TRANSACTION CONFIRMATION XXX

FOR IMMEDIATE DELIVERY

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | | Date: \_\_\_\_\_\_\_\_\_\_\_, 202[X] |
| This Transaction Confirmation XXX is subject to the Base Contract between Seller and Buyer dated as of \_\_\_\_\_\_\_\_\_, 202[X] (“Effective Date”). The terms of this Transaction Confirmation XXX are binding upon mutual execution hereof. | | | |
| **SELLER:**  [\_\_\_\_\_\_\_\_\_\_\_\_]  [\_\_\_\_\_\_\_\_\_\_\_\_]  [\_\_\_\_\_\_\_\_\_\_\_\_]  Attn:  Phone:  Fax:  Base Contract No.  Transporter:  Transporter Contract Number: | | **BUYER:**  Northwest Natural Gas Company  250 SW Taylor Street Portland, OR 97204  Attn:  Phone:  Fax:  Base Contract No.  Transporter:  Transporter Contract Number: | |
| **Contract Price:**  [Prior to COD, the Contract Price equals the Gas Daily Midpoint price at [To Be Determined] (the “Market Index**”**).][[1]](#footnote-2)  [After COD, the][[2]](#footnote-3) Contract Price equals [To Be Determined]. | | | |
| **Delivery Period:** [Beginning on the Commercial Operation Date (as defined below)][[3]](#footnote-4) and ending on the [\_\_\_\_\_\_\_\_ (\_\_)] yearly anniversary of such date (the “Initial Delivery Period”) provided, however, that commencing on expiration of the Initial Delivery Period, the Delivery Period shall be extended one time for an additional [\_\_\_\_\_\_\_\_ (\_\_)] years unless either party issues written notice that the Delivery Period will not be extended at least one hundred and eighty (180) days prior to the end of the Initial Delivery Period**.** | | | |
| **Delivery Point(s):**  Point of interconnection of Facility with [\_\_\_\_\_\_\_\_\_\_\_] as further described in Exhibit 1. | | | |
| **Gas (Product):**  Buyer is purchasing RNG from the following Facility, as such Facility is further described in Exhibit 1:  Facility Name: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  Technology Type: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  Biomass Materials: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  Facility Address: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]    [Seller shall design, develop, construct, install and achieve Commercial Operation of the Facility in material accordance with this Contract and Exhibit 2.][[4]](#footnote-5)  In no event will Seller have the right (1) to procure any element of the RNG from sources other than the Facility for sale or delivery to Buyer under this Contract except as otherwise agreed to in writing by Buyer or (2) to sell RNG from the Facility to a third party except as set forth in this Contract or as otherwise agreed to in writing by Buyer. Buyer will have no obligation to purchase from Seller at any time RNG not meeting the requirements set forth below (“Non-Conforming RNG”):  (i) All RNG provided by Seller pursuant to this Contract will be supplied from the Facility only, except as otherwise permitted.  (ii) All RNG delivered by Seller to the Delivery Point is required to be RNG that [(a) meets the quality requirements set forth in Section 5 of the Base Contract, (b) is produced from the anaerobic digestion of the Biomass Materials identified above and (c) meets all then applicable requirements of the Applicable Programs and are necessary to qualify such RNG as a substitute, for purposes of creating Environmental Attributes, for natural gas.  To the extent that the Facility produces any RNG that Buyer is not obligated to purchase hereunder but Buyer nevertheless takes delivery thereof, Buyer shall only be required to pay the lower of (a) the applicable Contract Price and (b) the Spot Price; provided, Seller shall have no obligation to sell Buyer RNG in excess of its obligations herein and may dispose of any excess RNG in any manner it desires. Seller shall ensure that it maintains sufficient records regarding RNG generation, sales and deliveries such that the RNG delivered to Buyer hereunder can be verified in accordance with the Applicable Programs. | | | |
| **Performance Obligation and Contract Quantity:**  During the Delivery Period, for each PGA Year, and on the terms set forth in the Contract as modified by the Additional Terms set forth below, (a) Seller shall sell to Buyer at the Delivery Point a quantity of Product equal to or greater than the Minimum Contract Quantity specified below, and (b) Buyer shall purchase from Seller at the Delivery Point such quantity of Product. The Product purchased and sold shall include both the heating value of the RNG and all Environmental Attributes associated with the RNG.  “Minimum Contract Quantity” will be at least [ ] MMBtu/PGA Year, subject to adjustment by Seller upon written notice to Buyer prior to July 1 of any year setting forth the Minimum Contract Quantity for the next following PGA Year.  Buyer shall have no obligation to purchase and Seller shall have no obligation to deliver volumes of Gas in excess of [\_\_\_\_\_\_\_\_] MMBtu/Day (the “Maximum Daily Quantity”).  **Scheduling/Ratable Supply/Third Party Purchases:**  At least six (6) Business Days prior to the commencement of each month of the Delivery Period, Seller will provide to Buyer a non-binding estimate of the expected quantity to be delivered each Day for such month (the “Monthly Nomination”), which amount shall not exceed the Maximum Daily Quantity on any given Day. Binding forecasts for each Day shall be established in accordance with the scheduling requirements of the interconnecting gas utility. If Buyer is the interconnecting gas utility, Seller shall indemnify Buyer for any costs, damages, expenses it incurs in maintaining its distribution system operations as the result of any failure to deliver the pro rata daily delivery requirement based on the Monthly Nomination, if any. Seller shall use reasonable commercial efforts to deliver the Monthly Nomination in equal amounts on each day of such month, but, without limiting Seller’s liability under the preceding sentence or Section 4.3 of the Base Contract, Seller shall have no liability to Buyer for any failure to do so. [On a daily basis, Seller shall deliver to Buyer all RNG produced by the Facility. Seller shall not grant any other purchaser the right to purchase RNG produced by the Facility]. Buyer acknowledges and agrees that, on a daily basis, RNG production may be variable, and except as otherwise provided in this paragraph, it will not be a breach of this Contract, nor will Seller be liable for damages under Section 3.2 of the Base Contract, as a result of such fluctuations of production on a daily basis, provided that Buyer shall have no obligation to purchase quantities of Gas in excess of the Maximum Daily Quantity.  **PGA Year Reconciliation**  For purposes of determining Seller’s liability with respect to the Minimum Contract Quantity, Section 3.2 of the Base Contract shall not apply to the transaction governed by this Transaction Confirmation. However, if in any PGA Year Seller does not Deliver to Buyer at least the Minimum Contract Quantity of Product that complies with the terms of this Contract (the amount of such shortfall below the Minimum Contract Quantity, the “Deficient Product”), then Buyer shall elect, at its sole discretion, either of the remedies described in (a) or (b) below, and within fifteen (15) Business Days after receiving notice from Buyer of its election, as Buyer’s sole and exclusive remedy for Seller’s Deficient Product, Seller shall:   1. Deliver, at Seller’s sole cost and expense, to Buyer a quantity of Product that complies with this Contract (“Replacement Product”) equal to the quantity of Deficient Product(s); or 2. Pay to Buyer an amount equal to the sum of: 3. The positive difference, if any, between, (1) Buyer’s costs to acquire Replacement Product, and (2) the product of the quantity of Deficient Product for which Buyer acquired Replacement Product and the Contract Price; 4. The product of the quantity of Deficient Product(s) for which Buyer did not acquire Replacement Product and the Contract Price; and 5. Any amount Buyer paid to Seller on account of the Deficient Product;   If Buyer elects the remedy described in (a) above with respect to certain Deficient Product and Seller fails to timely perform such remedy, then Buyer may elect the remedy described in (b) with respect to that same Deficient Product. If Buyer terminates this Contract under Section 10 of the Base Contract as the result of an Event of Default, then any Deficient Product for which Replacement Product was Delivered or payment made to Buyer in accordance with this Section shall not be included in the calculation Buyer’s termination damages for purposes of Section 10.3 of the Base Contract.  For purposes of the calculation of termination damages in Section 10.3.1 of the Base Contract, Buyer may assume that the amount of Gas and associated Environmental Attributes remaining to be delivered or purchased under this transaction for each PGA Year remaining in the Delivery Period is equal to the original Minimum Contract Quantity specified in this Transaction Confirmation, prior to any adjustments thereto (and a pro rata portion of the Minimum Contract Quantity for any partial PGA Year). | | | |
| Delivery Security  Security Type: Seller may elect to provide Delivery Security in the form of (a) a parent guaranty in form and substance satisfactory to Buyer, acting reasonably and in good faith (a “Parent Guaranty”), (b) a letter of credit in form and substance satisfactory to Buyer, acting reasonably and in good faith (a “Letter of Credit”) or (c) a payment bond in form and substance satisfactory to Buyer, acting reasonably and in good faith (a “Bond”).  Security Amount: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  Security Posting Date: Seventy-five (75) days prior to [COD][[5]](#footnote-6) [the start of the Delivery Period][[6]](#footnote-7). | | | |
