

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 13-4461
THE EXECUTION OF A LANDFILL LEASE	)	
& LANDFILL GAS PURCHASE	)	Introduced by Martha Bennett, Chief
AGREEMENT AND A RELATED LANDFILL	)	Operating Officer, with the concurrence
GAS COLLECTION SYSTEM ACQUISITION	)	of Metro Council President Tom Hughes
AGREEMENT WITH RIVERGATE LFG,	)	
INC.	)	

WHEREAS, Metro owns the 238 acre closed landfill, known as the St. Johns Landfill, located at 9363 N. Columbia Boulevard in Portland, Oregon, which contains a landfill gas collection system; and

WHEREAS, Rivergate LFG, Inc. (“Rivergate”) is a wholly owned subsidiary of Ash Grove Cement Co.; and

WHEREAS, Rivergate and Portland Landfill Gas Corporation, a Massachusetts corporation (“PLGC”) were constituent partners of Portland LFG Joint Venture, an Oregon general partnership (“Portland LFG”); and

WHEREAS, in 1997, the Metro Council adopted Metro Resolution No. 97-2494, by which the Council approved the acquisition by Portland LFG of Metro’s landfill gas collection system at the St. Johns Landfill; approved Metro’s landfill gas lease to Portland LFG; approved an agreement for Metro to provide operating services for the gas collection system to Portland LFG; and approved Metro’s sale of the landfill gas generated at the Landfill to Portland LFG for beneficial uses in North Portland; and

WHEREAS, in 2012, Metro’s landfill gas lease to Portland LFG expired; and

WHEREAS, on March 26, 2013, Rivergate and PLGC entered into a Partnership Interest Purchase Agreement, under which Rivergate assumed all of the assets and liabilities of Portland LFG, and Portland LFG was thereafter dissolved; and

WHEREAS, Rivergate is now the sole owner of the landfill gas collection system at the St. Johns Landfill; and

WHEREAS, Rivergate now wishes to convey to Metro, and Metro wishes to acquire from Rivergate the landfill gas collection system assets that Rivergate acquired in the 1997 transaction; and

WHEREAS, Metro now wishes to lease to Rivergate and Rivergate wishes to lease from Metro, a certain portion of property located on the St. Johns Landfill containing a landfill gas compressor station and associated landfill gas equipment; and


WHEREAS, Metro also wishes to grant to Rivergate an easement containing the pipeline connecting the compressor station and landfill gas equipment to the property of Rivergate's corporate owner, Ash Grove Cement Co.; and

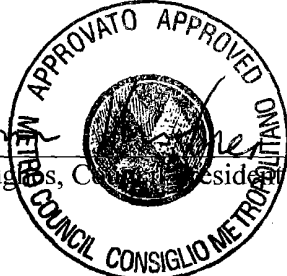
WHEREAS, Metro now wishes to sell to Rivergate and Rivergate wishes to purchase from Metro, the landfill gas emanating from the St. Johns Landfill;

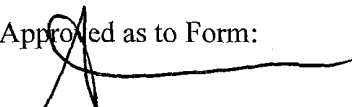
WHEREAS, Metro Code Section 2.04.026(a)(2) requires Metro Council approval of any contract for the lease of real property owned by Metro; now therefore

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to execute the Acquisition and Termination of Project Acquisition Note in a form substantially similar to that attached here as Exhibit A, and to execute the Landfill Lease & Landfill Gas Purchase Agreement in a form substantially similar to that attached here as Exhibit B.

ADOPTED by the Metro Council this 26 day of September, 2013.

  
Tom Hughes, Council President



Approved as to Form:  
  
Alison Kean, Metro Attorney

**EXHIBIT "A" TO RESOLUTION NO. 13-4461**

**ACQUISITION AND  
TERMINATION OF PROJECT ACQUISITION NOTE**

This Acquisition and Termination of Project Acquisition Note Agreement (the “Agreement”) is made as of \_\_\_\_\_, 2013, between Rivergate LFG, Inc., an Oregon corporation (“Rivergate”) and Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located in Portland, Oregon (“Metro”).

WHEREAS, Rivergate and Portland Landfill Gas Corporation, a Massachusetts corporation (“PLGC”) were constituent partners of Portland LFG Joint Venture, an Oregon general partnership (“Portland LFG”);

WHEREAS, pursuant to a Partnership Interest Purchase Agreement between Rivergate and PLGC dated March 26, 2013, Rivergate assumed all of the assets and liabilities of Portland LFG, and Portland LFG was dissolved;

WHEREAS, Rivergate is now the sole owner of a gas collection system on a 238 acre closed landfill, known as the St. Johns Landfill, located at 9363 N. Columbia Boulevard in Portland, Oregon (the “Landfill”), which has applicable federal, state, and local permits.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, Rivergate and Metro do hereby agree as follows.

**A. TRANSFER OF ASSETS**

The ownership rights and title to the network of gas collection wells, interconnecting pipes, valves, condensate knockout tanks, blowers, monitoring equipment, and any additional gas extraction equipment installed on the Landfill and used for the purpose of the extraction of landfill gas (the “Gas Collection System”), as set forth hereto on Exhibit A, (including without limitation, all gas pipelines used to transport gas from the landfill to any point of delivery) and all modifications, replacements, additions and expansions thereof that are owned by Rivergate shall be transferred to Metro effective as of the date of this Agreement (the “Transfer”).

**B. TERMINATION OF PROJECT ACQUISITION NOTE**

In consideration of and exchange for the Transfer, the Project Acquisition Note, dated as of May 2, 1997, made by Portland LFG in favor of Metro (the “Project Note”) is hereby cancelled and terminated along with all rights afforded to Metro to receive payment of any principal or interest amounts owed thereunder.

**C. SETTLEMENT OF OBLIGATIONS**

Upon consummation of the Transfer, all obligations of Portland LFG and Rivergate, as assignee, under the Project Note shall be deemed to be fulfilled and settled. Rivergate and Metro hereby agree to release any causes of action or claims against each other under the Project Note or that certain Acquisition and Security Agreement between Portland LFG and Metro, dated as

of May 2, 1997 (the “Security Agreement”). Metro further agrees to release any causes of action or claims against Portland LFG or PLGC (in its capacity as a former general partner of Portland LFG) under the Project Note and Security Agreement.

#### D. MISCELLANEOUS

A. Successors and Assigns. Subject to the restrictions on assignment herein contained, the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors, assigns and legal representatives of the respective parties hereto. This Agreement shall not (directly, indirectly, contingently or otherwise) confer or be construed as conferring any rights or benefits on any person or entity not named as a party hereto, except as otherwise expressly provided with respect to permitted subsidiaries or affiliates hereof.

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. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

D. Severability. If any provision of this Agreement or the application thereof to any party or circumstance be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to persons and circumstances other than those to which it has been held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

E. Entire Agreement; Amendments. This Agreement (including without limitation, the Exhibits hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all oral or written agreements and understandings between the parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by both parties hereto.

F. Waiver. No waiver by either party hereto of any one or more defaults by the other party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of alike or different character. No failure on the part of either party hereto to complain of any action or non-action on the part of the other party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the party who is making such waiver.

