BIOGAS PROJECT AGREEMENT

BETWEEN

NINETY-FIRST AVENUE RENEWABLE BIOGAS LLC

AND

CITY OF PHOENIX

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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."

RECITALS

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 (20^{th}) 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 Phoenix 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/ft^3, 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/ft^3" 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 (20^{th}) 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;

(1) 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 also the date on which Commencement of Construction occurs.

(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 anerobic 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 anerobic 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 SO_X 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 Indemnitees 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 hydgrogen 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 (5^{th}) anniversary of the start of the Production Period and on every fifth (5^{th}) 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 x 1 = 150,000 MMBtu HHV credited toward the QDT
35,000 x .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 x $1.00/MMBtu Biogas Base Rate for On-spec Biogas x 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 x $0.70/MMBtu Biogas Base Rate for Off-spec Biogas x 1.0 QDT Payment Factor = $0
Biogas Payment under (i) is $150,000

(ii) 100,000 MMBtu On-spec Biogas accepted and used x $1.00/MMBtu Biogas Base Rate for On-spec Biogas x 1.0 QDT Payment Factor = $100,000
35,000 MMBtu Off-spec Biogas accepted and used x ($ 0.70 Biogas Base Rate for Off-spec Biogas x 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 (30^{th}) 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 an 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 #1236011v

Appendix

Development, Operations and Decommissioning Standards for the Processing Facility

Appendix

Development, Operations and Decommissioning Standards

Developer shall be responsible for financing, designing, constructing, permitting, owning, operating, maintaining and managing the Project in accordance with the following standards.

3.1 Financing Responsibilities

Developer shall be responsible for securing all monies necessary to finance the development of the Project.

3.2 Design Responsibilities

Developer shall be responsible for the design of the Processing Facility. The Processing Facility shall be designed to convert Plant-produced Biogas into a commercially usable commodity. The Processing Facility shall be designed by experienced entities that are licensed to prepare such a design. The Processing Facility shall be located on the Project Site and shall be designed to fit into the allocated land space for the Processing Facility, all as delineated in **Figure 1**.

Developer‘s Processing Facility design shall:

1. Allow the Processing Facility to be constructed, permitted for operation, and in service producing a commercially usable commodity by the Commercial Operation Date Deadline.

2. Allow the Project to be constructed and operated in accordance with the Permits.

3. Provide for the construction of a Processing Facility pad site within the Project Site, as delineated in **Figure 1**. The pad site design shall be designed in a manner adapted to minimize in accordance with Applicable Laws and Permits windblown debris and dust resulting from Developer’s operation from migrating beyond the Project Site. The pad site design shall include vehicular access to the Project Site via existing Plant campus roadways. The design of the vehicular roads that are needed for the Project shall match that of existing Plant roadways. The primary roads constructed in connection with the Project will be surface treated with a dust inhibiting agent. Developer has the obligation to control dust from any primary roads and non-primary service roads used exclusively in connection with the Project, in accordance with Applicable Laws and Permits. Developer will not be responsible for dust generated by Phoenix. The pad site design may accommodate Processing Facility expansion and modifications.

4. Provide for the construction of a security fence about the full perimeter of the Project Site. The security fence shall provide for the security of the Project Site and shall be located six feet inside the perimeter of the Project Site. Secured gates shall be provided at vehicular access points to the Project Site.

5. Provide for the construction of Connecting Utilities. The location of the Connecting Utility connection points will be as generally oriented as shown in **Figure 2**. The Delivery Point for Biogas will include an automatically valved supply pipeline. Developer shall assume that the connection point consists of an ANSI B16.1 Class B stainless steel flanged connection. The Biogas delivery pressure at the point of connection shall at all times be between 1.5 and 6 inches of water column. Biogas delivery by Phoenix shall have a capacity of 2,400 scfm. The Connecting Utilities include the following:

a. Electrical service – 3.0 MVA @ 12.5 kV maximum service size
b. Acid Phase Gas-150 scfm
c. Condensate service – 50 gpm maximum service size
d. Re-use water service – 500 gpm @ 40 psig maximum service size
e. Potable water service – 200 gpm @ 40 psig maximum service size
f. Controls will include Biogas pressure, flow, temperature and methane concentration, Fire Detection Panel Alarm and Re-use water flow.

Developer shall be responsible for designing and installing the Connecting Utility interconnections and paying for such services in accordance with the Agreement.

6. Design the Project to operate up to the Biogas Maximum Flow of 2400 scfm.

7. Provide for measurement of certain Processing Facility performance measurements:

a Biogas and Acid Phase Gas delivery (*i.e.*, mass flow (scfm).
b. Biogas methane, [carbon dioxide, nitrogen, and oxygen] using a gas chromatograph .
c. Biogas temperature (^{o}F); associated instrumentation accuracy shall be within ± 1% of actual.
d. Biogas pressure (inches of water column); associated instrumentation accuracy shall be within ± 5% of actual.
e. Electricity metering by City of Phoenix. (See Figure 3 for Electrical One-Line)

9. Provide for the attenuation of sound pressure levels propagating from the Processing Facility to a 82 dBA (summation of all octave bands) sound pressure level as measured at any location along the boundary of the Project Site.

10. Accommodate the use of Biogas to produce a commercially usable commodity.

11. Provide for the protection of Connecting Utilities connections, including, at a minimum, Biogas supply high back pressure protection to prevent the inadvertent over-pressurization of the Phoenix' Biogas supply system.

12. Design plans for the Processing Facility shall be submitted to Phoenix prior to their finalization for Phoenix' general review and comment relative to the goals and objectives of the Project. Phoenix reasonable approval will be required with respect to all improvements proposed to be made by Developer on the Project Site. Phoenix shall provide Developer with either

approval or a description of all concerns within fourteen (14) days following submission of any design plans by Developer. To the extent that Phoenix fails to communicate reasonable concerns within fourteen (14) days following submission of any design plans, Phoenix shall be irrevocably deemed to have approved such design plans. Developer shall address Phoenix' reasonable expressed concerns and issues in developing the final designs and shall communicate to Phoenix the changes made in accommodating Phoenix' concerns. Review and approval by Phoenix of the design under this provision shall not constitute a representation or warranty that Developer's designs are in compliance with any rules, laws, codes, ordinances, statutes or other regulations or any other restrictions affecting the Project Site or any representation or warranty as to the safety, constructability, quality or the structural soundness of such designs or of the final constructed facilities.

In addition:

A. Developer shall provide Phoenix with record drawings for information.

B. For the pipeline and Interconnecting Utilities design and construction, Developer shall produce drawings based upon the City of Phoenix CAD standards and utilize Phoenix' guide construction specification standards. For Treatment Facility design and construction, Developer shall produce drawings based upon Developer and process equipment vendor specification standards.

C. Developer shall prepare a property boundary survey of the Project Site prior to commencing any construction work associated with the Processing Facility. The property boundary survey shall establish the legal description of the Project Site through iron rod placement and metes and bounds narrative.

3.3 Construction Responsibilities

Developer shall be responsible for the construction of the Project. The Project shall be constructed in accordance with Developer's design requirements by experienced entities that are licensed to perform such construction in the State of Arizona. Developer's Processing Facility construction shall:

1. Be in accordance with Lease Agreement and any other Project Agreements.

2. Abide with reasonable Plant campus security requirements.

3. Not damage the Plant campus, its processes, systems, equipment, roadways and/or land space in any way. Any and all such damage shall be repaired to the reasonable satisfaction of Phoenix immediately upon discovery.

4. Be in accordance with the design of the Processing Facility with respect to minimization in accordance with Applicable Law and Permits of windblown debris resulting from Developer's operation from migrating beyond the Project Site.

5. Be neat and workmanlike in execution. Developer shall clean up, organize and secure the construction site within the Project Site at the close of each business day throughout construction and until the aforementioned security and screening fence has been fully installed.

6. Protect and avoid damaging existing below-grade utilities.

7. Provide for all sanitary facilities required during the course of construction.

8. Be coordinated with Phoenix' activities in accordance with the body of the Agreement. Developer shall plan, schedule, facilitate and document the results of monthly construction progress meetings throughout the duration of Project construction.

9. Allow Phoenix' representatives to access and observe Developer's Project construction in accordance with the Project Agreements.

10. Provide for the startup and commissioning of the Processing Facility including the following, at a minimum:

a. The scheduling of the Processing Facility startup and commissioning activities with Phoenix.
b. The testing and Phoenix-witnessed demonstration of all Connecting Utility connection points.
c. The testing and Phoenix-witnessed demonstration of all performance measurement instrumentation.

3.4 Permitting Responsibilities

Developer shall be responsible for the permitting associated with the design, construction, ownership, operation, maintenance and management of the Project. Developer's permitting responsibilities shall include, but not be limited to:

1. The application for and renewal of all Permits required to design, construct, own, operate, maintain and manage the Project throughout the Term and to allow the Project to be designed, constructed, and permitted for operation by the Commercial Operation Date Deadline.

2. The payment of all associated permitting fees throughout the Term.

3. The maintenance of all Permits and permitting records and appropriate display of all issued Permits throughout the Term.

4. Performing all professional scientific, technical, and engineering work necessary to secure the required Permits and to maintain such Permits during the Term, including, if required by such Permits, the work to plat the Project Site.

3.5 Ownership Responsibilities

Developer will own the Processing Facility, the Connecting Utilities interconnections, and any facilities from the Processing Facility up to the interconnection with the facilities of the Interconnection Authority. The Interconnection Authority shall own the metering station that meters the output of the Processing Facility in connection with the passage into the facilities of the Interconnection Authority. The costs of utility services required to operate and maintain the Project shall be allocated between the Parties as set forth in the body of the Biogas Project Agreement and in the Lease.

3.6 Operating Responsibilities

Developer shall be responsible for the complete day-to-day operation of the Project. Developer's Processing Facility operating responsibilities shall include, but not be limited to:

1. Complying with all Permits in accordance with the terms of the Biogas Project Agreement. Phoenix represents and commits that, during the Term, it will not initiate, promote or advocate before any Governmental Authority, including without limitation the City of Phoenix or any entities under Phoenix's control, any local law, code, or regulation relating to the Project or Developer's use of the Project Site whose practical application is solely or primarily to have an adverse impact on Developer, the Project Site, or the Project and shall, to the extent permitted by law, indemnify and, in addition to any other remedy that Developer may have for such material breach, hold Developer harmless from any such law, code or regulation that is initiated, promoted, or advocated by Phoenix. If Phoenix is unable to so indemnify and hold Developer harmless, Phoenix shall be deemed to have exercised its option to terminate the Biogas Project Agreement at its convenience pursuant to Section 5.16 thereof.