| **Additional Terms:**  The following Additional Terms shall apply to the transactions governed by this Transaction Confirmation XXX:   1. Definitions.   “Advanced Biofuel” has the meaning ascribed to “advanced biofuel” under § 80.1402 of RFS2.  “Applicable Program” means each of the following [Public Utility Commission of Oregon, Order No. 20-227, M-RETS requirements associated with Renewable Thermal Credits (RTCs) as defined in M-RETs, Washington State HB 1257 (2019-2020), the Washington Climate Commitment Act, SB 5126 and the Oregon Department of Environmental Quality Climate Protection Program][[7]](#footnote-8) and any additional program for which Buyer provides reasonable advance written notice, subject to Seller’s consents, not to be unreasonably withheld, and provided that the only reasonable basis for withholding consent would be that Seller’s obligations to ensure compliance with such new Applicable Program would be commercially unreasonable  “Annualization Period” means the period commencing on the date which is the first day of the first full calendar month following the Commercial Operation Date and ending on the one-year anniversary of such date.  “Commercial Operation Date” or “COD” means the date on which the Facility is mechanically complete, has successfully completed commissioning and start-up testing and the Facility is able to deliver RNG to the Delivery Point.  “Conforming RNG” means RNG (or Gas, as applicable) that satisfies the requirements (i) and (ii) under Gas (Product).  “Contract Year” means a twelve (12) consecutive month period beginning on COD and each anniversary thereof.  “Delivery Period” means the delivery period described under the heading above entitled “Delivery Period.”  “Delivery Security” means the delivery security requirements described in Section 12 of this Transaction Confirmation.”  “Facility Lender” means any lenders, noteholders, bondholders, and each other party which has provided or is providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, including any equity and tax investor providing financing or refinancing for the Facility or any part thereof (including pursuant to the consummation of a sale-leaseback transaction) or purchasing equity ownership interests of Seller or its Affiliates, any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations. Except for purposes of the Seller covenants set forth in Section 9, with respect to all parties that may be defined as a Facility Lender hereunder, at any time that there is a lender secured by a first mortgage on the Facility, such lender will be deemed to be the Facility Lender to the exclusion of all other parties.  [“M-RETS” means Midwest Renewable Energy Tracking System, Inc. ][[8]](#footnote-9)  “Natural Gas Transporter” means [\_\_\_\_\_\_\_\_].  “Person” means any individual or legal entity, including a corporation, general or limited partnership, proprietorship, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity or Governmental Authority.  “PGA Year” means the period from November 1of one year to October 31 of the next year, which is the period covered by Buyer’s annual Purchased Gas Adjustment (“PGA”) submitted to the Oregon Public Utility Commission.  [“Renewable Natural Gas” 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 and/or any eligibility requirements under any Applicable Program for the Gas to qualify as a substitute for natural gas.]     1. Base Contract Quantity; No Warranty as to Merchantability, Use of Gas Marketer.   Base Contract Quantity. Throughout the Delivery Period, Seller shall sell and deliver, and Buyer shall buy and receive, on a Firm obligation basis (subject to the terms and conditions of this Contract) at least the Minimum Contract Quantity of RNG and associated Environmental Attributes produced at the Facility (except as otherwise set forth herein) and delivered, for purchase and receipt by the Buyer, to Buyer at the Delivery Point in accordance with the terms set forth herein. Seller further agrees to convey to Buyer all right, title and interest to all elements of the RNG and Environmental Attributes sold to Buyer at the Delivery Point.  No Warranty. THE EXPRESS WARRANTIES SET FORTH IN THIS CONTRACT ARE SELLER’S SOLE AND EXCLUSIVE WARRANTIES AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.   1. Environmental Attributes.   Seller will provide, transfer and convey all Environmental Attributes, as applicable, associated with all RNG produced from the Facility and purchased by Buyer as part of the RNG delivered to Buyer at the Delivery Point. Seller represents and warrants that Seller holds the rights to all such Environmental Attributes, and Seller agrees to convey and hereby conveys Environmental Attributes of the RNG purchased by Buyer to Buyer as included in the delivery of the RNG from the Facility at the Delivery Point.  Seller shall pay all initial costs associated with registration of the production facilities and fuel pathways under the [M-RETS][[9]](#footnote-10). Seller will cooperate, acting reasonably and in good faith, in obtaining Environmental Attributes and assigning such Environmental Attributes of the RNG produced at the Facility and purchased by Buyer to Buyer at the Delivery Point, including by preparing, signing and filing necessary or useful paperwork, providing information such as documentation of Seller’s estimate of pathway carbon intensity in accordance with the rules of the Applicable Programs, [uploading RTC certificates to MRETS in a timely manner and specifying carbon intensity in MRETs], consenting to monitoring of activities and collection of data (including granting easements and/or licenses necessary to access the Facility site for such monitoring and collection) and all other activities necessary or reasonably useful for Buyer to obtain the full amount and benefit of all applicable Environmental Attributes relating to the RNG produced at the Facility and purchased by Buyer. If Seller is unable to fulfill the requirements above, subject in all events to the Facility Lender’s cure rights as set forth in Section 10 of this Contract, Seller agrees that Buyer may retain a third party to prepare any required documentation and deduct the reasonable and documented cost of such services and any loss in revenue from any payments otherwise due to Seller, provided, that Buyer shall provide Seller with reasonable prior notice before retaining such a third party. Seller's obligations with respect to the foregoing requirements include, without limitation, material compliance with all required reporting, documentation and audit requirements of Buyer, the United States Environmental Protection Agency, and other governmental or similar authorities responsible for administering any Applicable Program, subject to this Section 3.  