G. Joint Work product. This Agreement shall be considered the work product of all parties hereto, and, therefore, no rule of strict construction shall be applied against any party hereto.

H. Expenses of Agreement Execution. Each party shall pay all expenses incurred by it in connection with its entering into this Agreement, including without limitation, all attorneys’ fees.

I. Choice of Laws/Attorneys Fees. 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 Oregon. In any litigation arising from this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by the prevailing party by reason of the event giving rise to such litigation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Rivergate	Metro
By:	By:

## EXHIBIT A

### LANDFILL GAS COLLECTION SYSTEM

#### **Introduction**

The St. Johns Landfill gas collection system consists of 64 single completion extraction wells, 21 double completion extraction wells, 21 horizontal gas collection trenches, a perimeter gas extraction trench system, and a manifold system consisting of pipes varying in size from 3-inches to 16-inches in diameter. The gas collection system also includes the blowers and their controls located at the Motor Blower Flare Facility (MBF). The condensate collection system consisting of 4-inch piping and a number of vacuum stations, valve stations, pumping stations and the condensate knock-outs at the MBF is an integral part of the gas collection system. The building, flares and ancillary equipment at the MBF are not part of the gas collection system. A map showing the general layout of the gas collection system and its major components is included at the end of this narrative description.

The following are descriptions of the major components of the landfill gas collection system at the St. Johns Landfill.

#### **Trenches**

Each gas extraction trench consists of a 5-foot deep, 3-foot-wide trench cut into the top of the subgrade before the installation of the final cover. The lower 3 feet of the trench is backfilled with gravel to allow the gas to migrate into the trench. A 6-inch-diameter perforated, corrugated, high-density polyethylene (HDPE) line is installed 12 inches from the bottom of the trench. The total length of perimeter gas trenches is about 17,800 feet.

#### **Extraction Wells**

The single completion LFG extraction wells are typically drilled to the depth of the landfill at each well location. These wells are between 40 and 60 feet deep. Single completion wells are completed with a single 6-inch diameter polyvinyl chloride (PVC) casing. The upper 25 feet (approximately) of casing is a solid 4-inch PVC riser. All casing below 25 feet is perforated pipe, which extends to the bottom of the well.

The double completion LFG extraction wells were also drilled to 100% of the depth of the landfill at each location, generally 60-100 feet deep. These wells were completed using 6 and 8-inch diameter PVC casings. Double completion wells are constructed with one casing installed to approximately one half the total depth of the well. This casing is perforated between 25 feet from ground surface to the bottom of the completion. The second completion is installed to the full depth of the well and perforated from the bottom of the shallow completion to the bottom of the casing.

## **Landfill Gas Manifold**

The LFG manifold, is constructed of high-density polyethylene pipe that connects all gas extraction wells and trenches to the Motor Blower/Flare Facility. The LFG manifold is sloped to allow condensate to drain to low-point drains. Expansion loops are designed into the manifold routing normally at high points, to allow the pipe to expand and contract. The following table shows the approximate length of each size of manifold piping. Valves are placed at various points along the manifold piping to isolate sections of the system.

### **Landfill Gas Manifold Pipe Sizes**

<i>Pipe Diameter (inches)</i>	<i>Length (feet)</i>
3	21,520
4	4,680
6	6,430
8	5,450
10	5,560
12	2,970
16	3,410
<b>Total</b>	<b>50,020</b>

## **Condensate Drainage System**

Condensate forms as warm, moist landfill gas from the wells and trenches cools in the gas manifold. The condensate drainage system is designed to extract condensate from the gas manifold and dispose of it by pumping it to the manhole (MH-1) at the Blower / Flare Facility. The major components are as follows:

- Vacuum Valve Stations
  - Remote Condensate Pump Stations T-1, T-2, T-3, T-4, and T-5
  - Vacuum Pump Stations VS#1 and VS#2
  - Manhole MH-1
  - Condensate drainage, condensate pump discharge, and vacuum piping.

The following sections describe in more detail the basic design and function of each major component.



### **Vacuum Valve Stations**

There are 31 vacuum valve stations, each located at a low point in the gas manifold. The vacuum valve stations are designed to extract condensate from the gas manifold and admit it into the condensate system.

The major components of a valve station are as follows:

- Fabricated condensate drip leg
- Air release valve
- Balancing valve
- Meter box.

### **Remote Condensate Pump Stations**

There are three remote pump stations, T-1, T-2, T-3, T-4, and T-5. The pump stations are designed to collect condensate from a portion of the landfill and pump it to MH-1 or to the leachate wet well.

The major pump station components are as follows:

- Condensate collection tank
- Condensate pumps
- Isolation valves
- Electrical controls

There is one 2 hp Meyers WGX20-43 condensate pumps at each station. Each is capable of approximately 18 GPM against 40-feet of head.

### **Vacuum Pump Station**

The two vacuum pump stations are located with two of the remote condensate pump stations, and consist of duplex vacuum pumps and a reserve tank. The vacuum pump stations are designed to provide vacuum for the condensate system as well as collect condensate draining from the landfill. The major components are as follows:

- Vacuum pumps and reserve tank
- Condensate collection tank
- Condensate pumps
- Isolation valves
- Electrical controls

#### **10.1.4.4 Manhole MH-1**

Manhole MH-1 is designed to collect the condensate that is discharged from the remote pump stations and pump it to the leachate wet well. The manhole is equipped with a submersible effluent pump capable of about 55 GPM against a 30-foot head.

#### **Condensate Drainage, Pump Discharge, and Vacuum Piping**

The condensate drainage piping consists of about 13,760 feet of four inch diameter high-density polyethylene (HDPE). The system is designed for vacuum assisted gravity drainage. The 4"-HDPE pipe is sloped from the vacuum valve stations to the condensate collection tanks. Vacuum is supplied from the vacuum pump stations through the collection tanks. Condensate cleanouts are located approximately every 300 feet along the pipe. This system also includes about 8,450 feet of one-inch diameter PVC vacuum line and 10,250 feet of two-inch PVC discharge line.

#### **Condensate Extraction and Discharge**

Landfill gas enters the MBF from the north through two 16 inch HDPE pipes. The gas goes through the condensate knock-out tanks (SCR-1 and SCR-2). These tanks extract condensate and filter the gas. Gas from these two knock-out tanks drains by gravity to Manhole-1(MH 1).

Condensate from MH-1 is discharged by a 2 hp Meyers pump to the leachate collection manhole at the northeast end of the landfill. The condensate mixes with leachate and is pumped to the sewer by the 1861/2 hp Little Giant pump in the well.

#### **Blowers**

The three blowers are Hauck model TBGB9-081-291-E, with a 50 horse motor. The blowers run at 4300 RPM and are rated at 2250 standard cubic feet per minute (SCFM) (air) at 68"WC of vacuum. As flow increases past approximately 2250 SCFM the total system vacuum decreases. Multiple blower operation is required when the landfill gas flow rate exceeds a single blower's capacity to maintain sufficient vacuum.

The blowers are equipped with surge controls that regulate the positioning of the volume damper on the suction side of each blower.