2. Complying with reasonable Plant campus security requirements.

3. Minimize in accordance with Applicable Laws and Permits windblown debris and dust resulting from Developer's activities from migrating beyond the Project Site.

4. Keep Processing Facility noise from exceeding a 82 dBA (summation of all octave bands) sound pressure level at the Project Site boundary.

5. Communicating with Plant personnel in the day-to-day operation of the Processing Facility including, but not limited to, coordination of issues related to:

a. Biogas quantity and/or quality.
b. Processing Facility windblown debris and dust migration from the Project Site.
c. Processing Facility aesthetics (including noise and odor propagation, Processing Facility housekeeping, condition of Processing Facility security fence, condition of Processing Facility vehicular access, and the like).
d. Plant campus security.
e. Plant campus construction activities.
f. Plant campus operations and maintenance activities.

6. Operation of the Project so as not to cause damage to any of the Phoenix-provided Connecting Utilities and/or Connecting Utilities connections.

7. Promptly upon becoming aware of same, informing Phoenix of any and all Project problems and/or conditions that may pose 1) a risk to the health and safety of the employees and/or neighbors of Plant, or 2) a risk of damage to Phoenix-owned infrastructure, equipment, and/or land space within the Plant campus including the Project Site.

8. Allowing for the permitted observation of the Processing Facility's operation by Phoenix employees and/or representatives.

3.7 Maintenance Responsibilities

Developer shall be responsible for:

a. The complete day-to-day maintenance of the Processing Facility including the Connecting Utilities up to the tie-in point with the Plant and the gas pipeline up to Interconnecting Authority metering station. Responsibility for the complete day-to-day maintenance of the metering station shall be as set forth in the Interconnection Agreement.

Developer's Processing Facility maintenance responsibilities shall include, but not be limited to:

1. Minimize in accordance with Applicable Laws and Permits windblown debris and dust resulting from Developer's activities from migrating beyond the Project Site.

2. Keep Processing Facility noise from exceeding a 82 dBA (summation of all octave bands) sound pressure level at the Project Site boundary.

3. Maintaining the structural integrity and aesthetic appearance of the Project Site, including, but not limited to:

a. Security fence repair and painting.
b. Vehicular access road repair and resurfacing of roads used exclusively by Developer.
c. Processing Facility painting.
d. Project Site debris cleanup.

3.8 Management Responsibilities

Developer shall be responsible for the complete day-to-day management of the Processing Facility. Developer's Processing Facility management responsibilities shall include, but not be limited to:

1. Employing and continually maintaining the employment of a manager who is reasonably acceptable to Phoenix throughout the Term.

2. Verbally acknowledging any and all Phoenix inquiries related to the design, construction, permitting, ownership, operation, maintenance, and/or management of the Project within two (2) business days of receipt of a Phoenix transmitted voice mail, E-mail, facsimile, and/or pager message.

3. Providing written response to Phoenix on any and all issues arising under this Agreement for which Phoenix requires a written response within fourteen (14) calendar days of receipt of the Phoenix request.

4. Complying with all Permits, other than those local laws, codes and regulations whose practical application is solely or primarily to Developer, the Project Site or the Project.

5. Complying with reasonable Plant campus security requirements.

6. Performing a baseline environmental site assessment of the Project Site in accordance with the Agreement.

3.9 Decommissioning

Developer will demobilize and remove the Processing Facility from the Project Site when and to the extent required by the body of the Agreement and the Lease. Developer shall be responsible for all associated demobilization and removal costs including, but not limited to those for (to the extent required):

a. Removing all Processing Facility Connecting Utilities interconnections back to their connection point, but not beyond the Project Site boundary and securing or adequately capping such utilities off so as to prevent damage to the utility or injury to personnel.
b. Removing all Processing Facility equipment and structures from the Plant campus to the extent required in the body of the Agreement or the Lease.
c. Repairing all roadway, infrastructure and/or land space damaged within the Plant campus as a result of Developer's demobilization/removal activities. All such damage shall be repaired to the reasonable satisfaction of Phoenix at Developer's expense.
d. Removing the Project Site security fence, filling and compacting all associated holes, and grading of the Project Site to establish the original condition of Project Site prior to the commencement of Developer's development activities.

All demobilization and removal activities shall be complete within 240 days after Phoenix and Developer approve the demolition scope and plans.

If Developer is demobilizing and removing the Processing Facility, Developer shall perform an environmental site assessment of the Project Site at the end of the Term in accordance with the Agreement. Developer shall perform such a site assessment to establish the fact that Developer's use of the Project Site during the Term did not environmentally contaminate or damage the Project Site in any manner. The site assessment shall be performed in accordance with the

ASTM Standard E1527-05, "Phase I Environmental Site Assessment" requirements or the replacement standard in force at the time that the Lease is terminated. The environmental site assessment shall be performed within 60 days of the end of the Term and the results of the site assessment shall be transmitted in written form to Phoenix within 30 days of receipt by Developer. If the environmental condition of the Leased Premises (as determined by the site assessment) is compromised, Developer shall promptly remediate the environmental condition of the Project Site so as to provide a Project Site condition equal to that established under the baseline environmental site assessment; provided, that Developer shall not be required to remediate any condition arising from a circumstance that existed prior to the date of this Agreement or to the extent that, after the date of this Agreement, was caused by the acts or omissions of Phoenix or any party for which it is responsible.