Upon title for the same passing to Buyer, Seller will not (i) own any Environmental Attributes relating to the RNG sold to Buyer or (ii) take any action, if such ownership or action would, in Buyer’s reasonable judgment, impair Buyer's ability to obtain the full benefit of the substitution of RNG delivered hereunder for natural gas that is not RNG under any Applicable Law.   1. Standards of Care. Seller will comply, in all material respects, with all Applicable Law relating to the production, nomination, scheduling and delivery of RNG to the Delivery Point. 2. Metering. For purposes of measuring the quantity of RNG delivered to the Delivery Point, Seller will be responsible for installing at the pipeline interconnection point, at its own cost and expense, RNG metering devices conforming to the specifications as the Natural Gas Transporter may require. The location of these metering devices will be as generally identified on Exhibit 1 - Facility. Such metering devices will be operated, maintained and calibrated by Seller or natural gas transporter, as the case may be, at no cost or expense to Buyer. The metering devices will be designed and operated to provide time-synchronized data for MMBtu and to provide all other information required to be measured pursuant to this Contract. As between Buyer and Seller, Seller is responsible for keeping the metering equipment accurate and in good working order and Seller will periodically test such metering equipment as Seller deems necessary. Buyer may request a special test at least once every Contract Year. If the results of any test indicate that the metering equipment is inaccurate by more than two percent (2%), the expense of such test will be borne by Seller and meter readings will be corrected for a period extending back to the time such inaccuracy first occurred if such time can be ascertained. If such time is not ascertainable, corrections will be made for one half of the elapsed time since the previous meter equipment test. Following any test, metering equipment found to be inaccurate will be promptly restored by Seller to a condition of accuracy. 3. Operations Logs, Access Rights and Reporting.   Operations Logs. Seller will maintain a reasonably complete and accurate log of all material Facility operations and maintenance information on a daily basis. Such log will include information on RNG production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, and equipment replacements. Seller will provide this information electronically to Buyer within thirty (30) days of Buyer's written request, but no more than once per quarter in each Contract Year.  Access Rights. Buyer, its authorized agents, employees and inspectors may, on reasonable advance written notice to Seller (which is at least three (3) Business Days) visit the Facility during normal business hours for purposes directly connected with this Contract. In connection with the foregoing, Buyer, its authorized agents, employees and inspectors must (i) at all times adhere to all safety and security procedures as may be required by Seller, Seller’s landlord and prudent industry standards; (ii) not interfere with the operation of the Facility; (iii) unless waived in writing by Seller, be escorted by a representative of Seller, and (iv) notwithstanding Section 8.3 of the Base Contract, indemnify Seller from all Claims made by third parties arising from any such visit to the extent that such claims are not the result of Seller’s negligent or intentional acts or omissions.  Reporting. On January 1, March 1 and October 1 of each PGA Year during the Delivery Period, Seller shall deliver to Buyer a report specifying Seller’s good faith estimate of the Product volumes that it will be able to deliver during the remaining months of such PGA Year, if such estimates differ from those included in the Minimum Contract Quantity. Such quarterly updates shall not be deemed to change the Minimum Contract Quantity and the delivery obligations under this Contract in any PGA Year shall be based on the Minimum Contract Quantity as of July 1 of the preceding such PGA Year.  On January 1, March 1, July 1 and October 1 of each PGA Year during the Term, Seller shall deliver to Buyer a meter report detailing actual RNG production volumes for each of the three preceding calendar months from the Facility, broken out on a Facility by Facility basis if there is more than one Facility.   