**EXHIBIT "B" TO RESOLUTION NO. 13-4461**

## **LANDFILL LEASE & LANDFILL GAS PURCHASE AGREEMENT**

This Landfill Lease and Landfill Gas Purchase Agreement (the "Agreement") is made as of \_\_\_\_\_, 2013, between Rivergate LFG, Inc. ("Rivergate") and Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located in Portland, Oregon ("Metro").

### **RECITALS**

(a) Metro is the owner of a 238 acre closed landfill, known as the St. Johns Landfill, located at 9363 N. Columbia Boulevard in Portland, Oregon, which contains a gas collection system.

(b) Metro desires to lease to Rivergate, and Rivergate desires to lease from Metro, a certain portion of property located on the St. John's Landfill containing a landfill gas compressor station and associated landfill gas equipment together with a pipeline easement to permit landfill gas to be transported from the property.

(c) Metro also desires to sell to Rivergate, and Rivergate desires to purchase from Metro, the landfill gas emanating from the St. John's Landfill.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, Rivergate and Metro do hereby agree as follows:

### **ARTICLE I -- DEFINITIONS**

Unless the context indicates otherwise, the capitalized terms used herein shall have the meanings defined as follows:

A. "British thermal unit" or "Btu" means that quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit (1 degree F) at thirty-nine point two degrees Fahrenheit (39.2 degrees F).

B. "Metro's Facilities" shall mean the three flares currently installed at the Landfill and all modifications, replacements, additions and expansions thereof, and certain blower station and pipeline equipment owned or operated by Metro on such real property, now or in the future.

C. "Force Majeure" means acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind

of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary facts, failures to act or orders of any kind by Metro may not be asserted as an event of Force Majeure by Metro; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances; explosions; or any other cause or event, not reasonably within the control of the party (and its subcontractors and suppliers) claiming Force Majeure (other than the financial inability of such party), which precludes that party from carrying out, in whole or in part, its obligations under this Agreement. Nothing in this provision is intended to excuse any party from performing due to any governmental act, failure to act, or order, where it was reasonably within such party's power to prevent, correct, anticipate, or guard against such act, failure to act, or order.

D. "Franchise" means that certain Grant of Franchise by the City of Portland, Oregon to Portland LFG Joint Venture for a Period of 20 years, Ordinance No. 171496, dated as of August 13, 1997, expiring on August 12, 2017.

E. "Gas Collection System" shall mean the network of gas collection wells, interconnecting pipes, valves, condensate knockout tanks, blowers, monitoring equipment, and any additional gas extraction equipment installed on the Landfill and used for the purpose of the extraction of Landfill Gas.

F. "Good Engineering Practice" means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected to accomplish the desired result in a manner consistent with reliability, safety, environmental protection, expedition, project economics and applicable laws, ordinances, rules and regulations for similar facilities. Good Engineering Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

G. "Hazardous Material" means the following:

Any "hazardous substance" as defined pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. 9601(14) as amended by the Superfund Amendments and Reauthorization Act or pursuant to any other analogous Federal or state statute, and including any judicial interpretations thereof;

- (ii) Any "pollutant or contaminant" as defined in 42 U.S.C.A. 9601(33);
- (iii) Any material defined as "hazardous waste" pursuant to 40 C.F.R. Part 260;
- (iv) Any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910;
- (v) Any petroleum, including crude oil or any fraction thereof; and
- (vi) Natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel.

H. "Landfill" means that real estate owned by Metro known as the St. Johns Landfill and located at 9363 N. Columbia Blvd. in Portland, Oregon, which real estate includes the Premises.

I. "Landfill Gas" means any and all gases resulting from the biological decomposition of landfill solid wastes, including, but not limited to, methane, carbon dioxide, hydrogen, and traces of other gases or liquids or any combination thereof.

J. "Permits" means all material authorizations from, permits and licenses issued by, consents and approvals of, filings with, notices from, and registrations with, any and all governmental entities, departments or agencies (including all conditions thereof), which may be required to be held or obtained, from time to time for (i) the burning or use of Landfill Gas at Buyer's Facilities, (ii) the operation, maintenance, possession or ownership of such Buyer's Facilities, or (iii) the performance by Metro of any of its obligations under this Agreement.

K. "Point of Delivery" means the first downstream flange located after the landfill gas flaring equipment located on the Landfill as shown in Exhibit B.

L. "Portland LFG" means the Portland LFG Joint Venture, a general partnership organized under the laws of the State of Oregon.

M. "Premises" means the property on site of the St. John's Landfill, described and depicted on Exhibit C, and the Easement across the Landfill also depicted on Exhibit C, attached hereto.

N. "Product" means Landfill Gas, processed gas extracted from Landfill Gas, constituent parts of Landfill Gas, electricity generated from Landfill Gas, heat and combustion by-products from the combustion of Landfill Gas, or any other derivative produced from Landfill Gas or processed gas extracted from Landfill Gas.

O. "Project Facility" means the Gas Collection System and all modifications, replacements, additions and expansions thereof.

P. "Sales Meter" shall mean the meter or meters, and measuring equipment installed pursuant to Article III .B. 3 for the purpose of measuring in accordance with Good Engineering Practice the Volume of Landfill Gas and the MMBtus contained in the Landfill Gas sold by Metro to Rivergate at the Point of Delivery. Volume of Landfill Gas sold to Rivergate shall be the flow measured by the Rivergate Sales Meter.

Unless the context indicates otherwise, all capitalized terms used herein and not defined herein shall have the meanings specified in the Landfill Lease or the Acquisition and Security Agreement, dated as of May 2, 1997 and such definitions shall be incorporated by reference herein, except that the definition of the term "Force Majeure" shall refer solely to the obligations under this Agreement.

## ARTICLE II – LANDFILL LEASE

### A. LANDFILL LEASE RIGHTS GRANTED

1. Metro hereby leases to Rivergate the Premises including the Easement depicted on Exhibit C and further grants to Rivergate, and its employees, agents, representatives and independent contractors (provided that such independent contractors have appropriate insurance covering Metro as an additional insured) the right to access, to the Premises for the purpose of compressing, processing and transporting landfill gas.

2. Rivergate shall have the right to install and locate on or under the Premises and Easement, modify, improve, expand, operate, remove and otherwise deal with, the Project Facility and all components thereof, and all other rights which are necessary or desirable for the conduct of Rivergate's activities hereunder.

### B. TERM

1. Lease Term. Subject to the other provisions hereof, this Agreement shall be effective immediately and shall remain in force for a term of five (5) years after the execution hereof unless sooner terminated in accordance with Article III.D hereof. This Agreement may be extended upon the mutual agreement of the parties.

### C. RENT PAYMENT

As the rent payment under this Agreement, Rivergate shall pay to Metro the sum of \$0.05 per MMBtu sold under this Agreement, which amount shall be deemed to be a credit against the amounts due at the end of each year under Article III.A.2 below.