Figure 1 - General Arrangement Drawing

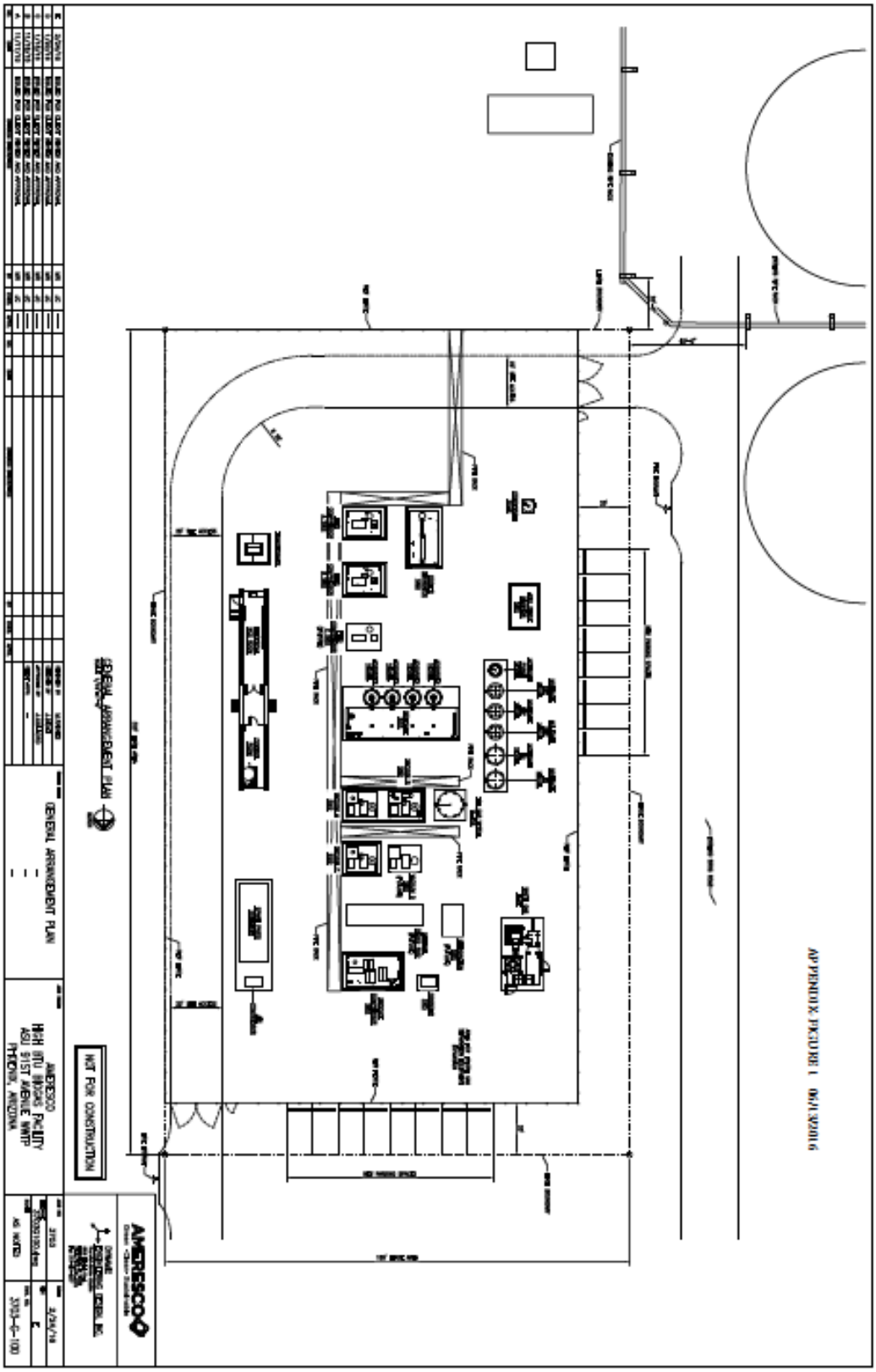

Figure 2 – Connecting Utilities Connection Points

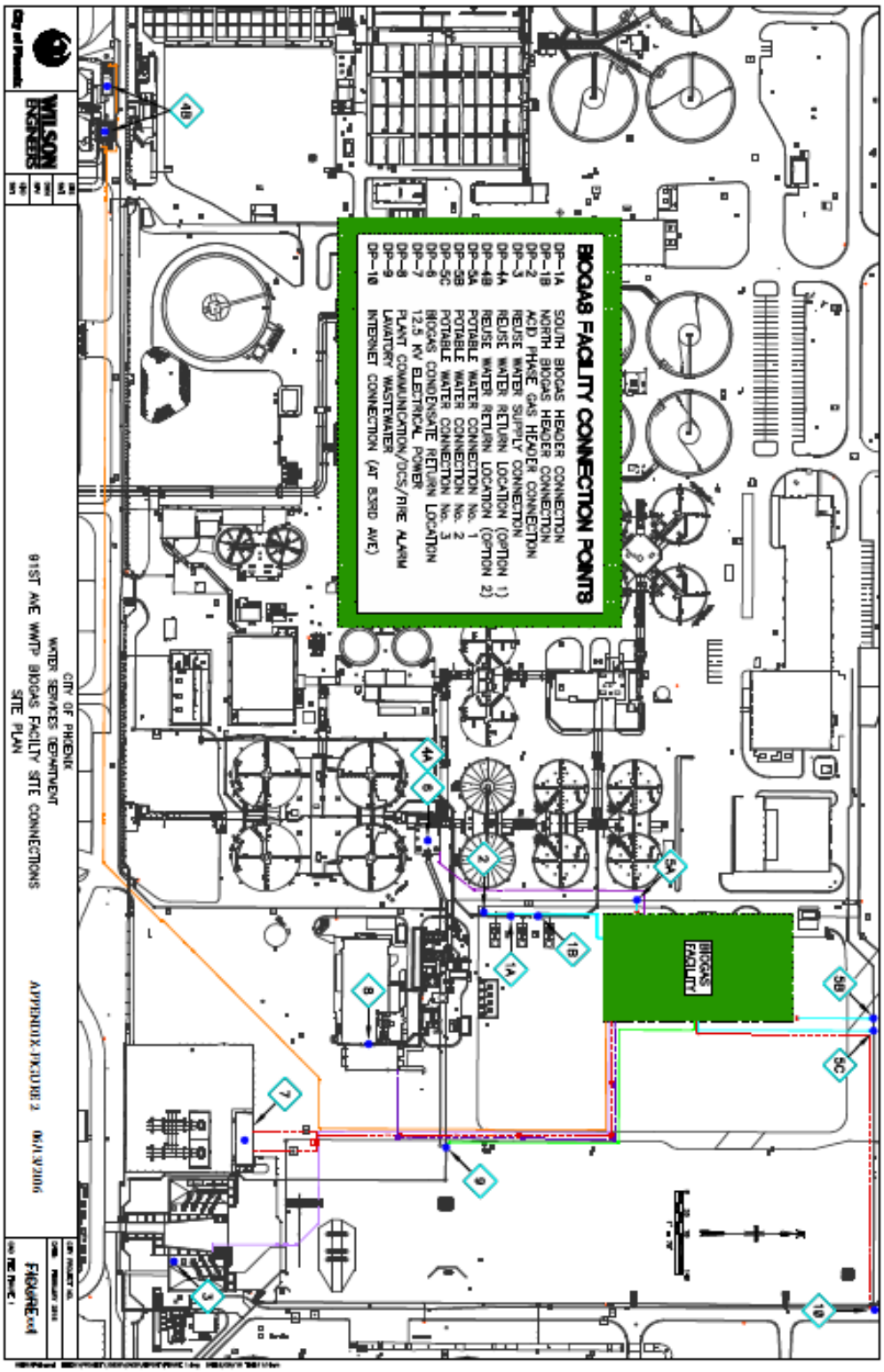

Figure 3 - Electrical One Line

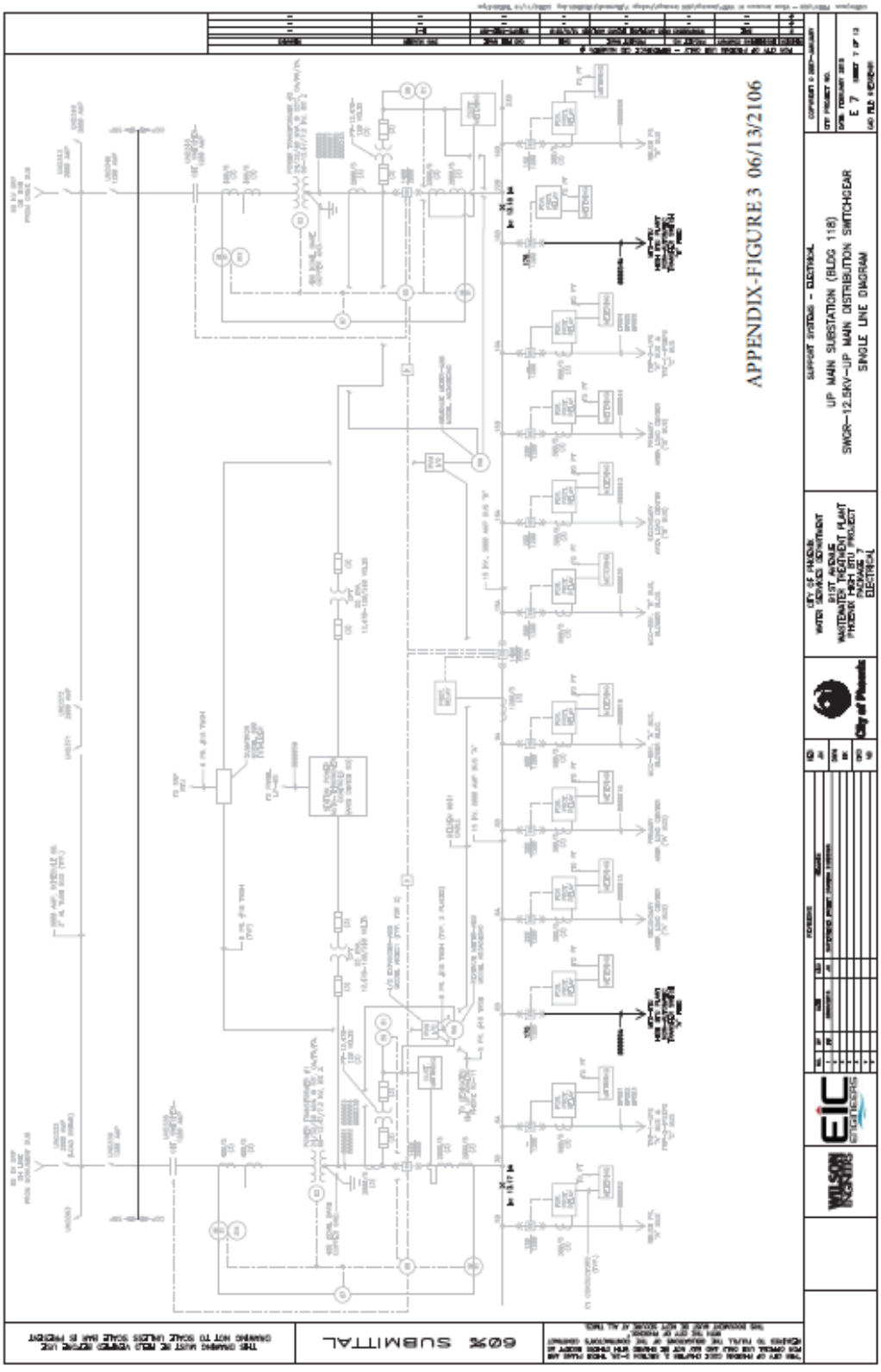

Exhibit A

Biogas Project Lease

BIOGAS PROJECT
LEASE AGREEMENT

THIS BIOGAS PROJECT LEASE AGREEMENT (this "Lease") is dated as of the ___ day of _____, 2016 ("Effective Date") by and between CITY OF PHOENIX, a municipal corporation ("Lessor"), and Ninety-First Avenue Renewable Biogas, LLC, a Delaware limited liability company ("Lessee")(each a "Party" and collectively the "Parties").

RECITALS

A. Lessor is an owner of the 91st Avenue Wastewater Treatment Plant, which includes certain real property, and is located at 5615 South 91st Avenue in Tolleson, Arizona (the "Plant"). Lessor operates the Plant on behalf of the Subregional Opeating Group Cities.

B. Lessor and Lessee concurrently herewith have entered into a Biogas Project Agreement ("BPA") whereby Lessor has agreed, *inter alia*, to provide Lessee with a continuous supply of Biogas produced from the wastewater treatment processes at the Plant for conversion into either burner-tip, feedstock, fuel, or other commercial application, in return for payment by Lessee to Lessor for the supplied Biogas.

C. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor a site at the Plant (as defined in Section 2 hereof, the "Leased Premises") as more particularly described in Section 2 of this Lease and upon the terms and conditions contained herein so that Lessee may construct and operate the Processing Facility at the Leased Premises and deliver the output of the Processing Facility to one or more purchasers.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the Parties agree as follows:

1. DEFINITIONS.

1.1 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 BPA.

2. THE LEASED PREMISES.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor for the term set forth in Section 3 below, at the rental and pursuant to the provisions set forth herein, the real property (the "Leased Premises," which shall have the same meaning as the term Project Site in the BPA) described in the legal description attached hereto as Exhibit "A" for the purpose of allowing the Lessee to construct and operate the Processing Facility and any related facilities and deliver the output therefrom to one or more purchasers. Except to the extent explicitly stated in

this Lease or the BPA, 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.

3. TERM OF LEASE.

The term of this Lease shall commence on the Effective Date and shall continue in full force and effect for as long as the BPA remains in effect, and this Lease shall terminate upon the expiration or termination, for any reason, of the BPA and shall be renewed or extended to the same extent that the BPA is renewed or extended.

4. RENT.

4.1 Rent Amount. In consideration for leasing the Leased Premises, Lessee shall pay to Lessor during the Term of this Lease without setoff or deduction, Rent in the amount of $5,200.00 per year, plus applicable taxes, levies or other assessments. Lessee's obligation to pay Rent under this Lease coincides with and commences on the day Commencement of Construction occurs.

4.2 Rent Schedule. Rent payable for the calendar year in which Commencement of Construction occurs, will be pro-rated beginning on the Commencement of Construction date and ending on December 31st of that calendar year. Thereafter, the Rent shall be paid in advance by Lessee annually, beginning on the January 1st of each calendar year following the year in which Commencement of Construction occurs; provided, that Lessee may elect to pay all rent due for the entire Term of this Lease as a lump sum within sixty (60) days after the Commercial Operations Date. In the event that Lessee pays the rent as a lump sum and the Lease is later terminated for any reason other than a default by Lessee under this Lease or the BPA, Lessor shall repay a *pro rata* portion of the advance Rent.

4.3 Payments. All payments of rent must be made and paid by Lessee to Lessor at:

City of Phoenix
P.O. Box 29115
Phoenix AZ 85038-9115

or at such other place as Lessor may, from time to time, designate in writing, and such rent will come due and be paid in each instance on the date it is due. If no place is specified as the place at which Lessor desires the rent to be paid, then it will be paid at the last place in which the rent was paid or was specified to be paid. All rent must be payable in current legal tender of the United States. Any extension, indulgence, or waiver granted or permitted by Lessor in the time, manner or mode of payment of rent, upon any given occasion, may not be construed as a continuing extension, indulgence or waiver, and will not preclude Lessor from demanding strict compliance herewith.

