



**REGIONAL DISTRICT  
of Fraser-Fort George**

**BYLAW NO. 3132**



Certified a true and correct copy of Bylaw  
No. 3132, 2019 as given third reading on  
the 18<sup>th</sup> day of April 2019

**"Karla Jensen"**

GM of Legislative and Corporate Services

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**A BYLAW TO AUTHORIZE ENTERING INTO A CONTRACT FOR THE SALE OF BIOGAS FROM THE  
FOOTHILLS BOULEVARD REGIONAL LANDFILL**

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**WHEREAS** the Region District may, pursuant to Section 263 of the *Local Government Act*, make agreements respecting the management of property and the disposition of any interest or right with respect to that property;

**AND WHEREAS** the Regional District wishes to enter into a contract for the sale of biogas from the landfill gas operation of the Foothills Boulevard Landfill, upon the terms and conditions contained herein;

**AND WHEREAS** approval of the electors has been obtained pursuant to Section 175 of the *Community Charter*;

**NOW THEREFORE** the Board of Directors of the Regional District of Fraser-Fort George, in open meeting assembled, enacts as follows:

**Interpretation**

1. In this bylaw, unless the context otherwise requires:

**"Biogas"** is as defined herein as landfill gas produced through the anaerobic digestion process on the Lands

**"Lands"** is as defined herein as 6595 Foothills Boulevard in Prince George, British Columbia and legally described as:

PID: 027-398-897  
Block A of the Northeast ¼ of District Lot 4053, Cariboo District; and

PID: 027-398-889  
Block A of the Northwest ¼ of District Lot 4048, Cariboo District.

**Contract Authorized**

2. (1) The Regional District is hereby authorized to enter into a purchase agreement with FortisBC Energy Inc. for the sale of Biogas and for the granting of access to FortisBC Energy Inc. to and for use of a portion of the Lands for the purpose of operating and maintaining its facilities on the Lands.

(2) The contract authorized under subsection (1) shall be substantially as set out in Appendix "A", attached to and forming part of this bylaw.

**Title**

3. This bylaw may be cited for all purposes as "Foothills Boulevard Landfill Biogas Purchase Agreement Authorization Bylaw No. 3132, 2019".

**READ A FIRST TIME ON THE 18<sup>TH</sup> DAY OF APRIL, 2019**

**READ A SECOND TIME ON THE 18<sup>TH</sup> DAY OF APRIL, 2019**

**READ A THIRD TIME ON THE 18<sup>TH</sup> DAY OF APRIL, 2019**

**APPROVAL OF THE ELECTORS RECEIVED ON THE        DAY OF        , 2019**

**ADOPTED THIS        DAY OF        , 2019**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
General Manager of Legislative and  
Corporate Services



Certified as Appendix "A" to Bylaw No. 3132, 2019

**"Karla Jensen"**

GM of Legislative and Corporate Services

**Appendix "A"**

**BIOGAS PURCHASE AGREEMENT**

**THIS AGREEMENT** made as of \_\_\_\_\_ (the "**Execution Date**")

**BETWEEN:**

**FORTISBC ENERGY INC.**, 16705 Fraser Highway, Surrey, British Columbia, V4N 0E8

(**"FEI"**)

**AND:**

**REGIONAL DISTRICT OF FRASER-FORT GEORGE**, 155 George Street, Prince George, British Columbia, V2L 1P8

(the "**Supplier**")

**WHEREAS:**

A. The Supplier owns and operates a regional landfill at the 6595 Foothills Boulevard in Prince George, British Columbia on lands legally described as follows:

PID: 027-398-897

Block A of the Northeast ¼ of District Lot 4053, Cariboo District; and

PID: 027-398-889

Block A of the Northwest ¼ of District Lot 4048, Cariboo District.

(collectively, the "**Lands**"), and which produces landfill gas through the anaerobic digestion process (the "**Biogas**").

B. FEI intends to finance, construct and operate facilities on the Lands to connect the Supplier's facilities to enable FEI to purchase the Biogas and purify and upgrade the Biogas to pipeline quantity biomethane for injection into FEI's natural gas distribution system adjacent to the Lands (the "**Project**").

C. The Supplier has agreed to sell the Biogas to FEI and to grant FEI continued access to and use of a portion of the Lands for the purpose of operating and maintaining its facilities on the Lands on the terms and conditions provided in this Agreement.

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

**ARTICLE 1 – REGULATORY REVIEW**

1.1 **BCUC Condition Precedent.** The Supplier acknowledges FEI is a public utility as defined in the British Columbia *Utilities Commission Act* and this Agreement, and any amendments thereto, are subject to acceptance and approval by the British Columbia Utilities Commission ("**BCUC**") in accordance with the *Utilities Commission Act*.

**1.2 Filing with BCUC.**

- (a) FEI will file this Agreement with the BCUC within a reasonable period of time after the Execution Date and, recognizing the Supplier's timeline to have the project operational by **December 31, 2020**, will take all steps reasonably required to secure BCUC acceptance and approval as soon as possible to enable the project timelines to be achieved, including those procedural steps related to filing the Agreement and providing argument and witnesses in support of the filing.
- (b) The Supplier will, at the request of FEI, provide any assistance reasonably required by FEI to secure BCUC acceptance and approval, including filing documents in support of FEI's application to the BCUC and providing argument and witnesses in support of the filing.

**1.3 Regulatory Review Termination.**

- (a) Either Party may terminate this Agreement if, within one (1) year of the date this Agreement is filed with the BCUC, or such later date as agreed by the Parties in writing, this Agreement has not been accepted and approved by the BCUC on the terms and conditions contained herein or such other terms and conditions which are acceptable to each Party having regard to its *bona fide* business interests.
- (b) If BCUC approval is not granted, or is granted on terms and conditions which are not reasonably satisfactory to the Parties having regard to their *bona fide* business interests, the Parties agree to negotiate in good faith to address the impacts thereof, including mitigation of costs; provided that if the Parties are unable to reach an agreement as to the manner in which to address such terms and conditions, either Party may terminate this Agreement upon written notice of termination to the other Party.
- (c) If the Agreement is terminated under this section, the Parties' obligations under this Agreement will be at an end, and thereafter neither Party shall have any further or continuing obligation to the other under this Agreement, except for those obligations and provisions which are specifically stated.