### D. ADDITIONAL REPRESENTATIONS AND COVENANTS

1. Title to Premises, the Landfill Gas and Improvements. Metro represents that it has furnished Rivergate with a true and correct copy of all documents evidencing its title to the Landfill. Metro represents and warrants that: (i) it has good and marketable title to the Premises, and the Landfill Gas at or in the Landfill; (ii) it holds exclusive rights to collect, sell, dispose and deal with the Landfill Gas at or in the Landfill, to conduct all the other rights and activities set forth in Article III, and to lease and grant all such rights and interests hereby; and (iii) all such rights and interests are free from all liens, encumbrances, restrictions or options of any kind whatsoever. Metro further agrees that: (i) it shall, at its own expense, defend or cause the defense of, the title to the Premises and to the Landfill Gas at or in the Landfill during the term of this Agreement, and any extension hereof; and (ii) Rivergate's quiet and peaceful enjoyment of the Premises and its rights hereunder shall not be disturbed or interfered with by Metro or any person or entity claiming by, through or under Metro. Subject to the provisions of Article II.A hereof, all improvements and fixtures built on the Premises by or on behalf of Rivergate, which are readily removable, are the property of Rivergate, and shall be removed following the termination of this Agreement as provided herein. All other

improvements and fixtures shall become property of Metro upon termination of this Agreement.

2. Adverse Agreements and Liens. Metro shall not enter into any agreement in connection with the sale of Landfill Gas that would adversely affect Rivergate, without the consent of Rivergate, which consent shall not be unreasonably withheld. Metro shall not take any action which would create a lien or encumbrance on the Premises.

3. Permits; Compliance with Laws. Metro represents that it has obtained, or will obtain if required, all material permits, licenses authorizations or approvals from any governmental authority required in order to carry out its obligations hereunder or to allow Rivergate to carry out its obligations or exercise its rights hereunder. Each party agrees that its performance of its obligations under this Agreement shall be in compliance with all applicable laws, ordinances, rules and regulations, and with any and all applicable orders, decrees and judgments of any governmental or judicial authority. In addition, each party shall not cause, by its actions or failures to act under or in connection with this Agreement, the other party to be in violation of any of the foregoing. Without limiting the foregoing, in its ownership, possession and use of the Landfill, Metro shall comply with all laws, regulations, ordinances, and orders pertaining to environmental matters, including, without limitation, those relating to the discharge, control, reporting, use, storage, treatment and disposal of Hazardous Materials; and Metro shall carry out, at its own expense, all repairs, maintenance with regards to the Landfill or to the Project Facility required pursuant to state and federal regulations and otherwise in accordance with Metro's operating plan, including, without limitation, Metro's plans for the Landfill and the Project Facility due to the closing of the Landfill.

4. Condensate. If allowed by law or regulation, Rivergate shall have the right to return to the Landfill any matter solid or liquid (including condensate) removed, as a result of collecting and/or processing Landfill Gas or Product from the Landfill in a manner which ensures protection of Metro's environmental safeguards at the Landfill. Notwithstanding the foregoing, any matter liquid (including condensate) removed or collected off the Premises may not be returned to the Landfill. Otherwise, Rivergate shall have no rights in or to such matter. Metro shall be responsible for any off-site disposal of such matter collected on the premises, whether required by Metro or any regulatory authority, including, without limitation, any additional processing or treatment thereof and the resulting expenses. Title to, and responsibility for, all such matter so removed, whether or not it is thereafter returned to the Landfill, shall remain with Metro.

5. No Bankruptcy Filings. Notwithstanding any other provision to the contrary, each party hereby covenants with the other that it shall not file voluntarily for bankruptcy nor permit any assignee or affiliate controlled by or connected with it to file for bankruptcy without first securing all rights granted to the other party under this Agreement or any other agreement between the parties relating to the subject matter hereof.



6. Landfill Gas. To the best of Metro's knowledge, the Landfill (including, without limitation, the Premises) consists primarily of organic waste, municipal waste, industrial waste and sludge. The Landfill Gas produced at or from the Premises has been and, to Metro's knowledge, shall be combustible. In accordance with the provisions of Article III.A.3, Metro shall operate and maintain the Landfill so as to maximize the production of Landfill Gas for Rivergate, provided, however, that, in Metro's reasonable discretion, no such operation and maintenance unreasonably and materially conflicts with (i) the protection of the environmental safeguards installed at the Landfill; (ii) any compliance with applicable permits; or (iii) the public health.

7. Disclosure. To the best of Metro's knowledge, none of the documents or other written or other information furnished by or on behalf of Metro to Rivergate pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of circumstances in which they were made, not misleading. Metro is not aware of any fact peculiar to Metro or the Landfill, which materially adversely affects the Landfill, and which has not been set forth in this Agreement or in other written material furnished to Rivergate by or on behalf of Metro prior to the date hereof in connection with the transactions contemplated hereby.

### **ARTICLE III – SALE AND PURCHASE OF LANDFILL GAS**

#### **A. GAS SALES**

1. Basic Agreement. Metro shall sell and deliver to Rivergate at the Point of Delivery and Rivergate shall purchase and accept from Metro at the Point of Delivery, all the Landfill Gas produced at the Landfill commencing on the date hereof and in accordance with the terms and conditions herein. Rivergate shall promptly notify Metro of any condition of which it has or comes to have knowledge that could materially decrease the likelihood that it will be willing or able to purchase the Landfill Gas produced at the Premises at the then current sales levels.

2. Price. Rivergate shall pay to Metro for all Landfill Gas delivered on an annual, calendar-year basis pursuant to this Agreement, as provided on the attached Exhibit A, which is incorporated by reference as if set forth in full. Rivergate may not set off against any amounts owed to Metro for Landfill Gas delivered hereunder any amount then due and owing to Rivergate by Metro under this or any other agreement.

3. Operating Standards. Rivergate shall use its best reasonable efforts to operate its Landfill in accordance with Good Engineering Practice so as to provide the maximum quantity of Landfill Gas to Rivergate, so long as commercially practicable in Metro's sole judgment and to the extent that no event of Force Majeure exists and further, to the extent that such operation does not unreasonably interfere with protection of the environmental safeguards installed by Metro at the Landfill and compliance with appropriate permits. Metro shall have no obligation to compensate Rivergate or any other person or entity for a reduction in the amount of Landfill Gas resulting from the aging of

the Landfill or other changes, or to purchase any other type of fuel from any third party to supply Rivergate.

4. Quality. Metro is selling raw unprocessed Landfill Gas hereunder and has no obligation to process the Landfill Gas in any manner whatsoever prior to delivering such Landfill Gas to Rivergate at the Point of Delivery.

5. Term. Subject to the other provisions hereof, the obligations of purchase under this Article shall coincide with the term of the Agreement set forth in Article II, unless the Agreement is sooner terminated in accordance with Article II of this Agreement or is sooner terminated as provided in this Article III, in which case this Agreement shall terminate.

## B. TERMS AND CONDITIONS OF GAS SALES

1. Billings and Payments. Rivergate shall furnish to Metro a quarterly statement setting forth the total amount of Landfill Gas in MMBtus sold by Metro to Rivergate at the Point of Delivery during the preceding quarter as measured according to Section 2 below, the amount of such Landfill Gas used for beneficial purposes in Rivergate Facilities and the amount flared, if any, along with the relevant calculations as to the price of such Landfill Gas set forth in Exhibit A hereto. By January 20th of each year, Rivergate shall remit to Metro payment in respect to the preceding calendar year for the Landfill Gas sold by Metro to Rivergate during the preceding calendar year based on the formulas set forth in Exhibit A hereto. Any statement or payment shall be final as to both parties unless questioned within two years after payment has been made thereon. If full payment for any year is not received by Metro on or prior to the 20th business day of the next year, Metro shall be entitled to interest on such deficiency from such 20th business day at the rate of one percent (1 %) per month and Rivergate shall be in material breach of this Agreement.