5. USE OF PREMISES, IMPROVEMENTS AND EQUIPMENT.

5.1 Use. The Parties have entered into the BPA whereby Lessor has agreed to sell and Lessee has agreed to purchase Biogas produced by the Plant. The Leased Premises may be used by Lessee for those purposes consistent with the construction, operation and maintenance of Biogas processing, transportation and use facilities. Lessee agrees that in using the Leased Premised, Lessee shall at all times, possess all necessary construction or operating permits and licenses as required by law. Lessee shall have the right to enter the Leased Premises at any time. Lessee has the right at its sole cost and expense to erect, maintain and operate on the Premises all facilities necessary or convenient to conduct the Project, including without 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") subject to Lessee obtaining all required governmental approvals, stipulations, modifications, variances or permits necessary for the permitted use. In connection therewith, Lessee has the right at its sole cost and expense to perform all work necessary to prepare, maintain and alter the Leased Premises for Lessee's business operations. In addition, Sections 2.01(b) (Processing Facility Use) and 11.02 (Project Site Use) of the BPA are 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 Leased Premises. Title to any Improvements, whether situated or erected on the Leased Premises, as permitted herein, or any alteration, change or addition thereto, shall remain solely in Lessee, or in one or more Financing Parties.

7. CONSTRUCTION, IMPROVEMENTS AND ALTERATION.

7.1 Construction Costs. The entire cost of the Processing Facility and any Improvements shall be paid by Lessee. Lessee must keep the Leased Premises and the Improvements to be constructed thereon at all times free and clear of all liens and encumbrances arising out of, or claimed by reason of, any work performed, material furnished or obligations incurred by or at the instance of Lessee, and must indemnify, defend and save Lessor harmless for all such liens or claims of lien and all attorneys' fees and other costs and expenses incurred by reason thereof.

7.2 Personal Property, Equipment and Fixtures. Section 5.13 (Surrender) of the BPA is incorporated herein by reference.

7.3 Repairs and Ordinary Maintenance. From and after the Effective Date, Lessee, at its sole cost and expense, shall keep and maintain the Leased Premises in a clean and neat condition, consistent with all applicable federal, state, county, and city laws, rules, regulations and ordinances, including, without limitation, those relating to environmental and health. Section 5.12 of the BPA is incorporated herein by reference.

7.4 Dust Control; Compliance with Applicable Laws. Lessee must comply with all applicable environmental laws, including those particularly described in the BPA and incorporated herein by this reference. All dust control required for Lessee's use of the Leased Premises or required by any law, rule, regulation or ordinance, shall be at the cost of Lessee. Dust control shall include, without limitation, treatment with a dust inhibiting agent on all primary and non-primary surface roads on the Leased Premises used exclusively in connection with the Project in accordance with all applicable laws.

Lessee must pay all fines for penalties resulting from any violation of dust control or other environmental laws caused by Lessee or Lessee's contractors or subcontractors. Lessor shall take responsibility for all dust generated by Lessor and those for whom Lessor is responsible.

8. INSURANCE AND INDEMNIFICATION:

8.1 Indemnification. Section 11.02(b) and Article XVIII of the BPA are incorporated herein by reference.

8.2 Required Insurance. Lessee must procure and maintain for the duration of the Lease, insurance against claims for injury to persons or damage to property which may arise from or in connection with this lease. See Insurance Specifications, Exhibit "B" attached hereto and made a part of this Lease. Copies of all required Insurance Certificate(s) indicating such coverage is in full force and shall be provided to Lessor as follows:

City of Phoenix
Finance/Real Estate
251 W. Washington Street, 8thFloor
Phoenix AZ 85003
Lease No. _____

The insurance requirements herein are minimum requirements for the Lease and in no way limit the indemnity covenants contained in this Lease. Lessor in no way warrants that the minimum limits contained herein are sufficient to protect the Lessee from liabilities that might arise out of this Lease. Lessee is free to purchase such additional insurance as Lessee determines necessary.

9. LESSOR PROVIDED SERVICES.

9.1 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 Leased 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 point shall be located at RAC/WAS Pump Station 1 (B-116), and the return interconnection shall

be at either the Plant Decant Station #1 or Plant 1 RAS/WAS Pump Station B-51 along the South Access Road.

9.2 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) a flow at any time of greater than 15 gpm on an average basis or 50 gpm for an instantaneous max for a duration no longer than 30 minutes, 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.

9.3 Po**table Water.** Lessor shall, at no cost to Lessee, supply potable water to the Leased Premises for fire suppression system, facility plumbing 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.

9.4 **Electrical Power.** Lessor shall supply electrical service up to 3,000 kVa to the Leased 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.

10. USE OF COMMON FACILITIES; USAGE FEES; CONSTRUCTION OF ADDITIONAL COMMON FACILITIES.

10.1 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 as more particularly described and set forth in the map attached hereto as Exhibit C (the "Common Facilities"). Lessee's use of any or all of such Common Facilities during the development, construction and operation of the Project shall be subject to Lessor's prior written consent, exercised in its reasonable discretion and upon receipt of a written request from Lessee detailing the specific Common Facilities it desires to use, provided, however, that is Lessor gives its consent, the parties will negotiate in good faith a long-term reasonable agreement for the use of such Common Facilities. Any usage of Common Facilities shall be subject to reasonable usage fees as described in Section 10.2 of this Lease. 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.

10.2 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 reasonable manner between Lessee and Lessor as necessary; provided, that there shall be no

charge for use of Common Facilities related to access, including roads and security gates. Lessor currently estimates that such fees shall be approximately $500.00 per year. Any such fees payable shall be paid together with the Lease Payments.

10.3 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.

10.5 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 10.2 of this Lease.

11. UTILITIES.

11.1 Lessor shall provide utility connections as specified in Exhibit D attached hereto and oriented as depicted in Exhibit E attached hereto. Lessor shall review each drawing of all or any aspect of Connecting Utilities submitted by Lessee within fourteen (14) days 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.

11.2 Lessor is responsible for continuing all utility services as defined in the Appendix to the BPA, however, 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 11, from applicable utility service providers. The equitable "pass-through" cost from all applicable utility service providers shall be charged to and paid by Lessee.

12. ACCESS AND RIGHTS OF WAY.

(a) Access. Section 11.04(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.

13. RESTRICTIONS ON ASSIGNMENT OF LEASE; RESTRICTIONS ON TRANSFER 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 the BPA 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 BPA. Any assignee of the Lease must acknowledge that the Lease is subject to the terms and conditions of the BPA that are incorporated by reference in the Lease.

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

15. TERMINATION.

15.1 Termination Without Liability. Any termination of this Lease that is caused by the termination of the BPA that is specified to occur without liability shall also be without liability under this Lease.

16. DEFAULT AND REMEDIES.

16.1 Default by Lessee. Lessee shall be deemed to be in material default of this Lease, if:

a) Lessee should fail to make payment of rent or other money obligation when due and after receiving thirty (30) days' prior written notice of such non-payment from Lessor;

b) Lessee should vacate or abandon the Leased Premises and the default continues for thirty (30) days after receipt of written notice from Lessor; or

c) Lessee should materially fail to observe or perform any other material provision of this Lease where such failure continues unremedied for thirty (30) consecutive days after receipt of written notice from Lessor; *provided, however*, that if the nature of the failure is such that more than thirty (30) days are required for performance, Lessee shall not be deemed to be in default if Lessee promptly commences substantial remedial performance within thirty (30) days, and thereafter diligently proceeds to completion.

16.2 Remedies of Lessor. If Lessee shall be in material default with respect to any of the covenants herein contained, Lessor shall promptly notify Lessee of the specifics and circumstances of the default in writing, 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 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. If Lessor elects to terminate this Lease, Lessor shall be entitled to receive from Lessee as damages the amount by which the aggregate of rental and other amounts payable by Lessee for the balance of the Lease Term if it were not terminated exceed the then reasonable rental value of

the Leased Premises for such period, in addition to recovering all rental due but unpaid, reasonable attorneys' fees and all costs incurred in recovering the Leased Premises. No remedy in this Lease conferred upon Lessor shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, including, but not limited to, the right to maintain an action to recover all amounts due hereunder. Lessor may exercise its rights and remedies at any time, in any order, to any extent, and as often as Lessor deems advisable.

16.3 Default by Lessor. 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.

16.4 Default Waiver. 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.

17. CONDEMNATION. If all or any part of the Leased Premises shall be condemned, appropriated or otherwise taken for public, quasi-public or any other use under any governmental law, ordinance or regulation, or by right of eminent domain, or by consent to sale in lieu thereof, or access to the Leased Premises shall be impaired by a taking, and such taking substantially interferes with the Project, Lessee shall have the right to terminate this Lease and the BPA without liability on thirty (30) days notice to Lessor provided that said election to terminate shall be made within sixty (60) days after receipt of the notice of said taking. Such termination shall be deemed to be a termination for convenience by Lessor under Section 5.15 of the BPA and Lessee shall have no claim against Lessor for the value of any unexpired portion of the Lease Term. Such deemed termination for convenience shall be deemed to be under Section 5.15(a)(i) unless Lessor gives notice otherwise. In the event of a partial taking which does not result in a termination of this Lease, Base Rent shall be equitably abated. In the event that Lessee elects to terminate this Lease under this Section 17, then all compensation or damages awarded for any such taking or transfer shall belong to and be the property of Lessor.

18. DESTRUCTION OF THE LEASED PREMISES. In the event the Improvements located on the Leased Premises are partially or totally damaged or destroyed, Lessee may elect to terminate this Lease and the BPA 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 5.14 (Surrender) of the BPA.

19. PROHIBITION AGAINST LESSEE CREATING LIENS AGAINST LEASED PREMISES. It is expressly 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 Leased Premises, nor shall the interest or estate of the Lessor in the Leased 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 upon the Leased 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 Leased Premises and the buildings and improvements thereon. Lessee will not permit the Leased 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 Leased 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.

20. 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.

21. 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 21, Lessor will be entitled, in addition to any other rights and remedies, to recover or withhold from Lessee the amount of the gratuity.

22. MISCELLANEOUS.

22.1 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 BPA, provided, that a copy shall also be provided to Lessor at the following address:

To Lessor: City of Phoenix
Water Services Department
200 W. Washington Street, 9th Floor
Phoenix, AZ 85003
Attention: Assistant Water Services Director, Wastewater Division
Telephone No. 602-534-7938
Facsimile No. 602-495-5542

or such other place or places as Lessor may from time to time designate in writing.