- 1.4 Costs Incurred Prior to BCUC Acceptance.** The Parties acknowledge and agree that if either Party elects to undertake any work or incur any costs with respect to this Agreement prior to BCUC approval, such Party will be solely responsible for all costs so incurred.

**ARTICLE 2 - TERM**

- 2.1 Term.** Subject to sections 1.1 (*BCUC Condition Precedent*), this Agreement will be for a period commencing on the Execution Date and expiring on the December 31<sup>st</sup> following the twentieth (20<sup>th</sup>) anniversary of the In-Service Date (the "**Initial Term**"), unless terminated earlier or renewed in accordance with the terms of this Agreement (the "**Term**"); where "**In-Service Date**" means the business day after the FEI Facilities are declared Functional by FEI, where "**Functional**" means the FEI Facilities have produced biomethane for a period of fourteen (14) consecutive days as determined by FEI acting reasonably.

- 2.2 Renewal.** This Agreement will renew automatically for one (1) additional two (2) year term (the "**Renewal Term**") on the same terms and conditions, save and except as to any amendments agreed between the parties following completion of the 18<sup>th</sup> Anniversary Review undertaken pursuant to section 5.10 (*Anniversary Reviews*), unless a Party provides the other Party with written notice of its intention to terminate this Agreement at least one (1) year prior to the expiry of the Initial Term.

## ARTICLE 3 - DIVISION OF RESPONSIBILITIES

- 3.1 **Supplier Facilities.** The Supplier will design, build, operate, maintain, repair, upgrade, replace and support facilities on the Lands, as more particularly identified in Schedule C (the “**Supplier Facilities**”).
- 3.2 **FEI Facilities.** FEI will design, build, operate, maintain, repair, upgrade, replace and support facilities on the License Area (as defined below), as more particularly identified in Schedule C (the “**FEI Facilities**”).
- 3.3 **Prime Contractor.** For the purposes of the *Workers Compensation Act* (British Columbia), FEI is designated the prime contractor in relation to the construction, operation, maintenance and support of the FEI Facilities.
- 3.4 **FEI Approvals.** FEI shall obtain and maintain any consents, permits, filings, orders or other approvals, including governmental consents and approvals, building and construction permits, environmental permits, zoning changes or variances (collectively the “**Approvals**”) required, affecting or necessary for the ownership, installation, maintenance and operation of the FEI Facilities.
- 3.5 **Supplier Approvals.** The Supplier shall obtain and maintain the Approvals required, affecting or necessary for the ownership, installation, maintenance and operation of the Supplier Facilities.
- 3.6 **Ownership of FEI Facilities.** The FEI Facilities are, and shall at all times remain, personal and the property of FEI, despite the degree to which they may be annexed or affixed to the Lands and despite any rule of law or equity to the contrary and shall be freely alienable by FEI as its own property. FEI shall be entitled to install notices on the FEI Facilities identifying FEI’s ownership.
- 3.7 **Existing Supplier Approvals.** If any existing Approvals issued to the Supplier need to be updated to reflect the operation of the FEI Facilities on the Lands, and FEI is not able to update such Approvals in accordance with section 3.4 [*FEI Approvals*], the Supplier shall ensure such approvals are updated as required.
- 3.8 **Utilities.** The Supplier will, at no cost to FEI, provide the electrical and telephone connections to the limits of the FEI Facilities. FEI will pay for utility consumption as directly invoiced to FEI by the service provider. The Supplier shall not be liable for any disruptions in such services, unless caused by any negligent act or omission of the Supplier.
- 3.9 **Cooperation.** To facilitate the connectivity between the Supplier Facilities and the FEI Facilities, the Parties agree to:
- (a) cooperate in the design, permitting, construction and connection of the respective facilities, including any upgrades and modifications to such facilities; provided that despite the exchange or review of, or comment on, any design drawings, by the other Party, each Party shall be solely responsible for the design and construction of their respective facilities;
  - (b) share operating data and data related to the interface between the FEI Facilities and the Supplier Facilities, and work together to optimize operation of their respective facilities; and
  - (c) notify each other in advance of proposed operational changes or system modifications or upgrades to their respective facilities and cooperate in the design of upgrades and modifications to the respective facilities, to ensure such changes, modifications or upgrades do not negatively impact the operation of the other Party’s facilities; provided that despite the exchange or review of, or comment on, any design

drawings, by the other Party, each Party shall be solely responsible for the design, construction and maintenance of their own facilities.

#### ARTICLE 4 – ACCESS TO AND USE OF LANDS

- 4.1 **Grant of License.** The Supplier, hereby grants to FEI, at no cost, a non-exclusive irrevocable license to those portions of the Lands shown outlined on the drawings attached as Schedule B (the “**License Area**”) at all times and from time to time, with or without vehicles, machinery and equipment, for FEI and its authorized employees, contractors and agents, to excavate, install, place, construct, renew, alter, repair, maintain, use, abandon, remove or replace the FEI Facilities, in whole or in part.
- 4.2 **Access over the Lands.** The Supplier, hereby grants to FEI, at no cost, the free and unobstructed right to access over and across the Lands, with or without vehicles, machinery and equipment, as required from time to time, for FEI and its authorized employees, contractors and agents to access the FEI Facilities; provided however this right shall in no way restrict the Supplier from maintaining, changing or improving the Lands as long as FEI and its authorized employees, contractors and agents continue to have access to the FEI Facilities. FEI’s right of access over the Lands is subject to FEI’s compliance with the reasonable requirements of the Supplier for the safety and security of the Lands, including as to access points and limitation on access to normal working hours except in the case of emergency.
- 4.3 **Grant of Rights to Third Parties.** Subject to section 4.5 [*Non-Interference*], the grant of rights to FEI hereunder does not preclude or prevent the Supplier from granting easements, statutory rights of way or other grants, leases or licences over the Lands to any other person.
- 4.4 **Use of License Area.** FEI shall:
- (a) not do, suffer or permit anything in, on or from the License Area that may be or become a nuisance or annoyance to the owners, occupiers or users of land or premises adjacent to or near the Lands or to the public, including the accumulation of rubbish or unused personal property of any kind;
  - (b) not do, suffer or permit any act or neglect that may in any manner directly or indirectly cause injury to the License Area;
  - (c) use the License Area only for the purposes set out in this Agreement;
  - (d) except as otherwise provided in this Agreement, pay all costs and expenses of any kind whatsoever associated with and payable in respect of FEI’s use of the License Area, the FEI Facilities and all equipment, furniture and other personal property brought onto the License Area by FEI, including without limitation, property taxes, levies, charges and assessments, permit and license fees, repair and maintenance costs, administration and service fees, gas, water, sewage disposal and other utility and service charges and payments for work and materials;
  - (e) carry on and conduct its activities in, on and from the License Area in compliance with any and all applicable laws from time to time in force, and to obtain all required approvals and permits thereunder, and not to do or omit to do anything in, on or from the License Area in contravention thereof;
  - (f) not erect or place any sign or advertising within the License Area (save and except signage identifying FEI’s ownership of the FEI Facilities in accordance with section 3.6 [*Ownership of FEI Facilities*] without