### 2. Measurement of Landfill Gas.

a. *Measuring Equipment for Sales of Landfill Gas.* Rivergate shall maintain and operate Sales Meters for the purpose of recording the quantities of landfill gas sold, provided, however, that such Sales Meters, as well as the charts and records related thereto, shall be the property of Rivergate. Rivergate shall maintain all charts and records for the term of this Agreement and upon termination hereof and upon request, shall furnish copies of such charts and records to Metro. The parties and their representatives shall have access at all reasonable times to inspect, test and repair such Sales Meters, and to inspect or copy such charts and records.

b. *Meter Test Notice.* Rivergate shall conduct a test of the Sales Meter(s) which is/are used for the billing of Landfill Gas sold to Rivergate at least once every 12 months at Rivergate's expense. Such test shall be carried out in accordance with the recommendations and guidelines of the manufacturer of such Sales Meters and Good Engineering Practice. Rivergate shall give Metro notice of the times of all tests of the

Sales Meters sufficiently in advance so that Rivergate may conveniently have its representative(s) ready to observe such tests, if desired. Metro shall have the right to conduct tests of the Sales Meter(s), at its expense, at all reasonable times.

c. *Correction for Errors of Sales Meters.* If, upon the completion of any test of the Sales Meter(s), any Sales Meter is determined to be recording outside the normal range of accuracy according to the manufacturer's specifications, records thereof shall be corrected for a period extending back to the time such inaccuracy occurred, if such time is ascertainable by Good Engineering Standards, or if not ascertainable or if the amount of Landfill Gas in MMBtu cannot be ascertained because a meter or device is out of service or being repaired, Metro and Rivergate shall estimate in good faith the volume and quality delivered based upon the parties' other operating records for the period in question. Following any test, any measuring equipment found to be inaccurate to any significant degree shall be adjusted immediately to measure accurately.

3. Condensate. Metro shall be responsible for (i) the collection and removal of materials which condense or are deposited on the Premises prior to the delivery of the Landfill Gas at the Point of Delivery and (ii) the disposal, in accordance with applicable laws and regulations, of all condensed materials so produced by and removed from the Premises, to the extent the Rivergate is not responsible therefore under this Agreement. Rivergate shall be responsible for the collection and removal of all condensed materials removed from the Landfill Gas or any pipes after the Point of Delivery or otherwise produced at or by Rivergate's Facilities, and shall, at its own cost, dispose of all materials so collected or produced in accordance with applicable laws and regulations. When applicable, Rivergate may dispose of condensate in accordance with the provisions of Article II.D.4.

4. Metro's right to Inspect. Metro and its representatives shall have the right, at all reasonable times following notice to inspect property and to inspect the records of Rivergate regarding Rivergate's Facilities at the landfill and its operations. Rivergate shall provide quarterly reports to Metro regarding the Facilities on the Premises in a form and substance reasonably satisfactory to Metro.

5. Extension and Assignment of Franchise. Metro shall cooperate with Rivergate and use its best efforts in negotiations with the City of Portland, Oregon to extend the Franchise for a subsequent twenty (20) year term before expiration of the Franchise's current term. Rivergate shall have the right to transfer or assign the Franchise to entities that it controls, is controlled by, or any affiliated entities under common control with Rivergate.

## C. TITLE TO LANDFILL GAS

Metro represents that it has the right to convey all Landfill Gas sold under this Agreement. Metro shall be deemed to be in exclusive control and possession of the Landfill Gas, and fully responsible and liable therefore until it is delivered to Rivergate at the Point of Delivery. After the delivery of Landfill Gas to Rivergate at the Point of

Delivery, Rivergate shall be deemed to be in exclusive control and possession of the Landfill Gas, and shall be fully responsible and liable therefore.

**ARTICLE IV – PROVISIONS APPLICABLE BOTH  
LANDFILL LEASE PROVISIONS, LANDFILL GAS PURCHASE PROVISIONS,  
AND TRANSFER OF ASSETS**

A. INSURANCE

Rivergate shall secure and maintain, at its own expense, throughout the term of this Agreement comprehensive commercial general liability insurance of at least \$1,000,000 combined single limit and excess liability coverage of at least \$5,000,000, with insurers, coverages and special provisions reasonably satisfactory to the Metro. Metro is, and shall continue to be, self-insured to the limitations of the Oregon Tort Claims Act and shall cooperate with Rivergate, to the extent reasonably requested by Rivergate, in Rivergate's procurement of additional insurance on behalf of Metro. Each party shall provide the other with evidence, reasonably satisfactory to the other, of such party's insurance hereunder upon the other party's reasonable request therefore, from time to time.

B. INDEMNIFICATION

1. Rivergate's Indemnity. Rivergate shall indemnify, defend and hold harmless Metro, its elected officials, directors, officers, employees, agents, representatives, and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorney's fees), causes of action, suits or judgments incurred by or involving any of the foregoing parties and arising, directly or indirectly, from or in connection with any breach by Rivergate of its obligations, covenants, representations or warranties contained in this Agreement.

2. Metro's Indemnity. To the greatest extent permitted by the Oregon Constitution, the Oregon Tort Claims Act, and the Metro Charter, Metro shall indemnify, defend and hold harmless Rivergate and Rivergate's shareholders, directors, officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, (collectively hereinafter "damages" ) incurred by or involving any of the foregoing parties and arising, directly or indirectly, from or in connection with:

(i) The condition of the Premises or the Landfill at the commencement of the term hereof; notwithstanding the foregoing, however, Metro shall have no obligation to indemnify Rivergate or any other third party under this subparagraph if the alleged damages are due to or proximately caused by any inherent characteristic of a landfill, including without limitation, subsidence, landfill fires and erosion, unless such condition arose out of

the tortious acts or tortious omissions of Metro or any of its employees, agents or independent contractors;

(ii) Any previous agreement involving the sale of Landfill Gas or Product at the Landfill or the lease of gas rights therein;

(iii) Any breach by Metro of its obligations, covenants, representations or warranties contained in this Agreement provided, however, that for the purposes of this Article only, any and all qualifications or limitations to such obligations, covenants, representations or warranties based on or related to Metro's knowledge shall not be applicable;

(iv) Any act or failure to act, at any time prior to or during the term hereof, of Metro or any other person or entity (a) who is either controlled or affiliated with Metro or invited onto any part of the Landfill by Metro, and (b) who is neither controlled by nor affiliated with Rivergate nor invited onto any part of the Landfill by Rivergate, provided such act or failure to act constitutes negligence or willful misconduct; or

(v) Any liability arising from prior, existing or future environmental conditions within, on or under any portion of the Landfill, including without limitation, the presence, treatment, transportation, disposal, release, or threat of release, of any Hazardous Material in or from the Landfill, and from such costs as any governmental authority may require Rivergate to incur in response to such conditions, except to the extent that such conditions are the result of or proximately caused by the action or omission of Rivergate.