1. Additional Events of Default. The following will constitute an "Additional Event of Default":   with respect to either party (in such case, the “Defaulting Party”):   * + 1. any representation or warranty made by such party herein is false in any material respect when made (or when deemed to have been made) and, if such falsity is capable of being remedied, is not remedied within forty-five (45) days after the Defaulting Party’s receipt of written notice from the Non-Defaulting Party;     2. the failure to perform any material covenant or obligation set forth in this Contract if such failure is not reasonably remedied within forty-five (45) days after the Defaulting Party’s receipt of written notice from the Non-Defaulting Party, which time period will be extended if the Defaulting Party is making diligent efforts to cure such failure to perform, provided that such extended period will not exceed an additional forty-five (45) days unless otherwise agreed;     3. such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such party under this Contract to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party.   with respect to Seller as the Defaulting Party, the occurrence of any of the following:   * + 1. if at any time during the Delivery Period, Seller delivers or attempts to deliver to the Delivery Point for sale under this Contract Gas that was not produced by the Facility;     2. Seller fails to satisfy the COD Delivery Requirement.  1. Material Project Underperformance. Either Party may terminate this Transaction Confirmation upon 60 days' prior written notice to the other Party in the event the quantity of Product Delivered over any PGA Year is less than [ ] percent ([ ]%)] of the [Minimum Contract Quantity specified on the Effective Date]. With the exception of any obligations of Seller to Buyer under “PGA Year Reconciliation” above with respect to the PGA Year at the time of termination, and the next following PGA Year if termination occurs between July 1 and November 1 of any year, neither Party shall have any liability to the other Party in the event of a termination pursuant to this paragraph. 2. General Covenants. Each party covenants that throughout the Delivery Period:    * 1. it will continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;      2. it will maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Contract; and      3. it will perform its obligations under this Contract in a manner that does not violate in any material way any of the terms and conditions in (i) its governing documents, (ii) any contracts to which it is a party or, (iii) any law, rule, regulation, order or the like applicable to it. 3. Seller Covenants. During the Delivery Period, Seller shall not (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets except to the extent permitted herein, and except to one or more Facility Lenders in connection with a foreclosure or transfer in lieu thereof, or (v) terminate its organizational documents or its qualifications and good standing in any jurisdiction. 4. Facility Lender's Cure Rights.    * 1. If Seller has collaterally assigned this Contract to a Facility Lender and provided notice to that effect to Buyer, Buyer will not seek to exercise its rights as the result of any Seller Event of Default, without Buyer first giving to the Facility Lender a copy of any notice of Event of Default and an opportunity to cure the same as described in this paragraph. If the Seller Event of Default relates to a failure to make payments, Buyer shall be permitted to draw on the Delivery Security if the Facility Lender fails to make the relevant payment by the fifteenth (15th) Business Day following written Notice from Buyer that Seller failed to make such payment. If the Seller Event of Default relates to any other uncured failure by Seller to perform its obligations hereunder, the Facility Lender shall have up to seventy five (75) days (the “Lender Cure Period”) to cure the relevant uncured failure, which Lender Cure Period shall begin on the date that the Facility Lender receives written notice from Buyer of such Seller Event of Default. Such Lender Cure Period may be extended for any additional period of time sufficient to allow the Facility Lender to obtain possession of Seller’s assets at the Facility to the extent that possession of Seller’s assets at the Facility is necessary to cure such Seller Event of Default, provided, however, that under no circumstances will such additional period of time extend beyond one hundred and eighty (180) days after the Facility Lender first received notice of the Seller Event of Default.      2. If the Facility Lender fails to cure or is unable or unwilling to cure any Seller Event of Default within the Lender Cure Period, as such Lender Cure Period may be extended for any additional period of time sufficient to allow the Facility Lender to obtain possession of Seller’s assets at the Facility to the extent that possession of Seller’s assets at the Facility is necessary to cure such Seller Event of Default, Buyer will have all its rights and remedies with respect to such Seller Event of Default as set forth in this Contract. 5. Credit and Collateral Requirements    * 1. Buyer Financial Information. If requested by Seller or Facility Lender, Buyer will make available for inspection by Seller within one hundred and twenty (120) days after the end of each fiscal year of Buyer, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year prepared in accordance with Generally Accepted Accounting Principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay will not be an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements.      