the prior written approval of the Supplier, acting reasonably; not to bring on or deposit any soil or fill onto the License Area except with the written consent of the Supplier;

- (g) co-ordinate all installation and construction activities on the License Area with the Supplier;
- (h) cover all below ground works and restore the surface of the License Area to the same condition that existed at the commencement of the works to the reasonable satisfaction of the Supplier; and
- (i) discharge any builders' lien which may be filed against the title to the Lands within 30 days of filing and comply at all times with the *Builders Lien Act* (British Columbia), in respect of any improvements, work or other activities undertaken by or on behalf of FEI.

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

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

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

4.6 **Sale of the Lands.** The Supplier shall not sell or otherwise transfer its interest in and to the Lands, unless, with the written consent of FEI in accordance with section 16.9 [*Assignment*], the transferee assumes all the terms and conditions of this Agreement.

## ARTICLE 5 – QUALITY, QUANTITY, TITLE AND INDEMNITY

5.1 **Quality and Delivery Quantity.**

- (a) Subject to section 5.2 (*Additional Verification*), FEI will monitor biogas quality and quantity at the interconnection point between the Supplier Facilities and the FEI Facilities, as generally shown in the schematic drawing attached as part of Schedule C (the "**Interconnection Point**") to determine whether the biogas meets the Specifications and the Volumetric Limits.
- (b) FEI agrees to accept any biogas made available by the Supplier which:
  - (i) meets the specifications as prescribed by FEI from time to time, acting reasonably, (the "**Specifications**"), the current of which are set out in Schedule A; and
  - (ii) subject to the volumetric requirements set out in Schedule D (the "**Volumetric Limits**").

- (c) Any biogas not accepted by FEI will be returned to the Supplier Facilities or will be prevented from entering the FEI Facilities at the Interconnection Point.

#### 5.2 Additional Verification.

- (a) Despite the Supplier installing and operating any measurement and monitoring equipment as part of the Supplier Facilities, the FEI Facilities will be used to determine biogas compliance with the Specifications and Volumetric Limits and will take precedence over any results generated by the Supplier's Facilities, save and except where FEI's measurement or monitoring equipment is inoperable in which event the data generated by the Supplier's Facilities may be used.
- (b) Where there are significant differences between the qualitative or quantitative data generated by the FEI Facilities and that generated by the Supplier's Facilities, the Parties will work together to determine and, to the extent possible, eliminate the cause of the discrepancies.

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

#### 5.4 Supply Based Reviews.

- (a) Subject to subsection 5.4((d)), the parties will undertake a joint review of the Project, to be completed within ninety (90) days, to enable the parties to determine ongoing Project viability, if after the In-Service Date, the Supplier does not deliver at least the aggregate of **30,000** GJ of Biogas meeting the Specifications over any period of six (6) consecutive months (collectively the "**Supply Minimum**") and FEI requests a review be conducted.
- (b) If, upon completion of the review, the parties determine the Project is no longer financially viable based on historic and projected supply of Biogas, the parties may negotiate options to obtain BCUC approval, including amendments to the Agreement which are acceptable to each Party having regard to its *bona fide* business interests.
- (c) If: (1) upon completion of the review, the parties are unable to agree whether the Project is viable; or (2) within 180 days of commencing negotiations pursuant to subsection (b) above the parties are unable to agree to amendments to the Agreement, FEI may, at its option, terminate this Agreement upon written notice to the Owner, whereupon the provisions of ARTICLE 9 will apply.
- (d) The parties will not initiate a review while a review or resulting negotiations are already underway.

5.5 **Minimum Annual Supply.** If the Supplier does not supply:

- (a) the Minimum Annual Quantity (as defined in Schedule D (*Commercial Terms*)) for any two (2) consecutive years, or
- (b) the Minimum Monthly Quantity (as defined in Schedule D (*Commercial Terms*)) for any six (6) consecutive months;



FEI, at its option, may:

- (c) reduce the Minimum Annual Quantity and/or the Minimum Monthly Quantity, as the case may be, to such quantities as established by FEI in its sole discretion.
- (d) terminate this Agreement upon written notice to the Supplier, whereupon the provisions of ARTICLE 9 will apply.

5.6 **Increased Production Volume** –The Supplier will notify FEI of any proposed changes or improvements to the Supplier Facilities or the Lands or any other activity or circumstance which may result in a long-term increase to Biogas flow by more than 10% above the Maximum Yearly Quantity to allow FEI to evaluate the impacts of such increase on the FEI Facilities and its gas distribution system and FEI’s ability to accommodate and accept such increased production volume. Provided such Biogas meets the Specifications, FEI may, in its discretion and upon notice to the Supplier, accept and purchase all or any portion of the additional production volume at the rates determined by Schedule D (*Commercial Terms*) either temporarily or permanently.

5.7 **Exclusivity.** In addition to its obligations to supply the minimum quantities of Biogas as established in Schedule D (*Commercial Terms*), the Supplier covenants and agrees to exclusively sell any additional Biogas available (the “**Excess Biogas**”) to FEI; provided that if FEI is, from time to time, unable to accommodate and accept all the Excess Biogas, the Supplier shall be entitled to use, sell or otherwise dispose of the excess production in a commercially and environmentally reasonable manner after consultation with FEI.