3. General. Notwithstanding any provision contained herein, the provisions of this Article IV shall survive the termination of this Agreement for a period of 3 years, notwithstanding the application of any statute of limitations.

4. Survival. Notwithstanding any provision contained herein, the provisions of this Section shall survive the termination of this Agreement for a period of 3 years, notwithstanding the application of any statute of limitations.

#### C. 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 to be in default during the continuation of such inability, provided that: (i) the non-performing party, within two (2) 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 obligations 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 shall use its best efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

#### D. TERMINATION

1. Metro's Right To Terminate. Metro shall have the right to terminate this Agreement only in the event Rivergate commits an act or omission that is a material default under this Agreement, provided that where Metro asserts a material default it notifies Rivergate in writing and allows Rivergate a reasonable period of time but not less than 30 days to cure the default and further provided that if such material default is due to an event of Force Majeure, such material default shall not be grounds for termination, unless such event of Force Majeure extends for a period in excess of 180 days or Rivergate is not diligently seeking to cure such event of Force Majeure.

2. Rivergate's Right to Terminate. Rivergate shall have the right to terminate this Agreement only in the event Metro commits an act or an omission which is a material default under this Agreement, provided that where Rivergate asserts a material default it notifies Metro in writing and allows Metro a reasonable period of time but not less than 30 days to cure the default and further provided that if such material default is due to an event of Force Majeure, such material default shall not be grounds for termination, unless such event of Force Majeure extends for a period in excess of 180 days and/or Metro is not diligently seeking to cure such event of Force Majeure.

3. Stay of Termination. A timely request for dispute resolution under Article IV.H of this Agreement will stay the termination for cause under this Section until dispute resolution is concluded and for a reasonable time for cure after the conclusion of such dispute resolution.

#### E. RIGHTS ON TERMINATION OR EXPIRATION

In the event of the termination or expiration of this Agreement, Rivergate shall remove any or all equipment on or associated with the compressor station on the Premises and shall remove or remediate any contamination present on the Premises as a result of the presence of the compressor station and shall otherwise restore the Premises to the condition present prior to the installation of the compressor station. Rivergate shall not be required or have any obligation to remove the underground pipeline installed in the Landfill to provide landfill gas from the Landfill to Ash Grove's North Rivergate Boulevard facility. Rivergate shall have the obligation to purge the pipeline of methane and fill the pipeline with an inert gas at the time of abandonment.

In the event of termination pursuant to Article II.D, Metro shall have the right, at its sole discretion, to purchase from Rivergate any or all elements of the Project Facility, Metro and Rivergate agree to negotiate in good faith, prior to the purchase and installation of such equipment, the terms of and conditions for Metro's purchase of any equipment belonging to Rivergate.

#### F. ASSIGNMENT

Neither party hereto may assign this Agreement or any of its rights and obligations hereunder to any person or entity (other than an entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the assignor, or that is otherwise affiliated with the assignor) without the prior consent of the other party, which consent shall not be unreasonably withheld or delayed. Any attempt at assignment without such consent shall be null, void and of no effect, and shall constitute a material default hereunder.

#### G. DISPUTE RESOLUTION

Prior to the initiation of litigation, either party may initiate dispute resolution under this Article IV.G. Dispute resolution will be initiated by either party delivering notice to the other, setting forth the nature of the dispute. The parties agree to meet or otherwise confer expeditiously to resolve the dispute, and to submit the dispute to nonbinding third party mediation if the dispute cannot be resolved within 15 days following the delivery of the notice. If a notice of default has been issued, the period of time allowed to cure the default shall be stayed pending dispute resolution, for a period not to exceed 45 days (including third party mediation) unless otherwise agreed to by the parties hereto. Notwithstanding the foregoing, a party may initiate litigation and shall not be bound by the dispute resolution procedures set forth in this paragraph in case of a situation where such party is seeking temporary or preliminary injunctive relief or where such party certifies, in good faith, that failure to promptly initiate litigation will subject it to the risk of grave harm.

#### H. DISCLOSURE OF INFORMATION

To the best of each parties knowledge, none of the documents or other written information furnished by or on behalf of either party pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.

## ARTICLE V - MISCELLANEOUS

A. Notices. All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and

If to Metro to:

Solid Waste Operations Director  
Metro  
600 Northeast Grand Avenue  
Portland, OR 97232  
Tel: (503) 797-1700  
Fax: (503) 797-1707  
E-Mail: \_\_\_\_\_

If to Rivergate to:

Gary Wright, Portland Operations Manager  
Ash Grove Cement Co.  
13939 N. Rivergate Blvd.  
Portland OR 97203  
Tel: (503) 286-1677  
Fax: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Acquisition and Security Agreement; (ii) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Acquisition and Security Agreement. Either party may change its address for the purpose of this Article V.A by giving the other party prior notice thereof in accordance with this provision.

B. Successors and Assigns. Subject to the restrictions on a ssignment herein contained, the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors, assigns and legal representatives of the respective parties hereto. This Agreement shall not (directly, indirectly, contingently or otherwise) confer or be construed as conferring any rights or benefits on any person or entity not named as a party hereto, except as otherwise expressly provided with respect to permitted subsidiaries or affiliates hereof. Rivergate shall have the right to transfer or assign the Agreement to entities that it controls, is controlled by, or any affiliated entities under common control with Rivergate.



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

D. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

E. Severability. If any provision of this Agreement or the application thereof to any party or circumstance be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to persons and circumstances other than those to which it has been held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

F. Entire Agreement; Amendments. This Agreement (including without limitation, the Exhibits hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all oral or written agreements and understandings between the parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by both parties hereto.

G. Waiver. No waiver by either party hereto of any one or more defaults by the other party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of alike or different character. No failure on the part of either party hereto to complain of any action or non-action on the part of the other party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the party who is making such waiver.

H. No Joint Venture. The relationship between the parties hereto is that of buyer and seller. Nothing in this Agreement is intended or shall be deemed to constitute either party hereto a partner, agent or legal representative of the other party or to create a joint venture or fiduciary relationship between the parties.

I. Joint Work Product. This Agreement shall be considered the work product of all parties hereto, and, therefore, no rule of strict construction shall be applied against any party hereto.

J. Expenses of Agreement Execution. Each party shall pay all expenses incurred by it in connection with its entering into this Agreement, including without limitation, all attorneys' fees.

K. Choice of Laws/Attorneys Fees. 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 Oregon. In any litigation arising

from this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by the prevailing party by reason of the event giving rise to such litigation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

METRO	RIVERGATE
By:	By:

Exhibit A  
Purchase Price

**Fuel Cost Comparisons, Balance Sheet Calculations, and Profit Sharing**

The Parties agree that on an annual calendar basis any savings realized as a result of using landfill gas will be shared equally between both parties. To make this determination the actual cost of landfill gas will be compared against the delivered cost of natural gas.

**Fuel Consumption and Reporting Protocol**

On a monthly basis, Rivergate will collect and tabulate the quantity of landfill gas consumed by the plant located in Portland, Oregon, owned and operated by Ash Grove Cement Company, utilizing conventional gas measuring instruments. Fuel quantities consumed will be reported in MMBTU's (1 million British Thermal Units).