22.2 Governing Law. 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.**

22.3 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 BPA in Article XVI thereof.

22.4 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.

22.5 Entire Agreement. This Lease contains the entire agreement of the Parties hereto with respect to the matters covered thereby, and no other agreement, statement or promise made by any Party hereto, or to any employee, officer or agent of any Party hereto, which is not contained herein shall be binding or valid. This Lease supersedes any and all prior oral or written agreements and understandings between the Parties concerning such subject matter.

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

22.7 Lease Binding Upon Successors and Assigns. Each of the terms, covenants and conditions of this Lease shall extend to, and be binding on and inure to the benefit of, Lessor and Lessee, and their successors and assigns.

22.8 Relationship of Parties. The relationship of the Parties hereto is that of Lessor and Lessee. It is expressly understood and agreed that Lessor does not in any way nor for any purpose become a partner, joint venturer, or agent of Lessee in the conduct of Lessee's operations or otherwise.

22.9 Time of the Essence. Time is expressly declared to be of the essence of this Lease.

22.10 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.

22.11 Partial Invalidity. If any term or provision of this Lease is held to be void, invalid or unenforceable by a court of competent jurisdiction, the same shall be severable from the remainder of this Lease and shall not affect or render invalid, void or unenforceable any other provision or term of this Lease. 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.

22.12 Quiet Enjoyment. Lessor warrants that it owns the Leased Premises in fee simple and has rights of access thereto, and has the full right to make a perform this Lease. Upon payment by Lessee of the rents herein provided, and upon the observance and performance of all of the covenants, terms and conditions on Lessee's part to be observed and performed, Lessee shall lawfully, peaceably and quietly hold, occupy and enjoy the Leased Premises for the term without hindrance, including equitably claiming by, through or under Lessor.

22.13 Counterparts. This Lease may be executed in one or more counterparts which, taken together, shall constitute one agreement. Faxed signatures to be followed by originals by a nationally recognized overnight courier or delivery service shall be accepted for closing.

22.14 Incorporation of Exhibits. All Exhibits attached hereto are by this reference incorporated herein as though set forth in full.

22.15 Employment and Organization Disclaimer. This Lease is not intended to, and will not, constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind as existing between the parties, and the rights and the obligations of the parties shall be only those expressly set forth herein. The parties agree that no person supplied by Lessee in the performance of Lessee's obligations under this Lease are Lessor's employees, and no rights under Lessor's Civil Service, retirement, or personnel rules accrue to such persons. Lessee shall have the sole and total responsibility for all salaries, wages, bonuses, retirement, withholding, workers' compensation, occupational disease compensation, unemployment compensations, other employee benefits, and all taxes and premiums appurtenant thereto concerning such persons used by it in the performance of this Agreement, and Lessee shall save and hold Lessor harmless with respect thereto.

22.16 Transactional Conflicts of Interest. As required by the provisions of Arizona Revised Statutes Section 38-511, as amended, notice is hereby given that Lessor may, within three (3) years of its execution, cancel this lease without penalty or further obligations, if any person significantly involved in initiating, negotiation, securing, drafting or creating this Lease on behalf of Lessor is, at any time while this Lease or any extension of this Lease is in effect, an employee or agent of Lessee or a consultant to Lessee with respect to the subject matter of this Lease. The cancellation shall be effective when written notice from Lessor is received by Lessee unless the notice specifies a later time. In addition to the right to cancel this Lease, Lessor may recoup any fee or commission paid or due to any person significantly involved in initiating,

negotiating, securing, drafting or creating this Lease in behalf of Lessor from Lessee arising as a result of this Lease.

22.17 Compliance With The Immigration Reform and Control Act of 1986 (IRCA). Lessee understands and acknowledges the applicability of the IRCA to it. Lessee shall comply with the IRCA in performing this Lease and shall permit Lessor to verify such compliance.

22.18 Anti-Discrimination in Employment. Lessee shall comply with the provisions of this Lease, and with the requirements of Chapter 18, Phoenix City Code, Articles 4 and 5 pertaining to discrimination in the acceptance of applications and in the hiring of employees. In this context the following language is required to appear:

> Lessee, in performing under this Lease, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. Lessee will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, 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. The Lessee further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Lease, and that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by Lessee. If Lessee employs more than 35 employees, Lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

22.19 Legal Worker Provisions. The Lessor is prohibited by A.R.S. §41-4401 from awarding an agreement to any entity who fails, or whose subcontractors fail, to comply with A.R.S. §23-214(A).

a) Lessee warrants its compliance with all federal immigration laws and regulations that relate to their employees and their compliance with §23-214, subsection A.

b) A breach of warranty under this section shall be deemed a material breach of the Lease and is subject to penalties up to and including termination of the Lease.

c) The Lessor retains the legal right to inspect the papers of the Lessee or employee(s).

22.20 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 Lease and the transactions contemplated hereby.

22.21 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.

22.22 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.

22.23 Time is of the Essence. Time is of the essence in the Parties' performance of their obligations under this Lease.

22.24 Rules of Interpretation. Sections 1.06 (Rules of Interpretation) and 1.07 (Agreement Authorship; Construe Agreement with Lease) of the BPA is incorporated herein by reference.

22.25 Successor and Assigns. This Lease shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Lease has been executed by the Parties hereto as of the date and year first hereinabove written.

LESSOR:

CITY OF PHOENIX, a municipal corporation
ED ZUERCHER, CITY MANAGER

By:_____
Kathryn Sorensen
Water Services Director

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

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

1235229v1

EXHIBIT "A"

DESCRIPTION OF THE LEASED PREMISES

BIOGAS PROJECT LEASE – EXHIBIT A

LEGAL DESCRIPTION FOR HITBU PLANT:

THAT PORTION OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE GILA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE COMMON CORNER TO SECTIONS 27, 28, 33 AND 34 OF SAID TOWNSHIP FROM WHICH THE COMMON QUARTER CORNER TO SAID SECTIONS 27 AND 28 BEARS NORTH 2°41'52" WEST A DISTANCE OF 2682.13;

THENCE ALONG THE COMMON LINE BETWEEN SAID SECTIONS 27 AND 34 SOUTH 89°59'57" EAST 2632.60 FEET TO THE COMMON QUARTER CORNER TO SAID SECTIONS 27 AND 34;

THENCE ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 27, NORTH 02°45'44" WEST 823.40 FEET;

THENCE EAST 54.35 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 320.00 FEET;

THENCE EAST 180.00 FEET;

THENCE SOUTH 320.00 FEET;

THENCE WEST 180.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 57600 SQUARE FEET OR 1.322 ACRES, MORE OR LESS.

SUNRISE ENGINEERING
2152 SOUTH VINEYARD, SUITE 123
MESA, ARIZONA 85210
TEL 480.768.8600 · FAX 480.768.8609
www.sunrise-eng.com

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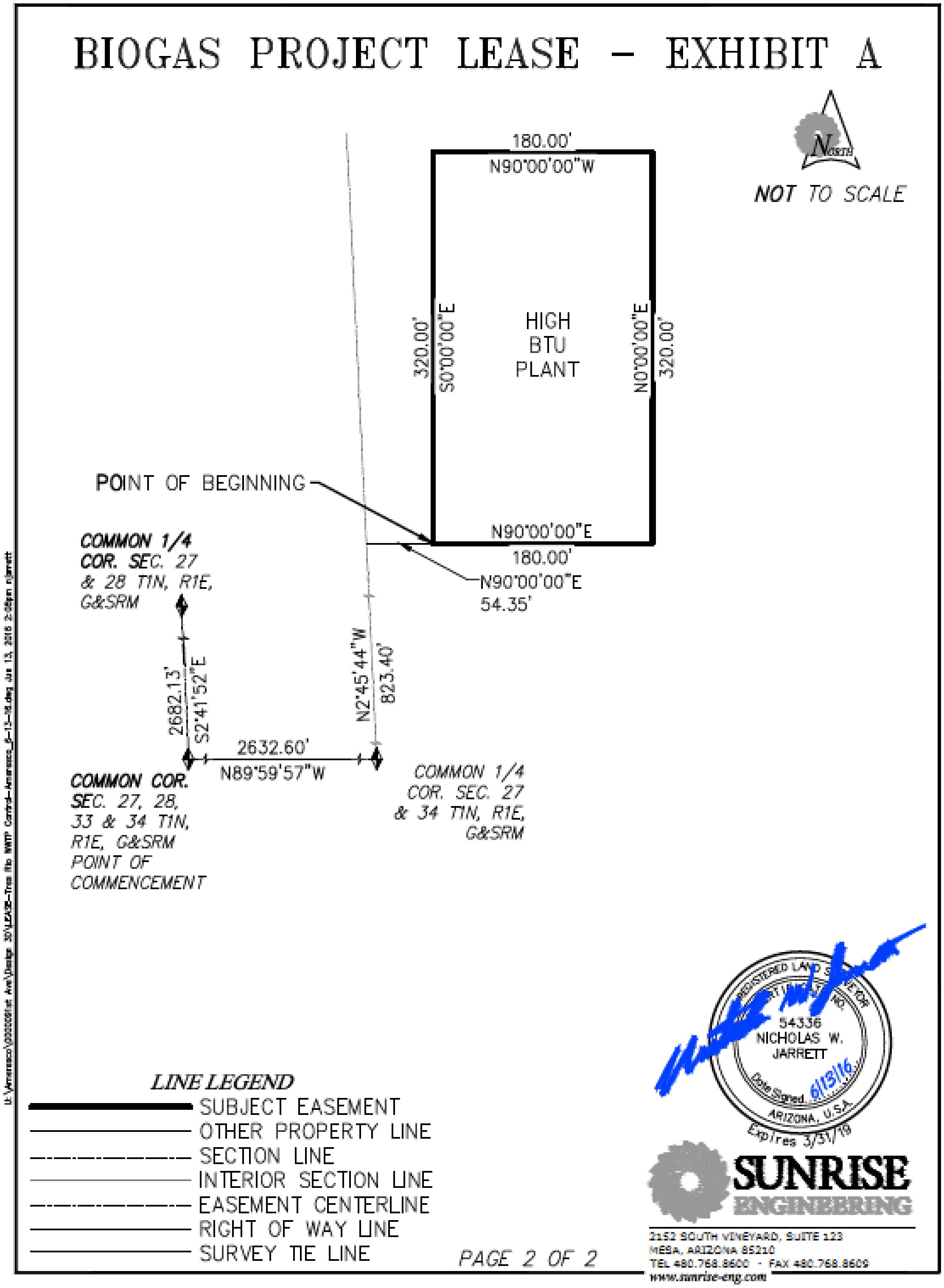
BIOGAS PROJECT LEASE – EXHIBIT A
NOT TO SCALE
180.00'
N90°00'00"W
HIGH
BTU
PLANT
320.00'
S0°00'00"E
N0°00'00"E
320.00'
POINT OF BEGINNING
N90°00'00"E
180.00'
N90°00'00"E
54.35'
COMMON 1/4
COR. SEC. 27
& 28 T1N, R1E,
G&SRM
2682.13'
S2°41'52"E
N2°45'44"W
823.40'
2632.60'
N89°59'57"W
COMMON COR.
SEC. 27, 28,
33 & 34 T1N,
R1E, G&SRM
POINT OF
COMMENCEMENT
COMMON 1/4
COR. SEC. 27
& 34 T1N, R1E,
G&SRM
LINE LEGEND
SUBJECT EASEMENT
OTHER PROPERTY LINE
SECTION LINE
INTERIOR SECTION LINE
EASEMENT CENTERLINE
RIGHT OF WAY LINE
SURVEY TIE LINE
PAGE 2 OF 2
54336
NICHOLAS W.
JARRETT
Date Signed 6/13/16
ARIZONA, U.S.A.
Expires 3/31/19
SUNRISE
ENGINEERING
2152 SOUTH VINEYARD, SUITE 123
MESA, ARIZONA 85210
TEL 480.768.8600 - FAX 480.768.8609
www.sunrise-eng.com