5.8 **Excuse from Non-Performance for Maintenance.** Neither Party will be considered to be in default under this Agreement where such Party’s non-performance is as a result of undertaking maintenance or repair on their respective facilities provided that such Party is diligently undertaking such maintenance or repair to minimize its impacts and it being the intention of the Parties that maintenance or repair work will not exceed 5 days per month and 20 days per year in aggregate.

5.9 **Title and Warranty.** Provided the Biogas meets the Specifications, or having failed to meet the Specifications, is accepted by FEI pursuant to section 5.2 [*Non-Compliant Biogas*], title to and responsibility for the Biogas shall pass from the Supplier to FEI at the Interconnection Point. Any Biogas rejected by FEI will be redirected back to the Supplier Facilities and title to and responsibility for such Biogas shall not pass to FEI. The Supplier warrants that it has the right to convey and will transfer good and merchantable title to the Biogas free and clear of all liens, encumbrances and claims.

5.10 **Anniversary Reviews.**

- (a) In addition to any reviews conducted pursuant to section 5.4 (*Supply Based Reviews*), at the tenth (10<sup>th</sup>) and eighteen (18<sup>th</sup>) anniversaries of the In-Service Date, the parties will undertake a review of the Project, which review will not exceed 90 days, including quantity, flow and quality of the Biogas made available to FEI throughout the Term, and the future projections of quantity, flow and quality (the “**10<sup>th</sup> Anniversary Review**” and the “**18<sup>th</sup> Anniversary Review**” respectively). The purpose of the 10<sup>th</sup> Anniversary Review is to determine Project financial viability for the balance of the Term based on historic and projected supply of Biogas at the then current pricing. The purpose of the 18<sup>th</sup> Anniversary Review is to determine Project financial viability for the balance of the Initial Term and whether to extend this Agreement beyond the Initial Term.

- (b) If, as a result of the 10<sup>th</sup> Anniversary Review, the parties determine the Supplier will be unable to consistently supply the Supply Minimum for the balance of the Term, the parties may negotiate amendments to the Agreement, including as to price payable by FEI, to enable the continuation of the Project. If, during the 10<sup>th</sup> Anniversary Review the parties are unable to agree whether the Supplier will be able to supply the Supply Minimum, or if the parties are unable to agree to amendments to the Agreement within 180 days of commencing the negotiations, FEI may, at its option, terminate this Agreement upon written notice to the Supplier, whereupon the provisions of Article 9, will apply.
- (c) If, as a result of the 18<sup>th</sup> Anniversary Review:
- (i) the parties decide to renew the Agreement, this Agreement will be renewed for a further term in accordance with section 2.2 (*Renewal*).
  - (ii) the parties determine the Supplier will be unable to consistently supply the Supply Minimum for the balance of the Term, FEI may, at its option, issue written notice that FEI will not renew this Agreement, whereupon this Agreement will terminate at the end of the Initial Term, and the provisions of Article 9 will apply.

5.11 **Indemnity.** The Supplier hereby agrees to indemnify and save FEI harmless from all losses, liabilities or claims, including reasonable legal fees and costs of court, arising from or out of claims of title, personal injury or property damage from the Biogas or other charges thereon (“**Claims**”) which attach before title passes to FEI. FEI hereby agrees to indemnify and save the Supplier harmless from all Claims which attach after title passes to FEI. Despite the foregoing, the Supplier will be liable for all Claims arising from the failure to deliver title to the Biogas to FEI free and clear of any encumbrances. Despite the foregoing, the Supplier will be liable for all Claims arising from the failure to deliver title to the Biogas to FEI free and clear of any encumbrances.

5.12 **Audit and Verification.** Each Party will provide access to the other Party, from time to time during ordinary business hours, to its records and measurement equipment as reasonably requested by the other Party to verify compliance with the terms of this Agreement, including to verify the quality and quantity of Biogas.

#### ARTICLE 6 – PURCHASE PRICE AND PAYMENT

6.1 **Payment.** Commencing from the In-Service Date and each month during the Term thereafter, FEI shall pay the Supplier for the quantity of Biogas accepted by FEI into the FEI Facilities, as determined by meter readings, at the rates and subject to the adjustments and any deductions set out in Schedule D, plus applicable taxes thereon. The Supplier shall not be entitled to receive any payment from FEI for any Biogas rejected by FEI and returned to the Supplier Facilities.

#### 6.2 **Payment Terms.**

- (a) On or about the 15th day of each month, FEI shall generate a statement for the preceding month showing the quantity of Biogas accepted by FEI in GJ, the applicable rates and adjustments, the net amount payable and the cumulative quantity of Biogas accepted for the then current year up to that month. If the quantity of Biogas accepted is not known by the billing date, FEI will issue the statement based on a reasonable estimate of the quantity accepted and make the necessary adjustments as soon as practical and in any event by the next billing date.
- (b) FEI will pay the net amount payable within 30 days of delivery of the statement to the Supplier.

- (c) Any errors in any statement or disputes as to amounts due shall be promptly reported to FEI and any resulting underpayments or overpayments identified will be refunded or repaid with accrued interest at the rate of 1.5% per month (19.56% per annum).

#### ARTICLE 7 – ENVIRONMENTAL ATTRIBUTES AND REPORTING

7.1 **FEI Offsets.** The parties agree FEI shall have the sole right, benefit, title and interest in and to, arising out of or resulting from the environmental benefits associated with the purification of biogas to biomethane, and the displacement of traditional natural gas by biomethane in FEI's natural gas distribution system ("**FEI GHG Reductions**"), whether such right, benefit, title or interest is in existence as of the Effective Date or arises thereafter, including:

- (a) the sole right to claim title to, interest in, the benefit of or the responsibility for the FEI GHG Reductions;
- (b) the sole right to register, certify or apply for the issuance or validation of any current or future credits, allowance, instrument, offset, certificate, right, benefit or advantage or proprietary or contractual right, whether or not tradable, (a "**Credit**") associated with the FEI GHG Reductions;
- (c) the sole right to hold and to transfer or assign to any person its title to, benefit of or responsibility for the FEI GHG Reductions or the associated Credits;
- (d) the sole right to apply the FEI GHG Reductions against its own or a third party's greenhouse gas emissions or to net those emissions to zero, whether or not as part of a legal obligation to reduce greenhouse gas emissions;
- (e) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;

(collectively, the "**FEI Environmental Attributes**").