**Landfill Gas Costs**

Rivergate will tabulate, on a monthly basis, actual incurred costs (including under Article II.C of this Agreement), associated with operation and maintenance of the LFG compressor station, pipeline, and gas measuring station. Costs will include Rivergate labor and material, contract labor and materials, parts, supplies, and electrical power.

All actual incurred landfill gas O&M costs will be included and reported in the monthly tabulations, regardless of fuel used during the month.

Additionally, the estimated annual City of Portland landfill gas pipeline franchise fee will be included in the cost evaluation. The fee will be equally divided and distributed to each month, regardless of fuel consumed, and will be adjusted to reconcile with actual during the month of December.

**Monthly Natural Gas Spot Price Index**

The monthly natural gas spot price per MMBTU, Sumas, Washington, as published by British Petroleum, will be used as the index, hereafter referred to as "The Index". Additionally, a fixed \$0.20 per MMBTU delivery charge will be added to "The Index" to yield a delivered cost per MMBTU. The delivered cost of natural gas per MMBTU will be used for monthly, and annual, cost comparison calculations.

When performing monthly cost comparison calculations, "The Index" will be capped at \$5.00 per MMBTU.

## **Fuel Cost Comparisons and Balance Sheet Tabulations**

As mentioned above, Rivergate will tabulate, on a monthly basis, the quantity of landfill gas used as well as the actual incurred O&M costs, including the allocated portion of the annual pipeline franchise fee.

Additionally, for fuel cost comparison, Rivergate will tabulate the published monthly natural gas spot price index ("The Index") and delivery charge. The delivered unit price for natural gas will be multiplied by the amount of landfill gas used during the month. This calculated dollar amount will be tabulated and used for monthly, and annual, fuel cost comparisons. Attachment 1 provides an example of the Fuel Cost Comparison and Balance Sheet format.

Rivergate will update the Fuel Cost Comparison and Balance Sheet document monthly and distribute to Metro for review on a quarterly basis.

## **Profit Sharing**

The Price to be paid for the purchase of Landfill Gas under Paragraph III.A.2 of this Agreement is limited to the profit sharing amount described below.

At the end of each calendar year, the monthly total landfill gas O&M costs will be summed. This dollar amount will be compared against the total annual dollar amount calculated for delivered natural gas. If the comparison shows a net savings was realized as a result of using landfill gas rather than natural gas, the net calculated savings will be shared equally between Rivergate and Metro, with distribution of funds by Rivergate to Metro to occur by January 20th of the following year.

If the sum of the calculation shows a net loss the result of using landfill gas rather than natural gas, Metro will not be held responsible for any portion of the loss.

## **Exception and Clarification**

During year 1 of this agreement, and only during the first year, monthly cost tabulations and comparisons will begin with the first month in which landfill gas is used as the primary fuel. Costs incurred prior to this month, including the allocated monthly pipeline franchise fee will not be included or incorporated in the year end cost comparison calculations.

## **Monthly Fuel Use Determinations**

Based on natural gas prices and trends, Rivergate will, in its sole discretion and using its best judgment, determine on a month to month basis whether or not to use landfill gas as its primary fuel source. This decision will be conveyed to Metro as far in advance as practical. Rivergate reserves the right to augment or revert to using natural gas at any time and for any reason.

## **Exhibit B Point of Delivery**

### **10.1.4.4 Manhole MH-1**

Manhole MH-1 is designed to collect the condensate that is discharged from the remote pump stations and pump it to the leachate wet well. The manhole is equipped with a submersible effluent pump capable of about 55 GPM against a 30-foot head.

### **Condensate Drainage, Pump Discharge, and Vacuum Piping**

The condensate drainage piping consists of about 13,760 feet of four inch diameter high-density polyethylene (HDPE). The system is designed for vacuum assisted gravity drainage. The 4"-HDPE pipe is sloped from the vacuum valve stations to the condensate collection tanks. Vacuum is supplied from the vacuum pump stations through the collection tanks. Condensate cleanouts are located approximately every 300 feet along the pipe. This system also includes about 8,450 feet of one-inch diameter PVC vacuum line and 10,250 feet of two-inch PVC discharge line.

### **Condensate Extraction and Discharge**

Landfill gas enters the MBF from the north through two 16 inch HDPE pipes. The gas goes through the condensate knock-out tanks (SCR-1 and SCR-2). These tanks extract condensate and filter the gas. Gas from these two knock-out tanks drains by gravity to Manhole-1(MH-1).

Condensate from MH-1 is discharged by a 2 hp Meyers pump to the leachate collection manhole at the northeast end of the landfill. The condensate mixes with leachate and is pumped to the sewer by the 186 1/2 hp Little Giant pump in the well.

### **Blowers**

The three blowers are Hauck model TBGB9-081-291-E, with a 50 horse motor. The blowers run at 4300 RPM and are rated at 2250 standard cubic feet per minute (SCFM) (air) at 68"WC of vacuum. As flow increases past approximately 2250 SCFM the total system vacuum decreases. Multiple blower operation is required when the landfill gas flow rate exceeds a single blower's capacity to maintain sufficient vacuum.

The blowers are equipped with surge controls that regulate the positioning of the volume damper on the suction side of each blower.

## Exhibit C

### Legal Description of Premises

The following is the legal description of the St. Johns Landfill and portions of Smith and Bybee Lakes as recorded in Book 2517, pages 646 and 648 of the records of Multnomah County, Oregon. The St. Johns Landfill is approximately 230 acres of the 657 acres described.

