 109,119
Gross profit	$ 20,525	$ 19,008	$ 25,784
Operating income	$ 1,207	$ 609	$ 4,728
Net income (loss)	$ 93	$ (306)	$ 2,392

	As of December 31,	
	2020	2021
Current assets	$ 60,406	$ 75,137
Non-current assets	58,140	56,052
Total assets	$ 118,546	$ 131,189
Current liabilities	$ 55,780	$ 58,910
Non-current liabilities	11,808	21,730
Total liabilities	$ 67,588	$ 80,640

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Other Equity Method Investments

The Company had an investment balance in other equity method investments of $2.3 million and $3.5 million as of December 31, 2020 and 2021, respectively. The Company recorded income (loss) from other equity method investments of $(0.1) million, $0.1 million, and $(0.6) million for the years ended December 31, 2019, 2020 and 2021, respectively. The Company accounts for its interest using the equity method of accounting because the Company does not control but has the ability to exercise significant influence over the investees' operations.

Combined summarized financial information for the Company's other equity method investments is as follows (in thousands):

	Year Ended December 31,		
	2019	2020	2021
Revenue	$ 546	$ 463	$ 704
Gross profit	$ 178	$ 155	$ 216
Operating loss	$ (214)	$ (90)	$ (1,757)
Net loss	$ (250)	$ (126)	$ (1,793)

	As of December 31,	
	2020	2021
Current assets	$ 1,233	$ 1,349
Non-current assets	5,553	7,047
Total assets	$ 6,786	$ 8,396
Current liabilities	$ 1,421	$ 1,012
Non-current liabilities	66	192
Total liabilities	$ 1,487	$ 1,204

NG Advantage

On October 14, 2014, the Company entered into a Common Unit Purchase Agreement ("UPA") with NG Advantage for a 53.3% controlling interest in NG Advantage. NG Advantage is engaged in the business of transporting CNG in high-capacity trailers to industrial and institutional energy users, such as hospitals, food processors, manufacturers and paper mills that do not have direct access to natural gas pipelines.

In connection with the arrangement between NG Advantage and bp for the supply, sale and reservation of a specified volume of CNG transportation capacity until February 2022, on February 28, 2018, the Company entered into a guaranty agreement with NG Advantage and bp pursuant to which the Company guarantees NG Advantage's payment obligations to bp in the event of default by NG Advantage under the supply arrangement, in an amount up to an aggregate of $30.0 million plus related fees which was reduced to $15.0 million effective June 24, 2020. As initial consideration for the guaranty agreement, NG Advantage issued to the Company 19,660 common units, which increased the Company's controlling interest in NG Advantage from 53.3% to 53.5%.

On October 1, 2018, the Company purchased 1,000,001 common units from NG Advantage for an aggregate cash purchase price of $5.0 million. This purchase increased Clean Energy's controlling interest in NG Advantage from 53.5% to 61.7%.

In each month from November 2018 through February 2019, the Company was issued 100,000 additional common units of NG Advantage, for a total of 400,000 common units, pursuant to the guaranty agreement entered in February 2018. The issuance of 400,000 additional common units increased the Company's controlling interest in NG Advantage to 64.6%.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

During the year ended December 31, 2019, the Company agreed to lend NG Advantage up to $26.7 million under a series of promissory notes that were incorporated into a delayed draw convertible promissory note (the "November 2019 Convertible Note"). In connection with the promissory notes between NG Advantage and the Company, NG Advantage issued to the Company warrants to purchase 2,086,879 common units. On February 6, 2020, the Company converted the outstanding principal and accrued interest under the November 2019 Convertible Note into common units of NG Advantage, resulting in an increase in the Company's controlling interest in NG Advantage from 64.6% to 93.2%.

On February 29, 2020, NG Advantage issued to the Company 283,019 common units of NG Advantage pursuant to the guaranty agreement entered in February 2018, which increased the Company's controlling interest in NG Advantage to 93.3% as of December 31, 2020.

During the year ended December 31, 2021, NG Advantage borrowed $5.0 million from the Company under a series of advance agreements. As of December 31, 2021, NG advantage had an outstanding balance of $18.4 million, plus accrued and unpaid interest under the advance agreements. This intercompany transaction has been eliminated in consolidation.

The Company recorded a loss attributable to the noncontrolling interest in NG Advantage of $7.2 million, $1.7 million, and $1.0 million for the years ended December 31, 2019, 2020 and 2021, respectively. The noncontrolling interest was $9.3 million and $8.3 million as of December 31, 2020 and 2021, respectively.

Investments in Equity Securities

For investments in equity securities of privately held entities without readily determinable fair values, the Company measures such investments at cost, adjusted for impairment, if any, and observable price changes in orderly transactions for the identical or similar investment of the same issuer. As of December 31, 2021, the Company had investment balance recorded at cost of $8.0 million. The Company did not recognize any adjustments to the recorded cost basis during the year ended December 31, 2021.

Note 5 —Cash, Cash Equivalents and Restricted Cash

Cash, cash equivalents and restricted cash as of December 31, 2020 and 2021 consisted of the following (in thousands):

	2020	2021
Current assets:		
Cash and cash equivalents	$ 108,977	$ 99,448
Total cash and cash equivalents	$ 108,977	$ 99,448
Long-term assets:		
Restricted cash - standby letters of credit	$ 4,000	$ —
Restricted cash - held as collateral	7,000	7,008
Total restricted cash	$ 11,000	$ 7,008
Total cash, cash equivalents and restricted cash	$ 119,977	$ 106,456

The Company considers all highly liquid investments with maturities of three months or less on the date of acquisition to be cash equivalents.

The Company places its cash and cash equivalents with high credit quality financial institutions. At times, such investments may be in excess of the Federal Deposit Insurance Corporation ("FDIC") and Canadian Deposit Insurance Corporation ("CDIC") limits. Financial instruments that potentially subject the Company to concentrations of credit risk

consist principally of cash deposits. The amounts in excess of FDIC and CDIC limits were approximately $107.6 million and $98.0 million as of December 31, 2020 and 2021, respectively.

The Company classifies restricted cash as short-term and a current asset if the cash is expected to be used in operations within a year or to acquire a current asset. Otherwise, the restricted cash is classified as long-term. Long-term restricted cash consisted of cash held as collateral for the benefit of a lender to NG Advantage.

Note 6 — Short-Term Investments

Short-term investments include available-for-sale debt securities and certificates of deposit. Available-for-sale debt securities are carried at fair value, inclusive of unrealized gains and losses. Unrealized gains and losses on available for sale debt securities are recognized in other comprehensive income (loss), net of applicable income taxes. Gains or losses on sales of available-for-sale debt securities are recognized on the specific identification basis.

The Company reviews available-for-sale debt securities for declines in fair value below their cost basis each quarter and whenever events or changes in circumstances indicate that the cost basis of an asset may not be recoverable, and evaluates the current expected credit loss. This evaluation is based on a number of factors, including historical experience, market data, issuer-specific factors, economic conditions, and any changes to the credit rating of the security. As of December 31, 2021, the Company has not recorded a credit loss related to available-for-sale debt securities and believes the carrying values for its available-for-sale debt securities are properly recorded.

Short-term investments as of December 31, 2020 consisted of the following (in thousands):

	Amortized Cost	Gross Unrealized Gain (Loss)	Estimated Fair Value
Municipal bonds and notes	$ 28,998	$ —	$ 28,998
Certificates of deposit	530	—	530
Total short-term investments	$ 29,528	$ —	$ 29,528

Short-term investments as of December 31, 2021 consisted of the following (in thousands):

	Amortized Cost	Gross Unrealized Loss	Estimated Fair Value
Municipal bonds and notes	$ 6,001	$ (1)	$ 6,000
Zero coupon bonds	123,210	(18)	123,192
Certificates of deposit	530	—	530
Total short-term investments	$ 129,741	$ (19)	$ 129,722

Note 7 - Derivative Instruments and Hedging Activities

In October 2018, the Company executed two commodity swap contracts with TotalEnergies Gas & Power North America, an affiliate of TotalEnergies and THUSA (as defined in Notes 12), for a total of 5.0 million diesel gallons annually from April 1, 2019 to June 30, 2024. These commodity swap contracts are used to manage diesel price fluctuation risks related to the natural gas fuel supply commitments the Company makes in its fueling agreements with fleet operators that participate in the *Zero Now* truck financing program. These contracts are not designated as accounting hedges and as a result, changes in the fair value of these derivative instruments are recognized in "Product revenue" in the accompanying consolidated statements of operations.

The Company has entered into fueling agreements with fleet operators under the *Zero Now* truck financing program. The fueling agreements contain a pricing feature indexed to diesel, which the Company determined to be embedded

derivatives and recorded at fair value at the time of execution, with the changes in fair value of the embedded derivatives recognized as earnings in "Product revenue" in the accompanying consolidated statements of operations.

Derivatives and embedded derivatives as of December 31, 2020 consisted of the following (in thousands):

	Gross Amounts Recognized	Gross Amounts Offset	Net Amount Presented
Assets:			
Commodity swaps:			
Current portion of derivative assets, related party	$ 1,591	$ —	$ 1,591
Long-term portion of derivative assets, related party	4,057		4,057
Fueling agreements:			
Prepaid expenses and other current assets	249	—	249
Notes receivable and other long-term assets, net	542	—	542
Total derivative assets	$ 6,439	$ —	$ 6,439
Liabilities:			
Fueling agreements:			
Accrued liabilities	$ 283	$ —	$ 283
Other long-term liabilities	273	—	273
Total derivative liabilities	$ 556	$ —	$ 556

Derivatives and embedded derivatives as of December 31, 2021 consisted of the following (in thousands):

	Gross Amounts Recognized	Gross Amounts Offset	Net Amount Presented
Assets:			
Fueling agreements:			
Prepaid expenses and other current assets	$ 2,038	$ —	$ 2,038
Notes receivable and other long-term assets, net	4,738	—	4,738
Total derivative assets	$ 6,776	$ —	$ 6,776
Liabilities:			
Commodity swaps:			
Current portion of derivative liabilities, related party	$ 1,900	$ —	$ 1,900
Long-term portion of derivative liabilities, related party	2,483		2,483
Total derivative liabilities	$ 4,383	$ —	$ 4,383

As of December 31, 2020 and 2021, the Company had a total volume on open commodity swap contracts of 16.9 million and 11.9 million diesel gallons, respectively, at a weighted-average price per gallon of approximately $3.18 per gallon.

The following table reflects the weighted-average price of open commodity swap contracts as of December 31, 2020 and 2021, by year with associated volumes:

	December 31, 2020		December 31, 2021	
Year	Volumes (Diesel Gallons)	Weighted-Average Price per Diesel Gallon	Volumes (Diesel Gallons)	Weighted-Average Price per Diesel Gallon
2021	5,000,000	$ 3.18	—	$ —
2022	5,000,000	$ 3.18	5,000,000	$ 3.18
2023	5,000,000	$ 3.18	5,000,000	$ 3.18
2024	1,875,000	$ 3.18	1,875,000	$ 3.18

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 8 —Fair Value Measurements

The Company follows the authoritative guidance for fair value measurements with respect to assets and liabilities that are measured at fair value on a recurring basis and non-recurring basis. Under the standard, fair value is defined as the exit price, or the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants, as of the measurement date. The standard also establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs market participants would use in valuing the asset or liability developed based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company's assumptions about the factors market participants would use in valuing the asset or liability developed based upon the best information available in the circumstances. The hierarchy consists of the following three levels: Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities; Level 2 inputs include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, and inputs (other than quoted prices) that are observable for the asset or liability, either directly or indirectly; Level 3 inputs are unobservable inputs for the asset or liability. Categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The Company's available-for-sale debt securities and certificate of deposits are classified within Level 2 because they are valued using the most recent quoted prices for identical assets in markets that are not active and quoted prices for similar assets in active markets.

The Company used the income approach to value its outstanding commodity swap contracts and embedded derivatives in its fueling agreements under the *Zero Now* truck financing program (see Note 7). Under the income approach, the Company used a discounted cash flow ("DCF") model in which cash flows anticipated over the term of the contracts are discounted to their present value using an expected discount rate. The discount rate used for cash flows reflects the specific risks in spot and forward rates and credit valuation adjustments. This valuation approach is considered a Level 3 fair value measurement. The significant unobservable inputs used in the fair value measurement of the Company's derivative instruments are Ultra-Low Sulfur Diesel ("ULSD") forward prices and differentials from ULSD to Petroleum Administration for Defense District ("PADD") regions. Significant increases (decreases) in any of those inputs in isolation would result in a significantly lower (higher) fair value measurement. Generally, a change in the ULSD forward prices is accompanied by a directionally opposite but less extreme change in the ULSD-PADD differential.

The Company estimated the fair value of its outstanding commodity swap contracts based on the following inputs as of December 31, 2020 and 2021:

	December 31, 2020		December 31, 2021	
Significant Unobservable Inputs	Input Range	Weighted Average	Input Range	Weighted Average
ULSD Gulf Coast Forward Curve	$1.47 - $1.54	$ 1.50	$ 2.03 - $ 2.15	$ $2.11
Historical Differential to PADD 3 Diesel	$0.81 - $1.58	$ 0.99	$ .87 - $ 1.58	$ $1.03
Historical Differential to PADD 5 Diesel	$1.66 - $2.58	$ 2.01	$ 1.82 - $ 2.69	$ $2.13

The Company estimated the fair value of embedded derivatives in its fueling agreements under the *Zero Now* truck financing program based on the following inputs as of December 31, 2020 and 2021:

	December 31, 2020		December 31, 2021	
Significant Unobservable Inputs	Input Range	Weighted Average	Input Range	Weighted Average
ULSD Gulf Coast Forward Curve	$1.47 - $1.54	$ 1.50	$ 2.03 - $ 2.15	$ $2.11
Historical Differential to PADD 3 Diesel	$0.81 - $1.58	$ 0.99	$ .87 - $ 1.58	$ $1.03
Historical Differential to PADD 5 Diesel	$1.66 - $2.58	$ 2.01	$ 1.82 - $ 2.69	$ $2.13

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

There were no transfers of assets or liabilities between Level 1, Level 2, or Level 3 of the fair value hierarchy as of December 31, 2020 or 2021.

The following tables provide information by level for assets and liabilities that are measured at fair value on a recurring basis as of December 31, 2020 and 2021 (in thousands):

	December 31, 2020	Level 1	Level 2	Level 3
Assets:				
Available-for-sale securities [1]:				
Municipal bonds and notes	$ 28,998	$ —	$ 28,998	$ —
Certificates of deposit [1]	530	—	530	—
Commodity swap contracts [2]	5,648	—	—	5,648
Embedded derivatives [3]	791	—	—	791
Liabilities:				
Embedded derivatives [3]	$ 556	$ —	$ —	$ 556

	December 31, 2021	Level 1	Level 2	Level 3
Assets:				
Available-for-sale securities [1]:				
Municipal bonds and notes	$ 6,000	$ —	$ 6,000	$ —
Zero coupon bonds	123,192	—	123,192	—
Certificates of deposit [1]	530	—	530	—
Embedded derivatives [3]	6,776	—	—	6,776
Liabilities:				
Commodity swap contracts [2]	$ 4,383	$ —	$ —	$ 4,383

(1) Included in “Short-term investments” in the accompanying consolidated balance sheets. See Note 6 for more information.

(2) Included in “Derivative assets, related party” and “Long-term portion of derivative assets, related party” as of December 31, 2020, and “Derivative liabilities, related party” and “Long-term portion of derivative liabilities, related party” as of December 31, 2021, in the accompanying consolidated balance sheets. See Note 7 for more information.

(3) Included in "Prepaid expenses and other current assets", "Notes receivable and other long-term assets, net", “Accrued liabilities” and “Other long-term liabilities” as of December 31, 2020, and "Prepaid expenses and other current assets" and "Notes receivable and other long-term assets, net" as of December 31, 2021 in the accompanying consolidated balance sheets. See Note 7 for more information.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following table provides a reconciliation of the beginning and ending balances of items measured at fair value on a recurring basis as shown in the tables above that used significant unobservable inputs (Level 3), as well as the change in unrealized gains or losses for the periods included in earnings (in thousands):

	Assets: Commodity Swap Contracts	Assets: Embedded Derivatives	Liabilities: Commodity Swap Contracts	Liabilities: Embedded Derivatives	Liabilities: Warrants
Balance as of December 31, 2019	$ 3,270	$ 723	$ (164)	$ (81)	$ (40)
Settlements, net	(1,652)	—	56	—	—
Total gain (loss)	4,030	68	108	(475)	40
Balance as of December 31, 2020	$ 5,648	$ 791	$ —	$ (556)	$ —
Balance as of December 31, 2020	$ 5,648	$ 791	$ —	$ (556)	$ —
Settlements, net	(225)	—	1,083	—	—
Total gain (loss)	(5,423)	5,985	(5,466)	556	—
Balance as of December 31, 2021	$ —	$ 6,776	$ (4,383)	$ —	$ —
Change in unrealized gain (loss) for the year ended December 31, 2020 included in earnings	$ 2,378	$ 68	$ 164	$ (475)	$ 40
Change in unrealized gain (loss) for the year ended December 31, 2021 included in earnings	$ (5,648)	$ 5,985	$ (4,383)	$ 556	$ —

Other Financial Assets and Liabilities

The carrying amounts of the Company's cash, cash equivalents and restricted cash, receivables and payables approximate fair value due to the short-term nature of those instruments. The carrying amounts of the Company's debt instruments approximated their respective fair values as of December 31, 2020 and 2021. The fair values of these debt instruments were estimated using a discounted cash flow analysis based on interest rates offered on loans with similar terms to borrowers of similar credit quality, which are Level 3 inputs. See Note 12 for more information about the Company's debt instruments.

Note 9 —Other Receivables

Other receivables as of December 31, 2020 and 2021 consisted of the following (in thousands):

	2020	2021
Loans to customers to finance vehicle purchases	$ 394	$ 419
Accrued customer billings	6,335	4,417
Fuel tax credits	10,556	12,684
Other	6,370	6,927
Total other receivables	$ 23,655	$ 24,447

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 10 —Land, Property and Equipment

Land, property and equipment, net as of December 31, 2020 and 2021 consisted of the following (in thousands):

	2020	2021
Land	$ 3,476	$ 3,476
LNG liquefaction plants	94,633	94,633
Station equipment	344,839	354,699
Trailers	79,860	72,783
Other equipment	89,276	93,135
Construction in progress	73,272	74,963
	685,356	693,689
Less accumulated depreciation	(394,445)	(431,928)
Total land, property and equipment, net	$ 290,911	$ 261,761

Included in "Land, property and equipment, net" are capitalized software costs of $32.3 million and $33.8 million as of December 31, 2020 and 2021, respectively. Accumulated amortization of the capitalized software costs are $28.8 million and $30.4 million as of December 31, 2020 and 2021, respectively.

The Company recorded amortization expense related to the capitalized software costs of $3.9 million, $2.5 million and $1.6 million for the years ended December 31, 2019, 2020 and 2021, respectively.

As of December 31, 2020 and 2021, $1.7 million and $2.1 million, respectively, are included in "Accounts payable" and "Accrued liabilities" in the accompanying consolidated balance sheets, representing amounts related to purchases of property and equipment. These amounts are excluded from the accompanying consolidated statements of cash flows as they are non-cash investing activities.

Note 11 —Accrued Liabilities

Accrued liabilities as of December 31, 2020 and 2021 consisted of the following (in thousands):

	2020	2021
Accrued alternative fuels incentives (1)	$ 18,175	$ 28,106
Accrued employee benefits	4,282	4,547
Accrued gas and equipment purchases	9,897	17,158
Accrued interest	512	893
Accrued property and other taxes	3,094	3,369
Accrued salaries and wages	7,646	8,172
Embedded derivatives	283	—
Other (2)	8,748	12,914
Total accrued liabilities	$ 52,637	$ 75,159

(1) Includes the amount of RINs, LCFS Credits and the amount of AFTC payable to third parties.

(2) No individual item in “Other” exceeds 5% of total current liabilities.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 12 —Debt

Debt obligations as of December 31, 2020 and 2021 consisted of the following (in thousands):

	December 31, 2020		
	Principal Balance	Unamortized Debt Financing Costs	Balance, Net of Financing Costs
bp Loan	$ 50,000	$ —	$ 50,000
NG Advantage debt	29,535	117	29,418
SG Facility	5,100	—	5,100
Other debt	1,162	—	1,162
Total debt	85,797	117	85,680
Less amounts due within one year	(3,631)	(39)	(3,592)
Total long-term debt	$ 82,166	$ 78	$ 82,088

	December 31, 2021		
	Principal Balance	Unamortized Debt Financing Costs	Balance, Net of Financing Costs
NG Advantage debt	$ 25,832	72	25,760
SG Facility	9,500	—	9,500
Other debt	800	—	800
Total debt	36,132	72	36,060
Less amounts due within one year	(12,868)	(23)	(12,845)
Total long-term debt	$ 23,264	$ 49	$ 23,215

The following is a summary of the aggregate maturities of debt obligations for each of the annual periods subsequent to December 31, 2021 (in thousands):

	2022	2023	2024	2025	2026	Thereafter	Total
NG Advantage debt	$ 2,991	$ 8,977	$ 4,161	$ 1,397	$ 8,306	$ —	$ 25,832
SG Facility	9,500	—	—	—	—	—	9,500
Other Debt	377	262	161	—	—	—	800
Total	$ 12,868	$ 9,239	$ 4,322	$ 1,397	$ 8,306	$ —	$ 36,132

SG Credit Agreement

On January 2, 2019, the Company entered into a term credit agreement (the "Credit Agreement") with Société Générale, a company incorporated as a société anonyme under the laws of France ("SG"). The Credit Agreement provides for a term loan facility (the "SG Facility") pursuant to which the Company may obtain, subject to certain conditions, up to $100.0 million of loans ("SG Loans") in support of its *Zero Now* truck financing program. Under the Credit Agreement, the Company is permitted to use the proceeds from the SG Loans to fund the incremental cost of trucks purchased or financed under the *Zero Now* truck financing program and related fees and expenses incurred by the Company in connection therewith. On March 12, 2021, the Credit Agreement was amended to permit the Company to use up to $45.0 million of proceeds from the SG Loans to fund certain station build costs, and up to $20.0 million to fund TotalEnergies JV Equity Obligations. Under the amended terms of the Credit Agreement, the Company's ability to draw from the SG Facility expired on January 2, 2022. Interest on outstanding SG Loans accrues at a rate equal to LIBOR plus 1.30% per annum, and a commitment fee on any unused portion of the SG Facility accrues at a rate equal to 0.39% per annum. Interest and commitment fees are payable quarterly.

The Company is required to make quarterly principal payments of $2.5 million beginning March 31, 2022 with any unpaid amount due on January 2, 2024, subject to the option to extend the maturity date for three successive terms of one year each. The Company is required to make mandatory prepayments under the SG Facility equal to any amounts the

Company receives for complete or partial refunds of the incremental cost of trucks purchased or financed under the *Zero Now* program, and the Company is generally permitted to make complete or partial voluntary prepayments under the SG Facility with prior written notice to SG but without premium or penalty. The Credit Agreement includes certain representations, warranties and covenants by the Company and also provides for customary events of default which, if any of them occurs, would permit or require, among other things, the principal of and accrued interest on the SG Loans to become or to be declared due and payable. Events of default under the Credit Agreement include, among others, nonpayment of principal and interest when due; violation of covenants; any default by the Company (whether or not resulting in acceleration) under any other agreement for borrowed money in excess of $20.0 million; voluntary or involuntary bankruptcy; repudiation or assignment of the Guaranty by THUSA (as defined below); or a change of control of the Company.

The Credit Agreement does not include financial covenants, and the Company has not provided SG with any security for its obligations under the Credit Agreement. As described below, THUSA has entered into the Guaranty to guarantee the Company's payment obligations to SG under the Credit Agreement. As of December 31, 2021, the Company had $9.5 million outstanding on the SG Facility and no events of defaults had occurred.

TotalEnergies Credit Support Agreement

The Company entered into a credit support agreement with TotalEnergies Holdings USA Inc. ("THUSA"), a wholly owned subsidiary of TotalEnergies, on January 2, 2019, which was subsequently amended on March 12, 2021 (as amended, the "CSA") in conjunction with the March 12, 2021 amendment to the Credit Agreement. Under the CSA, THUSA agreed to enter into a guaranty agreement ("Guaranty") pursuant to which it has guaranteed the Company's obligation to repay SG up to $100.0 million in SG Loans and interest thereon in accordance with the Credit Agreement. In consideration for the commitments of THUSA under the CSA, the Company is required to pay THUSA a quarterly guaranty fee at a rate per quarter equal to 2.5% of the average aggregate Loan amount for the preceding calendar quarter.

Following any payment by THUSA to SG under the Guaranty, the Company would be obligated to immediately pay to THUSA the full amount of such payment plus interest on such amount at a rate equal to LIBOR plus 1.0%. In addition, the Company would be obligated to pay and reimburse THUSA for all reasonable out-of-pocket expenses it incurs in the performance of its services under the CSA, including all reasonable out-of-pocket attorneys' fees and expenses incurred in connection with the payment to SG under the Guaranty or any enforcement or attempt to enforce any of the Company's obligations under the CSA. The CSA includes customary representations and warranties and affirmative and negative covenants by the Company. In addition, upon the occurrence of a "Trigger Event" and during its continuation, THUSA may, among other things: elect not to guarantee additional SG Loans; declare all or any portion of the outstanding amounts the Company owes THUSA under the CSA to be due and payable; and exercise all other rights it may have under applicable law. Each of the following events constitutes a Trigger Event: the Company defaults with respect to any payment obligation under the CSA; any representation or warranty made by the Company in the CSA was false, incorrect, incomplete or misleading in any material respect when made; the Company fails to observe or perform any material covenant, obligation, condition or agreement in the CSA; or the Company defaults in the observance or performance of any agreement, term or condition contained in any other agreement with THUSA or an affiliate of THUSA.

As security for the Company's obligations under the CSA, on January 2, 2019, the Company entered into a pledge and security agreement with THUSA and delivered a collateral assignment of contracts to THUSA, pursuant to which the Company collaterally assigned to THUSA all fueling agreements it enters into with participants in the *Zero Now* truck financing program. In addition, on January 2, 2019, the Company entered into a lockbox agreement with THUSA and PlainsCapital Bank, under which the Company granted THUSA a security interest in the cash flow generated by the fueling agreements the Company enters into with participants in the *Zero Now* truck financing program.

Until the occurrence of a Trigger Event or Fundamental Trigger Event (as described below) under the CSA, the Company has the freedom to operate in the normal course and there are no restrictions on the flow of funds in and out of the lockbox account established pursuant to the lockbox agreement. Upon the occurrence of a Trigger Event under the CSA, all funds in the lockbox account will be: first, used to make scheduled debt repayments under the Credit Agreement;

and second, released to the Company. Further, upon the occurrence of a "Fundamental Trigger Event" under the CSA and during its continuation, in addition to exercising any of the remedies available to THUSA upon the occurrence of a Trigger Event as described above: all participants in the *Zero Now* program would pay amounts owed under their fueling agreements with the Company directly into the lockbox account; under a "sweep" mechanism, all cash in the lockbox account would be used to prepay all outstanding SG Loans under the Credit Agreement; no other disbursements from the lockbox account could be made without THUSA's consent; and THUSA would retain dominion over the lockbox account and the funds in the account would remain as security for the Company's payment and reimbursement obligations under the CSA. Each of the following events constitutes a Fundamental Trigger Event: the Company defaults in the observance or performance of any agreement, term or condition contained in the Credit Agreement that would constitute an event of default thereunder, up to or beyond any grace period provided in such agreement, unless waived by SG; the Company defaults in the observance or performance of any agreement, term or condition contained in any evidence of indebtedness other than the Credit Agreement, and the effect of such default is to cause, or permit the holders of such indebtedness to cause, acceleration of indebtedness in an aggregate amount for all such collective defaults of $20.0 million or more; voluntary and involuntary bankruptcy and insolvency events; and the occurrence of a change of control of the Company.

The CSA will terminate following the later of: the payment in full of all of the Company's obligations under the CSA; and the termination or expiration of the Guaranty following the maturity date of the last outstanding SG Loan or December 31, 2023, whichever is earlier.

NG Advantage Debt

On November 30, 2016, NG Advantage entered into a Loan and Security Agreement (the "Wintrust LSA") with Wintrust Commercial Finance ("Wintrust"), pursuant to which Wintrust agreed to lend NG Advantage $4.7 million. The proceeds were primarily used to fund the purchases of CNG trailers and equipment. Interest and principal is payable monthly in 72 equal monthly installments at an annual rate of 5.17%. As collateral security for the prompt payment in full when due of NG Advantage's obligations to Wintrust under the Wintrust LSA, NG Advantage pledged to and granted Wintrust a security interest in all of its right, title and interest in the CNG trailers and equipment purchased with the proceeds received under the Wintrust LSA.

On December 10, 2020, NG Advantage entered an Amended and Restated Loan and Security Agreement with Berkshire Bank ("Berkshire ALA") to substitute and replace the two existing loans with Berkshire Bank dated May 12, 2016 and January 24, 2017 (collectively, the "Original Debt"). The Berkshire ALA provides NGA a 5-year term loan of $14.5 million with payments of principal and interest due monthly beginning February 1, 2021 at an annual interest rate of 5% maturing on January 1, 2026. NG Advantage used the funds provided by the Berkshire ALA to repay in full the outstanding principal balance plus accrued and unpaid interest of the Original Debt, and to repay the outstanding balances of certain other financing obligations to unrelated lenders, Nations and Liberty. NG Advantage has pledged as collateral certain assets and equipment including trailers under the Berkshire ALA, and the Company has provided a limited guaranty of up to $7.0 million classified in "Restricted cash" on the accompanying consolidated balance sheet. As of December 31, 2021, the Company was in compliance with the covenants under the Berkshire ALA.

The Berkshire ALA also provides NG Advantage a $1.0 million revolving line of credit which bears interest at the greater of the Prime Rate or 3.00%, plus 0.25% and has a maturity date of July 31, 2022. As of December 31, 2021, NG Advantage had no amounts outstanding on the revolving line of credit.

Financing Obligations

NG Advantage has entered into sale and leaseback transactions with various lessors as described below. In each instance, the sale and leaseback transaction does not qualify for sale-leaseback accounting because of NG Advantage's continuing involvement with the buyer-lessor due to a fixed price repurchase option. As a result, the transactions are recorded under the financing method, in which the assets remain on the accompanying consolidated balance sheets and the proceeds from the transactions are recorded as financing liabilities.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

On December 18, 2017, NG Advantage entered into a sale-leaseback arrangement through a Master Lease Agreement (the "BoA MLA") with Bank of America Leasing & Capital, LLC ("BoA"). Pursuant to the BoA MLA, NG Advantage received $2.1 million in cash for CNG trailers and simultaneously leased them back from BoA for five years commencing January 1, 2018 with interest and principal payable in 60 equal monthly installments at an annual rate of 4.86%.

On March 1, 2018, NG Advantage entered into a sale-leaseback arrangement through a Master Lease Agreement (the "First National MLA") with First National Capital, LLC ("First National"). Pursuant to the First National MLA, NG Advantage received $6.3 million in cash, net of fees and the first month's lease payment for CNG trailers and simultaneously leased them back from First National for six years commencing March 1, 2018 with interest and principal payable in 72 equal monthly installments at an annual rate of 9.28%.

On December 20, 2018 (the "Closing Date"), NG Advantage entered into a purchase agreement to sell a compression station for a purchase price of $7.0 million to an entity whose member owners were noncontrolling interest member owners of NG Advantage. On the Closing Date and immediately following the consummation of the sale of the compression station, NG Advantage entered into a lease agreement with the buyer of the station pursuant to which the station was leased back to NG Advantage for a term of five years with monthly rent payments equal to $0.1 million at an annual rate of 12.0%.

bp Loan

On December 18, 2020, the Company entered a memorandum of understanding ("MOU") with bp to create the bpJV. Contemporaneous with the execution of the MOU, the Company and bp executed a loan agreement whereby bp advanced $50.0 million ("bp Loan") to fund capital costs and expenses incurred prior to formation of the bpJV. The bp Loan bore interest at the rate per annum equal to LIBOR plus 4.33%. As repayment of the bp Loan, the outstanding principal balance was contributed to the bpJV in April 2021 upon entering into the bp JV Agreement. See Note 4 for additional information.

Plains Credit Facility

On May 1, 2021, the Company entered into a Loan and Security Agreement (the "Plains LSA") with PlainsCapital Bank ("Plains"), which provides the Company a $20.0 million revolving line of credit through May 1, 2022. The interest rate on amounts outstanding under the Plains LSA is the greater of the Prime Rate or 3.25%. As of December 31, 2021, no amounts were outstanding under the Plains LSA. As of December 31, 2021, the Company was in compliance with the covenants under the Plains LSA.

On September 16, 2021, Plains issued an irrevocable standby letter of credit on behalf of the Company to the Chevron Products Company, a division of Chevron U.S.A. Inc. ("Chevron"), for $2.0 million relating to the Company's Adopt-A-Port program with Chevron. The standby letter of credit is valid until cancelled and is collateralized by the Company's revolving line of credit with Plains, reducing the amount available under the line of credit from $20.0 million to $18.0 million. As of December 31, 2021, no amounts have been drawn under the standby letter of credit.

Other Debt

The Company has other debt due at various dates through 2024 bearing interest at rates up to 4.75%with a weighted-average interest rate of 4.38% and 4.34% as of December 31, 2020 and 2021, respectively.

Note 13 —Stockholders' Equity

Authorized Shares

The Company's certificate of incorporation authorizes the issuance of two classes of capital stock designated as common stock and preferred stock, each having $0.0001 par value per share. On June 14, 2021, the Company's

stockholders approved an increase in the number of shares of Common Stock the Company is authorized to issue from 304,000,000 to 454,000,000. As of December 31, 2021, the Company is authorized to issue 455,000,000 shares, of which 454,000,000 shares of capital stock are designated common stock and 1,000,000 shares are designated preferred stock.

Dividend Provisions

The Company did not declare or pay any dividends during the years ended December 31, 2019, 2020 and 2021.

Voting Rights

Each holder of common stock has the right to one vote per share owned on matters presented for stockholder action.

TotalEnergies Private Placement

On May 9, 2018, the Company entered into a stock purchase agreement (the "Purchase Agreement") with TotalEnergies Marketing Services, S.E. ("TMS"), a wholly owned subsidiary of TotalEnergies. Pursuant to the Purchase Agreement, the Company agreed to sell and issue, and TMS agreed to purchase, up to 50,856,296 shares of the Company's common stock at a purchase price of $1.64 per share, all in a private placement (the "TotalEnergies Private Placement"). The purchase price per share was determined based on the volume-weighted average price for the Company's common stock between March 23, 2018 (the day on which discussions began between the Company and TotalEnergies) and May 3, 2018 (the day on which the Company agreed in principle with TotalEnergies regarding the structure and basic terms of its investment). As of the date of the Purchase Agreement, TotalEnergies did not hold or otherwise beneficially own any shares of the Company's common stock, and TotalEnergies has agreed, until the later of May 9, 2020 or such date when it ceases to hold more than 5.0% of the Company's common stock then outstanding, among other similar undertakings and subject to customary conditions and exceptions, to not purchase shares of the Company's common stock or otherwise pursue transactions that would result in TotalEnergies beneficially owning more than 30.0% of the Company's equity securities without the approval of the Company's board of directors.

On June 13, 2018, the Company and TMS closed the TotalEnergies Private Placement, in which: (1) the Company issued to TMS all of the 50,856,296 shares of its common stock issuable under the Purchase Agreement, resulting in TotalEnergies beneficially holding approximately 25.0% of the outstanding shares of the Company's common stock and the largest ownership position of the Company as of September 30, 2018; (2) TotalEnergies paid to the Company an aggregate of $83.4 million in gross proceeds, which the Company has used and expects to continue to use for working capital and general corporate purposes, which may include executing its business plans, pursuing opportunities for further growth, and retiring a portion of its outstanding indebtedness; and (3) the Company and TotalEnergies entered into a registration rights agreement, described below. In connection with the issuance of common stock, the Company incurred transaction fees of $1.9 million.

Pursuant to the Purchase Agreement, the Company and TotalEnergies also entered into a registration rights agreement on June 13, 2018, upon the closing under the Purchase Agreement. Pursuant to the registration rights agreement, the Company filed a registration statement with the SEC to cover the resale of the shares issued and sold under the Purchase Agreement, which was declared effective on August 16, 2018, and is obligated to use its commercially reasonable efforts to maintain the effectiveness of such registration statement until all such shares are sold or may be sold without restriction under Rule 144 under the Securities Act of 1933, as amended. As of December 31, 2021, the Company was in compliance with all of its registration covenants set forth in the registration rights agreement.

At-The-Market Offerings

On May 10, 2021, the Company entered into an equity distribution agreement with Goldman Sachs & Co. LLC, as sales agent, to sell shares of the Company's common stock having an aggregate offering price of up to $100.0 million in an at-the-market offering program (the "May ATM Program"). Through June 3, 2021, the Company sold 12,362,237

shares of common stock under the May ATM Program, which exhausted the May ATM Program. On June 7, 2021, the Company entered into a new equity distribution agreement with Goldman Sachs & Co. LLC, as sales agent, to sell additional shares of common stock having an aggregate offering price of up to $100.0 million in a new at-the-market offering program (the "June ATM Program" and, together with the May ATM Program, the "ATM Programs"). On June 8, 2021, the Company sold 10,473,946 shares of common stock under the June ATM Program which exhausted the June ATM Program.

For the year ended December 31, 2021, the Company issued 22,836,183 shares of common stock under the ATM Programs for gross proceeds of $200.0 million, and incurred transaction costs of $6.5 million, including $6.0 million in commissions paid to Goldman Sachs & Co. LLC.

Share Repurchase Program

On March 12, 2020, the Company's Board of Directors approved a share repurchase program of up to $30.0 million (exclusive of fees and commissions) of the Company's outstanding common stock (the "Repurchase Program"). On December 7, 2021, the Company's Board of Directors approved an increase in the aggregate purchase amount under the Repurchase Program from $30.0 million to $50.0 million (exclusive of fees and commissions). The Repurchase Program does not have an expiration date, and it may be suspended or discontinued at any time. During the year ended December 31, 2021, the Company repurchased 452,700 shares of its common stock under the Repurchase Program for a total cost of $2.9 million. As of December 31, 2021, the Company had utilized a total of $17.4 million under the Repurchase Program to repurchase 8,197,086 shares of common stock. The Repurchase Program does not obligate the Company to acquire any specific number of shares. Repurchases under the Repurchase Program may be effected from time to time through open market purchases, privately negotiated transactions, structured or derivative transactions, including accelerated share repurchase transactions, or other methods of acquiring shares, in each case subject to market conditions, applicable securities laws and other relevant factors. Repurchases may also be made under Rule 10b5-1 plans.

Stock-Based Compensation

The following table summarizes the compensation expense and related income tax benefit related to the Company's stock-based compensation arrangements recognized in the accompanying consolidated statements of operations during the periods presented (in thousands):

	Year Ended December 31,		
	2019	2020	2021
Stock-based compensation expense, net of $0 tax in 2019, 2020, and 2021	$ 3,880	$ 2,957	$ 14,994

Equity Incentive Plans

In December 2006, the Company adopted its 2006 Equity Incentive Plan ("2006 Plan"), which became effective on May 24, 2007, the date the Company completed its initial public offering of common stock.

In May 2016, the Company adopted its 2016 Performance Incentive Plan ("2016 Plan"), which became effective on May 26, 2016, the date of approval of the 2016 Plan by the Company's stockholders. The 2006 Plan became unavailable for new awards upon the effectiveness of the 2016 Plan. Unissued awards under the 2006 Plan are not available for future grant under the 2016 Plan. If any outstanding award under the 2006 Plan expires or is canceled, the shares allocable to the unexercised portion of that award will be added to the share reserve under the 2016 Plan and will be available for grant under the 2016 Plan.

