

## LANDFILL GAS RIGHTS AGREEMENT

February 2, 2021

This **Landfill Gas Rights Agreement** ("Agreement"), dated ~~June 1, 2020~~, is made and entered into between **AEP RENEWABLE FUELS, LLC** ("AEP"), an Alabama Limited Liability Company with offices located at 1400 Buford Highway, Suite E-2, Buford, GA 30518 and **BALDWIN COUNTY COMMISSION**.

### SECTION 1 – DEFINITIONS

Unless the context indicates otherwise, as used herein, the terms set forth below shall be defined as follows:

**A. "Buyer"** means the party or parties to which Contractor will sell Natural Gas pursuant to one or more Purchase Agreement(s).

**B. "Commercial Operation Date"** means the date that Contractor has produced Natural Gas for five (5) consecutive days.

**C. "Commercial Quantities"** means Landfill Gas extracted from such quantities and of such quality that it is economically viable and profitable for Contractor to use the Landfill Gas to produce Natural Gas.

**D. "Condensate"** means the liquid formed from the condensing of the vapors that occur during the collecting, transporting and processing of Landfill Gas.

**E. "Contractor"** means AEP Renewable Fuels LLC, its successors and assigns.

**F. "BCC"** means Baldwin County Commission

**G. "Delivery Point"** means the point where Landfill Gas ownership transfers from BCC to the Contractor. The transfer takes place at a piping connection and flow meter adjacent to the existing flare station, which shall be the "Delivery Point" for purposes of this Agreement. See Exhibit A for a diagram of the location of the Delivery Point. The flow meter will be owned by the Contractor and calibrated in accordance with the Manufacturer's recommendation, however, no less than on an annual basis, by an independent testing laboratory approved by BCC. The calibration report shall be signed and sealed by a professional engineer registered in the State of Alabama.

**H. "Environmental Laws"** means any and all applicable federal, state, municipal and local laws, statutes, rules, regulations, ordinances, codes, restrictions, permitting requirements, licensing requirements and any other governmental requirements or obligations of any kind or nature relating to (i) environmental pollution, contamination or other impairment of any kind or nature, (ii) the construction, installation, repair, maintenance or operation of the Gas Collection System and/or (iii) any hazardous waste or other toxic substances of any nature, whether liquid, solid and/or gaseous, including, without limitation, smoke, vapor, fumes, soot, radiation, acids, alkalis, chemicals, wastes, by-products and recycled materials. These Environmental Laws shall include, but not be limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act,

the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Responsibility Cleanup and Liability Act of 1980, all as amended from time to time, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Commission, regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect and all applicable local ordinances, rules, regulations and permitting or licensing requirements. This definition shall not be interpreted to include the laws relating primarily to health and safety such as the Occupational Safety & Health Administration and similar state laws. This definition shall also include rules and regulations of the Alabama Department of Environmental Management (ADEM).

**J. "Flare"** means the equipment for the burning of Landfill Gas.

**K. "Force Majeure"** means an act of God; winds, tornadoes, landslides, epidemic, lightning, earthquake, fire, explosion, storm, hurricane, flood, or similar occurrence; strikes, lock-outs or other industrial disturbances; an act of a public enemy, blockade, insurrection, riots, general arrest, or restraint of government and people, civil disturbance or similar occurrence; acts, failures to act or orders of any kind of any governmental authorities; military action; war, whether or not it is declared; sabotage; equipment breakdowns; inability to procure materials or services or any other cause or event not reasonably within the control of the party claiming Force Majeure other than the financial inability of such party caused by factors other than any of the foregoing act or events. An event that satisfies the above definition but which occurs under a Power Purchase Agreement shall also be a Force Majeure under this Agreement.

**L. "Gas Collection System"** means the network of recovery wells and interconnecting pipes together with attendant valves, pumps, monitoring devices and other extraction related equipment installed for the purpose of extracting and recovering Landfill Gas at the Landfill, including, without limitation, any expansion area at the Landfill.

**M. "Processing Station"** means any and all machinery, equipment, fixtures, buildings, engines, drives and parking areas owned or leased by Contractor necessary or incidental to the production, processing, consumption, use or transmission of Landfill Gas or electric energy. The Processing Station shall also include the equipment necessary to compress and deliver the Landfill Gas to the Riviera Utilities pipeline interconnect located approximately at Hwy 98 & County Road 49, the electrical and/or gas transmission lines located on the right-of-way, if any.

**N. "Hazardous Material"** means any hazardous or toxic substance, material, or waste, which is or becomes regulated by any governmental authority, whether local, state or federal. The term Hazardous Material includes, without limitation, any material or substance which is (1) designated as a "hazardous substance" pursuant to Section 331 of the federal Water Pollution Control Act (33 U.S.C. Section 1151 et seq.), (2) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6903 et seq., or (3) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.

**O. "Landfill"** means that real property owned by BCC

**P. "Landfill Gas"** means any and all gases resulting from the anaerobic decomposition of refuse material within the Landfill, consisting principally of methane, carbon dioxide and traces of other constituent gases.

**Q. "Leachate"** means the liquid that forms in the Landfill for various reasons, including but without limitation, water percolation, and as may be defined by ADEM.

**R. "Management and Operation"** means all activities associated with the Ownership, development, operation, maintenance, closure and post closure activities at the Landfill, including, without limitation, the Gas Collection System, the installation and development of cells, the receipt, placement, compaction and covering of permitted waste material, the operation and maintenance of environmental protection and monitoring systems, the installation, placement and maintenance of the final cover, and all other activities incidental to the above mentioned activities.

**S. "Voluntary Emission Reduction or Carbon Credit"** means the economic value received from credits resulting from the voluntary collection and destruction of methane gas.

**T. "Plant Site"** means an approximately one-acre site upon which some or all of the Processing Station may be located, as more fully described in Exhibit B hereto.

**U. "Power Purchase Agreement(s)"** means one or more agreement(s) between Contractor and Buyer for sale of the product.

**V. "Project"** means the purchase of Landfill Gas under this Agreement and sale of Renewable Natural Gas ("RNG") and Renewable Identification Numbers ("RINs") under one or more Power Purchase Agreements, as well as all actions and activities relating in any way to such purchase of Landfill Gas and the sale of RNG and RINs.

