

## **SECOND AMENDMENT TO LANDFILL GAS LEASE AND OPERATING AGREEMENT**

This Second Amendment to Landfill Gas Lease and Operating Agreement (the "Second Amendment") is entered into between the County of Santa Barbara (hereafter "COUNTY") and NEO Tajiguas LLC (hereafter "NEOT"), a Delaware limited liability company. This Second Amendment, along with the First Amendment to Landfill Gas Lease and Operating Agreement dated August 18, 2009, modifies and is incorporated into the contract between the COUNTY and NEOT for the development and operation of the landfill gas collection system and utilization of the landfill gas for the sale to Southern California Edison, dated March 10, 1998, and recorded as Document No. 98-017423 in the Santa Barbara County Registry of Deeds (collectively referred to hereafter as the "Agreement").

NOW THEREFORE, COUNTY and NEOT agree to amend the Agreement as follows:

1. **Add a second paragraph to Subsection B of Section 12.** The following paragraph is added to subsection B of Section 12:

Commencing on March 17, 2020, the parties hereby agree that any dispute between the parties related to disposal of Condensate and/or leachate is resolved by NEOT continuing to dispose of quantities of Condensate and leachate up to fifty thousand (50,000) gallons per month, at NEOT's sole cost and expense. The cost and expense of disposal quantities of Condensate and leachate in excess of fifty thousand (50,000) gallons per month will be the responsibility of COUNTY. NEOT will provide disposal manifests and receipts for quantities disposed of in excess of 50,000 gallons per month to the COUNTY and NEOT may deduct any such costs from rent payments owed to the COUNTY.

2. **Subsection D is added to Section 25.** Subsection D to Section 25 is added as follows:

COUNTY or NEOT may terminate this Agreement for convenience and without cause or for reasons other than those enumerated in this Section 25, subsections (A) through (C) upon at least thirty (30) days' written notice (provided that any such notice shall not be given prior to June 26, 2020) by executing and delivering to the other party a Notice of Termination of Landfill Gas Lease and Operating Agreement in the form attached hereto as Exhibit A to this Second Amendment (the "Notice"). Any such termination under this subsection (D) shall not be effective before July 30, 2020 (such date being the "Termination Date"), unless the parties mutually agree in a writing executed by both COUNTY and NEOT to an alternative termination date.

If the COUNTY terminates this Agreement pursuant to this subsection (D), the COUNTY shall pay NEOT the sum of One Million Eighty Hundred Fifty Thousand (\$1,850,000.00) Dollars pursuant to the requirements of Section 27 A of this Agreement and in consideration of the termination of this Agreement. The County shall make this payment by wire transfer within ten (10) days after the removal of personal property from the Facility under Section 27.

3. **Revision to Section 27.** Section 27 is amended and replaced in its entirety with the following:
  - A. On the expiration of this Agreement, or its sooner termination, NEOT shall quietly and peaceably surrender possession of the premises to COUNTY, and shall cause a good and sufficient quitclaim deed to be placed on record in Santa Barbara County, California, the county in which the Landfill is located. Following any termination of the Agreement, NEOT shall leave in place all of the Collection System, the Flare Facility, any equipment installed by NEOT in the Condensate System, any pipeline and the pad, fixtures and improvements for the Facility. Any equipment left at the Landfill after NEOT surrenders possession of the premises shall become the sole and exclusive property of COUNTY.
  - B. Notwithstanding any provision of this Agreement, including, but not limited to this Section 27, on or after the expiration of the term, NEOT shall have no obligation to demolish, remove, restore, maintain or otherwise perform any work to make functional or compliant any portion of facilities installed by NEOT or the Sublessee, including, but not limited to, all or any portion of the Systems. On the expiration of this Agreement, or its sooner termination, however, NEOT shall demonstrate that the Collection System and the Flare Facility are in compliance with existing permits.
  - C. Notwithstanding Section 27 A of this Agreement, NEOT or the Sublessee shall remove personal property from the Facility, including, but not limited to, the engine and generator set used in the Facility to generate electricity within one hundred twenty (120) days of the Termination Date of this Agreement. Thereafter, the COUNTY will be responsible for decommissioning and removing any remaining personal property from that portion of the Facility that houses the electric power generation equipment, and for the decommissioning of the Flare Facility.
4. **Notices to NEOT.** COUNTY and NEOT hereby agree that a) the addresses set forth on Exhibit A attached to this Second Amendment shall be the addresses to which notice must be sent pursuant to Section 46 of this Agreement, and b) that the requirement of such Section 46 to designate a different address only by notice given in conformity with such Section 46 is waived as to such notice addresses and deemed satisfied.
5. **NEOT Authority.** NEOT warrants and represents that its signatory to this Second Amendment has the power and authority to enter into this Second Amendment in the name, title and capacity herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary by any Lender or law in order to enter into this Agreement have been fully complied with.
6. **Cooperation.** The COUNTY and NEOT agree to cooperate fully and to execute and approve any and all further documents and to take all additional actions as may be necessary to effectuate the purposes of this Second Amendment including, but not limited to NEOT executing a quitclaim deed and/or termination of the Lease and