In May 2020, the Company adopted its Amended and Restated 2016 Performance Incentive Plan ("Amended 2016 Plan"), which increased the aggregate number of shares of the Company's common stock to be delivered pursuant to all awards granted under the 2016 Performance Incentive Plan by an additional 17,500,000 shares, and became effective on

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

May 15, 2020, the date of approval of the Amended 2016 Plan by the Company's stockholders. As of December 31, 2021, the Company had 7,595,607 shares available for future grant under the Amended 2016 Plan.

Service-Based Stock Options

The Company has granted service-based stock options to key employees that vest annually over the three years following the date of grant at a rate of 34%, 33% and 33%, respectively, if the holder is in service to the Company at each vesting date. The service-based stock options granted have contractual terms of 10 years, and exercise price for the options granted is equal to the closing market price of the Company's common stock on the date of grant. The stock options are subject to the terms and conditions of the 2006 and 2016 Plans and a Notice of Grant of Stock Option and Stock Option Agreement.

The following table summarizes the Company's service-based stock option activity for the year ended December 31, 2021:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Options outstanding as of December 31, 2020	8,142,831	$ 5.38		
Granted	6,186,260	8.32		
Exercised	(1,219,976)	4.59		
Forfeited or expired	(1,295,444)	8.68		
Options outstanding as of December 31, 2021	11,813,671	$ 6.64	7.27	$ 15,409
Options exercisable as of December 31, 2021	5,133,792	$ 5.52	4.37	$ 12,329
Options vested and expected to vest as of December 31, 2021	11,813,671	$ 6.64	7.27	$ 15,409

As of December 31, 2021, there was $25.9 million of total unrecognized compensation cost related to unvested shares subject to outstanding service-based stock options. That cost is expected to be expensed over a remaining weighted average period of approximately 2.3 years. The total fair value of shares vested during the year ended December 31, 2021 was $1.8 million.

The fair value of each service-based stock option granted was estimated as of the date of grant using the Black-Scholes option pricing model and using the following assumptions:

	Year Ended December 31,		
	2019	2020	2021
Dividend yield	0.0%	0.0%	0.0%
Expected volatility	57.3% to 61.5%	65.8% to 83.9%	76.8% to 96.8%
Risk-free interest rate	2.11% to 2.53%	0.37% to 1.21%	0.58% to 1.31%
Expected life in years	6.0	6.0	5.6 to 5.8

The volatility amounts used were estimated based on (i) the historical volatility of the Company's common stock over a term equal to the estimated life of the options and on (ii) implied volatility of the Company's traded options. The expected lives used were based on historical exercise experience and the Company's anticipated exercise periods for its outstanding stock options. The risk-free interest rates used were based on the U.S. Treasury yield curve with terms approximating the expected life of the stock options at the time of grant.

The weighted-average grant date fair value per share of service-based stock options granted during the years ended December 31, 2019, 2020 and 2021, were $1.28, $1.54 and $5.90, respectively. The aggregate intrinsic value of service-

based options exercised during the years ended December 31, 2019, 2020 and 2021 was $0.1 million, $1.8 million and $10.1 million, respectively. The Company recorded $2.2 million, $1.7 million and $9.9 million of stock option expense relating to service-based stock options during the years ended December 31, 2019, 2020 and 2021, respectively. The Company has not recorded any tax benefit related to its service-based stock option expense.

Performance-Based Stock Options

The Company has granted 1,640,000 performance-based stock options to certain executives and key employees during 2021. The options granted vest in multiple tranches in which vesting of each tranche is contingent upon securing a defined RNG production volume following the date of grant, if the holder is in service to the Company upon the achievement of such performance hurdles. The performance-based stock options have contractual terms of 10 years, and the exercise price for the options granted is equal to the closing market price of the Company's common stock on the date of grant. The stock options are subject to the terms and conditions of the 2016 Plan and a Notice of Grant of Stock Option and Stock Option Agreement.

The following table summarizes the Company’s performance-based stock option activity for the year ended December 31, 2021:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Options outstanding as of December 31, 2020	—			
Granted	1,640,000	6.77		
Exercised	—			
Forfeited or expired	—			
Options outstanding as of December 31, 2021	1,640,000	$ 6.77	9.94	$ —
Options exercisable as of December 31, 2021	—	$ —	—	$ —

As of December 31, 2021, there was $6.6 million of total unrecognized compensation cost related to unvested shares subject to outstanding performance-based stock options. Compensation cost for the performance-based stock options is recognized when attainment of the performance hurdles is determined to be probable and over a period in which the Company estimates the performance hurdles will be achieved. No vesting occurred during the year ended December 31, 2021.

The fair value of each performance-based stock option granted was estimated as of the date of grant using the Black-Scholes option pricing model and using the following assumptions:

	Year Ended December 31, 2021
Dividend yield	0.0%
Expected volatility	77.1%
Risk-free interest rate	1.36%
Expected life in years	6.2

The volatility amount used was estimated based on (i) the historical volatility of the Company’s common stock over a term equal to the estimated life of the options and on (ii) implied volatility of the Company’s traded options. The expected life used was based on historical exercise experience and the Company’s anticipated exercise period for its outstanding

performance-based stock options. The risk-free interest rate used was based on the U.S. Treasury yield curve with terms approximating the expected life of the stock options at the time of grant.

The weighted-average grant date fair value per share of performance-based stock options granted during the year ended December 31, 2021, was $4.58. There were no performance-based stock options exercised during the year ended December 31, 2021. The Company recognizes the grant date fair value of the options that are probable of being earned over the estimated performance period. Compensation cost on performance-based stock options was $1.0 million for the year ended December 31, 2021. The Company has not recorded any tax benefit related to its performance-based stock option expense.

Market-Based Stock Options

The Company has granted 3,700,000 market-based stock options to select executives and employees during 2021. Market-based stock options vest if (i) the closing price of the Company's common stock equals or exceeds $14.00 for twenty consecutive trading days, representing 207% of the closing market price of the Company's common stock on the option grant date (the "Stock Price Condition") and (ii) the holder is employed by the Company at the time the Stock Price Condition is satisfied. The market-based stock options have contractual terms of 10 years, and the exercise price for the options granted is equal to the closing market price of the Company's common stock on the date of grant. The stock options are subject to the terms and conditions of the 2016 Plan and a Notice of Grant of Stock Option and Stock Option Agreement.

The following table summarizes the Company's market-based stock option activity for the year ended December 31, 2021:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Options outstanding as of December 31, 2020	—			
Granted	3,700,000	$ 6.77		
Exercised	—			
Forfeited or expired	—			
Options outstanding as of December 31, 2021	3,700,000	$ 6.77	9.94	$ —
Options exercisable as of December 31, 2021	—	$ —	—	$ —

As of December 31, 2021, there was $17.8 million of total unrecognized compensation cost related to unvested shares subject to outstanding market-based stock options. That cost is expected to be expensed over a remaining weighted average period of approximately 6.8 years. No vesting occurred during the year ended December 31, 2021.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The fair value of each market-based stock option granted was estimated on the date of grant using the Monte Carlo simulation model. The Monte Carlo simulation method is subject to variability as certain assumptions must be made, including the derived service period, which is estimated based on likely future stock price performance and volatility of the Company's common stock price. The fair value of each market-based stock option granted was estimated using the following assumptions:

	Year Ended December 31, 2021
Dividend yield	0.0%
Expected volatility	67.8%
Risk-free interest rate	1.5%
Expected life in years	10.0

The volatility amount used was based on the historical volatility of the Company's common stock over a term equal to the estimated life of the options. The risk-free interest rate used was based on the U.S. Treasury yield curve with terms approximating the expected life of the stock options at the time of grant. The expected life used was based on the Company's anticipated exercise period for its outstanding market-based stock options as the simulation was run from the valuation date through the end of the contractual life of the options using weekly time steps.

The weighted-average grant date fair value per share of market-based stock options granted during the year ended December 31, 2021, was $4.87. There were no market-based stock options exercised during the year ended December 31, 2021. The Company recorded $0.2 million of compensation cost relating to market-based stock options during the year ended December 31, 2021. The Company has not recorded any tax benefit related to its market-based stock option expense.

Service-Based Restricted Stock Units

The Company has granted service-based restricted stock units ("Service-Based RSUs") to key employees that vest annually over the three years following the date of grant at a rate of 34%, 33% and 33%, respectively, if the holder is in service to the Company at each vesting date. The Service-Based RSUs are subject to the terms and conditions of the 2016 Plan and a Notice of Grant of Restricted Stock Unit and Restricted Stock Unit Agreement.

The following table summarizes the Company's Service-Based RSU activity for the year ended December 31, 2021:

	Number of Shares	Weighted Average Fair Value at Grant Date
RSU outstanding and unvested as of December 31, 2020	978,716	$ 1.71
Granted	894,344	10.24
Vested	(722,193)	2.54
Forfeited or expired	(23,925)	6.86
RSU outstanding and unvested as of December 31, 2021	1,126,942	$ 8.08

The weighted average grant-date fair value of RSUs granted during the years ended December 31, 2020 and 2021 was $2.56 and $10.24, respectively.

As of December 31, 2021, there was $6.2 million of total unrecognized compensation cost related to unvested shares subject to outstanding Service-Based RSUs. That cost is expected to be expensed over a remaining weighted-average period of approximately 1.8 years.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The Company recorded $1.5 million, $1.0 million and $3.9 million of expense during the years ended December 31, 2019, 2020 and 2021, respectively, related to the Service-Based RSUs. The Company has not recorded any tax benefit related to its Service-Based RSU expense.

Employee Stock Purchase Plan

On May 7, 2013, the Company adopted an employee stock purchase plan (the "ESPP"), pursuant to which eligible employees may purchase shares of the Company's common stock at 85% of the fair market value of the common stock on the last trading day of two consecutive, non-concurrent offering periods each year. The Company has reserved 2,500,000 shares of its common stock for issuance under the ESPP, and the first offering period under the ESPP commenced on September 1, 2013.

The Company recorded $0.0 million of expense during the years ended December 31, 2019 and 2020 and $0.1 million of expense during the year ended December 31, 2021 related to the ESPP. The Company has not recorded any tax benefit related to its ESPP expense. As of December 31, 2021, the Company had issued an aggregate of 669,915 shares pursuant to the ESPP.

Amazon Warrant

On April 16, 2021, the Company entered into a Project Addendum to Fuel Pricing Agreement ("Fuel Agreement") with Amazon Logistics, Inc., a subsidiary of Amazon.com, Inc. ("Amazon"), and a Transaction Agreement with Amazon (the "Transaction Agreement"), pursuant to which, among other things, the Company issued to Amazon.com NV Investment Holdings LLC, a subsidiary of Amazon ("Amazon Holdings"), a warrant to purchase up to an aggregate of 53,141,755 shares (the "Warrant Shares") of the Company's common stock at an exercise price of $13.49 per share, which was a 21.3% premium to the $11.12 closing price of the common stock on April 15, 2021.

The Warrant Shares vest in multiple tranches, the first of which for 13,283,445 Warrant Shares vested upon execution of the Fuel Agreement. Subsequent tranches will vest over time based on fuel purchases by Amazon and its affiliates, up to a total of $500.0 million, excluding any payments attributable to "Pass Through Costs," which consist of all costs associated with the delivered cost of gas and applicable taxes determined by reference to the selling price of gallons or gas sold.

Under the Transaction Agreement, the Company was required to use commercially reasonable efforts to obtain the approval of its stockholders with respect to the issuance of Warrant Shares in excess of 50,595,531 shares of common stock, pursuant to The Nasdaq Stock Market LLC's Listing Rule 5635(b) (the "Stockholder Approval"). On June 14, 2021, the Company obtained Stockholder Approval.

As a result of the issuance of additional shares of common stock under the ATM Programs and in accordance with the terms of the warrant, on June 14, 2021, the number of shares of the Company's common stock that may be purchased pursuant to the warrant, at an exercise price of $13.49 per share, increased by an aggregate of 5,625,959 shares (the "Additional Warrant Shares"). The Additional Warrant Shares vest in multiple tranches, the first of which for 1,406,490 Additional Warrant Shares vested on June 14, 2021. Subsequent tranches of the Additional Warrant Shares will vest over time based on fuel purchases by Amazon and its affiliates, consistent with the vesting schedule for the Warrant Shares as described above. The right to exercise the warrants and receive the Warrant Shares and Additional Warrant Shares (the "Amazon Warrant") that have vested expires April 16, 2031.

Amazon Holdings may not exercise the Amazon Warrant to the extent such exercise would cause Amazon Holdings to beneficially own more than 4.999% of the number of shares of Common Stock outstanding immediately after giving effect to such exercise (excluding any unvested portion of the Amazon Warrant) (the "Beneficial Ownership Limitation"). Amazon Holdings may, however, waive or modify the Beneficial Ownership Limitation by providing written notice to the Company sixty-one (61) days before such waiver or modification becomes effective (or immediately upon written notice

to the Company to the extent the Company is subject to certain acquisition transactions pursuant to a tender or exchange offer).

Non-cash stock-based sales incentive contra-revenue charges ("Amazon Warrant Charges") associated with the Amazon Warrant are recognized as the customer purchases fuel and vesting conditions become probable of being achieved, based on the grant date fair value of the Amazon Warrant. The fair values of the Amazon Warrant were determined as of the grant date in accordance with ASC 718, *Compensation – Stock Compensation*, using the Black-Scholes option pricing model and the following assumptions:

	April 16, 2021	June 14, 2021
Dividend yield	0.0%	0.0%
Expected volatility	66.46%	67.97
Risk-free interest rate	1.59%	1.49%
Expected term in years	10.0	9.8

The volatility amounts used were estimated based on the historical volatility of the Company's common stock over a period matching the assumed term of the Amazon Warrant. The expected terms used were based on the term of the Amazon Warrant at the date of issuance. The risk-free interest rates used were based on the U.S. Treasury yield curve for the expected term of the Amazon Warrant at the date of issuance.

The following table summarizes the Amazon Warrant activity for the year ended December 31, 2021:

	Warrant Shares
Outstanding and unvested as of December 31, 2020	—
Granted	58,767,714
Vested	(14,689,935)
Outstanding and unvested as of December 31, 2021	44,077,779

As a result of the immediate vesting of a portion of the Warrant Shares and Additional Warrant Shares, the Company recognized Amazon Warrant Charges, in the second quarter of 2021, of $76.6 million and a customer incentive asset of $38.4 million representing Amazon Warrant Charges associated with future contractually required minimum fuel purchases which will be recognized as the fuel is purchased.

During the year ended December 31, 2021, Amazon Warrant Charges in the consolidated statements of operations were $83.6 million. Amazon Warrant Charges during the year ended December 31, 2021 included $76.6 million from the immediate vesting of a portion of the Warrant Shares and Additional Warrant Shares and $7.0 million associated with fuel purchases. As of December 31, 2021, the Company had a customer incentive asset of $12.4 million and $22.1 million, classified in "Prepaid expenses and other current assets" and "Notes receivable and other long-term assets, net," respectively, in the accompanying consolidated balance sheets.

Note 14 —Income Taxes

The components of income (loss) before income taxes for the years ended December 31, 2019, 2020 and 2021 are as follows (in thousands):

	2019	2020	2021
U.S.	$ 14,981	$ (11,216)	$ (93,117)
Foreign	(864)	(4)	(919)
Total income (loss) before income taxes	$ 14,117	$ (11,220)	$ (94,036)

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The provision for income taxes for the years ended December 31, 2019, 2020 and 2021 consists of the following (in thousands):

	2019	2020	2021
Current:			
State	$ 116	$ 80	$ 54
Foreign	4	109	(4)
Total current	120	189	50
Deferred:			
Federal	293	48	18
State	445	72	51
Total deferred	738	120	69
Total expense	$ 858	$ 309	$ 119

Income tax expense (benefit) for the years ended December 31, 2019, 2020 and 2021 computed using the federal income tax rate of 21% as of December 31, 2019, 2020 and 2021 consists of the following (in thousands):

	2019	2020	2021
Computed expected tax (benefit)	$ 2,964	$ (2,356)	$ (19,747)
Nondeductible expenses	3,087	2,775	617
Tax rate differential on foreign earnings	245	(144)	189
Joint ventures	3,745	(5,059)	(2)
Amazon warrants	—	—	3,707
Tax credits	(10,314)	(4,037)	(5,299)
Other	665	1,559	1,463
Change in valuation allowance	466	7,571	19,191
Total tax expense	$ 858	$ 309	$ 119

On December 20, 2019, AFTC was retroactively extended beginning January 1, 2018 through December 31, 2020. As a result, all AFTC revenue for vehicle fuel the Company sold in the 2018 and 2019 calendar year was recognized during the year ended December 31, 2019. AFTC revenues for vehicle fuel the Company sold in the 2020 and 2021 calendar year were recognized during the year ended December 31, 2020 and 2021, respectively. AFTC for vehicle fuel sales expired on December 31, 2021, and it is not known whether or when AFTC will be reinstated for vehicle fuel sales made after December 31, 2021.

The Company recorded a federal tax benefit of $10.5 million, $4.2 million and $4.9 million related to the exclusion of AFTC associated with 2019, 2020 and 2021 fuel sales in excess of its fuel tax obligation, respectively. These amounts increased the Company's deferred tax asset and the Company's deferred tax asset valuation allowance.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Deferred tax assets and liabilities result from differences between the financial statement carrying amounts and the tax bases of existing assets and liabilities. The tax effect of temporary differences that give rise to deferred tax assets and liabilities as of December 31, 2020 and 2021 are as follows (in thousands):

	2020	2021
Deferred tax assets:		
Accrued expenses	$ 4,940	$ 5,379
Lease obligations	6,938	11,388
Alternative minimum tax and general business credits	6,233	6,787
Stock option expense	6,648	7,214
Amazon warrants	—	16,026
Other	1,545	3,167
Depreciation and amortization	1,635	2,582
Loss carryforwards	119,708	128,514
Total deferred tax assets	147,647	181,057
Less valuation allowance	(134,974)	(162,018)
Net deferred tax assets	12,673	19,039
Deferred tax liabilities:		
Right-of-use assets	(6,788)	(11,266)
Commodity swap contracts	(1,596)	(649)
Goodwill	(2,221)	(2,534)
Investments in joint ventures and partnerships	(2,926)	(5,517)
Total deferred tax liabilities	(13,531)	(19,966)
Net deferred tax liabilities	$ (858)	$ (927)

As of December 31, 2021, the Company had federal, state and foreign net operating loss carryforwards of approximately $500.1 million, $370.9 million and $2.7 million, respectively. The Company's federal, state and foreign net operating loss carryforwards will, if not utilized, expire beginning in 2026, 2022 and 2030, respectively. The Company also has federal tax credit carryforwards of $6.8 million that will expire beginning in 2026. Due to the change of ownership provisions of Internal Revenue Code Section 382, utilization of a portion of the Company's net operating loss and tax credit carryforwards may be limited in future periods.

In assessing the realizability of the net deferred tax assets, management considers whether it is more likely than not that some or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers projected future taxable income and tax planning strategies in making this assessment. As of December 31, 2020 and 2021, the Company provided a valuation allowance of $135.0 million and $162.0 million, respectively, to reduce the net deferred tax assets due to uncertainty surrounding the realizability of these assets. The increase in the valuation allowance for the year ended December 31, 2021 of $27.0 million was primarily attributable to an increase in losses without benefit.

For the year ended December 31, 2021, the Company did not have any offshore earnings of certain non-U.S. subsidiaries which are permanently reinvested outside the United States.

The Company does not recognize the impact of a tax position in its financial statements unless the position is more likely than not to be sustained, based on the technical merits of the position. The Company has unrecognized tax benefits of $50.6 million as of December 31, 2021 that, if recognized, would not result in a tax benefit since it would be fully offset with a valuation allowance.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following is a tabular reconciliation of the total amounts of unrecognized tax benefits for the years ended December 31, 2019, 2020 and 2021 (in thousands):

Unrecognized tax benefit—December 31, 2019	$ 41,475
Gross increases—tax positions in current year	2,954
Gross increases—tax positions in prior year	870
Unrecognized tax benefit—December 31, 2020	45,299
Gross increases—tax positions in current year	3,508
Gross increases—tax positions in prior year	2,142
Gross decreases—tax positions in prior year	(364)
Unrecognized tax benefit—December 31, 2021	$ 50,585

The increase in the Company's unrecognized tax benefits in the years ended December 31, 2020 is primarily attributable to the portion of AFTC offset by the fuel tax the Company collected from its customers. The increase in the Company's unrecognized tax benefits in the years ended December 31, 2021 is primarily attributable to the warrants issued to its customer and the portion of AFTC offset by the fuel tax the Company collected from its customers.

ASC 740, *Income Taxes*, requires the Company to accrue interest and penalties where there is an underpayment of taxes based on the Company's best estimate of the amount ultimately to be paid. The Company's policy is to recognize interest accrued related to unrecognized tax benefits and penalties as income tax expense. The Company recognized interest and penalties related to uncertain tax positions of $0.0 million for each of the years ended December 31, 2019, 2020 and 2021.

The Company is subject to taxation in the United States and various states and foreign jurisdictions. The Company's tax years for 2018 through 2021 are subject to examination by various tax authorities. Although the Company is no longer subject to U.S. examination for years before 2018, and for state tax examinations for years before 2017, taxing authorities can adjust the net operating losses that arose in earlier years if and when the net operating losses reduce future income. In addition, the Company is required to indemnify SAFE&CEC S.r.l. for taxes that are imposed on CEC for pre-contribution tax periods.

A number of years may elapse before an uncertain tax position is finally resolved. It is often difficult to predict the final outcome or the timing of resolution of an uncertain tax position, but the Company believes that its reserves for income taxes reflect the most probable outcomes. The Company adjusts the reserve, as well as the related interest and penalties, in light of changing facts and circumstances. The amount of penalties accrued is immaterial. Settlement of any particular position would usually require the use of cash and result in the reduction of the related reserve, or there could be a change in the amount of the Company's net operating loss. The resolution of a matter would be recognized as an adjustment to the provision for income taxes at the effective tax rate in the period of resolution. The Company does not expect a significant increase or decrease in its uncertain tax positions within the next twelve months.

Note 15 —Commitments and Contingencies

Environmental Matters

The Company is subject to federal, state, local and foreign environmental laws and regulations. The Company does not anticipate any expenditures to comply with such laws and regulations that would have a material impact on the Company's consolidated financial position, results of operations or liquidity. The Company believes that its operations comply, in all material respects, with applicable federal, state, local and foreign environmental laws and regulations.

Litigation, Claims and Contingencies

The Company may become party to various legal actions that arise in the ordinary course of its business. The Company is also subject to audit by tax and other authorities for varying periods in various federal, state, local and foreign jurisdictions, and disputes may arise during the course of these audits. It is impossible to determine the ultimate liabilities that the Company may incur resulting from any of these lawsuits, claims, proceedings, audits, commitments, contingencies and related matters or the timing of these liabilities, if any. If these matters were to ultimately be resolved unfavorably, it is possible that such an outcome could have a material adverse effect upon the Company's consolidated financial position, results of operations, or liquidity. The Company does not, however, anticipate such an outcome and it believes the ultimate resolution of these matters will not have a material adverse effect on the Company's consolidated financial position, results of operations, or liquidity.

Long-Term Take-or-Pay Natural Gas Purchase Contracts

The Company has entered into one long-term CNG supply contract to purchase CNG, on a take-or-pay basis, that expires in June 2022. As of December 31, 2021, the fixed commitments under this contract totaled approximately $0.1 million for the year ending December 31, 2022.

The Company has entered into quarterly fixed price natural gas purchase contracts with take-or-pay commitments extending through June 2023. As of December 31, 2021, the fixed commitments under these contracts totaled approximately $1.2 million for each of the years ending December 31, 2022 and 2023.

Long-Term Natural Gas Supply Contract

In June 2017, the Company's subsidiary, NG Advantage, entered into an arrangement with bp for the supply, sale and transportation of CNG over a five-year period starting in December 2018 and expiring February 2022 (see Note 4). The arrangement is customary and ordinary course. As of December 31, 2021, the commitments for the specified volume under this contract were estimated to be approximately $1.1 million for the year ending December 31, 2022.

bpJV Capital Call Contribution

In December 2021, the bpJV authorized a capital call in the amount of $143.2 million with bp and the Company each required to contribute $71.6 million. Proceeds from the bpJV Capital Call will be used to fund working capital needs and to fund RNG production facility projects undertaken by the bpJV. As of December 31, 2021, the Company has paid $20.0 million related to the bpJV Capital Call. The remaining contribution balance of $51.6 million will be paid on or prior to June 30, 2022.

Note 16 —Leases

The Company's operating leases are comprised of real estate for fueling stations, office spaces, warehouses, a LNG liquefaction plant, and office equipment, and its finance leases are comprised of vehicles.

NG Advantage has provided residual value guarantees on leases of certain vehicles aggregating $1.0 million to the lessors. NG Advantage expects to owe these amounts in full and therefore they have been included in the measurement of the lease liabilities and ROU assets.

Certain of the Company's real estate leases contain variable lease payments, including payments based on a change in the index or gasoline gallon equivalents of natural gas dispensed at fueling stations. These variable lease payments cannot be determined at the commencement of the lease, are not included in the ROU assets and lease liabilities, and are recorded as a period expense when incurred.

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Lessee Accounting

As of December 31, 2020 and 2021, the Company's finance and operating lease asset and liability balances were as follows (in thousands):

	2020	2021
Finance leases:		
Land, property and equipment, gross	$ 4,915	$ 5,617
Accumulated depreciation	(1,905)	(2,646)
Land, property and equipment, net	$ 3,010	$ 2,971
Current portion of finance lease obligations	$ 840	$ 846
Long-term portion of finance lease obligations	2,552	2,427
Total finance lease liabilities	$ 3,392	$ 3,273
Operating leases:		
Operating lease right-of-use assets	$ 25,967	$ 42,537
Current portion of operating lease obligations	$ 2,822	$ 3,551
Long-term portion of operating lease obligations	23,698	39,431
Total operating lease liabilities	$ 26,520	$ 42,982

The components of lease expense for finance and operating leases consisted of the following (in thousands):

	Year Ended December 31, 2020	2021
Finance leases:		
Depreciation on assets under finance leases	$ 733	$ 809
Interest on lease liabilities	185	181
Total finance leases expense	$ 918	$ 990
Operating leases:		
Lease expense	$ 6,287	$ 7,313
Lease expense on short-term leases	847	205
Variable lease expense	2,593	3,321
Sublease income	(736)	(726)
Total operating leases expense	$ 8,991	$ 10,113

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Supplemental information on finance and operating leases is as follows (dollars in thousands):

	Year Ended December 31, 2020	2021
Operating cash outflows from finance leases	$ 185	$ 181
Operating cash outflows from operating leases	$ 5,503	$ 5,804
Financing cash outflows from finance leases	$ 1,242	$ 789
Assets obtained in exchange for new finance lease liabilities (1)	$ 1,337	$ 879
ROU assets obtained in exchange for operating lease liabilities (1)	$ 96	$ 19,515

	December 31, 2020	December 31, 2021
Weighted-average remaining lease term - finance leases	3.59 years	2.87 years
Weighted-average remaining lease term - operating leases	10.81 years	12.31 years
Weighted-average discount rate - finance leases	5.27%	5.22%
Weighted-average discount rate - operating leases	8.40%	7.55%

(1) These amounts are excluded from the accompanying consolidated statements of cash flows as they are non-cash investing, operating and/or financing activities.

The following schedule represents the Company's maturities of finance and operating lease liabilities as of December 31, 2021 (in thousands):

	Finance Leases	Operating Leases
Fiscal year:		
2022	$ 990	$ 6,148
2023	893	6,037
2024	1,305	6,087
2025	390	6,028
2026	—	5,840
Thereafter	—	38,033
Total minimum lease payments	3,578	68,173
Less amount representing interest	(305)	(25,191)
Present value of lease liabilities	$ 3,273	$ 42,982

Lessor Accounting

The Company leases fueling station equipment to customers that contain an option to extend and an end-of-term purchase option. Receivables from these leases are accounted for as finance leases, specifically sales-type leases, and are included in "Other receivables" and "Notes receivable and other long-term assets, net" in the accompanying consolidated balance sheets.

The Company recognizes the net investment in the lease as the sum of the lease receivable and the unguaranteed residual value, both of which are measured at the present value using the interest rate implicit in the lease.

During the years ended December 31, 2020 and 2021, the Company recognized $0.5 million and $0.4 million, respectively, in "Interest income" on its lease receivables.

The following schedule represents the Company's maturities of lease receivables as of December 31, 2021 (in thousands):

Fiscal year:	
2022	$ 1,182
2023	962
2024	962
2025	962
2026	1,034
Thereafter	2,339
Total minimum lease payments	7,441
Less amount representing interest	(1,908)
Present value of lease receivables	$ 5,533

Note 17 – 401(k) Plan

The Company has established a savings plan ("Savings Plan") which is qualified under Section 401(k) of the Internal Revenue Code. Eligible employees may elect to make contributions to the Savings Plan through salary deferrals of up to 90% of their base pay, subject to Internal Revenue Code limitations. The Company may also make discretionary contributions to the Savings Plans, subject to limitations. For each of the years ended December 31, 2019, 2020 and 2021 the Company contributed approximately $1.3 million, $1.5 million and $1.6 million, respectively, of matching contributions to the Savings Plan.

Note 18 – Net Income (Loss) Per Share

The following table sets forth the computations of basic and diluted earnings per share for the years ended December 31, 2019, 2020 and 2021 (in thousands, except share and per share amounts):

	2019	2020	2021
Net income (loss) attributable to Clean Energy Fuels Corp.	$ 20,421	$ (9,864)	$ (93,146)
Weighted-average common shares outstanding	204,573,287	200,657,912	213,118,694
Dilutive effect of potential common shares from restricted stock units, stock options and stock warrants	1,414,222	—	—
Weighted-average common shares outstanding - diluted	205,987,509	200,657,912	213,118,694
Basic income (loss) per share	$ 0.10	$ (0.05)	$ (0.44)
Diluted income (loss) per share	$ 0.10	$ (0.05)	$ (0.44)

The following potentially dilutive securities have been excluded from the diluted net income (loss) per share calculations because their effect would have been antidilutive. Although these securities were antidilutive for these periods, they could be dilutive in future periods.

(in shares)	2019	2020	2021
Stock options	7,652,463	8,142,831	17,153,671
Convertibles notes	3,164,557	1,112,783	—
Restricted stock units	—	978,716	1,126,942
Amazon warrant shares	—	—	58,767,714
Total	10,817,020	10,234,330	77,048,327

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 19 —Related Party Transactions

TotalEnergies S.E.

During the years ended December 31, 2020 and 2021, the Company recognized revenue of $7.8 million and $4.9 million, respectively, related to RINs and LNG sold to TotalEnergies and its affiliates in the ordinary course of business, AFTC credits, and settlements on commodity swap contracts (Note 7). As of December 31, 2020 and 2021, the Company had receivables from TotalEnergies of $0.9 million and $1.4 million, respectively.

During the years ended December 31, 2020 and 2021, the Company paid TotalEnergies $0.7 million and $2.0 million, respectively, for expenses incurred in the ordinary course of business, settlements on commodity swap contracts (Note 7), and the guaranty fee under the CSA (Note 12). As of December 31, 2020 and 2021, the amount due to TotalEnergies was $0.0 million and $0.1 million, respectively.

SAFE&CEC S.r.l

During the years ended December 31, 2020 and 2021, the Company received $1.2 million and $0.2 million, respectively, from SAFE&CEC S.r.l. in the ordinary course of business. As of December 31, 2020, the Company had receivables from SAFE&CEC S.r.l. of $0.2 million. Receivables balance as of December 31, 2021 was immaterial.

During the years ended December 31, 2020 and 2021, the Company paid SAFE&CEC S.r.l. $4.8 million and $9.6 million, respectively, for parts and equipment in the ordinary course of business. As of December 31, 2020 and 2021, the Company had payables to SAFE&CEC S.r.l. of $0.9 million and $0.2 million, respectively.

TotalEnergies JV and bpJV

Pursuant to LLC agreements under the TotalEnergies JV and the bpJV, the Company manages the day-to-day operations of RNG projects under the joint ventures in exchange for management fees. During the year ended December 31, 2021, the Company recognized management fee revenue of $0.4 million. As of December 31, 2021, the Company had receivables from the joint ventures of $0.4 million.

Note 20 —Reportable Segments and Geographic Information

Disclosures are required for certain information regarding operating segments, products and services, geographic areas of operation and major customers. Segment reporting is based on the "management approach," which assesses, how management organizes the Company's operating segments for which separate financial information is (1) available and (2) evaluated regularly by the Chief Operating Decision Maker ("CODM") in deciding how to allocate resources and in assessing performance. The Company's CODM is its Chief Executive Officer.

The Company operates in a single segment to supply natural gas. In making operating decisions, the CODM primarily considers consolidated financial information, accompanied by volumes delivered information. The assessment of operating results and the allocation of resources among the components of the business are made by the CODM and are based on gross margins and volumes delivered by market sector and volume type. Contracts are evaluated based on the economics of a mix of products and services for a customer.

The table below presents the Company's revenue, operating income (loss) and long-lived assets by geographic area (in thousands). Several of the Company's functions, including marketing, engineering, and finance are performed at the corporate level. As a result, significant interdependence and overlap exists among the Company's geographic areas. Geographic revenue data reflect internal allocations and are therefore subject to certain assumptions and the Company's methodology. Accordingly, revenue, operating income (loss), and long-lived assets shown for each geographic area may not be the amounts that would have been reported if the geographic areas were independent of one another. Revenue by

geographic area is categorized based on where services are rendered and finished goods are sold. Operating income (loss) by geographic area is categorized based on the location of the entity selling the finished goods or providing the services. Long-lived assets by geographic are categorized based on the location of the assets.

	2019	2020	2021
Revenue:			
United States	$ 338,549	$ 281,546	$ 252,310
Canada	5,516	10,178	3,336
Total revenue	$ 344,065	$ 291,724	$ 255,646
Operating income (loss):			
United States	$ 10,805	$ (9,853)	$ (94,157)
Canada	(877)	9	(891)
Total operating income (loss)	$ 9,928	$ (9,844)	$ (95,048)
Long-lived assets:			
United States	$ 415,548	$ 383,463	$ 440,770
Canada	226	202	630
Total long-lived assets	$ 415,774	$ 383,665	$ 441,400

The Company's goodwill and intangible assets as of December 31, 2019, 2020 and 2021 relate to its United States operations, and its subsidiaries, Clean Energy Cryogenics and NG Advantage (see Note 4).

Note 21 —Concentrations

During the years ended December 31, 2019, 2020 and 2021, one, three, and zero suppliers, respectively, each accounted for 10% or more of the Company's natural gas expense relating to CNG and LNG purchases.

During the years ended December 31, 2019, 2020 and 2021, no single customer accounted for 10% or more of the Company's total revenue.

Note 22 —Subsequent Events

NG Advantage Debt Refinancing

In January 2022, NG Advantage entered into a second amendment to the Berkshire ALA pursuant to which Berkshire Bank agreed to lend NG Advantage $14.0 million (the "Berkshire Term Loan 2"). The Berkshire Term Loan 2 bears interest at 5.00% with principal and interest payable in 59 equal monthly installments and a balloon payment due on January 31, 2027. The debt is collateralized by various trailers and station assets of NG Advantage. In connection with the Berkshire Term Loan 2, NG Advantage extinguished $11.1 million of existing debt obligations consisting of $10.4 million in cash payoffs and an application of $0.8 million in deposits held with the former lenders.

In connection with the second amendment to the Berkshire ALA, Berkshire Bank released $7.0 million, classified in "Restricted cash" on the accompanying consolidated balance sheet, to the Company related to the Company's limited guaranty under the Berkshire ALA. Concurrently, the Company issued an irrevocable standby letter of credit to Berkshire Bank for $7.0 million as collateral under the second amendment to the Berkshire ALA. The standby letter of credit is valid until specified release conditions are satisfied and is collateralized by the Company's revolving line of credit, reducing the total amount available under the line of credit to $11.0 million.

Stock Repurchase Activities

Subsequent to December 31, 2021, through the date of filing of this Report (the "filing date"), the Company repurchased 511,010 shares of its common stock under the Repurchase Program for a total cost of $3.0 million (exclusive

CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

of fees and commissions) at an average price of $5.85 per share. As of the filing date, the Company had utilized a total of $20.4 million to repurchase shares of its common stock in the open market and had a total of $29.6 million of authorized funds remaining under the Repurchase Program.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Our management carried out an evaluation, with the participation of our Chief Executive Officer and Chief Financial Officer (our principal executive and principal financial officers, respectively) of the effectiveness of our disclosure controls and procedures as of December 31, 2021, the end of the period covered by this report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of December 31, 2021.

Changes in Internal Control Over Financial Reporting

We regularly review and evaluate our internal control over financial reporting, and from time to time we may make changes to our processes and systems to improve controls or increase efficiencies. Such changes may include, among others, implementing new and more efficient systems, consolidating activities, and migrating processes.

There were no changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) for our Company. Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, assessed the effectiveness of our internal control over financial reporting as of December 31, 2021. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control—Integrated Framework (2013)*. Based on this assessment, our management concluded that, as of December 31, 2021, our internal control over financial reporting was effective. Our independent registered public accounting firm, KPMG LLP, has issued an attestation report on our internal control over financial reporting, which is included in Item 8. "Financial Statements and Supplementary Data" of this report.

Inherent Limitations of Disclosure Controls and Procedures and Internal Control Over Financial Reporting

In designing our disclosure controls and procedures and internal control over financial reporting, management recognizes that any controls and procedures, no matter how well-designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of our controls and procedures must reflect the fact that there are resource constraints, and management necessarily applies its judgment in evaluating the benefits of possible controls and procedures relative to their costs. Because of these inherent limitations, our disclosure and internal controls may not prevent or detect all instances of fraud, misstatements or other control issues. In addition, projections of any evaluation of the effectiveness of disclosure or internal controls to future periods are subject to risks, including, among others, that controls may become inadequate because of changes in conditions or that compliance with policies or procedures may deteriorate.

Item 9B. Other Information.

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

We have adopted a written code of ethics that applies to our employees, officers and directors, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. A current copy of the code is posted under "Corporate Governance" on the Investor Relations section of our website, www.cleanenergyfuels.com. To the extent required by applicable rules adopted by the SEC and the Nasdaq Stock Market LLC, we intend to disclose future amendments to certain provisions of the code, or waivers of such provisions granted to executive officers and directors, in this location on our website at www.cleanenergyfuels.com.

The remaining information required by Item 10 is incorporated by reference to our definitive proxy statement for our 2022 annual meeting of stockholders to be filed with the SEC within 120 days after the end of our fiscal year ended December 31, 2021.

Item 11. Executive Compensation.

The information required by Item 11 is incorporated by reference to our definitive proxy statement for our 2022 annual meeting of stockholders to be filed with the SEC within 120 days after the end of our fiscal year ended December 31, 2021.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required by Item 12 is incorporated by reference to our definitive proxy statement for our 2022 annual meeting of stockholders to be filed with the SEC within 120 days after the end of our fiscal year ended December 31, 2021.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information required by Item 13 is incorporated by reference to our definitive proxy statement for our 2022 annual meeting of stockholders to be filed with the SEC within 120 days after the end of our fiscal year ended December 31, 2021.

Item 14. Principal Accountant Fees and Services.

The information required by Item 14 is incorporated by reference to our definitive proxy statement for our 2022 annual meeting of stockholders to be filed with the SEC within 120 days after the end of our fiscal year ended December 31, 2021.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a)(1) **Consolidated Financial Statements**

The following items are filed in Item 8. Financial Statements and Supplementary Data of this report:

Report of Independent Registered Public Accounting Firm
Consolidated Balance Sheets
Consolidated Statements of Operations
Consolidated Statements of Comprehensive Income (Loss)
Consolidated Statements of Stockholders' Equity
Consolidated Statements of Cash Flows
Notes to Consolidated Financial Statements

(a)(2) **Financial Statement Schedules**

The financial statement schedule set forth below is filed as a part of this report. All other schedules have been omitted because they are not required, not applicable, or the required information is otherwise included.

