

DOCKETED

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BIOGAS PURCHASE AGREEMENT

This BIOGAS PURCHASE AGREEMENT (this "Agreement") is made and entered into as of this 22th day of December, 2010 (the "Effective Date"), by and between Calpine Energy Services, L.P., a Delaware limited partnership ("Buyer") and EIF KC Landfill Gas, LLC, a Delaware limited liability company ("Seller"). Buyer and Seller shall also be hereinafter referred to individually as a "Party" and together as the "Parties".

RECITALS

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, Biogas generated by a landfill gas-to-energy facility located in Johnson County, Kansas, which is an eligible renewable energy resource under California Public Utilities Code Section 399, as it may be amended, restated or supplemented from time to time, by the California Energy Commission (the "Eligible Resource") for spot delivery in accordance with the terms set forth below;

NOW, THEREFORE, in consideration of the foregoing, in reliance on the mutual conditions, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions.

- 1.1. "Biogas" shall mean pipeline quality natural gas that is produced from Landfill Gas and contains all the Green Attributes associated with the use of a pipeline quality Landfill Gas derived fuel for the generation of electric power.
- 1.2. "California Renewables Portfolio Standard" or "RPS" means the renewable energy program and policies established by California State Senate Bills 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.
- 1.3. "Governmental Authority" shall mean any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority.
- 1.4. "Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Unit(s), and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Buyer to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Buyer's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy. Green Attributes do not include (1) any energy, capacity, reliability or other power attributes from the Unit(s),

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(ii) production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Unit(s) for compliance with local, state, or federal operating and/or air quality permits. If Seller's Unit(s) is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from such facility.

1.5. "Green Tag Buyer" shall mean a purchaser of Green Tag(s).

1.6. "Landfill Gas" shall mean renewable landfill gas as defined by the CEC in the Second Edition of the Overall Program Guidebook for the RPS as of the date of execution of this Transaction Confirmation. This represents gas produced by the breakdown of organic material at landfills and is composed primarily of methane and carbon dioxide.

1.7. "MMBtu" shall mean million British thermal units, which is equivalent to one dekatherm.

1.8. "Renewable Energy Credits" and "RECs" shall mean a renewable energy credit defined under California law, including under the RPS, or by a California Governmental Authority associated with the production of electricity from an eligible renewable energy resource and where applicable, appropriately registered as such by a California Governmental Authority.

1.9. "Seller's Unit(s)" means Seller's source of Biogas, which may be owned and/ or operated by a third party.

1.10. "Unit(s)" Buyer's electric generation facilities.

2. Terms of Purchase and Sale.

2.1. **Delivery.** Seller shall deliver, and Buyer agrees to receive, the Biogas at Buyer's receipt point(s) set forth in the Kern River Transportation Agreement, dated as of July 2, 2009 by and between Calpine Energy Services, L.P. and Kern River Gas Transmission Company into Buyer's pool (the "**Delivery Point**") on or before January 31, 2011 (the "**Delivery Deadline**").

2.2. **Transportation.** Seller shall have the sole responsibility for transporting the Biogas to the Delivery Point. Buyer shall have the sole responsibility for transporting the Biogas from the Delivery Point. The Parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the applicable gas gathering or pipeline companies transporting Biogas to the Delivery Point (each, a "**Transporter**"). Each Party shall give the other Party timely prior written notice, sufficient to meet the requirements of the Transporters, of the quantities of Biogas to be delivered and purchased each calendar day. Should either Party become aware that actual deliveries at the Delivery Point are greater or lesser than the quantity of Biogas confirmed by Transporter(s) for movement, transportation or management (the "**Scheduled Biogas**"), such Party shall provide prompt notice thereof to the other Party. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Biogas greater than or less than the Scheduled Biogas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Biogas less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such

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Imbalance Charges paid by Seller. For each MMBtu of natural gas (brown gas) delivered to Buyer by or on behalf of Seller to resolve a pipeline imbalance due to Seller's delivery of quantities of Biogas less than the Scheduled Biogas, Buyer shall pay Seller the spot price of natural gas on the day the natural gas is delivered to Buyer as published in Platt's Gas Daily midpoint for Kern River, Opal under the Rockies heading. Amounts due to Seller for any natural gas (brown gas) delivered to Buyer to resolve such pipeline imbalances shall be set forth in the invoice to be provided to Buyer by Seller along with amounts due for Biogas delivered hereunder in accordance with Section 4 hereof.

2.3. Quantity. Seller shall deliver to Buyer, and Buyer shall receive from Seller up to a maximum of 86,800 MMBtu (million British Thermal Units) of Biogas at the Delivery Point (the "Contract Quantity") by the Delivery Deadline but shall deliver no more than a maximum of 11,000 MMBtu per calendar day without the written consent of Buyer.