7.2 **Supplier Offsets.** The parties agree the Supplier shall have the sole right, benefit, title and interest in and to, arising out of or resulting from the environmental benefits associated with the capture of biogas by the Supplier Facilities ("**Supplier GHG Reductions**") that are not FEI GHG Reductions, whether such right, benefit, title or interest is in existence as of the Effective Date or arises thereafter, including:

- (a) the sole right to claim title to, interest in, the benefit of or the responsibility for the Supplier GHG Reductions;
- (b) the sole right to register, certify or apply for the issuance or validation of any current or future credits, allowance, instrument, offset, certificate, right, benefit or advantage or proprietary or contractual right, whether or not tradable, (a "**Credit**") associated with the Supplier GHG Reductions;
- (c) the sole right to hold and to transfer or assign to any person its title to, benefit of or responsibility for the Supplier GHG Reductions or the associated Credits;
- (d) the sole right to apply the Supplier GHG Reductions against its own or a third party's greenhouse gas emissions or to net those emissions to zero, whether or not as part of a legal obligation to reduce greenhouse gas emissions;
- (e) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;

(collectively, the "**Supplier Environmental Attributes**").

- 7.3 **Support and Assistance.** The Supplier will, at FEI's expense, support FEI in all applications for the FEI Environmental Attributes and provide any assistance, authorizations, documentation and information FEI reasonably requires in this regard, including:
- (a) the quantification and verification of the carbon intensity of the Biomethane produced at the Supplier's Facilities; and
  - (b) authorization enabling FEI to apply on the Supplier's behalf for designation as a Part 3 fuel supplier with respect to resulting biogas for the purposes of the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act* and its regulations.
- 7.4 **Reporting Requirements.** Subject to section 7.1 [*FEI Offsets*] and section 7.2 [*Supplier Offsets*], each Party shall be responsible to comply with reporting requirements of all applicable environmental laws with respect to emissions from their respective facilities.

#### ARTICLE 8 – DEFAULT

- 8.1 **Default.** Either Party (the “**Defaulting Party**”) shall be in default of this Agreement if the Defaulting Party is in breach of any term, covenant, agreement, condition or obligation imposed on it under this Agreement, provided that:
- (a) the other Party (the “**Non-Defaulting Party**”) provides the Defaulting Party with a written notice of such default and a 10-day period within which to cure such a default (the “**Cure Period**”); and
  - (b) the Defaulting Party fails to cure such default during the Cure Period, or if such default is not capable of being cured within the Cure Period, fails in good faith to commence the curing of such default upon receipt of notice of default and to continue to diligently pursue the curing of such default thereafter until cured.
- 8.2 **Effect of Default.** Upon default, the Non-Defaulting Party may, at its option and in addition to and without liability therefore or prejudice to any other right or remedy it may have:
- (a) cease performing its obligations under this Agreement, including suspending or refusing to make any payment due hereunder, until the default has been fully remedied, and no such action shall relieve the Defaulting Party from any of its obligations under this Agreement;
  - (b) undertake the necessary steps to remedy the default at the Defaulting Party's expense, and such action shall not relieve the Defaulting Party from any of its obligations under this Agreement; or
  - (c) terminate this Agreement immediately upon notice to the other Party, whereupon the provisions of ARTICLE 9 shall apply.

**ARTICLE 9 - EFFECT OF EXPIRY OR TERMINATION.**

9.1 **Removal of FEI Facilities.** Upon the expiry or termination of this Agreement, unless otherwise agreed by the Parties, FEI will, within 90 days following the expiry date or termination date, as the case may be, remove the FEI Facilities from the Lands and repair any damage to the Lands arising from such removal; provided that FEI will be obligated to remove only those portions of the FEI Facilities located above surface level and may leave any un-removed portions in a safe manner in accordance with FEI standard practice. Any portion of the FEI Facilities not removed by FEI will become the property of the Supplier at no cost to the Supplier.

9.2 **Termination Payment.** If:

- (a) FEI terminates this Agreement pursuant to 8.2(c) as a result of default of the Supplier; or
- (b) the Supplier sells or otherwise transfers its interest in and to the Lands.

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

- (i) FEI's net costs associated with removing the FEI Facilities, plus
- (ii) the unrecovered net book value of the FEI Facilities that will be stranded, adjusted for the positive or negative salvage value of the FEI Facilities.

**ARTICLE 10 - INSURANCE REQUIREMENTS**

10.1 **Insurance.** Each Party shall obtain and maintain the following insurance coverage and provide proof of coverage to the other Party:

- (a) General Commercial Liability Insurance from insurers registered in and licensed to underwrite insurance in British Columbia for bodily injury, death and property damage in the amount of \$5,000,000 per occurrence naming the other Party as an additional insured with respect to this Agreement; and
- (b) Such other insurance as reasonably required by the other Party from time to time.

Each Party shall be responsible for payment of any deductibles of their policies. All such policies shall provide that the insurance shall not be cancelled or changed in any way without the insurer giving at least 10 calendar days' written notice to the other Party.

**ARTICLE 11 - ENVIRONMENTAL RELEASE AND INDEMNITY**

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

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

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

except with respect to any Contaminants brought onto the Lands by FEI or any Contaminants released from the Lands as a result of any negligent act or omission of FEI.

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

#### **ARTICLE 12 - INDEMNIFICATION AND LIMITATION OF LIABILITY**

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

- (a) the negligence or wilful misconduct of such Party, its employees, directors, officers or contractors; or
- (b) the breach by such Party of any of the provisions contained in this Agreement.

12.2 **Limitation of Liability.** Each Party's liability to the other Party under this ARTICLE 12 shall be limited to the payment of direct damages. In no event shall either Party be responsible or liable to the other Party for any indirect, consequential, punitive, exemplary or incidental damages of the other Party or any third party arising out of or related to this Agreement even if the loss is directly attributable to the gross negligence or wilful misconduct of such Party, its employees, or contractors.