Schedule II - Valuation and Qualifying Accounts

	(In thousands)	
	Allowance for Credit Losses on Accounts Receivables	Allowance for Credit Losses on Notes Receivables
Balance as of December 31, 2018	$ 1,919	$ 4,163
Charges (benefit) to operations	908	931
Deductions	(415)	(1,763)
Balance as of December 31, 2019	2,412	3,331
Charges (benefit) to operations	796	1,250
Deductions	(1,873)	(476)
Balance as of December 31, 2020	1,335	4,105
Charges (benefit) to operations	77	650
Deductions	(207)	—
Balance as of December 31, 2021	$ 1,205	$ 4,755

(a)(3) **Exhibits**

The information required by this Item 15(a)(3) is set forth on the exhibit index, which immediately precedes the signature page to this report and is incorporated herein by reference.

Item 16. Form 10-K Summary.

We have elected not to provide summary information.

EXHIBIT INDEX

Exhibit Number	Description	Incorporated herein by reference to the following filings: Form	Filed on
3.1	Restated Certificate of Incorporation, as amended by the Certificate of Amendment to the Restated Certificate of Incorporation of the Registrant dated May 28, 2010, as further amended by the Certificate of Amendment to the Restated Certificate of Incorporation of the Registrant dated May 8, 2014.	Filed as Exhibit 3.1 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2018.	August 7, 2018
3.1.1	Certificate of Amendment to the Restated Certificate of Incorporation of Clean Energy Fuels Corp. dated June 8, 2018.	Filed as Exhibit 3.1.1 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2018.	August 7, 2018
3.1.2	Certificate of Amendment to Restated Certificate of Incorporation, dated June 14, 2021.	Filed as Exhibit 3.1 to the Current Report on Form 8-K	June 15, 2021
3.2	Amended and Restated Bylaws.	Filed as Exhibit 3.2 to the Current Report on Form 8-K.	February 23, 2011
3.2.1	Amendment No. 1 to Amended and Restated Bylaws.	Filed as Exhibit 3.2.1 to the Current Report on Form 8-K.	February 27, 2014
4.1	Specimen Common Stock Certificate.	Filed as Exhibit 4.1 to the Registration Statement on Form S-1, as amended.	March 27, 2007
4.2	Form of Replacement Note issued by the Registrant.	Filed as Exhibit 4.9 to the Current Report on Form 8-K.	June 18, 2013
4.3*	Description of Clean Energy Fuels Corp. Capital Stock.		
4.4†	Warrant to Purchase Common Stock of Clean Energy Fuels Corp., between Clean Energy Fuels Corp. and Amazon.com NV Investment Holdings LLC, dated as of April 16, 2021.	Filed as Exhibit 4.4 to the Current Report on Form 8-K.	April 16, 2021
10.1+	Form of Indemnification Agreement.	Filed as Exhibit 10.4 to the Registration Statement on Form S-1, as amended.	March 27, 2007
10.2+	2006 Equity Incentive Plan—Form of Notice of Stock Option Grant and Stock Option Agreement.	Filed as Exhibit 99.5 to the Registration Statement on Form S-8.	August 14, 2007
10.3*††	Ground Lease dated November 3, 2006 among the Registrant, Clean Energy Construction and U.S. Borax, Inc.		

10.4*	First Amendment to Ground Lease dated October 28, 2008 among Clean Energy LNG, LLC, Clean Energy Construction and U.S. Borax, Inc.		
10.5+	Amended and Restated 2006 Equity Incentive Plan.	Filed as Exhibit 10.63 to the Annual Filing on Form 10-K for the fiscal year ended 2011.	March 12, 2012
10.6+	Clean Energy Fuels Corp. Employee Stock Purchase Plan.	Filed as Exhibit Annex A to Schedule 14A Definitive Proxy Statement.	March 28, 2013
10.7+	2006 Equity Incentive Plan - Form of Notice of Stock Option Grant.	Filed as Exhibit 10.104 to the Quarterly Report on Form 10-Q for the quarter ended March 31, 2015.	May 11, 2015
10.8+	Amended and Restated Employment Agreement dated December 31, 2015, between the Registrant and Andrew J. Littlefair.	Filed as Exhibit 10.106 to the Current Report on Form 8-K.	December 31, 2015
10.9+	Amended and Restated Employment Agreement dated December 31, 2015, between the Registrant and Robert M. Vreeland.	Filed as Exhibit 10.107 to the Current Report on Form 8-K.	December 31, 2015
10.10+	Amended and Restated Employment Agreement dated December 31, 2015, between the Registrant and Mitchell W. Pratt.	Filed as Exhibit 10.108 to the Current Report on Form 8-K.	December 31, 2015
10.11+	Amended and Restated Employment Agreement dated December 31, 2015, between the Registrant and Barclay F. Corbus.	Filed as Exhibit 10.109 to the Current Report on Form 8-K.	December 31, 2015
10.12+	Clean Energy Fuels Corp. 2016 Performance Incentive Plan.	Filed as Exhibit 10.114 to the Current Report on Form 8-K.	May 27, 2016
10.13+	Clean Energy Fuels Corp. 2016 Performance Incentive Plan-Form of Notice of Stock Option Grant and Terms and Conditions of Nonqualified Stock Option.	Filed as Exhibit 10.117 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2016.	August 9, 2016
10.14+	Clean Energy Fuels Corp. 2016 Performance Incentive Plan-Form of Notice of Stock Unit Award and Terms and Conditions of Stock Unit Award.	Filed as Exhibit 10.118 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2016.	August 9, 2016

10.15+	Form of Option Surrender Agreement.	Filed as Exhibit 10.120 to the Quarterly Report on Form 10-Q for the quarter ended March 31, 2017.	May 4, 2017
10.16	Series A Preferred Units Issuance Agreement dated July 14, 2017, by and between Clean Energy and NG Advantage LLC.	Filed as Exhibit 10.122 to the Quarterly Report on Form 10-Q for the quarter ended September 30, 2017.	November 2, 2017
10.17	Stock Purchase Agreement dated May 9, 2018, between the Registrant and Total Market Services, S.A.	Filed as Exhibit 10.125 to the Quarterly Report on Form 10-Q for the quarter ended March 31, 2018.	May 10, 2018
10.18	Voting Agreement dated May 9, 2018, among the Registrant, Total Market Services, S.A., and the directors and officers of the Registrant signatory.	Filed as Exhibit 10.126 to the Quarterly Report on Form 10-Q for the quarter ended March 31, 2018.	May 10, 2018
10.19	Form of Registration Rights Agreement dated June 13, 2018, between the Registrant and Total Market Services, S.A.	Filed as Exhibit 10.127 to the Quarterly Report on Form 10-Q for the quarter ended March 31, 2018.	May 10, 2018
10.20	Term Credit Agreement, dated as of January 2, 2019, between the Registrant and Société Générale.	Filed as Exhibit 10.129 to the Annual Report on Form 10-K for the year ended December 31, 2018.	March 12, 2019
10.21	Credit Support Agreement, dated as of January 2, 2019, by and between the Registrant and Total Holdings USA, Inc.	Filed as Exhibit 10.130 to the Annual Report on Form 10-K for the year ended December 31, 2018.	March 12, 2019
10.22	Amended and Restated 2016 Performance Incentive Plan.	Filed as Exhibit 10.1 to the Current Report on Form 8-K.	May 18, 2020
10.23††	Memorandum of Understanding, dated December 18, 2020, between Clean Energy and BP Products North America Inc.	Filed as Exhibit 10.24 to the Annual Report on Form 10-K for the year ended December 31, 2020.	March 9, 2021
10.24††	USD $50,000,000 Loan Agreement, dated December 18, 2020, between Clean Energy and BP Products North America Inc.	Filed as Exhibit 10.25 to the Annual Report on Form 10-K for the year ended December 31, 2020.	March 9, 2021
10.25††	Joint Venture Agreement, dated March 3, 2021, between Clean Energy Renewable Fuels, LLC and Total Biogas Holdings USA, LLC.	Filed as Exhibit 10.26 to the Annual Report on Form 10-K for the year ended December 31, 2020.	March 9, 2021

10.26††	Limited Liability Company Agreement of CE Renewco, LLC between Clean Energy and BP Products North America Inc.	Filed as Exhibit 10.27 to the Current Report on Form 8-K.	April 15, 2021
10.27††	Transaction Agreement, between Clean Energy Fuels Corp. and Amazon.com, Inc., dated as of April 16, 2021.	Filed as Exhibit 10.27 to the Current Report on Form 8-K.	April 16, 2021
21.1*	Subsidiaries.		
23.1*	Consent of Independent Registered Public Accounting Firm KPMG LLP.		
24.1*	Power of Attorney (included on the signature page to this report).		
31.1*	Certification of Andrew J. Littlefair, President and Chief Executive Officer, pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes- Oxley Act of 2002.		
31.2*	Certification of Robert M. Vreeland, Chief Financial Officer, pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.		
32.1**	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, executed by Andrew J. Littlefair, President and Chief Executive Officer, and Robert M. Vreeland Chief Financial Officer.		
101	The following materials from the Registrant's Annual Report on Form 10-K for the year ended December 31, 2021, formatted in iXBRL (Inline eXtensible Business Reporting Language): (i) Consolidated Balance Sheets; (ii) Consolidated Statements of Operations; (iii) Consolidated Statements of Comprehensive Income (Loss);		

	(iv) Consolidated Statements of Stockholders' Equity;
	(v) Consolidated Statements of Cash Flows; and
	(vi) Notes to Consolidated Financial Statements.
104	Cover Page Interactive Data File (formatted as iXBRL and contained in Exhibit 101)

+ Management contract or compensatory plan or arrangement.

† Portions of this exhibit have been omitted pursuant to the grant of a request for confidential treatment and the non-public information has been filed separately with the SEC.

†† Certain portions of this document that constitute confidential information have been redacted in accordance with Item 601(b)(10) of Regulation S-K.

* Filed herewith.

** Furnished herewith.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CLEAN ENERGY FUELS CORP.

By: /s/ ANDREW J. LITTLEFAIR
Andrew J. Littlefair
President and Chief Executive Officer

Date: February 24, 2022

POWER OF ATTORNEY

IN WITNESS WHEREOF, each person whose signature appears below constitutes and appoints Andrew J. Littlefair and Robert M. Vreeland as his true and lawful agent, proxy and attorney-in-fact, each acting alone, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to (i) act on and sign any amendments to this report, with exhibits thereto and other documents in connection therewith, (ii) act on and sign such certificates, instruments, agreements and other documents as may be necessary or appropriate in connection therewith, and in each case file the same with the Securities and Exchange Commission, hereby approving, ratifying and confirming all that such agent, proxy and attorney-in-fact or any of his substitutes may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ ANDREW J. LITTLEFAIR Andrew J. Littlefair	President, Chief Executive Officer (Principal Executive Officer) and Director	February 24, 2022
/s/ ROBERT M. VREELAND Robert M. Vreeland	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	February 24, 2022
/s/ STEPHEN A. SCULLY Stephen A. Scully	Chairman of the Board and Director	February 24, 2022
/s/ LIZABETH ARDISANA Lizabeth Ardisana	Director	February 24, 2022
/s/ JAMES C. MILLER III James C. Miller III	Director	February 24, 2022
/s/ LORRAINE A. PASKETT Lorraine A. Paskett	Director	February 24, 2022
/s/ KARINE BOISSY-ROUSSEAU Karine Boissy-Rousseau	Director	February 24, 2022
/s/ KENNETH M. SOCHA Kenneth M. Socha	Director	February 24, 2022
/s/ VINCENT C. TAORMINA Vincent C. Taormina	Director	February 24, 2022
/s/ PARKER WEIL Parker Weil	Director	February 24, 2022
/s/ LAURENT WOLFFSHEIM Laurent Wolffsheim	Director	February 24, 2022

DESCRIPTION OF CLEAN ENERGY FUELS CAPITAL STOCK

References to "we," "us" and "our" in this section refer to Clean Energy Fuels Corp.

Authorized Capitalization

Pursuant to our certificate of incorporation as currently in effect, we are authorized to issue 454,000,000 shares of common stock, par value $0.0001 per share, and 1,000,000 shares of preferred stock, par value $0.0001 per share. The authorized shares of our common stock and preferred stock are available for issuance without further action by our stockholders, unless such action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. If the approval of our stockholders is not required, our board of directors may determine not to seek stockholder approval for any issuance of such shares.

Common Stock

Dividends

As of December 31, 2021, 222,684,923 shares of our common stock were issued and outstanding. Subject to provisions of the Delaware General Corporation Law (the "DGCL"), and to any future rights which may be granted to the holders of any series of our preferred stock, dividends are paid on our common stock when and as declared by our board of directors out of funds legally available for dividend payments.

Voting Rights

Each holder of shares of our common stock is entitled to one vote per share on all matters submitted to a vote of our common stockholders. Holders of our common stock are not entitled to cumulative voting rights.

Liquidation

If we are liquidated, holders of our common stock are entitled to receive all remaining assets available for distribution to stockholders after satisfaction of our liabilities and the preferential rights of any of our preferred stock that may be outstanding at that time.

Preemptive Rights

The holders of our common stock do not have any preemptive, conversion or redemption rights by virtue of their ownership of the common stock.

Preferred Stock

As of December 31, 2021, no shares of our preferred stock were issued or outstanding. Our board of directors has the authority, without further action by our stockholders, to designate and issue up to 1,000,000 shares of preferred stock in one or more series. Our board of directors may also designate the rights, preferences and privileges of each such series of preferred stock, any or all of which may be greater than or senior to those of our common stock. Though the actual effect of any issuance of preferred stock on the rights of the holders of common stock will not be known until our

board of directors determines the specific rights of the holders of preferred stock, the potential effects of such an issuance include:

- diluting the voting power of the holders of common stock;
- reducing the likelihood that holders of common stock will receive dividend payments;
- reducing the likelihood that holders of common stock will receive payments in the event of our sale, liquidation, dissolution, or winding up; and
- delaying, deterring or preventing a change-in-control or other corporate takeover as further described below.

Certain Anti-Takeover Matters

Our certificate of incorporation and bylaws include a number of provisions that may have the effect of encouraging persons considering unsolicited tender offers or other unilateral takeover proposals to negotiate with our board of directors rather than pursue non-negotiated takeover attempts. These provisions include:

Advance Notice Requirements

Our bylaws establish advance notice procedures with respect to stockholder nominations of directors and proposals of business to be brought before meetings of our stockholders. These procedures provide that notice of such stockholder nominations or proposals must be delivered in writing to our Corporate Secretary at the address of our principal executive offices within a specified time period before the meeting at which the director nominee is to be up for election or the proposal is to be voted on, and must contain certain specific information about the nominee or proposal and the stockholder submitting the notice. See the full text of our bylaws for more information.

Preferred Stock

The existence of our authorized but unissued shares of preferred stock enables our board of directors to issue such shares without further action by our stockholders, which could allow the board of directors to use such shares to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise. For example, if in the due exercise of its fiduciary obligations, our board of directors were to determine that a takeover proposal was not in the best interests of our Company and our stockholders, the board of directors could cause these shares of preferred stock to be issued without stockholder approval in one or more private offerings or other transactions that might dilute the voting or other rights of the proposed acquiror or insurgent stockholder or stockholder group. In this regard, certificate of incorporation grants our board of directors broad power to establish the rights, preferences and privileges of authorized and unissued shares of preferred stock. As a result, the issuance of these shares of preferred stock could adversely affect the rights and powers, including voting rights, of the holders of shares of our common stock, and in this way could have the effect of delaying, deterring or preventing a change of control of us.

Delaware Anti-Takeover Statutes

We are subject to Section 203 of the DGCL, or Section 203, regulating corporate takeovers. In general, Section 203 prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date the stockholder became an interested stockholder, unless:

- the transaction is approved by the board of directors before the date the interested stockholder attained such status;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced; or
- on or after the date the business combination is approved by the board of directors, the business combination is authorized at a meeting of stockholders by at least two-thirds of the outstanding voting stock that is not owned by the interested stockholder.

Section 203 defines "business combination" to include the following:

- any sale, lease, exchange, mortgage, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- any merger or consolidation involving the corporation or any majority-owned subsidiary and the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation or by any majority-owned subsidiary of any stock of the corporation or of such subsidiary to the interested stockholder;
- any transaction involving the corporation or any majority-owned subsidiary that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation or any majority-owned subsidiary.

In general, Section 203 defines "interested stockholder" to be any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by any of these entities or persons.

A Delaware corporation may opt out of Section 203 either with an express provision in its original certificate of incorporation or in an amendment to its certificate of incorporation or bylaws approved by its stockholders. We have not opted out of Section 203. As a result, Section 203 could prohibit or delay mergers or other takeover or change in control transactions, and as a result, may discourage attempts to pursue these transactions.

Limitation of Liability and Indemnification Matters

Our certificate of incorporation provides that a director of ours will not be liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except in certain cases where liability is mandated by the DGCL. Our bylaws also provide for indemnification by us, to the fullest extent permitted by law, of any person made or threatened to be made a party to, or who is involved in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was our director or officer, or at our request, serves or served as a director or officer of any other enterprise, against all expenses, liabilities, losses and claims actually incurred or suffered by such person in connection with the action, suit or proceeding. Our bylaws also provide that, to the extent authorized from time to time by our board of directors, we may provide indemnification to any one or more employees and other agents of ours to the extent and effect determined by our board of directors to be appropriate and authorized by the DGCL. Our bylaws also permit us to purchase and maintain insurance for the foregoing, and we currently and expect to continue to maintain such insurance. In addition, our bylaws provide that the provisions thereof are not exclusive of other rights to which any person seeking indemnification may be entitled under any agreement, vote of stockholders or disinterested directors or applicable provisions of the DGCL, and we have entered into a contract with each of our directors and officers providing for indemnification of each such person by us to the full extent authorized or permitted by law, subject to certain limited exceptions. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Listing

Our common stock is listed on the Nasdaq Global Select Market and trades under the symbol "CLNE."

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) OF THE TYPE THAT THE COMPANY TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

EXECUTION COPY

GROUND LEASE

This GROUND LEASE (this "**Lease**") is entered into this 3rd day of November 2006, by and among U.S. BORAX INC., a Delaware corporation ("**Lessor**"), CLEAN ENERGY LNG, LLC, a California limited liability company ("**Lessee**"), and CLEAN ENERGY CONSTRUCTION, a California corporation ("**CE Construction**"). Lessor, Lessee and CE CONSTRUCTION are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. Lessor is the owner of certain real property located near the City of Boron in Kern County, California, upon which Lessor, among other things, operates a borate mine and conducts related refining and shipping activities (the "**Borax Site**"). Natural gas is supplied to the Borax Site by way of a 2.5-mile natural gas pipeline owned by Lessor (the "**Lateral NG Pipeline**"), which interconnects with an interstate natural gas pipeline owned and operated by Mojave Pipeline Company (the "**Mojave Pipeline**") near the City of Boron in Kern County. The Borax Site is served by a railroad line owned by BNSF Railway Company, through a rail spur owned by Lessor.

B. Clean Energy Fuels Corp., a Delaware corporation ("**Parent**"), and its affiliates, including Lessee, are involved in the business of manufacturing and supplying liquefied natural gas and compressed natural gas for use in vehicles and for other purposes.

C. Lessee has requested that Lessor lease, and pursuant to the terms and conditions of this Lease, Lessor has agreed to lease, a portion of the Borax Site to Lessee for the purpose of operating a natural gas liquefaction facility to be constructed by CE Construction.

D. Lessee has also requested that Lessor provide, and pursuant to the terms and conditions of this Lease, Lessor has agreed to provide, certain services, including the supply of electricity and process water, to the Premises (as defined below).

E. Parent, which owns all of the membership interests in Lessee, is willing to guarantee Lessee's obligations to Lessor under this Lease.

NOW, THEREFORE, and in reference to the foregoing recitals (collectively, the "**Recitals**"), Lessor and Lessee, in consideration of the various obligations set forth in this Lease, agree as follows:

ARTICLE 1.
DEFINITIONS

In addition to other definitions of terms set forth elsewhere in this Lease, the following words and phrases shall have the indicated meanings wherever used in this Lease:

1.1 "**Access Road**" means the main access road to the Premises, which is located, in part, on the Premises as more fully shown on the Survey.

1.2 "**Abandonment**" means the failure of the LNG Facility to produce a minimum of [***] gallons of LNG during the first 12 months following the In-Service Date; [***] gallons of LNG during the 12 months following the second anniversary of the In-Service Date and [***] gallons of LNG during any 12 consecutive month period occurring after the third anniversary of the In-Service Date.

association, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, such Person. The term "**control**," and its correlative terms, as used in the immediately preceding sentence, means, with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than fifty percent (50%) of the outstanding voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

1.4 "**Award**" means the amount of any award made, compensation paid, or damages ordered as a result of a Taking.

1.5 "**Bankruptcy Code**" means Title 11 of the United States Code, as the same may be amended from time to time.

1.6 "**Business Day**" means any day except a Saturday or a Sunday or a day when commercial banks are authorized or required by Governmental Authority to be closed in Los Angeles, California.

1.7 "**Claims**" means any and all claims, liens, suits, actions, debts, damages, costs, losses, liabilities, obligations, judgments, expenses (including, without limitation, court costs, expert and consultant fees, attorneys' fees, including, without limitation, those incurred on appeal), fines and penalties arising from or relating to, in any way whatsoever, this Lease or the transactions contemplated hereby and the LNG Facility, including, without limitation, any alleged or actual breach of this Lease by and/or tortious action or inaction of, the Lessor Parties (including, without limitation, any act or omission which is negligent, grossly negligent, reckless or the result of willful misconduct).

1.8 "**Cogeneration Facility**" means the 45 megawatt cogeneration facility located on the Borax Site and owned, operated and maintained by Lessor.

1.9 "**Commercially Reasonable Efforts**" means those efforts which a prudent business Person would exert using sound business judgment in like circumstances.

1.10 "**Construction Commencement**" means the commencement of substantial site grading of the Premises for the LNG Facility by CE Construction.

1.11 "**Contract**" means any agreement, contract, obligation, promise or undertaking (whether written or oral and whether express or implied) that is legally binding.

1.12 "**Core Service**" means any one or more of the following services to be provided by Lessor hereunder: [***]

1.13 "**Core Service Default**" means (i) a knowing and intentional breach by Lessor of its obligation to provide one or more Core Services or (ii) the failure of Lessor to use Commercially Reasonable Efforts to resume the delivery of one or more Core Services following a Core Service Disruption, which, in either case, continues following notice of such breach. A termination by Lessor of any service, including, without limitation, a Core Service, in accordance with Section 12.4 or Section 19.20, shall not constitute a Core Service Default.

1.14 "**Core Service Default Claims**" means all Claims arising from or relating to one or more Core Service Defaults.

1.15 "**Core Services Disruption**" means a disruption in the supply of a Core Service which Lessor is obligated to remedy pursuant to this Lease.

1.16 "**Date of Taking**" means the date upon which title to the Premises, an interest therein, or a portion thereof passes to and vests in the condemnor, or the date damage related to the exercise of the power of condemnation is suffered, or the effective date of any order for possession if that order is issued prior to the date title vests in the condemnor.

1.17 "**Demised Land**" means the land described and depicted on **Exhibit "A"**.

1.18 "**Easements**" means the non-exclusive easements on, over, across, under and/or through (as applicable) the Borax Site described on **Exhibit "B"** for the purposes set forth on said **Exhibit "B"**. The locations of the Easements are also more fully described on **Exhibit "A"** and depicted on the Survey.

1.19 "**Environmental Laws**" means all present and future laws, statutes, ordinances, rules, regulations, Orders or Permits of any Governmental Authority relating to the environment or to any hazardous materials or substances, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601 et seq.), the applicable provisions of the California Health and Safety Code and the California Water Code, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Clean Air Act (42 U.S.C. §741 et seq.), the Clean Water Act (33 U.S.C. §7401 et seq.), the Toxic Substances Control Act (15 U.S.C. §§2601-2629), the Safe Drinking Water Act (42 U.S.C. §§300f-300j), and all amendments to any of the foregoing, as well as all rules, regulations, orders and decrees now or hereafter promulgated thereunder.

1.20 "**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any successor law, and the rules and regulations issued pursuant to that act or any successor law.

1.21 "**Hazardous Substance**" means, at any time, (i) any "hazardous substance" as deemed in §101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601(14)) or in subdivision (f) of §25281 or §25316 or §25501(L) of the California Health and Safety Code at such time; (ii) any "hazardous waste," "infectious waste" or "hazardous material" as deemed in §§25117, 25023.2 or 25501(K) of the California Health and Safety Code at such time; (iii) any "waste" as deemed in subdivision (d) of §13050 of the California Water Code; (iv) any additional substances or materials which at such time are classified or considered to be hazardous or toxic under any Environmental Laws; (v) asbestos and asbestos-containing materials; and (vi) petroleum and petroleum products, including, without limitation, crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof. The term "Hazardous Substances" shall include building materials and building components including, without limitation, asbestos contained in or comprising building materials or building components.

1.22 "**Governmental Authority**" means: (i) any nation, state, county, city, town, village, district or other jurisdiction of any nature; (ii) any federal, state, local, municipal, foreign or other government; (iii) any governmental or quasi-

governmental authority of any nature (including, without limitation, any governmental agency, branch, department, official or entity and any court or other tribunal); (iv) any multi-national organization or body; or (v) any body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

1.23 "**Improvements**" means all paving, landscaping, utility lines, pipes, fences, walls, buildings, and other structures located on the Demised Land, whether presently in existence or hereafter erected or placed upon the Demised Land, including, without limitation, all alterations and additions thereto, without regard to whether ownership thereof is in Lessor or Lessee. The Improvements shall be made by CE Construction and shall include, without limitation, the Lessee Controlled Roadways.

1.24 "**In-Service Date**" means the first day on which the LNG Facility has been constructed and become fully operational in accordance with this Lease and all Legal Requirements and Permits and LNG is being shipped from the LNG Facility to Lessee's customers.

1.25 "**Interconnection Plans**" means the detailed plans and specifications for the interconnections between the LNG Facility and any facilities or improvements owned by Lessor, including, without limitation, the Cogeneration Facility, Lessor's water and fire protection systems, the Lateral NG Pipeline and the Rail Spur.

1.26 "**Legal Requirements**" means any and all now or hereafter existing laws, rules, statutes, ordinances, regulations, Orders or Permits of any Governmental Authority, including, without limitation, Environmental Laws, in any way applicable to Lessor, Lessee or the Premises, including, without limitation, all of the foregoing relating to the ownership, division, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Premises.

1.27 "**Lessee Controlled Roadways**" means those roadways, other than the Access Road, located within the boundaries of the Demised Land.

1.28 "**Lessor Controlled Roadways**" means the Access Road and all roadways located outside the boundaries of the Demised Land.

1.29 "**Lessee's Improvements**" means all of those Improvements that are constructed by CE Construction and/or Lessee, and owned by Lessee, including, without limitation, the LNG Facility, as now existing or as hereafter constructed, installed, erected, or placed on the Demised Land or the Easements by CE Construction and/or Lessee pursuant to any right of Lessee hereunder to so construct, erect, install, or place any Improvement on the Demised Land or any Easement.

1.30 "**Lessor Parties**" means Lessor, its shareholders, directors, officers and employees.

1.31 "**Lessor's Improvements**" means, to the extent not relocated pursuant to Section 8.4 below, the electric power line and the underground water line owned by Lessor and located on the Premises as shown on the Survey.

1.32 "**LNG**" means liquefied natural gas produced at the LNG Facility.

1.33 "**LNG Facility**" means the LNG Facility described on **Exhibit "C"**. The LNG Fueling Station, if constructed by CE Construction and/or Lessee, shall be deemed to be a part of the LNG Facility.

1.34 "**Official Records**" means the official records of Kern County, California.

1.35 "**Operational**" means, with respect to a Train, that such Train has been constructed in accordance with this Lease and is otherwise capable of normal operation, except to the extent that such operation is impaired by the failure of Lessor to provide a Core Service in accordance with the provisions of this Lease.

1.36 "**Order**" means any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Authority or by any arbitrator against a Person.

1.37 "**Organizational Documents**" means (i) the articles or certificate of incorporation and the bylaws of a corporation, (ii) the partnership agreement and any statement of partnership of a general partnership, (iii) the limited partnership agreement and the certificate of limited partnership of a limited partnership, (iv) the certificate of formation and operating agreement of a limited liability company, (v) any charter or similar document adopted or filed in connection with the creation, formation or organization of a Person, and (vi) any amendment to any of the foregoing.

1.38 "**Partial Taking**" means any Taking of the Premises, one or more Easements and/or any Improvements on the Premises that is not a Total Taking or a Substantial Taking.

1.39 "**Permits**" means any and all approvals, inspections, entitlements, consents, licenses, permits, rights-of-way, concessions, grants, franchises, waivers or other authorizations or agreements issued, granted, given or otherwise provided by or under the authority of any Governmental Authority or pursuant to any applicable Legal Requirement, as the same may be applicable to the Premises.

1.40 "**Person**" means any individual, corporation (including, without limitation, any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or Governmental Authority.

1.41 "**Personal Property**" means all equipment, inventory, fixtures, and other personal property owned by Lessee or by any other person or entity holding an interest under Lessee in the Demised Land or any portion thereof and located, from time to time, on or about the Demised Land and not included in the definition of Improvements set forth above.

1.42 "**Plans and Specifications**" means, collectively, the Interconnection Plans and the Plant Layout Plans, as the same have been approved by Lessor in accordance with this Lease.

1.43 "**Plant Layout Plans**" means plans and specifications for the LNG Facility showing, among other things, the production capacity of the LNG Facility and the location on the Demised Land of all improvements associated with the LNG Facility, including, without limitation, the size, land coverage, shape, height, location, material and elevation of the LNG Facility, all ingress and egress to streets and roads, and all grading and earthmoving required to complete the LNG Facility.

1.44 "**Premises**" means, collectively, the Demised Land and all of Lessee's Improvements.

1.45 "**Proceeding**" means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

1.46 "**Prohibited Person**" means any Person: (i) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the

"**Executive Order**"); (ii) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order; or (iii) with whom Lessor or Lessee is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order.

1.47 "**Project Agreements**" means this Lease and the Parent Guaranty.

1.48 "**Property Taxes**" means and includes all taxes, assessments, and other governmental charges of every kind and nature whatsoever, whether general or special, ordinary or extraordinary, including, without limitation, assessments for public improvements or benefits and bonds, including, but not limited to Mello-Roos bonds, issued to finance such improvements or benefits, that have been heretofore or shall be during the term of this Lease (i) assessed, levied, or imposed upon, or become due and payable and a lien upon, the Premises or any part thereof; or (ii) assessed, levied, or imposed by reason of the use or occupancy or change in ownership of the Premises or any part thereof; or (iii) assessed, levied, or imposed upon this Lease or Lessee's rental obligations or Lessor's right to receive Rent or other sums under this Lease; or (iv) assessed, levied, or imposed by reason of Lessor's ownership or interest in all or any part of the Premises, this Lease, or Rent or other sums accruing under this Lease, including, without limitation, a tax or excise on Rent; or (v) assessed, levied, or imposed in lieu of any of the foregoing taxes, assessments, or other governmental charges; or (vi) assessed by reason of any Improvements made for or on behalf of Lessee.

1.49 "**Release**" is defined in Section 101(22) of CERCLA.

1.50 "**Substantial Taking**" means the Taking of so much of the Premises, the Easements and/or Improvements on the Premises, that, in Lessee's reasonable judgment, the conduct of Lessee's operation of the LNG Facility would be substantially prevented or impaired.

1.51 "**Survey**" means the survey of the Demised Premises and portions of the Borax Site attached hereto as **Exhibit "A"**.

1.52 "**Taking**" means a taking or damaging (including severance damages), by eminent domain, inverse condemnation or otherwise, by or for any public or quasi-public use under any statute now or hereafter in effect. The transfer of title may be either a transfer resulting from the recording of a final order or judgment of condemnation or a voluntary transfer or conveyance to the condemning authority under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending. The Taking shall be considered to take place as of the later of (i) the date actual physical possession is taken by the condemning authority, or (ii) the date upon which the right to compensation and damages accrues under the law applicable to the Premises and/or any Easement(s).

1.53 "**Total Taking**" means the Taking of the Premises, all of the Easements and/or all of Lessee's Improvements on the Premises.

1.54 "**Train**" means the production equipment necessary to produce approximately [***] gallons of LNG in a 24-hour period.

ARTICLE 2.
DEMISING PROVISIONS

2.1 Demised Land. Subject to the terms and conditions of this Lease, from and after the Term Commencement Date and for the Term, Lessor hereby leases the Demised Land to Lessee, and Lessee hereby leases the Demised Land from Lessor, subject to all of the following title and use exceptions (collectively, the "**Encumbrances**"):

(a) Easements, covenants, conditions, restrictions, assessments, bonds, Property Taxes, deeds of trust, and other liens, encumbrances, and other matters affecting title to the Demised Land or any part thereof, as of the Term Commencement Date, that are disclosed in or by this Lease or the Official Records;

(b) All Legal Requirements;

(c) Subject to the provisions of this Lease, and in particular Lessee's Access Rights, the right and power of Lessor, which is hereby reserved by and to Lessor, for the benefit of the entire Borax Site, to continue to use, maintain, alter and/or replace the Access Road, including, without limitation, those portions of the Access Road located within the Premises which are depicted on the Survey (the "**Reserved Roadway Rights**");

(d) Subject to the provisions of this Lease, and in particular Lessee's Access Rights, the right and power of Lessor, which is hereby reserved by and to Lessor, to use, sell, maintain, alter, demolish, and/or replace any and all of Lessor's Improvements located on the Demised Land (the "**Reserved Uses**"); and

(e) The right and power of Lessor, which is hereby reserved by and to Lessor, to have access across all or any portion of the Demised Land as expressly set forth herein, including, without limitation, in Section 4.5 hereof.

2.2 Lessee's Access Rights. Lessor hereby agrees to provide to Lessee, at all times during the Term, reasonable and sufficient ingress to, and egress from, the Premises to and from public roadways over the Access Road or such other roadways as may be designated by Lessor for such purpose from time to time (the "**Lessee's Access Rights**"). Lessee's Access Rights shall be deemed to be an easement appurtenant to Lessee's interests in the Premises that Lessor shall have no right to terminate during the Term, subject to the following provisions:

(a) Lessee's Access Rights are non-exclusive and shall be exercised only upon Access Road or such other Lessor Controlled Roadways as may be designated from time to time by Lessor;

(b) Subject to the terms and conditions of Lessee's Access Rights as set forth in this Lease, and subject to the rights, if any, to use Lessor Controlled Roadways granted by Lessor to others from time to time, whether before or after the execution of this Lease, Lessor shall have control over the Lessor Controlled Roadways, including, without limitation, the exclusive right and power:

(i) To adopt from time to time and to enforce reasonable rules and regulations respecting use of the Lessor Controlled Roadways by Lessee and others applied on a non-discriminatory basis;

(ii) To adopt reasonable security measures designed to prevent or discourage use of the Lessor Controlled Roadways by unauthorized people and to comply with Legal Requirements, including, without limitation, fencing and locked gates and imposition of background and identity checking and other procedures for all or some persons entering upon the Borax Site or through the Borax Site to the Demised Land, all of which shall be applied on a non-discriminatory basis;

(iii) To close or restrict temporarily use of the Lessor Controlled Roadways or any portion thereof as may be necessary in the event of any emergency or to make improvements to, or to repair, the Lessor Controlled Roadways, or for security or other legitimate purposes (including, without

limitation, in the event of labor action by employees of Lessor or any of its contractors), provided, however, that in any such event, Lessor shall use Commercially Reasonable Efforts to provide Lessee with reasonably suitable alternative means of maintaining Lessee's Access Rights;

(iv) Provided that Lessor shall always and continuously during the Term provide reasonable means for Lessee's exercise of Lessee's Access Rights, to close, relocate, realign, replace, regrade, repave, improve, abandon, or demolish, from time to time, all or any part of the Lessor Controlled Roadways, in which event any new or different roads that Lessor may, in the future, build upon the Borax Site outside the boundaries of the Demised Land shall be deemed part of the "**Lessor Controlled Roadways**" as that term in used in this Lease;

(v) To offer all or any part of the Roadways or other portions of the Borax Site located outside the boundaries of the Demised Land for dedication to public use or to any Governmental Authority, and with respect to any such offer, Lessee agrees fully and promptly to cooperate with Lessor and to execute, acknowledge (when needed), and deliver all appropriate instruments and documents; and

(vi) To grant easements over, and licenses to use, the Lessor Controlled Roadways or any portion thereof to third parties chosen by Lessor.

(c) With respect to any portion of the Lessor Controlled Roadways over which Lessee exercises Lessee's Access Rights, Lessee agrees that, when, if ever, that portion, or some other area as a substitute or alternative for that portion, becomes a public roadway, whether through acceptance of an offer of dedication made by Lessor or otherwise, then Lessee's Access Rights shall cease as to that portion or other area, with Lessee relying upon the public nature of that portion or other area to assure access to the Premises. When, if ever, and to the extent that, dedicated public roadways over any portion of the Borax Site offer reasonable access to the Demised Land, Lessee's Access Rights shall cease and no longer be a part of this Lease.

(d) Lessor shall maintain the Access Road in substantially the same repair and condition as it is maintained as of the Term Commencement Date. The costs and expenses incurred by Lessor for repair, maintenance, and improvement of the Access Road shall be shared by Lessor and Lessee as follows: [***]

provided, however, that if one Party's use of the Access Road is determined in good faith by Lessor to be contributing to the need for materially greater maintenance and repair of the Access Road (as compared with Lessor's current use of the Access Road), a greater share of the costs and expenses incurred for repair, maintenance, and improvement of the Access Road may reasonably be allocated to such Party. If Lessee is determined to be the Party causing such need, Lessee shall pay its share of the costs and expenses incurred by Lessor for such additional repair, maintenance, and improvement of the Access Road within thirty (30) days of request therefore from Lessor, which request shall be accompanied by a statement setting forth in reasonable detail the nature and amount of such costs and expenses.

(e) Lessee shall be solely responsible for the repair, maintenance and improvement of the Lessee Controlled Roadways, and Lessee shall pay all costs and expenses for such repair, maintenance, and improvement. Lessor shall have no obligation to contribute or reimburse Lessee for any portion of such costs and expenses.

2.3 Easements. Subject to the terms and conditions set forth on **Exhibit "B"** and the other provisions of this Lease, Lessor hereby grants to Lessee, from and after the Term Commencement Date and for the Term, the Easements.

2.4 Lessor's Services.

(a) [***]

(b) Lessee acknowledges and agrees that Lessor has made no representation as to the availability from third parties to the LNG Facility of any of the services to be provided by Lessor pursuant to this Lease in the event that Lessor ceases to provide such services. Without limiting Lessor's obligations as expressly set forth in this Lease or Lessee's rights and remedies hereunder upon a Lessor Default, including, without limitation, an adjustment in Rent as provided in Section 19.20 and **Exhibit "J"**, Lessee acknowledges that it shall be solely responsible for procuring such services in the event that they are no longer provided by Lessor.

2.5 Term and Termination.

(a) The term of this Lease shall commence on the Term Commencement Date and, unless terminated earlier in accordance with the provisions hereof, shall continue until the date that is thirty (30) years to the date following the In-Service Date (the "**Initial Term**"); provided, however, that unless either Lessor or Lessee provides written notice to the other Party on or before the date that is six (6) months prior to the expiration of the Initial Term of such Party's intent to terminate this Lease at the end of the Initial Term, the term of this Lease shall automatically be extended beyond the initial term for successive periods of three years each (each, an "**Extension Term**") unless, not less than six months prior to the end of any Extension Term, Lessor or Lessee delivers written notice to the other Party hereto of its intent to terminate this Lease, in which case this Lease shall terminate at the end of such Extension Term. The Initial Term, as the same may be extended in accordance with this Section 2.5(a) or earlier terminated in accordance with the provisions of this Lease, is referred to herein as the "**Term**."