2. Seller Financial Information. If requested by Buyer, Seller will make available for inspection by Buyer or its designee (a) within one hundred and twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of such party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements will be for the most recent accounting period and will be prepared in accordance with Generally Accepted Accounting Principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay will not be an Event of Default so long as such party diligently pursues the preparation, certification and delivery of the statements. 6. Delivery Security.    * 1. Seller will deliver to Buyer and maintain in full force and effect for the period posted with Buyer, Delivery Security in the amounts determined as provided in the heading above entitled “Delivery Security” to be posted on the applicable dates set forth therein.      2. Buyer will be entitled to draw upon the Delivery Security for any amounts due following any Event of Default by Seller.      3. The NAESB Credit Support Addendum will be applicable to the Delivery Security, with the following special provisions:         1. Buyer is the "Secured Party" and Seller is the "Pledging Party".         2. the "Collateral Threshold" and "Minimum Transfer Amount" with respect to the Seller will be "zero (0)".         3. the "Exposure" with respect to the Buyer will be the Security Amount provided above under “Delivery Security.”         4. the term “Letter of Credit” is replaced in each instance with “Bond” if a Bond is provided.         5. the term “Letter of Credit Default” is replaced in each instance with “Bond Default” if a Bond is provided.         6. the term “Letter of Credit Issuer Requirements” is replaced in each instance with “Bond Issuer Requirements” if a Bond is provided.         7. if a Bond is provided, Paragraph 7(a) is deleted and replaced with “Each “Bond” shall be issued by an entity that meets the requirements of a Bond Issuer set forth in the elections on Page 1 herein substantially in the form attached as an exhibit to Transaction Confirmation [XXX].”         8. in Paragraph 7, each referenced to a “bank” is replaced with “surety company” if a Bond is provided.         9. in Paragraph 7(b), the reference to “twenty (20) Business Days” is replaced with “thirty (30) days”.         10. the Delivery Security required under this Contract will not be deemed a limitation of damages. 7. Governmental Charges   Cooperation. Each party will use reasonable efforts to implement the provisions of and to administer this Contract in accordance with the intent of the Parties to minimize all taxes, so long as no party is materially adversely affected by such efforts. Each party shall assist the other as reasonably requested in all tax matters.  Governmental Charges. As between the parties, Seller will pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Facility, including ad valorem taxes and other taxes attributable to the same or any interests in the land for the Facility. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may (only after written notice to Seller and Facility Lender sent no later than ten (10) Days prior to the date when such Governmental Charges are due, and an opportunity for Seller and Facility Lender to pay such amounts to Buyer by the date no later than three (3) Days prior to the date when such Governmental Charges are due, to the extent of any shortfall not covered by Seller or Facility Lender) deduct such amounts from payments to Seller; if Buyer elects not to deduct such amounts from Seller's payments, Seller will promptly reimburse Buyer for such amounts upon request. Nothing will obligate or cause a party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. A party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption will be lost or the benefit of such exemption reduced; and thus, in the event a party's exemption is lost or reduced, each party's responsibility with respect to such governmental charge will be in accordance with the first four sentences of this Section.   1. Additional Representations and Warranties.   General Representations and Warranties. Each party represents and warrants to the other party that:   * + 1. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;     2. it has all regulatory authorizations necessary for it to perform its obligations under this Contract;     3. the execution, delivery and performance of this Contract is within its powers, has been duly authorized by all necessary action and does not violate, in any material way, any of the terms and conditions in its governing documents, any contracts to which it is a party or any laws applicable to it;     4. this Contract and each other document executed and delivered in accordance with this Contract constitutes a legal, valid and binding obligation, and is enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights and general principles of equity;     5. as of the Effective Date, there is not pending or, to its knowledge, threatened against it or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Contract;     6. as of the Effective Date, no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur, in either case as a result of its entering into or performing its obligations under this Contract; and     7. it is acting for its own account, has made its own independent decision to enter into this Contract and as to whether this Contract is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Contract.  