12.3 **Duty to Mitigate.** Each Party has a duty to mitigate the damages that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

#### **ARTICLE 13 - FORCE MAJEURE**

13.1 **Effect of Force Majeure.** Neither Party will be in default of this Agreement by reason only of any failure in the performance of such Party's obligations pursuant to this Agreement if such failure arises without the fault or negligence of such Party and is caused by any event of Force Majeure (as defined below) that makes it commercially impracticable or unreasonable for such Party to perform its obligations under this Agreement and,

in such event, the obligations of the Parties will be suspended to the extent necessary for the period of the Force Majeure condition, save and except neither Party will be relieved of or released from its obligations to make payments to the other Party as a result of an event of Force Majeure. For the purpose of this section, "**Force Majeure**" means any cause which is unavoidable or beyond the reasonable control of any Party to this Agreement and which, by the exercise of its reasonable efforts, such Party is unable to prevent or overcome, including, acts of God, war, riots, intervention by civil or military authority, strikes, lockouts, accidents, acts of civil or military authority, or orders of government or regulatory bodies having jurisdiction, or breakage or accident to machinery or lines of pipes, or freezing of wells or pipelines or the failure of gas supply, temporary or otherwise; provided however, the lack of funds or other financial cause shall not be an event of Force Majeure.

- 13.2 **Notice of Force Majeure.** The Party whose performance is prevented by an event of Force Majeure must provide notification to the other Party of the occurrence of such event as soon as reasonably possible.

#### ARTICLE 14 - DISPUTE RESOLUTION

- 14.1 **Dispute Resolution.** The Parties will make a *bona fide* attempt to settle any dispute which may arise under, out of, in connection with or in relation to this Agreement by amicable negotiations between their respective senior representatives and will provide frank and timely disclosure to one another of all relevant facts and information to facilitate negotiations. If the Parties are unable to resolve the dispute within fifteen (15) days, or if the Parties agree to waive such discussions in respect of a particular issue, either Party may refer the dispute to a single arbitrator who is appointed and renders a decision in accordance with the then current "Domestic Commercial Arbitration Shorter Rules of Procedure" or similar rules of the British Columbia International Commercial Arbitration Centre ("**BCICAC**"). The decision of the arbitrator shall be final and binding. The costs and expenses of the arbitration, but not those incurred by the Parties, shall be shared equally, unless the arbitrator determines that a specific Party prevailed, and in such a case the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party. The arbitration will take place in Vancouver, British Columbia and be conducted in English.

- 14.2 **Performance of Obligations.** The Parties shall continue to fulfill their respective obligations pursuant to this Agreement during the resolution of any dispute in accordance with this section.

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

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

#### ARTICLE 15 - CONFIDENTIALITY

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

- (a) to its directors, officers, employees, agents, accountants, lawyers, consultants or financial advisers or those of its affiliates; or



- (b) to a third party that is another contractor or consultant retained by the Disclosing Party for the purposes of this MOU and the activities described herein;

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

- 15.2 **Exception for Regulatory Submission.** Despite the foregoing, the Receiving Party may use the Information in connection with the preparation for and conduct of submissions to regulatory agencies, subject to requesting that the regulatory agency treat the Information as confidential in accordance with the agency's rules of procedure for confidential filings.
- 15.3 **Exclusions** The obligation of confidentiality set out above shall not apply to material, data or information which: (1) is known to the Receiving Party prior to its receipt thereof; (2) is generally available to the public; (3) has been obtained from a third party which has the right to disclose the same; and (4) is required by law to be disclosed, provided that where disclosure is required by law, the Receiving Party will, unless prohibited by law, forthwith notify the Disclosing Party to enable the Disclosing Party to mount a defense to such disclosure.

#### **ARTICLE 16 – GENERAL**

- 16.1 **Costs.** Except as otherwise set out in this Agreement, each Party will be responsible for the payment of its own costs related to performing its obligations under this Agreement.
- 16.2 **Publicity.** Neither Party shall initiate any media releases, interviews, or presentations to the media regarding the terms of this Agreement without the agreement and approval of the other Party, not to be unreasonably withheld or delayed.
- 16.3 **Compliance with Laws.** Each Party covenants, as a material provision of this Agreement, it will comply with all applicable codes, statutes, by-laws, regulations or other laws in force in British Columbia during the Term.
- 16.4 **Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada. To the extent ARTICLE 14 [*Dispute Resolution*] is not applicable to a dispute between the Parties, the Parties hereby attorn to the jurisdiction of the courts of British Columbia and all courts competent to hear appeals therefrom.
- 16.5 **Notice.** Any invoices, payments, notices or other communication required to be given or made pursuant to the Agreement shall, unless otherwise expressly provided herein, shall be in writing and shall be personally delivered to or sent by facsimile to either Party at its address set forth below and deemed to have been received the next business day following delivery or facsimile transmittal:

If to: **FortisBC Energy Inc.**  
16705 Fraser Highway, Surrey, BC, V4N 0E8

Attention: Director, Natural Gas for  
Transportation and Regional LNG

Fax: 604 592 7444

**With a copy to:**  
renewablenaturalgas@fortisBC.com

If to: **Regional District of Fraser-Fort George**  
155 George St., Prince George, BC, V2L 1P8