**W. "Renewable Energy Tax Credits"** means the tax credit derived from producing renewable energy using a non-conventional fuel source within the meaning of Section 45 of the Internal Revenue Code of 1986, as amended.

**X. "Renewable Energy Credits"** means the economic value of any benefit, except Renewable Energy Tax Credits and Voluntary Emission Reduction or Carbon Credits, realized by the Project resulting from the renewable fuel source under state or federal law, as the same may be amended from time to time.

Capitalized terms not otherwise defined in this Section 1 shall have the meanings given to them elsewhere in this Agreement.

## **SECTION 2 – RIGHTS GRANTED TO CONTRACTOR**

**A. Landfill Gas.** BCC grants Contractor the exclusive right to purchase all Landfill Gas collected at the Landfill. Title to and risk of loss for the Landfill Gas will pass to Contractor at the Delivery Point. BCC shall not condition the Landfill Gas beyond what is being performed at the time this Agreement is executed.

**B. Plant Site License.** BCC hereby grants to Contractor right and license in the Plant Site, commencing as of the effective date of this Agreement and terminating at the termination of this Agreement. BCC hereby covenants (i) that it has title to the Plant Site in fee and has full right to make and enter into this lease, and (ii) that Contractor shall have quiet and peaceable possession of the Plant Site during the term of this Agreement so long as Contractor is not in default of its obligations under this Agreement. BCC, in its sole discretion, may consent to Contractor leasing the Plant Site so long as the terms of such lease are consistent with the terms of this Agreement.

**C. Right-Of-Way.** BCC hereby grants to Contractor for the term of this Agreement an easement and right-of-way over the Landfill for Contractor and/or Buyer for the construction, installation, operation and maintenance of utilities lines, electric lines, gas transmission lines and/or electric transmission lines by the Contractor and with BCC's reasonable approval. If BCC, in its sole discretion, determines that such lines unreasonably interfere with the operations of the landfill, then Contractor will relocate such lines at its own expense. Further definitions and descriptions shall be included in Exhibit C.

**D. Easements.** BCC hereby grants to Contractor for the term of this Agreement an easement over the Landfill to the Plant Site for the installation, operation and maintenance of sewer, electric, water and telephone lines that are necessary for the Processing Station, as reasonably determined by Contractor and approved by BCC as well as an easement for the installation, operation and maintenance of Condensate disposal lines to connect the Processing Station with the point on the Landfill where Contractor returns Condensate to BCC as provided in and subject to the terms of this Agreement. If BCC, in its sole discretion, determines that such lines unreasonably interfere with the operations of the landfill, then Contractor will relocate such lines at its own expense. Further definitions and descriptions shall be included in Exhibit C.

**E. Additional Gas Collection System Infrastructure.** Subject to the terms and conditions set forth below, Contractor shall have the right but not the obligation to install additional gas collection system infrastructure and other components to any existing Gas Collection System in the Landfill to enhance the collection of Landfill Gas from the existing Gas Collection System in the Landfill, provided such modifications do not unreasonably interfere with the management and operations of the landfill in BCC's sole discretion. Subject to the terms and conditions set forth below, Contractor shall have the right to connect such additional infrastructure into the Gas Collection System owned, constructed, and maintained by BCC. Such additional wells, related equipment, permitting, review by BCC's Engineer, construction, and construction observation services will be at the cost and expense of Contractor. Each party hereto agrees to reasonably cooperate with each other with respect to these matters. The Contractor shall provide a minimum of 45 days to review the proposed modifications to the Gas Collection System. However, BCC has the exclusive authority to deny or approve any proposed modifications to the gas collection system, which shall not be unreasonably conditioned, withheld or delayed.

### **SECTION 3 – OBLIGATIONS OF BCC**

**A. Obligations.** It is understood and agreed by the parties that BCC's primary purpose is the efficient Management and Operation of the Landfill and compliance with Applicable Laws (as defined below) relating to the Management and Operation of the Landfill, including,

without limitation, all applicable permit requirements. The operation of the Processing Station shall not, therefore, unreasonably interfere with the Management and Operation requirements of the Landfill, as required by operations permits and as reasonably determined by BCC. Subject to these limitations, BCC shall:

(i) cooperate in the construction, development and operation of its Landfill so as to maximize the production of Landfill Gas to the extent that such operation does not impact the course of normal operations and regulatory compliance, as reasonably determined by BCC in its sole discretion;

(ii) not unreasonably interfere with the Contractor's construction, operation and maintenance of the Processing Station;

(iii) take reasonable steps to prevent any of its independent contractors from committing such interference, disruption, or destruction described in (ii) above, except as needed to perform construction. Provided, however, that BCC shall not under any circumstances liable for the conduct or actions of its independent contractors;

(iv) repair major cracks, fissures, erosion or the physical changes in the Landfill which have an adverse effect on the production of Landfill Gas or on the Gas Collection System or Processing Station;

(v) accept into its Leachate collection system all Condensate produced from processing Landfill Gas from the Landfill by Contractor without cost to Contractor, provided that that Contractor's activities do not alter the composition of the Condensate from that which is collected directly from the Landfill. If special handling of the Condensate is required as a result of the Contractor's activities, the Contractor shall pay BCC for the direct cost of the disposal of the Condensate or, at Contractor's election, dispose of the Condensate itself. This includes, but is not limited to, disposal of the mixture as a Hazardous Material (if it meets such definition). At BCC's request, the Contractor shall, at his own expense, test Condensate resulting from the Landfill Gas processing procedure, which shall be completed within sixty (60) days of such request. The results of such tests shall be used by BCC to assess the changes to the Condensate quality resulting from the Contractor's operations. The party that disposes of the Condensate shall be responsible for disposing of the same in accordance with any applicable Environmental Laws.