EXHIBIT "B"

INSURANCE REQUIREMENTS

EXHIBIT "B"

INSURANCE REQUIREMENTS

LESSEE shall procure and maintain for the duration of the Lease, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Lease.

The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. The City in no way warrants that the minimum limits contained herein are sufficient to protect the LESSEE from liabilities that might arise out of this Lease. LESSEE is free to purchase such additional insurance as LESSEE determines necessary. Some or all of the insurance requirements listed below may be Self-Insured by the LESSEE .

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** LESSEE shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	$2,000,000
Products – Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Damage to Rented Premises)	$100,000

2. **Property Insurance**

Coverage for Lessee's improvements	Replacement Value
Coverage on building (required if Lessee is sole occupant)	Replacement Value

a. Property insurance shall be written on an all risk, replacement cost coverage, including coverage for flood and earth movement, subject to customary sublimits.

b. Policy shall be in force at the time of substantial completion of the facility's construction and continue until the termination of the ground lease or until title to the facility passes to the City of Phoenix, whichever is earlier.

B. **NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Lease, the Lessee must provide to the City, within five (5) business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to**: City of Phoenix, Finance/Real Estate, Attn: Property Management, 251 West Washington Street, 8th Floor, Phoenix, AZ 85003**

C. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

D. **VERIFICATION OF COVERAGE:** LESSEE shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Lease. A self-insurance letter is acceptable in lieu of certificate. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before the Lease commences. Each insurance policy required by this Lease must be in effect at or prior to commencement of this Lease and remain in effect for the duration of the Lease. Failure to maintain the insurance policies as required by this Lease or to provide evidence of renewal is a material breach of contract.

All certificates required by this Lease shall be sent directly to **City of Phoenix, Finance/Real Estate, Attn: Property Management, 251 West Washington Street, 8th Floor, Phoenix, AZ 85003.** The City Department, Lease agreement number and location description are to be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Lease at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

E. **APPROVAL:** Any modification or variation from the insurance requirements in this Lease must have prior approval from the City of Phoenix Law Department, whose decision shall be final. Such action will not require a formal lease amendment, but may be made by administrative action.

EXHIBIT "C"

COMMON FACILITIES MAP

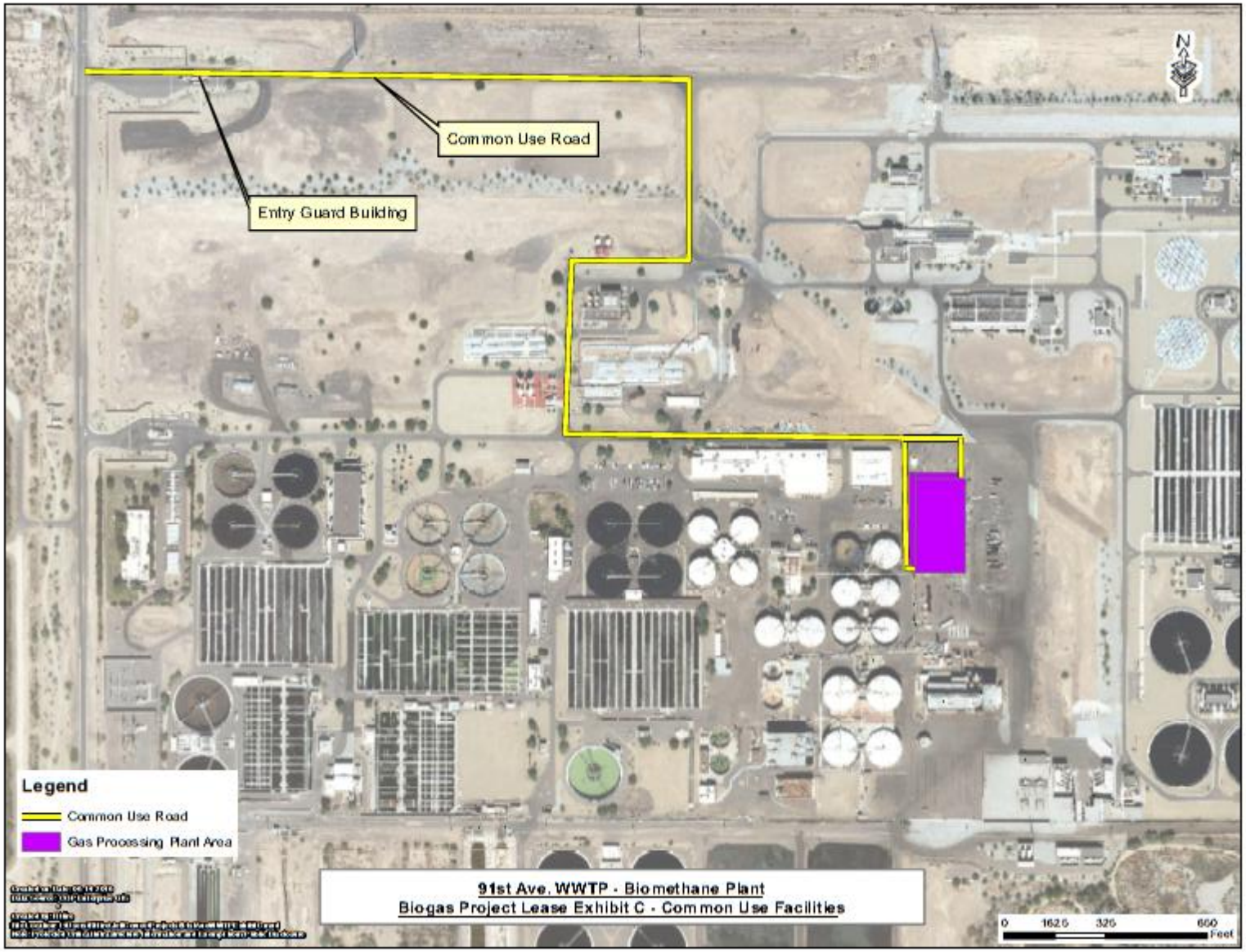
Common Use Road
Entry Guard Building
N
Legend
Common Use Road
Gas Processing Plant Area
91st Ave. WWTP - Biomethane Plant
Biogas Project Lease Exhibit C - Common Use Facilities
0
162.5
325
650
Feet

EXHIBIT "D"

PROCESSING FACILITY UTILITY CONNECTIONS

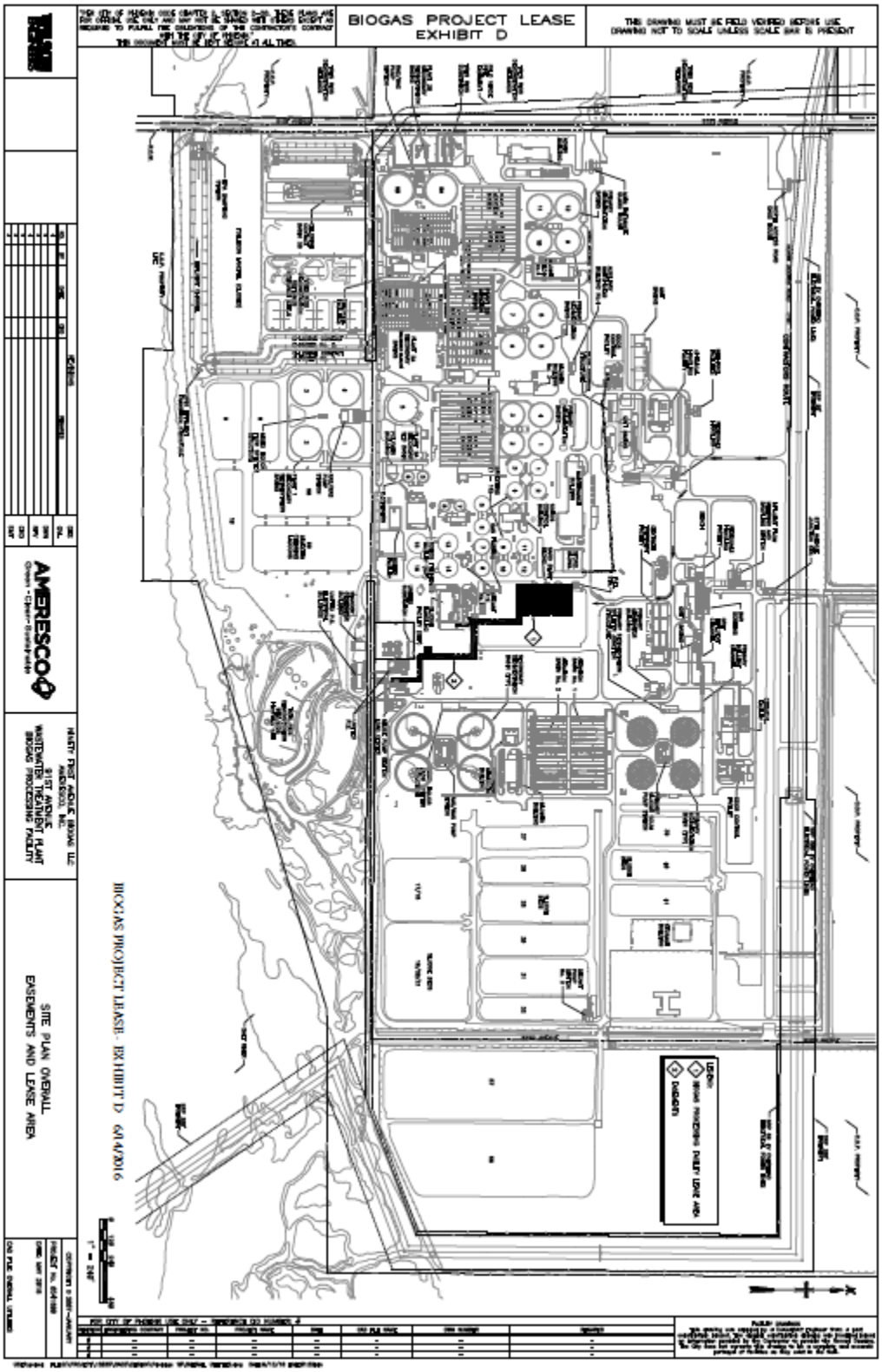
BIOGAS PROJECT LEASE
EXHIBIT D
THIS DRAWING MUST BE FIELD VERIFIED BEFORE USE.
DRAWING NOT TO SCALE UNLESS SCALE BAR IS PRESENT
BIOGAS PROJECT LEASE - EXHIBIT D 6/14/2016
SITE PLAN OVERALL
EASEMENTS AND LEASE AREA
91ST AVENUE
WASTEWATER TREATMENT PLANT
BIOGAS PROCESSING FACILITY
AMERESCO