Attention: General Manager of  
Environmental Services

Fax: 250-563-7520



- 16.6 **Schedules.** The schedules attached to this agreement are an integral Part of this Agreement and are hereby incorporated into this Agreement as a part thereof.
- 16.7 **Amendments to be in writing.** Except as set out in this Agreement, no amendment or variation of the Agreement shall be effective or binding upon the Parties unless such amendment or variation is set forth in writing and duly executed by the Parties, and accepted by the BCUC if required pursuant to the *Utilities Commission Act*.
- 16.8 **Waiver.** No Party is bound by any waiver of any provision of this Agreement unless such waiver is consented to in writing by that Party. No waiver of any provisions of this Agreement constitutes a waiver of any other provision, nor does any waiver constitute a continuing waiver unless otherwise provided.
- 16.9 **Assignment.** Neither Party shall assign its rights and obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned. Despite the foregoing, FEI may assign this Agreement, or parts thereof, to any of its affiliates.
- 16.10 **Enurement.** This Agreement enures to the benefit of and is binding on the Parties and their respective successors and permitted assigns.
- 16.11 **Survival.** The following provisions shall survive the termination or expiration of this Agreement: Section 5.11 [*Indemnity*], ARTICLE 11 [*Environmental Release and Indemnity*], ARTICLE 12 [*Indemnification and Limitation of Liability*], ARTICLE 14 [*Dispute Resolution*], ARTICLE 15 [*Confidentiality*], Section 16.4 [*Governing Law*] and Section 16.5 [*Notice*].
- 16.12 **Remedies Cumulative.** All rights and remedies of each Party under this Agreement are cumulative and may be exercised at any time and from time to time, independently and in combination.
- 16.13 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination does not impair or affect the validity, legality or enforceability of any other provision of this Agreement.
- 16.14 **Further Assurances.** The Parties shall sign such further and other documents and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable to give full effect to this Agreement.
- 16.15 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, covenants, representations, warranties or other provisions, whether express or implied, collateral, statutory or otherwise, relating to the subject matter of this Agreement except as provided in this Agreement.
- 16.16 **Time is of the essence.** Time is of the essence of this Agreement.
- 16.17 **Execution.** This Agreement may be executed in counterparts, each of which shall be deemed as an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission hereof shall be as effective as delivery of an originally executed counterpart hereof.

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

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

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

**FORTISBC ENERGY INC.**  
by its authorized signatory(ies):

**REGIONAL DISTRICT OF FRASER-FORT GEORGE**  
by its authorized signatory(ies):

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\_\_\_\_\_

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*Schedules attached:*  
*Schedule A – Biogas Acceptance Specifications*  
*Schedule B – Drawing of License Area*  
*Schedule C – Description of Supplier Facilities and FEI Facilities*  
*Schedule D – Commercial Terms*

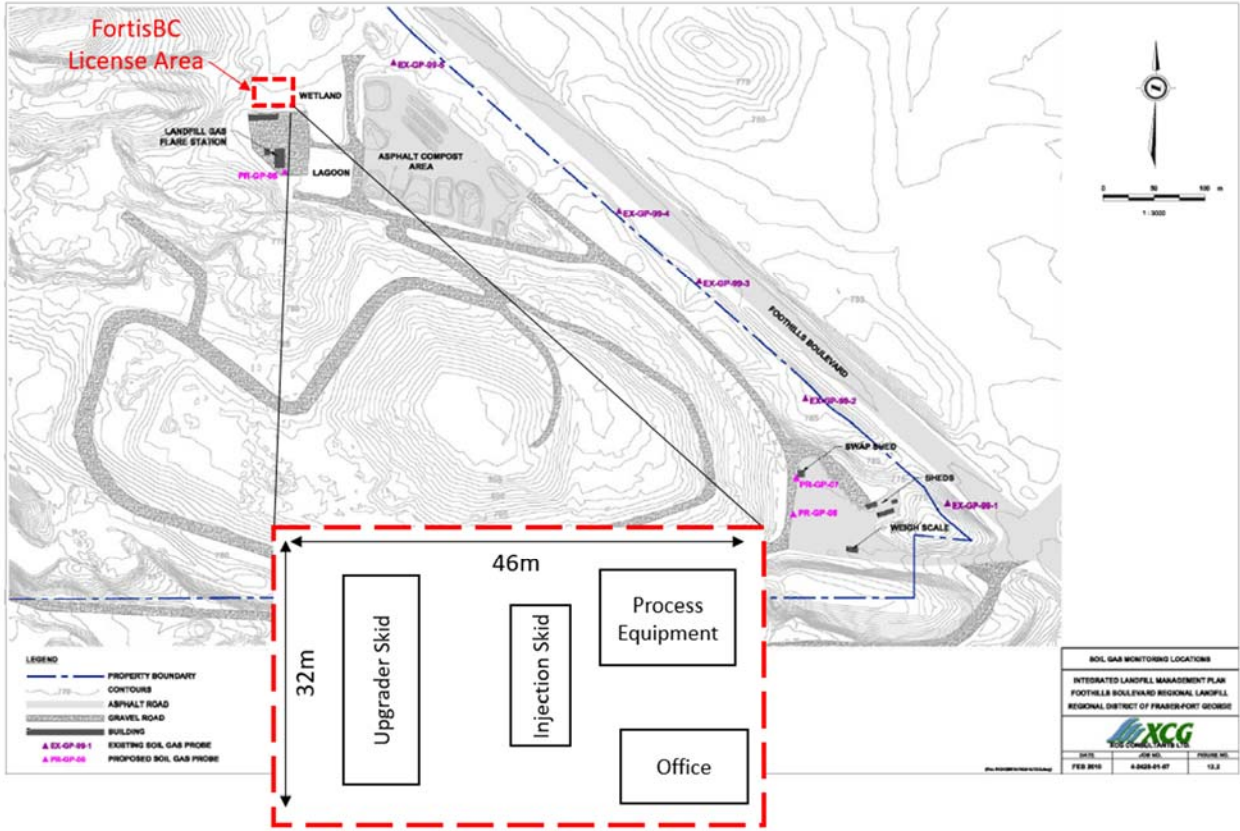
**Schedule A  
Specifications**

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To be accepted by FEI, Biogas must meet the following specifications:

- be free of liquid water;
- have a minimum methane content of 49% by volume;
- have a maximum nitrogen content of 7.0% by volume; and
- have a maximum oxygen content of 0.8% by volume.