(b) Provided that no Default by Lessee has occurred and is continuing at the time such Termination Notice is delivered, Lessee shall have the right to terminate this Lease at any time after January 1, 2009, upon the delivery to Lessor of written notice (a "**Termination Notice**") of Lessor's intent to terminate this Lease. The Termination Notice shall be delivered not less than six (6) months prior to the date upon which Lessee desires such termination to be effective and, provided that no Default has occurred and is then continuing on such date, this Lease shall terminate on such date.

(c) This Lease shall be effective upon execution; however, the Term and Lessee's right to occupy the Premises and utilize the Easements pursuant to this Lease shall not commence until the date (the "**Term Commencement Date**") on which each of the following conditions has been satisfied (which conditions are for the sole benefit of Lessor and may be waived by Lessor in writing):

(i) Lessee shall have executed and delivered each of the Project Agreements, and Parent shall have executed and delivered a guaranty of this Lease in the form of **Exhibit "G"** (the "**Parent Guaranty**");

(ii) Lessor shall have received from Lessee (A) a certificate of the Secretary of Lessee, attesting to the incumbency of the officers executing this Lease and the other Project Agreements on its behalf, (B) resolutions of the Boards of Directors of Lessee authorizing the execution, delivery and performance of this Lease, certified by the Secretary of Lessee, and (C) such other evidence

of Lessee's authority to enter into and perform this Lease and the Project Agreements as Lessee may reasonably require;[1]

(iii) Lessor shall have received from Parent (A) a certificate of the Secretary of Parent, attesting to the incumbency of the officers executing the Parent Guaranty on its behalf, (B) resolutions of the Boards of Directors of Parent authorizing the execution, delivery and performance of the Parent Guaranty, certified by the Secretary of Parent, and (C) such other evidence of Parent's authority to enter into and perform the Parent Guaranty as Lessee may reasonably require;

(iv) The Premises constitutes a legal parcel under applicable Legal Requirements (including, without limitation, the California Subdivision Map Act, Cal. Gov. Code Sections 66410 - 66499.58);

(v) Lessor shall have received evidence reasonably satisfactory to it that each of the Permits listed in Part A of **Exhibit "H"** and any other Permits required for the commencement of construction of the LNG Facility have been obtained by CE Construction upon terms and conditions satisfactory to Lessor in its sole and absolute discretion to the extent that such Permits would impose any obligations or restrictions on Lessor or the Borax Site (other than the Premises) or, if such obligations or restrictions would survive the termination of this Lease, and all time periods during which any challenge to or appeal of the issuance of such Permits shall have expired without any such challenge or appeal having been commenced (or, if commenced, such challenges or appeals having been finally determined or otherwise resolved on terms and conditions satisfactory to Lessor in its sole and absolute discretion);

(vi) Lessor shall have approved the Plant Layout Plans and the Interconnection Plans in accordance with Section 8.1 hereof;

(vii) There shall (A) be no material default or breach on the part of Lessee hereunder or under the other Project Agreements, and (B) have been no change in the condition (financial or otherwise) of Lessee or Parent which would have a material adverse impact (financial or otherwise) on Lessee's or Parent's ability to perform under this Lease, the other Project Agreements or the Parent Guaranty, as applicable;

(viii) There shall be no pending Proceeding (A) that has been commenced against the LNG Facility, or (B) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with or materially adversely affecting, the construction and operation of the LNG Facility;

(ix) Lessor and Lessee shall have executed and delivered a confirmation of the Term Commencement Date in the form of **Exhibit "I"**, it being agreed that neither Party shall have any obligation to deliver such confirmation until such time as all of the other conditions set forth in this Section 2.5(c) shall have been satisfied; and

(x) All other requirements of Governmental Authorities having jurisdiction shall have been satisfied and, without limitation of the foregoing, Lessor shall, after using Commercially Reasonable Efforts, have obtained all Permits which Lessor is required to obtain under applicable Legal Requirements in order for Lessor to perform its obligations hereunder. In the event that

---

[1] Upon execution of this Lease, Lessor agrees to deliver to Lessee similar evidence of Lessor's authorization to enter into and perform this Lease.

delays occur in Lessor's obtaining such Permits, and such delays impact the In-Service Deadline, the In-Service Deadline shall be extended accordingly.

(d) In addition to any other rights that it may have to terminate this Lease, Lessor shall have the right, upon written notice to Lessee, to terminate this Lease in the event that CE Construction fails to:

(i) cause Construction Commencement to occur on or before the date that is thirty (30) days following the Term Commencement Date; or

(ii) cause the In-Service Date to occur on or before the date that is two years following the date that is the earlier of (1) the date on which Lessee has obtained all of the Permits listed on **Exhibit "H"** have been obtained by Lessee and (2) December 31, 2007 (the "**In-Service Deadline**").

(e) In addition to any other rights that it may have to terminate this Lease, Lessee shall have the right, prior to the occurrence of the Term Commencement Date and upon not less than thirty (30) days' written notice to Lessor, to terminate this Lease and the Guaranty in the event that:

(i) CE Construction or Lessee shall have been unable to obtain all of the Permits listed on **Exhibit "H"** upon terms and conditions reasonably satisfactory to Lessee;

(ii) Lessor shall have failed to approve the Plant Layout Plans and the Interconnection Plans in accordance with Section 8.1 hereof; or

(iii) a Proceeding shall have been commenced that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with or materially adversely affecting, the construction and operation of the LNG Facility.

(f) Upon termination of this Lease, the rights and obligations of the Parties hereunder shall terminate, except for those obligations which, by their express terms, survive the termination of this Lease.

2.6 Quiet Enjoyment. Provided that Lessee fully performs all the terms of this Lease on Lessee's part to be performed, including, without limitation, payment by Lessee of all Rent, Lessee shall peaceably and quietly have, hold and enjoy the Premises from and after the Term Commencement Date and during the Term without hindrance, disturbance or molestation from or by Lessor, or any other Party claiming through Lessor, subject to the Encumbrances.

ARTICLE 3.
RENT

3.1 Base Rent. In addition to any and all other amounts payable from Lessee to Lessor pursuant to this Lease, Lessee agrees to pay to Lessor, and Lessor agrees to accept from Lessee, as rent for the use and occupancy of the Demised Land, during the Term, the amounts described on **Exhibit "J"** (the "**Base Rent**").

3.2 Payment of Base Rent. The Base Rent shall be paid, in lawful money of the United States of America, at such place or places as Lessor shall designate from time to time. The Base Rent shall be paid at the times and in accordance with the procedures set forth on **Exhibit "J"**.

3.3 Base Rent Adjustments. The components of Base Rent shall be subject to adjustment from time to time as and to the extent set forth on **Exhibit "J"**.

3.4 Additional Rent.

(a) Except as otherwise expressly set forth herein, Lessee agrees to pay, in addition to Base Rent, as additional rent, all other payments, costs, expenses, charges, and other obligations of every kind whatsoever directly arising from or related to the Premises and the operation thereof, including, without limitation, all services and utilities provided by third parties, insurance premiums on insurance policies required under this Lease, Property Taxes, as they become due and payable during the Term and all amounts required to be paid by Lessee to Lessor pursuant to **Exhibits "D"**, **"E"** and **"F"** or any other provision of this Lease (collectively, "**Additional Rent**"); and

(b) Lessee shall make all payments required to be made to a third party in order to fulfill an obligation of Lessee set forth in this Lease at whatever time is necessary to prevent delinquency or penalty for late payment, unless Lessee has duly contested said payments in the manner permitted and prescribed in this Lease. Lessee shall make all payments required by this Lease to be made to Lessor, including, without limitation, all amounts required to be paid by Lessee to Lessor pursuant to **Exhibits "D"**, **"E"** and **"F"**, to Lessor in the manner and within the time periods set forth in this Lease.

Base Rent and Additional Rent are described herein collectively as "**Rent**."

3.5 No Offset. This Lease is intended to be net to Lessor, and Lessee shall pay to Lessor, net throughout the Term, the Rent free of any offset, abatement or other deduction, except as may be expressly set forth herein. Lessor shall not be required to make any payment of any kind with respect to the Premises, except as may be expressly set forth elsewhere in this Lease. The foregoing shall not be construed as limiting the express provisions of this Lease which shall provide for certain reductions to the Additional Rent in accordance with the provisions of **Exhibit "J"** in the event that Lessor ceases to deliver Core Services.

3.6 Interest on Arrearages. Lessee agrees to pay to Lessor interest on any Rent not paid when due and upon all other amounts becoming due to Lessor under this Lease, whether or not such amounts constitute Rent, as follows:

(a) Said interest shall accrue from the date the Rent becomes due and continue until the Rent is paid in full;

(b) Said interest shall become due and payable daily as it accrues, without necessity of demand for payment, and shall be calculated at a rate equal to [***]; and

(c) Lessor may apply all payments received under this Lease first to interest accrued, and second to delinquent Rent and other monetary obligations.

ARTICLE 4.
USE OF PREMISES

4.1 Permitted Uses. Subject to the provisions of Sections 4.7 and 4.8 and **Exhibit "K"** hereof, Lessee shall use the Premises solely for the purposes of constructing (through CE Construction), operating, maintaining, repairing and replacing the LNG Facility and the LNG Fueling Station (as such term is defined on **Exhibit "K"**) on the Premises, and producing, storing and transporting LNG, and for purposes reasonably related to the foregoing, and for no other purpose without the prior written consent of Lessor, which consent may be granted or withheld in Lessor's sole and absolute discretion. Storage of equipment related to the conduct of Lessee's business shall be a permitted use; provided, however, that all storage areas must be screened from public view.

4.2 Compliance with Legal Requirements; Nuisance.

(a) Lessee shall not use the Premises or the Easements or permit anything to be done in or about the Premises or the Easements that will in any way conflict with any Legal Requirements or the Permits.

(b) Lessee shall, at its own cost and expense, promptly and properly observe and comply with all Legal Requirements relating to or arising from the use or occupancy, condition or maintenance, improvement or operation of the Premises or any part thereof that is from time to time permitted to it under this Lease, and shall do all things required to comply with all Legal Requirements and to maintain all Permits necessary and appropriate for the operation of the Premises or Lessee's business. Lessee acknowledges that prior to entering into this Lease, Lessee has had an ample opportunity to review all existing Permits that are part of the public record and to make inquiry with respect to any Permits in possession of Lessor that are not part of the public record, including Permits held in the name of Lessor and relating to the greater Borax Site and that Lessee has satisfied itself that its construction, use, occupancy, maintenance, improvement and operation of the Premises will comply with such permits.

(c) The judgment of any court of competent jurisdiction or the admission of Lessee in any action against Lessee that Lessee has violated any Legal Requirements shall be conclusive of the fact as between Lessor and Lessee.

(d) Lessee agrees not to do or permit anything to be done on or about the Premises and agrees not to bring or keep anything thereon that would create an unsafe condition at the Premises or the Borax Site, constitute a nuisance or constitute waste to the Premises, provided, that the foregoing shall not be construed as prohibiting Lessee from operating the LNG Facility in a commercially reasonable manner and in accordance with normal and customary practices in the liquefied natural gas industry. Lessee shall install all necessary and appropriate signage and warning devices to alert persons to any dangers or hazards present at the LNG Facility.

(e) Lessee shall implement such measures as are necessary to ensure that the Premises are a drug and alcohol-free environment.

(f) Lessee agrees not to do or permit anything to be done on or about the Premises which would interfere with the operations of Lessor or Lessor's other tenants, including Mojave Cogeneration Company.

4.3 Hazardous Substances.

(a) Without limiting the generality of the foregoing provisions of this Article 4, Lessee's use and occupancy of the Premises and the Easements or any portion thereof shall at all times be in strict compliance with any and all Legal Requirements relating in any way to the protection of the environment, including, without limitation, Environmental Laws.

(b) In the event Lessee shall, on, at or about the Borax Site, use, store, or generate or permit or suffer the use, storage, or generation of any Hazardous Substance, then Lessee, at its sole cost and expense, shall comply with all applicable Environmental Laws. Lessee shall not engage in operations that involve the Release of any Hazardous Substance on or about the Borax Site. Lessee shall be solely responsible for obtaining, at its own cost and expense, all Permits required under Environmental Laws for its activities under this Lease or on the Borax Site.

(c) In the event of any Release that occurs in connection with Lessee's activities or the activities of any of its employees, agents, representatives, lessees, sublessees, licensees, contractors or invitees on the Borax

Site, or in the event of any threat of a Release occurring in connection with Lessee's activities or the activities of any of its employees, agents, representatives, lessees, sublessees, licensees, contractors or invitees on or about the Borax Site, Lessee shall immediately (and in no event later than within twenty-four (24) hours) notify the Lessor orally and in writing thereof. In the event of such a Release or threat of Release of any Hazardous Substance, Lessee shall take such steps as are required by Legal Requirements and Lessor to mitigate and remediate such Release. To the extent such steps can lawfully be taken by Lessor, rather than Lessee, Lessee shall defer to Lessor's election, if any, to assume the lead in taking such steps, provided, however, that Lessor shall have no obligation to Lessee to take such steps. Any election by Lessor to take such steps shall not constitute a waiver or irreversible election of any rights or remedies. Regardless whether Lessor or Lessee is required to, or does, undertake such action, the provisions of Section 4.3(d) below shall apply. In the event of any Release affecting the Premises which occurs in connection with Lessor's activities or the activities of any of its employees, agents, representatives, lessees, sublessees, licensees or contractors on the Premises, or in the event of any threat of a Release occurring in connection with Lessor's activities or the activities of any of its employees, agents, representatives, lessees, sublessees, licensees, contractors or invitees on or about the Premises, Lessor shall immediately (and in no event later than within twenty-four (24) hours) notify Lessee orally and in writing thereof. In the event of such a Release or a threat of Release of any Hazardous Substance, Lessor shall take such steps as are required by Legal Requirements to mitigate and remediate such Release.

(d) Lessee shall, at all times, indemnify, defend, protect, and hold harmless the Lessor Parties and any lender of Lessor, including, with respect to Lessor, any mortgage holder, against and from any and all claims, liens, suits, actions, debts, damages, costs, losses, liabilities, obligations, judgments, and expenses (including, without limitation, court costs, expert and consultant fees, attorneys' fees, including, without limitation, those incurred on appeal), fines, penalties, and damage to, or loss suffered by the Lessor Parties or the Borax Site or any portion thereof, of any nature whatsoever, arising from or relating to (i) Lessee's failure to perform the obligations required under this Section 4.3; (ii) a Release of any Hazardous Substance that occurs in connection with Lessee's activities or the activities of any of its employees, agents, representatives, lessees, sublessees, licensees, contractors or invitees on or about the Premises or on or about the Borax Site, including, without limitation, the Roadways; or (iii) the threat of a Release of any Hazardous Substance occurring in connection with Lessee's activities or the activities of any of its employees, agents, representatives, lessees, sublessees, licensees or contractors on or about the Premises or on or about the Borax Site, including, without limitation, the Roadways. Lessee's obligations under this Lease shall arise whether or not any Governmental Authority or individual has taken or threatened any action in connection with the presence of any Hazardous Substance. This entire Section 4.3 shall survive termination or the expiration of this Lease.

(e) Lessee shall provide all relevant information regarding any Hazardous Substances used, stored or generated on the Borax Site, including, without limitation, its Material Safety Data Sheets (MSDS), to (i) Lessor, and (ii) emergency personnel such as firemen and hazardous materials teams immediately upon the occurrence of a Release, fire, casualty or other occurrence in, on or about the Borax Site.

(f) Upon the expiration or termination of this Lease, Lessee agrees to pay, indemnify, defend, protect, and hold harmless the Lessor Parties from and against all costs, expenses, and liabilities associated with the investigation, reconnaissance, remediation, removal, and disposal of any and all Hazardous Substances from the Premises which are not the result of Lessor's activities or the activities of any employee, agents, representatives, lessees, licensees, contractors or invitees of Lessor, in order to return the Premises to the condition existing as of the Term Commencement Date and to save Lessor harmless therefrom.

(g) Nothing in this Lease shall be deemed to prohibit the use, storage or transportation of natural gas or the production, use, storage or transportation of LNG on or at the Premises in accordance with the provisions of the Project Agreements and all Legal Requirements.

(h) Notwithstanding the foregoing, Lessee shall not be responsible for or have any obligations pertaining to any environmental conditions existing on the Demised Land prior to the Term Commencement Date.

4.4 Utilities. Without limiting Lessor's obligations to provide the services required to be provided by Lessor to Lessee pursuant to the express provisions of this Lease, Lessee shall be solely responsible for procuring, at its sole cost and expenses, all utilities and services that Lessee uses at or about the Demised Land during the Term, including, without limitation, all water, natural gas, electricity, telephone, and other utilities and services supplied to the Premises, together with any and all taxes thereon, and for any and all hook up charges and costs of installation of utility lines and meters (including, without limitation, the costs of bringing such utilities to the Demised Land, if any).

4.5 Entry by Lessor; Suspension of Activities.

(a) In addition to any and all other rights of entry granted or reserved to Lessor by this Lease, including, without limitation, the Reserved Roadway Rights and the Reserved Uses, Lessee agrees to permit Lessor, its agents, representatives, contractors, and licensees to enter the Premises at all reasonable times upon reasonable advance written notice (with accommodations as may be necessary to enable Lessee to have a representative accompany Lessor) (i) as reasonably necessary to permit Lessor to perform its obligations hereunder (including the provision of any services to the Premises contemplated hereunder); (ii) to inspect the Premises for purposes of verifying Lessee's compliance with the provisions of this Lease (including, without limitation, Lessee's compliance with Section 4.3), including obtaining samples and performing tests of soil, surface water, groundwater or other media, and (iii) and in case of emergency (in which case Lessor may enter upon the Premises at any time without advance notice).

(b) Without limiting Lessor's other rights and remedies hereunder, in the event that Lessor determines in good faith that Lessee's (i) failure to comply with the requirements of this Lease or (ii) operation of the LNG Facility, presents an unsafe condition, upon written request of Lessor, Lessee shall promptly remedy such failure or condition and, if Lessee fails to remedy such failure or condition within a reasonable time (as determined in good faith by Lessor) following delivery of such written notice, Lessee shall, at the direction of Lessor, suspend operation of the LNG Facility until such failure or condition is remedied. In the event Lessee fails to suspend operations of the LNG Facility and/or remedy such failure or condition, Lessor shall have the right, upon thirty (30) days prior written notice to Lessee, or such shorter notice period as may be reasonable due to the circumstances, to enter upon the Premises for the purpose of remedying such failure or condition.

4.6 Additional Reservations and Restrictions.

(a) Lessee shall not have any possessory or other right to any oil, gas or other hydrocarbons or minerals and accompanying fluids, including, without limitation, any geothermal resources, in, on or below the Demised Land or at the Borax Site.

(b) Lessor reserves all water rights, including, without limitation, any riparian and groundwater rights, associated with the Demised Premises, and Lessee shall not have any possessory or other right to any surface or groundwater at the Demised Land or at the Borax Site. Without limiting the foregoing, Lessee shall not have any right to access, extract, use or produce surface or groundwater from the Demised Land

or the Borax Site, and Lessee shall not (i) drill any extraction or injection wells; (ii) extract any groundwater or inject any fluids into any existing wells; or (iii) construct any unlined ponds. The foregoing shall not be construed as prohibiting the installation by Lessee of storm water control systems with Lessor's approval, in accordance with the Plans and Specifications and all Legal Requirements.

4.7 Rail Spur. Lessee shall have the right to construct the Rail Interconnection and Rail Spur (as such terms are defined on **Exhibit "B"**) in accordance with **Exhibit "B"**.

4.8 On-Site Fueling Station. Lessee may, subject to the terms and conditions set forth on **Exhibit "K"**, cause CE Construction to construct an LNG Fueling Station (as such term is defined on **Exhibit "K"**) on the Premises.

4.9 Protocol for Emergencies. Prior to the In-Service Date, Lessor and Lessee shall agree upon a reasonable protocol for handling emergencies at the Premises and elsewhere on the Borax Site. Lessee shall reasonably cooperate with Lessor in scheduling maintenance and other outages at the LNG Facility to coincide with maintenance and other outages at the facilities providing Core Services. Without limiting Lessee's obligation under the preceding sentence, prior to the In-Service Date, Lessor and Lessee shall agree upon a reasonable protocol for such coordination.

4.10 Mine Safety Regulation. Lessee acknowledges that the Borax Site constitutes mine property subject to the jurisdiction of the Mine Safety and Health Administration of the United States Department of Labor ("**MSHA**") and the California Occupational Safety and Health Administration ("**CalOSHA**"). Lessor makes no representation or warranty as to whether the LNG Facility or any of Lessee's activities with respect thereto will be subject to regulation by MSHA and/or CalOSHA. To the extent that the LNG Facilities or any of Lessee's activities are subject to regulation by MSHA or CalOSHA, without limiting Lessee's other obligations hereunder, Lessee shall comply with all rules, regulations, decisions, rulings or directives of MSHA and CalOSHA and shall obtain any all Permits required to be obtained from MSHA and CalOSHA under applicable Legal Requirements. Lessor will provide reasonable assistance to Lessee in regard to Lessee's efforts to obtain an exemption from MSHA regulation or, if an exemption is not available, to help Lessee to comply with such regulation, if applicable. Lessee shall reimburse Lessor for all reasonable costs and expenses incurred in providing such assistance.

ARTICLE 5.
PROPERTY TAXES

5.1 Real Property Taxes.

(a) Lessee agrees to pay to Lessor, prior to delinquency, as rent additional to all other Rent reserved in this Lease, all Taxes on Real Property **(**"**Real Property Taxes**"**)** for each fiscal tax year or portion thereof that is within the Term, prorated between Lessor and Lessee for each fiscal tax year that is not entirely within the Term in the same ratio as the number of days of such fiscal tax year that are within the Term bears to the number of such days that are outside the Term. Lessor and Lessee shall use its Commercially Reasonable Efforts to cause the LNG Facility and the Premises to be separately assessed from other property owned by Lessor. In the event the Premises are separately assessed, Lessee shall pay Real Property Taxes thereon directly to the Governmental Authority collecting the Real Property Taxes.

(b) With respect to Real Property Taxes that may, under applicable Legal Requirements then in force, be paid in installments, Lessee shall be required to pay hereunder only such installments, prorated between Lessor and Lessee for partial fiscal tax years as above provided.

(c) In the event that Lessee fails to pay any Real Property Taxes prior to delinquency, Lessor shall have the right and option, but no obligation, to pay such Real Property Taxes or any portion thereof before or after the delinquency date and any and all fines, penalties, and interest thereon, and Lessee agrees to reimburse Lessor immediately for the total amount so paid by Lessor, as Additional Rent.

(d) In the event that Lessor has paid, before the Term Commencement Date, any Real Property Taxes or installment thereof for a fiscal tax year or portion thereof that is in part within the Term, Lessee agrees to pay to Lessor, on the Term Commencement Date, Lessee's pro rata portion thereof.

5.2 Personal Property Taxes.

(a) Lessee agrees to pay, or cause to be paid, directly to the taxing authority or authorities before delinquency, any and all taxes, assessments and other governmental charges of every kind and nature that are levied or assessed upon Personal Property **(**"**Personal Property Taxes**"**)**.

(b) If any Personal Property Taxes are assessed, levied, or imposed upon Lessor or upon all or any part of the Premises or of Lessor's interest in the Premises or this Lease, or if Personal Property Taxes become a lien upon or may be enforced against Lessor or all or any part of the Premises or against Lessor's interest in the Premises or in this Lease, Lessor shall have the right and option, but no obligation, to pay Personal Property Taxes or any portion thereof before or after the delinquency date, and Lessee agrees to reimburse Lessor immediately therefor, including, without limitation, any and all late payment penalties or fines and interest paid by Lessor, as Additional Rent.

5.3 Contests. Nothing herein shall prevent Lessee from contesting, and Lessee may contest and institute all proceedings reasonably necessary to contest, in good faith, the validity or amount of any Property Taxes, including, without limitation, any applicable or potentially applicable exemptions from Property Taxes, provided Lessee protects the Premises and the interests of Lessor by payment by Lessee of the Property Taxes under protest prior to delinquency, and provided, further, that Lessee shall indemnify, defend, protect, and hold harmless Lessor from and against any liability for the payment of said Property Taxes.

5.4 Apportionment. If, at any time during the Term, any portion of the Premises is jointly assessed, for Property Tax purposes, with other real property that is not a part of the Premises, then Lessor and Lessee, together, shall

agree upon a reasonable allocation of the taxes, assessments, or other governmental charges that are assessed, levied, or imposed thereon, and only the portion thereof reasonably attributable to the Premises shall be deemed Property Taxes payable by Lessee, which allocation may be based upon any and all records, memoranda, and notes available at the Assessor's Office, calculations of respective square footage, evaluation of respective permanent improvements and uses, and other relevant evidence available to Lessor and Lessee.

ARTICLE 6.
INDEMNITY AND INSURANCE

6.1 Lessee's Indemnity. Except to the extent that liabilities arise from Lessor's or its employees', agents', contractors' or subcontractors' gross negligence or willful misconduct, Lessee agrees to indemnify, defend, protect and hold harmless the Lessor Parties from and against and hold the Lessor Parties harmless and free from any and all Claims, including, without limitation, any and all liability for injury to or death of, or damage to or loss of the use of the property of, Lessee or any of Lessee's employees, agents, invitees, contractors, or licensees. The obligations of Lessee pursuant to this Section 6.1 with respect to Claims arising while this Lease is in effect shall survive the termination of this Lease for a period of thirty-six (36) months. The obligations of Lessee pursuant to this Section 6.1 are in addition to, and not in limitation or substitution of, Lessee's obligations under Section 4.3.

6.2 Liability Insurance.

(a) At all times during the Term, Lessee shall maintain in full force and effect:

(i) Commercial General Liability (including Broad Form Property Damage, Premises/Operations, Personal Injury, and Contractual Liability coverage applicable to this Lease) relating to Lessee's construction, ownership, use, operation and maintenance of the Premises with limits of liability of not less than [***] combined single limit per occurrence and in an annual aggregate for bodily injury and property damage;

(ii) Workers' Compensation Insurance covering Lessee's employees as required by Law and Employers' Liability Insurance with a limit of [***];

(iii) Automobile Liability (covering owned, hired and non-owned vehicles) with limits of liability of not less than [***] combined single limit for bodily injury and property damage per occurrence; and

(iv) Excess Liability insurance providing [***] in insurance coverage in excess of the limits of insurance provided in (i) and (iii) above.

(b) Lessee shall require any contractors engaged in work at the Premises to maintain insurance coverage of the types and in the amounts at least equal to the insurance coverage which Lessee is required to maintain in accordance with Section 6.2(a), except that limits of Excess Liability shall not be less than [***].

(c) The policies required to be maintained by Lessee pursuant to Section 6.2(a)(i), Section 6.2(a)(iii) and Section 6.2(a)(iv) above shall: (i) provide the coverage is primary and that any coverage that Lessor may maintain shall be in excess thereof; (ii) name Lessor as an additional insured; (iii) provide that the policy cannot be canceled or modified without thirty (30) days' prior written notice to Lessor; and (iv) include a cross-liability or severability-of-interests endorsement in the event that the basic policy obtained by Lessee does not contain such a provision, which cross-liability or severability-of-interests endorsement shall apply to all additional insureds, and shall be referenced in the additional insured endorsement.

Neither the maintenance nor the amount of any Commercial General Liability insurance shall be construed to limit in any way Lessee's obligations under any indemnity, defense, or hold harmless agreements set forth in this Lease. Any self-insured retention respecting said liability insurance shall not exceed [***].

6.3 Casualty Insurance. Lessee shall maintain at all times during the Term, an All-Risk Property Policy covering Lessee's Improvements and all Personal Property. Such policy shall be written on an All-Risk basis with fair market value or on an agreed value basis sufficient to insure Lessee's Improvements and the Personal Property, as well as an amount to insure exposures that are prudent and deemed to be standard operating procedure for a risk of the size and scope as the LNG Facility. Such policy shall cover any property at the Premises commencing from the date hereof and applying continuously thereafter throughout the Term. The value of all policies based upon the value of the Premises shall be modified and upgraded, at least annually, to reflect the then-current fair market value or current agreed value of Lessee's Improvements and the Personal Property.

6.4 General. Each insurance policy required by this Lease to be procured and maintained by Lessee shall be issued by a company authorized to do insurance business in the State of California having a rating in Best's Key Rating Guild of not less than A-IX. Lessee agrees to deliver to Lessor (a) on or before the Term Commencement Date and from time to time thereafter upon request, a copy of each such policy and all endorsements, or binder therefor, and a certificate certifying that it contains the provisions required by this Lease, and (b) not later than ten (10) days after renewal of any policies, a renewal binder therefor.

6.5 Driver Certification. Lessee shall ensure that all drivers of LNG transport vehicles are certified by the U.S. Department of Transportation and all other Legal Requirements.

ARTICLE 7.
OPERATION, MAINTENANCE AND REPAIR OF THE LNG FACILITY

7.1 Lessor's Obligations. Except for the work to be performed by the Lessor pursuant to Section 8.11 and Lessor's obligation to maintain the Access Road as set forth in Section 2.2(d), and as provided in **Exhibit "B"**, Lessor shall not be obligated to make or bear the cost of any repairs, replacements, rebuilding, or renewals of any kind, nature, or description whatsoever related to the Premises or any portion thereof or Lessee's Improvements.

7.2 Lessee's Obligations.

(a) Except to the extent that the demolition of Improvements by Lessee is permitted under Article 8, and subject to other provisions of this Lease that govern the maintenance and repair of utility lines and the Access Road, Lessee shall, at its own cost, and without expense to Lessor, keep and maintain the Premises in good, sanitary and neat order, condition, and repair, in compliance with all Legal Requirements and Permits, and free from hazards.

(b) Lessee hereby waives the benefit of any Legal Requirements that would otherwise accord Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Premises or any portion thereof in good order, condition, or repair.

7.3 Surrender of the Premises. Upon the expiration or termination of the Term, Lessee shall complete the removal and remediation obligations set forth on **Exhibit "L"** (the "**Removal and Remediation Obligations**"). Further, upon the expiration or termination of the Term, Lessee shall execute, acknowledge, and deliver to Lessor a quitclaim deed and such other instruments and documents as Lessor shall reasonably request in order to assure and show in

the Official Records Lessor's fee title to the Premises free of any interest or claim of Lessee. Lessee's obligations under this Section 7.3 shall survive the expiration or termination of this Lease.

ARTICLE 8.
CONSTRUCTION ACTIVITIES AND ALTERATIONS

8.1 Plans and Specifications. Lessee shall submit to Lessor for its approval a complete set of the Plant Layout Plans and the Interconnection Plans, respectively. The Plant Layout Plans and the Interconnection Plans shall be consistent in all material respects with the description of the LNG Facility contained on **Exhibit "C"**. Provided that the Plant Layout Plans and the Interconnection Plans are in all material respects consistent with said description, the other provisions of this Lease and all Legal Requirements, Lessor shall not unreasonably withhold its consent to such plans. Lessor shall either approve or disapprove each submittal pursuant to this Section 8.1 as soon as is reasonably practical after receipt of a complete submittal, but in any event within [***] after receipt thereof (and if such submittal is a request for an approval of a modification to a previously-approved submittal, within [***] after receipt thereof). Lessor's failure to respond within such [***] period (or such [***] period, as applicable) shall be deemed as its approval of the submittal (or modification, as applicable). If Lessor disapproves of the submittal, it shall so notify Lessee in writing within said [***] period, (or [***] period as applicable) and, at the same time, provide Lessee with a reasonably detailed statement of the reasons why such submittal was disapproved. In such latter event, Lessor and Lessee agree to cooperate reasonably with each other in resolving any objections of the other to the submittal or requested revisions. Once the Plant Layout Plans and Interconnection Plans have been approved by Lessor, such approval shall be binding on Lessor (absent a misrepresentation by Lessee) and no further approval by Lessor of such plans or Permits shall be required unless such plans are subsequently modified in any material respect, in which case such modifications shall be subject to Lessor's approval in accordance with this Section 8.1. Lessor shall not be deemed to have incurred or assumed any obligation or responsibility in connection with any aspect of the Plant Layout Plans or the Interconnection Plans, and nothing in the Project Agreements, nor any act or failure to act on the part of Lessor, shall be construed as a warranty or representation as to the adequacy or fitness of the LNG Facility or any aspect thereof or a waiver of a claim by Lessor relating to the LNG Facility. Once the Plant Layout Plans and the Interconnection Plans have been approved by Lessor, Lessor and Lessee shall enter into an amendment to this Lease which supplements **Exhibit "C"** with references to title and date all such approved Plant Layout Plans and Interconnection Plans.

8.2 Construction of LNG Facility. Lessee shall construct the LNG Facility upon the Demised Land in accordance with the following requirements:

(a) The LNG Facility and all demolitions, alterations, and additions made in connection therewith or thereto shall be designed and constructed in a good and workmanlike manner and in accordance with this Lease and the Plans and Specifications;

(b) The design and construction of the LNG Facility and all such demolitions, alterations, and additions shall comply with all Legal Requirements and Permits, and, without limiting the generality of the foregoing, Lessee, at Lessee's sole cost and expense, shall procure all necessary Permits as may be necessary or appropriate for the construction of the LNG Facility; and

(c) Except for the work to be performed by Lessor pursuant to Section 8.11 hereof, the entire cost of construction of the LNG Facility, including, without limitation, any off site work, plans and specifications, and all Permits and fees therefor, shall be paid by Lessee.

8.3 Insurance Covering Lessee's Work. Lessee shall not commence any construction activity, allow the construction or installation of the LNG Facility, or perform or allow the performance of any other work to or on the Premises, unless prior to the commencement of such work, Lessee shall obtain or cause to be obtained by its contractor (and during the performance of such work keep or cause to be kept in force) commercial general liability (and/or contractor's liability) insurance, with completed operations coverage, and worker's compensation insurance to cover every contractor and each employee of every contractor to be employed, in accordance with Section 6.2(b).

8.4 Relocation of Utilities. Lessee shall be responsible, at Lessee's sole cost and expense, for obtaining all agreements and Permits that may be required to relocate any utility improvement that may be necessary or appropriate in connection with the construction, operation or maintenance of the LNG Facility. Additionally, to the extent such relocation is necessary to complete the LNG Project in accordance with the Plans and Specifications, Lessee shall be responsible for relocating to a location and in a manner reasonably acceptable to Lessor, and at Lessee's sole cost and expense, Lessor's Improvements.

8.5 Personal Property. Personal Property may be removed from the Premises by Lessee at any time during the Term and all Personal Property shall be removed from the Premises by Lessee upon the expiration or termination of the Term.

8.6 Liens and Notices of Violation Prohibited. Lessee shall not permit the Premises or any part thereof to become subject to any lien, charge, or encumbrance. Lessee shall maintain the Premises and every part thereof free from all orders, notices and violations filed or entered by any Governmental Authority. Nothing in the foregoing provisions of this Section 8.6 shall limit Lessee's right, and Lessor agrees that Lessee shall have the right, to contest or challenge the validity or amount of any such lien, charge, encumbrance and any such orders, notices, and violations by appropriate and timely administrative or judicial proceedings; provided that, by first posting a bond, making payment under protest, or other lawful and effective procedure, the interests of Lessor, any mortgagee of Lessor, Lessor's title to, and any mortgage holder's lien upon, the Premises and every part thereof are protected against any risk of loss, diminution, or impairment. Notwithstanding the foregoing, Lessee shall be permitted to encumber the LNG Facility and Lessee's interest in this Lease (but not any right, title or interest of Lessor in and to the Premises) in connection with a bona fide debt financing by Lessee or any Affiliate of Lessee in connection with any future financing by Lessee or by an Affiliate of Lessee.

8.7 Mechanics' Liens. Lessee agrees:

(a) to pay for all labor and services performed for, and for all materials used by or furnished to, Lessee or any contractor employed by Lessee with respect to the Premises or any part thereof, whether or not such labor, services, or materials were related to equipment, fixtures or other works of improvement;

(b) to indemnify, defend, and protect Lessor and the Premises from and against, and to hold Lessor and the Premises free and harmless from, any and all liabilities, claims, liens, encumbrances, and judgments created or suffered in connection with such labor, services, or materials; and

(c) to permit Lessor to post and maintain notices of nonresponsibility on the Premises in accordance with California Civil Code Section 3094 or other similar statute hereafter enacted; provided that nothing herein shall prevent Lessee from contesting in good faith the validity or amount of any lien, claim, encumbrance, or judgment, in accordance with the provisions of Section 8.6.

8.8 Lessor's Right to Discharge. Should a judgment on any lien, charge, encumbrance, order, notice or violation be rendered against the Premises, and should Lessee fail to discharge such judgment or take action to protest such judgment within [***] after such rendering (or within such shorter period as may be necessary to avoid any

enforcement of or realization upon such judgment), Lessor shall have the right, but not the obligation, to discharge said judgment. If Lessor exercises that option, any amount paid by Lessor shall be due from Lessee as Additional Rent. Such Additional Rent shall be due and payable on the next date after the expense is incurred that Base Rent is due together with interest at a rate equal to [***].

8.9 Permits.

(a) CE Construction and/or Lessee shall be solely responsible for obtaining all Permits necessary for the siting, construction, development, operation and maintenance of the LNG Facility, and CE Construction shall use Commercially Reasonable Efforts to obtain all such Permits as soon as possible. Notwithstanding the foregoing, neither Lessee nor CE Construction shall make or present any submission, presentation or other substantive written communication to any Governmental Authority in connection with the LNG Facility without first obtaining Lessor's approval of such submission, presentation or other substantive communication, which approval shall not be unreasonably withheld. Lessor shall be given reasonable advance notice of any meetings (whether held in person or telephonically) between Lessee and/or CE Construction and any Governmental Authority relating to any Permit, and Lessee, CE Construction and Lessor shall reasonably cooperate in scheduling such meetings at such times and in such locations as are reasonably convenient for all Parties, so as to enable Lessor, CE Construction and Lessee to each participate in the same. Subject to the foregoing, Lessor, CE Construction and Lessee shall each make their representative(s) available for all such meetings, either in person or by telephone. In no event shall Lessee or CE Construction allow any Permit to be binding upon the Premises without Lessor's approval, which shall not be unreasonably withheld to the extent the Permits apply solely to the Premises, the Easements and/or the Exclusion Zone; provided, however, that if any Permit affects any other part of the Borax Site or would survive the termination of this Lease, Lessor may withhold its approval of such Permit in Lessor's sole and absolute discretion.

(b) Lessor agrees to join with CE Construction, at its request, in seeking the Permits and other approvals of Governmental Authorities related to construction of the LNG Facility which are approved by Lessor in accordance with this Lease. Lessee shall reimburse Lessor for all of Lessor's reasonable out-of-pocket costs incurred in evaluating and processing such Permits and other approvals of Government Authorities. Lessee agrees to indemnify and hold Lessor harmless from and against any and all liabilities and obligations arising from such joinder by Lessor with Lessee in connection with such Permits.

8.10 Sharing of Information. Lessee will (a) afford Lessor's representatives reasonable access during normal business hours to the personnel designated by Lessee who possess information relating to Lessee's permitting, design and construction of the LNG Facility; and (b) furnish Lessor's representatives with copies of all such plans, specifications, contracts, books and records and other documents and data regarding the permitting, design and construction of the LNG Facility on a confidential basis as Lessor's representatives may reasonably request from time to time.

8.11 Lessor's Additional Improvements. In connection with construction of the LNG Facility, Lessor shall make certain improvements to the Borax Site as more fully described on **Exhibit "M"** ("**Lessor's Improvements**"). Lessor shall use Commercially Reasonable Efforts to complete Lessor's Improvements 1 and 2 on or before the date that is [***] following the date that each of the Permits listed in Part A and the air permits listed in Part B of **Exhibit "H"** has been obtained by CE Construction. Lessor will undertake Commercially Reasonable Efforts to complete Lessor's Improvements 3, 4, 5, and 6 on or before the date that is [***] following the date of this Lease. Additionally, Lessor shall cause to be removed prior to Construction Commencement all personal property of Lessor located on the Premises (other than Lessor's Improvements).