(vi) be solely responsible for complying with any and all applicable federal, state, BCC, municipal, and local laws, statutes, rules, regulations, ordinances, codes restrictions, permitting requirements and any other governmental requirements or obligations of any kind or nature ("Applicable Laws") relating to or regulating the expansion, construction and Management and Operation of the Landfill exclusive of the Processing Station (including, without limitation, the Gas Collection System), including, without limitation, any and all Environmental Laws, including, without limitation, those Environmental Laws relating to cover requirements;

(vii) in good faith and using its best efforts, cooperate fully with Contractor so that Contractor can meet its responsibilities and obligations under this Agreement;

(viii) shall own the Gas Collection System and be solely responsible for operation and maintenance of any existing Gas Collection System and any expansion of such System; BCC shall promptly replace or repair any nonfunctioning or defective components of such Gas Collection System, as may be expanded, including, without limitation, network recovery wells and interconnecting pipes with attendant valves, pumps, monitoring devices and other extraction related equipment installed for the purpose of extracting and recovering Landfill Gas; BCC shall monitor and adjust the Gas Collection System on a monthly basis to optimize gas flow and methane content without interference with the normal Management and Operation of the Landfill and BCC's duty to comply with applicable Laws relating to the same. Should Contractor in good faith believe that BCC is not meeting its obligations in this regard, Contractor shall be allowed, with notice to BCC, to bring in its qualified engineers to assess and make recommendations to improve the existing Gas Collection System performance; BCC may, in its sole discretion; choose to implement these recommendations, subject to the conditions of Section 2E and provided they do not interfere with the normal Management and Operation of the Landfill and BCC's duty to comply with applicable Laws relating to the same.

(ix) At the Contractor's request but no more than once per fiscal year, BCC may retain one of BCC retained Consultants to assess and make recommendations to improve the existing Gas Collection System. BCC may, in its sole discretion; choose to implement these recommendations, subject to the conditions of Section 2E and provided they do not interfere with the normal Management and Operation of the Landfill and BCC's duty to comply with applicable Laws relating to the same.

(x) Cooperate with Contractor in connection with the rights granted under Section 2E hereof, to the extent that such cooperation does not unreasonably interfere with the normal Management and Operation of the Landfill, in BCC's sole discretion, and BCC's duty to comply with Applicable Laws relating to the same;

(xi) execute such further documents or may be reasonably requested by Contractor in connection with the grant of rights under Section 2 of this Agreement.

(xii) should BCC's flare be required to remain on due to permit or other legal requirements, BCC will operate the flare so as to minimize the amount of gas consumed by the flare without interference with the normal Management and Operation of the Landfill, in BCC's sole discretion, and BCC's duty to comply with applicable Laws relating to the same.

**B. Access.** BCC hereby grants access to the Landfill and the Processing Station to Contractor, Buyer(s) and their employees, representatives and independent contractors on a twenty-four (24) hour per day seven (7) day per week basis for the purposes of enabling Contractor or Buyer(s) to conduct their operations contemplated under the Agreement. Such operations to include, but without limitation, (i) the construction, operation, and maintenance of the Processing

Station, and (ii) operation and maintenance of all electric or gas transmission lines used by Contractor. BCC agrees to maintain roads to and within the Landfill to permit reasonable access for the parties described above. If access to certain routes be denied for any reason, BCC and Contractor shall mutually arrange for alternative access. All of the foregoing rights shall be exercised by Contractor in a manner so as not to interfere unreasonably with BCC's Landfill operations in BCC's sole discretion. Nothing contained in the Agreement shall prevent BCC, its employees, representatives, and independent contractors from using any of the roads or other means of access to or in the Landfill. BCC management personnel only shall have twenty-four (24) hour per day seven (7) day per week access to the plant site via card reader access which shall be provided for by AEP.

**C. Documents.** As requested by Contractor, BCC shall:

- (i) to the extent permitted by law, assign such permits or other approvals, as may be necessary for Contractor to undertake the activities contemplated in this Agreement;
- (ii) provide Contractor with copies of documents in its possession regarding Landfill Gas production from the Landfill, the quantities and type of refuse in the Landfill, tipping records, etc;
- (iii) inform Contractor in writing about any environmental information, environmental impact reports or studies, permits or permit applications, zoning information including variances or variance applications, and any other available data relating to the Landfill and BCC's or Contractor's activities contemplated in this Agreement, and, at Contractor's request, deliver copies of such material or documents as may be in BCC's possession;
- (iv) provide assistance as may be necessary for Contractor to obtain any permits required to undertake the activities contemplated in this Agreement.
- (v) provide adequate land space at the Landfill for installation of the Processing Station and related equipment within available land space limitations, including the Plant Site and the above referenced easement and right of way areas as shown on Exhibit A. The location of any proposed Processing Station and related equipment shall not interfere with BCC's Management and Operation of the Landfill in BCC's sole discretion.

**D. Further Documentation.** To the extent reasonably possible, BCC will provide further written easements in streets and other rights-of-way with respect to the matter set forth in Section 2C and 2D.

#### **SECTION 4 – OBLIGATIONS OF CONTRACTOR**

**A. Processing Station.** Contractor shall, at its sole expense, design, install, permit, and construct, a Processing Station at the Landfill (including any expansions thereof), all in accordance with federal, state and industry standards in existence as of the date of this Agreement or as of the date of work commencing on any expansions thereof. The design and permitting documents shall be signed and sealed by a professional engineer registered in the State of Alabama.

The Contractor shall, at his sole expense provide all planning, design, and fees necessary to obtain all required local, state, and federal regulatory permits for the Processing Station, including all related permit fees. The Scope of Work undertaken in this Agreement is set out in Exhibit A attached hereto.

**B. Operating Requirements.** Contractor shall operate and maintain the Processing Station in a reasonably prudent manner, in accordance with good engineering practices, in accordance with accepted industry standards and in compliance with Applicable Law, including Contractor's permit requirements. The extent of permit compliance responsibility by the Contractor will be limited to compliance with those permits and permit conditions directly related to the Processing Station. The Contractor shall not operate the Processing Station in such a manner as to cause BCC to violate the conditions of any of its permits.

The Contractor shall be responsible for all permitting related to construction and/or operation of the Processing Station, including completion and submission of permit application, development of supplemental permit information, and payment of application fees once reviewed and approved by BCC.

If an application must be filed in BCC's name, the Contractor shall complete the application, in full, and provide payment of the application fee for execution and submission by BCC. The Contractor shall be responsible for responding to all review comments and requests for information issued by the permitting agency until the permit is issued.