Operating Agreement and/or the Sublease, and providing such other reasonable assistance and documentation requested by Southern California Edison in connection with that certain Renewable Power Purchase and Sales Agreement, dated as of November 15, 2006, as amended ("SCE PPA"). This paragraph shall survive the expiration of this Agreement.

7. **SCE PPA Letter of Credit.** Upon receipt of the Notice pursuant to Section 25(D) of this Agreement, NEOT shall cause such Notice to be timely forwarded to MM Tajiguas Energy LLC ("MM"), who in turn shall promptly provide a copy thereof to Southern California Edison ("SCE") with a copy to the COUNTY. NEOT shall use best efforts to have MM seek confirmation from SCE that it will not reject the return of that certain letter of credit in the amount of One Million Seven Hundred Fifty-Two Thousand Two Hundred Eighty (\$1,752,280) Dollars provided to SCE by MM under the terms of the SCE PPA ("Letter of Credit"). In the event that SCE does not return the Letter of Credit to MM and a dispute arises between NEOT and the COUNTY regarding the return of the Letter of Credit from SCE to MM, the parties agree to try in good faith to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 days of notice of such dispute, then either party may elect to submit the dispute to non-binding arbitration in accordance with the Dispute Resolution Procedure set forth in Section 11 C of the Agreement. By agreeing to this paragraph 7, neither party admits any fault or liability as to the Letter of Credit or waives any defenses they may have in any dispute regarding the Letter of Credit. This paragraph shall survive the expiration of this Agreement.
  
8. **Ratifications.** The terms and provisions set forth in this Second Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Agreement. The terms and provisions of the Agreement , including all defined terms, except as expressly modified and superseded by this Second Amendment, are ratified and confirmed and shall continue in full force and effect, and shall continue to be legal, valid, binding and enforceable obligations of the parties.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have executed this Second Amendment to the Agreement to be effective on the date executed by the last of COUNTY and NEOT.

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk

**COUNTY OF SANTA BARBARA:**

By: \_\_\_\_\_  
Gregg Hart, Chair  
Board of Supervisors

Date: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

Public Works

By: \_\_\_\_\_  
Scott D. McGolpin  
Director of Public Works

**NEOT:**

NEO Tajiguas LLC

By: \_\_\_\_\_  
Authorized Representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

Betsy M. Schaffer, CPA  
Auditor-Controller

By: \_\_\_\_\_  
Deputy

**APPROVED AS TO FORM:**

Ray Aromatorio  
Risk Manager

By: \_\_\_\_\_

**EXHIBIT A**  
**FORM OF TERMINATION NOTICE**

\_\_\_\_\_ [Date] \_\_\_\_\_

**Via Certified Mail Return Receipt Requested**

NEO Tajiguas LLC  
c/o Fortistar Methane Group  
One North Lexington Avenue, 14th Floor  
White Plains, NY 10601

MUFG Union Bank, N.A., as Collateral Agent  
551 Madison Ave., 11th Floor  
New York, NY 10022  
Attn: Amedeo Morreale  
Vice President

MUFG Union Bank, N.A., as Administrative  
Agent  
445 South Figueroa St., 15<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attn: Louise Leef  
Power & Utilities

**Re: Notice of Termination of Landfill Gas Lease and Operating Agreement by  
and between NEO Tajiguas LLC and the County of Santa Barbara dated March 10, 1998,  
as amended**

Dear Sir/Madam:

Consistent with Section 25 of the Landfill Gas Lease and Operating Agreement by and between NEO Tajiguas LLC and the County of Santa Barbara dated March 10, 1998, as amended, the County of Santa Barbara hereby elects to terminate the Landfill Gas Lease and Operating Agreement, as amended, effective \_\_\_\_\_ ("Termination Date"). The Landfill Gas Lease and Operating Agreement will remain in full force and effect until the Termination Date.

The Parties' obligations up until the Termination Effective Date and upon termination will continue to be governed by the Landfill Gas Lease and Operating Agreement, unless modified by any subsequent agreement(s) between the Parties.

Very truly yours,

County of Santa Barbara