In the event Lessor's Improvements 1 and 2 are not completed by Lessor on or before the date that is [***] following the date that each of the Permits listed in Part A of **Exhibit "H"** has been obtained by CE Construction, the In-Service Date shall be extended by one day for each day of delay beyond the date that is [***] following the date that each of the Permits listed in Part A and the air permits listed in Part B of **Exhibit "H"** has been obtained by CE Construction in completing Lessor's Improvements 1 and 2.

In the event Lessor's Improvements 3, 4, 5, and 6 are not completed by Lessor on or before the date that is 180 days following the date of this Lease, the In-Service Date shall be extended by one day for each day of delay beyond the date that is 180 days following the date of this Lease in completing Lessor's Improvements 3, 4, 5, and 6.

8.12 Future Alterations. Except for routine maintenance, repair and replacement of the LNG Facility, Lessee shall not materially alter or modify the LNG Facility without first obtaining the prior written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, that in no event shall Lessee increase the production capacity of the LNG Facility above three Trains, as described in **Exhibit "C"**. Lessee may, however, increase the production capacity of the LNG Facility to three Trains, as described in **Exhibit "C"**, provided the construction of the Trains is in all material respects consistent with the provisions of this Lease, the Plant Layout Plans and Interconnection Plans and any modifications thereto approved by Lessor in accordance with Article 8. Except as provided in the preceding sentence, Lessee not alter or modify the LNG Facility in any manner which would result in an increase in the amount of water, electricity or other services required to be provided by Lessor hereunder (including, without limitation, any increase in the amount of Return Gas delivered to Lessor) beyond the amounts specified in this Lease and the Exhibits hereto, in either case without first obtaining Lessor's prior written consent, which may be withheld in Lessor's sole and absolute discretion.

ARTICLE 9.
DESTRUCTION

9.1 Obligation to Rebuild. In the event that Lessee's Improvements or any of them are damaged or destroyed in whole or in part by any casualty, whether or not covered by insurance, Lessee may, in its sole and absolute discretion, elect to rebuild or restore Lessee's Improvements in accordance with the Plans and Specifications and otherwise subject to compliance with Article 8 (as if the provisions of such Article 8 which apply to the initial construction of Lessee's Improvements were also expressly applicable to such rebuilding and restoration). In the event Lessee elects not to rebuild or restore such Lessee's Improvements, Lessee shall have the option to terminate this Lease, which option may be exercised only by the delivery to Lessor, not later than [***] from the date such damage or destruction occurs, of a written notice of termination. Such notice shall specify a date of termination of this Lease, which date shall not be less than [***] from the date such notice is delivered to Lessor. In the event that Lessee so elects to terminate this Lease, Lessee shall cause to be completed on or before the end of said [***] all of the Removal and Remediation Obligations, which obligations shall survive the termination of this Lease; provided, however, that if Lessor elects to have Lessee remove the subsurface Improvements as provided in **Exhibit "L"**, Lessee shall have an additional [***] in which to complete its Removal and Remediation Obligations. Lessor and Lessee shall have no further obligations to each other after said effective date of termination respecting the Premises, except those obligations that, by the terms of this Lease or provisions of Legal Requirements, shall survive the termination of this Lease.

9.2 No Abatement of Rent. Unless this Lease is terminated by Lessee as provided in Section 9.1, there shall be no abatement of Rent by reason of damage to or destruction of the Premises in whole or in part. In the event Lessee elects to terminate this Lease as provided in Section 9.1, Lessee shall continue to be obligated to pay Rent and to comply with all of the provisions of this Lease until such time as Lessee has vacated the Premises and paid and

performed all of its obligations hereunder which are required to be paid and performed prior to the expiration or earlier terminate of this Lease. Lessee hereby waives the provision of Section 1932, Subdivision 2, and Section 1933, Subdivision 4, of the California Civil Code, and all present and future amendments thereto, and all other Legal Requirements that would permit or cause termination of a lease or abatement of rental obligations upon damage to or destruction of the property subject thereto.

ARTICLE 10.
CONDEMNATION

10.1 Rights. Lessor and Lessee agree that, in the event of a Taking, all rights between them and in and to an Award shall be as set forth herein, and Lessee shall have no right to any Award except as set forth herein. In no event shall any portion of the Award that is attributable to Lessee's leasehold interest in the Demised Land be paid to Lessee, and Lessee hereby assigns to Lessor the portion, if any, of the Award that is attributable to Lessee's leasehold interest in the Demised Land. Lessee shall be entitled to such portion of the Award allocable to Lessee's Improvements, and Lessor shall have no right or interest therein or thereto.

10.2 Total Taking. Subject to Section 10.5, in the event of a Total Taking, Lessee's interest in the leasehold created by this Lease shall continue until the Taking is completed by deed, contract, final order or judgment of condemnation or otherwise, at which time such leasehold shall terminate. Subject to Section 10.4, Lessee shall continue to be obligated to pay all Rent and shall otherwise be bound by the provisions of this Lease.

10.3 Substantial Taking. In the event of a Substantial Taking, Lessee may, by written notice to Lessor given not later than the earlier of (a) [***] after receipt by Lessee of notice of any intended Taking or (b) the date upon which such Taking shall be completed, elect to treat the Taking as a Total Taking. If Lessee does not deliver such notice within such time period, the Taking shall be treated as a Partial Taking. A Substantial Taking shall be treated in the same manner as a Total Taking.

10.4 Possession Following Notice of Taking. Lessee may continue to occupy the Premises and Improvements and use the Easement(s) until the condemning authority takes physical possession of the Premises, Easement(s) and Improvements. However, at any time following any notice of any intended Total Taking or Substantial Taking, Lessee may elect to deliver possession of the Premises to Lessor before the actual taking of possession by the condemning authority. Such election shall be made by Lessee by written notice declaring the election and agreeing to pay all Rent and performing all other obligations required under this Lease through the date of Taking. Lessee's right to apportionment of or compensation from the Award shall accrue as of the date that Lessee delivers possession to Lessor.

10.5 Apportionment for Award of Total Taking. Upon a Total Taking or upon a Substantial Taking, Lessee shall receive from the Award those portions of the Award that are attributable to Lessee's ownership interest in the Lessee's Improvements and Personal Property located on or about the Premises and any amounts awarded for: (a) restoration of the Lessee's Improvements and Personal Property of Lessee on the Premises (and/or Easement(s)); (b) removal, relocation or loss of any Lessee's Improvements or Personal Property from the Premises (and/or Easement(s)); (c) anticipated or lost profits or damages because of detriment to or interruption of the business of Lessee or any special damages of Lessee (provided that if no portion of the damages contained in this clause are included in the Award for the Taking, Lessee shall have the absolute right to prosecute Lessee's own claim for damages as permitted by law and to receive and keep all proceeds of any such claim free from any claim of Lessor); and (d) any severance damage to the Lessee's Improvements and Personal Property of Lessee on the Premises (and/or Easement(s)).

10.6 Partial Taking. This Lease shall remain in full force and effect following a Partial Taking, and shall cover the remaining portion of the Premises. Lessee shall receive from the Award those portions of the Award that are attributable to Lessee's ownership interest in the Lessee's Improvements, fixtures, equipment and personal property located on or about the Premises and any amounts awarded for: (a) restoration of the Lessee's Improvements and Personal Property of Lessee on the Premises (and/or Easement(s)); (b) removal, relocation or loss of any Lessee's Improvements or Personal Property from the Premises (and/or Easement(s)); (c) anticipated or lost profits or damages because of detriment to or interruption of the business of Lessee or any special damages of Lessee (provided that if no portion of the damages contained in this clause are included in the Award for the Taking, Lessee shall have the absolute right to prosecute Lessee's own claim for damages as permitted by law and to receive and keep all proceeds of any such claim free from any claim of Lessor); and (d) any severance damage to the Lessee's Improvements and Personal Property of Lessee on the Premises (and/or Easement(s)).

10.7 Taking for Temporary Use. In the event of any Taking of the temporary use of all or any portion of or interest or estate in the Premises, Easement(s) and/or Lessee's Improvements, for a period ending on or before the expiration or earlier termination of this Lease, neither the Term nor the Rent under this Lease shall be reduced or affected in any way, and Lessee shall be entitled to the entire Award for the use or estate taken. If any such Taking of the temporary use of all or any portion of or interest or estate in the Premises, Easement(s) and/or Improvements is for a period extending beyond the expiration or earlier termination of this Lease, such Taking shall be treated under the foregoing provisions of this Article 10.

10.8 Remediation Obligations. Nothing in this Article 10 shall relieve Lessee of its obligations under Section 7.3 hereof, provided; however, that in the event of a Taking, Lessee's remediation obligations with regard to the portion of the Demised Land subject to the Taking shall be limited to that required by the condemning authority.

10.9 Sole and Exclusive Remedies. This Article 10 sets forth Lessee's sole and exclusive remedies in the event of a Taking. Each Party hereby waives the provisions of Sections 1265.120 and 1265.130 of the California Code of Civil Procedure and the provisions of any successor or other law of like import.

ARTICLE 11.
LESSEE'S DEFAULT

11.1 Lessee's Default Defined. For the purposes of this Lease, the terms "**Default by Lessee**" and "**Lessee's Default**" both mean the occurrence of any one or more of the following events:

(a) failure of Lessee to pay any Rent within [***] after written notice to Lessee following the date such Rent becomes due;

(b) any assignment, encumbrance, transfer, delegation, subleasing or other occupancy of all or any portion of Lessee's interest in this Lease or all or any portion of the Demised Land in violation of Article 14;

(c) any failure by Lessee to maintain the insurance policies and coverages required to be maintained by Lessee pursuant to Article 6;

(d) any material breach by Lessee of any of its representations and warranties hereunder;

(e) any failure by Lessee to pay prior to delinquency any Property Taxes;

(f) Lessee shall cease doing business as a going concern, make an assignment for the benefit of creditors, generally not pay its debts as they become due or admit in writing its inability to pay its debts as they become due, file a petition commencing a voluntary case under any chapter of the Bankruptcy Code, be adjudicated an insolvent, file a petition seeking for itself any reorganization, composition, readjustment, liquidation, dissolution or similar arrangement under the Bankruptcy Code or any other present or future similar statute, law, rule or regulation, or file an answer admitting the material allegations of a petition filed against it in any such proceeding, consent to the filing of such a petition or acquiesce in the appointment of a trustee, receiver, custodian or other similar official for it or of all or any substantial part of its assets or properties, or take any action looking to its dissolution or liquidation;

(g) any case, proceeding or other action shall be instituted against either Lessee or Parent seeking the entry of an order for relief against Lessee as debtor, to adjudicate Lessee or any general partner thereof as a bankrupt or insolvent, or seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief against either Lessee or Parent thereof under the Bankruptcy Code or any other present or future similar statute, law, rule or regulation, which case, proceeding or other action either results in such entry, adjudication or issuance or entry of any other order or judgment having a similar effect, or remains undismissed for a period of [***], or within [***] after the appointment (without Lessee's or Parent's, as applicable, consent) of any trustee, receiver, custodian or other similar official for it or such general partner, or of all or any substantial part of its assets and properties, such appointment shall not be vacated;

(h) Abandonment, which continues for a period of [***] after Lessee's receipt from Lessor of written notice thereof (any such notice being in lieu of, and not in addition to, any notice required under Section 1161 et seq., of the California Code of Civil Procedure);

(i) execution by either Lessee or Parent of an assignment for the benefit of creditors of all or substantially all of its assets that are available by law for the satisfaction of claims of judgment creditors of Lessee or Parent, as applicable; or

(j) breach by Lessee or CE Construction of any material provision of this Lease, except those mentioned in subparts (a) through (i) of this Section 11.1, not cured within [***] after Lessor gives Lessee written notice of the breach (any such notice being in lieu of, and not in addition to, any notice required under Section 1161 et seq., of the California Code of Civil Procedure), or, in the case of breaches which cannot be cured solely by the payment of money and which reasonably require more than [***] to cure, not cured within a reasonable time after the giving of such notice, provided that Lessee commences curing such breach within said [***] after the giving of such notice and thereafter diligently prosecutes to completion such cure, provided further that, in all events, Lessee shall have fully cured such breach within [***] after the giving of such notice.

11.2 Lessor's Right to Terminate. In the event of a Default by Lessee, Lessor shall have, in addition to any other remedies now or later available to Lessor hereunder or at law or equity, the right to terminate this Lease and Lessee's right to possession of the Premises by giving written notice of termination to Lessee, and Lessee shall in such event:

(a) pay to Lessor any accrued and unpaid Rent earned to the date of termination;

(b) pay to Lessor an amount equal to [***]; and

(c) undertake and complete within not more than [***] following such termination the Removal and Remediation Obligations.

11.3 Lessor's Right Not To Terminate. Unless and until Lessor elects to terminate this Lease and Lessee's right to possession as provided in Section 11.2, this Lease shall continue in full force and effect after Default by Lessee, and Lessor may enforce all of its rights and remedies under this Lease, including, without limitation, the right to recover or enforce payment of Rent as it becomes due under this Lease.

11.4 Cessation of Services. Upon the occurrence of a Default by Lessee hereunder, in addition to any other remedies now or later available to Lessor hereunder or at law or equity, Lessor may cease delivery of any of the Core Services without an adjustment in Rent.

11.5 General. Efforts by Lessor to mitigate damages caused by any Default by Lessee shall not constitute a waiver by Lessor of any of Lessor's rights or remedies under this Lease, and nothing contained in this Lease shall affect any rights of Lessor under this Lease to indemnification arising prior to termination of this Lease. Neither reasonable acts of repair, alteration, maintenance, reletting, or preservation of the Premises, nor the appointment of a receiver or trustee, whether in bankruptcy proceedings or otherwise, upon initiative of Lessor to protect Lessor's interests under this Lease, shall constitute an election by Lessor to terminate this Lease or Lessee's right to possession of the Premises. If Lessor permits this Lease to continue in full force and effect after a Default by Lessee, Lessor may, nevertheless, at any time thereafter elect to terminate this Lease and Lessee's right to possession of the Premises under the provisions of Section 11.2, for such previous Default by Lessee, provided the Default by Lessee has not then been cured. The rights and remedies of Lessor under this Article 11 shall be additional to all other rights and remedies provided to Lessor in this Lease or by law or in equity, whether now in force or hereafter enacted, including, without limitation, injunctions and other equitable relief. In no event shall Lessor assert, or bring any action against any of Lessee's employees, agents, or representatives alleging, personal liability of any of them for any such breach by Lessee.

11.6 Right of Lessor to Perform. Following not less than [***] written notice (except in cases of emergency, when no notice shall be required), Lessor may, but shall not be obligated, to make any payment required of Lessee under this Lease that Lessee fails timely to pay. No such payment by Lessor shall constitute a waiver of, or release Lessee from, Lessee's said obligation or any other obligation of Lessee under this Lease, nor shall such payment by Lessor diminish or affect in any way other rights and remedies of Lessor set forth elsewhere in this Lease that may be applicable by reason of Lessee's failure to make a payment.

ARTICLE 12.
LESSOR'S DEFAULT

12.1 Lessor's Default Defined. For the purposes of this Lease, the terms "**Default by Lessor**" and "**Lessor's Default**" both mean a breach by Lessor of any material provision of this Lease which is not cured within [***] after Lessee gives Lessor written notice of the breach, or, in the case of breaches which cannot be cured solely by the payment of money and which reasonably require more than [***] to cure, not cured within a reasonable time after the giving of such notice, provided that Lessor commences curing such breach within said [***] after the giving of such notice and thereafter diligently prosecutes to completion such cure, provided further that, in all events, Lessor shall have fully cured such breach within [***] after the giving of such notice. Notwithstanding the foregoing, the [***] cure period referred to above shall not be applicable to a breach by Lessor of its obligation to deliver a Core Service. The failure of Lessor to deliver a Core Service, caused by circumstances other than a voluntary decision or act by Lessor to cease or reduce a Core Service, shall not constitute a Default by Lessor provided Lessor uses commercially reasonably efforts to fully restore the Core Service.

12.2 Lessee's Remedies. Upon the occurrence of a Default by Lessor, Lessee shall have the right to terminate this Lease upon not less than [***] written notice to Lessor. Such right shall be in addition to any other rights and remedies that Lessee may have under applicable law, subject to the limitations on Lessor's liability contained herein.

12.3 Limitations on Lessor's Liability. Notwithstanding any other provision of this Lease to the contrary, in no event shall any Lessor Party be liable to Lessee or its Affiliates (the "**Lessee Parties**") on account of any Claims, except to the extent expressly set forth in this section 12.3.

(a) In no event shall the Lessor Parties have any liability for any indirect, special, consequential (including, without limitation, loss of business opportunity or business goodwill), punitive, exemplary or other damages. Furthermore, the liability of the Lessor Parties on account of all Claims shall be subject to the following limitations:

(i) [***]

(ii) The aggregate liability of the Lessor Parties' with respect to all Claims arising out of facts or circumstances occurring during the Term other than Core Service Default Claims shall not exceed [***].

(iii) [***]

(b) Lessee agrees not to assert, or bring any action against, any of Lessor's shareholders, officers, directors, employees, agents, or representatives alleging any personal liability of any of them for any Claims.

(c) Lessee, on behalf of itself and its successors and assigns, does hereby irrevocably release and forever discharge, and covenant not to sue, the Lessor Parties with respect to any Claims (whether known or unknown, contingent or fixed, suspected or unsuspected, liquidated or unliquidated, concealed or hidden) to the extent such Claims exceed the limitations set forth in this Section 12.3. Lessee further agrees, represents and warrants that the matters released herein are not limited to matters which are known or disclosed, and Lessee hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it by virtue of the provisions of Section 1542 of the Civil Code of the State of California which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Lessee hereby agrees, represents and warrants that it has read and understood this Section 12.3, and Lessee realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Lessee further agrees, represents and warrants that this Section 12.3 has been negotiated and agreed upon in light of that realization and that Lessee nevertheless hereby intends to release, discharge and acquit the Lessor Parties as set forth hereinabove from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses.

(d) Lessee acknowledges and agrees that the limitations on the liability of the Lessor Parties set forth in this Section 12.3 are a material inducement to Lessor to enter into this Lease and that in the absence of

such limitations, Lessor would not enter into the transactions contemplated by this Lease. Lessee represents and warrants that it has had advice of counsel of its own choosing in negotiations for and the preparation of this Lease and the provisions of this Section 12.3 (including the release set forth in Section 12.3(c)).

(e) Nothing in this Section 12.3 shall be deemed to limit the provisions of Article 16 of this Lease.

12.4 Termination of Services by Lessor(a) Lessor shall have the right, to be exercised in its sole and absolute discretion subject to and in accordance with the provisions of this Section 12.4, to terminate its obligation to deliver any of the services required to be delivered by Lessor pursuant to Section 2.4 (including any of the Core Services).

(b) In the event that Lessor elects to terminate its obligation to deliver any of the services set forth in Section 2.4(a), Lessor shall provide Lessee with prior written notice of such election (an "**Election Notice**"). Each Election Notice shall specify a date (the "**Termination Date**") upon which the applicable service(s) shall be terminated, which Termination Date shall not be less than [***] from the date of the Election Notice. In the case of Process Water, Lessor may terminate this service upon not less than [***] from the date of the Election Notice, if Lessee is permitted to use the Alternate Process Water Line interconnected with the AVEK Water Line. If Lessor does not allow Lessee to interconnect the Alternate Process Water Line with the AVEK Water Line in order to obtain its full quantity of Process Water as provided in **Exhibit "E-2"**, Lessor will provide [***] prior written notice to Lessee of its election to cease providing Process Water to Lessee. If Lessor permits Lessee to interconnect the Alternate Process Water Line with the AVEK Water Line, Lessor and Lessee will arrange for reasonable mutually acceptable metering of and invoicing for the water consumed by Lessee from the AVEK Water Line. The cost of all water from the AVEK Water Line consumed by Lessee shall be paid by Lessee. Termination of a service provided to Lessee in accordance with this Section 12.4(b) will not constitute a Default by Lessor.

(c) During the period following the delivery of an Election Notice and prior to the Termination Date set for the service(s) covered thereby, Lessor shall use Commercially Reasonable Efforts to assist Lessee, at no material out-of-pocket expense to Lessee, in obtaining an alternative source of the service(s) to be discontinued, including supporting the obtaining of Permits and the procurement of access and Easements necessary to effect the changeover to the new source.

(d) Upon the Termination Date set forth in the Election Notice, (i) Lessor's obligation to deliver the service(s) described therein shall terminate and Lessor shall have no further obligation to deliver such service(s), and (ii) the Rent shall be reduced in accordance with **Exhibit "J"**.

(e) The provisions of this Section 12.4 shall not apply to an election by Lessor to terminate its obligation to deliver Energy, which election shall be governed by the provisions of Section 8 of **Exhibit "D"** or to termination of services pursuant to Section 19.20.

(f) Notwithstanding any other provision of this Lease, except as expressly set forth in **Exhibit "D"** with respect to Lessee's right to procure Energy from Southern California Edison Company or its successor utility, in no event shall Lessee have the right to procure any of the services to be provided by Lessor to Lessee hereunder, including the services described in Section 2.4, unless Lessor terminates its right to provide such services in accordance with this Section 12.4 or fails to provide such services in default of its obligations to do so hereunder.

(g) Notwithstanding the foregoing, Lessor shall not be obligated to accept (i) Return Gas or (ii) Process Waste Water from Lessee if Lessee is failing to meet the respective quality standards with respect thereto set forth in **Exhibits "F-2"** and **"E-2"**, respectively.

(h) In the event of a temporary cessation or termination of the provision of a Core Service by Lessor to Lessee, for any reason other than a failure by Lessee to deliver Return Gas or Process Waste Water meeting the standards set forth in **Exhibits "F-2"** and **"E-2"**, respectively, or other Default by Lessee, there shall be a corresponding adjustment to Long-Term Variable Rent as and to the extent provided in **Exhibit "J"**.

ARTICLE 13.
ESTOPPEL CERTIFICATES AND SALE BY LESSOR

13.1 Estoppel Certificates, etc. Each Party agrees to execute and deliver to the other Party (and its lender, if applicable), within [***] following request, an estoppel certificate and such other instruments and documents as the requesting Party may reasonably request evidencing the status of this Lease. Such estoppel certificate shall include, among other things, (i) a certification that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect, and certifying the date to which the Rent and any other charges are paid in advance, if any, and (ii) acknowledging that there are not, to the responding Party's knowledge, any uncured defaults on the part of either Party hereunder, or specifying such defaults if they are claimed. Such estoppel certificate shall permit reliance thereon by any auditor, creditor, commercial banker, and investment banker of the responding Party and, in the case of an estoppel certificate delivered by Lessee, by any prospective purchaser or encumbrancer of all or any part of the Borax Site or of all or any part of Lessor's interests under this Lease.

13.2 Failure to Deliver Estoppel Certificates. If either Party shall fail to execute and deliver, within the time required by Section 13.1, any such estoppel certificate, then, in addition to constituting a default by such Party hereunder:

(a) Such failure shall constitute acknowledgment by the Party failing to deliver the estoppel to any third party, such as, but not limited to, a person or entity purchasing assets or lending money, that this Lease is unmodified and in full force and effect (except as may be represented by the Party requesting the estoppel) and that all Rent has been duly and fully paid to and including the respective due dates immediately preceding the date of the notice of request (except as may be represented by the Party requesting the estoppel) and shall constitute a waiver, with respect to all such third persons, of any defaults that may exist before the date of the notice and shall be a default under this Lease; and

(b) The Party failing to deliver the estoppel shall be estopped to assert or claim anything respecting the status of this Lease that is contrary to the representations made by the Party requesting the estoppel, and such third person may rely upon such estoppel.

13.3 Liability Upon Transfer.

(a) In the event that Lessor shall sell or otherwise transfer its title to the Premises, after the effective date of such sale or transfer, and upon assumption of all of Lessor's obligations hereunder by the buyer or transferee of the Premises, whether expressly or by operation of law, Lessor shall have no further liability under this Lease to Lessee, except as to matters of liability which have accrued before, and are unsatisfied

as of, the date of sale or transfer, and Lessee shall thereafter seek performance solely from Lessor's successor.

(b) In the event that Lessee shall assign its interest in this Lease in accordance with the provisions of Article 14, after the effective date of such assignment, and upon assumption of all of Lessee's obligations hereunder, whether expressly or by operation of law, Lessee shall have no further liability under this Lease to Lessor, and in the event of a Transfer described in Sections 14.2(a) or (b), the Parents' Guaranty shall terminate, except as to matters of liability which have accrued before, and are unsatisfied as of, the date of Transfer, and Lessor shall thereafter seek performance solely from Lessee's successor.

ARTICLE 14.
ASSIGNMENT AND SUBLETTING

14.1 Generally Forbidden. Except as permitted under Section 14.2, Lessee shall not sell, assign, delegate, encumber, or otherwise transfer this Lease or any of Lessee's rights or obligations hereunder, nor shall Lessee sublet or permit or suffer any Person (other than Lessor) to occupy or use all or any portion of the Premises (any such action, a "**Transfer**"), and any attempt to effect a Transfer shall be null and void, shall constitute a Default by Lessee, and, at Lessor's option, shall terminate this Lease. The foregoing prohibition against Transfers shall apply fully to an assignment by operation of law. Sales, assignments, encumbrances or other transfers, whether in one transaction or a series of transactions, of a controlling equity interest in Lessee shall constitute an attempted Transfer of this Lease and shall be prohibited by this Section 14.1; provided, however, that a transfer of equity interests in Lessee from a Person who holds such interests as of the date of this Lease to another wholly-owned subsidiary of Parent shall not constitute a Transfer for purposes of this Section 14.1 so long as Lessee provides notice of such transfer to Lessor within thirty (30) days following the effectiveness of such Transfer.

14.2 Permitted Transactions. Notwithstanding the provisions of Section 14.1, with the prior written consent of Lessor, which consent shall not be unreasonably withheld, Lessee shall have the right and power to assign its interests under this Lease (a) to any Person that is concurrently acquiring substantially all of the business assets of Parent, including Parent's ownership interest in Lessee, whether structured as a "assets" sale or a sale of equity interests in Parent; (b) to a Person that acquires the LNG Facility from Lessee; and (c) to any business entity that controls, is controlled by, or is under common control with Lessee.

14.3 Transfer Procedures. If Lessee desires to Transfer this Lease (other than to secure a debt financing to the extent permitted in Section 8.6) or any interest herein, then at least thirty (30) days (but no more than one hundred eighty (180) days) prior to the effective date of the proposed Transfer, Lessee shall submit to Lessor a written request (a "**Transfer Notice**") for Lessor's consent, which notice shall include:

(a) A statement containing (i) the name and address of the proposed transferee (the "**Transferee**"); (ii) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, and any other reasonable information and materials (including without limitation, credit reports and bank and character references) required by Lessor to assist Lessor in reviewing the financial responsibility, character, and reputation of the proposed Transferee (provided, that if Lessor requests such additional information or materials, the Transfer Notice shall not be deemed to have been received until Lessor receives such additional materials); (iii) the nature of such Transferee's business; (iv) the proposed effective date of the Transfer; and (v) all of the principal terms of the proposed Transfer, including the consideration to be paid to Lessee in connection therewith. At the request of the proposed Transferee, Lessor will sign a reasonable and customary form of confidentiality agreement covering the information provided to Lessor. Without limitation as to other reasonable grounds for withholding consent, it shall be

reasonable under this Lease and under any applicable law for Lessor to withhold consent to any proposed Transfer where one or more of the following apply: (1) the Transferee intends to use the Premises other than for operation of the LNG Facility in accordance with this Lease; (2) the Transferee is a governmental agency or instrumentality thereof; (3) the Transferee is not a party of reasonable financial worth and/or financial stability in light of the obligations of the Lessee under this Lease; and (4) the Transferee is a Person who is, or in the thirty-six months prior to the Transfer Notice has been, adverse to Lessor in any arbitration, litigation, mediation or other similar proceeding.

(b) After Lessor's consent to the Transfer and promptly after execution, Lessee shall deliver to Lessor four (4) originals of the proposed assignment or sublease or other evidence of the Transfer on a form approved by Lessor and four (4) originals of the of Lessor's consent to such Transfer executed by Lessee and the proposed Transferee.

(c) If Lessee modifies any of the terms and conditions relevant to a proposed Transfer specified in the Transfer Notice such that Lessor would be entitled to withhold its consent to such Transfer under Article 14, Lessee shall re-submit such Transfer Notice to Lessor for its consent pursuant to all of the terms and conditions of this Article 14.

(d) With respect to each Transfer proposed to be consummated by Lessee, whether or not Lessor shall grant consent, Lessee shall pay all of Lessor's out-of-pocket expenses, fees, and costs, as well as any professional, attorneys', accountants', engineers' or other consultants' fees reasonably incurred by Lessor relating to such proposed Transfer within thirty (30) days after written request by Lessor.

14.4 Prohibited Persons. Notwithstanding any other provision of this Lease to the contrary, in no event shall Lessee effect a Transfer of any portion of its interest in this Lease or the Premises to a Prohibited Person.

14.5 Miscellaneous Provisions. Without limiting the foregoing provisions of this Article 14, the acceptance of Rent by Lessor from any other person shall not be deemed to be a waiver of Lessor of any provision of this Article 14.

ARTICLE 15.
RIGHT OF FIRST REFUSAL

15.1 ROFR Notice. Without limiting the provisions of Article 14, in the event that Lessee seeks to Transfer all or a majority of its interest in the LNG Facility, whether such Transfer is structured as an asset sale or a sale of a controlling equity interest in Lessee (whether such sale occurs in a single sale or in a series of Transfers), Lessee shall include with the Transfer Notice delivered in accordance with Article 14 a written right of first refusal notice (a "**ROFR Notice**"). Each ROFR Notice shall set forth the proposed Transferee's name and shall include a summary of the terms of the proposed Transfer, including without limitation, the purchase price and method of payment, and shall have attached to it a copy of any offer or counteroffer executed or to be executed by Lessee and the Transferee. If the proposed Transfer is to be made in exchange for property of the Transferee, the ROFR Notice shall also include the dollar value placed on the Transferee's property by Lessee. Lessee represents and warrants that the purchase price, terms and conditions referred to in the ROFR Notice shall have been arrived at through arm's length negotiations.

15.2 Response to ROFR Notice. If Lessor, within [***] after receipt of a ROFR Notice, indicates in writing to Lessee its agreement to purchase the LNG Facility to be Transferred on the terms stated in such ROFR Notice, Lessee shall sell and convey such property to Lessor on the same terms and conditions as set forth in such ROFR Notice, except that in the event of a proposed exchange of property Lessor shall pay the aforesaid dollar value placed on the

property in full in cash rather than exchange property. If Lessor does not notify Lessee of its intent to exercise its right of first refusal within such [***] period, or if Lessor gives Lessee written notification that it does not elect to exercise such right of first refusal, then Lessee may Transfer the LNG Facility free of this right of first refusal on the same terms and conditions offered to Lessor as set forth in the ROFR Notice, subject to the provisions of Section 14.3 hereof.

15.3 Timing of Transfer; Change of Terms. If Lessee does not complete the Transfer of the LNG Facility described within the ROFR Notice within [***] of (i) the expiration of the aforementioned [***] period or (ii) such earlier date on which Lessor notifies Lessee that it does not wish to exercise its right of first refusal, or if Lessee intends to Transfer the LNG Facility on terms and conditions which are changed or modified from those stated in the ROFR Notice, then the transaction or any further transaction shall be deemed a new determination by Lessee to Transfer the LNG Facility and the provisions of this Article 15 shall again be applicable to any proposed Transfer.

15.4 Termination of Right. Lessor's right of first refusal as provided herein shall be extinguished if and only if Lessor fails to exercise its right to purchase the LNG Facility within the [***] period provided above and Lessee thereafter Transfers the LNG Facility to the Transferee and on the terms set forth in the ROFR Notice within the [***] period provided above, and provided the offer from the Transferee presented to Lessor in the ROFR Notice was a valid, bona fide and binding third party offer. Failure by Lessor to respond to any other offer shall in no way extinguish the right granted to Lessor hereunder which shall in such case continue to burden the LNG Facility.

15.5 Valuation. In the event Lessee elects to exchange its interest in the LNG Facility rather than to sell it, if Lessor objects to the dollar value placed by Lessee on the exchange property as stated in the ROFR Notice, Lessor shall notify Lessee of its objection and the dollar value shall be the first market value of such property as established by an appraiser appointed by Lessor, who shall be a member of the American Institute of Real Estate Appraisers. The [***] period provided in Section 15.2 for Lessor to deliver notice of exercise of its right to purchase the LNG Facility shall be extended for so long as it takes to complete such appraisal. All costs and expenses incurred by the appraiser shall be shared equally by Lessee and Lessor.

15.6 Transfer Defined. As used in this Article 15, the term "**Transfer**" shall be defined to mean any transfer, sale, lease, or other conveyance, whether by agreement for sale or in any other manner.

15.7 Right of First Refusal Exercised. Within [***] of Lessee's receipt of Lessor's notice of exercise, an escrow shall be opened at an escrow company selected by Lessor, which escrow shall have a time limit of [***]. Lessee shall transfer its interest in the LNG Facility through said escrow to Lessor or Lessor's nominee subject only to real property taxes for the then-current fiscal year and customary permitted encumbrances, including, without limitation, all encumbrances of record, and all other encumbrances and defects in title and conditions which the proposed Transferee was willing to accept. Lessee and Lessor, or Lessor's nominee, shall each pay [***]; Lessee shall pay for any documentary tax stamps; and Lessor or its nominee shall pay the recording fee for any instruments which are recorded through such escrow.

15.8 No Waiver of Assignment Restrictions. Nothing in this Article 15 shall be construed as limiting or waiving the provisions of Article 14 hereof.

ARTICLE 16.
FORCE MAJEURE

16.1 Effect of Force Majeure Events. Except as otherwise provided herein, either Party shall be excused from performance and shall not be construed to be in default in respect of any obligation hereunder for so long as

failure to perform such obligation shall be caused by or arise out of a Force Majeure Event. "**Force Majeure Event**" means any event or occurrence beyond the reasonable control of a Party which causes such Party to be unable to perform its obligations hereunder (other than obligations to pay money), but only if and to the extent that (i) such circumstance or event or combination of events or circumstances, despite the exercise of reasonable diligence and care, cannot be or be caused to be prevented, avoided or removed by such Party; (ii) such circumstance or event is not the result of the failure of such Party to perform any of its obligations under this Lease; and (iii) such Party has given the other Party prompt notice of such circumstance or event in accordance with Section 16.3. Such events or occurrences may include, but are not limited to: explosions, fires, earthquakes, storms, lightning, wind, tornadoes, or other natural calamities and acts of God; acts of war or the public enemy and acts of terrorism, whether war be declared or not; public disorders, insurrection, rebellion, sabotage, riots or violent demonstrations; strikes, lockouts or other industrial action by workers or employees of a Party or such Party's contractors; sudden actions of the elements; actions or inactions by Governmental Authorities.

16.2 Certain Delays not Excused. Notwithstanding that a Force Majeure Event otherwise exists, the provisions of this Article 16 shall not excuse the obligation to pay money in a timely manner, except to the extent that the Force Majeure Event directly affects the ability to remit such payments in a timely manner, nor shall a Force Majeure Event extend the In-Service Deadline beyond [***].

16.3 Notice of Force Majeure Events. As soon as possible following the date of commencement of any Force Majeure Event and in no event later than [***] after the date the Party whose performance is affected by the Force Majeure Event knows of the occurrence of such an event, the affected Party shall advise the other Party in writing of the commencement, the nature and expected duration of such Force Majeure Event. If means of providing notice to the other Party are interrupted, such notice shall be provided within [***] after the resumption of means of providing notice to the other Party. As soon as possible and in no event later than [***] following the termination of a Force Majeure Event, the Party having invoked such Force Majeure Event as a cause of suspension and/or delay of performance shall notify the other Party that it is able to resume performance.

16.4 Period of Suspension or Delay and Mitigation. The suspension or delay of performance due to a Force Majeure Event shall be of no greater scope and no longer duration than is required by the Force Majeure Event. The affected Party shall: (a) undertake all Commercially Reasonable Efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Force Majeure Event; and (b) undertake Commercially Reasonable Efforts to ensure resumption of normal performance of this Lease after the termination of any Force Majeure Event and shall perform its obligations to the maximum extent practicable.

ARTICLE 17.
REPRESENTATIONS AND WARRANTIES

17.1 Representations and Warranties of Lessee. Lessee represents and warrants to Lessor as follows, as of the execution date of this Lease:

(a) Lessee is duly organized, validly existing and in good standing under the laws of the state of its organization, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use and to perform all of its obligations under this Lease.

(b) This Lease constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms. Lessee has the absolute and unrestricted right, power, authority and capacity to execute and deliver this Lease and to perform its obligations hereunder.

(c) The execution, delivery or performance of the Project Agreements by Lessee will not directly or indirectly (with or without notice or lapse of time): (i) contravene, conflict with or result in a violation of any provision of the Organizational Documents of Lessee, or any resolution adopted by the stockholders, members, board of directors, or the general partner (as the case may be) of Lessee currently in effect; (ii) contravene, conflict with or result in a violation of, or give any Governmental Authority or other Person the right to exercise any remedy or obtain any relief under, any Legal Requirement or any Order to which Lessee, or any of the assets owned or used by Lessee, may be subject; (iii) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify any Permit that is held by Lessee or Lessor for the mining operation, or that otherwise relates to the business of, or any of the assets owned or used by, Lessee; or (iv) contravene, conflict with or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify any Contract which it has entered into and is currently enforceable against it.

(d) To the best of Lessee's knowledge, there is no pending Proceeding that has been commenced that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the performance by Lessee of any of its obligations hereunder.

(e) To the best of Lessee's knowledge, the Permits listed on **Exhibit "H"** are all of the Permits which are necessary in order to allow Lessee to construct and operate the LNG Facility.

(f) Neither Lessee nor Parent is a Prohibited Person.

17.2 Representations and Warranties of Lessor. Lessor represents and warrants to Lessee as follows, as of the effective date of this Lease:

(a) Lessor is duly organized, validly existing and in good standing under the laws of the state of its organization, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use and to perform all its obligations under this Lease.

(b) This Lease constitutes the legal, valid and binding obligation of Lessor, enforceable against Lessor in accordance with its terms. Lessor has the absolute and unrestricted right, power, authority and capacity to execute and deliver this Lease and to perform its obligations hereunder.

(c) The execution, delivery and performance of this Lease by Lessor will not directly or indirectly (with or without notice or lapse of time): (i) contravene, conflict with or result in a violation of any provision of the Organizational Documents of Lessor, or any resolution adopted by the stockholders, members, board of directors, or the general partner (as the case may be) of Lessor currently in effect; or (ii) contravene, conflict with or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify any Contract which it has entered into and is currently enforceable against it.

(d) To Lessor's knowledge, there is no pending Proceeding that has been commenced that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the performance by Lessor of its obligations hereunder.

(e) Lessor is not a Prohibited Person.

17.3 Acknowledgment. Each of Lessor and Lessee acknowledges that the representations and warranties set forth in this Article 17 and elsewhere in this Lease constitute the sole and exclusive representations and warranties of the Parties in connection with the transactions contemplated hereby. There are no representations, warranties, covenants, understandings or agreements among the Parties regarding the Premises or the LNG Facility other than those contained in this Lease. Without limiting the generality of the foregoing, Lessor acknowledges that in entering into this Lease, Lessor is not relying upon any projections as to the production or revenue generating capacity of the LNG Facility which may have been provided to Lessor by Lessee, and Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the Premises or their condition, including, without limitation, with respect to the presence or absence of Hazardous Substances, the geophysical condition of the Demised Land, or the availability of adequate utilities (except to the extent that Lessor has agreed to provide the same hereunder). Lessee agrees that the Premises shall be leased and delivered to Lessee in its "AS-IS/WITH ALL FAULTS" condition.