The Contractor shall, at its own expense, prepare and file permit applications and diligently execute the processing of such permit applications for the purpose of obtaining all permits that are required under Applicable Law relating to the construction, installation, and operation of the Processing Station, associated electrical transmission lines, and/or steam, pipelines, or other utilities or improvements, on and off site. In connection therewith, BCC agrees to make available to the Contractor all known public records within BCC's possession of environmental reports, studies, application, and other available data relating to the Landfill.

**C. Plans and Drawings.** Contractor shall submit detailed plans, drawings and technical data for the Processing Station and expansions thereto and any other equipment to be installed on the Plant Site or Landfill to BCC for review. This information will be kept up to date for the term of the Agreement. Electronic copies of all drawings and permit applications will be provided to BCC when available. Contractor will provide BCC with a complete set of signed and sealed "as built" plans for the Processing Station and all other modifications, including but not limited to utilities and any Gas Collection System modifications constructed at the Landfill site pursuant to Section 2E.

## **SECTION 5 – TERM**

**A. Agreement Term.** This Agreement shall be effective on the date of its execution and shall have a term of fifteen (15) years from the Commercial Operation Date, which term may be extended by mutual agreement of the parties for one (1) additional five (5) year period.



## SECTION 6 – COMPENSATION

**A. Royalty Payments.** Subject to the provisions set forth below, Contractor agrees to pay four US dollars/million Btu (\$4.00/mmBtu), for all Landfill Gas consumed by the Processing Station. The initial royalty payment shall be made within 120 days from the date of the first transfer of Landfill Gas ownership from BCC to the Contractor. Thereafter, royalty payments shall be made no later than the first day of each month during the duration of this Agreement.

**B. Carbon Credit payments.** If Contractor designs and/or constructs a landfill Gas Collection System at its cost as part of this contract, Contractor shall be entitled to all Voluntary Emission Reduction or Carbon Credit payments resulting from the construction and operation of same.

## SECTION 7 – FINANCING

**A. Contractor's Right to Finance.** BCC acknowledges the need of the Contractor to finance the initial construction of the Processing Station and related equipment and hereby consents to any security interest, mortgage, encumbrance or lien (collectively, "Lien") on the machinery, equipment, fixtures, and buildings that make up the Processing Station for the purpose of obtaining such financing, provided:

(i) Contractor shall give BCC notice of the existence of such Lien together with the name and address of the holder of such Lien, and a copy of such Lien.

(ii) That the existence of such Lien shall not relieve Contractor from any liability or responsibility for the performance of its obligations under this Agreement.

(iii) Such financing shall be limited to funds needed for the initial construction of the Processing Station and the purchase of such equipment. Any additional financing, including without limitation funds to be used for maintenance of the Processing Station, expansions of the Processing Station, or upgrading equipment, shall not result in a Lien on the machinery, equipment, fixtures, and buildings that make up the Processing Station without BCC's written consent.

BCC further acknowledges that, in connection with the financing referenced in this Section 7.A., BCC is required to subordinate its right to payments due to BCC hereunder to certain other expenses and payments required to be made by Contractor; namely, that all revenues of Contractor shall be paid and distributed as follows (as the same may be reasonably modified by Contractor's lender):

1. First, to Contractor's operating expenses to a budget number approved by Contractor's lender, not to exceed \$900,000.00;
2. Second, to Contractor's debt service on such financing;
3. Third, to replenish Contractor's debt service reserve as follows:
  - a. Contractor will maintain a 6-month debt service reserve in the total amount of \$380,963, which will be initially funded out of the debt and equity proceeds;
  - b. The debt service reserve will increase to a 12-month debt service (e.g. an additional \$380,963 will be added to the debt service reserve to a total of \$761,926, which represents 12-months of debt service on the senior loans) to be funded out of available cash flow in accordance with the priority of the waterfall. This is projected to occur in the 3<sup>rd</sup> month after the commercial operation date;
  - c. The debt service reserve will decrease to a 9-month reserve when 25% of the total debt financing has been repaid (e.g. \$190,481 will be released from the debt service reserve and distributed in accordance with the waterfall with the debt service reserve then totaling \$571,444);
  - d. The debt service reserve will decrease back to a 6-month reserve when 50% of the total debt financing has been repaid (e.g. \$190,481 will be released from the debt service reserve and distributed in accordance with the waterfall with the debt service reserve then totaling \$380,963);
4. Fourth, to replenish a \$250,000 operating expenses reserve to be used to cover any unexpected operations and maintenance costs as follows:
  - a. Contractor will maintain an operating expense reserve in the total amount of \$250,000, which will be funded out of the debt and equity proceeds;
  - b. The operating expense reserve represents approximately 3.5 months of the \$900,000 annual operation and maintenance budget;
  - c. Unexpected operations and maintenance costs are defined as system failures that are not under warranty, including without limitation motors, blowers, meters and compressors;
5. Fifth, to BCC to purchase raw Landfill Gas under this Agreement;
6. Sixth, to replenish a \$350,000 Landfill Gas reserve that would be used to cover any shortfall in cash flow available to pay Baldwin County for the raw Landfill Gas as follows:
  - a. Contractor will maintain a Landfill Gas reserve in the total amount of \$350,000, which will be initially funded out of the debt and equity proceeds;
  - b. The Landfill Gas reserve represents approximately 4.3 months of landfill gas payments to BCC at the contractual \$4/mmbtu; and
7. Last, all remaining available cash flow may be distributed to Contractor's equity holders pursuant to the terms of its applicable organizational documents.

BCC acknowledges that, notwithstanding any term to the contrary contained herein, in no event will Contractor's compliance with the terms of the payment and distribution schedule set forth above result in a default under this Agreement, and BCC agrees to subordinate its rights to receive payments hereunder to payment of those expenses and amounts given higher priority in the foregoing list. Contractor acknowledges that nothing herein shall be construed to (i) relieve Contractor of the duty to timely pay all royalty and other payments required herein, or (ii) prejudice BCC's default remedies should Contractor fail to timely pay such payments.

**B. No Mortgage of BCC Property.** Notwithstanding the foregoing, under no circumstances shall Contractor cause any mortgage to exist on the Landfill or Plant Site, except with respect to any fixtures that are Contractor's property.