A tract of land in Section 6, Township 1 North, Range 1 East, Sections 30 and 31, Township 2 North, Range 1 East, Sections 25 and 36, Township 2 North, Range 1 West of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at the point of intersection of the North bank of the Columbia Slough and the West line of the land conveyed to the Merchants Investment and Trust Company by Deed recorded July 18, 1901 in Book 279, Page 407, Deed Records; thence North  $01^{\circ} 23' 56''$  East 570 feet, more or less, to the true point of beginning of the tract of land herein described, which point of beginning bears North  $01^{\circ} 23' 56''$  East 328.86 feet from the Northwest corner of the duly, recorded plat of JUNCTION; thence North  $01^{\circ} 23' 56''$  East 1785.90 feet; thence North  $64^{\circ} 57' 47''$  West 1775.73 feet to the East line of the West one-half of the West one-half of Section 31, Township 2 North, Range 1 East; thence North  $01^{\circ} 57' 21''$  East along said East line 300.30 feet to the Southeast corner of Lot 2, of said Section 31; thence continuing North  $01^{\circ} 57' 21''$  East 2378.72 feet to the Northwest corner of Lot 7 in Section 31; thence along Lot 7 and Lot 6 of Section 31, as follows: South  $68^{\circ} 34' 10''$  East 324.64 feet, South  $10^{\circ} 34' 10''$  East 825.58 feet, South  $66^{\circ} 34' 10''$  East 330.23 feet, North  $79^{\circ} 25' 50''$  East 1386.97 feet, North  $40^{\circ} 25' 50''$  East 198.14 feet, North  $26^{\circ} 34' 10''$  West 924.64 feet, North  $72^{\circ} 34' 10''$  West 231.15 feet to the section line between Sections 30 and 31, Township 2 North, Range 1 East; thence along Lots 5, 6 and 7 of Section 30, as follows: North  $40^{\circ} 32' 20''$  West 966.80 feet, North  $77^{\circ} 32' 20''$  West 888.90 feet, South  $50^{\circ} 27' 40''$  West 592.67 feet, South  $69^{\circ} 27' 40''$  West 397.51 feet, South  $38^{\circ} 27' 40''$  West 164.69 feet, South  $70^{\circ} 27' 40''$  West 197.56 feet, North  $68^{\circ} 31' 58''$  West 230.45 feet to the section line between Section 30, Township 2 North, Range 1 East, and Section 25, Township 2 North, Range 1 West; thence along Lots 5 and 4 of Section 25, as follows: North  $88^{\circ} 31' 01''$  West 570.88 feet, South  $86^{\circ} 28' 59''$  West 591.03 feet, South  $72^{\circ} 28' 59''$  West 591.03 feet to the section line between Sections 25 and 36, Township 2 North, Range 1 West; thence North  $88^{\circ} 17' 17''$  West along said section line, 1652.66 feet; thence  $51^{\circ} 48' 00''$  West, a distance of 701.25 feet to the Southerly bank of the Columbia Slough as shown on the Plat of RIVERGATE INDUSTRIAL DISTRICT, BLOCKS 13 T O 25; thence along the Southerly and Easterly line of the Columbia Slough as follows: North  $88^{\circ} 27' 28''$  West 146.59 feet, South  $66^{\circ} 32' 32''$  West 279.31 feet, South  $21^{\circ} 32' 32''$  West 315.00 feet, South  $01^{\circ} 32' 32''$  West 122.44 feet, South  $23^{\circ} 27' 28''$  East 299.44 feet, South  $38^{\circ} 27' 28''$  East 200.00 feet, South  $24^{\circ} 57' 28''$  East 250.00 feet, South  $39^{\circ} 32' 32''$  West 280.00

feet, South 70° 32' 32" West 300.00 feet, South 31° 32' 32" West 270.00 feet, South 44° 10' 32" West 381.05 feet, South 06° 58' 00" East 162.30 feet, thence South 54° 25' 06" East 451.04 feet; thence South 01° 23' 05" West 89.41 feet to the center of the Columbia Slough; thence South 48° 52' 00" East 495.16 feet to the North line of the James Loomis Donation Land Claim; thence South 49° 16' 05" East 309.74 feet to the East line of said Loomis Donation Land Claim; thence South 51° 56' 10" East along the center line of the Columbia Slough, 1632.60 feet; thence South 54° 39' 43" East along said centerline, 204.71 feet; thence South 72° 21' 26" East along said centerline, 608.08 feet to the East line of a 100 acre tract, thence North 04° 11' 48" East along the East line of said 100 acre tract, 50 feet, more or less, to the North bank of the Columbia Slough; thence South 66° 59' 00" East along said North bank, 2237.96 feet; thence South 83° 30' 13" East 383.95 feet; thence South 68° 46' 04" East 328.40 feet; South 35° 00' 04" East 574.56 feet to a point which bears North 81° 36' 13" West from the true point of beginning; thence South 81° 36' 13" East 100.00 feet to an iron pipe; thence South 81° 36' 13" East 1468.26 feet to the true point of beginning.

EXCEPT that portion thereof contained in the Bonneville Power right-of-way described in Condemnation Proceedings filed March 16, 1939 in the District Court of the United States for the District of Oregon, under No. Civic 92.

AND EXCEPT for the limitations set forth in Exhibit B, attached hereto and incorporated by this reference.

**Exhibit C**

**(Continued)**

**Legal Description of Premises**

**Premises**

See Exhibit C Attachment.



Attachment 1

Form of Fuel Cost Comparison and Balance Sheet

Line #	Cost Factors	Computation	Example Computation
1	Monthly Spot Price per MMBTU	[Sumus, WA MMBTU price as published by BP]	
2	# of MMBTUs Sold during year		
3	Natural Gas Reference Cost	Line 1 * Line 2	
	O&M		
4	Operational Expenses		
5	Depreciation on New Equipment		
6	Total O&M	Line 4 + Line 5	
7	Franchise Fee		
8	Total Costs	Line 6 + Line 7	
9	Rent Payment Under Article II.C		
10	Total MMBTUs Sold * \$.05		
11	Total Landfill Gas Cost	Line 8 + Line 10	
12	Unrecovered Net Losses	[Carry forward from prior period]	
13	Profit Sharing	Line 11 – Line 12	
14	Metro Share	Line 13 * 0.5	

[Simplified Balance Sheet with separately stated capital assets to confirm additional new equipment for which depreciation will be taken into account.]

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION 13-4461 FOR THE PURPOSE OF AUTHORIZING THE EXECUTION OF A LANDFILL LEASE & LANDFILL GAS PURCHASE AGREEMENT AND A RELATED LANDFILL GAS COLLECTION SYSTEM ACQUISITION AGREEMENT WITH RIVERGATE LFG, INC.

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Date: July 24, 2013

Prepared by: Paul Ehinger x1789

## BACKGROUND

In 1997, the Metro Council adopted Metro Resolution No. 97-2494, by which the Council approved the acquisition by Portland LFG of Metro's landfill gas collection system at the St. Johns Landfill; approved Metro's landfill gas lease to Portland LFG; approved an agreement for Metro to provide operating services for the gas collection system to Portland LFG; and approved Metro's sale of the landfill gas generated at the Landfill to Portland LFG for beneficial use by the Ashgrove Cement Company located in a nearby industrial park. The arrangement enabled partners of the joint venture Portland LFG to access tax credits as well as fuel source, while providing income to Metro and a beneficial use of the gas collected at the landfill as an adjunct to flaring the gas as needed.

The agreement expired in 2012 and all the gas collected at the landfill was subsequently flared. The tax credits for beneficial use of the gas have also expired. Metro then undertook a study of cost-effective beneficial uses of the gas collected at the landfill and determined that use as an industrial fuel continued to be the preferred option.

In March 2013, Rivergate LFG (one of the joint venture partners of Portland LFG and the parent of Ashgrove Cement) acquired the rights to the St. Johns landfill gas collection system from the joint venture. Rivergate and Metro have negotiated the agreement referenced in Resolution No. 13-4461 to reinstate the use of landfill gas at Ashgrove Cement as a fuel. The agreement conveys ownership of the gas collection system back to Metro and grants easements to Rivergate of the compressor station and related portions of the gas collection system necessary to ship the gas to Ashgrove. The agreement is for five years and provides revenue to Metro for the gas used by Ashgrove.

## ANALYSIS/INFORMATION

1. **Known Opposition** None.
2. **Legal Antecedents** Resolution No. 97-2494
3. **Anticipated Effects** Beneficial use of a portion of the gas collected at the St. Johns Landfill.

**4. Budget Impacts**

Revenue in the range of \$20,000 to \$30,000 annually at the current low prices for natural gas.

**RECOMMENDED ACTION**

Approval of Resolution 13-4461.