ARTICLE 18.
JOINDER

18.1 Joinder of CE Construction CE construction joins in this Lease as a party solely at the request of Lessee for purposes of allowing Lessee to cause the construction of the LNG Facility and any other Improvements permitted to be made by Lessee under the Lease to be completed in accordance with applicable contractor licensing requirements. CE Construction represents and warrants to Lessor that CE Construction holds all of the licenses necessary to construct the LNG Facility and such other Improvements. CE Construction shall not have any rights to enforce this Lease against Lessor and all such enforcement rights shall be vested in Lessee. Nothing in this Lease is intended to provide CE Construction with any rights of possession or occupancy of the Demised Land, including, without limitation, any rights as a tenant, subtenant or licensee of Lessor or Lessee, and CE Construction's right to enter upon the Demised Land shall be solely those of a guest or invitee of Lessee. Any breach of or default under any of the provisions of this Lease by CE Construction shall be deemed to be a breach of or default by Lessee under this Lease and shall entitle Lessor to exercise any or all of its rights and remedies under this Lease or at law or in equity. Any notices required to be provided under this Lease, including notices with respect to any default by Lessee, shall be deemed to have been provided to both Lessee and CE Construction upon the delivery of such notice to Lessee in accordance with the provisions of this Agreement.

ARTICLE 19.
MISCELLANEOUS PROVISIONS

19.1 Headings. The article and section headings used in this Lease are for purposes of convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.

19.2 Exhibits. Each and every exhibit or schedule to this Lease to which reference is made in this Lease or the Exhibits hereto is incorporated, by that reference, into this Lease and made a part hereof.

19.3 Recitals. Lessor and Lessee each represent and warrant to the other that it has no knowledge or notice of any facts or circumstances indicating that any of the Recitals is false, incomplete, or misleading as written. The Recitals are, by this reference, incorporated into, and made a part of, this Lease.

19.4 Waiver. Waiver by Lessor of any breach of any provision of Lease shall not be deemed to be a waiver of such provision or of any subsequent breach of the same or of any other provision of this Lease.

19.5 Notices Any notice, demand, approval, consent, or other communication required or desired to be given under this Lease in writing shall be personally served or given by overnight express carrier or by mail, and if mailed, shall be deemed to have been given when three (3) business days have elapsed from the date of deposit in the United States Mail, certified and postage prepaid, addressed to the Party to be served at the last address as has then been given by that Party to the other Party by written notice done in compliance with the provisions of this Section 19.5. For purposes of this Section 19.5, acknowledged or proven receipt of any notice, demand, approval, consent, or other communication done by facsimile transmission or by e-mail to a Party's regular business facsimile telephone number shall be deemed personal service thereof effective upon such acknowledgement of proven receipt. At the date of execution of this Lease, the respective mailing addresses of Lessor and Lessee are as follows:

Lessor:

U.S. Borax Inc.
Boron Operations
14486 Borax Road
Boron, California 93516-2000
Attention: General Manager
Facsimile: (760) 762-7542

with a copy
to:

U.S. Borax Inc.
26877 Tourney Road
Valencia, California 91355
Attention: Legal Department
Facsimile: (661) 287-5566

Lessee and CE Construction:

Clean Energy LNG, LLC
3020 Old Ranch Parkway, Suite 200
Seal Beach, California 90740
Facsimile: (562) 546-0097
Attention: Mitchell Pratt
Facsimile: (562) 546-0097

with a copy to:

Sheppard Mullin Richter & Hampton, LLP
Four Embarcadero Center
17th Floor
San Francisco, California 94111-4106
Attention: James J. Slaby
Facsimile: (415) 434-3947

19.6 Attorneys' Fees. In the event that legal proceedings are commenced to enforce or interpret any of the terms or conditions of this Lease, for breach of any such terms or conditions, or to terminate the leasehold interest or right to possession of Lessee granted by this Lease, the prevailing Party in any such proceedings shall receive from the losing Party such reasonable sum for attorneys' fees and costs incurred, not limited to taxable costs, as may be fixed by the court, whether incurred at the trial court level or on any appeal, in addition to all other relief to which prevailing Party may be entitled.

19.7 Successors. Without limiting or otherwise affecting any restrictions on assignments of this Lease or rights or duties under this Lease, this Lease and all of its terms and conditions shall run with the Demised Land and the Easements and shall be binding upon and inure to the benefit of the successors and assigns of Lessor and Lessee.

19.8 Surrender of Lease Not Merger. Neither the voluntary or other surrender of this Lease by Lessee nor a mutual cancellation hereof shall cause a merger of the titles of Lessor and Lessee, but such surrender or cancellation shall operate as an assignment to Lessor of any or all such subleases that have been approved in writing by Lessor or are otherwise acceptable to Lessor.

19.9 Entire Agreement. The Project Agreements set forth the entire agreement between Lessor and Lessee for the lease of the Premises and supersede all prior negotiations and agreements, written or oral, concerning or relating to the subject matter of this Lease, and may not be modified except by a writing executed by both Parties.

19.10 Severability. If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Lease shall be valid and enforceable to the fullest extent permitted by law, but only, if and to the extent such enforcement would not materially and adversely frustrate the Parties essential objectives as expressed herein.

19.11 Construction. No provision of this Lease shall be construed against or interpreted to the disadvantage of either Lessor or Lessee by any court or other governmental or judicial authority by reason of such Party's having or being deemed to have structured, written, drafted or dictated such provisions.

19.12 Governing Law. This Lease and all of the rights and obligations of Lessor and Lessee under this Lease or related to the Demised Land, or any part thereof, shall be governed by the laws of the State of California, not including choice of law rules and principles.

19.13 Time is of Essence. Time is of the essence of this Lease.

19.14 No Joint Venture. Nothing in this Lease shall be construed to render or constitute Lessor in any way or for any purpose a partner, joint venturer or associate in any relationship with Lessee other than that as landlord and tenant, nor shall this Lease be construed to authorize either Party to act as agent for the other Party except as expressly provided to the contrary in this Lease.

19.15 Counterparts. This Lease may be executed in any number of counterparts, all of which together shall be deemed one and the same instrument, and each of which counterparts shall be deemed an original of this Lease for all purposes notwithstanding that less than all of the signatures may appear on any one counterpart.

19.16 Recordation. Lessor and Lessee agree that this Lease shall not be recorded in the Official Records. Upon the Term Commencement Date, the Parties shall, within [***], mutually execute, acknowledge before a notary, and record in the Official Records, a memorandum of this Lease in customary form. The costs of such recordation shall be shared equally by Lessee and Lessor.

19.17 No Sharing of Grants. Except as otherwise expressly provided herein, any grants or credits obtained by a Party hereto shall be retained by that Party and such Party shall not be required to share such grants or credits with the other Party hereto.

19.18 Public Announcements; Community Interaction.

(a) Other than those incidental to filings required to comply with Legal Requirements or in connection with any public hearing, legal proceedings or dispute resolution procedure, any public announcement or similar publicity with respect to this Lease will be issued, if at all, at such time and in such manner as the Parties mutually determine. The Parties shall cooperate in good faith to agree upon the content of any public announcement incidental to filings required to comply with Legal Requirements or in connection with any public hearing. Notwithstanding the foregoing, in the event that either Party or its counsel (i) determines that, as a result of the Parties entering into this Lease, or the commencement of the transactions contemplated herein or therein, a filing on Form 8-K (or any similar or successor form) is required under applicable securities laws, including the Securities Exchange Act of 1934, as amended, or (ii) either Party is intending to file a registration statement under the Securities Act of 1933, as amended, covering certain of its securities, and such Party or its counsel believes that a copy of this Lease, or a description of the transaction contemplated herein or therein, is necessary to complete such registration statement or otherwise comply with applicable Securities and Exchange Commission ("SEC") requirements, such Party shall be entitled to make such filing. In the event this Lease is filed pursuant to the applicable SEC requirements, the Party filing this Lease will use Commercially Reasonable Efforts (which shall not include the obligation to commence any legal proceeding or to incur any substantial out-of-pocket costs or expenses) to obtain confidential treatment of this Lease by the SEC.

(b) Lessor and Lessee shall reasonably cooperate so as to develop and maintain (and, in the case of Lessor, preserve) a positive working relationship with the local community surrounding the Borax Site. Neither party shall not take any actions which could reasonably be expected to have a material adverse effect upon the other Party's relationship with the community in which the Borax Site is located, including relationships with municipal and county governments, the State of California, and community organizations located in and around the Borax Site.

19.19 Confidentiality. Except for disclosures permitted under Section 19.18, during the Term, and for a period of two (2) years after the termination or expiration of this Lease, the Parties will maintain in confidence all non public information and documents, including this Lease, provided or to be provided by and to one another with pursuant to or in connection with this Lease, except that information and documents may be disclosed (a) by a Party to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors, and to its and its Affiliates' actual or prospective equity investors, lenders and underwriters, (b) to the extent requested by any Governmental Authority or reasonably deemed appropriate to disclose by Lessee in connection with its application for the Permits and other approvals by Government Authorities contemplated hereby (including, without limitation, disclosures to community groups or other potential stakeholders in the permitting

process), (c) to the extent required by Legal Requirements or by any subpoena or similar legal process, (d) in connection with the exercise of any remedies under this Lease or any Proceeding relating to this Lease or the enforcement of rights hereunder, (e) subject to an agreement containing provisions substantially the same as those of this Section 19.19, to any permitted assignee or successor or prospective assignee or successor of a Party in and to any of the rights of such Party under this Lease, and (f) to the extent such information (i) becomes publicly available other than as a result of a breach of this Section 19.19 or (ii) becomes available to a Party on a non-confidential basis from a source other than the other Party.

19.20 Non Dedication. The Parties acknowledge and agree that neither Party intends to perform its obligations hereunder as an electrical corporation, a gas corporation, a water corporation or as a public utility on a regulated or other basis. Each Party agrees that the delivery and acceptance of any services to be provided by one Party to the other Party under this Lease is solely on the terms set forth herein. Neither Party dedicates to the public any part of the services provided by such Party under this Lease. Neither Party shall assert in any proceeding before any Governmental Authority or otherwise that it or the other Party is an electrical corporation, a gas corporation, a water corporation or a public utility, nor shall either Party assert that the other Party has dedicated any services provided by such Party under this Lease to the public. In the event that any [***], Lessor shall have the right to cease providing such service upon [***] prior written notice to Lessee. Upon the cessation of any service to be provided by Lessor to Lessee under this Lease as a result of the foregoing action by a Governmental Authority, the Rent shall be adjusted pursuant to **Exhibit "J"**. In the event service is so discontinued, the Parties shall reasonably cooperate to restructure, if possible, the manner in which such service is provided to Lessee so as to make such service not subject to regulation as a public utility under applicable Legal Requirements.

19.21 No Solicitation of Employees.[***]

19.22 Dispute Resolution Procedures. In the event a dispute arises between the Parties related to this Lease, the following process shall be followed:

(a) Each Party will designate a senior executive ("**Designated Representative**") to represent it in connection with any dispute that may arise between the Parties (a "**Party Dispute**"). The designations will be communicated by each Party to the other Party not later than [***] following the date of execution of this Lease in the manner provided in Section 19.5. Subsequent changes in a Party's Designated Representative shall be communicated in the same manner.

(b) In the event that a Party Dispute should arise, the Designated Representatives will meet, with their attorneys, if they so agree, within [***] after written request by any Party to any other Party (the "**Dispute Notice**") in an effort to resolve the Party Dispute.

(c) If the Designated Representatives are unable to resolve the Party Dispute within [***] following their first meeting, the Party Dispute will be submitted to non-binding mediation in Los Angeles, California before a mediator made available to the Parties through JAMS.

(d) In the event that the mediation process fails to result in a resolution of the Party Dispute within [***] following receipt of the Dispute Notice, the Parties may take any action they may deem necessary to protect their interests.

(e) The foregoing provisions of this Section 19.22 shall not be construed to prohibit any Party from commencing, at any time prior to the completion of the process described above, any action or proceeding which such Party determines is necessary to protect or preserve any rights or remedies it may have in law or in equity.

19.23 Work of Improvement. To the extent that this Lease contemplates the construction of a work of improvement or any related activity for which a license from the California Contractor's State License Board is required, all such work will be performed by CE Construction as general contractor.

[Next Page Is Signature Page]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease on the dates set forth opposite their signatures below.

LESSOR:

U.S. BORAX INC., a Delaware corporation

By:

/s/ Gary Goldberg

Its:

President and Chief Executive

LESSEE:

CLEAN ENERGY LNG, LLC,
a California limited liability company

By:

/s/ Andrew J. Littlefair

Its:

President and CEO

CE CONSTRUCTION:

CLEAN ENERGY CONSTRUCTION,
a California corporation

By:

/s/ Andrew J. Littlefair

Its:

President and CEO

TABLE OF CONTENTS

		Page
ARTICLE 1. DEFINITIONS		1
1.1	"Access Road"	1
1.2	"Abandonment"	1
1.3	"Affiliate"	1
1.4	"Award"	2
1.5	"Bankruptcy Code"	2
1.6	"Business Day"	2
1.7	"Claims"	2
1.8	"Cogeneration Facility"	2
1.9	"Commercially Reasonable Efforts"	2
1.10	"Construction Commencement"	2
1.11	"Contract"	2
1.12	"Core Service"	2
1.13	"Core Service Default"	2
1.14	"Core Service Default Claims"	2
1.15	"Core Services Disruption"	2
1.16	"Date of Taking"	3
1.17	"Demised Land"	3
1.18	"Easements"	3
1.19	"Environmental Laws"	3
1.20	"Exchange Act"	3
1.21	"Hazardous Substance"	3
1.22	"Governmental Authority"	3
1.23	"Improvements"	3
1.24	"In-Service Date"	4
1.25	"Interconnection Plans"	4
1.26	"Legal Requirements"	4

1.27	"Lessee Controlled Roadways"	4
1.28	"Lessor Controlled Roadways"	4
1.29	"Lessee's Improvements"	4
1.30	"Lessor Parties"	4
1.31	"Lessor's Improvements"	4
1.32	"LNG"	4
1.33	"LNG Facility"	4
1.34	"Official Records"	4
1.35	"Operational"	4
1.36	"Order"	4
1.37	"Organizational Documents"	4
1.38	"Partial Taking"	4
1.39	"Permits"	5
1.40	"Person"	5
1.41	"Personal Property"	5
1.42	"Plans and Specifications"	5
1.43	"Plant Layout Plans"	5
1.44	"Premises"	5
1.45	"Proceeding"	5

		Page
1.46	"Prohibited Person"	5
1.47	"Project Agreements"	5
1.48	"Property Taxes"	5
1.49	"Release"	5
1.50	"Substantial Taking"	6
1.51	"Survey"	6
1.52	"Taking"	6
1.53	"Total Taking"	6
1.54	"Train"	6
ARTICLE 2. DEMISING PROVISIONS		6
2.1	Demised Land	6
2.2	Lessee's Access Rights	6
2.3	Easements	8
2.4	Lessor's Services	8
2.5	Term and Termination	9
2.6	Quiet Enjoyment	11
ARTICLE 3. RENT		11
3.1	Base Rent	11
3.2	Payment of Base Rent	11
3.3	Base Rent Adjustments	11
3.4	Additional Rent	11
3.5	No Offset	12
3.6	Interest on Arrearages	12
ARTICLE 4. USE OF PREMISES		12
4.1	Permitted Uses	12
4.2	Compliance with Legal Requirements; Nuisance	12

4.3	Hazardous Substances	13
4.4	Utilities	14
4.5	Entry by Lessor; Suspension of Activities	14
4.6	Additional Reservations and Restrictions	15
4.7	Rail Spur	15
4.8	On-Site Fueling Station	15
4.9	Protocol for Emergencies	15
4.10	Mine Safety Regulation	15
ARTICLE 5. PROPERTY TAXES		16
5.1	Real Property Taxes	16
5.2	Personal Property Taxes	16
5.3	Contests	17
5.4	Apportionment	17
ARTICLE 6. INDEMNITY AND INSURANCE		17
6.1	Lessee's Indemnity	17
6.2	Liability Insurance	17
6.3	Casualty Insurance	18
6.4	General	18
6.5	Driver Certification	18

ARTICLE 7. OPERATION, MAINTENANCE AND REPAIR OF THE LNG FACILITY 18

7.1 Lessor's Obligations 18

7.2 Lessee's Obligations 18

Page

7.3 Surrender of the Premises 19

ARTICLE 8. CONSTRUCTION ACTIVITIES AND ALTERATIONS 19

8.1 Plans and Specifications 19

8.2 Construction of LNG Facility 19

8.3 Insurance Covering Lessee's Work 20

8.4 Relocation of Utilities 20

8.5 Personal Property 20

8.6 Liens and Notices of Violation Prohibited 20

8.7 Mechanics' Liens 20

8.8 Lessor's Right to Discharge 21

8.9 Permits 21

8.10 Sharing of Information 21

8.11 Lessor's Additional Improvements 21

8.12 Future Alterations 22

ARTICLE 9. DESTRUCTION 22

9.1 Obligation to Rebuild 22

9.2 No Abatement of Rent 23

ARTICLE 10. CONDEMNATION 23

10.1 Rights 23

10.2 Total Taking 23

10.3 Substantial Taking 23

10.4	Possession Following Notice of Taking	23
10.5	Apportionment for Award of Total Taking	23
10.6	Partial Taking	24
10.7	Taking for Temporary Use	24
10.8	Remediation Obligations	24
10.9	Sole and Exclusive Remedies	24
ARTICLE 11. LESSEE'S DEFAULT		24
11.1	Lessee's Default Defined	24
11.2	Lessor's Right to Terminate	25
11.3	Lessor's Right Not To Terminate	26
11.4	Cessation of Services	26
11.5	General	26
11.6	Right of Lessor to Perform	26
ARTICLE 12. LESSOR'S DEFAULT		26
12.1	Lessor's Default Defined	26
12.2	Lessee's Remedies	26
12.3	Limitations on Lessor's Liability	27
12.4	Termination of Services by Lessor	28
ARTICLE 13. ESTOPPEL CERTIFICATES AND SALE BY LESSOR		29
13.1	Estoppel Certificates, etc.	29
13.2	Failure to Deliver Estoppel Certificates	29
13.3	Liability Upon Transfer	29
ARTICLE 14. ASSIGNMENT AND SUBLETTING		30
14.1	Generally Forbidden	30

14.2	Permitted Transactions	30
14.3	Transfer Procedures	30
14.4	Prohibited Persons	31
14.5	Miscellaneous Provisions	31
ARTICLE 15. RIGHT OF FIRST REFUSAL		31
15.1	ROFR Notice	31
15.2	Response to ROFR Notice	31
15.3	Timing of Transfer; Change of Terms	32
15.4	Termination of Right	32
15.5	Valuation	32
15.6	Transfer Defined	32
15.7	Right of First Refusal Exercised	32
15.8	No Waiver of Assignment Restrictions	32
ARTICLE 16. FORCE MAJEURE		32
16.1	Effect of Force Majeure Events	32
16.2	Certain Delays not Excused	33
16.3	Notice of Force Majeure Events	33
16.4	Period of Suspension or Delay and Mitigation	33
ARTICLE 17. REPRESENTATIONS AND WARRANTIES		33
17.1	Representations and Warranties of Lessee	33
17.2	Representations and Warranties of Lessor	34
17.3	Acknowledgment	34
ARTICLE 18. JOINDER		35
18.1	Joinder of CE Construction	35
ARTICLE 19. MISCELLANEOUS PROVISIONS		35
19.1	Headings	35
19.2	Exhibits	35

19.3	Recitals	35
19.4	Waiver	35
19.5	Notices	35
19.6	Attorneys' Fees	36
19.7	Successors	36
19.8	Surrender of Lease Not Merger	36
19.9	Entire Agreement	37
19.10	Severability	37
19.11	Construction	37
19.12	Governing Law	37
19.13	Time is of Essence	37
19.14	No Joint Venture	37
19.15	Counterparts	37
19.16	Recordation	37
19.17	No Sharing of Grants	37
19.18	Public Announcements; Community Interaction	37
19.19	Confidentiality	38
19.20	Non Dedication	38
19.21	No Solicitation of Employees	38
19.22	Dispute Resolution Procedures	39
19.23	Work of Improvement	39

Exhibits

Exhibit "A"	Survey of the Premises
Exhibit "B"	Easements and Exclusion Zone Easements
Exhibit "C"	LNG Facility
Exhibit "C-1"	LNG Facility Site Plan
Exhibit "D"	Electric Power Sales

Exhibit "D-1"	Energy Price
Exhibit "E"	Water Supply Services
Exhibit "E-1"	Payment Schedule for Water Services
Exhibit "E-2"	Quantity and Quality Specifications
Exhibit "F"	Other Lessor Services
Exhibit "F-1"	Payment Schedule for Other Lessor Services
Exhibit "F-2"	Blended Gas Quality Standards
Exhibit "F-3"	Gas Metering
Exhibit "F-3A"	Gas Pipeline Diagram
Exhibit "G"	Form of Parent Guaranty
Exhibit "H"	Required Permits
Exhibit "I"	Form of Term Commencement Date Letter
Exhibit "J"	Base Rent
Exhibit "J-1"	Calculation of LNG Discount
Exhibit "K"	Terms and Conditions for On-Site Fueling Station
Exhibit "L"	Removal and Remediation Obligations
Exhibit "M"	Lessor's Improvement Obligations
Exhibit "N"	Exceptions to Lessor's Representations

FIRST AMENDMENT TO GROUND LEASE

The First Amendment to Ground Lease (this "**First Amendment**") is made and executed to be effective as of the 28th day of October, 2008 ("**Amendment Effective Date**"), by and between U.S. BORAX INC., a Delaware corporation ("**Lessor**"), CLEAN ENERGY LNG, LLC, a California limited liability company ("**Lessee**"), and CLEAN ENERGY CONSTRUCTION, a California corporation ("**CE Construction**"). Lessor, Lessee, and CE CONSTRUCTION and referred to herein collectively as the "**Parties**."

RECITALS

WHEREAS, the Parties are parties to that certain Ground Lease made and executed as of November 3, 2006 (as further amended, modified or supplemented from time to time, the "**Agreement**," terms defined therein having the sane meaning when used herein); and

WHEREAS, the Parties wish to amend the Agreement on the terms and conditions set forth herein.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties herein contained, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Amendment of Section 1.12. The definition of the term "**Core Service**" as set forth in Section 1.12 of the Agreement, is hereby deleted in its entirety, and replaced with the following:

> "**Core Services**" means any one or more of the following services to be provided by Lessor hereunder: (i) the provision of Energy in accordance with **Exhibit "D"**; (ii) the provision of Fire Water, Excess Fire Water, Process Water, the acceptance of Process Waste Water, and the acceptance of Water Softener/Caustic Scrubber Effluent in accordance with **Exhibit "E"**; (iii) the provision of natural gas transportation service on the Lateral NG Pipeline in accordance with **Exhibit "F"**; (iv) security and site monitoring services in accordance with **Exhibit "F"**; and (v) the acceptance of Return Gas in accordance with **Exhibit "F"**.

2. Amendment of Exhibit "E" to Add Water Softener/Caustic Scrubber Effluent Disposal, Metering and Quality Monitoring. **Exhibit "E"** of the Agreement is hereby amended to add the following as new sections, after the section entitled "Additional Rent" of such Exhibit:

> **Water Softener/Caustic Scrubber Effluent Disposal**
>
> Lessor shall dispose of Water Softener/Caustic Scrubber Effluent which is delivered by Lessee to Lessor at Lessor's dust control water sump; provided that in no event shall Lessor be obligated to dispose of Water Softener/Caustic Scrubber Effluent in excess of the quantities set forth in **Exhibit "E-2"**. Lessor shall not be required to dispose of Water Softener/Caustic Scrubber Effluent unless the quality of that effluent as delivered meets the quality standards described in **Exhibit "E-2"** or if such disposal would be inconsistent with any Legal Requirements or Permits applicable to Lessor or would cause Lessor to exceed any quantity or quality standards imposed upon Lessor by any such Legal Requirements or Permits.
>
> Lessee shall install, own, operate and maintain, at its sole cost and expense, such equipment as is needed to ensure that Water Softener/Caustic Scrubber Effluent delivered to Lessor meets the quality specifications set forth in **Exhibit "E-2"**. Lessor reserves the right to adjust such specifications from time to time as Lessor determines are reasonably necessary to enable Lessor to comply with any Legal Requirements or Permits. In the event that Lessee delivers Water Softener/ Caustic Scrubber Effluent which fails to meet the quantity and quality specifications set forth in **Exhibit "E-2"**, Lessee shall immediately notify Lessor of such failure and take such steps as are necessary to prevent the further delivery of such non-conforming Water Softener/Caustic Scrubber Effluent including the transport of the effluent off-site for disposal. Lessee shall

promptly reimburse Lessor for all costs, expenses, fees, fines, and penalties, including costs and expenses incurred in the handling and disposing of such non-conforming Water Softener/Caustic Scrubber Effluent already received by Lessor. In addition, Lessor may, at its election and without any obligation or liability, stop accepting Water Softener/Caustic Scrubber Effluent until Lessor is reasonably satisfied that future Water Softener/Caustic Scrubber Effluent discharges by Lessee shall meet the quantity and quality specifications set forth in **Exhibit "E-2"**.

Water Softener/Caustic Scrubber Effluent Metering and Quality Monitoring

Lessee, at its expense, shall provide monthly sampling of the quantity and quality of Water Softener/Caustic Scrubber Effluent. Lessor may inspect and test all sampling points upon the installation thereof. In addition, from time to time, Lessor shall be permitted to inspect and test each sampling point upon reasonable advance notice to Lessee. The cost and expense of any such inspection or test shall be paid by Lessor. If a sampling device is found to be defective or inaccurate, it shall promptly be adjusted, calibrated, repaired or replaced by Lessee at Lessee's cost and expense. If at anytime Lessor desires to independently test the samples, Lessor shall have the right to conduct such testing at its cost.

3. Amendment to Exhibit "E-1". **Exhibit "E-1"** of the Agreement is hereby amended to delete the second number "2." and the number "3." and replace them with the numbers "3." and "4.". **Exhibit "E-1"** of the Agreement is further amended to add a new section "5.", which shall read in its entirety as follows:

5. Water Softener/Caustic Scrubber Effluent Disposal.

Included in Rent.

4. Amendment to Exhibit "E-2". **Exhibit "E-2"** of the Agreement is hereby amended to add a new section "5.", which shall read in its entirety as follows:

5. Water Softener/Caustic Scrubber Effluent Disposal.

Quantity: To average not more that 6 GPM or total more than 8650 gallons in any 24 hour period. Once weekly blow down activities will increase the flow rate to a maximum of 20 GPM for no more that 45 minutes but the 24 hour average will not exceed the above limits of 6 GPM.

Quality: The constituents of the Water Softener/Caustic Scrubber Effluent will not exceed the following values.

Total Dissolved Solids <1500 mg/1
Chloride as CI < 1000 mg/1
Sodium as Na < 1000 mg/1
Arsenic as As < 0.6 mg/1
pH < 9

5. Terms and Conditions of the Agreement. Other than as expressly set forth in this First Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect and shall apply to this First Amendment; provide that to the extent there is a conflict between the terms of this First Amendment and the terms of the Agreement, the terms of this First Amendment shall control to the extent of such conflict.

6. Governing Law. This First Amendment shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of California, not including choice of law rules and principles.

7. Counterparts. This First Amendment may be executed in two or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute but one and the same agreement.

8. No Other Amendment. Except as expressly amended hereby, the terms and provisions of the Agreement remain in full force and effect, and are ratified and confirmed by the Parties in all respects as of the Amendment Effective Date.

[Signatures set forth on following page]

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be signed as of the Amendment Effective Date.

LESSOR:

U.S. BORAX INC., a
Delaware corporation

By: /s/ Chris J.
Robison
Its: V.P. Operations

LESSEE:

CLEAN ENERGY
LNG, LLC,
a California limited
liability company

By: /s/ Mitchell W.
Pratt
Its: SVP & Corporate
Secretary

**CE
CONSTRUCTION:**

CLEAN ENERGY
CONSTRUCTION,
A California
corporation

By: /s/ Mitchell W.
Pratt
Its: SVP & Corporate
Secretary

Exhibit 21.1

CLEAN ENERGY FUELS CORP. SUBSIDIARIES
as of December 31, 2021

Name of Subsidiary	State or Province of Incorporation or Organization
Clean Energy Fueling Services Corp.	British Columbia
Clean Energy	California
Clean Energy Finance, LLC	California
Clean Energy LNG, LLC	California
Clean Energy Los Angeles, LLC	California
Clean Energy Real Estate, LLC	California
Natural Fuels Company, LLC	Colorado
Blue Energy General LLC	Delaware
Blue Energy Limited LLC	Delaware
CE Natural Gas Fueling Services, LLC	Delaware
Clean Energy Renewable Fuels, LLC	Delaware
Clean Energy Renewable Development, LLC	Delaware
Clean Energy South Fork Holdings, LLC	Delaware
Clean Energy & Technologies LLC	Delaware
CLNE PlasmaFlow, LLC	Delaware
CLNE PlasmaFlow Holdings, LLC	Delaware
NG Advantage LLC*	Delaware
O'Bryan Grain Renewable Energy, LLC	Delaware
South Fork Funding, LLC	Delaware
South Fork Renewable Energy, LLC	Delaware
Mansfield Gas Equipment Systems Corporation	Georgia
Blue Fuels Group LP	Texas
Clean Energy Texas LNG, LLC	Texas
TranStar Energy Company LP	Texas
M&S Rental, LLC	Wyoming
Southstar LLC	Wyoming
Wyoming Northstar Incorporated	Wyoming

* Own less than 100%

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Clean Energy Fuels Corp.:

We consent to the incorporation by reference in the registration statements (Nos. 333-255959, 333-226656, 333-145434, 333-150331, 333-156776, 333-159799, 333-164301, 333-168433, 333-171957, 333-174989, 333-177043, 333-178877, 333-179223, 333-186705, 333-187456, 333-189925, 333-190536, 333-192221, 333-193243, 333-201379, 333-208868, and 333-211934) on Form S-3 and Form S-8 of our report dated February 24, 2022, with respect to the consolidated financial statements and financial statement schedule II of Clean Energy Fuels Corp. and the effectiveness of internal control over financial reporting.

/s/ KPMG LLP

Irvine, California
February 24, 2022

Exhibit 31.1

Certification

I, Andrew J. Littlefair, certify that:

1. I have reviewed this annual report on Form 10-K of Clean Energy Fuels Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 24, 2022

/s/ ANDREW J. LITTLEFAIR
Andrew J. Littlefair
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

Certification

I, Robert M. Vreeland, certify that:

1. I have reviewed this annual report on Form 10-K of Clean Energy Fuels Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 24, 2022

/s/ ROBERT M. VREELAND
Robert M. Vreeland
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION REQUIRED BY
SECTION 1350 OF TITLE 18 OF THE UNITED STATES CODE

Each of the undersigned hereby certifies in his capacity as the specified officer of Clean Energy Fuels Corp. (the "Company"), pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to the best of his knowledge, the Annual Report on Form 10-K of the Company for the annual period ended December 31, 2021 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 24, 2022

/s/ ANDREW J. LITTLEFAIR
Andrew J. Littlefair
President and Chief Executive Officer
(Principal Executive Officer)

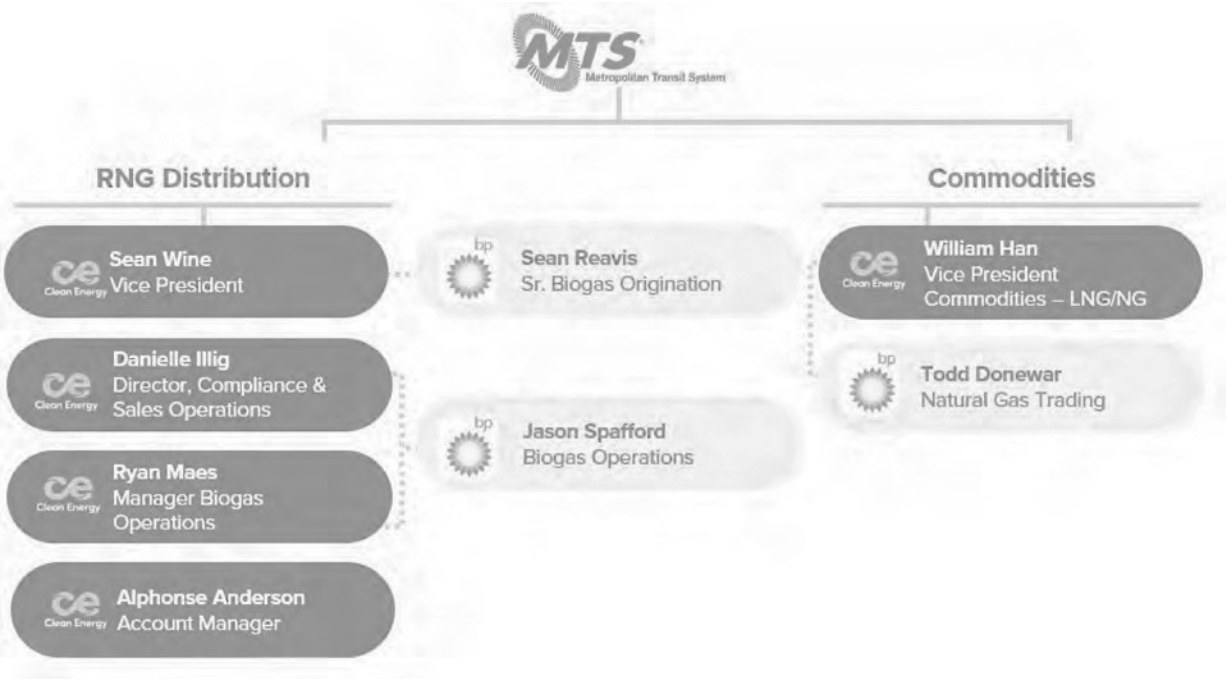
Date: February 24, 2022

/s/ ROBERT M. VREELAND
Robert M. Vreeland
Chief Financial Officer
(Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff on request.

Appendix B, Project Team Organizational Chart

The project team shown below is responsible for performing work on MTS' RNG contract. These members of the bp team will ensure a seamless transition and continue supporting Clean Energy Renewables throughout the contract term.



Appendix C, Clean Energy's Recruitment and Training Process

Clean Energy recruits for positions using our Human Resources Information System "UKG". We also have partnerships with Indeed, Monster and LinkedIn where positions are posted as well. Our in-house recruiters source the resumes that come in and conduct the interviews. Once an applicant is qualified into a candidate, the hiring manager determines who will be part of the interview process and interviews are scheduled.

For continued education we partner with a training organization called Traliant for required training such as soft skills including emotional intelligence and harassment awareness and avoidance. We hold approximately four training subjects per year company-wide and several more for the leadership team. Team members with specialized certifications such as CPAs or CFAs complete ongoing annual education to maintain and renew their certifications.

Drug and Alcohol Testing Procedures and Policy

Clean Energy has a zero-tolerance policy for illegal drugs, because they affect an employee's productivity and efficiency, jeopardize the safety of the employee, co-workers, and the public, and negatively affect our performance as a company. Our drug and alcohol policy is included in our employee handbook. In addition, the intent of Clean Energy's policy is to provide a safe and healthful workplace for our employees in observance of all federal and state laws and regulations. Testing is according to Substance Abuse and Mental Health Services Administration (SAMHSA) guidelines.

James Wright is our Environmental Health & Safety Director. Clean Energy has established and implemented an anti-drug and alcohol misuse program that is equivalent in general to requirements of 49 CFR part 655, although this is not required.

Appendix D, Sample Insurance Certificate

CLEAENE-05 KSHIPPEY

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 6/30/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0757776 HUB International Insurance Services Inc. 4695 MacArthur Court Suite 600 Newport Beach, CA 92660	CONTACT NAME: Kimberly Shippey PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: kimberly.shippey@hubinternational.com
	INSURER(S) AFFORDING COVERAGE — NAIC #
	INSURER A: Federal Insurance Company — 20281
INSURED Clean Energy, a California corporation 4675 MacArthur Court, Suite 800 Newport Beach, CA 92660	INSURER B: Pacific Indemnity Company — 20346
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY [X] PRO-JECT [X] LOC OTHER:	X		3581-68-98	11/30/2021	11/30/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY	X		7352-19-89	11/30/2021	11/30/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $ $
A	X UMBRELLA LIAB [ ] OCCUR EXCESS LIAB [ ] CLAIMS-MADE DED [ ] RETENTION $	X		7986-07-91	11/30/2021	11/30/2022	EACH OCCURRENCE AGGREGATE	$ 15,000,000 $ 15,000,000 $
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	7173-64-18	11/30/2021	11/30/2022	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: REQUEST FOR PROPOSAL - MTS Doc No: G2627.0-22 - Gas Service Provider (GSP)
San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD & IV) and San Diego Transit Corporation (SDTC), and their directors, officers, agents, and employees as additional insureds as their interests may appear as additional insured as respects general liability and auto liability, as required by written contract, and is primary and non-contributory, subject to the terms and conditions of the policy and attached forms. Waiver of subrogation applies as respects workers' compensation, as required by written contract, per the attached form. Excess liability is following form. Separation of insureds applies. 30 day notice of cancellation, except 10 days for non-payment

CERTIFICATE HOLDER	CANCELLATION
San Diego Metropolitan Transit System (MTS) - RFP PURPOSES 1255 Imperial Avenue, Suite 1000 San Diego, CA 92101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03) © 1988-2015 ACORD CORPORATION. All rights reserved.
The ACORD name and logo are registered marks of ACORD

SAMPLE - CERTIFICATE

CHUBB

Liability Insurance

Endorsement

Policy Period	NOVEMBER 30 2021 TO NOVEMBER 30 2022
Policy Number	3581-68-98DAL
Insured	CLEAN ENERGY A CA CORPORATION
Name of Company	FEDERAL INSURANCE COMPANY

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added:

Who Is An Insured

Designated Persons Or Organizations

Any person or organization designated below is an **insured**; but they are **insureds** only with respect to their liability arising out of your acts or failure to act.

Designated Insured

"ANY PERSON OR ORGANIZATION BUT ONLY TO THE EXTENT SPECIFIED UNDER WRITTEN CONTRACT, AGREEMENT OR PERMIT SIGNED PRIOR TO THE DATE OF AN OCCURRENCE COVERED BY THIS POLICY."

All other terms and conditions remain unchanged.

Authorized Representative

SAMPLE CERTIFICATE

CHUBB

Liability Insurance

Endorsement

Policy Period	NOVEMBER 30 2021 TO NOVEMBER 30 2022
Policy Number	3581-68-98
Insured	CLEANENERGY A CA CORPORATION
Name of Company	FEDERAL INSURANCE COMPANY

This Endorsement applies to the following forms:

GENERAL LIABILITY
EMPOYEE BENEFITS ERRORS OR OMISSIONS

Conditions

Under Conditions, the following provision is added to the condition titled Other Insurance.

Other Insurance - Primary, Noncontributory Insurance - Scheduled Person Or Organization

If you are obligated, pursuant to a written contract or agreement, to provide the person or organization described in the Schedule (that is also included in the Who Is An Insured section of this contract) with primary insurance such as is afforded by this policy, then this insurance is primary and we will not seek contribution from insurance available to such person or organization.

Schedule

"ANY PERSON OR ORGANIZATION THAT YOU ARE OBLIGATED, PURSUANT TO A WRITTEN CONTRACT, AGREEMENT OR PERMIT TO PROVIDE PRIMARY INSURANCE AS IS AFFORDED BY THIS POLICY, BUT ONLY TO THE MINIMUM EXTENT REQUIRED BY SUCH CONTRACT, AGREEMENT OR PERMIT."