## **SECTION 8 – GENERAL OBLIGATIONS**

**A. Planning and Expansion.** Contractor recognizes that future development of the Landfill may include addition of and/or modification of facilities such as Leachate collection and treatment systems, wastewater collection sewers, wastewater sludge disposal systems and solid waste to existing areas. Contractor also recognizes that future development of the Landfill may also include expansion, relocation of existing cover material and waste and continued future filling in currently inactive and/or closed portions of the Landfill. Contractor recognizes that BCC may in the future adjust the sideslopes of the landfill and modify the existing Landfill Gas System in order to gain additional airspace. Contractor and BCC agree to exchange information for planning and coordination of such facilities and activities to promote safe and orderly development and operation of the Landfill within the constraints of the Applicable Laws and in consideration of optimizing Landfill Gas collection volumes. Should BCC expand or modify its facilities, it shall take reasonable steps to reduce downtime to Contractor's Generator Station resulting from such activities.

**B. Interests Retained By BCC.** All materials, minerals, water, natural gas, and other items existing in, on, or under the Landfill (including, but not by way of limitation, the refuse, cell liners, the Landfill Gas until title passes to Contractor at the Delivery Point, Leachate, Leachate collection system, Condensate, and cover) shall at all times remain the property of BCC.

**C. Gas Migration.** Contractor shall have no responsibility or liability for the control or containment of or for damage occasioned by Landfill Gas migration beyond or within the grounds of the Landfill. BCC shall be solely responsible for the control and containment of the migration of Landfill Gas. Should migration of gas cause the current or additional migration control systems to be implemented the parties will work together to design and implement a migration control program that will mitigate any impact on gas quality or the operation of the Processing Station.

**D. Contactor Licensing.** Contractor shall be licensed to do business in the State of Alabama. Construction of the Processing Station will be performed by an Alabama licensed contractor. All permitting and design performed by Contractor will be performed by an

Alabama licensed professional engineer. The Contractor shall perform completion of this Project in strict accordance with the designs, specifications and any applicable drawings. Signed and sealed designs and as-built drawings will be provided by the Contractor to BCC. The Contractor must be in good standing with BCC, Solid Waste Department and Baldwin County Purchasing Department.

## **SECTION 9 – LIMITATION OF LIABILITY**

**A. Landfill Gas.** Except as provided in this Agreement, BCC provides no representation or warranties either expressed or implied, as to the amount or chemical composition of the Landfill Gas to be extracted hereunder, including, but without limitation, any warranty of merchantability or fitness of the Landfill Gas for a particular purpose.

**B. Contractor's Obligation.** Contractor will be solely responsible for the determination of the suitability of the Landfill Gas to be used under this Agreement for any and all purposes contemplated by Contractor.

**C. Condensate.** Condensate shall be managed in accordance with Section 3A(v) above.

## **SECTION 10 - INDEMNITIES**

**A. Indemnification by Contractor.** Contractor shall indemnify, hold harmless and, upon request, defend BCC, its officers, employees, servants, agents and independent contractors, successors and/or assigns, jointly and severally, from and against any and all costs, claims, liabilities, damages, expenses, causes of action, suits, or judgments, including, without limitation, reasonable attorney's fees of outside counsel and all court costs and experts fees, incurred in connection with or arising from or relating to (1) any breach of this Agreement by Contractor or any of Contractor's officers, employees, servants, agents and independent contractors; or (2) the Contractor's operations at the Plant Site, including the Processing Station; or (3) any breach or violation of any Applicable Laws, including without limitation, Environmental Laws, by Contractor or any of Contractor's officers, employees, servants, agents and independent contractors; or (4) the operations, acts, or omissions to act of any person who is either controlled by or affiliated with Contractor or invited onto any part of the Landfill, Plant Site, or Processing Station by Contractor or any of Contractor's officers, employees, servants, agents and independent contractors; or (5) any negligent, grossly negligent or intentional act or omission of Contractor or its officers, employees, servants, agents, or independent contractors, including, without limitation, such acts or omissions that cause injury or death to person(s) or damage or loss to or of property; and/or (6) any contamination or other environmental problems or difficulties whether now known or hereafter discovered that arises from any negligent, act or omission of Contractor or any of Contractor's officers, employees, servants, agents or independent contractors or Contractor's operation of the Plant Site and the Processing Station.

Contractor's indemnification of BCC under this Section 10A shall not be applicable to the extent that liability arises solely from any negligent, grossly negligent or intentional acts or

omissions of BCC or any of BCC's officers, employees, servants, agents or independent contractors.

**B. Indemnification by BCC.** BCC shall indemnify, hold harmless and, upon request, defend Contractor, its members, managers, employees, servants, agents, independent contractors, successors and/or assigns, jointly and severally, from and against any and all costs, claims, liabilities, damages, expenses, causes of action, suits, or judgments, including, without limitation, reasonable attorney's fees of outside counsel and all court costs and experts fees, incurred in connection with or arising out of or relating to (1) the Management and Operation of the Landfill, including the Gas Collection System, by BCC; or (2) any breach or violation of any Applicable Laws, including, without limitation, Environmental Laws, by BCC or any of BCC's officers, employees, servants, agents and independent contractors; or (3) BCC's use or activities at the Landfill prior to the date of this Agreement; or (4) the subsurface migration or surface emission of Landfill Gas within or beyond the Landfill, to the extent such migration is not related to the activities of Contractor; or (5) any negligent, grossly negligent or intentional act or omission of BCC or its officers, employees, servants, or agents, including, without limitation, such acts or omissions that cause injury or death to person(s) or damage or loss to or of property; or (6) any contamination or other environmental problems or difficulties whether now known or hereafter discovered that arises from any negligent act or omission of BCC or any of BCC's officers, employees, servants, or agents or BCC's Management and Operation of the Landfill or the Gas Collection System SAME, including, without limitation, any subsurface migration or surface emission of Landfill Gas; and/or (7) any injury or death to person(s) or damage or loss to or of property arising out of or due to the presence of Hazardous Materials in or on the Landfill Gas or Landfill.

Notwithstanding the foregoing, BCC's indemnification of Contractor under this Section shall not be applicable to the extent that liability arises solely from any negligent, grossly negligent or intentional act or omission of Contractor or any of Contractor's members, managers, employees, servants, agents or independent contractors.