1. Termination for Force Majeure.   Buyer will have the right, but not the obligation, to terminate this Contract if the Facility fails to deliver at least fifty percent (50%) of the Minimum Contract Quantity for a period of eight (8) consecutive rolling months during any one (1) Contract Year following a Force Majeure event that materially and adversely impacts the Facility (such period, a “Force Majeure Facility Failure”); provided that Buyer shall have no such right to terminate this Contract: (A) if (i) the Facility may be capable of resuming normal Gas production and delivery, (ii) Seller remedies the Force Majeure Facility Failure within six (6) months, (iii) within forty-five (45) days of Seller’s knowledge of a Force Majeure Facility Failure occurring, Seller presents Buyer with a plan for mitigation of the effect of the Force Majeure which plan is commercially reasonable and reasonably satisfactory to Buyer, as evidenced by Buyer's written acknowledgement of such plan, and (iv) Seller diligently pursues such mitigation plan throughout said additional period; or (B) if the Facility is destroyed or rendered inoperable by a Force Majeure caused by a catastrophic natural disaster and (i) within ninety (90) days of Seller’s knowledge of a Force Majeure Facility Failure occurring, Seller provides to Buyer, at no cost to Buyer, a determination by an independent, third-party engineer that the Facility is capable of being repaired or replaced within twenty-four (24) additional months and (ii) provides Buyer a copy of the engineer's report, at no cost to Buyer. Notwithstanding anything to the contrary herein, Seller shall under no circumstances be required to repair or replace the Facility or any related item, in whole or in part, which suffers material damage as the result of an event of Force Majeure if doing so would exceed the proceeds of applicable insurance or be, in Seller’s sole discretion, commercially impracticable.  If Buyer exercises its termination right in connection with a Force Majeure event, then the Contract will terminate without further liability of either party to the other, effective upon the date set forth in Buyer's notice of termination, subject to each party's satisfaction of all of the final payments and surviving obligations set forth herein.   1. Buyer's Options as to Force Majeure Termination.   If the Contract is terminated by reason of Force Majeure (as provided in Section 16), then for a period of three (3) years after such termination (the "Exclusivity Period") neither Seller, its successors and assigns, nor its Affiliates will enter into an obligation or agreement to sell or otherwise transfer RNG from the Facility produced after such Force Majeure termination to any third party, unless Seller first offers, in writing, to sell to Buyer such RNG from the Facility on the same terms and conditions as this Contract, subject to permitted modifications identified in subsection (b) below (the "First Offer"), and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.  If Buyer accepts the First Offer, Buyer will Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer's management approval, and then the Parties will have not more than ninety (90) days from the date of Buyer's notice to enter into a new Contract, in substantially the same form as this Contract, or amend this Contract, if necessary.  If Buyer rejects or fails to accept Seller's First Offer within thirty (30) days of receipt of such offer, Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any such Gas from the Facility to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller will deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, such RNG from the Facility without first offering to sell or otherwise transfer such RNG to Buyer on such more favorable terms and conditions (the "Revised Offer") in accordance herewith. If within thirty (30) days of receipt of Seller's Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such RNG from the Facility to any third party on such terms and conditions as set forth in the certificate.   1. Insurance.   Insurance. From the Effective Date through expiration of the Delivery Period, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its contractors and subcontractors, including Seller’s EPC contractors, maintaining sufficient limits of the appropriate insurance coverage. The obligations of the Seller in this Section 18 constitute material obligations of the Contract.   * + 1. Workers’ Compensation and Employers’ Liability.        1. Workers’ Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs work.        2. Employers’ Liability insurance shall not be less than (1) one million dollars ($1,000,000.00) for injury or death occurring as a result of each accident and (2) one million dollars ($1,000,000.00) for disease per employee with an aggregate liability of five million dollars ($5,000,000).     