EXHIBIT "E"

UTILITY CONNECTIONS ORIENTATION FIGURE

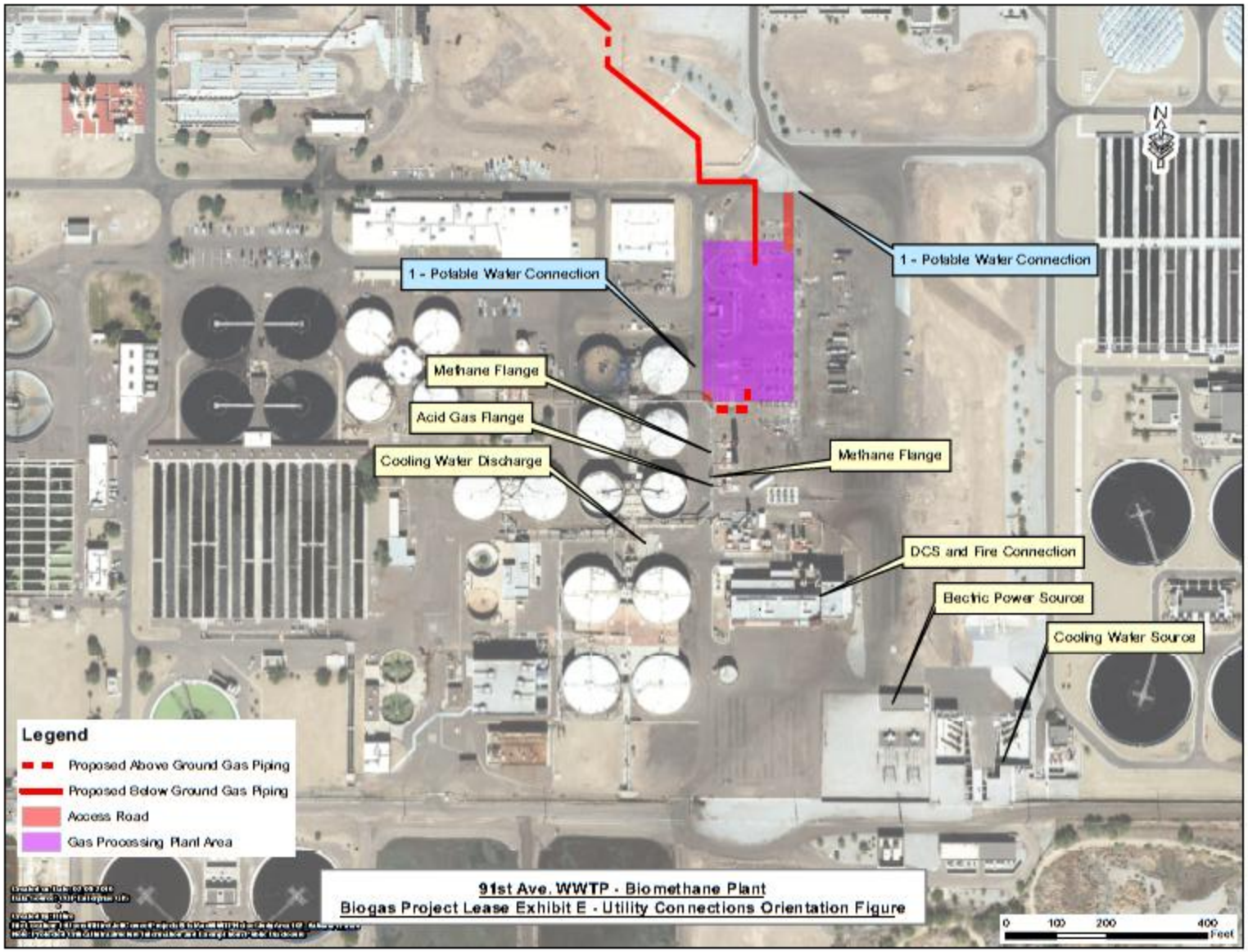
1 - Potable Water Connection
1 - Potable Water Connection
Methane Flange
Acid Gas Flange
Cooling Water Discharge
Methane Flange
DCS and Fire Connection
Electric Power Source
Cooling Water Source
N
Legend
Proposed Above Ground Gas Piping
Proposed Below Ground Gas Piping
Access Road
Gas Processing Plant Area
91st Ave. WWTP - Biomethane Plant
Biogas Project Lease Exhibit E - Utility Connections Orientation Figure
0
100
200
400
Feet

Exhibit B

Developer Permit Summary

Exhibit B

Developer Permit Summary

Overall Project

1. City of Phoenix Office of Environmental Programs – CWA Section 404 /Biological Resources Initial Assessment and Recommendations
2. City of Phoenix Building Permit – Annual Facilities Program submittal process and includes Fire Marshall review
3. Maricopa County Environmental Services Department Approval to Construct (ATC)
4. Maricopa County Environmental Services Department Approval of Construction (AOC)

High Pressure Gas Pipeline:

1. Arizona Public Service ("APS") approval and easement agreement for the natural gas pipeline crossing of the cooling water pipeline that pipes cooling water to the Palo Alto Nuclear Power Plant.
2. Arizona Corporation Commission ("ACC")
3. Army Corp of Engineers 404 /408 Permit
4. U.S. Fish and Wildlife Threatened or Endangered Species Review.
5. Salt River Project ("SRP") approval and easement agreement for the natural gas pipeline
6. City of Tolleson - Permit required when crossing waste water lines.
7. City of Phoenix – Revocable Permit for 91st Avenue roadway crossing /encroachment

High Btu Treatment Facility:

1. Maricopa County Air Quality Department – Air Permit

Exhibit C

Insurance Requirements

Exhibit C

INSURANCE REQUIREMENTS

I. Insurance Requirements – Construction Phase:

Developer shall procure and maintain, and shall cause all contractors and subcontractors working on the Project to procure and maintain, until the latter of when all of their obligations have been discharged in connection with construction of the Project or until the Commercial Operations Date, insurance against claims for injury to persons or damage to property that might arise from or in connection with Developer's activities and work under the BPA or on the Project, including its employees, representatives, agents, contractors, subcontractors, and material men.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

The City in no way warrants that the minimum limits contained herein are sufficient to protect Developer from liabilities that might arise from or in connection with Developer's activities and work under the BPA or on the Project, including its employees, representatives, agents, contractors, subcontractors, and material men. Developer is free to purchase such additional insurance as it may be determined necessary.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Developer shall provide coverage with limits of liability not less than those stated below:

A. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	$2,000,000
Products- Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Excess Liability – "Following Form"	$10,000,000

The policy shall be endorsed to include blanket additional insured language.

B. Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance under this Agreement.

Combined Single Limit (CSL)	$1,000,000

The policy shall be endorsed to include blanket additional insured language.

C. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$100,000
Disease – Each Employee	$100,000
Disease – Policy Limit	$500,000

Policy shall contain a waiver of subrogation against the City of Phoenix.

D. Pollution Legal Liability (including Errors & Omissions)

Per Occurrence	$1,000,000
General Aggregate	$2,000,000

a. The policy shall provide for complete professional service coverage, including coverage for pollution liability that is the result of a breach of professional duties.
b. The policy shall provide for protection against claims for third-party bodily injury, property damage, or environmental damage caused by pollution conditions resulting from contracting activities for which any or all of the Developer, and its contractors, subcontractors, and material men, are legally liable.
c. The policy shall provide for cleanup costs when mandated by governmental entities, when required by law, or as a result of third-party claims.
d. The policy shall be endorsed to include blanket additional insured language.
e. If during the development, construction and installation phases of the Project, the transportation of any hazardous materials or regulated substances is required, then the policy shall provide coverage for claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo.
f. For a claims made policy, Developer warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

E. Builder's Risk Insurance or Installation Floater

In an amount equal to the initial Contract Amount for the construction of the facility plus additional coverage equal to Contract Amount for all subsequent change orders.

a. Coverage shall be written on all risk, replacement cost basis and shall include coverage for soft costs, flood and earth movement, subject to customary sublimits.
b. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy.
c. Policy must provide coverage from the time any covered property becomes the responsibility of the Developer, and continue without interruption during

construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

d. Policy shall contain a waiver of subrogation against the City of Phoenix.
e. Developer is responsible for the payment of all policy deductibles.

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix shall be an additional insured to the full limits of the liability purchased by the Developer, and its contractors, subcontractors, and material men, even if those limits of liability are in excess of those required by this Agreement.
2. With the exception of Workers Compensation, Developer's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources to the extent of Developer's negligence.

NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City; except ten (10) days for nonpayment of premiums. Such notice shall be sent directly to City of Phoenix, Water Services Department, 200 W. Washington Street, 9th Floor, Phoenix, Arizona 85003, Attention: Assistant Water Services Director, Wastewater Division and shall be sent by certified mail, return receipt requested.

ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Developer from potential insurer insolvency.