**D. BCC's Limitation of Liability for Breach of Contract.** In no event shall BCC be liable to Contractor with respect to any claim for breach of this Agreement for any indirect, special, incidental, punitive or consequential damages of any kind or nature. Without limiting the generality of such exclusion, the following types of damages shall not be recoverable: loss of usage of the Processing Station and capital costs. This Section shall not be interpreted to eliminate or limit in any respect BCC's other indemnification obligations as provided in and pursuant to Section 10B.

If BCC breaches this Agreement, the sole and exclusive remedy of Contractor shall be to recover from BCC the actual compensatory damages for which Contractor is entitled under Alabama law.

**E. Exclusiveness of Remedies for Breach or Termination.** BCC and Contractor expressly agree that BCC and Contractor, respectively, shall each also have the right to terminate

this Agreement pursuant to and subject to the conditions of Section 14A and Section 14B, respectively, as a result of a breach that is not cured by the other party within thirty (30) days of notice thereof; these two remedies shall be cumulative. No other damages shall be recoverable by BCC from Contractor or by Contractor from BCC for such termination or breach.

Notwithstanding anything to the contrary, the language of this Section 10 shall not prevent BCC, Contractor or any Buyer from (i) pursuing injunctive relief or specific performance or (ii) from arbitrating or litigating (as the case may be) any liability or indemnification matter without terminating this Agreement (i.e. the party shall not be required to terminate this Agreement in order to seek redress for a breach of the Agreement or any other matter to which the party is entitled to indemnification under the provisions of this Section 10).

**F. Survival.** All provisions of this Section 10 shall survive termination of this Agreement, by default or otherwise.

## **SECTION 11 – INSURANCE**

**A. Contractor.** The Contractor shall purchase and maintain all of the insurance described in Sections 11(i) through Section 11(iv) hereof during the term of this Agreement:

(i) Workers' Compensation including occupational disease in accordance with the statutory requirements set forth by the state in which the Work is to be performed and employer's liability insurance covering all Contractor's employees engaged in the performance of this contract in the minimum sum of \$1,000,000.

(ii) Commercial general liability insurance, including Contractor's protective liability and contractual liability insurance covering death or bodily injury and property damage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(iii) Comprehensive automobile liability insurance covering Contractor for claims arising from owned, hired and non-owned vehicles covering death or bodily injury and property damage with a combined single limit of a minimum sum of \$1,000,000.

iv) Environmental pollution liability insurance covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations with a combined single limit of a minimum sum of \$1,000,000.

(v) Certificates of insurance covering all of the insurance required to be maintained by Contractor shall be filed with BCC. BCC shall be named as an additional insured under all insurance policies, using ISO CG 20-10 Endorsement. All such policies shall be from reputable national insurance companies, licensed in the state in which the Project is located and reasonably acceptable to BCC. All

insurance policies shall contain the provision that the insurance company will provide written notice to BCC thirty (30) days prior to any change, termination or cancellation of coverage. All insurance policies shall provide that all deductibles shall be for Contractor's account, and all such insurance policies shall be primary and not contributory with BCC's insurance.

**B. BCC.** BCC shall purchase and maintain all of the insurance described in Section 11B(i) through Section 11B(v) hereof during the term of this Agreement:

(i) Workers' Compensation including occupational disease in accordance with the statutory requirements set forth by the state in which the Work is to be performed and employer's liability insurance covering all of BCC's employees engaged in the performance of this contract in the minimum sum of \$1,000,000.

(ii) Commercial general liability insurance, including BCC's protective liability and contractual liability insurance covering death or bodily injury and property damage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(iii) Comprehensive automobile liability insurance covering BCC for claims arising from owned, hired and non-owned vehicles covering death or bodily injury and property damage with a combined single limit of a minimum sum of \$1,000,000.

(iv) Certificates of insurance covering all of the insurance required to be maintained by BCC shall be filed with the Contractor. Contractor shall be named as an additional insured under all insurance policies, using ISO CG 20-10 Endorsement. All such policies shall be from reputable national insurance companies, licensed in the state in which the Project is located and reasonably acceptable to Contractor. All insurance policies shall contain the provision that the insurance company will provide written notice to the Contractor thirty (30) days prior to any change, termination or cancellation of coverage. All insurance policies shall provide that all deductibles shall be for BCC's account, and all such insurance policies shall be primary and not contributory with Contractor's insurance.

## **SECTION 12 – REMOVAL AND RESTORATION**

The Processing Station and related equipment shall remain the personal property and/or responsibility of Contractor (collectively "Contractor's Equipment"), notwithstanding the method or mode of installation or attachment to real property. Upon written request by Contractor, BCC shall provide a waiver or estoppel certificate from Contractor or any lessee operator of the Landfill, in a form satisfactory to Contractor, acknowledging that Contractor's Equipment is personal property owned by Contractor and subject to the right of removal by Contractor. Contractor shall have an obligation, within three (3) months after the expiration or termination of this Agreement,

to remove or to cause the removal of the above ground portion of Contractor's Equipment and to permanently seal and cap all openings for pipes or equipment left in the Plant Site in accordance with the then applicable industry standards and Applicable Laws relating to the closure of the Plant Site and in such a manner as to not cause violations of the Title V permit conditions. Upon the expiration or termination of this Agreement, BCC shall have the option to accept ownership of the below ground portions of the Processing Station, including foundations, if any. Should BCC not elect to accept ownership, Contractor shall be responsible to remove all such below ground portions.

### **SECTION 13 – FORCE MAJEURE**

If by reason of Force Majeure either party is unable to carry out, either in whole or in part, its obligations herein contained, such party shall not be deemed in default during the continuation of such inability, provided that: (i) the non-performing party, within two weeks after the occurrence of the Force Majeure, gives the other party written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; (iii) no obligation of either party which arose prior to the occurrence causing the suspension of performance be excused as a result of the occurrence; and (iv) that the non-performing party endeavor to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. Notwithstanding the foregoing, the performing party may, at its option, terminate this Agreement after six (6) consecutive months of any such suspension of performance. Neither party shall be required to settle strikes, lockouts, or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in its judgment, not in its best interest. A Force Majeure, as that term is defined herein, under the Power Purchase Agreement, shall be a Force Majeure under this Agreement.

### **SECTION 14 – TERMINATION**

**A. Contractor's Default.** In the event that Contractor at any time fails to perform or observe any of the provisions of this Agreement required to be performed or observed by Contractor or otherwise breaches this Agreement, BCC shall notify Contractor in writing of the facts relied upon as constituting a default or breach hereunder. Contractor, if in default, shall have ninety (90) days after receipt of such notice in which to complete or substantially complete compliance with such provisions. BCC shall have the right to terminate this Agreement upon written notice to Contractor if Contractor fails to complete or substantially complete such compliance efforts within the ninety (90) day period, unless (i) such failure is excused under the provisions of Section 13 hereof, or (ii) compliance within ninety (90) days is not reasonably possible and Contractor has commenced and is diligently pursuing such compliance effort. Upon such termination, BCC shall be entitled to the remedies and damages set forth in this Agreement.

**B. BCC's Default.** In the event that BCC at any time fails to perform or observe any of the provisions of this Agreement required to be performed or observed by BCC or otherwise breaches this Agreement, Contractor shall notify BCC in writing of the facts relied upon as constituting a default or breach hereunder. BCC, if in default, shall have ninety (90) days after receipt of such notice in which to complete or substantially complete compliance with such provisions. Contractor shall have the right to terminate this Agreement upon written notice to



BCC if BCC fails to complete or substantially complete such compliance efforts within the ninety (90) day period, unless (i) such failure is excused under the provisions of Section 13 hereof, or (ii) compliance within ninety (90) days is not reasonably possible and BCC has commenced and is diligently pursuing such compliance efforts. Upon such termination, Contractor shall be entitled to the remedies and damages set forth in this Agreement.

**C. Termination For Convenience.** In the event:

(1) Contractor, in its sole discretion, determines that (a) the Landfill can no longer produce Commercial Quantities of Landfill Gas or (b) the Project cannot be operated economically; or

(2) a Buyer fails to perform its obligations under one or more Power Purchase Agreement(s);

(3) then Contractor shall have the right to surrender and terminate this Agreement after payment of one (1) years' worth of gas payments to BCC as outlined in Section 6A. Once payment has been made this agreement shall become null and void.

**D. Non-Waiver.** No action taken by BCC or Contractor after the effective date of the termination of this Agreement pursuant to Section 14A or 14B in accepting one or more payments from the other or undertaking any other activity which would have been authorized by this Agreement but for its termination, shall be construed as notice that this Agreement is not canceled or as a waiver of the termination.

**SECTION 15 – REPRESENTATIONS AND WARRANTIES**

**A. BCC.** BCC hereby agrees, warrants and represents to Contractor, as of the date of execution of this Agreement and while this Agreement is in effect, that

(i) BCC has not entered into any other agreements with respect to the Landfill Gas conveyed to Contractor under this Agreement or with respect to any of the other rights conveyed to Contractor pursuant to Section 2 of this Agreement;

(ii) Contractor shall receive good and marketable lease to the Plant Site, the Landfill and the Landfill Gas, free and clear of all liens, claims, encumbrances and mortgages or adverse interests of any kind or nature;

(iii) It is intended that the Landfill and the Management and Operation of the Landfill (including the Gas Collection System) be in compliance with any and all Applicable Laws relating to the Management and Operation of the Landfill, including, without limitation, all Environmental Laws; and BCC will rectify instances of non-compliance in accordance with applicable laws and the associated compliance schedules; and that any existing Gas Collection System is in commercially reasonable operating

condition and that that existing or any new or expanded system will be maintained by BCC in good repair during the term of this Agreement.

(iv) BCC is not currently aware of any toxic material or Hazardous Material placed in the Landfill within the last 10 years, except for any incidental Hazardous Material that may be included within normal household waste; and

(vi) The execution, delivery and performance by BCC of this Agreement is within the powers of BCC, have been duly authorized and does not violate any Applicable Law or the charter of BCC.

**B. Contractor.** Contractor hereby agrees, warrants and represents to BCC, as of the date of execution of this Agreement and while this Agreement is in effect, that:

(i) Contractor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Alabama and has the power to carry on its business as it is contemplated to be conducted under this Agreement; and

(ii) The execution, delivery and performance by Contractor of this Agreement is within the limited liability company powers of Contractor, have been duly authorized by all necessary limited liability company action, and do not violate any Applicable Law, or the terms of the articles of organization or operating agreement of Contractor.

## **SECTION 16 – TESTING AND ANALYSIS**

**A. Testing and Evaluation.** Subject to the provisions of this Agreement, Contractor may conduct such tests and evaluations as may be necessary in order to determine whether the Landfill will produce Commercial Quantities of Landfill Gas and the Project is economically viable. All tests will be subject to the approval of BCC, which shall not be unreasonably conditioned, withheld, or delayed. Access to the Landfill for the purpose of conducting such tests shall be pursuant to Section 3B. Contractor, at its sole expense, will complete such testing and evaluation. Contractor shall provide BCC a copy of the results of all such tests and evaluations.

**B. Pertinent Information.** Prior to the commencement of the testing and evaluation and to the extent BCC has knowledge, BCC shall inform Contractor in writing about any environmental information, environmental impact reports or studies, permits or permit applications, zoning information including variances or variance applications, and any other available data relating to the Landfill and BCC's or Contractor's activities in connection therewith. At Contractor's request, BCC will deliver copies of such material as may be in BCC's possession.

**C. Go/NO Go Decision Date.** Contractor shall determine the economic viability of this Project, Processing Station and whether the Landfill will produce Commercial Quantities of Landfill Gas within ninety (90) days of completion of the testing and evaluation described above and provide a Go/No Go Decision within the ninety (90) days. Gas sampling for said testing shall be recovered within thirty (30) days from the date of execution of this agreement.

**D. Termination by Contractor.** If Contractor determines, in its sole judgment, following completion of testing and evaluation, that the Project or the Processing Station is not economically viable or that the Landfill will not produce Commercial Quantities of Landfill Gas, Contractor shall provide written notice to BCC of such judgment in accordance with the "Go/No Go" decision date as specified above. Thereafter, this Agreement shall terminate with no further liability on the part of BCC or Contractor.