SAMPLE CERTIFICATE

CHUBB®

Policy Conditions

Endorsement

Policy Period	NOVEMBER 30, 2021 TO NOVEMBER 30, 2022
Effective Date	NOVEMBER 30, 2021
Policy Number	3581-68-98 DAL
Insured	CLEAN ENERGY, A CA CORPORATION
Name of Company	FEDERAL INSURANCE COMPANY

This Endorsement applies to the following forms:

COMMON POLICY CONDITIONS

Schedule

Designated Person or Organization:

If you are obligated, pursuant to a written contract or agreement, to provide notice of cancellation or nonrenewal to a person(s) or organization(s), then we will notify such person(s) or organization(s) provided that within 15 days of our request for such information to the first **named insured** or producer of record, the first **named insured** or producer of record provides us with a spreadsheet containing the name, mailing address and, if available, email address of the person(s) or organization(s).

Conditions

Under Conditions, the following provisions are added:

Notice of Cancellation

When we cancel this policy we will notify person(s) or organization(s) shown in the Schedule above at least sixty (60) days (20 days in the event of non-payment of premium) in advance of the cancellation date.

Any failure by us to notify such person(s) or organization(s) will not invalidate such cancellation with respect to any other person(s) or organization(s).

Notice of Nonrenewal

If we decide not to renew this policy, we will mail or deliver to the person or organization shown in the Schedule above written

notice of the nonrenewal not less than thirty (30) days before the expiration date.to the person
or
Any failure by us to notify such person(s) or organization(s) will not invalidate such cancellation with respect to any other person(s) or organization(s).Schedule above

All other terms and conditions remain unchanged.

Authorized Representative

Policy Conditions	*NOTICE OF CANCELLATION OR NON-RENEWAL*	*last page*
Form 80-02-9310 (Ed. 4-94)	*Endorsement*	*Page 2*

CHUBB

Policy Conditions

Endorsement

Policy Period	NOVEMBER 30, 2021 TO NOVEMBER 30, 2022
Effective Date	NOVEMBER 30, 2021
Policy Number	3581-68-98 DAL
Insured	CLEAN ENERGY, A CA CORPORATION
Name of Company	FEDERAL INSURANCE COMPANY

This Endorsement applies to the following forms:

COMMON POLICY CONDITIONS

Under Conditions, the following provisions are added.

Conditions

Notice Of Material Change To Scheduled Persons Or Organizations

If there is a **material change** to the terms and conditions of this insurance initiated by us after the inception date, but pri to the expiration date, then we will send to the person(s) or organization(s) described in the Schedule a notice of such **material change** at least 60 days in advance of the effective date of the **material change**.

Any failure by us to notify such person(s) or organization(s) will not invalidate such notification with respect to any other person(s) or organization(s).

Conditions

Under Definitions, the following definition is added.

Material Change

Material change means any:

* reduction of limits of insurance;

* increase in deductibles;

* addition of an exclusion; or

* other reduction of coverage;

that results in an adjustment to the premium.

Material change does not include any reduction of limits of insurance for paid claims.

Schedule

Name of Person(s) or Organization(s):

If you are obligated, pursuant to a written contract or agreement, to provide person(s) or organization(s) with notice of a **material change** to the terms and conditions of this insurance, then we will notify such person(s) or organization(s) provided that within 15 days of our request for such information to the first **named insured** or producer of record, the first **named insured** or producer of record provides us with a spreadsheet containing the name, mailing address and, if available, email address of the person(s) or organization(s).

All other terms and conditions remain unchanged.

Authorized Representative

Policy No. 7352-19-89 COMMERCIAL AUTOMOBILE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
This endorsement modifies the Business Auto Coverage Form.

1. **EXTENDED CANCELLATION CONDITION**
   Paragraph A.2.b. - CANCELLATION - of the COMMON POLICY CONDITIONS form IL 00 17 is deleted and replaced with the following:
   b. 60 days before the effective date of cancellation if we cancel for any other reason.
2. **BROAD FORM INSURED**
   A. **Subsidiaries and Newly Acquired or Formed Organizations As Insureds**
   The Named Insured shown in the Declarations is amended to include:
   1. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
   2. Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
      (a) That is an "insured" under any other automobile policy;
      (b) That has exhausted its Limit of Insurance under any other policy; or
      (c) 180 days or more after its acquisition or formation by you, unless you have given us written notice of the acquisition or formation.

   Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

   B. **Employees as Insureds**
   Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add the following:
   d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

   C. **Lessors as Insureds**
   Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add the following:
   e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
      (1) The agreement requires you to provide direct primary insurance for the lessor; and
      (2) The "auto" is leased without a driver.

   Such leased "auto" will be considered a covered "auto" you own and not a covered **"auto" you hire.**
   However, the lessor is an "insured" only for "bodily injury" or "property damage" resulting from the acts or omissions by:
      1. You;
      2. Any of your "employees" or agents; or
      3. Any person, except the lessor or any "employee" or agent of the lessor, operating an "auto" with the permission of any of 1. and/or 2. above.

   D. **Persons And Organizations As Insureds Under A Written Insured Contract**
   Paragraph A.1 - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add the following:
   f. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed under an express provision in a written "insured contract", written agreement or a written permit issued to you by a governmental or public authority to add such person or organization to this policy as an "insured".
   However, such person or organization is an "insured" only:

SAMPLE CERTIFICATE

Form: 16-02-0292 (Rev. 11-16) Page 1 of 3

"Includes copyrighted material of Insurance Services Office, Inc. with its permission"

(1) with respect to the operation, maintenance or use of a covered "auto"; and
(2) for "bodily injury" or "property damage" caused by an "accident" which takes place after:
(a) You executed the "insured contract" or written agreement; or
(b) The permit has been issued to you.

3. **FELLOW EMPLOYEE COVERAGE**
EXCLUSION B.5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply.

4. **PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE**
Paragraph A.4.a. - TRANSPORTATION EXPENSES - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of $50 per day for temporary transportation expense, subject to a maximum limit of $1,000.

5. **AUTO LOAN/LEASE GAP COVERAGE**
Paragraph A. 4. - COVERAGE EXTENSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to add the following:
c. Unpaid Loan or Lease Amounts
In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the loan or lease for a **covered "auto" minus:**
1. The amount paid under the Physical Damage Coverage Section of the policy; and
2. Any:
a. Overdue loan/lease payments at the time of **the "loss";**
b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
c. Security deposits not returned by the lessor;
d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
e. Carry-over balances from previous loans or leases.

We will pay for any unpaid amount due on the loan or lease if caused by:
1. Other than Collision Coverage only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
2. Specified Causes of Loss Coverage only if the Declarations indicate that Specified Causes of Loss Coverage is provided for any covered "auto"; or
3. Collision Coverage only if the Declarations indicate that Collision Coverage is provided for any **covered "auto.**

6. **RENTAL AGENCY EXPENSE**
Paragraph A. 4. - COVERAGE EXTENSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to add the following:
d. Rental Expense
We will pay the following expenses that you or any of your "employees" are legally obligated to pay because of a written contract or agreement entered into for use of a rental vehicle in the conduct of your business:
MAXIMUM WE WILL PAY FOR ANY ONE CONTRACT OR AGREEMENT:
1. $2,500 for loss of income incurred by the rental agency during the period of time that vehicle is out of use because of actual damage to, or "loss" of, that vehicle, including income lost due to absence of that vehicle for use as a replacement;
2. $2,500 for decrease in trade-in value of the rental vehicle because of actual damage to that vehicle arising out of a covered "loss"; and
3. $2,500 for administrative expenses incurred by the rental agency, as stated in the contract or agreement.
4. $7,500 maximum total amount for paragraphs 1., 2. and 3. combined.

7. **EXTRA EXPENSE - BROADENED COVERAGE**
Paragraph A.4. - COVERAGE EXTENSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to add the following:
e. Recovery Expense
We will pay for the expense of returning a stolen covered "auto" to you.

8. **AIRBAG COVERAGE**
Paragraph B.3.a. - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE does not apply to the accidental or unintended discharge of an airbag. Coverage is excess over any other collectible insurance or warranty specifically designed to provide this coverage.

9. **AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT - BROADENED COVERAGE**
Paragraph C.1.b. - LIMIT OF INSURANCE - of SECTION III - PHYSICAL DAMAGE is deleted and replaced with the following:
b. $2,000 is the most we will pay for "loss" in any one "accident" to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:
(1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
(2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
(3) An integral part of such equipment.

10. **GLASS REPAIR-WAIVER OF DEDUCTIBLE**

"Includes copyrighted material of Insurance Services Office, Inc. with its permission"

SAMPLE CERTIFICATE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE the following is added:
No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES
Paragraph D.- DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to add the following:
If this *Coverage* Form and any other *Coverage* Form or policy issued to you by us that is not an automobile policy or *Coverage* Form applies to the same "accident", the following applies:
1. If the deductible under this Business Auto *Coverage* Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible under this Business Auto *Coverage* Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS
Paragraph A.2.a. - DUTIES IN THE EVENT OF AN ACCIDENT, CLAIM, SUIT OR LOSS of SECTION IV - BUSINESS AUTO CONDITIONS is deleted and replaced with the following:
a. **In the event of "accident», claim, "suit" or** "loss", you must promptly notify us when the "accident" is known to:
   (1) You or your authorized representative, if you are an individual;
   (2) A partner, or any authorized representative, if you are a partnership;
   (3) A member, if you are a limited liability company; or
   (4) An executive officer, insurance manager, or authorized representative, if you are an organization other than a partnership or limited liability company.

Knowledge of an "accident", claim, "suit" or "loss" by other persons does not imply that the persons listed *above* have such knowledge. Notice to us should include:
(1) How, when and where the "accident" or **"loss" occurred;**
(2) The "insured's" name and address; and
(3) To the extent possible, the names and addresses of any injured persons or **witnesses.**

13. WAIVER OF SUBROGATION
Paragraph A.5. - TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US of SECTION IV - BUSINESS AUTO CONDITIONS is deleted and replaced with the following:
5. We will waive the right of recovery we would otherwise have against another person or organization for "loss" to which this insurance applies, provided the "insured" has waived their rights of recovery against such person or organization under a contract or agreement that is entered into before such "loss".

To the extent that the "insured's" rights to *recover* damages for all or part of any payment made under this insurance has not been waived, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

14. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS
Paragraph B.2. - CONCEALMENT, MISREPRESENTATION or FRAUD of SECTION IV- BUSINESS AUTO CONDITIONS - is deleted and replaced with the following:
If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not void *coverage* under this Coverage Form because of such failure.

15. AUTOS RENTED BY EMPLOYEES
Paragraph B.5. - OTHER INSURANCE of SECTION IV - BUSINESS AUTO CONDITIONS - is amended to add the following:
e. Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire. If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal **insurance.**

16. HIRED AUTO - COVERAGE TERRITORY
Paragraph B.7.b.(5). - POLICY PERIOD, COVERAGE TERRITORY of SECTION IV - BUSINESS AUTO CONDITIONS is deleted and replaced with the following:
(5) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 45 days or less; and

17. RESULTANT MENTAL ANGUISH COVERAGE
Paragraph C. of - SECTION V - DEFINITIONS is deleted and replaced by the following:
"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death as a result of the "bodily injury" sustained by that person.

SAMPLE CERTIFICATE

"Includes copyrighted material of Insurance Services Office, Inc. with its permission"

POLICY NUMBER: 7352-19-89

COMMERCIAL AUTO
16-02-0316 Ed. 10 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NON-CONTRIBUTORY LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: CLEAN ENERGY, A CA CORPORATION

SCHEDULE

Name(s) Of Person(s) Or Organization(s):
PERSONS OR ORGANIZATIONS DESCRIBED IN THE WHO IS AN INSURED SECTION OF THIS CONTRACT AND THAT YOU ARE OBLIGATED, PURSUANT TO A WRITTEN CONTRACT OR AGREEMENT, TO PROVIDE WITH PRIMARY INSURANCE AS IS AFFORDED BY THIS POLICY.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Item 5. - **"Other Insurance"** of Item B. - **"General Conditions"** under Section IV - **"Business Auto Conditions"**:

e. Regardless of the provisions of Paragraph 5.a. through d. above, for any liability arising out of the ownership, maintenance, use, rental, lease, loan, hire or borrowing by an "insured" of a covered "auto" for which an "insured" is contractually obligated to provide primary insurance coverage to a client, this Coverage Form will be primary and non-contributory with respect to the Persons or Organizations in the schedule, regardless of the availability or existence of other collectible insurance under any other Coverage Form or policy that applies on a primary basis.

SAMPLE CERTIFICATE

COMMERCIAL AUTOMOBILE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION (OTHER THAN NONPAYMENT OF PREMIUM) SCHEDULED PERSON(S) OR ORGANIZATION(S)

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
GARAGE COVERAGE FORM
TRUCKERS COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

SCHEDULE

Name of Person(s) or Organization(s):
BLANKET-ON FILE WITH COMPANY

Address:

Under Common Policy Conditions the following condition is added:

NOTICE OF CANCELLATION (OTHER THAN NONPAYMENT OF PREMIUM) SCHEDULED PERSON(S) OR ORGANIZATION(S)

When we cancel this policy for any reason other than nonpayment of premium, we will notify the person(s) or organization(s) described in the SCHEDULE at least 30 days in advance of the cancellation date.

Any failure by us to notify such person(s) or organization(s) will not:

Impose any liability or obligation of any kind upon us; or
Invalidate such cancellation.

16-02-0306 (Ed. 5-11) Page 1 of 1

SAMPLE CERTIFICATE

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

WC124
(4-84)

WC 00 03 13

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached affective on the inception data of the policy unless a different data is indicated below.

(The following "attaching clause" need be completed only when this endorsement Is issued subsequent to preparation of the policy.)

This endorsement, affective on 11/30/2021 (DATE) at 12:01 A. M. standard time, forms a part of

Policy No. 7173-64-18 of the PACIFIC INDEMNITY COMPANY (NAME OF INSURANCE COMPANY)

Issued to Clean Energy, a California corporation

Endorsement No. 01

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the parson or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.*

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

Schedule

ANY PERSON OR ORGANIZATION WHEN REQUIRED BY WRITTEN CONTRACT SIGNED PRIOR TO THE DATE OF AN OCCURRENCE COVERED BY THIS POLICY.

SAMPLE CERTIFICATE

WC 124 (4-84)
WC 00 03 13

Copyright 1983 National Council on Compensation Insurance.

Page 1 of 1

CLEAN ENERGY, A CA CORPORATION
4675 MACARTHUR CT STE 800
NEWPORT BEACH CA 92660

(21) 7173-64-18

11-30-2021 to 11-30-2022

11-30-2021

HUB INTERNATIONAL INSURANCE
SERVICES INC
4695 MACARTHUR CT
STE 600
NEWPORT BEACH 92660

Pacific Indemnity Company

0006211

30 DAY NOC NON-RENL/MATERIAL 99999 11/20

30 DAY NOTICE OF CANCELLATION NON RENEWAL OR MATERIAL CHANGE FOR
THE AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

NOTICE CANCELLATION/NONRENEWAL SCH PERS/ORGS:
IF YOU ARE OBLIGATED, PURSUANT TO A WRITTEN CONTRACT OR AGREEMENT, TO PROVIDE NOTICE OF CANCELLATION OR NONRENEWAL TO A PERSON(S) OR ORGANIZATION(S), THEN WE WILL NOTIFY SUCH PERSON(S) OR ORGANIZATION(S) PROVIDED THAT WITHIN 15 DAYS OF OUR REQUEST FOR SUCH INFORMATION TO THE FIRST NAMED INSURED OR PRODUCER OF RECORD, THE FIRST NAMED INSURED OR PRODUCER OF RECORD PROVIDES US WITH A SPREADSHEET CONTAINING THE NAME, MAILING ADDRESS AND, IF AVAILABLE, EMAIL ADDRESS OF THE PERSON(S) OR ORGANIZATION(S).

SAMPLE CERTIFICATE

This endorsement is not applicable for the state of Florida

All Other Terms and Conditions Remain Unchanged

03-19-21

Appendix E, Exceptions/Deviations

Clean Energy Renewables reserves the right to negotiate terms after award.

Appendix F, Sample Documents

Sample Monthly Natural Gas Invoices [CONFIDENTIAL]

Clean Energy

Remit to
Clean Energy Renewable Fuels
PO Box 676911
Dallas, TX 75267-6911
Acct: #3100046386
ABA: #111322994

E: credit@cleanenergyfuels.com
T: 949-437-1000
F: 949-724-1573

Invoice

Ship to
San Diego Metropolitan Transit System
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7440

Bill to
San Diego Metropolitan Transit System
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7440

Customer number:	000006
Invoice number:	CE10001439
Sales order number:	RSO0001476
Invoice date:	7/26/2022
Invoice due date:	8/25/2022
Total discount:	0.00
Total misc charges:	0.00
Total taxes:	0.00
Invoice total (USD):	628,200.00
Terms:	Net 30 days
Purchase order #:	23000268
Page:	1 of 1

Misc. Charges	Description	Site #	Site Desc	Unit Price	Quantity	UOM	Extended Price
				Total			

Item Details	Description	Site #	Site Desc	Unit Price	Quantity	UOM	Extended Price
CNG	Compressed Natural Gas June 2022, SoCal Citygate FOM 10.47	20307	SDMTS	10.47000	60,000.0000	MMBTU	628,200.00
				Total	60,000.0000		628,200.00

Sales Tax	Tax Description	Tax Rate	Sales Total	UOM	Total Taxes
	Total				

Remit to: Clean Energy Renewable Fuels, PO Box 676911, Dallas, TX 75267-6911, Acct: #3100046386, ABA: #111322994
For account inquiries, please email credit@cleanenergyfuels.com

Sample Monthly RIN Credits Generated [CONFIDENTIAL]

Clean Energy

Date: 2/28/2023

San Diego Metropolitan Transit System
January 2023 RIN Statement
Period: 1/1/2022 - 1/31/2022

Facility	Dispensed Volume (MMBtu)	Biomethane Volume (MMBtu)	RINs Generated	Price	MTS RIN Revenue 15.0% Share	Due to MTS
1213 N Johnson Ave A	14,722	14,722	172,651	$ 2.5000	$ 64,744.30	$ 64,744.30
3650 Main Street	14,722	14,722	172,651	$ 2.5000	$ 64,744.30	$ 64,744.30
4630 Ruffner Street	14,722	14,722	172,651	$ 2.5000	$ 64,744.30	$ 64,744.30
3650 Main Street	14,722	14,722	172,651	$ 2.5000	$ 64,744.30	$ 64,744.30
122 16th Street	14,722	14,722	172,651	$ 2.5000	$ 64,744.30	$ 64,744.30
120 16th Street	14,722	14,722	172,651	$ 2.5000	$ 64,744.30	$ 64,744.30
Total	88,333	88,333	172,651	$ 2.5000	$ 388,465.80	$ 388,465.80

Sample Quarterly LCFS Credits Generated [CONFIDENTIAL]

Clean Energy

2023 LCFS Baseline-Diesel	89.15
Fossil CNG CI	79.21
RNG CI	(250.00)
SCF/MMBtu	9.03
MJ/SCF	105.50
EER-Diesel	0.90

San Diego Metropolitan Transit System
Q1 2023 LCFS Statement
Period: January 1 - March 31, 2023

Facility	Dispensed Volume (MMBtu)	Biomethane Volume (MMBtu)	LCFS Credits Generated	Blue Gas Value	Incremental RNG Value	Price	Due to Atlas ReFuel 100% Blue/15% Incremental
1213 N Johnson Ave A	44,167	44,167	13,894	43	13,851	$ 150.00	$ 318,105.08
3650 Main Street	44,167	44,167	13,894	43	13,851	$ 150.00	$ 318,105.08
4630 Ruffner Street	44,167	44,167	13,894	43	13,851	$ 150.00	$ 318,105.08
3650 Main Street	44,167	44,167	13,894	43	13,851	$ 150.00	$ 318,105.08
122 16th Street	44,167	44,167	13,894	43	13,851	$ 150.00	$ 318,105.08
120 16th Street	44,167	44,167	13,894	43	13,851	$ 150.00	$ 318,105.08
Total	**265,000**	**265,000**	**83,362**	**43**	**13,851**	$ 150.00	**$ 1,908,630.48**

Sample Product Transfers [CONFIDENTIAL]

Included for reference purposes only. Our proposed work plan includes Clean Energy Renewables management of all reporting and recordkeeping requirements under the LCFS. MTS would therefore not need this document as we will generate the credits on your behalf.

LCFS Biogas Product Transfer Document

As set forth by California Air Resource Board under Title 17, California code of Regulations §§ 95491b.

Aggregated Transaction Quarter End Date: 03/31/2023

Transferor:
Clean Energy
4675 Macarthur Court, Suite 800
Newport Beach, CA 92660
Sean Wine
949-437-1319
swine@cleanenergyfuels.com

Recipient/Transferee:
San Diego Metropolitan Transit
1255 Imperial Avenue Suite 1000,
San Diego, California 92101
Brianda Diaz
619-557-4580
Brianda.Diaz@sdmts.com

Transfer of Regulated Party Status to Recipient/Transferee:

The recipient/transferee is now the regulated party for the acquired fuel that it has acquired as listed below and accordingly is responsible for meeting the requirements of the LCFS regulations with respect to such fuel.

Prior to any transfer(s) this biogas was produced by the company registered with the EPA under the Company ID (###).

Production Facility ID: #####

Fuel Pathway Code: CNG######

Flow Month	Fuel Type	Carbon Intensity	Volume (MMBtu)
01/01/2023 - 01/31/2023	Green CNG - HDV	x.xx	88,333.0
02/01/2023 - 02/28/2023	Green CNG - HDV	x.xx	88,333.0
03/01/2023 - 03/31/2023	Green CNG - HDV	x.xx	88,334.0

Sample Pipeline Injections [CONFIDENTIAL]

Included for reference purposes only. Our proposed work plan includes Clean Energy Renewables management of all reporting and recordkeeping requirements under the LCFS. MTS would therefore not need this document as we will generate the credits on your behalf.

Meter Volume Information

ATMOS energy

Facility: TransLouisiana Gas Pipeline
Point: [redacted]
Operator: [redacted]
Meter: [redacted]
Acct#: N/A
Flow Direction: Receipt

Gas Day	MCF Volume	BTU	Energy
01/01/2021	4,801.491	934	4,483.655
01/02/2021	4,845.115	927	4,493.385
01/03/2021	4,842.603	927	4,490.821
01/04/2021	5,056.622	925	4,675.934
01/05/2021	4,931.004	927	4,572.542
01/06/2021	4,997.973	934	4,669.459
01/07/2021	5,087.224	926	4,711.399
01/08/2021	4,951.604	921	4,560.698
01/09/2021	4,975.342	919	4,573.214
01/10/2021	4,893.974	922	4,513.359
01/11/2021	5,055.878	917	4,635.383
01/12/2021	5,078.290	915	4,645.329
01/13/2021	5,195.245	921	4,784.563
01/14/2021	5,264.948	920	4,844.878
01/15/2021	4,853.729	915	4,439.417
01/16/2021	4,568.160	913	4,171.021
01/17/2021	5,045.660	912	4,601.116
01/18/2021	5,160.321	910	4,697.315
01/19/2021	5,138.830	909	4,669.859
01/20/2021	4,826.516	920	4,441.125
01/21/2021	5,073.164	924	4,686.888
01/22/2021	4,918.769	926	4,564.444
01/23/2021	4,830.099	927	4,476.623
01/24/2021	4,847.354	933	4,523.525
01/25/2021	4,679.021	933	4,367.488
01/26/2021	4,766.377	923	4,398.775
01/27/2021	4,761.063	914	4,352.384
01/28/2021	4,507.536	901	4,063.408
01/29/2021	4,392.847	927	4,072.698
01/30/2021	4,539.744	937	4,254.213
01/31/2021	4,566.052	933	4,262.225
	151,450.555	922	139,697.143

This report may include preliminary data. No warranty for the accuracy of this data is made or implied. In particular, data obtained prior to the measurement audit (completed late on the 7th workday for the previous month's data) does not include gas quality, missing data, or other adjustments. Imbalance penalties or other fees will not be waived in the event of these or other data corrections. The customer should not rely exclusively on this information, but rather should contact the appropriate Atmos Representative for further information.

02/04/2021 11:35:36AM

AFFIDAVIT

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

The undersigned, under penalty of perjury, attests to the following:

I, Brianda Diaz, currently serve as Procurement Specialist of San Diego Metropolitan Transit System ("MTS") a Public Agency, located at 1255 Imperial Avenue, Suite 1000, San Diego, CA 92101.

In this capacity I oversee the purchase and transportation of natural gas and biogas for MTS.

MTS took title to biogas as defined in 40 CFR 80.1401 from Clean Energy Renewable Fuels, LLC ("CERF") which was produced by various registered biogas production facilities under contract with CERF from 1/1/2023 through 3/31/2023.

The biogas described above was purchased and dispensed only for use as transportation fuel by MTS in accordance with the schedule below:

Biogas Activities by Gold Coast	MMBtu (HHV)
Purchased from CERF:	176,667
Dispensed for Use as Transportation Fuel as CNG:	176,667
Dispensed for Use as Transportation Fuel as LNG:	0

DATED THIS ___ DAY OF APRIL, 2023.

_____

Brianda Diaz
Procurement Specialist
San Diego Metropolitan Transit System

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF VENTURA

On _____ before me, _____, personally appeared

_____,

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Appendix G, RFP Forms

9. FORMS

The following forms/information are required to be submitted with your proposal as a matter of responsiveness. All proposals (and accompanying information) must be received by MTS' Procurement Department prior to the scheduled time and date as specified in the Calendar of Events. Submit the proposal following instructions as specified in Submission Requirements Section.

- ☑ Contact Information Form
- ☑ Cost/Pricing Forms
- ☑ Designation of Subcontractors
- ☑ DBE Program - Information for MTS's Bidder List
- ☑ Certification Regarding Debarment, Suspension and Other Ineligible and Voluntary Exclusions Lower-Tier Covered Transactions Contractor and Subcontractor's Statement of Eligibility Form and Questionnaire
- ☑ Equal Opportunity Program Workforce Report
- ☑ Equal Opportunity Program Workforce Report Continued
- ☑ Status of Current and Past Contracts Form
- ☑ Financial Questionnaire Form
- ☑ California Public Records Act Acknowledgement Form
- ☑ Noncollusion Declaration Form
- ☑ Iran Contracting Act Certification Form
- ☑ Safety Department Standard Operating Procedures and Form
- ☑ Certification of Restrictions on Lobbying Form

CONTACT INFORMATION

Read attached General Provisions carefully. They are a part of your proposal. Unit prices will prevail regardless of extensions submitted by the Proposer.

Company Information:

The Official, Legal Name of Proposing Firm: **Clean Energy Renewable Fuels, LLC**

Doing Business As: **N/A**

Legal Structure (Corp./Partner/Proprietor): **Limited Liability Company**

Company Mailing Address: **4675 MacArthur Court, Suite 800**
Street

Newport Beach **CA** **92660**
City State Zip

Person Authorized to sign:

Point of Contact: **Robert M. Vreeland**

Title: **Chief Financial Officer**

E-Mail Address: **robert.vreeland@cleanenergyfuels.com**

Phone Number: **(949) 437-1272**

Accounts Receivable

Point of Contact: **Eric Albrecht**

Title: **Senior Manager Credit & Collections**

E-Mail Address: **credit@cleanenergyfuels.com**

Phone Number: **(949) 437-1226**

COST/PRICING FORM

Refer to Attachment: ATT 1 Cost Pricing Form

Proposer shall submit pricing for all the work described in the Scope of Work section. In preparing a cost proposal, Proposers are requested to provide a total all-inclusive cost for each year of service. Estimated quantities are for proposal purposes only. The quantities do not reflect guaranteed usage by MTS and may be more or less than indicated.

Read attached General Provisions carefully. They are a part of your proposal. Unit prices will prevail regardless of extensions submitted by the Proposer.

All proposers must complete proposal forms as provided, failure to do so will deem the proposal non-responsive.

Proposer accepts responsibility for accuracy and presentation of the numbers included in the cost/price form.

Submit the proposal following instructions as specified in Submission Requirements section.

DESIGNATION OF SUBCONTRACTORS

List Subcontractor participants below. If 100% of item is not to be performed or furnished by subcontractor, describe exact portion of item to be performed or furnished by subcontractor. The successful bidder must execute and return this form even if no subcontractor participation will be reported.

	Subcontractor 1
Company Name:	BP Energy Company
Contractor License or Certificate Number	B2011022782
DBE, DVBE LGBT, MBE, SB, WBE:	N/A
% of Work:	10
Department of Industrial Relations (DIR) Number:	N/A
Point of Contact	Sean Reavis
Email:	Sean.Reavis@bp.com
Phone Number:	(402) 203-2911
Address:	201 Helios Way (Street)
	Houston (City) TX (State) 77079 (Zip)

Description of Work:

Having provided RNG services to MTS for years, BP's new role will be to ensure a seamless transition to Clean Energy Renewables and to secure RNG supply going forward.

COPY THIS FORM IF NEEDED FOR ADDITIONAL SUBCONTRACTORS.

Subcontractor _____

Company Name: _____

Contractor License or Certificate Number _____

DBE, DVBE LGBT, MBE, SB, WBE: _____

% of Work: _____

Department of Industrial Relations (DIR) Number: _____

Point of Contact _____

Email: _____

Phone Number: _____

Address: _____
Street

_____
City State Zip

Description of Work:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

DBE PROGRAM – INFORMATION FOR MTS'S PROPOSAL LIST

Per U.S. Department of Transportation's (DOT's) DBE Regulation 49 CFR 26.11, MTS must obtain the following information about contractors and subcontractors whom bid on MTS's federally assisted contracts: company name; company address; company's status as a DBE or non-DBE; age of firm; and the annual gross receipts of the company. This information will be maintained in MTS's proposer list. The purpose for maintaining a proposer list is to derive data on the relative availability of DBEs in the local market. MTS may use this data in the future to help set MTS's overall DBE participation goals on federally assisted contracts.

INSTRUCTIONS: Each prime contractor and each subcontractor bidding on a MTS federally assisted contract is **required** to complete this form as part of their bid/proposal.

1. What is your company's name? **Clean Energy Renewable Fuels, LLC**
2. What is your company's address? **4675 MacArthur Court, Suite 800 Newport Beach, CA 92660**
3. What type of work does your company perform? (list NAICS Codes if known) **Delivery of RNG for vehicles**

Is your company a certified DBE WBE, DVBE, SB or LGBT? If yes, please check the applicable box and state the corresponding certification number.

- ☐ DBE
- ☐ DVBE
- ☐ MBE
- ☐ SB
- ☐ WBE
- ☐ LGBT

5. How many years has your company been in business? **11 years**
6. What are the annual gross receipts of your company (please check the applicable bracket)?

- ☐ Less than $1,000,000
- ☐ $1,000,001 – $15,000,000
- ☐ $15,000,001 - $26,290,000*
- ☐ $26,290,001– $50,000,000
- ☐ $50,000,001 - $100,000,000
- ☑ Greater than $100,000,000

*The DOT annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous 3 fiscal years has had average annual gross receipts below $26,290,000, your company may be eligible for DBE Certification. *

7. Do you want MTS to provide your company additional guidance on how to become DBE certified?

- ☐ Yes
- ☑ No

ACKNOWLEDGED AND AGREED

SUBCONTRACTOR

(Copy this form if needed for additional subcontractors)

Print Name: _____

Title: _____

Signature: _____

Date: _____

PRIME CONTRACTOR

Print Name: **Robert M. Vreeland**

Title: **Chief Financial Officer**

Signature: Robert M Vreeland

Date: **August 9, 2022**

DBE PROGRAM – INFORMATION FOR MTS'S PROPOSAL LIST

Per U.S. Department of Transportation's (DOT's) DBE Regulation 49 CFR 26.11, MTS must obtain the following information about contractors and subcontractors whom bid on MTS's federally assisted contracts: company name; company address; company's status as a DBE or non-DBE; age of firm; and the annual gross receipts of the company. This information will be maintained in MTS's proposer list. The purpose for maintaining a proposer list is to derive data on the relative availability of DBEs in the local market. MTS may use this data in the future to help set MTS's overall DBE participation goals on federally assisted contracts.

INSTRUCTIONS: Each prime contractor and each subcontractor bidding on a MTS federally assisted contract is **required** to complete this form as part of their bid/proposal.

1. What is your company's name? **BP Energy Company**
2. What is your company's address? **201 Helios Way, Houston, TX 77079**
3. What type of work does your company perform? (list NAICS Codes if known) **Natural Gas Trading and Marketing**

Is your company a certified DBE WBE, DVBE, SB or LGBT? If yes, please check the applicable box and state the corresponding certification number.

- ☐ DBE
- ☐ DVBE
- ☐ MBE
- ☐ SB
- ☐ WBE
- ☐ LGBT

5. How many years has your company been in business? **30+ years**
6. What are the annual gross receipts of your company (please check the applicable bracket)?

- ☐ Less than $1,000,000
- ☐ $1,000,001 – $15,000,000
- ☐ $15,000,001 - $26,290,000*
- ☐ $26,290,001– $50,000,000
- ☐ $50,000,001 - $100,000,000
- ☑ Greater than $100,000,000

*The DOT annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous 3 fiscal years has had average annual gross receipts below $26,290,000, your company may be eligible for DBE Certification. *

7. Do you want MTS to provide your company additional guidance on how to become DBE certified?

- ☐ Yes
- ☑ No

ACKNOWLEDGED AND AGREED

SUBCONTRACTOR

(Copy this form if needed for additional subcontractors)

Print Name: **Ronald Vogel**
Title: **Attorney In Fact**
Signature: Ron Vogel
Date: **July 21, 2022**

PRIME CONTRACTOR

Print Name: **Robert M. Vreeland**
Title: **Chief Financial Officer**
Signature: Robert M Vreeland
Date: **August 9, 2022**

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBLE AND VOLUNTARY EXCLUSIONS LOWER THAN TIER COVERED TRANSACTIONS

CONTRACTOR AND SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

(Provide one completed Form for the Prime Contractor and any Subcontractors)

MTS may not permit a contractor or subcontractor to bid on, be awarded, or perform work on a public works project if the contractor or subcontractor is ineligible to bid on, be awarded or perform work on a public works project pursuant to California Labor Code sections 1777.1 or 1777.7.

In addition, MTS may not award any federally funded contract over $25,000 to a contractor or subcontractor that is excluded or disqualified pursuant to 2 CFR Part 180 Subpart C.

The prime/subcontractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification.

QUESTIONNAIRE

Has the Contractor, or any officer, principal, affiliates or employee of the Contractor ever been debarred, suspended, proposed for debarment, declared ineligible or otherwise prevented from bidding on, or completing a federal, state, or local government project?

☐ Yes
☑ No

If the answer is yes, or where the prime/subcontractor is unable to certify any of the statements in the above certifications, such prime/subcontractor shall attach an explanation (i.e. date, background, resolution) with this form.

Note: Failure to provide this form at the time of Bid/Proposal will not result in a finding of a non-responsive bid/proposal. Submittal of this form for The Prime Contractor and all Subcontractors is required for a Proposer to be deemed "Responsible." MTS encourages Proposers to complete and submit all forms at the time of bid/proposal.

SUBCONTRACTOR (Copy this form if needed for additional subcontractors)		PRIME CONTRACTOR	
Business Name:		Business Name:	Clean Energy Renewable Fuels, LLC
License No. (if applicable):		License No. (if applicable):	B2022008369
DUNS No.:		DUNS No.:	07-933-6714

ACKNOWLEDGED AND AGREED

Print Name:		Print Name:	Robert M. Vreeland
Title:		Title:	Chief Financial Officer
Signature:		Signature:	Robert M Vreeland
Date:		Date:	August 9, 2022

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBLE AND VOLUNTARY EXCLUSIONS LOWER THAN TIER COVERED TRANSACTIONS

CONTRACTOR AND SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

(Provide one completed Form for the Prime Contractor and any Subcontractors)

MTS may not permit a contractor or subcontractor to bid on, be awarded, or perform work on a public works project if the contractor or subcontractor is ineligible to bid on, be awarded or perform work on a public works project pursuant to California Labor Code sections 1777.1 or 1777.7.

In addition, MTS may not award any federally funded contract over $25,000 to a contractor or subcontractor that is excluded or disqualified pursuant to 2 CFR Part 180 Subpart C.

The prime/subcontractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification.

QUESTIONNAIRE

Has the Contractor, or any officer, principal, affiliates or employee of the Contractor ever been debarred, suspended, proposed for debarment, declared ineligible or otherwise prevented from bidding on, or completing a federal, state, or local government project?

☐ Yes
☑ No

If the answer is yes, or where the prime/subcontractor is unable to certify any of the statements in the above certifications, such prime/subcontractor shall attach an explanation (i.e. date, background, resolution) with this form.

Note: Failure to provide this form at the time of Bid/Proposal will not result in a finding of a non-responsive bid/proposal. Submittal of this form for The Prime Contractor and all Subcontractors is required for a Proposer to be deemed "Responsible." MTS encourages Proposers to complete and submit all forms at the time of bid/proposal.