2. Commercial General Liability.        1. Coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage “occurrence” form, with no alterations to the coverage form.        2. The limit shall not be less than five million dollars ($5,000,000.00) each occurrence for bodily injury, property damage, personal injury and products/completed operations. Coverage limits and scope requirements may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy, or other applicable coverage. Limits shall be on a per project basis.        3. Coverage shall:           1. by “Additional Insured” endorsement add as insureds the Buyer, its directors, officers, agents and employees with respect to liability arising out of the obligations of Seller under this Contract performed by or for the Seller. In the event the Commercial General Liability policy includes a “blanket endorsement by contract,” the following language added to the certificate of insurance will satisfy Buyer’s requirement: Buyer “NW Natural, its directors, officers, agents and employees with respect to liability arising out of the obligations of Seller under this Contract performed by or for the Seller has been endorsed by blanket endorsement;”           2. be endorsed (blanket or otherwise) to specify that the Seller's insurance is primary and that any insurance or self-insurance maintained by Buyer shall not contribute with it; and           3. include a severability of interest clause.     3. Business Auto.        1. Coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 “any auto”.        2. The limit shall not be less than five million dollars ($5,000,000.00) each accident for bodily injury and property damage.        3. If Seller or its contractors or subcontractors haul hazardous materials in performing their obligations hereunder, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.     4. Environmental Liability.        1. coverage will apply to losses arising from the release or escape of pollutants for bodily injury, property damage, cleanup expenses and defense costs.        2. The limit shall not be less than five million dollars ($5,000,000) per occurrence.     5. Additional Insurance Requirements.        1. Before commencing performance of any of its obligations herein, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller.        2. The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written notice has been given to Buyer.        3. Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to issue certificates of insurance and endorsements on its behalf, and submitted to Buyer.        4. Reviews of such insurance may be conducted by Buyer on an annual basis acting reasonably and in good faith.        5. Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors.     6. Form And Content. All policies or binders with respect to insurance maintained by Seller pursuant to its obligations herein shall waive any right of subrogation of the insurers hereunder against Buyer, its officers, directors, employees, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.  1. Changes in Law. If any new Applicable Law is enacted or existing Applicable Law is amended after the Effective Date, which individually or collectively could reasonably be expected to have a material adverse effect upon the rights and obligations of a Party, as a whole, under this Contract, and which do not constitute a Force Majeure event, then the Party directly affected by the new or changed Applicable Law (the "Affected Party") may give the other Party written notice requesting the Parties enter into negotiations to make the minimum changes to this Contract necessary to appropriately pass through or otherwise address the effects of the new or changed Applicable Law, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Contract as of the Effective Date. Upon receipt of such notice requesting negotiations, the Parties shall promptly (but in any event no later than fifteen (15) days after such request) meet and negotiate in good faith such changes. If the Parties are unable to agree upon such changes within sixty (60) days following the request, then the Affected Party may terminate this Contract on written notice to the other Party. Any such termination shall be without further liability of either Party with respect to future deliveries or sales of Product. | | | |
| Seller: [\_\_\_\_\_\_\_\_\_\_\_\_]  By:  Title:  Date: | | Buyer: NORTHWEST NATURAL GAS COMPANY  By:  Title:  Date: | |

Attached:

Exhibit 1 – Facility and Delivery Point Description

Exhibit 2 – [Facility Development Obligations][[10]](#footnote-11)

1. Delete if Facility is already in operation. [↑](#footnote-ref-2)
2. Delete if Facility is already in operation. [↑](#footnote-ref-3)
3. Modify if Facility is already in operation. [↑](#footnote-ref-4)
4. Delete if Facility is already in operation. [↑](#footnote-ref-5)
5. Use if Facility is not yet in operation. [↑](#footnote-ref-6)
6. Use if Facility is already in operation. [↑](#footnote-ref-7)
7. Review and confirm Applicable Programs. [↑](#footnote-ref-8)
8. Include if applicable/used in document(s). [↑](#footnote-ref-9)
9. Reference applicable exchange. [↑](#footnote-ref-10)
10. Delete if Facility is already in operation or exhibit is otherwise inapplicable. [↑](#footnote-ref-11)