2.4. Quality and Measurement. All Biogas delivered by Seller shall meet the gas pressure, quality and heat content requirements of the receiving Transporter. The unit of quantity measurement for purposes of this Agreement shall be one MMBtu dry. Measurement of Biogas quantities hereunder shall be in accordance with the established procedures of the Transporter who will receive the Biogas at the Delivery Point on behalf of Buyer.

2.5. Supporting Documentation. Following delivery of the Biogas to Buyer, Seller or its designee shall provide Buyer with any documentation required by the CEC to evidence the transportation of the Biogas from the Eligible Resource to the Delivery Point, including any affidavits or attestations set forth in the CEC RPS Eligibility Guidebook, as the same may be amended or supplemented as of the Delivery Deadline, including the information required by Form CEC-RPS-1A:S1 attached as Appendix A hereto and an attestation in the form of Appendix B hereto, together with the information referenced as Exhibit A thereto (the "Supporting Documentation"). Each Party shall provide the other Party cooperation and additional documentation (as may be reasonably available) (i) pursuant to any audit of this Agreement or the transactions hereunder by a Governmental Authority or (ii) in order for title to the Green Attributes associated with the Biogas sold and delivered to Buyer hereunder to vest in Buyer and for such Green Attributes to be tracked on WREGIS and be credited to Buyer.

2.6. Price and Fees. The price to be paid by Buyer to Seller for the purchase of Biogas delivered to the Delivery Point shall be, per MMBtu, the sum of (a) the spot price of natural gas on the day the Biogas is delivered to Buyer as published in Platts Gas Daily midpoint for Kern River, Opal under the Rockies heading (the "Index Price") and (b) [REDACTED] USD (the "Contract Price").

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

3. Title, Warranties and Indemnity.

3.1. Unless otherwise specifically agreed, title to the Biogas shall pass from Seller to Buyer at the Delivery Point. Seller shall have responsibility for and assume any liability with respect to the Biogas prior to its delivery to Buyer at the Delivery Point. Buyer shall have responsibility for and assume any liability with respect to said Biogas after its delivery to Buyer at the Delivery Point.

3.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Biogas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims.

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3.3. The Biogas delivered to Buyer hereunder is from a facility that produces an eligible renewable fuel under California Public Utilities Code Section 399, as it may be amended, restated or supplemented as of the Delivery Deadline, by the California Energy Commission ("CEC").

3.4. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("**Claims**"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Biogas or other charges thereon which attach before title passes to Buyer, including all Claims from any persons arising from any falsehood, material inaccuracy or misleading statements or information in any Supporting Documentation. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Biogas or other charges thereon which attach after title passes to Buyer.

3.5. Notwithstanding the other provisions of this Section 3, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of the Biogas delivered by Seller to meet the quality requirements of Section 2.4.

4. **Payment.** Seller shall invoice Buyer for the Biogas delivered and received in the preceding calendar month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. Buyer shall remit the amount due under this Section 4 in immediately available funds, on or before ten (10) calendar days following the date upon Buyer receives the invoice and Supporting Documentation from Seller (the "**Payment Date**"); provided that if the Payment Date falls on a weekend or U.S. Federal banking holiday, payment will be due on the next weekday following the weekend or holiday.

5. **Notices.** Each notice, request, demand, statement or routine communication allowed or permitted by this Agreement, or any notice or communication which either Party may desire to give to the other, shall be in writing and shall be considered as delivered when received by the other Party by certified mail, reputable overnight courier, or by facsimile addressed to the other Party at its address indicated below or at such other address as either Party may designate for itself in a written notice to the other Party; provided that in the case of facsimile communication the recipient confirms by return facsimile such receipt. Either Party may additionally designate in writing a replacement or successor representative to the person listed below at any time during the term of this Agreement.

If to Buyer:

Calpine Energy Services, L.P.
717 Texas Avenue, Suite 1000
Houston, TX 77002
Attn: Brian Modellmog
Telephone: 713-820-4069
Facsimile: 713-830-8722

If to Seller:

EIF KC Landfill Gas, LLC
c/o Element Markets, LLC
3555 Timmons Lane, Suite 900
Houston, TX 77027
Attn: Randall N. Lack
Telephone: (281) 207-7213
Facsimile: (281) 207-7211

7. **Confidentiality.** Neither Party shall disclose, directly or indirectly, without the prior written consent of the other Party, the terms of this Agreement to a third party (other than the employees, lenders, members, potential or existing financing parties, counsel, accountants and other agents of the Party, or prospective purchasers of all or substantially all of a Party's assets or of any rights under this Agreement, provided such persons shall have agreed to keep such terms confidential) except (i) to the extent required in order to comply with any applicable law, order, regulation, exchange rule or (ii) to the extent necessary for the enforcement or implementation of this Agreement, or (iii) to the extent required in order to comply with existing commercial arrangement, to Seller's lessor and sublessor provided that each such party agrees in writing to keep the terms of

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this Confirmation confidential. Each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. In the event that disclosure is required by a governmental body or applicable law, the Party subject to such requirement may disclose the material terms of this Agreement to the extent so required. The existence of this Agreement is not subject to this confidentiality obligation. The terms of this Agreement shall be kept confidential by the Parties for one (1) year following the Effective Date. Subject to Section 13, the Parties shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this confidentiality obligation.