#### **SECTION 17 – ASSIGNMENT**

Except as expressly provided herein, this Agreement may not be transferred or assigned by one party without written consent of the other party which consent shall not be unreasonably withheld, conditioned or delayed.

#### **SECTION 18 – NOTICES**

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been properly given or sent (on the date such act(s) occurs) if (a) served personally upon the party for whom intended, (b) sent by first-class mail, return receipt requested, (c) sent by Federal Express or other nationally recognized over-night carrier or (d) sent via facsimile, to such party at its address as hereinafter shown, provided a confirmation is generated by the fax machine sending the fax (and such fax is confirmed with a telephone call to the receiving party's office, notifying him that such fax was sent), or sent as otherwise permitted by the receiving party by notice to the sending party in accordance with this provision:

To Contractor:           AEP Renewable Fuels, LLC  
                                  1400 Buford Highway Ste E-2  
                                  Buford, GA 30518

With a copy to:

To BCC:

Or to any other addresses designated in writing by the receiving party to the other party in accordance with the provisions of this Agreement.

#### **SECTION 19 - TAXES**

Contractor shall, during the term of this Agreement, pay or arrange for the payment of all general taxes currently levied upon or assessed against the Processing Station, relating equipment, machinery and improvements constructed or installed by it in, on, or adjacent to the Landfill.

## SECTION 20 – MATERIAL CHANGES

**A. Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such terms and provisions to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

**B. Headings.** The headings appearing in this Agreement are intended for convenience and reference only, and are not to be considered in construing this Agreement.

**C. Disclaimer of Joint Venture, Partnership and Agency.** This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between Contractor and BCC or to impose any partnership obligation or liability upon such parties. Neither BCC nor Contractor shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other party.

**D. Governing Law.** All questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of Alabama.

**E. Amendments to Agreement.** This Agreement may be amended or modified only by a written instrument signed by both parties hereto.

**F. Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous oral or written agreements and understandings between the parties relating to the subject matter hereof.

**G. Successors and Assigns.** All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

**H. Contractor Right to Processing Station Design.** It is acknowledged that the Contractor has or will expend considerable time and expense in developing the designs for the Processing Station, therefore, consider such design to be proprietary. BCC agrees on behalf of itself and its agents and representatives to maintain the proprietary nature of this design by not constructing like facilities without the written approval of the Contractor.

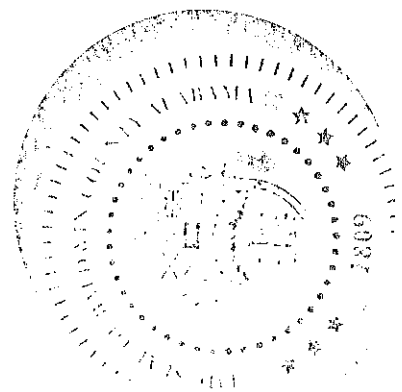
**IN WITNESS OF THE ABOVE TERMS,** the parties have caused this Agreement to be executed, by their respective officers duly authorized, on the dates indicated below, in duplicate, each to have the force and effect of an original.

**AEP RENEWABLE FUELS, LLC**

By: *T. Erwin* 2/2/21  
Name: Tony Erwin Date  
Title: CEO

**COMPANY OR ORGANIZATION**

By: *Joe Daniels* 2/2/21  
Name: Date  
Title:



REMAINDER OF PAGE IS BLANK NOTARY PAGE TO FOLLOW

STATE OF ALABAMA

County OF: Baldwin

NOTARY CERTIFICATE

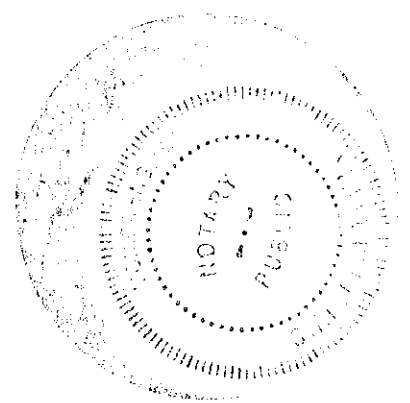
Before me this day personally appeared Joe Davis, III and Weyne Dyess, as Chairman and County Administrator respectively of Baldwin County Comm. to me well known or produced identification \_\_\_\_\_ (Type of

Identification) to be persons described in and who executed the foregoing instrument, and who acknowledged that they did so as officers of said corporation all by and with the authority of the Board of Directors of said corporation.

Witness my hand and seal this 2nd day of February, 2021.

Signature of Notary Monica English

Notary Stamp: My Commission Expires: May 5, 2024





December 18, 2020

Baldwin County Commission  
Attn: Honorable Billie Jo Underwood, Mrs. Terri Graham,

Re: Proposed Landfill Gas Rights Agreement (the "Agreement") by and between AEP Renewable Fuels, LLC (together with any successor, "AEP") and Baldwin County Commission (the "Commission")

Dear Mses. Underwood and Graham,

This letter will serve as a written modification to the Landfill Gas Rights Agreement ("Agreement"). Unless otherwise stated, the terms herein shall have the same meaning as in the Agreement. The parties understand and agree that, notwithstanding any term to the contrary, the Agreement, once approved and executed by the Baldwin County Commission ("BCC"), will not be effective, and neither party will have any obligations thereunder, unless and until AEP executes all written agreements necessary to proceed with (1) interconnecting the Processing Station with the Riviera Utilities pipeline, (2) interconnecting with British Petroleum lateral lines, and (3) compressing and piping Landfill Gas to a metering and pressure regulation station. If said written agreements are not in place within six (6) months of the BCC's execution of the Agreement, the Agreement shall be null and void without further action by either party thereto.

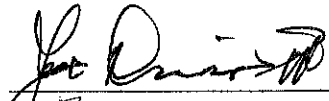
Sincerely,

AEP Renewable Fuels, LLC

By:   
Tony Erwin, CEO

**AGREED AND ACKNOWLEDGED:**

BALDWIN COUNTY COMMISSION

By:   
Name: Joe Davis JTE  
Title: Chairman  
Date: 2/12/2021