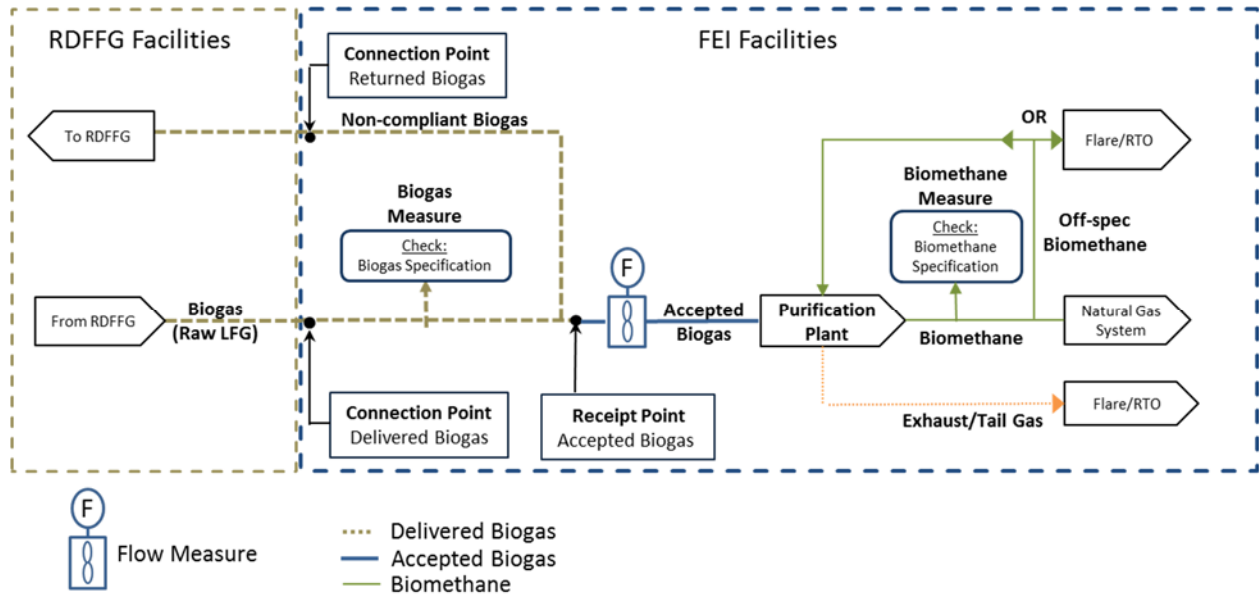
Schedule B  
Drawing of License Area



**Schedule C**  
**Description of Supplier Facilities and FEI Facilities**

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- A. **Supplier Facilities** means those facilities necessary to capture Biogas and make it available for passage to the FEI Facilities, including:
- (a) the Biogas collection header;
  - (b) the Biogas collection system (vertical or horizontal wells);
  - (c) all associated valves, monitoring points and supports;
  - (d) a raw Biogas flow meter;
  - (e) a real-time raw Biogas methane level monitor;
  - (f) condensate removal (traps and knockouts);
  - (g) a real-time oxygen level monitor;
  - (h) a blower for the collection system;
  - (i) point of distribution to FEI Facilities (i.e. connection to FEI piping at the flare station);
  - (j) a flare system for combustion of biogas;
  - (k) piping up to the FEI Facilities for delivery/return of Biogas to/from the connection point;
  - (l) back-up monitoring system, including sensors, to measure the quality and quantity Biogas, methane concentration, gas volume and flow rate; and
  - (m) any upgrades, replacements or modifications thereto
- B. **FEI Facilities** means those facilities connected to the Owner Facilities and necessary to monitor Biogas quality, to accept and measure Biogas and to purify and upgrade Biogas to biomethane, including but not limited to:
- (a) a receipt piping connection (a flange);
  - (b) Biogas measurement instruments;
  - (c) water removal equipment and connections to the existing condensate system;
  - (d) sulfur compound removal equipment;
  - (e) siloxane removal equipment;
  - (f) volatile organic compound removal equipment;
  - (g) carbon dioxide, oxygen and nitrogen removal equipment;
  - (h) monitoring equipment for safe operation;
  - (i) compression equipment;
  - (j) upstream shut-off and safety-relief equipment;
  - (k) equipment for thermal oxidization of waste gas if required;
  - (l) a flare or thermal oxidizer system for any tail gas created by the upgrading process;
  - (m) piping between the Owner's flare station connection point and the FEI Facilities;
  - (n) interconnection between the FEI Biogas upgrade equipment and the existing FEI natural gas system;
  - (o) concrete foundations;
  - (p) equipment for metering (certified for commercial use under Canada's *Weights and Measures Act*), composition monitoring and odorizing of biomethane;
  - (q) signage;
  - (r) fencing; and
  - (s) any upgrades, replacements or modifications thereto.
- C. **Interconnection Point** - The Interconnection Point between the Supplier Facilities and the FEI Facilities is within the location shown on the schematic diagram attached to this Schedule C.



**1. VOLUMETRIC LIMITS**

- 1.1 The following quantity limitations, as established as a result of the system and capacity limitations of the Supplier Facilities and the limitations and thresholds established by the BCUC and applicable to FEI with respect to acceptance of Biogas, as measured by equipment forming part of the FEI Facilities (the “**Volumetric Limits**”) apply to this Agreement:
- (a) **Maximum Yearly Quantity**- 115,000 GJ per Contract Year, where “Contract Year” means the period from November 1<sup>st</sup> to October 31<sup>st</sup> of each year; provided that the Maximum Yearly Quantity will be prorated for part years;
  - (b) **Minimum Yearly Quantity** – 60, 000 GJ per Contract Year.
  - (c) **Minimum Monthly Quantity** – 1/12<sup>th</sup> of the Minimum Yearly Quantity.
  - (d) **Maximum Hourly Flow** - Rate 700 m3/hour (at STP).

**2. PRICE AND ADJUSTMENTS**

- 2.1. **Purchase Price.** FEI shall pay the Supplier for the quantity of Biogas accepted by FEI per month, commencing from the In-Service Date, at the following rate, subject to annual adjustment pursuant to section 2.2 (*Annual Adjustment*) of this Schedule, plus applicable taxes thereon:
- \$1.25 per GJ (the “**Base Rate**”).
- 2.2. **Annual Adjustment.** Subject to section 3 (*Maximum Rate*) of this Schedule, the Base Rate shall be adjusted annually on the first of November following each anniversary of the In-Service Date by the percentage increase, if any, in the Consumer Price Index (published by Statistics Canada for the Province of British Columbia, all items.
- 2.3. **Maximum Rate.** No adjustment will be made which results in the applicable rate of finished biomethane, as determined by FEI, exceeding the applicable of:
- (a) then current BCUC - approved maximum RNG supply purchase price; or
  - (b) the maximum RNG supply purchase price established by provincial regulations.