8. **Governing Law.** WITH THE EXCEPTION OF THE STATUTES AND REGULATIONS EXPLICITLY REFERENCED HEREIN, THIS AGREEMENT, AND ALL CLAIMS OR CAUSES OF ACTION (WHETHER IN CONTRACT OR IN TORT) THAT MAY BE BASED UPON, ARISE OUT OF OR RELATE TO THIS AGREEMENT, OR THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED PURSUANT TO THE INTERNAL LAWS OF THE STATE OF NEW YORK.

9. **Forward Contract.** The Parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10. **Severability.** To the extent that any provision of this Agreement or any paragraph, term, sentence, phrase, clause or word of this Agreement shall be found to be void, illegal or unenforceable for any reason, such paragraph, term, sentence, phrase, clause or word shall be deemed modified or deleted in such a manner as to make the Agreement, as so modified, legal and enforceable under applicable law. The remainder of the Agreement shall remain in full force and effect.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and there are no other agreements, warranties or representations, written or oral, other than those contained herein or specifically incorporated herein by reference. This Agreement supersedes any and all prior agreements or understandings between the Parties with regard to the subject matter contained herein, and may only be amended, modified or extended by a writing signed by each of the Parties.

12. **Successors and Assigns.** The provisions of this Agreement bind the Parties hereto and each and all of their respective heirs, legal representatives, successors and assigns. This Agreement may not be assigned by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld. Notwithstanding the foregoing, Seller may assign its rights to any lender or other financing party in connection with securing indebtedness or other financing relating in whole or in part to Seller or its landfill gas to energy facility and, in connection with any such financing, Buyer agrees to cooperate and provide customary consents to collateral assignment in the form reasonably requested by the lenders or other financing parties.

13. **Waiver.** No waiver of any breach of any term and/or provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other term and/or provision of this Agreement.

14. **No Consequential.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOSS OF PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, NOTWITHSTANDING THE FAULT, NEGLIGENCE (INCLUDING GROSS NEGLIGENCE), IN WHOLE OR IN PART, STRICT LIABILITY OR BREACH OF CONTRACT OF THE BENEFICIARY THEREOF AND WHETHER ASSERTED IN CONTRACT, IN WARRANTY, IN TORT, BY STATUTE OR OTHERWISE.

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15. Authority. Each Party to this Agreement represents and warrants that it has full and complete authority to enter into and perform this Agreement. Each person who executes this Agreement on behalf of the Party that such person represents hereby represents and warrants that they have full and complete authority to do so and that the Party they represent will be bound thereby.

16. Headings and Subheadings. The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties and shall not be used to construe or interpret the provisions of this Agreement.

16. Counterparts. This Agreement may be signed in one or more counterparts, each of which when taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of facsimile or e-mail of a PDF file containing a copy of an executed agreement (or signature page thereto) shall be deemed in all respects and for all purposes to be an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof hand delivered by a Party to the other Party.

[Signature page follows]

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IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representatives as of the Effective Date.

BUYER

Calpine Energy Services, L.P.

By: [Signature]
Printed Name: Kent Williams
Title: Vice President

DA

SELLER

BIF KC Landfill Gas, LLC

By: [Signature]
Printed Name: Randall N. Lack
Title: Authorized Agent

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APPENDIX A

Form CEC-RPS-1A-S1-Biofuels



[double-click PDF icon above to open form]

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APPENDIX B

Source Facility Attestation

Source Facility Representative Name: _____

Address: _____ Tel: _____

Source of biogas: _____

Amount of biogas sold to [BUYER NAME] (MMBtu): _____

Declaration:

I, _____ (name of Source Facility authorized representative), declare under the penalty of perjury, that the information on this form is true and correct to the best of my knowledge.

Further, I declare the following:

1. The biogas referenced above (the "Biogas") was sold exclusively to [_____] (the "Buyer");
2. The Biogas was produced from landfill gas collected at the Source Facility, which is, as of the date hereof, considered an RPS-eligible resource under the California Energy Commission Renewable Energy Program;
3. The Biogas was transported to the Buyer via injection by the Source Facility into an interstate pipeline, and transportation and metering information regarding the Biogas is set forth on Exhibit A hereto;
4. The Biogas was nominated to [check one of the following, as appropriate]:
 - ☐ _____ (insert generation facility name)
 - ☐ _____ (insert LSE-owned pipeline serving the generation facility)

As an authorized agent of _____ (Source Facility), I attest that the above statements are true and correct.

Signature: _____

Date: _____

EXHIBIT A

[to be provided]