SUBCONTRACTOR (Copy this form if needed for additional subcontractors)		PRIME CONTRACTOR	
Business Name:	BP Energy Company	Business Name:	Clean Energy Renewable Fuels, LLC
License No. (if applicable):	B2011022782	License No. (if applicable):	B2022008369
DUNS No.:	62-527-5755	DUNS No.:	07-933-6714

ACKNOWLEDGED AND AGREED

Print Name:	Ronald Vogel	Print Name:	Robert M. Vreeland
Title:	Attorney In Fact	Title:	Chief Financial Officer
Signature:	Ronald Vogel	Signature:	Robert M Vreeland
Date:	July 21, 2022	Date:	August 9, 2022

EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT

Metropolitan Transit System (MTS) enforces an Equal Opportunity (EEO) program established under MTS policies and procedures No. 25. This program prohibits discrimination in employment and requires MTS Contractors to be equal opportunity employers. You may submit a copy of the Employer Information Report, EEO-1, in lieu of the **Equal Opportunity Program Workforce Report Continued Form**. The undersigned hereby certifies that the foregoing data contained herein is true and correct:

COMPLETE ALL SECTIONS OF THIS FORM:

1. The Official, Legal Name of Proposing Firm: **Clean Energy Renewable Fuels, LLC**
2. Doing Business As: **N/A**
3. Legal Structure (Corp./Partner/Proprietor): **Limited Liability Company**
4. Address of Establishment in San Diego County: **N/A** (Street)

   (City) (State) (Zip)
5. If there is no office in San Diego County, or if there are less than 15 employees in that office, include an address for your regional office that will oversee the work under MTS' contract: **4675 MacArthur Court, Suite 800** (Street)

   Newport Beach (City) **CA** (State) **92660** (Zip)

Employment Data - Include the employees located in San Diego County only, unless your firm employs fewer than fifteen (15) people locally. In the event, you should list the workforce of the regional office that will oversee the work under MTS' contract. Report all permanent full-time and part-time employees including apprentices and on-the-job trainees. Blank spaces will be considered as zeros

ACKNOWLEDGED AND AGREED

6. Name, Address, and Phone Number of Person to Contact Regarding this Report:

Name of Signee: **Rosemaria Altieri**
Title: **Director Human Resources**
Phone Number: **(949) 437-9169**
Address: **4675 MacArthur Court, Suite 800** (Street)

Newport Beach (City) **CA** (State) **92660** (Zip)

Name of Signee: **Robert M. Vreeland**
Authorized Signature: Robert M Vreeland
Date: **August 9, 2022**

EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT CONTINUED

OCCUPATIONAL CATEGORY	African American		Hispanic		Asian or Pacific Islander		Native American		Other		Overall Total	
	M	F	M	F	M	F	M	F	M	F	M	F
Executive/Managerial												
Engineers/Architects/ Surveyors												
Professionals (N.E.C.)												
Technicians			SEE ATTACHED SHEETS									
Sales												
Administrative Support												
Protective Services												
Services (N.E.C.)												
Craft Workers (Skilled)												
Machine Operators, Assemblers & Inspectors												
Transportation and Material Moving												
Laborers (Unskilled)												
TOTALS FOR EACH COLUMN												

Indicate by gender and ethnic code the number of the above workforce, which are persons with disabilities:

DISABLED												

COMPID = BP95927
UNITID = BP95927

EQUAL EMPLOYMENT OPPORTUNITY
2020 EMPLOYER INFORMATION REPORT EEO-1
Consolidated Report

SECTION B – COMPANY IDENTIFICATION

1. CLEAN ENERGY
4675 MACARTHUR COURT
SUITE 800
NEWPORT BEACH, CA 92660

2.a. CLEAN ENERGY
4675 MACARTHUR COURT
SUITE 800
NEWPORT BEACH, CA 92660

c. EIN= 954603747

SECTION C – TEST FOR FILING REQUIREMENT

1- Y 2- N 3- Y DUNS= 829953988

SECTION E – ESTABLISHMENT INFORMATION
NAICS: 221210 - Natural Gas Distribution

SECTION D – EMPLOYMENT DATA

JOB CATEGORIES	Hispanic or Latino		Non-Hispanic or Latino												Overall Totals
			********** Male **********						********** Female **********						
	Male	Female	White	Black or African American	Native Hawaiian Or Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	White	Black or African American	Native Hawaiian Or Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	
Exec/Sr. Officials & Mgrs	0	0	5	0	0	0	0	0	1	0	0	0	0	0	6
First/Mid Officials & Mgrs	4	2	56	0	0	4	0	3	12	0	0	4	0	2	87
Professionals	6	4	29	0	0	13	0	2	19	1	0	12	0	0	86
Technicians	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sales Workers	0	1	10	0	0	0	0	0	3	1	0	0	0	0	15
Administrative Support	3	7	10	2	0	3	0	0	9	1	0	3	0	3	41
Craft Workers	28	1	98	7	0	4	0	6	0	0	0	0	0	0	144
Operatives	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Laborers & Helpers	2	0	4	1	0	0	0	0	0	0	0	0	0	0	7
Service Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	43	15	213	10	0	24	0	11	44	3	0	19	0	5	387
Previous Year Total	37	13	248	11	1	16	0	8	42	1	0	20	0	5	402

SECTION F – REMARKS

DATES OF PAYROLL PERIOD: 10/10/2020 THRU 10/23/2020

SECTION G – CERTIFICATION: CERTIFIED DATE: 8/18/2021 9:29 PM

CERTIFYING OFFICIAL: Bernadette Abrenica TITLE: Sr. Benefits Specialist
EMAIL: bernadette.abrenica@cleanenergyfuels.com PHONE: 949-437-1000
EEO-1 REPORT CONTACT PERSON: Bernadette Abrenica TITLE: Senior Benefits Specialist
EMAIL: bernadette.abrenica@cleanenergyfuels.com PHONE: 949-437-1000

ETHNIC IDENTIFICATION

African American: (NOT OF HISPANIC ORIGIN): All persons having origins in any of the black racial groups of Africa.
Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
Asian or Pacific Islander: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area, includes, China, Japan, Korea, the Philippine Islands, and Samoa.
Native American: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition
Other: Caucasian and others not falling into one of the designated categories.
DISABLED DEFINITION
Any person who 1) has a physical or mental condition which limits one or more of such person's major life activities, 2) has a history of such a condition, or 3) is regarded as having such a condition. For purposes of this definition, "major life activity" means any mental or physical function or activity, which if impaired, creates a substantial barrier to employment.

OCCUPATIONAL CATEGORY LIST

Executive/Managerial
Executive, Management Related
Engineers/Architects/Surveyors
Professionals (N.E.C.)*
Mathematical and Computer Scientists
Natural Scientists
Health Diagnosing
Health Assessment and Treating
Teachers, Postsecondary
Teachers, except Postsecondary
Counselors, Educational and Vocational
Librarians, Archivists, Curators
Social Scientists and Urban Planners
Social, Recreation and Religious Workers
Lawyers and Judges
Writers, Artists Entertainers & Athletes
Technicians
Health Technologists and Technicians
Engineering and Related Technologists and Technicians
Science Technicians
Technicians, Except Health, Engineering, and Service
Sales
Supervisors and Proprietors
Sales Representatives, Finance, and Business Services
Sales Representatives, Commodities except Retail
Sales Workers, Retail, and Personal Services
Other Sales Related
Administrative Support
Supervisors of Administrative Support
Computer Equipment Operators
Secretaries, Stenographers, Typists
Information Clerks
Records Processing, Except Financial
Financial Records Processing
Duplicating and Other Office Machine Operators
Communications Equipment Operators
Mail and Message Distributing
Material Recording and Distributing Clerks
Adjusters and Investigators
Other Office/Clerical
*N.E.C.: Not Elsewhere Classified
Protective Services
Supervisors of Protective Services
Firefighting and Fire Prevention
Police and Detectives
Guards & Other Protective Services
Services (N.E.C.)*
Private Households
Food Preparation and Services
Health Services
Cleaning and Building Services
Personal Services
Craft Workers (Skilled)
Supervisors of Mechanics and Repairers
Vehicle and Mobile Equipment Mechanics and Repairers
Heating, Air Conditioning, Refrigeration, Mechanics
Other Mechanics and Repairers
Supervisors of Construction Trades
Construction Trades, Except Supervisors
Extractive Occupations
Precision Production Occupations
Machine Operators, Assemblers & Inspectors
Metalworking and Plastic Working Machine Operator
Metal and Plastic Processing Machine Operators
Woodworking Machine Operators
Printing Machine operators
Textile, Apparel, and furnishing Machine Operators
Machine Operators, Assorted Materials
Fabricators, Assembler and Hand Working Occupations
Production Inspector, Tester, Sampler, Weigher
Transportation and Material Moving
Motor Vehicle Operators
Rail Transportation Occupations
Water Transportation Occupations
Material Moving Equipment Operators
Laborers (Unskilled)
Handlers
Equipment Cleaners
Helpers & Laborers

STATUS OF CURRENT AND PAST CONTRACTS

Proposers shall list the status of **at least three (3)** current and past contracts where the subject scope of work has been performed within the past five years.

Proposer shall provide an accurate contact name, telephone number, and email for each contract, the terms and scope of the contract, the original contract value and if the contract has been completed or is still in progress. The Proposer must also indicate if the contract was terminated by either the procuring agency or by the Contractor for cause or convenience. If the contract was terminated, list the reason for termination. Identify and state the status of any litigation, claims, or settlement agreements related to any of the contracts.

REFERENCE NO.1

Company Name:	**Foothill Transit**
Point of Contact:	**Sharlane Bailey, Director of Facilities**
Phone:	**(626) 931-7253**
Email:	**sbailey@foothilltransit.org**
Project Award Date:	**September 2014**
Original Contract Value:	**Value fluctuates based on RNG market conditions.**
Status of Contract:	**Current**

A. Terms and Scope of Contract

Maintain their CNG stations, RNG Supply, and Management of LCFS and RIN Credit Programs. In 2021, Foothill Transit awarded Clean Energy a contract to design, build, operate, maintain and supply fuel for their new hydrogen fueling station.

B. Identify Claims / Litigation or Settlements Associated with each Contract:

None

ACKNOWLEDGED AND AGREED

Clean Energy Renewable Fuels, LLC

Robert M Vreeland

Robert M. Vreeland, Chief Financial Officer

REFERENCE NO.2

Company Name:	Los Angeles Metropolitan Transit Authority
Point of Contact:	Craig Reiter, Senior Director, Sustainability and Energy
Phone:	(213) 418-3476
Email:	reiterC@metro.net
Project Award Date:	2017 - Present (RNG)
Original Contract Value:	Value fluctuates based on RNG market conditions.
Status of Contract:	Current

A. Terms and Scope of Contract

Design, build, operate and maintain CNG Stations, RNG and commodity gas supply, Management of LCFS and RIN credit programs

B. Identify Claims / Litigation or Settlements Associated with each Contract:

None

ACKNOWLEDGED AND AGREED

Clean Energy Renewable Fuels, LLC

Robert M. Vreeland

Robert M. Vreeland, Chief Financial Officer

REFERENCE NO.3

Company Name:	Kings County Area Public Transit Agency
Point of Contact:	Angie Dow; Executive Director
Phone:	(559) 852-2691
Email:	angie.dow@co.kings.ca.us
Project Award Date:	June 2018
Original Contract Value:	Value fluctuates based on RNG market conditions.
Status of Contract:	Current

A. Terms and Scope of Contract

Maintain their CNG station, RNG Supply, and Management of LCFS and RIN Credit Programs

B. Identify Claims / Litigation or Settlements Associated with each Contract:

None

ACKNOWLEDGED AND AGREED

Clean Energy Renewable Fuels, LLC

Robert M Vreeland

Robert M. Vreeland, Chief Financial Officer

FINANCIAL QUESTIONNAIRE FORM

1. This organization is organized under the laws of the State of: **California**

2. Principal Financial institution. The information bellow will be used to assess financial responsibility.

Name of Bank: **Plains Capital Bank**

Address: **2911 Turtle Creek Blvd.**
Street

Dallas, TX 75219
City State Zip

Telephone: **(214) 252-4000**

Officer Familiar with Proposer's Account: **Kimberly Fry**

3. Business License

NOTE: The representations regarding the Proposer's license are made under penalty of perjury.

Proposer's Business License No.: **B2022008369**

Original Date Issued: **July 22, 2022**

Expiration Date: **June 30, 2023**

Proposer's DUNS No.: **07-933-6714**

Expiration Date: **N/A**

Proposer's System for Award Management (SAM) No.: **Registration in process, Pending ID Assignment**

Expiration Date: **TBD**

4. The date of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this proposal are as follows:

Not Applicable

5. All current and prior DBAs, alias, and/or fictitious business names for any principal having an interest in this proposal are as follows:

None

6. Has Proposer ever failed to complete any work awarded to it? If so, when, where, and why?

No

7. Identify any conditions bankruptcy, pending litigation, planned office closures, impending merger:

None

8. Provide a general description of the individual or firm's financial condition:

Clean Energy Renewable Fuels, LLC ("CERF") is a wholly owned subsidiary of Clean Energy Fuels Corp. ("CLNE"), a publicly traded company on the Nasdaq Stock Market. CLNE reports the operating activities of all its subsidiaries, including CERF, with the Securities and Exchange Commission on a consolidated basis. As of December 31, 2021, CLNE's consolidated current assets are $410 million, including $229 million of cash and cash equivalents. For CLNE's financials, see CLNE's annual report attached.

CALIFORNIA PUBLIC RECORD ACT (CPRA) AKNOWLEDGEMENT

I/We hereby represent, acknowledge, and agree as follows:

1. MTS is a California public agency established by California Public Utilities Code, Section 120000. et. seq., and is subject to the California Public Records Act (Government Code sec. 6250 et seq.) which provides generally that all records relating to a public agency's business are open to public inspection unless exempted from disclosure by law.

2. The proposal I/we have submitted to MTS is open to public inspection under CPRA unless it is exempted from disclosure by law.

3. To the extent the proposal includes materials that I/we believe are exempt from disclosure under CPRA, I/we understand that I/we must provide a letter identifying the materials that I/we believe are exempt from disclosure and explaining the basis for exemption.

4. Any materials not identified as exempt from disclosure are open to public inspection, and I/we waive any right to subsequently claim exemption from disclosure for such materials.

5. MTS at all times retains the right to make the final determination regarding what, if any, portion of a proposal is subject to disclosure under CPRA.

6. Use of headers/footers bearing designations such as "confidential", "proprietary", or "trade secret" on all or nearly all of a proposal which would prohibit or limit public inspection is not acceptable and may deem the proposal non-responsive and may be rejected; labeling a page as such does not prohibit MTS from disclosing the page in response to a Public Records Act (PRA) response or in the ordinary cause of business if MTS concludes it is obligated to so by applicable law.

7. To defend and indemnify MTS in any action on a PRA request for any of the contents of a Proposal marked TRADE SECRET, CONFIDENTIAL or PROPRIETARY.

8. Marking a document as "trade secret", "confidential" or "proprietary" without the express written permission of MTS does not exempt a document from disclosure to third parties under state or federal law, or in the normal course of MTS's business operations. MTS has no obligation to get a respondent's permission before producing such documents.

9. The bid I/we have submitted *(check one of the following)* materials that we believe are exempt from disclosure under CPRA.

INCLUDES ☑

DOES NOT INCLUDE ☐

ACKNOWLEDGED AND AGREED

Company Name: Clean Energy Renewable Fuels, LLC

Title: Chief Financial Officer

Signature: Robert M Vreeland

Date: Robert M. Vreeland
August 9, 2022

August 12, 2022

Brianda Diaz
Procurement Specialist
San Diego Metropolitan Transit System
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

Subject: Confidentiality of Proposal Content

Dear Ms. Diaz:

Clean Energy Renewable Fuels, LLC is pleased to present our proposal for a Gas Service Provider, MTS DOC. NO. G2627.0-22. This letter is in response to the California Public Record Act (CPRA) Acknowledgement form in this RFP, which asks for "a letter identifying the materials that I/we believe are exempt from disclosure and explaining the basis for exemption."

Clean Energy Renewable Fuels' proposal is marked "Confidential" in certain sections for the following reasons.

Clean Energy Renewable Fuels' proposal contains certain records that are statutorily exempt from public disclosure, including, without limitation, proprietary cost and pricing information and confidential information regarding employees and customers. Government Code section 6254(c) authorizes public agencies to withhold records in the interest of personal privacy, including employee and customer information. In addition, Government Code section 6254(k) authorizes public agencies to withhold records when federal or state law exempts or prohibits disclosure. Trade secrets, as defined by Civil Code section 3426.1(d), are exempt from disclosure by the California Uniform Trade Secrets Act, Government Code section 6254.15, Government Code section 6276.44, and Evidence Code section 1060. The following case law provides further support for the exemption of the foregoing information: *San Jose Construction, Inc. v. S.B.C.C., Inc.* (2007) 155 Cal.App.4th 1528 and *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443 (citing authority that billing and markup rates, cost and pricing information, and profit margins are trade secrets).

In light of the above, Clean Energy Renewable Fuels asks that MTS provide Clean Energy Renewable Fuels with notice in the event of a CPRA request so that Clean Energy Renewable Fuels can (1) prepare a redacted version of its RFP proposal to remove the portions that are exempted by law, pursuant to Government Code section 6253(a); and (2) provide statutory and case law support to justify the redactions.

Thank you for the opportunity to submit our proposal for this project. We look forward to hearing from you soon.

Sincerely,

Robert M Vreeland

Robert M. Vreeland
Chief Financial Officer

Clean Energy
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
949.437.1000
CleanEnergyFuels.com

NONCOLLUSION DECLARATION

TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH OFFER

(23 U.S.C. § 112(c) and California Public Contract Code § 7106)

The undersigned declares:

I am the Chief Financial Officer of Clean Energy Renewable Fuels, LLC, the party making the foregoing offer.

The offer is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The offer is genuine and not collusive or sham. The proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham offer. The proposer has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham offer, or to refrain from submitting an offer. The proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the offer price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the offer price, or of that of any other proposer. All statements contained in the offer are true. The proposer has not, directly or indirectly, submitted his or her offer price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, offer depository, or to any member or agent thereof, to effectuate a collusive or sham offer, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of the proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on August 9, 2022 (date), at Newport Beach (city), California (state).

ACKNOWLEDGED AND AGREED

Name of Contractor: Clean Energy Renewable Fuels, LLC

Signature: Robert M Vreeland

Date: Robert M. Vreeland
August 9, 2022

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code Section 2200 *et seq.*)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) is true and correct:

1. The Contractor is not:

   a. identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or

   b. a financial institution that extends, for 45 days or more, credit in the amount of $20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran. ☑

2. MTS has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, MTS will be unable to obtain the goods and/or services to be provided pursuant to the Contract. ☐

3. The amount of the Contract payable to the Contractor for the Project does not exceed $1,000,000. ☐

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of $250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

ACKNOWLEDGED AND AGREED

Company Name: Clean Energy Renewable Fuels, LLC

Title: Chief Financial Officer

Signature: Robert M Vreeland

Date: Robert M. Vreeland
August 9, 2022

SAFETY DEPARTMENT STANDARD OPERATING PROCEDURES

FOR CONTRACTORS SAFETY AND HEALTH REQUIREMENTS

(SAF 016-03)

January 2003

SAF 016-03

Purpose: To establish environmental, safety and health requirements for the San Diego Metropolitan Transit System (MTS) Contractors.

Background: MTS is committed in providing and maintaining a safe work place, safe plant and equipment, and a safe and competent workforce as required by legislation and best industrial practice for our employees, customers, visitors, and general public.

To support this commitment, we require our Contractors to provide adequate leadership and safety training for their employees and require the same of their sub-Contractors.

Objectives: This SOP requires all MTS Contractors to:

- Comply with the environmental, safety and health requirements of the contract as per FTA, OSHA, Cal OSHA, and San Diego Metropolitan Transit System (MTS).
- Assign a competent person the responsibility for the implementation of the safety regulations, personal protective equipment usage, and compliance with hazardous materials/environmental policies, and drug and alcohol program.
- Ensure that all Contractor employees and sub-Contractors are trained and educated in safety and support on-site Contractors on safe work and MTS safety programs.
- Sign the MTS Contractual Agreement with Outside Agencies (Safety Rules).

MTS Representatives are required to:

- Pro-actively monitor the Contractors' workplace to identify all occupational health and safety hazards – Departmental/Safety representative.
- Safety and contract requirements compliance – Audit/Inspection conducted and documented (schedule and spot check) by Quality Assurance Department.

NOTE: Copies of both MTS Illness and Injury Prevention Program (IIPP) and the MTS Maintenance Department Code of Safe Practices are available in the Safety Department's office. MTS handles the Engineering/Construction site safety plans.

SAFETY DEPARTMENT SAFETY RULES

MTS Contractual Agreement with Outside Agencies

Work on MTS Premises

A. Safety Rules

These safety rules apply specifically to Contractors, Contractor's employees, or sub-Contractors working on Metropolitan Transit System (MTS) property. Any loss or damage, including death, resulting from Contractors, Contractor's employees, or subcontractor's negligence shall hold MTS management and employees harmless from any such loss. No work shall be performed on MTS property without approval and proper permits, when required. Requirements:

1. Comply with Cal OSHA, state, local and MTS' safety, and environmental policies.
2. Observe and follow all posted facilities safety regulations.
3. Use the proper Personal Protective Equipment required for the job.
4. No illegal drugs or alcohol will be consumed on site or off the premises while working for MTS.

B. Use of Tools and Equipment (when required)

1. Required Tools and Equipment must be in good condition, safe for use and calibrated (if required).
2. Follow safe engineering work practices/procedures.
3. Wear the required personal protective equipment when using tools.

C. Machinery and Vehicles (when required)

1. Do not attempt to operate MTS machinery or equipment without special permission.
2. Only licensed operators may operate Forklift Trucks and other equipment on MTS occupied spaces.

D. Contractor Requirements (when required)

1. Valid Contractor's license number.

ACKNOWLEDGED AND AGREED

Company Name: Clean Energy Renewable Fuels, LLC

Print Name: Robert M. Vreeland

Title: Chief Financial Officer

Signature: Robert M Vreeland

Date: August 9, 2022

CERTIFICATE OF RESTRICTIONS ON LOBBYING

The CONTRACTOR hereby certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

3. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Check one of the following Boxes.

Does NOT Apply	☑
Applies	☐

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Executed this 9th day of August, 2022.

ACKNOWLEDGED AND AGREED

Name of Contractor: Clean Energy Renewable Fuels, LLC

Signature: Robert M Vreeland

Date: Robert M. Vreeland
August 9, 2022

SAMPLE PROMPT PAYMENT CERTIFICATION FORM

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
PROMPT PAYMENT CERTIFICATION FORM

PURPOSE: This certification is used to monitor compliance by prime contractors to promptly pay its subcontractors. In accordance with DOT's DBE Regulations and MTS's DBE Program, prime contractors must pay its subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of payment from MTS. Any delay or postponement of payment over thirty (30) days must be for good cause and after receipt of prior written approval from a MTS Project Manager.

INSTRUCTIONS: Please complete the below Prompt Payment Certification Form and return to MTS within **14 days** after receipt of payment from MTS at the following email address: antonio.monreal@sdmts.com. If there is more than one subcontractor on the contract, please complete a separate Prompt Payment Certification Form for each subcontractor.

1. CONTRACTOR INFORMATION

Contractor Name: _____ Contract No. _____ Work Order No. _____

Telephone No. _____ Email Address _____

2. PAYMENT INFORMATION

a) Name of Subcontractor: _____

b) Type of Services or Materials Provided by Subcontractor (state NAICS code if known)

_____

c) Date Last Payment Received from MTS?

_____

d) Was any of that payment for services/materials provided by the subcontractor? If YES, please answer questions e-g. If NO, proceed to Part 3 Certification.

_____

e) When was the Subcontractor paid for the services/materials it provided? * Prime contractors must pay its subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of payment from MTS*

_____

f) If payment was delayed or postponed over thirty (30) days, was the reason for good cause? (Explain) _____

_____

g) If payment was delayed or postponed over thirty (30) days, **who** at MTS pre-authorized the delay or postponement and **when** was such pre-authorization given? _____

_____

3. CERTIFICATION

The contractor hereby certifies that the foregoing Prompt Payment Certification Form is true and correct.

Signature _____ Title _____ Date _____

_____

***** FOR MTS USE ONLY *****

Date Certification Received _____ Contractor Compliant _____

Contract Administrator _____ Date Reviewed _____

_____

SAMPLE

EXHIBIT 4: BASE CONTRACT FOR THE PURCHASE AND SALE OF NATURAL GAS NAESB TERMS AND CONDITIONS

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 San Diego**	*PARTY NAME*	PARTY B **Clean Energy Renewable Fuels, LLC**
1200 Third Ave #200 San Diego, CA 92187	*ADDRESS*	4675 MacArthur Court, Suite 800 Newport Beach, CA 92660
www.sandiego.gov/	*BUSINESS WEBSITE*	**www.cleanenergyfuels.com**
60000028-26-R	*CONTRACT NUMBER*	CSD001
	D-U-N-S® NUMBER	
☒ US FEDERAL: 95-6000776 ☐ OTHER:	*TAX ID NUMBERS*	☒ US FEDERAL: 27-5411503 ☐ OTHER:
	JURISDICTION OF ORGANIZATION	Delaware
☐ Corporation ☐ LLC ☐ Limited Partnership ☐ Partnership ☐ LLP ☒ Other: **Municipal Corporation**	*COMPANY TYPE*	☐ Corporation ☒ LLC ☐ Limited Partnership ☐ Partnership ☐ LLP ☐ Other: _____
	GUARANTOR (IF APPLICABLE)	

CONTACT INFORMATION

City of San Diego ATTN: Chase Wiegand TEL#: 858-492-5033 EMAIL: cwiegand@sandiego.gov	■ COMMERCIAL	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
City of San Diego ATTN: Chase Wiegand TEL#: 858-492-5033 EMAIL: cwiegand@sandiego.gov	■ SCHEDULING	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
City of San Diego ATTN: Chase Wiegand TEL#: 858-492-5033 EMAIL: cwiegand@sandiego.gov	■ CONTRACT AND LEGAL NOTICES	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
City of San Diego ATTN: Monique Coleman TEL#: 858-526-2335 EMAIL: mcoleman@sandiego.gov	■ CREDIT	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
City of San Diego ATTN: Monique Coleman TEL#: 858-526-2335 EMAIL: mcoleman@sandiego.gov	■ TRANSACTION CONFIRMATIONS	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com

ACCOUNTING INFORMATION

City of San Diego ATTN: Monique Coleman TEL#: 858-526-2335 EMAIL: mcoleman@sandiego.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: City of San Diego ATTN: Monique Coleman ADDRESS: 8353 Miramar Place San Diego, CA 92121	CHECKS (IF APPLICABLE)	ATTN: Clean Energy Renewable Fuels, LLC ADDRESS: 4675 MacArthur Ct, Suite 800 Newport Beach, CA 92660

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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 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

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 6 Taxes
☒ Buyer Pays At and After Delivery Point (default)
OR
☐ Seller Pays Before and At Delivery Point

Section 7.2 Payment Date
☒ 25th Day of Month following Month of delivery (default)
OR
☐ Day of Month following Month of delivery

Section 7.2 Method of Payment
☐ Wire transfer (default)
☐ Automated Clearinghouse Credit (ACH)
☒ Check

Section 7.7 Netting
☒ Netting applies (default)
OR
☐ Netting does not apply

Section 10.2 Additional Events of Default
☒ No Additional Events of Default (default)
☐ Indebtedness Cross Default
☐ Party A: _____
☐ Party B: _____
☐ Transactional Cross Default
Specified Transactions:
_____
_____

Section 10.3.1 Early Termination Damages
☐ Early Termination Damages Apply (default)
OR
☒ Early Termination Damages Do Not Apply

Section 10.3.2 Other Agreement Setoffs
☒ Other Agreement Setoffs Apply (default)
☒ Bilateral (default)
☐ Triangular
OR
☐ Other Agreement Setoffs Do Not Apply

Section 15.5 Choice Of Law
California

Section 15.10 Confidentiality
☒ Confidentiality applies (default)
OR
☐ Confidentiality does not apply

☐ **Special Provisions:**
☐ **Addendum(s):**

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

City of San Diego	PARTY NAME	Clean Energy Renewable Fuels, LLC
By: CAbarca	SIGNATURE	By: Barclay F. Corbus (Oct 20, 2025 16:20:18 PDT)
Claudia C. Abarca	PRINTED NAME	Barclay F. Corbus
Director, Purchasing & Contracting	TITLE	Sr. Vice President

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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.**

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

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:	**BUYER:**
_____ _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	_____ _____ _____ 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)

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: _____	Buyer: _____
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Copyright © 2006 North American Energy Standards Board, Inc.
All Rights Reserved

EXHIBIT 5: TRANSACTION CONFIRMATION CSD001-TC01

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

	Date: 11/5/2025 Transaction Confirmation #: CSD001-TC01

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated 11/5/2025. The terms of this Transaction Confirmation are binding upon execution by the parties.

SELLER:	**BUYER:**
Clean Energy Renewable Fuels, LLC Attn: Jen Komonchak Phone: 949-437-1251 Base Contract No. CSD001	City of San Diego Attn: Chase Weigand Phone: (858) 492-5033

Contract Price:

Contract Price ($/MMBtu)
The "Contract Price" for Conventional Gas or Biogas per MMBtu shall be equal to the SoCal Citygate First of the Month Index as published by Natural Gas Intelligence, less $0.08 per MMBtu.

Delivery Period: The initial term shall begin on December 1, 2025 and shall end on December 31, 2028. Thereafter, Buyer may at its sole discretion extend this Transaction Confirmation for one (1) 4-year option period by providing written notice to Seller at least ninety (90) days prior to the end of the initial term. The initial term and the 4-year option period, if exercised, are collectively referred to herein as the "Delivery Period".

Performance Obligation and Contract Quantity: (Select One)

Firm (Fixed Quantity):	**Firm (Variable Quantity):**	**Interruptible:**
_____ MMBtus/day	0 MMBtus/day Minimum	Up to _____ MMBtus/day.
☐ EFP	1,000 MMBtus/day Maximum ("**Max Daily Quantity**")	

Performance Obligation: Subject to the Max Daily Quantity, during the Delivery Period, Seller will deliver Biogas and/or Conventional Gas to the Delivery Point(s) to meet Buyer's full requirements. Buyer acknowledges that the delivered quantities of Gas will fluctuate and agrees to receive all Gas, up to the Max Daily Quantity. Seller shall be the exclusive provider of Biogas and Conventional Gas to Buyer at the Delivery Point for the Delivery Period.

Subject to the terms of this Transaction Confirmation and the Max Daily Quantity described above, during each consecutive twelve-month (12) month period beginning on the first day of the Delivery Period and ending on the last day of the Delivery Period, Seller shall provide an amount of Biogas to the Delivery Point which is equal to Buyer's Gas Quantity (as defined below) for the applicable rolling twelve (12) month period (the "**Minimum**

Commitment"). "**Buyer Gas Quantity**" means the total amount of natural gas provided to the Station (as defined below) during the applicable time period but limited to such portion of the gas which is deemed to have been actually consumed as a Vehicle Fuel (as determined in accordance with Seller's LCFS and RFS compliance protocol).

Delivery Point: The Delivery Point shall be Buyer's San Diego Gas & Electric Company ("**SDG&E**") meter interconnect at Buyer's California 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).).

"**Blue Gas LCFS Credits**" means LCFS Credits which are generated by Seller when Conventional Gas is dispensed from the Station as a Blue Gas Vehicle Fuel.

"**Blue Gas Vehicle Fuel**" means CNG derived from Conventional Gas and used in transportation vehicles.

"**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.

"**CARB**" means the California Air Resources Board or its successor agency and policies established under the California Low Carbon Fuel Standard Regulation, (Cal. Code Regs. tit. 17, §§ 95480 – 90 (2010).), (collectively, the "**LCFS**") applying to any transportation fuel that is sold, supplied, or offered for sale in California.

"**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)).

"**CI**" or "**Carbon Intensity**" means the quantity of life cycle greenhouse gas emissions, per unit of fuel energy, expressed in grams of carbon dioxide equivalent per megajoule (gCO2e/ML) as defined in the LCFS (as amended or replaced with a subsequent program).

"**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 or the CARB LCFS.

"**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.

"First Fuel Reporting Entity" means the first entity responsible for reporting in the LRT-CBTS (LCFS reporting tool-credit and banking transfer system) for a given amount of fuel. This is the entity that initially holds the status as

the fuel reporting entity and the credit or deficit generator but may transfer either status pursuant to sections 95483 or 95483.1.

"**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 CARB LCFS Credits and EPA RINs.

"**Greenhouse Gas**" means carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydroflourocarbons, 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. Governmental Authority includes, without limitation, the EPA, CARB and the California Public Utilities Commission or its successor agency.

"**Incremental LCFS Credits**" means the number of LCFS Credits generated from the use of Biogas Vehicle Fuel that exceed the number of LCFS Credits (if any) that would have been generated using the lesser of: (a) the CI of the default CNG pathway used for Conventional Gas; or (b) the compliance curve set by CARB: "Benchmarks for Diesel Fuel and Fuels used as a Substitute for Diesel Fuel" (as defined from time to time in Title 17 of the California Code of Regulations for the Low Carbon Fuel Standard).

"**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 or CARB, 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.

"**LCFS Account**" means an account containing an entity's LCFS Credits, established and maintained in accordance with the LCFS.

"**Low Carbon Fuel Standard Credits**" or "**LCFS Credits**" shall mean credits generated and traded under the California Air Resources Board Low Carbon Fuel Standard, with each credit equal to one metric tonne of Carbon Dioxide reductions as compared to the baseline CO2 emissions under the Low Carbon Fuel Standard.

"**LCFS Credits Resale Price**" shall be calculated by reference to the volume weighted average price of all LCFS Credits of the same annual and quarterly vintage realized by Seller within the same calendar quarter.

"**LRT**" means the reporting tool established in accordance with LCFS and required by CARB to submit annual compliance and quarterly progress reports and track LCFS Credits.

"**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 Conventional Gas and Biogas purchased from Seller hereunder into Vehicle Fuel which shall be distributed as Vehicle Fuel through Buyer's Station.

(b) When applicable, Buyer represents that it is not aware of any reason that would cause the Blue Gas LCFS Credits not to comply with the LCFS.

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

(a) Seller shall maintain records relevant to the production and purchase and sale of Conventional Gas and Biogas and transportation and distribution of the Conventional Gas and Biogas purchased hereunder as it applies to the creation and sale of LCFS Credits in accordance with the requirements of CARB.

(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 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 and CARB Low Carbon Fuels Standard, together with regulations and decisions promulgated thereunder, are applicable to the purchase and sale of Conventional Gas and Biogas.

4. CARB LCFS Fuel Reporting Entity Status.

Pursuant to the California Code of Regulations for the Low Carbon Fuel Standard, Seller will retain the Low Carbon Fuel Standard (LCFS) First Fuel Reporting Entity status as set forth in Title 17, California Code of Regulations in § 95483 with respect to all Biogas sold by Seller to Buyer hereunder (the "Purchased Biogas").

Buyer will elect to not be the First Fuel Reporting Entity for Conventional Gas (referred to as "Fossil CNG" in the California Code of Regulations in §§ 95483) as set forth in Title 17, California Code of Regulations in § 95483, and designates Seller as the First Fuel Reporting Entity for Conventional Gas under the California Air Resources Board as set forth in Title 17, California Code of Regulations § 95480.3 with respect to all Conventional Gas purchased by Buyer at the Delivery Point(s) during the Delivery Period (the "Purchased Conventional Gas").

Buyer and Seller agree that: (A) for Conventional Gas, the original First Fuel Reporting Entity (Buyer) per subsections (1)(A) through (1)(E) will not generate credits or deficits in the LCFS and will instead provide the amount of fuel dispensed, and other required information pursuant to sections 95483.2(b)(8), 95491 and 95491.1, to the contractually designated entity (Seller) for the purpose of LCFS reporting and credit or deficit generation; and (B) the contractually designated entity (Seller) accepts all LCFS responsibilities as the First Fuel Reporting Entity for Conventional Gas and as a credit or deficit generator, as applicable.

Any deficits generated based on Seller's status as the First Fuel Reporting Entity for the Purchased Biogas or the Purchased Conventional Gas shall be deemed to be Buyer's sole financial responsibility; and therefore, in the event any deficits are generated based on Seller's status as the First Fuel Reporting Entity for the Purchased Biogas or the

Purchased Conventional Gas, notwithstanding anything to the contrary in this Transaction Confirmation or the Base Contract, Seller may: (1) offset any deficits with Incremental LCFS Credits or other LCFS Credits generated by Seller based on the Purchased Biogas and Purchased Conventional Gas (if any), a portion or all of which would have paid to Buyer pursuant to the Seller's Payment; and/or (2) purchase LCFS Credits equal to the deficit with Buyer being financial responsible (Seller will invoice Buyer) for all costs incurred by Seller to purchase such LCFS Credits (including, without limitation, the price per LCFS Credit paid by Seller to the applicable third party credit seller multiplied by the number of LCFS Credits that need to be purchased to satisfy the deficit); and/or (3) invoice Buyer for all amounts (including, without limitation, any attorney's fees or broker fees) Seller incurred based on such deficit(s). Buyer shall remit payment to Seller within fifteen (15) days of its receipt of a Seller invoice pursuant to this Section. Buyer shall be deemed to have received an invoice from Seller three (3) days after the invoice is sent to Buyer.

5. LCFS Credit and 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 LCFS Credits and/or as an agent with respect to LCFS Credits 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 LCFS Credits generated and/or sold hereunder. Seller and /or its affiliates and control persons shall owe no fiduciary obligation to Buyer with respect to the LCFS Credits generated and sold. Seller and its affiliate's sole obligation with respect to the sale of LCFS Credits generated and/or sold in this transaction shall be to use commercially reasonable efforts to sell such credits alongside other LCFS Credits that Seller and/or its affiliates may market or sell based on the calendar quarter in which such credits are generated.

(c) 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.

6. 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 and LCFS Credit creation in compliance with CARB requirements.

7. Regulatory Hinderance.

In the event that: (a) the RFS and/or LCFS are 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 and/or LCFS Credits 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.

8. Environmental Attributes and Alternative Fuel Credit

Buyer is not entitled to any RINS, LCFS Credits 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 and/or LCFS Credits 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. The parties agree that Buyer will be considered the "Alternative Fueler" 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.

9. 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.

10. 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.

11. 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.

12. Additional Terms Applicable to Deliveries to SDG&E

Buyer and Seller acknowledge and agree that Buyer will designate Seller as the California Core Transport Agent for the Delivery Point. Upon Seller's request, in writing, Buyer will assist Seller in completing all required Direct Access Service Request forms.

By executing this Transaction Confirmation, Buyer understands and agrees that: (i) it shall at all times, notwithstanding anything to the contrary herein, remain responsible for payment of its core gas transportation service received from SDG&E; (ii) it will continue to receive an invoice from SDG&E for transportation and other access

charges and Buyer will be responsible for payment of all invoices it receives from SDG&E; and (iii) it is responsible for all Franchise Fees under Tariff Rate Schedule GTCAGNGV – Commercial and any Utility Users Tax that a city or county may require as a result of Buyer receiving its gas commodity through Seller. Buyer agrees to release and hold harmless, defend and indemnify the applicable utility from and against any liability, claims, demands, causes of action, damages and/or expenses resulting from or in connection with any improper use of its gas consumption information.

13. 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.

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. 7 of this Transaction Confirmation.

Clean Energy Renewable Fuels, LLC		**City of San Diego**	
By:	Barclay F. Corbus Barclay F. Corbus (Oct 20, 2025 16:20:18 PDT)	By:	
Name:	Barclay F. Corbus	Name:	Claudia C. Abarca
Title:	Sr. Vice President	Title:	Director, Purchasing & Contracting
Date:		Date:	November 5, 2025

EXHIBIT A

CNG Station Location(s)			
Street Address	**City and State**	**Local Distribution Channel**	**Meter Number**
8323 Miramar Place	San Diego, CA	San Diego Gas & Electric Company	00930184

EXHIBIT B

Payment Schedule

Calendar Year	RNG MMBtu	CI Number Used by Seller to Determine Payment to Buyer. (The actual CI of the RNG supplied to the Station may be different).	Buyer Percentage of LCFS Credit Generation Rate	Incremental LCFS Credits generated per RNG MMBtu based on corresponding CI Number (as shown in this table) for such RNG ("LCFS Credit Generation Rate")	Buyer Percentage of RIN Credit Generation Rate	Number of RINs generated per RNG MMBtu ("RIN Generation Rate")
2025	1	-250	15%	0.3082	15%	11.6935
2026	1	-250	15%	0.3069	15%	11.6935
2027	1	-250	15%	0.3056	15%	11.6935
2028	1	-250	15%	0.3043	15%	11.6935
2029*	1	-250	15%	0.3030	15%	11.6935
2030*	1	-250	15%	0.3016	15%	11.6935
2031*	1	-250	15%	0.2976	15%	11.6935
2032*	1	-250	15%	0.2935	15%	11.6935

*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 (as determined in accordance with Seller's LCFS and RFS compliance protocol) during the applicable calendar month where such month is within the Delivery Period)] x [RIN Resale Price])]

(2) Within forty-five (45) days of Seller's receipt of payment for all LCFS Credits generated during the prior calendar quarter, Seller will pay Buyer the "**LCFS Payment**" which is described below:

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

(3) The RIN Payment and the LCFS Payment shall collectively be referred to as the "**Seller Payment**". Specifically, and only, for the purposes of determining the Seller Payment, all Gas supplied to the Station is deemed to be RNG with the applicable CI Number shown in the table above for the applicable calendar year. Buyer

acknowledges and agrees that the CI for the actual Biogas supplied by Seller to Buyer pursuant to this Transaction Confirmation will vary over the Delivery Period, however, the CI number used to determine the Seller Payments will not vary from the applicable numbers described above unless Buyer does not comply with the Buyer Minimum Commitment.

(4) In the event CARB modifies the LCFS CI benchmarks for diesel during the term of this Transaction Confirmation, the numbers above shall be proportionally adjusted by Seller to maintain the economic intent of the parties as of the day they entered into this Transaction Confirmation. Upon the determination of such adjustment by Seller, Seller shall provide Buyer with a new table which upon Seller's transmission of such updated table to Buyer shall be deemed to automatically supersede and replace the table above.

SIGNATURES

The parties have signed this Contract, effective as of the day and year first stated above.

CONTRACTOR

Under penalty of perjury, I certify that the information provided here is correct.

Signature: _____
Clay Corbus (Apr 23, 2026 07:16:42 PDT)

Title: Chief Executive Officer

Additional Signature (if required):

Title:

CITY OF SACRAMENTO

A Municipal Corporation

APPROVED AS TO FORM:

Signature: Paul A. Gale

Title: Sr. Dep City Atty

Reviewed By:

Signature:

Title:

Approved By:

Signature:

Title:

Additional Signature (if required):

Title: