

CITY COUNCIL REPORT



Meeting Date: **June 21, 2016**
 General Plan Element: **Public Services & Facilities**
 General Plan Goal: **Partner with other jurisdictions and agencies to achieve maximum efficiency in City service delivery.**

ACTION

Authorization for the City of Phoenix to sell Scottsdale's portion of the 91st Avenue Reclamation Plant Biogas. Adopt Resolution 10495 authorizing the City of Phoenix, as the management agency of the 91st Avenue Sewage Treatment Plant, to sell Scottsdale's portion of the Plant's biogas to Ninety-first Avenue Renewable Biogas, L.L.C. for conversion into a renewable energy source in exchange for a proportional share of the sales revenues.

BACKGROUND

The 91st Avenue Sewage Treatment Plant (Plant) is owned by the cities of Glendale, Mesa, Phoenix, Scottsdale, and Tempe, jointly referred to as the Sub-regional Operating Group or SROG. The digester gas produced at the Plant (biogas) is a result of the natural breakdown of organic matter in the wastewater treatment process which is then captured in the anaerobic digesters. Currently, the Plant produces 600,000 million British Thermal Units of biogas. Historically, the Plant's biogas was burned through a flare and wasted to the atmosphere.

In 2009, SROG issued a solicitation requesting proposals to beneficially utilize the Plant's biogas. In May of 2009, six teams were interviewed by SROG representatives and the team led by Sempra Energy was selected and contract negotiations commenced. However due to an internal business re-organization, Sempra withdrew from the project negotiations in early 2010.

In the Fall of 2012, SROG again issued a solicitation with the intent of selecting a qualified team to beneficially utilize the Plant's biogas. In December 2012, Ameresco was selected for their proposal to capture and process the biogas, then pipe it to the nearby El Paso Gas pipeline (now known as the Kinder Morgan pipeline) for sale to interested off-takers. In this agreement, SROG would have no capital or operating budget responsibilities for the project. Ameresco, now known as Ninety-first Avenue Renewable Biogas, L.L.C. (91RB) will be responsible for funding, designing, building, operating and selling the processed biogas. In return, SROG would receive revenue from the biogas sales.

Since December 2013, various terms and conditions have been reviewed and discussed but not until recently has SROG identified a proposal that was both financially attractive while making beneficial use of the biogas. Based on the terms and conditions of the negotiated agreement, SROG will receive the following guaranteed royalties with the potential for added revenue based on actual gas produced from the digesters.

- Year 1 - 5: \$600k in year 1 escalating 1% / year
- Year 6 – 10: \$725k in year 6 escalating 1% / year
- Year 11 -15: \$862k in year 11 escalating 1% / year
- Year 16 – 20: \$1M in year 16 escalating 1% / year

The above annual royalties represent the minimum contractual revenues SROG will receive as a whole. Based on Plant ownership, Scottsdale Water will receive approximately 10% of the revenue stream, with actual revenues based on measured wastewater attributes.

ANALYSIS & ASSESSMENT

The Plant currently burns generated biogas through flares, wasting this potential energy source and degrading air quality. In response to a solicitation process, 91RB proposes to fund and build the infrastructure necessary to capture and process the biogas and convey it to the Kinder Morgan pipeline for transmission and sale.

Through this agreement SROG will successfully:

- Sell Plant biogas as a renewable energy commodity;
- Create a new revenue stream for the City and other SROG partners; and
- Reduce the Plant's carbon footprint by improving air quality through the capture and beneficial use of biogas.

Scottsdale Water recommends authorizing the City of Phoenix, as the Plant's management agency, to sell Scottsdale's portion of the Plant's biogas to 91RB for conversion into a renewable energy source in exchange for a proportional share of the sales revenues.

RESOURCE IMPACTS

Available funding

No funding is required for this action.

Staffing, Workload Impact

No additional resources are required.

Future Budget Implications

Scottsdale Water will receive a guaranteed royalty for the sale of biogas plus additional revenue based on measured biogas production exceeding conservative baseline estimates.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution 10495 authorizing the City of Phoenix, as the management agency of the 91st Avenue Sewage Treatment Plant, to sell Scottsdale's portion of the Plant's biogas to Ninety-first Avenue Renewable Biogas, L.L.C. for conversion into a renewable energy source in exchange for a proportional share of the sales revenues.

RESPONSIBLE DEPARTMENT(S)

Water Resources Department

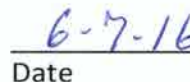
STAFF CONTACTS (S)

Chris Hassert, Planning and Engineering Director
(480) 312-5681, chassert@scottsdaleaz.gov

APPROVED BY



David B. Petty, Acting Water Resources Director
(480) 312-5661



Date

ATTACHMENTS

1. Resolution No. 10495

RESOLUTION NO. 10495

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY OF PHOENIX, AS THE MANAGEMENT AGENCY OF THE 91ST AVENUE SEWAGE TREATMENT PLANT, TO SELL SCOTTSDALE'S PORTION OF THE PLANT'S BIOGAS TO NINETY-FIRST AVENUE RENEWABLE BIOGAS, L.L.C. FOR CONVERSION INTO A RENEWABLE ENERGY SOURCE IN EXCHANGE FOR A PROPORTIONAL SHARE OF THE SALES REVENUES.

WHEREAS, in 1979, the City entered into the Intergovernmental Agreement for the Construction, Operation and Maintenance of the Jointly Used Sewerage Treatment and Transportation Facilities (IGA) to jointly own, construct, and maintain the 91st Avenue Sewage Treatment Plant (Plant) located in Phoenix;

WHEREAS, the IGA, as amended, continues in effect and provides for the joint ownership, construction, operation and maintenance of the Plant by the Cities of Scottsdale, Tempe, Glendale, Mesa, and Phoenix (Cities), with the City of Phoenix acting as the Management Agency for the Cities;

WHEREAS, Phoenix, working in cooperation with the other Cities and in accordance with the IGA, conducted a public process resulting in a response from Ninety-First Avenue Renewable Biogas, L.L.C., a Delaware limited liability company (91RB), to purchase and convert waste digester gas (biogas), a byproduct of the Plant's wastewater processing, into a renewable energy source (Project);

WHEREAS, Phoenix and 91RB have negotiated the Biogas Project Agreement (Agreement), the terms of which require 91RB to convert the Plant's biogas into a renewable energy source, assume the risk of financial loss from the Project, and pay the Cities over a 20-year period;

WHEREAS, under the Agreement, the City of Scottsdale anticipates receiving approximately \$1,600,000 over the 20-year period to offset the costs of operating, constructing, and maintaining the Plant;

WHEREAS, the City anticipates the following Project benefits: converting a waste product into renewable energy, reducing waste and its associated air pollution, creating a potential emergency power source for the Plant, and generating revenue from renewable energy sales to offset Plant costs;

WHEREAS, pursuant to Section 17 of the IGA, Phoenix, as the Plant's Management Agency, must secure the Cities' written approval before entering into any contracts disposing of Plant effluent and products to which the Cities contribute; and

WHEREAS, the City Council of the City of Scottsdale desires to provide Phoenix with written approval, pursuant to Section 17 of the IGA, to sell Scottsdale's portion of the Plant's biogas to 91RB in exchange for Scottsdale's proportional share of the sales revenues;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The City Council hereby authorizes the City of Phoenix to sell Scottsdale's portion of the Plant's biogas to 91RB for conversion into a renewable energy source in exchange for a proportional share of the sales revenues, so long as the contract is in substantially the same form as is attached to this Resolution.

Section 2. The City Council further authorizes the Water Resources Manager to execute documents and take such other actions as are necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this 21st day of June, 2016.

ATTEST:

CITY OF SCOTTSDALE, an Arizona
municipal corporation

Carolyn Jagger, City Clerk

W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:



Bruce Washburn, City Attorney

By Janis L. Bladine, Senior Assistant City Attorney

BIOGAS PROJECT AGREEMENT
BETWEEN
NINETY-FIRST AVENUE RENEWABLE BIOGAS LLC
AND
CITY OF PHOENIX

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Appendix - Development, Operations and Decommissioning Standards for the Processing Facility

Exhibit A - Biogas Project Lease

Exhibit B - Developer Permit Summary

Exhibit C - Insurance Requirements

Exhibit D - Parties Designated Representatives

Exhibit E - Map and Legal Description of Project Site

Exhibit F - Schematic of Biogas Delivery Point

Exhibit G - Biogas Metering Standards

Exhibit H - Easement Agreement

Exhibit I - Monthly Production Report

Exhibit J - Processing Facility Surrender Cost and Processing Facility Demobilization and Removal Cost

BIOGAS PROJECT AGREEMENT

This BIOGAS PROJECT AGREEMENT (the "Agreement" or "BPA") is effective this _____ day of _____ 2016 by and between the City of Phoenix, an Arizona municipal corporation ("Phoenix") and Ninety-First Avenue Renewable Biogas LLC, a Delaware limited liability company ("Developer"). Phoenix and Developer are sometimes individually referred to in this Agreement as a "Party," and collectively as the "Parties."

RECTALS

A. The Subregional Operating Group Cities ("SROG" or the "SROG cities") is an association of the City of Glendale, City of Mesa, City of Phoenix, City of Scottsdale and City of Tempe, Arizona. SROG owns and uses the regional water reclamation plant located at 5615 South 91st Avenue in Tolleson, Arizona known as the 91st Avenue Wastewater Treatment Plant (the "Plant") to collect and treat wastewater from the cities that make up SROG. Phoenix operates the Plant on behalf of SROG and is party to certain arrangements with the other members of SROG by which the benefits of the Project realized by Phoenix will flow to SROG members.

B. The Plant produces, as a byproduct of wastewater treatment processes, digester gas ("Biogas") from its anaerobic digestion facilities. SROG desires to convert the Plant's Biogas waste byproduct into a commodity by selling that gas to Developer. To that end, (1) Phoenix proposes to sell Developer certain amounts of Biogas, (2) and Phoenix proposes to lease, by separate agreement, a limited area at the Plant to Developer so that it may construct and operate Biogas processing equipment (the "Processing Facility") at the Plant and deliver the output of the Processing Facility to one or more purchasers.

C. It is therefore in the public interest for: (1) Phoenix to lease a site at the Plant (the "Project Site") to Developer in order to accommodate the construction and operation of the Processing Facility to be owned, operated, and maintained by Developer, and (2) Phoenix to provide to Developer as a benefit of this Agreement a continuous supply of Biogas produced by the wastewater treatment processes at the Plant as raw material for conversion at the Processing Facility into either burner-tip, feedstock, fuel, or other commercial application, in return for payment by Developer to Phoenix for the supplied Biogas.

D. The SROG cities have adopted a commitment to energy efficiency, energy management and renewable energy resources, and desire to make the Plant's Biogas and a site at the Plant available for development of a renewable energy project consisting of a Biogas Processing Facility with Connecting Utilities from the Plant, a pipeline from the Project Site to the gas metering station and interconnection facilities of the Interconnection Authority as further described in the Interconnection Agreement (the "Project"). This Agreement and the Lease are intended to satisfy such desire and, through the separate arrangements among Phoenix and the other SROG members, to share the benefits of Phoenix' agreements with Developer related to the Project.

E. Developer desires to develop, finance, construct and operate a long-term renewable energy project involving the conversion of Biogas to a useable commodity using the Processing Facility at the Project Site.

F. Developer desires to develop the Project at the Project Site and provide certain economic benefits (the "Economic Benefits") to Phoenix in connection therewith, and Phoenix desires for Developer to develop the Project at the Project Site and to receive such Economic Benefits.

G. Phoenix intends to share certain Economic Benefits with the other members of SROG through separate arrangements among the SROG Cities. Developer is not a party to such arrangements. Notwithstanding such arrangements among the SROG Cities, the rights and obligations of Phoenix under this Agreement, the Lease and the other agreements with Developer related to the Project (the "Project Agreements") are, as between Developer and Phoenix, Phoenix' alone, and none of the other SROG Cities shall have any rights or obligations under the Project Agreements.

NOW, THEREFORE, in consideration of the mutual premises, terms, covenants and obligations contained herein, and intending to be legally bound hereby, the Parties do agree as follows:

ARTICLE I – DESCRIPTION, SCOPE AND TERM OF PROJECT; DEFINED TERMS

Section 1.01 The Project.

The Project consists of Developer's construction and operation of a Biogas Processing Facility at the Plant over a period coterminous with the Lease, transfer from Phoenix to Developer of Biogas generated by the Plant's anaerobic digestion facilities, and payment by Developer to Phoenix for that Biogas. The Project's design, construction and operation will not materially interfere with or cause Impairment to the operation of the Plant, and will be integrated with the present layout and operation of the Plant, in each case as the Plant exists and is operated on the Effective Date.

Section 1.02 Term of Biogas Project Agreement.

This Agreement is effective as of the Effective Date and shall continue in full force and effect for a period ending on the twentieth (20th) anniversary of the Commercial Operations Date.

Section 1.03 Certain Related Documents.

Concurrent with the execution and delivery of this Agreement, Phoenix and Developer are entering into a Biogas Project Lease (the "Lease"), in the form attached hereto as Exhibit A, in which Phoenix will lease the Project Site to Developer.

Section 1.04 Exhibits and Appendix.

This Agreement incorporates by reference the Exhibits attached hereto and a single Appendix, containing the applicable Development, Operations and Decommissioning Standards for the Processing Facility. In the event of any conflict between the provisions of the Appendix and this Agreement, or the Exhibits and this Agreement, the language in the body of the Agreement shall control.

Section 1.05 Definitions.

"91st Avenue Wastewater Treatment Plant (or the "Plant")" means the regional water reclamation plant located at 5615 South 91st Avenue in Tolleson, Arizona used to collect and treat wastewater from the cities that make up SROG.

"A.R.S." means Arizona Revised Statutes.

"Acid Phase Gas (or "APG")" has the meaning set forth in Section 12.01(a).

"Agreement" means this Biogas Project Agreement entered into by Phocnix and Developer establishing the rights and obligations of each Party.

"Annual Bonus Revenue" has the meaning set forth in Section 12.03.

"Applicable Law" means all existing and future laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs and orders, rules, regulations, interpretations, issuances, enactments, decisions, and Authorizations of any Governmental Authority having jurisdiction over the matter in question with respect to the Project or any part thereof, including any property, real, personal, intellectual or otherwise used in connection therewith, this Agreement, the transactions contemplated by this Agreement and the Lease, the Parties, the transmission of gas, or the testing, commissioning, health and safety, or the environmental condition or operation of the Project or any part thereof, including Environmental Laws.

"Authorizations" means any valid waiver, exemption, variance, franchise, permit, authorization, approval, consent, lease, ruling, tariff, rate, certification, license or similar order of or from, or filing or registration with, or notice to, any Person or Governmental Authority.

"Biogas" means the byproduct of anaerobic digestion of biosolids at a wastewater treatment plant. Biogas is comprised predominantly of methane and carbon dioxide and has an overall heat value of approximately 400 to 700 Btu/ft³, and, for the purposes of this Agreement, shall not include Acid Phase Gas.

"Biogas Payment" has the meaning set forth in Section 12.02.

"Biogas Project Lease" is a phrase that is interchangeable with "Lease".

"Btu/ft³" means British thermal unit per cubic foot, a measurement of thermal energy contained per unit volume (i.e., per cubic foot of Biogas or natural gas).

"Business Day" means Monday through Friday, excluding any holiday designated by the Federal Reserve Bank of San Francisco, as identified on the Federal Reserve website.

"City of Phoenix (or "Phoenix")" means city of Phoenix, Arizona.

"Claims" has the meaning set forth in Section 18.05.

"Commencement of Construction" means a NTP to the EPC Contractor or other prime construction contractor, including the availability of funds sufficient to construct the Project. The Parties do not intend that the occurrence of Commencement of Construction hereunder will be affected by whether or not Developer "commences" or "begins actual construction" as those terms are defined in the Clean Air Act and its State and local counterparts.

"Commercial Operations Date" means the date on which the EPC Contractor or Developer delivers care, custody and control of the Project to Developer as declared by Developer in a written notice to Phoenix.

"Commercial Operations Date Deadline" has the meaning set forth in Section 9.02.

"Connecting Utilities" means the connecting of certain utilities between the Plant and the Processing Facility.

"Controlled Affiliate" means with respect to any Person, (a) each Person that directly or indirectly, controls or is controlled by or is under common control with such designated Person, (b) any Person that beneficially owns or holds 50% or more of any class of voting securities of such designated Person or 50% or more of the equity interest in such designated Person or (c) any Person of which such designated Person beneficially owns or holds 50% or more of any class of voting securities or in which such designated Person beneficially owns or holds 50% or more of the equity interest. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Decommissioning Period" means the period, not to exceed two hundred and forty (240) days, during the Term, following the Production Period, that is used by Developer to decommission, demobilize and remove the Processing Equipment, including but not limited to the facility, structures, lines, and equipment, from the Project Site and Plant and return that property to its pre-development condition as set forth in the Appendix and the Lease.

"Delivery Point" has the meaning set forth in Section 5.02.

"Designated Representatives" has the meaning set forth in Section 3.03.

"Developer" means Ninety-First Avenue Renewable Biogas LLC, a Delaware limited

liability company, or any permitted assignee or transferee of this Agreement.

"**Developer Permit Summary**" has the meaning set forth in Section 7.01.

"**Development Milestones**" has the meaning set forth in Section 8.01.

"**Development Period**" means the period during the Term commencing at the Effective Date and ending at the Commercial Operations Date that precedes the Production Period.

"**Development Standards**" means the standards with respect to the development, operations and decommissioning of the Processing Facility set forth in the Appendix.

"**Economic Benefits**" means the collective monetary and non-monetary benefits provided by Developer to Phoenix in accordance with Article XII hereof.

"**Effective Date**" means the date on which this Agreement is effective as set forth in the preamble of this Agreement.

"**Environmental Attributes**" means any contractual right to the full set of non-energy renewable and environmental attributes, including any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, allocated, assigned, awarded, certified or otherwise transferred or granted to Developer in connection with the Project or directly attributable to renewable energy or other products generated, produced, or provided by the Project or due to the Project's use of renewable resources for gas or electricity generation, including any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances, and any State, local and/or federal production tax credits, tax deductions, investment tax credits or other applicable tax credits; accelerated depreciation schedules; subsidy payments or other renewable energy or other benefits as may be created under any existing or future statutory or regulatory scheme (federal, State or local) by virtue of or due to the Project's actual gas or electricity production and sale or the Project's gas or electricity production and sale capability because of the Project's environmental or renewable characteristics or attributes.

"**Environmental Law**" means all federal, state, regional and local laws, statutes, regulations, rules, ordinances applicable to the Project relating to pollution, protection of human health and safety, industrial hygiene, public safety, occupational safety, fire prevention and protection, and the environment (including without limitation ambient air, surface water, ground water, land surface or subsurface strata), including without limitation, laws, statutes and regulations relating to emissions, discharges, injuries or damages to natural resources, Releases or threatened Releases of Hazardous Substances or otherwise relating to the manufacture, processing, distribution, use, treatment, generation, storage, disposal, transport or handling of Hazardous Substances. Environmental Law includes without limitation, the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Clean Water Act

(33 U.S.C. § 1251 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. § 2701, et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), each of their state and local counterparts, and all other applicable federal, state and local environmental laws and statutes, including obligations under the common law, ordinances, rules, regulations and guidance or policy documents, as any of the foregoing may have been or may be from time to time amended, supplemented, supplanted or interpreted, and any other Applicable Law, now or hereafter existing relating to regulation or control of Hazardous Substances or environmental protection, health or safety.

"EPC Contractor" means an engineering, procurement and construction contractor, or other prime construction contractor, engaged by Developer for construction of the Project, which may be Developer or a Controlled Affiliate of Developer.

"Financial Closing" means the execution and delivery of final documents by Developer, Financing Parties, and equity investors of all funds necessary to evidence the irrevocable commitment (subject only to customary conditions precedent to funding draws) to construct the Project.

"Financing Parties" means any lender, and any trustee for, or agent of, such lender, that provides senior or subordinated construction, interim or long-term debt financing or refinancing to the Project or any portion thereof or any Person (including the U.S. Department of Energy) providing a guaranty of such financing, the proceeds of which are applied in whole or in part to the Project or any portion thereof, in each case whether secured or unsecured.

"Force Majeure Event" has the meaning set forth in Section 15.01.

"Governmental Authority" means any international, national, federal, state, territorial, tribal, local or other government, or any political subdivision thereof, and any governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity having legal jurisdiction over the matter or Person in question.

"Hazardous Substances" means (a) any chemical, pollutant, contaminant, waste, toxic substance, special waste, infectious waste, hazardous substance or words of similar import (whether solid, liquid or gas) that are now or hereafter included within the definitions of or identified in any environmental Authorization or Environmental Law or in the regulations promulgated pursuant to said laws, all as amended; (b) any material, waste, substance, pollutant or contaminant which is or contains (i) petroleum, its derivatives, by-products and other hydrocarbons, including crude oil or any fraction thereof, natural gas, natural gas liquids, or synthetic gas usable for fuel or any mixture thereof, drilling fluids, produced waters, (ii) asbestos and/or asbestos-containing materials in any form that is or could become friable, (iii) polychlorinated biphenyls, (iv) flammable explosives, (v) radioactive materials, or (vi) mold; and (c) such other chemical, pollutant, contaminant, waste, toxic substances, hazardous substances, or words of similar import which are or become defined in, or regulated by, environmental Authorizations or Environmental Law.

"Impairment" means a material increase in operating costs, material increase in

operating risks, material reduction in performance or in capacity of the Plant or, after the Commercial Operations Date, the Project that materially reduces the value, efficiency, availability, safety or reliability of the Plant or the Project.

"Interconnection Agreement" means the agreement or agreements between Developer and the Interconnection Authority from time to time with respect to the interconnection of their respective equipment and facilities.

"Interconnection Authority" means the entity Developer selects to provide interconnection service for the Project.

"Lease" has the meaning set forth in Section 1.03.

"Liquidated Damages" has the meaning set forth in Article IX and Article XIII.

"Major Permits" means those Permits identified as such in the Developer Permit Summary attached hereto as Exhibit B.

"Maricopa County" means Maricopa County, Arizona.

"Material Adverse Effect" means, with respect to any Party, a material adverse effect on (a) the business or financial condition of such Party, (b) the ability of such Party to perform its obligations under this Agreement or (c) the prospects of consummating the transactions or carrying out the development of the Project or the ongoing operation of the Plant contemplated by this Agreement.

"Maximum Flow" means the flow rate of 2,400 standard cubic feet per minute dry, as may be increased by Developer by written notice from time to time in connection with additions or alterations to the Processing Facility.

"MMBtu" means million British thermal units.

"Notice to Proceed" or **"NTP"** means an unlimited and unqualified notice to proceed issued by Developer to, and accepted by, its EPC Contractor for the Project, authorizing such EPC Contractor to proceed with construction-activity under the construction contract for the Project.

"Off-spec Biogas" has the meaning set forth in Section 12.01(a)(ii).

"On-spec Biogas" has the meaning set forth in Section 12.01(a)(ii).

"Party(ies)" has the meaning set forth in the preamble.

"Permits" means any necessary legal authorization or permission related to the development, financing and construction of the Project, including Major Permits as defined herein.

"Person" means any individual, partnership, joint venture, corporation, trust, limited liability company, unincorporated organization, tribunal, Governmental Authority, department or agency or other entity or association.

"Phoenix" has the meaning set forth in the preamble of this Agreement.

"Processing Facility" means the facility consisting of the processing equipment used to convert Biogas delivered from the Plant into a commercially usable commodity, including all related facilities and appurtenances (including but not limited to Connecting Utilities from the Plant-provided utility connection points to Developer-provided Processing Facility equipment and Developer's pipeline facilities from the fence line of the Project Site to their connection with third-party transport facilities).

"Processing Facility Surrender Cost" has the meaning set forth in Exhibit J.

"Production Period" means the period during the term of the Agreement, beginning with the Commercial Operations Date and ending upon termination of the Agreement, but not including any Decommissioning Period.

"Project" means the Project as set forth in the recitals and Section 1.01, and as more fully described herein, which shall initially consist of the installation and operation of digester gas treatment and separation equipment, pipeline facilities, compressors, and related equipment, excluding for interconnection. For purposes hereof, the term "Project" shall also include: (i) technological changes and advancements made to the initial Project and replacements thereto during the Term, and (ii) all development rights, contract rights, permits, property and other assets created or obtained by Developer in connection with the development of such Project.

"Project Agreements" has the meaning set forth in the Recitals to this Agreement.

"Project Site" has the meaning set forth in the Recitals of this Agreement.

"QDT Payment Factor" has the meaning set forth in Section 12.02(b).

"Quarterly Delivery Target (or "QDT")" has the meaning set forth in Section 12.01(b).

"Records" has the meaning set forth in Section 12.06.

"Release of Hazardous Substances" means the active or passive release or threatened release of any Hazardous Substances into, upon, under, or from, any land or water or air or into the environment, or words of similar import or as the term release is otherwise defined in any environmental Authorization or Environmental Law, and includes the release or threatened release of Hazardous Substances by means of using, storing, transporting, handling, burying, disposing, managing, discharging, injecting, emptying, emitting, spilling, leaking, flowing, seeping, leaching, dumping, pumping, pouring, escaping, placing, disposing and the like.

"Rent Commencement Date" has the meaning set forth in Section 2.01.

"State" means the State of Arizona.

"Subregional Operating Group" (or **"SROG"** or the **"SROG cities"**) is an association of the cities of Glendale, Mesa, Phoenix, Scottsdale and Tempe, Arizona that own and use the Plant, which Phoenix operates, to collect and treat wastewater from the respective incorporated boundaries of those cities.

"Term" means term of this Agreement, which commences on the Effective Date of this Agreement and continues until the (20th) anniversary of the Commercial Operations Dated, unless terminated by either Party pursuant to the terms hereof.

Section 1.06 Rules of Interpretation.

In this Agreement, unless otherwise specifically provided in this Agreement:

- (a) capitalized terms used in this Agreement shall have the meanings set forth in Section 1.05 hereof;
- (b) terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa;
- (c) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices" or "Exhibits" (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits hereof;
- (d) all references to a particular Person in any capacity shall be deemed to refer also to such Person's authorized agents, successors and permitted assigns in such capacity;
- (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof;
- (f) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and shall not be construed to mean that the examples given are an exclusive list of the topics covered;
- (g) all accounting terms not specifically defined herein shall be construed in accordance with accounting principles and, to the extent not inconsistent therewith, generally accepted accounting principles in the United States of America consistently applied;
- (h) references to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time;

(i) references to any agreement, document or instrument shall be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced as of such time;

(j) the masculine shall include the feminine and neuter and vice versa;

(k) references to an Applicable Law shall mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and in effect from time to time;

(l) references to a governmental agency, department, board, commission or other public body or to a public officer includes an entity or officer that is delegated or who succeeds to substantially the same functions as those performed by such public body or officer as of the date of this Agreement;

(m) the phrase "sole discretion" shall be deemed to mean the sole and absolute discretion of the Party who is exercising sole discretion, which may at times be arbitrary and unreasonable; and

(n) any reference to the Project where the taking of an action or an obligation to act (such as, without limitation, giving or receiving notice, asserting or defending claims, entering into a contract, compliance with law; making of a payment or performance of any other obligation, and so forth) is ascribed to the Project shall be deemed to mean that the action is or shall be taken by, or the obligation to act falls or shall fall upon, Developer acting on behalf of the Project.

Section 1.07 Agreement Authorship; Construe Agreement with Lease.

The Parties jointly prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof. This Agreement is entered into by the Parties in conjunction with the Lease, and is to be construed with the Lease to effectuate the overall intention of the Parties.

ARTICLE II - DEVELOPMENT RIGHTS

Section 2.01 Lease.

(a) Project Site Lease. The Lease will be executed and delivered, substantially in the form attached hereto as Exhibit A. The Rent Commencement Date is the date on which Lease payments to Phoenix begin to accrue, which is on the Effective Date of the Lease.

(b) Processing Facility Use. Developer agrees to design, construct, permit, own, operate, maintain, and manage the Processing Facility pursuant to the Development Standards set out in the Appendix to this Agreement. Developer shall use the Processing Facility and other appurtenances of Developer on the Project Site exclusively for processing and treatment

of Biogas produced by the Plant, and shall not be used or made available for processing or treatment of the products of any third party.

Restrictions on Assignability of Lease; Restrictions on Transfer of Control. The Lease is non-assignable by Developer unless at the time of an assignment by Developer to the assignee of the Lease, Developer simultaneously assigns this Agreement and Developer simultaneously transfers all of its right, title and interest in and to the entirety of the Project to the assignee of the Lease or a Controlled Affiliate of the assignee of the Lease, in compliance with the restrictions on assignment and transfer set forth herein. Any assignee of the Lease must acknowledge that the Lease is subject to the terms and conditions of this Agreement that are incorporated by reference in the Lease.

ARTICLE III – COORDINATION AND PREVENTING MATERIAL ADVERSE EFFECT OR IMPAIRMENT

Section 3.01 Coordination of Project Construction.

The Parties each acknowledge: (a) that Plant operations near the Project Site will occur for the duration of the Project, (b) such Plant operations and the construction activities related to the Project, shall take place simultaneously, and (c) Developer's construction plans and schedule may be affected by the ongoing Plant operations. Subject to Section 1.01, each Party hereto has a duty not to cause material interference to the other Party's activities or Impairment to the other Party's assets as described in this Section 3.01. In an effort to avoid any material interference to Project construction activities or Plant operations, or Impairment to the Project or Plant, and in order for the development and construction of the Project to proceed in a mutually beneficial manner, the Parties agree to cooperate and keep each other apprised of ongoing activities on the Project Site and the Plant, provided, however that the duty described above to avoid such material interference and Impairment shall remain the duty of the Party potentially causing any material interference or Impairment. When the circumstances so require, the Designated Representatives acting on behalf of each organization, shall determine and agree upon the Project construction scheduling and operations to be implemented. The Parties agree that these matters shall be determined in a commercially reasonable manner, in good faith and with the object of coming to a commercially reasonable agreement.

Section 3.02 Coordination of Plant and Project Operation.

The Parties each acknowledge: (a) that Plant operations near the Project Site will occur for the duration of the Project, (b) such Plant operations may be affected by the operations of the Project, and (c) the Project may be affected by the ongoing Plant operations. Subject to Section 1.01, each Party hereto has a duty not to cause material interference to the other Party's activities or Impairment to the Project or the Plant as described in this Section 3.02. In an effort to avoid any material interference or Impairment to the Project or the Plant, and in order for the Project to be operated in a mutually beneficial manner, the Parties agree to cooperate and keep each other apprised of ongoing activities on the Project Site and the Plant, provided, however that the duty described above to avoid such material interference and Impairment shall remain the duty of the

Party potentially causing any material interference or Impairment. When the circumstances so require, the Designated Representatives, acting on behalf of each organization shall determine and agree upon the operations scheduling to be implemented. The Parties agree that these matters shall be determined in a commercially reasonable manner, in good faith and with the object of coming to a commercially reasonable agreement.

Section 3.03 Designated Representatives.

The Parties shall each designate an individual employee as the point of contact for communications between the respective organizations for purposes of this Agreement (the "Designated Representatives"). The Parties also shall each designate an alternate individual employee. In the event the original Designated Representative is unable to fulfill his or her role in accordance with this Section 3.03, the alternate representative shall become the Designated Representative upon written notice to the other Party. Each Party may change its Designated Representatives and/or alternate representative following written notice to the other Party. The initial Designated Representatives and alternate representatives appointed by the Parties are listed on Exhibit D attached hereto.

Section 3.04 Remedies.

If the outcome of the operation of Sections 1.01, 3.01 and/or 3.02 is to cause, extend or perpetuate a material adverse effect on, or Impairment of, the Project, including without limitation through coordination, postponement, curtailment or alteration of development, financing, construction, operations or maintenance, or the cancellation or complete shutdown, of the Project, then Developer shall have the right to take any reasonable measures to remove or mitigate either or both of the underlying material interference or Impairment affecting Phoenix or the effect on Developer and/or the Project, including making capital expenditures. Developer shall have the right to offset all losses, costs, damages, expenses and the like related to or arising from the operation of Sections 1.01, 3.01 and/or 3.02 and/or Developers actions to remove or mitigate as described above, against any amounts that Developer may owe Phoenix from time to time under any of the Project Agreements, provided, that such right of offset shall not require Phoenix to make any out-of-pocket payment to Developer during the term of this Agreement. The rights of Phoenix under Sections 1.01, 3.01, 3.02 and 5.15 shall be its sole remedies for material interference or Impairment caused by Developer or the Project.

ARTICLE IV - PROJECT DEVELOPMENT

Section 4.01 Exclusivity.

Developer shall have the exclusive right to develop the Project on the Project Site, and the exclusive right to use all Biogas produced by the Plant, except for that quantity of Biogas unavailable as provided for in Section 5.04. A map and legal description of the Project Site is attached hereto as Exhibit E.

Section 4.02 Duties of Developer.

Developer will, at its own cost, obtain all Permits and Authorizations in the name of Developer necessary for the development, construction and operation of the Project at the Project Site, except to the extent Applicable Law requires any of the Permits or Authorizations to be in the name of Phoenix. If any Permit or Authorization is required to be filed in the name of Phoenix, Phoenix shall cooperate in the executing, filing and processing of such Permit or Authorization, and any associated correspondence, filings or other documentation necessary or convenient in the design, construction and operation of the Project and Developer shall bear all out-of-pocket costs associated therewith.

Section 4.03 Project Development Plan.

Developer must diligently pursue all Permits and take such other actions required for the development and construction of the Project, including timely responses to any comments from Permit-granting Government Authorities. Developer shall comply with the Development Milestones as described herein and in the Appendix. The sole evidence of failure to comply with this Section 4.03 shall be failure to meet a Development Milestone in a timely manner. The sole remedy for failure to comply with this Section 4.03 shall be the remedies for failure to achieve a Development Milestone in a timely manner.

Section 4.04 Developer Team.

Developer will maintain at all times prior to the Commercial Operations Date a qualified development team for the Project. Developer's team shall have individuals with substantial qualifications or experience with permitting, developing and financing Biogas projects.

ARTICLE V - BIOGAS PROJECT DEVELOPMENT

Section 5.01 Biogas Collection System.

The Plant uses blowers and flares to collect and destroy Biogas and has three flare stations for its anaerobic digestion facilities as of the Effective Date. Phoenix will continue to operate the Plant's Biogas and Acid Phase Gas collection and destruction system for the duration of this Agreement. During the term of this Agreement, Phoenix must divert Biogas and Acid Phase Gas to the flare at any time upon request of the Project, and may divert Biogas and Acid Phase Gas at any time to the extent permitted as an excuse under Section 5.04. In addition, automatic switching at the Project may, from time to time, divert Biogas and Acid Phase Gas to the Plant's flares. In each such case, the Party requiring the Biogas and Acid Phase Gas diversion to the flare shall, to the extent practicable, give reasonable advance notice to the other Party under the circumstances necessitating the Biogas and Acid Phase Gas diversion, which in the case of switching at the Project, may include only an electronic indication or similar notification.

Section 5.02 Designated Delivery Point.

Phoenix shall tender all Biogas produced at the Plant by its anaerobic digestion facilities (less that excused pursuant to Section 5.04) to the delivery point (the "Delivery Point") at any time after the Rent Commencement Date upon the request of Developer from time to time. Any Acid Phase Gas tendered or delivered by Phoenix shall be tendered or delivered to a separate delivery point. Risk of loss, control and possession of, and title to the Biogas shall pass from Phoenix to Developer at the Delivery Point and, with respect to Acid Phase Gas, shall pass at such separate delivery point. The location of the Delivery Point and such separate delivery point for Acid Phase Gas will be determined after the initial design of the Project has been completed, but in any case shall not be more than 200 lineal feet downstream from the Plant's existing blower/flare station. Once the initial design of the Project is complete, a detailed schematic of the Delivery Point and the separate Acid Phase Gas delivery point shall be attached as Exhibit F hereto.

Section 5.03 Metering.

(a) Except for the determination of heating value, the unit of volume for measurement of Biogas tendered hereunder will be one cubic foot of Biogas at a base temperature of 60 degrees Fahrenheit and at an absolute pressure of 14.73 PSIA. All fundamental constants shall be in accordance with the standards prescribed in the then current American Gas Association Manual with any subsequent amendments that may be mutually acceptable to the Parties. Further details and specifications pertinent to metering the Biogas tendered by Phoenix to Developer are set forth in Exhibit G attached hereto.

(b) Developer shall, at its expense, install metering equipment at the Delivery Point for the measurement of the volume and heat content of delivered Biogas. Developer shall provide to Phoenix an interface for real-time data from the content metering equipment. Phoenix shall have access to the Project's metering equipment at all reasonable times; provided that, subject to subsection (c) below, unless demonstrated to be in error, volume and heat content measurements made by Project meters will be used to determine the heat content of Biogas tendered by Phoenix to Developer and payment pursuant to this Agreement. From time to time, the Parties may agree upon further calibration and testing standards to be used for the meters, which further standards will be attached hereto as a supplement to Exhibit G and made a part hereof upon written endorsement by Designated Representatives of the Parties. A detailed schematic of the metering equipment will be provided for Phoenix's reasonable approval prior to the Commercial Operations Date.

(c) Developer shall use reasonable efforts to keep metering equipment accurate and in repair, making, at the Developer's expense, periodic tests acceptable to both Developer and Phoenix at frequencies or intervals specified by the metering equipment manufacturer, but in no event shall the periodic testing occur less often than once per twelve-month period. At either Party's option, additional tests in advance of the next scheduled test may be ordered. Each Party shall give the other reasonable advance notice of any such tests so that each Party may have its Designated Representative present. The expense of any such special test requested by Developer shall be borne by Developer. The expense of any such special test requested by Phoenix shall be borne (i) by

Phoenix if the metering equipment is found to be accurate within two percent, or (ii) by Developer if the metering equipment is found to be inaccurate by more than two percent, in which case, meter readings shall be corrected for a period extending back to the time when such inaccuracy first occurred if that time can be ascertained; and, if not ascertainable, corrections shall be made for one-half of the elapsed time since the last previous test of the meter equipment such that Developer fully pays Phoenix for any tendered Biogas that was improperly measured or is refunded for any overpayment.

Section 5.04 Phoenix Delivery of Biogas.

Phoenix shall tender all Biogas produced, including any increase in produced Biogas after the Commercial Operations Date, other than Biogas unavailable due to the permissible excuses described in this Section 5.04, to Developer at the Delivery Point. Within thirty (30) days following each anniversary of the Rent Commencement Date, Phoenix shall provide to Developer a report that identifies wastewater quantity and quality processed by the Plant and subjected to the Plant's anaerobic digestion facilities in the prior calendar year, and (ii) a forecast of wastewater quantity and quality anticipated to be processed by the Plant and subjected to the Plant's anaerobic digestion facilities in the upcoming calendar year. Permissible excuses for the unavailability of Biogas from Phoenix shall be limited to: (i) a Force Majeure Event to the extent permitted as an excuse under Article XV of this Agreement; (ii) short-term emergencies; (iii) as may be needed to test or ensure continued operation of the Plant's flares, including without limitation use as pilot gas for such flares; (iv) as may be needed for emergency power generation during area-wide blackouts, and (v) scheduled or unscheduled maintenance of anaerobic digestion facilities equipment or systems, or Plant flares; for a combined total of up to fifteen (15) days per year; provided, that Phoenix shall use reasonable efforts to minimize such unavailability of Biogas.

Section 5.05 Notice of Inability to Deliver Biogas.

Phoenix shall provide Developer (i) at least three (3) days notice of any scheduled outage or curtailment and (ii) as much advance notice as practicable of any unscheduled outage or curtailment, of the Plant's anaerobic digestion facilities. Phoenix and Developer will cooperate to coordinate scheduled maintenance, testing and continued operation of the Plant's anaerobic digestion facilities and flares.

Section 5.06 Biogas Delivery Prior to Commercial Operations Date.

Upon seven (7) days written notice from Developer, Phoenix shall begin and continue tendering to Developer at the Delivery Point all Biogas produced by the Plant, and Developer shall have the option to accept from time to time some or all of such Biogas in connection with the startup and testing of the Project prior to the Commercial Operations Date. Biogas tendered prior to the Commercial Operations Date shall be supplied by Phoenix without charge to Developer for an aggregate elapsed period of acceptance from time to time up to sixty (60) days; provided, that Developer shall pay Phoenix for all such Biogas that is processed and sold at the Biogas Base Rate applicable to the quality of Biogas delivered. The hours of any calendar day during which Phoenix does not tender On-spec Biogas at the Maximum Flow shall not be included in calculating such sixty (60) day aggregate period of acceptance by Developer.

Section 5.07 Biogas Delivery Subsequent to Commercial Operations Date.

After the Commercial Operations Date, Phoenix shall tender to Developer at the Delivery Point all Biogas produced at the Plant, other than Biogas unavailable due to the permissible excuses described in Section 5.04, and Developer shall have the option to accept from time to time some or all of such Biogas and Developer shall purchase or pay for such Biogas in accordance with Article XII of this Agreement.

Section 5.08 Inability to Accept Biogas.

Developer shall not be required to purchase or pay for Biogas during the shutdown of the Project (i) for scheduled maintenance and/or repair, (ii) as the result of a short-term (up to forty-eight hours) unscheduled outage or emergency shutdown; (iii) due to a Force Majeure Event in accordance with Article XV of this Agreement during which the Developer is unable to use the Biogas; or (iv) due to the combined SOX emissions of the Plant and the Project exceeding the common allowable emissions limit contained in the air quality permit issued to Developer and Phoenix.

Section 5.09 Disposal of Condensate.

Phoenix shall accept for disposal from Developer up to an annual average flow volume of 1.5 gallons per minute ("gpm") of condensate generated by the Processing Facility. In no event will Phoenix be required to accept condensate from Developer that has (1) a maximum annual condensate volume exceeding 788,400 gallons, (2) a maximum peak flow at any time of greater than 15 gpm, or (3) a maximum temperature greater than 130 degrees F. Developer shall be responsible for all costs associated with constructing and maintaining the pipeline or connection point for the transfer of the condensate from it to Phoenix at the border of the Project Site.

Section 5.10 Anaerobic Digestion System Improvements.

The Parties hereto acknowledge that Phoenix has an obligation to comply with Applicable Law in the operation and expansion of the Plant and corresponding operation and maintenance of the Plant's anaerobic digestion facilities. Developer may, from time to time, request that Phoenix make repairs and improvements to the anaerobic digestions facilities that are in addition to those required by Applicable Law, and are intended to result in enhanced quality or quantity of Biogas transmitted to the Delivery Point. No repairs or improvements to the anaerobic digestion facilities requested by Developer shall interfere with or cause Impairment to Plant operations. Any such repairs or improvements will be completed by Phoenix, in its sole and absolute discretion, and will be the property of Phoenix and under Phoenix's sole control. Any costs related to such repairs or improvements requested by Developer shall be entirely the financial responsibility of Developer, and will be promptly paid for directly by Developer. In connection with any such request, Developer shall provide Phoenix with evidence of financial responsibility reasonably satisfactory to Phoenix, which may include, without limitation, a letter of credit or performance bond reasonably acceptable to Phoenix in an amount equal to the projected costs of the repairs or

improvements prior to the commencement of any repairs or construction and installation of improvements.

Section 5.11 Project Recordkeeping.

Each Party shall establish and maintain an information system to provide storage and ready retrieval of all information necessary to verify the quantity and quality of Biogas and Acid Phase Gas tendered, delivered and flared pursuant to this Agreement and shall provide the other Party and its auditors reasonable access to such information to verify such Biogas and Acid Phase Gas deliveries. The Parties acknowledge that the quality of Acid Phase Gas may not be measured on a continuous basis.

Section 5.12 Project Repairs.

During the Term, Developer shall keep the Processing Facility maintained in accordance with all applicable laws, codes and regulations and in operating condition consistent with the performance standards set out in the Appendix, including equipment replacement and any upgrades required by law. Phoenix shall not be required to repair or maintain or to pay for the repair or maintenance of the Project Site or the Processing Facility except to the extent set forth in the Lease. Developer shall fully pay and discharge all proper claims for labor and materials furnished in connection with the design, construction, repair, reconstruction, remodeling or alteration of the Project Site or the Processing Facility by Developer. Developer shall obtain lien releases for labor or materials for which payment has been made, and shall take all other reasonable steps to forestall the assertion of proper lien claims against the Project Site.

Section 5.13 Surrender.

At the expiration of this Agreement or upon earlier termination, Developer shall quit and surrender the Project Site to Phoenix. Subject to the provisions of Section 5.14, Developer shall have no more than two-hundred and forty (240) days following the date of termination or expiration, as a limited purpose extension of the Term, to remove from the Project Site the Processing Facility, fixtures, personal property and equipment, any related structures or appurtenances (collectively "Improvements") brought on the Project Site by Developer, and shall reasonably restore the Project Site to its condition as of the Effective Date. All such removal and restoration activities are referred to in this section as "Decommissioning." As provided for in the Appendix, whether or not Phoenix acquires the Processing Facility from Developer, Developer shall remove from the Project Site all substances or instrumentalities hazardous to health or safety, including all solid wastes, toxic wastes, hazardous wastes, environmental pollutants or contaminants, but only to the extent introduced to the Project Site by Developer or those for whom Developer is responsible (collectively "Pollutants") as necessary to remediate the Project Site to a condition equal to that established under the baseline environmental assessment provided for in the Appendix. Developer shall also comply with all applicable laws and regulations in connection with its vacation of the Project Site. In the event Developer fails to remove the Pollutants (and, if not acquired by Phoenix pursuant to Section 5.14), as required by this section, as to any and all Improvements and Pollutants not removed within the designated time frame, Phoenix shall have the option of:

- 1) Declaring the Improvements abandoned by Developer and assume ownership of them without the necessity of obtaining a distress warrant, writ of sequestration or other legal process; or
- 2) Removing the Improvements and filing a lawsuit against Developer to recover the cost of such removal; and
- 3) Removing the Pollutants, withholding all payments, if any, then owing by Phoenix to Developer, and filing a lawsuit against Developer to recover the cost of such removal.

Developer may at its option abandon in place the pipeline connecting the Processing Facility to the metering station of the Interconnection Authority if done in accordance with requirements of the Arizona Corporation Commission, or its successor, as the case may be, allowing for pipeline reuse. To the extent that Developer and Phoenix agree at the time of such surrender that it is commercially reasonable to do so, Developer will remove all other utility connections and lines (e.g. cooling water, electrical, condensate disposal) it installed and connected to the Processing Facility.

Section 5.14 Phoenix Purchase of the Processing Facility.

At the expiration of the Lease, the parties will discuss the disposition of the Processing Facility, which may include acquisition of the Processing Facility by Phoenix or its removal by Developer. If the Parties do not agree on the sale of the Processing Facility, the disposition of the Processing Facility shall be governed by the Lease terms and Section 5.13 of this Agreement.

Section 5.15 Termination for Convenience by Phoenix.

(a) Upon ninety (90) days' advance written notice to Developer prior to a specified date of termination ("Termination Date"), Phoenix may terminate this Agreement at its convenience and Developer shall surrender the Project Site to Phoenix, provided that in connection with any such termination implemented under item (i) below and for the consideration set out in Exhibit J, Section 1 (Processing Facility Surrender Cost) that occurs earlier than the Commercial Operations Date, Developer shall, at Phoenix' option, exercised explicitly in such notice, complete the Processing Facility. Developer shall, upon written notice from Phoenix given at any time after the Commercial Operations Date, provide to Phoenix in writing, within ten Business Days, Developer's best estimate of the total cost to Phoenix associated with a Phoenix termination for convenience under Exhibit J, Section 1 (Processing Facility Surrender Cost) or Section 2 (Processing Facility Demobilization and Removal Cost) associated with a contingent Termination Date proposed by Phoenix, including all related administrative, breakage, prepayment, and other costs, penalties, fees and charges. At Phoenix' request in connection with any such written notice, Developer shall also provide Phoenix with Developer's proposed form of sales agreement relating to a termination for convenience involving Exhibit J, Section 1 (Processing Facility Surrender Cost). Upon Developer's surrender of the Project Site by the Termination Date, Phoenix shall, at Phoenix' option, pay to Developer either:

(i) the applicable "Processing Facility Surrender Cost" as set out in Exhibit J, Section 1, under which Developer shall cease operations as the owner of the Processing Facility and Phoenix shall assume title to the Processing Facility as it then exists; or

(ii) the "Treatment Facility Demobilization and Removal Cost" as set out in Exhibit J, Section 2, under which Developer shall cease operations and remove the Processing Facility as provided for under the Lease terms and Section 5.13 of this Agreement, provided, that for such purpose, the reference to Section 5.14 contained in Section 5.13 shall be of no effect;

and in either case Phoenix shall have no further liability to Developer other than as may be set forth in Section 18.04 or any purchase agreement.

(b) Notwithstanding the foregoing and without reference to the lapse of time since the Commercial Operations Date, Phoenix may elect to terminate this Agreement under this Section 5.15 within ninety (90) days following a casualty-related Force Majeure, and in connection with any such election, (i) the applicable Processing Facility Surrender Cost or Processing Facility Demobilization and Removal Cost, as applicable, shall be reduced by an amount equal to any insurance proceeds actually received by Developer (less all costs of obtaining such proceeds) resulting from such Force Majeure that Developer has not applied to the repair of the Processing Facility, and (ii) the estimate of any related costs (administrative, breakage, etc.) provided by Developer pursuant to this Section 5.15 shall be appropriately adjusted to reflect the impacts of such Force Majeure.

(c) At the option of Phoenix, explicitly exercised in the written notice of termination in connection with a sale of the Processing Facility to Phoenix pursuant to Section 5.15(a) and Exhibit J, Section 1 (Processing Facility Surrender Cost), Developer shall operate and maintain the Processing Facility for Phoenix, and shall market any output and attributes of the Processing Facility, each for a term equal to the remaining term of this Agreement under Section 1.02 just prior to the Termination Date, or such shorter period as Phoenix shall specify in such notice. At the request of Phoenix at any time, Developer shall provide Phoenix with forms of agreement for such operations and maintenance services, and for such marketing services, including compensation terms.

ARTICLE VI - PROJECT FINANCING; DEVELOPER FINANCIAL DISCLOSURE

Section 6.01 Developer Obligation.

The financing, development, construction and operation of the Project is entirely the responsibility of Developer. Phoenix is not obligated to seek or provide any financing for the Project.

Section 6.02 Phoenix Cooperation with Project Financing.

Phoenix shall reasonably cooperate with Developer's efforts to finance the Project. Such cooperation may include, without limitation, providing any reasonable and necessary consents to assist Developer with its efforts to secure financing for the Project.

- (a) Phoenix agrees, if requested by the Financing Parties, to take commercially reasonable actions such as the following:
- (i) execute a consent and agreement in commercially reasonable form with respect to a collateral assignment hereof as the Financing Parties may reasonably request in connection with the financing or refinancing of the Project;
 - (ii) acknowledge that such consent and agreement or similar document will, among other things, require the Financing Parties receive notice of, and a reasonable opportunity to cure, any default by Developer in accordance with this Agreement and the Lease;
 - (iii) consent to the exercise by the Financing Parties of the rights of Developer under this Agreement, or the replacement of Developer by such Developer's Financing Parties, and to the right of the Financing Parties to assume all the rights and obligations of Developer under this Agreement; and
 - (iv) execute and deliver such other consents, agreements, documents or instruments, and take such other actions as requested by Financing Parties and as is customary for similar transactions.
- (b) Each Party agrees to execute any amendment to this Agreement or the Lease that the Financing Parties may reasonably request; provided that, in the case of any of the foregoing, it would not result in a material adverse change in the Parties' rights and obligations under this Agreement.

Each Party shall, at any time after the execution of this Agreement, and at such Party's out-of-pocket expense (in the case of Phoenix, such expenses to be reimbursed by Developer), prepare and provide to the Financing Parties such information in connection with this Agreement or the services as may be necessary, needed and reasonably requested by the Financing Parties; provided, however, that for purposes of the foregoing clause, the preparation of such items will not give rise to an expense to the extent such preparation can be accomplished by existing Phoenix staff in their normal course of employment; and provided, further, that such information shall be protected to the extent permitted by Applicable Law by execution of a confidentiality agreement in form and substance reasonably satisfactory to the disclosing Party. Phoenix shall cooperate with the other Party and the Financing Parties in good faith in order to satisfy the reasonable requirements of Developer's financing arrangements.

ARTICLE VII - PERMITTING

Section 7.01 Developer Permit Summary.

Attached hereto as Exhibit B is Developer's summary of all Permits required for financing, development, construction, and operation of the Project (the "Developer Permit Summary"). To the best of Developer's knowledge, after diligent inquiry, the Developer Permit Summary is complete.

Section 7.02 Developer's Ongoing Disclosure to Phoenix of Permitting Progress and Changes.

Developer will provide quarterly status reports to Phoenix from the end of the calendar quarter following the Effective Date until the calendar quarter following the Commercial Operations Date of the Project regarding the receipt of Permits and activities related to the Permits. In the event of any material change in the Permits required for the Project, including any material change in Developer's understanding of the Permits, that developer becomes aware of, Developer shall promptly provide written notice to Phoenix of such material change within twenty (20) Business Days of such change. Such notice shall include the anticipated effect of such material change on the Developer Permit Summary and on the timing and prospects for successful development of the Project.

Section 7.03 Permitting Deadlines; Phoenix Right to Terminate.

The Developer Permit Summary includes various deadlines for the receipt of all Major Permits, as identified in the Developer Permit Summary. In the event that it becomes clear that such Major Permits can no longer be obtained on a schedule that would allow for timely achievement of the Commercial Operations Date (including for such purpose any extensions of time available to Developer in return for payments to Phoenix and any cure periods), either Party may terminate this Agreement following sixty (60) calendar days notice in writing with opportunity to cure as set forth in Article XIII of this Agreement. Any such termination shall be without liability of one Party to the other.

Section 7.04 Use of Existing Permits, Surveys and Reports; Permitting Support.

To the extent Phoenix has already completed any studies or surveys pertaining to cultural, biological, or other aspects of the Plant, the Project, or Project Site, Phoenix has made and shall make such studies available to Developer in order to expedite Developer's due diligence and Permit application filing process. Phoenix will not be responsible for any misstatements, errors or omissions in the information provided to Developer. In addition to the foregoing, Phoenix will provide such other support as may be reasonably requested by Developer from time to time.

ARTICLE VIII - DEVELOPMENT MILESTONES

Section 8.01 Development Milestones.

(a) **Development Milestones.** In the event any of the development milestones (the "Development Milestones") set forth herein are not accomplished by Developer in accordance with the dates set forth herein, Phoenix may, in its sole and absolute discretion, and as its sole remedy, terminate this Agreement without liability of either Party to the other, following sixty (60) days written notice to Developer with opportunity for Developer to cure during such sixty (60) day period; provided, that if Developer cannot reasonably cure during such sixty (60) day period, Phoenix may not terminate this Agreement for so long as Developer is diligently pursuing a cure. In addition, Phoenix may, in its sole and absolute discretion, agree to one or more extensions of the Development Milestones of a duration determined by Phoenix, provided that Developer submits a plan to Phoenix to complete the Development Milestone, which Phoenix approves prior to granting the extension. Phoenix may terminate the Agreement at any time without further notice during the pendency of any such extension in the event that pursuit of the Development Milestone by Developer is not continuous and diligent and consistent with the plan approved by Phoenix. The following are the Development Milestones:

- (i) Filing by Developer of a complete application for an air quality emissions permit not later than the later of (A) one hundred twenty (120) days following the Effective Date, or (B) thirty (30) days following review of a draft of such application by Phoenix;
- (ii) Submission by Developer of a completed application for a gas interconnection agreement with the appropriate Interconnection Authority not later than the later of (A) two hundred ten (210) days following the Effective Date, or (B) thirty (30) days following review of a draft of such application by Phoenix;
- (iii) Issuance by Developer of a notice to proceed with fabrication to the prime equipment supplier by the later of (A) three hundred sixty-five (365) days following the Effective Date, or (B) ninety (90) days following the later of (1) issuance of an air emissions permit for the Project in final non-appealable form on terms acceptable to Developer in its sole discretion and (2) execution and delivery by the appropriate Interconnection Authority of a gas interconnection agreement for the Project on terms acceptable to the Developer in its sole discretion; and
- (iv) Submission by Developer of a complete application for a building permit for the Processing Facility within ninety (90) days following issuance of all other Permits in final, non-appealable form, on terms acceptable to Developer in its sole discretion.
- (v) Commencement of construction of the Processing Facility within ninety (90) days following the latest to occur of: (A) receipt of all equipment

from the prime equipment supplier at the Project Site in condition reasonably acceptable to Developer; and (B) receipt of all Permits, Authorizations and approvals necessary to construct and operate the Project, each in final non-appealable form on terms acceptable to Developer in its sole discretion

(b) Extension; Not a Default. Each of the Development Milestones shall be extended by the period of any (i) Force Majeure Event affecting Developer, or (ii) delay in the performance by Phoenix of its obligations under this Agreement or the Lease. Notwithstanding anything in this Agreement or the Lease to the contrary, failure of Developer to achieve any one or more of the Development Milestones in a timely manner, or at all, shall not be a default or an Event of Default.

ARTICLE IX - PROJECT CONSTRUCTION

Section 9.01 Construction Coordination.

During construction of the Project, Developer shall provide, or cause to be provided, monthly summary status reports on construction progress. The Designated Representatives named in Exhibit D hereto, or their successors, shall make reasonable efforts to coordinate Project construction activities in accordance herewith.

Section 9.02 Commercial Operations Deadline.

The Commercial Operation Date of the Project shall occur, subject to extension for Force Majeure, not later than thirty (30) months following the Effective Date (the "Commercial Operations Date Deadline"). If the Project fails to achieve the Commercial Operations Date by the Commercial Operations Date Deadline, Phoenix may terminate this Agreement by written notice to Developer, provided, that the Commercial Operations Date Deadline shall be extended with respect to each day, up to one (1) year, that Developer, at its sole option, agrees that it shall pay, and pays, to Phoenix, Liquidated Damages. The amount of such Liquidated Damages shall be (a) \$1,000.00 per day with respect to the first six (6) months of extension, and (b) thereafter shall be equal to the amount of Biogas Payment that Phoenix would have received if the Commercial Operation Date had occurred at the end of six (6) months of extension. Following such one (1) year of extension, if the Commercial Operations Date has not occurred, Phoenix may, at its sole option exercised from time to time, agree to further extensions of the Commercial Operations Date Deadline in return for the continued payment by Developer of Liquidated Damages at the rate set forth in clause (b) of the immediately previous sentence. Any termination by Phoenix pursuant to this Section 9.02 shall be without liability of either Party to the other. The opportunity to terminate and/or receive Liquidated Damages in accordance with this Section 9.02 shall be Phoenix' sole remedies for any failure of Developer to achieve the Commercial Operations date in a timely manner.

ARTICLE X - COSTS AND EXPENSES

Section 10.01 Costs and Expenses During Development and Construction.

All costs related to development and construction of the Project will be paid by Developer. Phoenix shall not be responsible for any costs related to development and construction of the Project.

Section 10.02 Costs and Expenses Related to Financing Parties Due Diligence.

After the Effective Date any reasonable out-of-pocket costs or expenses incurred by Phoenix in connection with any due diligence or inspection activities of the Financing Parties shall be promptly reimbursed by Developer, if undisputed, within thirty (30) days after Phoenix submits a request for reimbursement to Developer.

Section 10.03 Costs and Expenses Related to Ongoing Operations of the Project.

Developer shall be solely responsible for any and all operating expenses or capital costs related to the ongoing operation of the Project. In the event Phoenix incurs any reasonable expenses directly in connection with the operation of the Project, the Parties will establish a budget to provide for such expenses, and Phoenix shall submit such expenditures to Developer for reimbursement, and Developer shall reimburse such expenses within thirty (30) days. Such expenses shall not include the first four hundred (400) hours of staff time per calendar year, such four hundred (400) hours to be prorated for partial calendar years.

ARTICLE XI - PROJECT OPERATIONS

Section 11.01 Operation and Maintenance Agreements.

After the Commercial Operations Date, Developer or a Controlled Affiliate of Developer will operate the Project but may contract for operation and maintenance ("O&M") services with an arms-length third party subject to the prior written consent of Phoenix, which consent will not be unreasonably withheld, conditioned or delayed.

Section 11.02 Project Site Use.

(a) Permitted Uses. The Project Site shall be used solely for operation of the Processing Facility, and other purposes directly related to these operations ("Permitted Uses"), provided that there is no violation of the provisions of (b) below. No other use is permissible without the prior written consent of Phoenix. In connection with such use, Developer shall at all times operate its business and conduct its operations on the Project Site as would a reasonably prudent party engaged in the same or a similar enterprise. Developer shall not bring onto the Project Site any personal property not directly related to the Permitted Uses. Developer shall not, without the prior written permission of Phoenix, conduct tours or otherwise permit entry on the Project Site by any party who is not an employee, agent, contractor, or lender of Developer or Phoenix.

i. Developer shall operate the Processing Facility in accordance with the provisions of the Appendix, Section 3.6 and maintain the Processing Facility in accordance with the provisions of the Appendix, Section 3.7.

ii. Subject to the provisions of (c) below, Developer shall be liable at Developer's expense for obtaining and complying with permits and any other regulatory compliance for the construction and operation of the Processing Facility and all other provisions of applicable law, in each case in accordance with the provisions of the Appendix. Likewise, Developer shall be liable for any fines and penalties assessed by regulatory or other governmental agencies for compliance failures due to its failure to fulfill such obligations.

iii. Developer shall provide all personnel and equipment required to fulfill its responsibilities under the Agreement. Phoenix personnel and equipment will not be available for use by Developer to operate or maintain the Processing Facility or any other appurtenances of the Project Site.

iv. Developer shall be responsible for all costs associated with construction and operation of the Processing Facility, including connection of utilities to the connecting points provided by Phoenix at the boundaries of the Project Site, replacement of equipment, and any need to upgrade the Processing Facility based on changes in applicable law.

v. Control of Sulfur Oxides (SOx) Emissions. The Parties agree that based on a joint meeting with the Maricopa County Air Quality Department ("MCAQD"), that MCAQD will issue individual air quality permits to the Plant and the Processing Facility; however, the allowable total emission limitations will be shared between both facilities. These limitations will be established based on the potential to emit for the Plant only, which will allow the Plant to operate continuously in the event that the Project does not operate for twelve (12) months. The emissions limits for sulfur oxide ("SOx") emissions is 91 tons per year ("tpy") (twelve (12) month rolling total) and 18,500 pounds per month ("lbs/month"), and the Plant and the Processing Facility will add their SOx emissions together to determine compliance with these limits. The monthly SOx emissions should be calculated and then forwarded to Phoenix and the Developer to complete their respective monthly emission reports and the annual emission inventory. The flares of the Plant and the Processing Facility will be allowed to emit up to 88.76 tpy (twelve (12) month rolling total) and 18,129 lbs/month of SOx. The remaining 2.24 tpy and 3711 lbs/month of the permitted SOx emission limits will be for the remaining sources of SOx at the Plant. The Parties acknowledge that the total SOx emissions from both the Processing Facility and the Plant is a function of the volume of Biogas and Acid Phase Gas generated by the Plant and the hydrogen sulfide ("H2S") concentration level of the Biogas and Acid Phase Gas, which is controlled by Phoenix through the addition of ferric chloride to the incoming sludge to the Plant. Therefore the Parties agree that Developer may rely on Phoenix' operation of the Plant to regulate and reduce the Processing Facility's SOx emissions. In recognition of these circumstances and conditions, to the extent allowed by law Phoenix shall (i) affirmatively take responsibility for all exceedances of SOx emissions from the Processing Facility, and either (ii) protect, defend, indemnify, and hold Developer, its directors, officers, employees, agents, representatives, co-ventures, tenants, contractors, and servants (the "Developer Indemnitees"),

harmless from any and all costs, expenses, losses and liabilities that one or more Developer Indemnified Parties might incur relating to any exceedances of the Processing Facility's SOx emissions or (iii) or otherwise fully compensate the Developer Indemnified Parties. If Phoenix does not comply in full with the immediately preceding sentence, Phoenix shall, at the sole option of Developer, be deemed to have exercised its right to terminate this Agreement for convenience in accordance with Section 5.15(a)(i). In further recognition of these conditions, the Parties will cooperatively work together with all required reporting and monitoring of H2S levels in the Biogas and Acid Phase Gas and SOx emission monitoring. Any such exceedances shall be a Force Majeure Event with respect to Developer's obligations under this Agreement and the Lease.

(b) Prohibited Activities-Environmental Hazards.

i. Developer shall install and maintain the Processing Facility and conduct all operations in an environmentally sound manner in accordance with all applicable federal, state and local laws and regulations, and the requirements of any governmental authorities charged with the duty to regulate such operations from time to time. In connection with this, Developer shall perform the initial and final environmental site assessments of the Project Site at Developer's cost, as set out in the Appendix, Section 3.9. Developer shall not use, store or dispose of any hazardous materials on the Project Site, except to the extent such substances are required for the Permitted Uses, and any such substances shall be used, stored and disposed of in a safe manner and in compliance with all applicable governmental regulations. Developer shall ensure that all contractors of Developer comply with the terms of this section. In the event Developer is notified of any environmentally harmful or dangerous conditions on the Project Site resulting from Developer's operations or activities thereon, Developer shall promptly take all actions at its sole cost and expense required to clean up and correct such dangerous or harmful conditions in accordance with applicable law and regulations and sound engineering practices. Phoenix shall have no responsibility to inspect or oversee Developer's operations or to identify or correct any potentially harmful, dangerous or damaging conditions. Phoenix shall have no right to control any details of Developer's operations, nor to designate or control Developer's contractors or subcontractors. Neither Developer nor any of its contractors or subcontractors shall have any right of contribution or indemnity from Phoenix for any matters relating to operations or activities on the Project Site or conditions on the Project Site, except to the extent allowed by law, and to the extent such matters arise from conditions that existed on the Effective Date at the Project Site or at rights of way granted to Developer or that were caused by the acts or omissions of Phoenix. Developer agrees to indemnify and hold Phoenix harmless from any and all costs, expenses and liabilities Phoenix might incur relating to any harmful, damaging or dangerous conditions arising from operations or activities by Developer under this Agreement, except to the extent they arise from conditions that existed on the Effective Date at the Plant, including the Project Site and rights of way granted to Developer or that were caused by the acts or omissions of Phoenix. Phoenix agrees, to the extent allowed by law, to indemnify and hold the "Developer Indemnified Parties harmless from any and all costs, expenses and liabilities that one or more of the Developer Indemnified Parties might incur relating to any harmful, damaging or dangerous conditions arising from conditions that existed on the Effective Date at the Plant, including the Project Site and rights of way granted to Developer or that were caused by the acts or omissions of Phoenix, or otherwise fully compensate each of the Developer Indemnified

Parties. If Phoenix does not comply in full with the immediately preceding sentence, Phoenix shall, at the sole option of Developer, be deemed to have exercised its right to terminate this Agreement for convenience in accordance with Section 5.15(a)(i). By commencing such operations, Developer acknowledges its consent to the terms of this section.

ii. Developer shall additionally indemnify, defend and hold Phoenix harmless from and against any claims, demands, causes of action, liabilities and obligations (whether asserted directly, or as a common law or statutory claim for contribution or indemnity) arising out of or relating to any discharge, release, disposal, production or treatment activities in, on or under the Project Site by Developer, of materials, wastes or substances that are subject to regulation under federal, state or local laws or regulations, including any waste, pollutant or contaminant in violation of the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation Liability Act (collectively, "Environmental Claims"). The foregoing indemnity excludes pre-existing conditions, including, without limitation, those disclosed by the initial environmental site assessment provided for in subsection (b)(i) above, and any subsequently discovered environmental conditions that existed on the Effective Date at the Plant, including the Project Site and rights of way granted to Developer or that were caused by the acts or omissions of Phoenix, for which Phoenix shall, to the extent allowed by law, indemnify, defend and hold the Developer Indemnified Parties harmless from and against any claims, demands, causes of action, liabilities and obligations (whether asserted directly, or as a common law or statutory claim for contribution or indemnity) arising therefrom, or otherwise fully compensate each of the Developer Indemnified Parties. If Phoenix is not allowed by law to fully effect such indemnity, and does not otherwise fully compensate each of the Developer Indemnified Parties, it shall be deemed to have exercised its right to terminate this Agreement pursuant to Section 5.15(a)(i), provided, that the compensation to Developer shall include all costs of such claims, demands, causes of action, liabilities and obligations.

iii. The terms of subsection (b)(ii) above include (1) property owned or operated by Developer, including without limitation the Project Site, (2) liability established under contract to which Developer is a party or otherwise a successor, and (3) any Response Action, or Environmental Claims occasioned by any governmental authority having jurisdiction over the Project Site with respect to activities of Developer or Phoenix described in Section 11.02(b)(ii) or any conditions existing on the Effective Date on the Project Site or rights of way granted to Developer. "Response Action" shall mean any testing, sampling, response, cleanup, decontamination, restoration, removal, transportation, or disposal or other remedial work which is required or otherwise authorized to be performed, whether onsite or offsite, by any federal, state or local entity or agency with jurisdiction over environmental activities or conditions of the Project Site with respect to activities of Developer described in Section 11.02(b)(ii) or, with respect to Phoenix's agreement to indemnify, defend and hold harmless, conditions that existed on the Effective Date at the Plant, including the Project Site and rights of way granted to Developer or that were caused by the acts or omissions of Phoenix.

iv. Except as specifically described in this Agreement, Developer hereby irrevocably waives, releases, acquits and discharges Phoenix from any and all claims, demands, causes of action, liability, rights, damages, costs, losses, expenses, or compensation whatsoever, direct or indirect, known or unknown, seen or unseen, whether in contract, tort, or based on statute, which

Developer has or which may arise during the Term relating to (1) any physical characteristics or existing conditions in, on or under the Project Site, including without limitation: subsurface conditions, but excluding, without limitation, any solid and hazardous wastes, and hazardous substances in, on, or related to the Project Site not placed there by Developer or any party for whom it is responsible, (2) any law or regulation applicable to such included characteristics or conditions, (3) any Response Action described in Section 11.02(b)(iii), or (4) Environmental Claims described in subsections (b)(ii) and (iii).

v. Any Response Action related to the environmental conditions at the Project Site after the Effective Date, other than those relating to conditions which existed on the Effective Date or which arise from the acts or omissions of Phoenix, shall be at the sole cost, expense, and responsibility of Developer. Phoenix shall bear the responsibility and liability, to the extent allowed by law, in connection with any Response Action, corrective action or other governmental compliance which any federal, state or local entity or agency with jurisdiction over environmental activities or conditions of the Project Site may deem necessary or advisable in connection with contamination, in, on or emanating from the Project Site as described in subsections (b)(ii) and (iii) to the extent it relates to conditions that existed on the Effective Date at the Plant, including the Project Site and rights of way granted to Developer or that were caused by the acts or omissions of Phoenix.

vi. Developer shall not bring nor permit to remain on the Project Site any asbestos-containing materials, polychlorinated biphenyls, petroleum, explosives, toxic materials, or substances regulated as hazardous waste, hazardous materials, hazardous substances or toxic substances under any federal, state or local law or regulation, except ordinary products commonly used in connection with a Permitted Use and stored in the usual manner and quantities and in accordance with applicable environmental laws and regulations.

vii. For purposes of this Section 11.02(b), if any condition as referred to in subsection (b)(i), any Environmental Claim, or any Response Action at the Project Site or at any right of way granted by Phoenix to Developer arises from any substance that is a constituent of processes used in the operation of the Processing Facility (other than Biogas) or in connection with any subsequent or downstream activities conducted with respect to the treated gas, Developer shall have the burden of proof to show that such condition existed on the Effective Date or arose from acts or omissions of Phoenix. With respect to all other conditions, Environmental Claims or Response Actions, Phoenix shall have the burden of proof to show that such condition, Environmental Claim or Response Action did not exist on the Effective Date and was not caused by the acts or omissions of Phoenix.

(c) Compliance. Subject to the other provisions of this Agreement, including without limitation Sections 4.02 and 11.02(a), Developer shall obtain and maintain in effect all required governmental permits including air and water emission permits, licenses, approvals and authorizations, and shall comply with all applicable federal, state and local laws, zoning ordinances, platting or other regulations, orders and standards in connection with its activities upon and use of the Project Site, in each case in accordance with the Appendix. The Parties acknowledge that Developer will not be required to obtain any water/waste water discharge permits or storm water runoff permits and that the Processing Facility must rely on information

from Phoenix to ensure its compliance with any Plant water/waste water discharge requirements and storm water runoff requirements. Developer shall obtain for the Processing Facility whatever regulatory status or certifications and registrations with any applicable regulatory agency, whether state, federal or local, in order to operate the Processing Facility consistent with this Agreement, and shall maintain such status, certifications, and registrations during the Term as necessary to fulfill Developer's obligations under this Agreement.

(d) Access by Phoenix. Phoenix shall have the unfettered right to access into and through the Project Site, including the Processing Facility, for purposes of inspection of Developer's operations, making repairs to utility connections, meter-reading, or otherwise in connection with protecting rights under this Agreement. Such access rights by Phoenix shall be in effect during normal business hours during the Term including during the Development Period, upon Phoenix's providing reasonable notice to Developer by telephone or facsimile. In cases of imminent danger to human health or to Phoenix's property, Phoenix representatives shall make good faith attempts to provide contemporaneous notice to Developer, but shall have the right to enter without notice seven (7) days per week, twenty-four (24) hours per day.

(e) Maintenance of the Project Site. Developer shall, at its sole expense, conduct all necessary maintenance to the Processing Facility and any other improvements on the Project Site, as provided for in the Appendix, Section 3.7. Developer shall take good care of the Project Site and use its reasonable efforts to keep them free from debris and waste at all times, and shall promptly remove all refuse, litter and debris created or left by Developer or its invitees, licensees, agents and contractors. Developer agrees to use reasonable care in the conduct of all its operations on the Project Site to prevent injury or damage to property or personnel.

Section 11.03 Construction of the Processing Facility/Damage or Destruction of the Processing Facility.

Development Standards. Developer shall cause the Processing Facility to be designed and constructed consistent with the standards set out in the Appendix, Sections 3.2 and 3.3, and in accordance with applicable building codes, governmental statutes, regulations, ordinances, orders and standards, including, to the extent it has the power to comply, any platting requirement, but excluding those practically applicable only to Developer, the Processing Facility, or the Project Site. Developer shall fence the perimeter of the Project Site as provided for in the Appendix, Section 3.2(4). Not later than the commencement of Developer's construction at the Project Site, Developer shall provide Phoenix with lien waivers in a form reasonably acceptable to Phoenix for those pieces of equipment for the Project that have been paid for by Developer in advance

Section 11.04 Developer's Access to Project Site.

(a) Access. Developer shall have reasonable access to and from the Project Site across the Plant via reasonable specified routes and identified roads and rights of way as directed by Phoenix from time to time and shall not be entitled to utilize roadways or routes other than those directed by Phoenix.

(b) Rights of Way. Phoenix agrees to grant to Developer any rights of way across property contiguous with the Project Site which is owned or leased by Phoenix and which may be reasonably necessary in connection with Developer's delivery of gas to its customers, all at locations reasonably designated by Phoenix. Phoenix may from time to time change the locations of any such rights of way to the extent it deems necessary in connection with its operation of the Plant, in which event Phoenix shall reimburse Developer for the reasonable cost of relocating any of Developer's facilities that may be required in connection with any such relocation, including without limitation, lost revenues, tax benefits and utility benefits, and any damages and/or penalties arising with respect to the obligations that Developer may have to sell the output of the Project, including any associates attributes, each to the extent reasonably resulting from any such relocation. Such rights of way shall be conveyed by Phoenix to Developer pursuant to the form of easement attached as Exhibit H.

(c) Taxes. Developer shall pay to taxing authorities, prior to delinquency, all real estate and ad valorem taxes and assessments which may be assessed, levied, confirmed, imposed and become due on (i) Developer's leasehold interest in the Project Site, (ii) on personal property and improvements of Developer on the Project Site including, as applicable, the Processing Facility, and (iii) on any land of Phoenix, to the extent such taxes and assessments arise by virtue of any easement or right-of-way granted by Phoenix to Developer at the Plant, but not upon Phoenix's fee interest in the Project Site. Developer shall provide Phoenix with evidence of its payment of any such taxes for which Developer is liable under this provision. Phoenix shall have no obligation to pay such taxes; however, in the event of Developer's failure to timely pay any such taxes, Phoenix may pay such taxes on Developer's behalf and Developer shall be liable for such amounts and for any related penalties and interest. If Phoenix desires Developer to contest the validity of any tax or assessment, Developer shall do so at the requesting party's expense. If Developer desires Phoenix to contest the validity of any tax or assessment, Phoenix shall do so at Developer's expense. Phoenix in any event shall not be responsible for the outcome of any such contest. Developer shall cooperate with reasonable requests from Phoenix regarding the establishment of a separate property tax account with the Maricopa County Assessor's Office for the Project Site. With respect to any separate account established by Phoenix with the Maricopa County Assessor's Office relating to the Project, the Project Site and improvements shall be listed in the name of Developer.

ARTICLE XII - ECONOMIC BENEFITS TO PHOENIX

Section 12.01 Biogas Supply Obligation

(a) Biogas and Acid Phase Gas. For purposes of this Agreement, the Plant's wastewater treatment process generates two forms of byproduct gas. Acid Phase Gas ("APG") is generated in the first stage of the multi-stage wastewater digestion process. Biogas is generated in the second stage of that process.

i. The APG generated by the Plant will range between 25 and 150 standard cubic feet per minute (scfm) and will consist of between 5% to 65% methane with less than 30,000 ppmv hydrogen sulfide. Developer agrees under normal operations to divert to the flares all APG up to 150 scfm tendered to it with associated Biogas that Developer

accepts delivery of provided that the APG tendered by Phoenix to Developer meets these flow and quality specifications. Developer has the right to reject APG if such gas does not meet these specifications or is not accompanied by the associated Biogas. In the event that Developer rejects APG, the associated Biogas tendered with it by Phoenix will also be rejected and considered Off-spec Biogas. Developer will not pay Phoenix for any APG nor will the quantity of APG tendered or delivered by Phoenix to Developer be counted towards the QDT for Biogas or the compensation formula for Biogas deliveries.

ii. The Biogas generated by the Plant and tendered by Phoenix at the Delivery Point will have a minimum methane concentration level of 55% and will contain less than 0.1% oxygen, 0.5% nitrogen, 3,000 ppmv hydrogen sulfide, and 0.5% combined total of hydrogen, nitrogen and oxygen. Biogas generated by the Plant and tendered by Phoenix to Developer at the Delivery Point that meets these quality specifications is considered, for purposes of this Agreement, "On-spec Biogas." Biogas that does not meet all of these specifications is considered "Off-spec Biogas."

iii. Provided that the Biogas tendered by Phoenix to Developer at the Delivery Point does not exceed the instantaneous "Maximum Flow" rate of 2,400 scfm dry, and further subject to the terms that follow below, Developer shall pay Phoenix for (A) all On-spec Biogas it tenders unless Developer is not able to accept that Biogas pursuant to Section 5.08, and (B) all Off-spec Biogas delivered by Phoenix that Developer accepts and processes at its Processing Facility.

(b) Biogas Quarterly Delivery Target. Phoenix will use reasonable efforts to tender to Developer a targeted minimum amount of Biogas ("Quarterly Delivery Target" or "QDT") each and every calendar quarter following the Commercial Operations Date. Phoenix's failure to deliver sufficient Biogas in any calendar quarter to meet the QDT shall not constitute a breach of this Agreement. The initial QDT for the Production Period is 150,000 MMBtu HHV. The QDT will increase in the second calendar year and each calendar year thereafter by one percent of the QDT then in effect; provided, that the QDT shall not be greater than 175,000 MMBtu. The QDT for a partial calendar quarter shall be determined by pro rating the QDT for a full calendar quarter then in effect. The QDT, whether for a full or partial calendar quarter, shall be reduced proportionally to reflect reductions in production or processing capacity, as the case may be, due to partial or total outages of either the Plant or the Project due to either Force Majeure Events or a scheduled outage (up to a total of ninety (90) hours in any calendar quarter, prorated for partial calendar quarters). Each Party shall use reasonable efforts to coordinate and schedule maintenance so as to minimize resulting reductions in QDT. For purposes of calculating Biogas Payments to Phoenix by Developer, On-spec Biogas tendered (i.e. On-spec Biogas tendered by Phoenix to Developer (i) that does not exceed the instantaneous "Maximum Flow" rate, or (ii) that does exceed the instantaneous "Maximum Flow" rate but is nonetheless accepted by Developer (i.e. not diverted to a flare)) will be counted towards meeting the QDT amount at a ratio of 1:1 or 100%. Off-spec Biogas tendered by Phoenix to Developer, and accepted and processed by Developer at the Processing Facility, will be counted towards meeting the QDT amount at a ratio of 0.7:1 or 70%. Biogas tendered by Phoenix to Developer during periods in which Developer is not able to accept that Biogas pursuant to Section 5.08 will not be counted toward meeting the QDT.

(c) Biosolids Processing Maximization. During the Production Period, Phoenix will maximize its processing of biosolids at the Plant in order to maximize its production of On-spec Biogas and meet or exceed the QDT amounts of Biogas delivered to Developer. Phoenix will not knowingly alter its processes in a manner that materially adversely affects the production of On-spec Biogas, discontinue or reduce its biosolids treatment processes at the Plant, divert biosolids from the Plant, or otherwise create obstacles or impediments to meeting the Biogas QDT for On-spec Biogas in effect from time to time. Notwithstanding the foregoing, Phoenix may alter its processes at the Plant in a manner that materially adversely affects the production of On-spec Biogas if Phoenix keeps Developer whole by either fully compensating Developer for all resulting costs and losses, including any damages and/or penalties related to agreements for the sale of Project output and/or attributes, and/or fully reimbursing Developer, through a reduction in amounts otherwise due from Developer to Phoenix for all costs of designing, permitting, financing, installing, operating and maintaining improvements to the Processing Facility that allow the Processing Facility to process Biogas provided by Phoenix to the same quality and quantity as if Phoenix had not changed its process.

(d) Phoenix Supply Obligations. Phoenix will tender to Developer all Biogas produced by Phoenix at the Plant each day less the minimum amount of Biogas permitted to be unavailable pursuant to Section 5.04. Phoenix will tender the Biogas to Developer at the Delivery Point, just upstream of the location at which Biogas can be diverted to the Project or to the Plant's flare system.

(e) No Developer Take Obligations. Developer is not obligated to accept delivery from Phoenix of any Biogas or APG at any time.

(f) Environmental Attributes. Developer shall have all right, title and interest in, and shall be entitled to the economic benefits of, all Environmental Attributes associated with or attached to (i) all Biogas purchased from Phoenix and paid for by Developer under this Agreement, and (ii) all activities undertaken, and facilities and other property owned, leased or operated by Developer in connection with the Project.

Section 12.02 Biogas Payment.

Developer will pay Phoenix each calendar quarter the Biogas Payment, as defined in Section 12.02(c). The Biogas Payment with respect to a calendar quarter shall be calculated in accordance with Sections 12.02(a), (b), and (c).

(a) Biogas Base Rates. The Biogas Base Rate shall initially be \$1.00 per MMBtu with respect to On-spec Biogas and \$0.70 per MMBtu with respect to Off-spec Biogas.

i. The Biogas Base Rate for both On-spec Biogas and Off-spec Biogas will increase by \$0.15 per MMBtu beginning on the fifth (5th) anniversary of the start of the Production Period and on every fifth (5th) anniversary following that.

ii. Twice each calendar year, Developer will pay the On-spec Biogas Base Rte (initially \$1.00 per MMBtu) for all Off-spec Biogas accepted and processed by Developer at the Processing Facility during a 48 hour period. Developer and Phoenix shall communicate and coordinate to identify that twice a year 48-hour periods.

(b) Quarterly Delivery Target Payment Factor. For purposes of calculating the Biogas Payment owed by Developer to Phoenix in each calendar quarter for Biogas delivered by Phoenix to Developer, the Parties agree to use a value called the “Quarterly Delivery Target Payment Factor” (the “QDT Payment Factor”). The QDT Payment Factor for any calendar quarter is derived from the table below, and reflects an assigned value dependent on the total quantity of MMBtus HHV counted towards satisfying the QDT in that calendar quarter. The QDT Payment Factor for the initial QDT of 150,000 MMBtus HHV is as follows:

> 149,999 MMBtus HHV	= 1.0
135,000 to 149,999 MMBtus HHV	= 0.9
120,000 to 134,999 MMBtus HHV	= 0.8
105,000 to 119,999 MMBtus HHV	= 0.7
90,000 to 104,999 MMBtus HHV	= 0.6
< 90,000 MMBtus HHV	= 0.5

The HHV ranges above for the QDT Payment Factor shall be increased in proportion to increases in the QDT as set forth in subsection 12.01(b).

(c) Biogas Payment Calculation. The amount of each quarterly payment due to Phoenix from Developer (the “Biogas Payment”) shall be the greater of (1) the sum of (A) the product of (i) the Biogas Base Rate for On-spec Biogas in effect on the first day of such calendar quarter; (ii) the QDT Payment Factor with respect to such calendar quarter; and (iii) the quantity of the QDT satisfied (but not exceeded) by On-spec Biogas during such calendar quarter; and (B) the product of (i) the Biogas Base Rate for Off-spec Biogas in effect on the first day of such calendar quarter; (ii) the QDT Payment Factor with respect to such calendar quarter; and (iii) the quantity of the QDT satisfied (but not exceeded) by Off-spec Biogas during such calendar quarter; and (2) the sum of (A) the product of (i) the Biogas Base Rate for On-spec Biogas in effect on the first day of such calendar quarter; (ii) the QDT Payment Factor with respect to such calendar quarter, and (iii) the quantity of On-spec Biogas accepted and processed by Developer at the Treatment Facility during such calendar quarter; and (B) the product of (i) the Biogas Base Rate for Off-spec Biogas in effect on the first day of such calendar quarter; (ii) the QDT Payment Factor with respect to such calendar quarter; and (iii) the quantity of Off-spec Biogas accepted and processed by Developer at the Treatment Facility during such calendar quarter..

For purposes of illustrating how the quarterly Biogas Payment would be calculated in a hypothetical calendar quarter, see the figures and calculations below.

Quarterly Biogas Delivered by Phoenix to Developer

- (1) 150,000 MMBtu HHV of On-spec Biogas tendered and counted toward the QDT but Developer accepts delivery of only 100,000 MMBtu HHV
- (2) 35,000 MMBtu HHV of Off-spec Biogas accepted and processed by Developer
- (3) 15,000 MMBtu HHV of Off-spec Biogas rejected by Developer and diverted to flares

$150,000 \times 1 = 150,000$ MMBtu HHV credited toward the QDT
 $35,000 \times .7 = 24,500$ MMBtu HHV credited toward the QDT but not needed as QDT is satisfied entirely with On-spec Biogas
No credit toward QDT for rejected Off-spec Biogas

174,500 MMBtu HHV credited toward the QDT = 1.0 is the QDT Payment Factor

Biogas Payment is the greater of:

(i) 150,000 MMBtu On-spec Biogas counted toward satisfying QDT \times \$1.00/MMBtu Biogas Base Rate for On-spec Biogas \times 1.0 QDT Payment Factor = \$150,000
0 MMBtu Off-spec Biogas counted toward satisfying QDT as QDT was fully satisfied by On-Spec Biogas \times \$0.70/MMBtu Biogas Base Rate for Off-spec Biogas \times 1.0 QDT Payment Factor = \$0

Biogas Payment under (i) is \$150,000

(ii) 100,000 MMBtu On-spec Biogas accepted and used \times \$1.00/MMBtu Biogas Base Rate for On-spec Biogas \times 1.0 QDT Payment Factor = \$100,000
35,000 MMBtu Off-spec Biogas accepted and used \times (\$ 0.70 Biogas Base Rate for Off-spec Biogas \times 1.0 QDT Payment Factor) = \$24,500

Biogas Payment under (ii) is \$124,500

Biogas Payment under (i) is greater, so Biogas Payment is \$150,000 to Phoenix from Developer

(d) Quarterly Statement and Payment. By the 10th day of the month following the last month of the prior calendar quarter, Developer shall deliver to Phoenix its statement, in Excel spreadsheet format, setting forth (1) the number of MMBtus delivered by Phoenix in the prior calendar quarter, (2) the amount of those MMBtus that were from On-spec Biogas and Off-spec Biogas, and the number of MMBtus accepted and processed at the Processing Facility by Developer. Phoenix shall have the right to inspect the statement and contest the MMBtus delivered based on Plant records, as described in Section 5.11. Biogas Payments to Phoenix shall be made by Developer on or before the 30th day of month following the last month of the prior calendar quarter.

Section 12.03 Annual Bonus Revenue.

Following the end of the first calendar year after the Production Period commences, and following the end of every calendar year following that, Developer will pay to Phoenix an Annual Bonus Revenue sum in the amount of 21% of the net revenue earned by the Project above \$5,250,000 (which figure shall escalate by one-half percent (0.5%) each year and shall be prorated

for partial calendar years) in the prior calendar year. By the 30th day of the month following the last month of the calendar year, Developer shall deliver to Phoenix its statement setting forth the details associated with the net revenue earned by the Project in the prior calendar year. Annual Bonus Revenue payments to Phoenix shall be made by Developer on the 30th day of month, or the immediately preceding Business Day, following the last month of the prior calendar year. For purposes of this Section 12.03, "net revenue" shall mean all revenue received by the Project from the sale of Project output and associated environmental attributes in a given period, less (a) any fees to transport the processed Biogas to the end use client (which shall include amounts payable or amortized during such period with respect to the Interconnection Agreement), and (b) payments to outside service providers in connection with such sale, including for brokering or managing the sale of the processed Biogas and any associated environmental attributes.

Section 12.04 Monthly Production Report.

Developer shall provide to Phoenix, within thirty (30) days following the end of each calendar month a report, in the form set out in Exhibit I, for the prior month detailing volumes associated with daily deliveries, takes, and processing.

Section 12.05 Disputed and Late Payments.

In the event a good faith dispute arises regarding the amount of any portion of the Biogas Payment, under Section 12.02 above, or the Annual Bonus Revenue, under Section 12.03 above, payable by Developer to Phoenix, Developer shall not be in default of its payment obligation if Developer: (1) timely tenders at least the amount last agreed to by Developer and Phoenix subject to adjustment once the dispute is resolved, and (2) within ten (10) Business Days after resolution of the dispute, pays any difference between the amounts paid pending resolution and the amount of the Biogas Payment or Annual Bonus Revenue that is finally determined to be the correct amount, plus interest on the past-due amount at the rate set forth in Section 21.04. The Parties shall negotiate in good faith to resolve any Biogas Payment and Annual Bonus Revenue disputes or the computation of adjustments to such payments as provided for in this Agreement pursuant to the dispute resolution procedures set out at Article XIX.

Section 12.06 Right to Inspect Records.

Developer shall keep true, accurate and complete books, records, accounts, contracts and data (collectively "Records") sufficient to support and to verify calculation of the Biogas Payments and Annual Bonus Revenue owed and compliance with all terms, covenants, and operations of Developer under this Agreement. All such Records shall be kept for not less than five (5) full calendar years after the close of the accounting period to which the books and records relate. Phoenix, through its staff or its designated agents or representatives, shall have the right at all reasonable times and upon three (3) Business Days written notice to inspect the relevant portions of the Records within the possession or control of Developer pertaining to the production, transportation or use of commodity gas produced from the Processing Facility, and the operations of the Project (other than any such information that is subject to attorney-client privilege). Phoenix's inspections may occur within reasonable business hours at the offices of

Developer or, upon ten (10) Business Days' written notice, at a mutually agreeable location in Maricopa County, Arizona. In addition to the inspection rights referenced above, Phoenix shall also have the right to inspect such books, accounts, contracts, records and data at a mutually agreeable location in Maricopa County, Arizona, once each calendar year. In the event Phoenix's inspection of Developer's records discloses material errors affecting the rights of the Parties under this Agreement, Developer shall be responsible for the actual reasonable third-party costs of Phoenix's audit or inspection, and shall promptly pay such costs upon receipt of Phoenix's invoice in an amount not exceeding \$50,000, such maximum to be escalated annually over the Term on the basis of the Consumer Price Index for all Urban Consumers.

Section 12.07 Phoenix Gas Purchase.

If Developer from time to time has non-contracted process gas that it is unable to sell, Phoenix may purchase such non-contracted gas on a daily day-ahead basis only, delivered at the interconnection with the Interconnection Authority, at the then market price and terms (calculated at the interconnection point not taking into account transmission charges not imposed on Developer).

Section 12.08 Compensation for Biogas and Associated Rights and Benefits.

The compensation paid by Developer to Phoenix under this Agreement is the complete compensation for all subject Biogas, and for all associated rights, attributes and benefits, including without limitation, Environmental Attributes.

Section 12.09 Title to Biogas.

Phoenix represents and warrants that it has good and marketable title to all of the Biogas from the Plant, unencumbered by any lien, encumbrance or other right of any third party, and shall protect, defend and indemnify, or otherwise fully compensate, Developer from and against any claim that Biogas tendered or delivered to the Delivery Point is or was subject to any lien, encumbrance or other right of any third party.

ARTICLE XIII - LIQUIDATED DAMAGES

Section 13.01 Liquidated Damages Payable by Developer.

Time is of the essence in the performance of the obligations and duties contained in this Agreement and in other agreements contemplated hereby. If Developer fails to perform in accordance with Section 9.02 of this Agreement, the actual damages to Phoenix for the delay will be difficult to determine and accurately specify. Therefore, in lieu of actual damages, Developer shall pay Phoenix fixed, agreed to, and Liquidated Damages as specified in this Agreement. Liquidated Damages shall be measured and accrue on a daily basis and shall be payable to Phoenix on the thirtieth (30th) day following the end of the month containing days on which Liquidated Damages have accrued. The Parties have agreed that the Liquidated Damage values of this Agreement are a fair and reasonable approximation of actual damages and shall not be construed as a penalty.

Section 13.02 Liquidated Damages Not a Substitute for Lease Payments.

Liquidated Damages are not to be construed as a substitute for Lease Payments due and payable in accordance with the Lease.

ARTICLE XIV - INSURANCE

Section 14.01 Insurance.

During the Term of this Agreement Developer will comply with the scope and coverage of the Insurance Requirements as described on Exhibit C attached hereto. Phoenix retains the right, from time to time, to change the amount of the Insurance Requirements if and to the extent it changes its insurance requirements generally, and will provide not less than ninety (90) days notice to Developer of any amendment to the Insurance Requirements, provided that the resulting cost of insurance is not greater than the initial cost of coverage in the initial year of coverage escalated by the Consumer Price Index, U.S. City Average Urban Wage Earners and Clerical Workers (All Items 1982-84 = 100).

Section 14.02 Coverage.

Developer shall pay for and maintain insurance policies having the coverage set out in Exhibit C in full force and effect throughout the Term, naming Phoenix as an additional insured. Developer shall deliver to Phoenix evidence that Developer has obtained and continues to hold the policies of insurance required under Exhibit C, including evidence of the payment of premiums for such coverage within a reasonable time following renewal. Developer shall cause renewals of expiring policies to be bound copies of such policies to be delivered to Phoenix within forty-five (45) days following such renewal; provided, that Developer shall provide certificates of insurance evidencing such renewal within fifteen (15) days following such renewal. To the extent commercially available, Developer's insurance shall include Contractual Liability coverage and shall specifically refer to this Agreement and specifically cover the liability assumed under this Agreement. All such policies shall be written to provide that they may not be canceled, lapse, expire, or be materially altered except with thirty (30) days (ten (10) days with respect to non-payment of premium) prior written notice to Phoenix. Developer may self-insure deductible amounts under the policies in amounts not greater than those set out in Exhibit C. Prior to the commencement of construction of the Processing Facility, Developer shall likewise cause any maintenance or other contractor of Developer performing work on the Project Site to obtain and to maintain, throughout the time it performs such work, insurance as set out in Exhibit C with limits appropriate to the sublet work and potential perils.

ARTICLE XV - FORCE MAJEURE

Section 15.01 Effect of a Force Majeure Event.

Each Party shall be excused from performance and shall not be construed to be in default in respect of any obligation hereunder, for so long as failure to perform such obligation is due

to a Force Majeure Event; provided, however, that notwithstanding anything in this Article to the contrary a Force Majeure Event shall not excuse either Party from the obligation to make payments for any obligation hereunder. A "Force Majeure Event" means any event which wholly or partly prevents or delays the affected Party's performance of any obligation arising under this Agreement, but only if and to the extent such event (a) is not within the reasonable control, directly or indirectly, of the Party affected, (b) could not have been reasonably prevented by such affected Party through the exercise of due diligence, (c) is not the result of the financial inability of the affected Party, and (d) is not the direct or indirect result of an affected Party's negligence or the failure of such affected Party to perform any of its obligations under this Agreement (except to the extent such failure of performance results from a Force Majeure Event). Events that, subject to the foregoing, could qualify as Force Majeure Events include, but are not limited to, flood, tsunami, lightning, earthquake, fire, explosion, epidemic, quarantine, hurricane, tornadoes and other severe weather to the extent that the Project was not constructed to withstand such weather without damage, war (declared or undeclared), strikes and other labor disputes (including collective bargaining disputes and lockouts), riot or similar civil disturbance, acts of God or the public enemy (including acts of terrorism), blockade, insurrection, revolution, sabotage, expropriation or confiscation, unavailability of fuel, power or raw materials, a change in law, a breach by a party under this Agreement, the Lease, or another document governing the Project or Plant, and failure to timely obtain permits or approvals to the extent such delay is not caused by the affected Party. Force Majeure Events shall not include (i) a change in economic circumstance unless such change was itself the result of a Force Majeure Event, (ii) changes in the availability of debt or equity capital for the Project due to changes in financial market conditions (except to the extent resulting from a Force Majeure event), (iii) failure to timely apply for permits or approvals to the extent within the control of the affected Party and not a third party (except to the extent resulting from a Force Majeure event); (iv) reasonably avoidable transportation delay or damage to materials due to transportation (provided, to the extent that the affected Party establishes that it expended reasonable additional amounts to avoid such delay or damage as a result of a Force Majeure Event, or such affected Party shall be entitled to claim Force Majeure relief with respect to such additional expended amounts).

Section 15.02 Notice of Force Majeure Event.

If either Party desires to invoke a Force Majeure Event as a cause for delay in its performance of, or failure to perform, any obligation (other than the payment of money) hereunder, it shall, as soon as is practicable but in any event within ten (10) Business Days after the occurrence of the inability to perform due to a Force Majeure Event, advise the other Party in writing of such date and the nature and expected duration and effect of such Force Majeure Event. Promptly, but in any event within fifteen (15) Business Days, after a notice is given pursuant to the preceding sentence, the Parties shall meet (or otherwise communicate) to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such Force Majeure Event.

Section 15.03 Mitigation of a Force Majeure Event.

Each Party suffering a Force Majeure Event shall take, or cause to be taken, such reasonably diligent actions as are reasonably necessary, to attempt to counteract or to mitigate, in all material respects, the effects of such a Force Majeure Event. No Party shall be entitled to any relief

from failure to perform any obligation otherwise excused by a Force Majeure Event to the extent such Party fails to take such actions in an attempt to so counteract or mitigate. The Parties shall take all commercially diligent measures to resume normal performance under this Agreement after the cessation of any Force Majeure Event.

Section 15.04 Force Majeure Event Relief.

If either Party is rendered unable by a Force Majeure Event to carry out, in whole or in part, its obligations under this Agreement and gives written notice in accordance with Section 15.02, then during the pendency of such a Force Majeure Event but for no longer period, the obligation of the affected Party (excluding the obligation to make payments then due or becoming due with respect to performance prior to the event or any payments required to be made under this Agreement that are not excused by such an event, including Lease Payments under a casualty-related Force Majeure Event lasting twelve (12) months or less) shall be suspended, provided such suspension shall be of no greater scope and of no longer duration than is required by the Force Majeure Event. The affected Party shall remedy the Force Majeure Event with all reasonable dispatch and shall notify the other Party at appropriate intervals regarding remedial efforts.

ARTICLE XVI - STANDARD REPRESENTATIONS AND WARRANTIES

Section 16.01 Representations and Warranties of Developer.

The following representations and warranties are true as of the Effective Date of this Agreement.

(a) Organization. Developer is a corporation duly formed and validly existing under the laws of the jurisdiction of its organization, is qualified to conduct business and is in good standing under the laws of each jurisdiction in which the nature of its business requires such qualification. Developer has full corporate power and authority to own, hold under lease, and operate its properties, and to conduct its business as such business is now being conducted and as contemplated by this Agreement. Developer has never approved, or commenced any proceeding, or made any election contemplating, the dissolution or liquidation or winding up or cessation of its business or affairs.

(b) No Violation. The execution and delivery of, and performance under, this Agreement by Developer does not and will not: (i) violate any provision of Applicable Law, the organizational documents of Developer or any material contract to which Developer is a party; (ii) result in the creation of any lien, charge, encumbrance or security interest upon any assets of Developer under any agreement or instrument to which Developer is a party or by which Developer or its assets may be bound or affected; or (iii) require any order or governmental approval of or by any Governmental Authority, any consent or any notice to any Person on the part of Developer, which has not been obtained or given, other than (A) Permits and Authorizations, and (B) such approvals or consents that, if not obtained or made, will not result in a Material Adverse Effect on either Party.

(c) Authority, Enforceability. Developer has full power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly authorized, executed and delivered by Developer and, assuming due authorization, execution and delivery hereof by Phoenix as applicable, is its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity (regardless of such enforceability is considered in a proceeding at law or equity).

(d) Litigation. There is no action, suit, investigation, arbitration or administrative or other proceeding by or before any court or Governmental Authority, pending or, to the knowledge of Developer, threatened, against Developer or its Controlled Affiliates which could have a Material Adverse Effect on the Parties.

(e) Brokers. There are, and after the Effective Date there will be, no claims (or any basis for any claims) for brokerage commissions, finder's fees or similar payments in connection with this Agreement, the Lease or the transactions contemplated hereby and thereby resulting from any action taken by Developer or any Person on Developer's behalf.

(f) Disclosures. The representations and warranties of Developer contained in this Agreement and the information contained in the Exhibits and the Appendix to this Agreement are true and correct in all material respects.

(g) No Gratuities. Developer has not provided any gratuities to SROG or Phoenix as described in Section 21.06 hereof.

(h) Developer Sophistication. Developer (including for such purpose the sophistication and knowledge of its Controlled Affiliates) is sophisticated and knowledgeable regarding the development, financing, and operation of Biogas energy projects and Biogas processing facility operations. Developer has examined and inspected, and will have the right to examine and inspect, the nature and condition of the Project Site, including the environmental and safety conditions of the Project Site, accepts the Project Site in an "As-Is -- Where-Is" condition, and agrees that it has not and will not rely upon any statement, information, or representation from Phoenix, whether directly or indirectly, verbally or in writing, except as set forth in this Agreement.

Section 16.02 Representations and Warranties of Phoenix.

The following representations and warranties are true as of the Effective Date of this Agreement.

(a) Organization. Phoenix is a municipal corporation duly organized and validly existing in accordance with the constitution and laws of the State and has, full legal right, power and authority to adopt, execute and deliver, as appropriate, this Agreement and all other documents, instruments and certificates contemplated therein and to carry out the transactions contemplated hereby.

(b) No Violation. The execution and delivery of, and performance under, this Agreement by Phoenix does not and will not: (i) violate any provision of Applicable Law or any material contract to which Phoenix is a party; (ii) result in the creation of any lien, charge, encumbrance or security interest upon any assets of Phoenix under any agreement or instrument to which Phoenix is a party or by which Phoenix or its assets may be bound or affected; or (iii) require any order or governmental approval of or by any Governmental Authority, any consent or any notice to any Person on the part of the cities, which has not been obtained or given, other than such approvals or consents that, if not obtained or made, will not result in a Material Adverse Effect on the Parties.

(c) Authority, Enforceability. Phoenix has full power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly authorized, executed and delivered by Phoenix and, assuming due authorization, execution and delivery hereof by Developer, is Phoenix's legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or equity).

(d) Litigation. There is no action, suit, investigation, arbitration or administrative or other proceeding by or before any court or Governmental Authority, pending or, to the knowledge of Phoenix, threatened, against Phoenix that could have a Material Adverse Effect on the Parties.

(e) Brokers. There are, and after the Effective Date there will be, no claims (or any basis for any claims) for brokerage commissions, finder's fees or similar payments in connection with this Agreement, the Lease or the transactions contemplated hereby and thereby resulting from any action taken by Phoenix or any Person acting on behalf of Phoenix.

(f) Disclosures. The representations and warranties of Phoenix contained in this Agreement are true and correct in all material respects and the information in the Exhibits and the Appendix to this Agreement are true and correct in all material respects.

(g) Title.

- (i) Phoenix has good, valid and marketable title to (A) the Project Site to be subject to the Lease, and (B) its portion of the real property to be encumbered by the easements to be granted by Phoenix in accordance with the Lease.
- (ii) Phoenix is capable of performing all of its obligations in relation to the Project Site under and as contemplated by the Lease.

ARTICLE XVII - CONFIDENTIALITY AND PUBLICITY

Section 17.01 Confidentiality and Publicity.

Except as set forth in this Section 17.01 and to the extent permitted by law, each Party shall hold in confidence, for the term of this Agreement and for a period ending five (5) years from the termination date if terminated, any confidential information (designated as such) supplied to it by the other Party or otherwise related to this Agreement or the Project. Each Party shall inform its representatives, contractors and subcontractors to whom confidential information must be provided in connection with such Party's performance of this Agreement of its obligations under this Section 17.01 and shall apply the same safeguards thereto used with respect to its own internal confidential information. Notwithstanding the foregoing, the Parties may disclose the following categories of information or any combination thereof:

- (a) information which was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a breach of this Agreement or by a wrongful act of such Party;
- (b) information that such Party can show was lawfully in its possession prior to receipt thereof from another Party through no breach of any confidentiality obligation to such Party;
- (c) information lawfully received by such Party from a third party having no obligation of confidentiality to any other Party with respect thereto;
- (d) information at any time developed independently by such Party providing it is not developed from otherwise confidential information;
- (e) data or other information regarding the performance or development of the Project which is required or permitted by the terms of this Agreement to be provided to Persons or Developer's Financing Parties, subject to any non-disclosure policies adopted by the Parties;
- (f) information contained in and required to be included in any filing required to be made with any other Governmental Authority and its predecessor and successor agencies, any regional transmission organization having rules with which any Party is or becomes obligated to comply, or any similar entity or organization that any Party joins or has rules with which any Party must comply;
- (g) information disclosed pursuant to and in conformity with Applicable Law, or in connection with any legal proceedings; and
- (h) information required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries.

In addition, each Party may disclose information regarding this Agreement, including the material terms hereof and information regarding performance hereunder, to:

(i) financial institutions and other Persons providing or expressing interest in providing debt financing or refinancing, lease financing and/or other credit support to Developer or investors, and the agent or trustee of any of them, guarantors of such financings and to rating agencies,

(iii) Persons to which offering statements or other disclosure documents associated with the private or public offering of securities by or on behalf of Developer or any of its Controlled Affiliates are provided, and

(iii) the EPC Contractor, engineering and other advisors in connection with development of the Project. Notwithstanding the foregoing, (a) each Party may publish information otherwise prohibited from disclosure by the terms of this Agreement with the express written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, and (b) each Party may provide information otherwise prohibited from disclosure by the terms of this Agreement and the performance or development of the Project to its officers, management and, as applicable, elected representatives, consistent with its internal governance practices.

Section 17.02 Dissemination of Information.

Subject to the foregoing, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information for publication concerning this Agreement or the participation of another Party in the transactions contemplated hereby without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 17.03 Governmental and Regulatory Authorities.

A Party making any disclosures or reporting required by a governmental or regulatory authority shall use reasonable efforts to maintain, and cause the governmental or regulatory authority to which disclosure is made to maintain, the confidentiality of confidential information, including through use of a protective order or other available mechanism.

Section 17.04 Disclosures.

Notwithstanding anything in this Agreement or in any other written or oral understanding or agreement to which the Parties hereto are party or by which they are bound, any Party may (a) consult any tax advisor regarding the tax treatment and tax structure of the transaction contemplated by this Agreement, and (b) may at any time disclose to any Person, without limitation of any kind, the tax treatment and tax structure of such transaction and all materials of any kind (including opinions or other tax analyses) that are provided relating to such tax treatment or tax structure. The preceding sentence is intended to satisfy the requirements for the transaction contemplated herein to avoid classification as a "confidential transaction" for purposes of Treasury Regulations Section 1.6011-4(b)(3) and shall be interpreted consistent with such intent. This authorization is not intended to permit disclosure of any information that is unrelated to the tax treatment or tax

structure of any transaction contemplated hereby, including (i) the identities of participants or potential participants in any such transaction, (ii) the existence or status of any negotiations, and (iii) any pricing or financial information, except in each case to the extent such information is related to the tax treatment or tax structure of any such transaction. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the federal tax structure of such transaction or any federal tax matter or federal tax idea related to such transaction.

ARTICLE XVIII - INDEMNIFICATION AND LIABILITY

Section 18.01 Non-Waiver of Liability.

Phoenix, as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, subject to Sections 18.02 and 18.03, Developer agrees that it will not insist upon or demand any statement, terms or conditions whereby Phoenix agrees to limit in advance or waive any right it might have to recover actual lawful damages in any court of law under applicable State law.

Section 18.02 Limitation on Damages.

TO THE EXTENT PERMITTED BY LAW, NONE OF THE PARTIES TO THIS AGREEMENT, NOR ANY OF THEIR EMPLOYEES, OFFICERS OR CONTROLLED AFFILIATES, SHALL UNDER ANY CIRCUMSTANCES BE LIABLE FOR SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND TO ANY PARTY, WHETHER CAUSED BY BREACH OF THIS AGREEMENT OR A PARTY'S NEGLIGENCE, OR OTHERWISE BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY OR INDEMNITY, OR ANY OTHER CAUSE OF ACTION.

Section 18.03 Limitation on Liability.

To the extent permitted by law, for breach of any provision for which an express measure of damages or other limited remedy is provided in this Agreement, the liability of the defaulting Party shall be limited as set forth in such provision and all other damages and remedies therefore are hereby waived. If no measure of damages or other remedy is expressly provided, the liability of the defaulting party shall be limited to direct damages only, and all other measures of damages are waived. This limitation on the liability of the Parties will apply even in the event of fault, tort (including negligence, in whole or in part and whether active or passive), strict liability, breach of contract, or otherwise of the Party whose liability is limited and will extend to such Party's related or affiliated entities and their directors, officers, employees and agents.

Section 18.04 Indemnification of Developer.

Subject to Section 11.02(b), to the extent permitted by law, Phoenix will defend, indemnify and hold harmless Developer and its respective officers, directors, employees and agents, from and against any and all Claims of third parties to the extent that any such Claims arise out of, or by reason of, the negligence, willful misconduct or breach of Phoenix, its respective officers, elected

officials, employees and agents, or to the extent such claims arise out of Hazardous Substances or other violations of applicable permits or law for which Phoenix is responsible. The provisions of this Section 18.04 shall survive termination or expiration of this Agreement with respect to any activities of Phoenix contemplated or arising under this Agreement.

Section 18.05 Comprehensive Developer Indemnification of Phoenix.

(a) Indemnity. Subject to Section 11.02(b), Developer agrees to defend, indemnify, protect and hold harmless Phoenix, its elected officials, agents, and employees (collectively, "Indemnitees"), from and against any and all third party claims, demands, damages, costs, actions or causes of action for personal and bodily injuries, death, or damage to or infringement of property (real or intangible) excluding any property of Phoenix and each of the other SROG Cities, together with any and all costs or expenses (including reasonable attorneys' fees and court costs) (collectively, "Claims"), in any way arising out of, related to, caused by or incident to Developer's negligence or willful misconduct related to its activities under this Agreement or the Lease, including a breach thereof, except to the extent any such claims arise from the breach by, or negligence or willful misconduct of, any Indemnitee.

To the extent Developer declines to defend Phoenix against any action seeking to impose upon both or either liability for any Claims, and Developer is later judged by a court of competent jurisdiction in a non-appealable decision to have been obligated to defend Phoenix, then, Developer shall pay to Phoenix all additional court costs, investigation costs, and reasonable attorneys' fees incurred by Phoenix in effecting such defense in addition to any other sums that Developer may be obligated to pay by reason of the entry of a judgment against Phoenix in such litigation. Developer waives its right of recourse as to Indemnitees to the extent indemnification applies, and Developer shall require its insurer(s) to waive its/their rights of subrogation to the extent such action is required to render such waiver by Developer effective.

(b) Indemnification Procedures. Phoenix will give Developer prompt notice of any Claims for which indemnification is or will be sought under this Section and will cooperate and assist Developer in the defense of the Claims.

(c) Survival. The provisions of this Section 18.05 shall survive termination or expiration of this Agreement with respect to any activities of Developer contemplated or arising under this Agreement.

ARTICLE XIX - DISPUTE RESOLUTION

Section 19.01 Dispute Resolution.

Except as otherwise provided in any other agreement in writing between the Parties with respect solely to the subject matter thereof, if any question or controversy arises between the Parties concerning the observance or performance of any of the conditions contained herein, or the rights or obligations of any Party, under or arising from this Agreement, upon which the Parties cannot agree, an action to resolve the question or controversy may be instituted and maintained in any State or Federal court of competent jurisdiction in Maricopa County.

Section 19.02 Senior Executive Negotiation.

Prior to the filing of any action in State or Federal court or the entry into a voluntary arbitration proceeding, the Parties shall negotiate in good faith for a minimum period of thirty (30) days (except in circumstances where an injured Party would need to resort to an action for injunctive relief to prevent further injury during such thirty day period) in an attempt to reach an agreed-upon resolution of the dispute. For such purpose, each Party shall designate a senior executive to be available for regular meetings and negotiations with his or her counterpart from the other Party during such thirty day period, and whose authority to negotiate a settlement of the matter in dispute shall be subject only to approval and ratification by the governing body of the Party and, if required, third-party consents such as those of lenders or regulatory authorities. This Section 19.02 shall not apply to any financial default by Developer pursuant to Section 20.01(a).

ARTICLE XX - EVENTS OF DEFAULT; REMEDIES

Section 20.01 Default by Developer.

Any of the following shall constitute Events of Default on the part of the Developer:

(a) To the extent not excused by any noncasualty-related Force Majeure Event (or a casualty-related Force Majeure Event lasting longer than twelve (12) months), Developer defaults in the payment of any (1) Biogas Payment or Annual Bonus Revenue to Phoenix under this Agreement, or (2) other payments due under this Agreement, and such failure is not remedied by Developer within ten (10) Business Days after written notice of such failure is given to Developer by Phoenix; the intent of the parties under this provision is that any failure by the Developer to meet its payment obligation during the initial 12 months of any casualty-related Force Majeure Event shall constitute a default under this provision; or

(b) To the extent not excused by a Force Majeure Event, Developer defaults in any of the other covenants, conditions and obligations required to be performed by Developer under this Agreement, or if any material representation made by Developer in Section 16.01, proves to be untrue, and such default, if remediable, is not remedied within ten (10) Business Days after written notice of such default is given to Developer by Phoenix, or such longer reasonable period as may be necessary to cure, so long as Developer is exercising diligent efforts to cure; provided that the total length of any such cure period may not extend beyond ninety (90) days; or

(c) Developer (1) makes an assignment or any general arrangement for the benefit of creditors or has such a petition filed against it and such petition is not withdrawn or dismissed within twenty (20) Business Days after its filing, (2) otherwise becomes bankrupt or insolvent, however evidenced, or (3) becomes unable to pay its debts as they fall due.

To the extent of and subject to the terms of any consent and agreement between Phoenix, Developer, and Developer's Financing Parties referred to in Sections 6.02 and 21.09, compliance with all the terms of this Agreement by Developer's Financing Parties within the curative times provided in this Section 20.01 shall constitute performance as provided for in this Section.

Section 20.02 Phoenix Remedies.

If an Event of Default occurs on the part of the Developer, Phoenix may at its option exercise any rights it may have against Developer, including any and all of the following rights:

(a) Termination. If the Event of Default exists and is not cured within ten (10) Business Days, after delivery of the notice provided in this section to Developer, Phoenix may declare the Agreement terminated, in which case all rights and interests of Developer under this Agreement shall terminate. Phoenix may retake possession of the Project Site, may require Developer to remove the Processing Facility from the Project Site and restore the Project Site in accordance with Section 5.13 of this Agreement, all at Developer's cost, and may dispossess anyone claiming the right to possession under this Agreement. Phoenix may enter into agreements with an alternate developer for use of the Project Site and operation of the Processing Facility, if not removed, or an alternate facility if the Processing Facility has been removed, in exchange for compensation obligations more or less favorable to Phoenix than the compensation provisions under this Agreement and the Lease. Notwithstanding the foregoing, Phoenix shall have no obligation to sell the Biogas and/or re-let the Project Site, as the case may be, or otherwise to mitigate its damages under this Agreement or the Lease in response to one or more Events of Default by Developer, except as required by applicable law. Further, in connection with any such default, Phoenix shall have the right to acquire the Processing Facility at the applicable Processing Facility Surrender Cost provided for in Exhibit J on the same basis as if a termination for Phoenix's convenience had occurred, after deducting any sums then owed to Phoenix by the Developer under this Agreement.

(b) Other Remedies. Except in cases that Phoenix has available to it a remedy which is stated to be its sole remedy, Phoenix shall have any other rights and remedies available to it at law or equity, including recovery of damages for breach in circumstances in which Phoenix is unable to re-let the Project Site or determines in its sole discretion that re-leasing is not feasible, but only to the extent allowed by applicable law. Developer acknowledges that Phoenix has the right under this Agreement to seek an injunction.

Section 20.03 Default by Phoenix.

In the event of any default by Phoenix, for causes not excused by a Force Majeure Event, in fulfilling its obligations under this Agreement or the Lease, and if such default is not remedied by Phoenix

- (a) with respect to monetary obligations, within ten (10) Business Days after written notice of such default is given to Phoenix by Developer;
- (b) with respect to obligations under the Lease, upon termination of the Lease; and
- (c) with respect to all other obligations of Phoenix under this Agreement, within thirty (30) Business Days after written notice of such default is given to Phoenix by Developer, or such longer period as may be necessary to cure such breach as long as

Phoenix is exercising diligent efforts to cure, provided that the total length of any such cure period may not extend beyond sixty (60) days;

then Developer may at its option declare the Agreement terminated and may remove the Processing Facility from the Project Site and shall restore the Project Site in accordance with Section 5.13 of this Agreement. In such event, Phoenix shall be liable to Developer for the Processing Facility Demobilization and Removal Cost set out in Exhibit J associated with termination for Phoenix's convenience under Section 5.15. Upon the making of such payment to Developer, Phoenix will have no further liability to Developer.

Section 20.04 Attorney's Fees.

If either Party is required to bring any action to interpret or enforce this Agreement, or for any alleged breach, the prevailing Party in any such action it shall be entitled to recover its reasonable attorneys' fees in addition to all other recoverable damages and costs to the extent it prevails.

To the extent any damages required to be paid under this Agreement are liquidated, the Parties acknowledge that the actual damages the parties would suffer would be extremely difficult or impossible to determine in the event of the default of a Party, that otherwise obtaining an adequate remedy is inconvenient and the liquidated damages provided for in this Agreement constitute a reasonable approximation of the actual harm or loss.

ARTICLE XXI - MISCELLANEOUS

Section 21.01 Affirmative Action.

Developer will abide by the provisions of the Phoenix City Code, Chapter 18, Article V, as amended. Developer shall not discriminate against any worker, employee or applicant, or member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. Developer will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Developer shall incorporate this Section 21.01 in any and all subcontracts with all entities or labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Furthermore, Developer shall incorporate this Section 21.01 in any and all subcontracts, job-consultant agreements or other related agreements and contracts related to the Project.

Section 21.02 Contract Cancellation Pursuant to A.R.S. §38-511.

The Parties acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R. S. § 38-511.

Section 21.03 Compliance with Laws.

Developer agrees to fully observe and comply with all applicable Federal, State, and local laws, regulations, standards, codes, and ordinances when performing under this Agreement regardless of whether or not they are referred to in this Agreement. To the extent applicable to Developer's activities at the Project Site or Plant, Developer further agrees to fully observe and comply with all health, safety, and environmental requirements and obligations applicable to the Plant and Plant personnel provided Developer is made aware in advance of those requirements and obligations. Developer agrees to permit Phoenix to inspect Developer's business records, including, to the extent permitted by law, personnel records to verify any such compliance. Phoenix will assume no responsibility for Developer's acts or omissions to act in connection with this Agreement.

Section 21.04 Overdue Amounts to Bear Interest.

Any amount of money owed by one Party to the other in accordance with this Agreement that is more than thirty (30) days beyond the date such amount is due and payable under this Agreement shall accrue interest each day thereafter that such amount is not paid at the lower of (a) the prime interest rate published in The Wall Street Journal plus two percent (2%) on the first day such amount becomes past due or (b) the highest rate allowable by Applicable Law.

Section 21.05 Legal Worker Requirements.

In connection with the Project, Developer and its affiliates and subcontractors shall comply with all Federal and State immigration laws and regulations that relate to their employees, including A.R.S. § 23-214.A. If Developer fails to comply with such requirements, it is a material breach of this Agreement. Phoenix retains the right to inspect the papers of the employees of Developer, their affiliates or subcontractors who work on the Project to ensure that Developer and their affiliates and subcontractors are complying with this Section 21.05.

Section 21.06 Gratuities.

Phoenix may, by written notice to the Developer, terminate this Agreement without notice or cure if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Developer or any agent or representative of Developer, to any officer or employee of Phoenix making any determinations with respect to the Project or Developer. In the event this Agreement is terminated by Phoenix pursuant to this Section 21.06, Phoenix will be entitled, in addition to any other rights and remedies, to recover or withhold from Developer the amount of the gratuity.

Section 21.07 Waiver.

No delay or failure by either Party to exercise any of its rights, powers or remedies under this Agreement following any breach or default by the other Party shall be construed to be a waiver or any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of

any other breach or default theretofore or thereafter occurring. Any waiver, consent, or approval of any kind on the part of any Party of any breach or default, or any waiver on the part of any Party of any provision or condition of this Agreement, shall be effective only if in writing and then only to the extent specifically set forth in such writing. The acceptance by Phoenix of Lease Payments under the Lease or compensation provided for by this Agreement after a default by Developer shall not be deemed a waiver of any preceding breach by Developer other than the failure to pay the particular amount so accepted. The waiver by Phoenix and/or Developer of the breach of any covenant or condition of this Agreement shall not constitute a waiver of any other breach past or future regardless of knowledge thereof

Section 21.08 Amendment.

This Agreement may not be amended except by a written instrument of the Parties.

Section 21.09 Assignment.

This Agreement is not assignable by either Party except with the prior written consent of the other Party, except that Developer may: (i) upon written notice to Phoenix transfer its rights and obligations hereunder to a Controlled Affiliate or an agency or instrumentality of the State of Arizona or its political subdivisions; provided, that such assignee also takes assignment of the Lease and all other Project assets and obligations to the extent assignable; or (ii) with the written consent of Phoenix, not to be unreasonably withheld, delayed or conditioned, assign this Agreement to any other person or entity succeeding to all or substantially all of the assets of Developer by way of merger, asset purchase, reorganization, or otherwise, provided that an assignee under this clause (ii) must, when considered with any accompanying credit support, be at least as financially capable of fulfilling the obligations of the assigning Party and must provide Phoenix a certificate in which the assignee makes to Phoenix representations and warranties substantively equivalent to those set forth in Sections 16.01 hereof. Any purported assignment in violation of this Section 21.09 will be null and void. Notwithstanding anything in this Section 21.09, Developer may directly or indirectly assign this Agreement or any interest in developer as collateral; in connection with any such collateral assignment by Developer, subject to Section 6.02, Phoenix shall not be required to enter into any consent agreement with Developer's lenders unless Phoenix approves the form of such consent agreement in its reasonable discretion. For the purposes of this Section 21.09, direct transfer of the entire ownership of Developer shall be deemed to be an assignment of this Agreement. No transfer or assignment pursuant to this Section 21.09 shall be effective until the proposed transferee or assignee delivers a certificate of insurance, in a form reasonably acceptable to Phoenix, demonstrating compliance with the insurance coverage requirements described in this Agreement, as specifically described in Exhibit C hereto. Upon any permitted assignment or other transfer, Developer shall have no obligations under this Agreement or any of the agreements contemplated hereby.

Section 21.10 Severability and Renegotiation.

Should any provision of this Agreement for any reason be declared invalid or unenforceable by a final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining provisions, and the

remaining provisions shall remain in force and effect as if this Agreement had been executed without the invalid provision. In the event any term or provision of this Agreement is declared invalid or unenforceable, the Parties shall promptly renegotiate in good faith new provisions to eliminate such invalidity or unenforceability and to restore this Agreement as nearly as possible to its original intent

Section 21.11 Governing Law; Waiver of Jury Trial.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES WHICH MAY DIRECT OR PERMIT THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION. **THE PARTIES IRREVOCABLY WAIVE THE RIGHT TO A JURY TRIAL WITH RESPECT TO ANY MATTER ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT.**

Section 21.12 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof. This Agreement supersedes any and all prior oral or written agreements and understandings between the Parties concerning such subject matter.

Section 21.13 Captions and Section Headings.

The headings used throughout this Agreement are inserted for reference purposes only, and are not to be considered or taken into account in construing the terms or provisions of any Article or Section nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.

Section 21.14 Counterparts/Fax Signatures.

This Agreement may be executed in any number of counterparts, which together shall constitute but one and the same instrument and each counterpart shall have the same force and effect as if they were one original. Faxed signatures to be followed by originals by a nationally recognized overnight courier or delivery service will be accepted for closing.

Section 21.15 Notices.

Any notices, demands, consents, and reports necessary or provided for pursuant to this Agreement will be in writing and will be addressed as follows, or at such other address as may hereafter be specified in writing by the addressee.

If to Phoenix:

City of Phoenix

Water Services Department
200 W Washington St., 9th Floor
Phoenix, AZ 85003
Attn: Assistant Water Services Director, Wastewater Division
Telephone No. 602-534-7938
Facsimile No. 602-495-5542

With a copy to:
City of Phoenix
Phoenix City Attorney
200 W Washington St., 13th Floor
Phoenix, AZ 85003
Telephone No. 602-262-6761
Facsimile No. 602-534-7522

If to Developer:

Ninety-First Avenue Renewable Biogas LLC
111 Speen Street, Suite 410
Framingham, MA 01701
Attn: Exec. Vice President, Engineering and Operations
Telephone No. 508-661-2200
Facsimile No. 508-661-2201

With a copy to:
Ninety-First Avenue Renewable Biogas LLC
111 Speen Street, Suite 410
Framingham, MA 01701
Attn: General Counsel
Telephone No. 508-661-2200
Facsimile No. 508-661-2201

Such notice or other communication may be delivered by (i) personal delivery; (ii) United States of America registered or certified mail, return receipt requested, postage prepaid; or (iii) traceable courier service. For purposes of this Agreement, notices will be deemed to have been "given" or "delivered" upon personal delivery thereof, or upon actual delivery after having been deposited in the United States of America mail as provided herein.

Section 21.16 No Partnership or Joint Venture; Employment Disclaimer.

This Agreement will not constitute or create, or be deemed to constitute or create, a joint venture, partnership or any other similar arrangements among the Parties, will not create, or be deemed to create, a fiduciary or similar duty among the Parties, and no Party will be authorized to act as agent of any other Party, except as specifically provided in this Agreement or in another agreement. The Parties agree that no Persons supplied by Developer in the performance of Developer's obligations under this Agreement are considered to be Phoenix employees and no rights

of City civil service, retirement, or personnel rules accrue to such persons. Developer shall have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits, and all taxes and premium appurtenant thereto concerning such persons, and shall save and hold Phoenix harmless with respect thereto.

Section 21.17 Compliance with the Immigration Reform and Control Act of 1986 (IRCA).

Developer understands and acknowledges the applicability of the IRCA. Developer must comply with the IRCA in performing this Agreement, and must permit Phoenix to verify such compliance.

Section 21.18 Time is of the Essence.

Time is of the essence in the Parties' performance of their obligations under this Agreement.

Section 21.19 Further Assurance.

The Parties shall execute and provide such additional documents including a consent to assignment, legal opinions, estoppel letters or similar documents, and shall cause such additional actions to be taken as may be required or, in the reasonable judgment of any Party, be necessary to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.

Section 21.20 Successors and Assigns.

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns.

Section 21.21 No Third-Party Beneficiary.

This Agreement and each of the other Project Agreements is intended solely for the benefit of the Parties hereto and thereto. Nothing in this Agreement or any of the other Project Agreements shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party hereto or thereto, as the case may be, including without limitation any member of SROG other than Phoenix.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

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

CITY OF PHOENIX, an Arizona municipal corporation
ED ZUERCHER, City Manager

By: _____
Kathryn Sorensen
Water Services Director

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

Ninety-First Avenue Renewable Biogas LLC,
a Delaware Limited Liability Company
By: Ameresco, Inc., its sole member

By: _____
Michael T. Bakas
Senior Vice President

COP/LAW/SLW #1236011v1

Appendix

Development, Operations and Decommissioning Standards for the Processing Facility

Exhibit A
Biogas Project Lease

Ameresco draft
3/30/16

BIOGAS PROJECT LEASE

between

CITY OF PHOENIX

and

NINETY-FIRST AVENUE RENEWABLE BIOGAS LLC

Dated as of _____, 2016

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BIOGAS PROJECT LEASE

THIS BIOGAS PROJECT LEASE (this "Lease") is made this th day of 2016 by and between the City of Phoenix, a political subdivision of the State of Arizona ("Lessor" or "Phoenix"), and Ninety-First Avenue Renewable Biogas LLC, a Delaware limited liability company ("Lessee" or "Ameresco").

WITNESSETH:

1. **PROPERTY DESCRIPTION.** Lessor, in consideration of the rents and covenants herein stipulated to be paid and performed by Lessee does hereby grant, demise and lease unto Lessee, the premises described in Attachment A attached hereto and hereby incorporated herein (the "Premises," which shall have the same meaning as the term "Project Site" in the Biogas Project Agreement) for the purpose of constructing, owning and operating Lessee's facilities (which shall include the Processing Facility) for processing and utilizing Biogas purchased from Lessor as more fully described in the Biogas Project Agreement of same date herewith between Lessor and Lessee (the "Biogas Project Agreement") and any related facilities. The Premises are located on and adjacent to the Plant, owned and operated by Lessor at 5615 South 91st Avenue, Tolleson, Arizona. Except to the extent explicitly stated in this Lease or in the Biogas Project Agreement, the Premises are leased to Lessee in "as-is where-is" condition and Lessor shall have no obligation to make any improvements to the Premises before or during the term of this Lease.

2. **TERM.** The term of this Lease shall commence on the date first set out above and shall continue in effect for as long as the Biogas Project Agreement remains in effect, and this Lease shall terminate upon the expiration or termination, for any reason, of the Biogas Project Agreement and shall be renewed or extended to the same extent that the Biogas Project Agreement is renewed or extended.

3. **WARRANTY OF TITLE AND QUIET ENJOYMENT.** Lessor warrants that: (i) Lessor owns the Premises in fee simple and has the rights of access thereto and has the full right to make and perform this Lease, and (ii) Lessor covenants that Lessee, so long as Lessee pays the rents and observes and keeps the covenants of this Lease on its part to be kept, and as long as Lessee makes all payments due and complies with the terms of the Biogas Project Agreement, shall lawfully and peaceably hold, occupy and enjoy the Premises during the term hereof.

4. **RENT.** Lessor acknowledges payment in advance of rent for the term of this Lease, including any extensions thereof, in the sum of One Dollar (\$1.00).

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5. USE, IMPROVEMENTS AND EQUIPMENT.

(a) Lessor and Lessee have entered into the Biogas Project Agreement, whereby Lessor has agreed to sell and Lessee has agreed to purchase Biogas produced by the Plant. The Premises may be used by Lessee for those purposes consistent with the construction, operation and maintenance of Biogas processing, transportation and use facilities. Lessee shall have the right to enter the Premises at any time. Lessee has the right at its sole cost to erect, maintain and operate on the Premises all facilities necessary or convenient to conduct the Project, including without the limitation the Processing Facility and the Biogas transportation, facilities, a condensate pipeline, communications facilities, utility lines, transmission pipelines, and supporting equipment and structures thereto, as Lessee deems necessary, in Lessee's reasonable judgment (collectively, the "Improvements.") In connection therewith, Lessee has the right at its sole cost to do all work necessary to prepare, maintain and alter the Premises for Lessee's business operations.

(b) Sections 2.01(b) (Processing Facility Use) and 11.02 (Project Site Use) of the Biogas Project Agreement are incorporated herein by reference.

(c) Section 5.14 (Surrender) of the Biogas Project Agreement is incorporated herein by reference.

6. TITLE. Lessor and Lessee intend and agree that the Improvements shall be and remain the personal property of Lessee, and shall at no time become a fixture with respect to the Premises. Title to any Improvements, whether situated or erected on the Premises, as hereinabove allowed, or any alteration, change or addition thereto, shall remain solely in Lessee or, in a third party who holds title for reasons related to Lessee's financing.

7. LESSOR PROVIDED SERVICES.

(a) Cooling Water. Lessor shall, at no cost to Lessee, supply all cooling water requested by Lessee from time to time, up to 500 gallons per minute ("gpm"), for use at the Premises. Lessor shall also accept the return from Lessee of cooling water. Lessee shall be responsible for all costs associated with constructing and maintaining the interconnection points for the transfer of the cooling water and cooling water return. Such supply interconnection points shall be located at RAC/WAS Pump Station 1 (B-116) and return interconnection shall be either the Plant Decant Station #1 or Plant 1 RAS/WAS Pump Station B-51 along the South Access Road, respectively.

(b) Condensate. Lessor shall, at no cost to Lessee, accept for disposal from Lessee, all condensate generated by the Improvements, including without limitation the Processing Facility; provided, that in no event shall Lessor be required to accept condensate from Lessee that has (1) a volume exceeding 788,400 gallons in any calendar year, (2) an instantaneous

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flow at any time of greater than 450 gpm, or (3) a temperature greater than 130 degrees F. Lessee shall be responsible for all costs associated with constructing and maintaining the interconnection point for the transfer of the condensate to Lessor. Such interconnection points shall be located at SROG's Decant Station #1.

(c) Potable Water. Lessor shall, at no cost to Lessee, supply potable water to the Premises for fire suppression system, plumbing facilities and maintenance purposes. Lessee shall be responsible for all costs associated with constructing and maintaining the interconnection point for the transfer of the potable water to Lessee. The delivery point shall be SROG's potable water pipeline located immediately south of SROG's presently existing flares.

(d) Electric Power. Lessor shall supply electrical service up to ~~3,000~~500 kVa to the Premises as a submetered 12.47 kV source located inside the Unified Plant Main Substation. Lessee shall be responsible for all costs associated with constructing and maintaining the interconnection point for the transfer of the electrical service to Lessee.

(e) Dust Control Water Use. The primary roads constructed in connection with the Project will be surface treated with a dust inhibiting agent. Lessee has the obligation to control dust from any primary roads and non-primary service roads on the Premises used exclusively in connection with the Project, in accordance with Applicable Law. Lessee shall not be responsible for dust generated by Lessor, whether or not on the Premises, or in the operation and maintenance of the Plant.

(f) Use of Common Facilities: Usage Fees: Construction of Additional Common Facilities.

(i) Common Facilities. Lessor presently has existing structures and facilities at the Plant including gas metering equipment, security gates, locker rooms, break rooms, restrooms, construction pond, and parking facilities that may be useful to Lessee as shared or common facilities (the "Common Facilities"). Lessee's use of any or all of such Common Facilities during the development, construction, and operations of the Project shall be subject to Lessor's prior written consent, exercised in its reasonable discretion, provided, however, that if Lessor gives its consent, the parties will negotiate in good faith a long-term reasonable agreement for the use of Common Facilities. Any usage of Common Facilities may be subject to reasonable usage fees as described in Section 7(f)(ii) hereof. Lessee may, from time to time, terminate the agreement with respect to some or all of Common Facilities and cease to be obligated for the associated usage fees, by giving ten (10) day's advance notice in writing to Lessor, and thereafter Lessee shall not be entitled to use such Common Facilities that were the subject of the terminated portion of the agreement.

(ii) Usage Fees. Lessor may charge reasonable operation and maintenance fees to Lessee for the use of the Common Facilities. These fees will be negotiated in a commercially

Comment [CD1]: Discuss defining common facilities more definitely or even exclusively. The broad definition makes it unclear what Lessee has to pay for.

Comment [CD2]: Will this be used? Section 5.03 of the Biogas Project Agreement requires Developer to install Project-dedicated metering equipment.

Comment [CD3]: Will Lessee have an alternative way to have access to the Project if Phoenix no longer allows it to use the security gates?

Comment [CD4]: Term Sheet allows developer to use the common facilities without condition.

Comment [CD5]: Discuss

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reasonable manner between Lessee and Lessor as necessary. Lessor currently estimates that such fees shall be approximately \$_____ per year. Any such fees payable shall be paid together with the Lease Payments.

(iii) Construction of Additional Common Facilities. During the term of this Lease, Lessee and Lessor may agree to build additional facilities for Lessee and Lessor to use ("Additional Common Facilities"). The division of costs for any construction, operation and maintenance of Additional Common Facilities during the term of this Lease shall be divided equitably between Lessee and Lessor. Upon termination or expiration of this Lease, all right, title and interest in and to the Additional Common Facilities shall transfer to Lessor without further action required by any Party.

(iv) Maintenance. Lessor shall maintain, at its own cost and expense, all Common Facilities, unless otherwise agreed to in writing by the Parties, and except as provided in Section 7(f)(ii) herein.

(g) Utilities.

(i) Lessor shall provide utility connections as specified in the Appendix, Section _____ and oriented as depicted in Figure _____. Lessor shall review each drawing of all or any aspect of Connecting Utilities submitted by Lessee within three (3) weeks of receiving each drawing from Lessee or be deemed to have approved it. Lessor shall shut down and complete tie-ins of all Connecting Utilities within four (4) weeks of receiving a written request from Lessee. Lessor shall providing continuous Connecting Utilities service in accordance with Project specifications within one (1) week of a written request from Lessee.

(ii) Lessor is responsible for continuing all utility services as defined in the Appendix and Lessee is responsible for the equitable "pass-through" cost of continuing all third party utility services provided by Lessor during the term of this Lease, subject to the other provisions of this Section 7, from applicable utility service providers.

Comment [CD6]: Discuss how the pass-through cost of electric service will be determined.

8. ACCESS AND RIGHTS OF WAY.

(a) Access. Section 11.01(a) (Access) of the Biogas Project Agreement is incorporated herein by reference.

(b) Rights of Way. Section 11.04(b) (Rights of Way) of the Biogas Project Agreement is incorporated herein by reference.

9. TAXES AND ASSESSMENTS. Section 11.04(c) of the Biogas Project Agreement is incorporated herein by reference.

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10. **DESTRUCTION OF BUILDINGS.** In the event the Improvements located on the Premises are partially or totally damaged or destroyed, Lessee may elect to terminate this Lease and the Biogas Project Agreement without liability as of the date of the damage or destruction, by giving notice to Lessor no more than thirty (30) days following the date of such damage or destruction, condemnation or transfer in lieu of condemnation, in which event Lessee shall comply with the provisions of Section 5(c).

11. **CONDEMNATION.** In the event the Premises or a part thereof sufficient to substantially interfere with the business for which said Premises are used, shall be condemned, appropriated or otherwise taken or access to the Premises be impaired by right of eminent domain, Lessee shall have the right to terminate this Lease and the Biogas Project Agreement without liability on thirty (30) days notice to Lessor provided that said election to terminate shall be made within sixty (60) days after the receipt of notice of said taking.

12. **DEFAULT.**

(a) If Lessee shall be in material default with respect to any of its covenants herein contained, Lessor shall promptly notify Lessee of the specifics and circumstances of the default, and if any such default continues for thirty (30) days after such notice to Lessee, Lessor may terminate this Lease if Lessee fails to cure, or commence the cure of, any default within the thirty (30) day period immediately following receipt of Lessor's written notice of default and, after said period, to diligently pursue the cure to completion.

(b) If Lessor shall be in material default with respect to any of its covenants herein contained, Lessee shall promptly notify Lessor of the circumstances and specifics of any such default, and if such default continues for thirty (30) days after such notice to Lessor, Lessee may terminate this Lease if Lessor fails to cure, or commence the cure of, any default within the thirty (30) day period immediately following receipt of Lessee's written notice of default and, after said period, to diligently pursue the cure to completion.

(c) In the event that either party waives a default by the other party, such waiver shall not be construed or deemed to be a continuing waiver of any subsequent breach or default on the part of either party.

13. **PROHIBITION AGAINST LESSEE CREATING LIENS AGAINST PREMISES.** It is expressly covenanted and agreed by and between the parties hereto that nothing in this Lease contained shall authorize Lessee to do any act which will in any way encumber the title of Lessor in and to the Premises, nor shall the interest or estate of the Lessor in the Premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Lessee, and any claim to or lien

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upon the Premises arising from any act or omission of Lessee shall accrue only against the leasehold estate of Lessee and shall in all respects be subject and subordinate to the paramount title and rights of Lessor in and to the Premises and the buildings and improvements thereon. Lessee will not permit the Premises to become subject to any mechanics', laborers' or material men's lien on account of labor or material furnished to the Lessee in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of the Lessee; provided, however, that Lessee shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claimed lien.

14. **INSURANCE.** At all times during the term of this Lease, Lessee shall maintain the insurance coverages required under the Biogas Project Agreement.

15. **TERMINATION FOR CONVENIENCE.** Section 5.16 (Termination for Convenience) of the Biogas Project Agreement is incorporated herein by reference.

16. **NOTICES.** All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be given in the same manner as under the Biogas Project Agreement.

17. **REPRESENTATIONS AND WARRANTIES.** Each of the parties gives to the other with respect to this Lease the same representations and warranties it gives with respect to the Biogas Project Agreement in Article XVI thereof.

18. **TERMINATION FOR CONVENIENCE.** Section 5.16 (Termination for Convenience) of the Biogas Project Agreement is incorporated herein by reference.

19. **CONTRACT CANCELLATION PURSUANT TO A.R.S. §38-511.** The Parties acknowledge that this Lease is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

20. **COMPLIANCE WITH LAWS.** Lessee agrees to fully observe and comply with all applicable Federal, State, and local laws, regulations, standards, codes, and ordinances when performing under this Lease regardless of whether or not they are referred to in this Lease. To the extent applicable to Lessee's activities at the Project Site or Plant, Lessee further agrees to fully observe and comply with all health, safety, and environmental requirements and obligations applicable to the Plant and Plant personnel provided Lessee is made aware in advance of those requirements and obligations. Lessee agrees to permit Lessor to inspect Lessee's business records, including, to the extent permitted by law, personnel records to verify any such compliance. Lessor will assume no responsibility for Lessee's acts or omissions to act in connection with this Lease.

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21. **OVERDUE AMOUNTS TO BEAR INTEREST.** Any amount of money owed by one Party to the other in accordance with this Lease that is more than thirty (30) days beyond the date such amount is due and payable under this Lease shall accrue interest each day thereafter that such amount is not paid at the lower of (a) the prime interest rate published in The Wall Street Journal plus two percent (2%) on the first day such amount becomes past due or (b) the highest rate allowable by Applicable Law.

22. **GRATUITIES.** Lessor may, by written notice to Lessee, terminate this Lease without notice or cure if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Lessee or any agent or representative of Lessee, to any officer or employee of Lessor making any determinations with respect to the Project or Lessee. In the event this Lease is terminated by Lessor pursuant to this Section 22, Lessor will be entitled, in addition to any other rights and remedies, to recover or withhold from Lessee the amount of the gratuity.

23. **WAIVER.** No delay or failure by either Party to exercise any of its rights, powers or remedies under this Lease following any breach or default by the other Party shall be construed to be a waiver or any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, consent, or approval of any kind on the part of any Party of any breach or default, or any waiver on the part of any Party of any provision or condition of this Lease, shall be effective only if in writing and then only to the extent specifically set forth in such writing. The acceptance by Lessor of compensation provided for by this Lease or the Biogas Project Agreement after a default by Lessee shall not be deemed a waiver of any preceding breach by Lessee other than the failure to pay the particular amount so accepted. The waiver by Lessor and/or Lessee of the breach of any covenant or condition of this Lease shall not constitute a waiver of any other breach past or future regardless of knowledge thereof.

24. **AMENDMENT.**

This Agreement may not be amended except by a written instrument of the Parties.

25. **RESTRICTIONS ON ASSIGNABILITY OF LEASE; RESTRICTIONS ON TRANSFER OF CONTROL.** This Lease is non-assignable by Lessee unless at the time of an assignment by Lessee to the assignee of the Lease, Lessee simultaneously assigns Biogas Project Agreement and Lessee simultaneously transfers all of its right, title and interest in and to the entirety of the Project to the assignee of the Lease or a Controlled Affiliate of the assignee of the Lease, in compliance with the restrictions on assignment and transfer set forth in the Biogas Project Agreement. Any assignee of the Lease must acknowledge that the Lease is subject to the

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terms and conditions of the Biogas Project Agreement that are incorporated by reference in the Lease.

26. **SEVERABILITY AND RENEGOTIATION.** Should any provision of this Lease for any reason be declared invalid or unenforceable by a final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining provisions, and the remaining provisions shall remain in force and effect as if this Lease had been executed without the invalid provision. In the event any term or provision of this Lease is declared invalid or unenforceable, the Parties shall promptly renegotiate in good faith new provisions to eliminate such invalidity or unenforceability and to restore this Lease as nearly as possible to its original intent

27. **GOVERNING LAW; WAIVER OF JURY TRIAL.** THIS LEASE AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES WHICH MAY DIRECT OR PERMIT THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION. THE PARTIES IRREVOCABLY WAIVE THE RIGHT TO A JURY TRIAL WITH RESPECT TO ANY MATTER ARISING UNDER OR WITH RESPECT TO THIS LEASE.

28. **ENTIRE AGREEMENT.** This Lease constitutes the entire agreement between the Parties relating to the subject matter hereof. This Lease supersedes any and all prior oral or written agreements and understandings between the Parties concerning such subject matter.

29. **CAPTIONS AND SECTION HEADINGS.** The headings used throughout this Lease are inserted for reference purposes only, and are not to be considered or taken into account in construing the terms or provisions of any Article or Section nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.

30. **COUNTERPARTS/FAX SIGNATURES.** This Lease may be executed in any number of counterparts, which together shall constitute but one and the same instrument and each counterpart shall have the same force and effect as if they were one original. Faxed signatures to be followed by originals by a nationally recognized overnight courier or delivery service will be accepted for closing.

31. **TIME IS OF THE ESSENCE.** Time is of the essence in the Parties' performance of their obligations under this Lease.

32. **FURTHER ASSURANCE.** The Parties shall execute and provide such additional documents including a consent to assignment, legal opinions, estoppel letters or

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similar documents, and shall cause such additional actions to be taken as may be required or, in the reasonable judgment of any Party, be necessary to effect or evidence the provisions of this Lease and the transactions contemplated hereby.

33. **SUCCESSORS AND ASSIGNS.** This Lease shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns.

34. **NO THIRD-PARTY BENEFICIARY.** This Lease and each of the other Project Agreements is intended solely for the benefit of the Parties hereto and thereto. Nothing in this Lease or any of the other Project Agreements shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party hereto or thereto, as the case may be, including without limitation any member of SROG other than Lessor.

35. **TERMINATION WITHOUT LIABILITY.** Any termination of this Lease that is caused by a termination of the Biogas Project Agreement that is specified to occur without liability, shall also be without liability under this Lease.

36. **BROKERAGE.** Lessor and Lessee represent that they have dealt with no broker or agent with respect to this Lease or the negotiation and execution hereof. Each party hereby indemnifies and saves and holds the other party harmless against any claims for brokerage commissions or compensation or other claims of any kind (including reasonable attorney's fees and costs) arising out of a breach of the foregoing representation by the indemnifying party.

37. **DEFINITIONS.** All capitalized terms used in this Lease shall, except to the extent otherwise defined herein, have the respective meanings assigned to them in the Biogas Project Agreement.

38. **RULES OF INTERPRETATION.** Section 1.06 (Rules of Interpretation) of the Biogas Project Agreement is incorporated herein by reference.

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

LESSOR:

CITY OF PHOENIX, an Arizona municipal corporation
ED ZUERCHER, City Manager

By: _____
Kathryn Sorensen
Water Services Director

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

LESSEE:

Ninety-First Avenue Renewable Biogas LLC,
a Delaware Limited Liability Company
By: Ameresco, Inc., its sole member

By: _____
Michael T. Bakas
Senior Vice President

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Ameresco draft
3/30/16

ATTACHMENT A
PREMISES DESCRIPTION

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Exhibit B
Developer Permit Summary

Exhibit C
Insurance Requirements

Exhibit D
Parties Designated Representatives

Exhibit E
Map and Legal Description of Project Site

Exhibit F
Schematic of Biogas Delivery Point

Exhibit G
Biogas Metering Standards

Exhibit H
Easement Agreement

Exhibit I
Monthly Production Report

Exhibit J

**Processing Facility Surrender Cost
and
Processing Facility Demobilization and Removal Cost**

Section 1. Processing Facility Surrender Cost.

The Processing Facility Surrender Cost at any time on or after the Effective Date is the amount set forth below with respect to the time period in which the termination occurs, plus all administrative, breakage, prepayment and other costs, penalties, fees or charges incurred by Developer relating to terminating agreements relating to the Project, including without limitation with respect to all hedges and other similar financial instruments, and with respect to all loan agreements. The Processing Facility Surrender Cost with respect to the period before the Commercial Operation Date shall be equal to the Treatment Facility Surrender Cost during the first year following the Commercial Operation Date; provided, that during the period from the Effective Date to December 31, 2016, the Processing Facility Surrender Cost shall be [\$24,283,357], plus all administrative, breakage, prepayment and other costs, penalties, fees or charges incurred by Developer relating to terminating agreements relating to the Project, including without limitation with respect to all hedges and other similar financial instruments, and with respect to all loan agreements. The table below is with respect to each twelve month period following the Commercial Operations Date.

Period	Amount
1	\$ 28,750,000
2	\$ 27,312,500
3	\$ 25,875,000
4	\$ 24,437,500
5	\$ 23,000,000
6	\$ 21,562,500
7	\$ 20,125,000
8	\$ 18,687,500
9	\$ 17,250,000
10	\$ 15,812,500
11	\$ 14,375,000
12	\$ 12,937,500
13	\$ 11,500,000
14	\$ 10,062,500
15	\$ 8,625,000
16	\$ 7,187,500
17	\$ 5,750,000
18	\$ 4,312,500
19	\$ 2,875,000
20	\$ 1,437,500

Section 2. Processing Facility Demobilization and Removal Cost.

The Processing Facility Demobilization and Removal Cost at any time on or after the Effective Date is the amount set forth below with respect to the time period in which the termination occurs, plus all administrative, breakage, prepayment and other costs, penalties, fees or charges incurred by Developer relating to terminating agreements relating to the Project, including without limitation with respect to all hedges and other similar financial instruments, and with respect to all loan agreements. The Processing Facility Demobilization and Removal Cost with respect to the period before the Commercial Operation Date shall be equal to the Processing Facility Demobilization and Removal Cost during the first year following the Commercial Operation Date. The table below is with respect to each twelve month period following the Commercial Operations Date.

Period	Amount
1	\$ 29,250,000
2	\$ 27,812,500
3	\$ 26,375,000
4	\$ 24,937,500
5	\$ 23,500,000
6	\$ 22,062,500
7	\$ 20,625,000
8	\$ 19,187,500
9	\$ 17,750,000
10	\$ 16,312,500
11	\$ 14,875,000
12	\$ 13,437,500
13	\$ 12,000,000
14	\$ 10,562,500
15	\$ 9,125,000
16	\$ 7,687,500
17	\$ 6,250,000
18	\$ 4,812,500
19	\$ 3,375,000
20	\$ 1,937,500