VERIFICATION OF COVERAGE: Developer shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Agreement shall be sent directly to City of Phoenix, Water Services Department, 200 W. Washington Street, 9th Floor, Phoenix, Arizona 85003, Attention: Assistant Water Services Director, Wastewater Division. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.

SUBCONTRACTORS: Developers' certificate(s) shall include all subcontractors as additional insureds under its policies or Developer shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements indentified above.

APPROVAL: Any modification or variation from the insurance requirements in this Agreement shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

II. Insurance Requirements – Operations Phase:

Developer, and/or the tenant under the Lease, shall procure and maintain, and shall cause all contractors and subcontractors working on the Project to procure and maintain, from the Commercial Operations Date until all of their obligations have been discharged in connection with operation and maintenance of the Project, insurance against claims for injury to persons or damage to property that might arise from or in connection with Developer's activities and work under the BPA or on the Project, including its employees, representatives, agents, contractors, subcontractors, and material men.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

The City in no way warrants that the minimum limits contained herein are sufficient to protect Developer, and/or the tenant under the Lease, from liabilities that might arise from or in connection with Developer's activities and work under the BPA or on the Project, including its employees, representatives, agents, contractors, subcontractors, and material men. Developer, and/or the tenant under the Lease, is free to purchase such additional insurance as it may be determined necessary.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Developer, and/or the tenant under the Lease, shall provide coverage with limits of liability not less than those stated below:

A. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	$2,000,000
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Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Excess Liability – "Following Form"	$10,000,000

The policy shall be endorsed to include blanket additional insured language.

B. Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL)	$1,000,000

The policy shall be endorsed to include blanket additional insured language.

C. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$100,000
Disease – Each Employee	$100,000
Disease – Policy Limit	$500,000

Policy shall contain a waiver of subrogation against the City of Phoenix.

D. Pollution Legal Liability

Per Occurrence	$1,000,000
General Aggregate	$2,000,000

a. The policy shall provide for complete professional service coverage, including coverage for pollution liability that is the result of a breach of professional duties.
b. The policy shall provide for protection against claims for third-party bodily injury, property damage, or environmental damage caused by pollution conditions resulting from contracting activities for which any or all of the Developer, and its contractors, subcontractors, and material men, are legally liable.
c. The policy shall provide for cleanup costs when mandated by governmental entities, when required by law, or as a result of third-party claims.
d. The policy shall be endorsed to include blanket additional insured language.
e. If during the operational phase of the Project, the transportation of any hazardous materials or regulated substances is required, then the policy shall provide coverage for claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo.

f. For a claims made policy, Developer warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

E. Property Insurance

Coverage on building (required if Lessee is sole occupant) Replacement Value
Coverage for Lessee's tenant improvements Replacement Value

a. Property insurance shall be written on an all risk, replacement cost coverage, including coverage for flood and earth movement, subject to customary sublimits.

b. Policy shall be in force at the time of substantial completion of the facility's construction and continue until the termination of the ground lease or until title to the facility passes to the City of Phoenix, whichever is earlier.

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. With the exception of Workers Compensation, Developer's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources to the extent of Developer's negligence.

NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City; except ten (10) days for nonpayment of premiums. Such notice shall be sent directly to City of Phoenix, Water Services Department, 200 W. Washington Street, 9th Floor, Phoenix, Arizona 85003, Attention: Assistant Water Services Director, Wastewater Division and shall be sent by certified mail, return receipt requested.

ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Developer from potential insurer insolvency.

VERIFICATION OF COVERAGE: Developer shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at

or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Agreement shall be sent directly to City of Phoenix, Water Services Department, 200 W. Washington Street, 9th Floor, Phoenix, Arizona 85003, Attention: Assistant Water Services Director, Wastewater Division. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.

SUBCONTRACTORS: Developers' certificate(s) shall include all subcontractors as additional insureds under its policies or Developer shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

APPROVAL: Any medication or variation from the insurance requirements in this Agreement shall be made by the Law Department, whose decision shall be final. Such actions will not require a formal Agreement amendment, but may be made by administrative action.

Exhibit D

Parties Designated Representatives

Exhibit D

Designated Representatives

The initial Designated Representatives and Alternate Individual Employees for purposes of Section 3.03 of this Agreement are as follows:

For Phoenix

Designated Representative: City of Phoenix
Water Services Department
200 W. Washington Street, 9th Floor
Phoenix, AZ 85003
Attn: Assistant Water Services Director,
Wastewater Division
Telephone: (602) 534-7938
Facsimile: (602) 495-5542

Alternate Invidual Employee: City of Phoenix
Water Services Department
200 W. Washington Street, 9th Floor
Phoenix, AZ 85003
Attn: Assistant Water Services Director,
Wastewater Division
Telephone: (602) 534-7938
Facsimile: (602) 495-5542

For Developer

Designated Representative: Ninety-First Avenue Renewable Biogas LLC
111 Speen Streeet, Suite 410
Framingham, MA 01701
Attn: Senior VP, Renewable Energy
Telephone: (508) 661-2200
Facsimile: (508) 661-2201

Alternate Individual Employee: Ninety-First Avenue Renewable Biogas LLC
111 Speen Streeet, Suite 410
Framingham, MA 01701
Attn: General Counsel
Telephone: (508) 661-2200
Facsimile: (508) 661-2201

Exhibit E

Map and Legal Description of Project Site

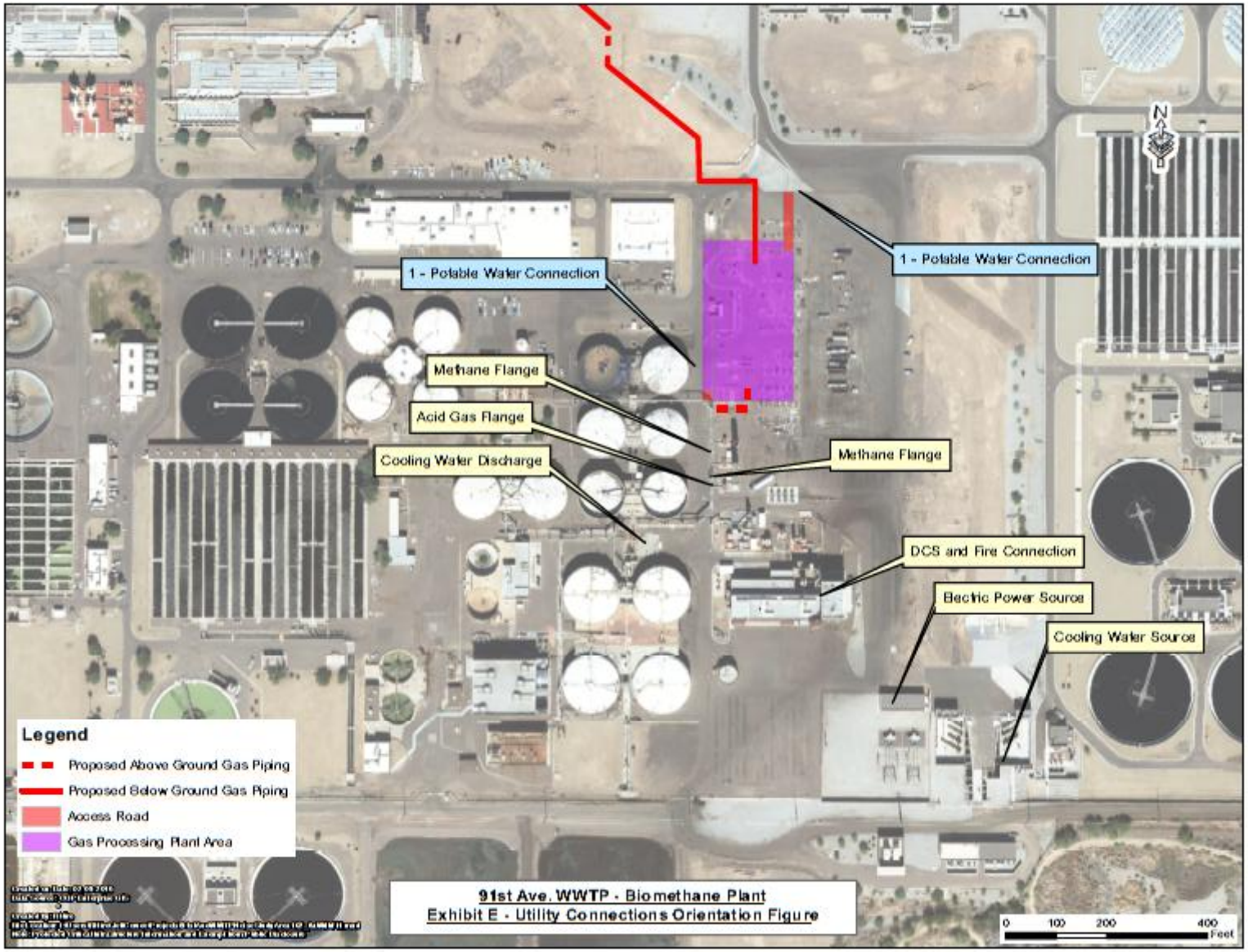

1 - Potable Water Connection
1 - Potable Water Connection
Methane Flange
Acid Gas Flange
Cooling Water Discharge
Methane Flange
DCS and Fire Connection
Electric Power Source
Cooling Water Source
N
Legend
Proposed Above Ground Gas Piping
Proposed Below Ground Gas Piping
Access Road
Gas Processing Plant Area
91st Ave. WWTP - Biomethane Plant
Exhibit E - Utility Connections Orientation Figure
0
100
200
400
Feet

EXHIBIT E

LEGAL DESCRIPTION FOR HITBU PLANT:

THAT PORTION OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE GILA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE COMMON CORNER TO SECTIONS 27, 28, 33 AND 34 OF SAID TOWNSHIP FROM WHICH THE COMMON QUARTER CORNER TO SAID SECTIONS 27 AND 28 BEARS NORTH 2°41'52 WEST A DISTANCE OF 2682.13;

THENCE ALONG THE COMMON LINE BETWEEN SAID SECTIONS 27 AND 34 SOUTH 89°59'57" EAST 2632.60 FEET TO THE COMMON QUARTER CORNER TO SAID SECTIONS 27 AND 34;

THENCE ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 27, NORTH 02°45'44" WEST 823.40 FEET;

THENCE EAST 54.35 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 320.00 FEET;

THENCE EAST 180.00 FEET;

THENCE SOUTH 320.00 FEET;

THENCE WEST 180.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 57600 SQUARE FEET OR 1.322 ACRES, MORE OR LESS.

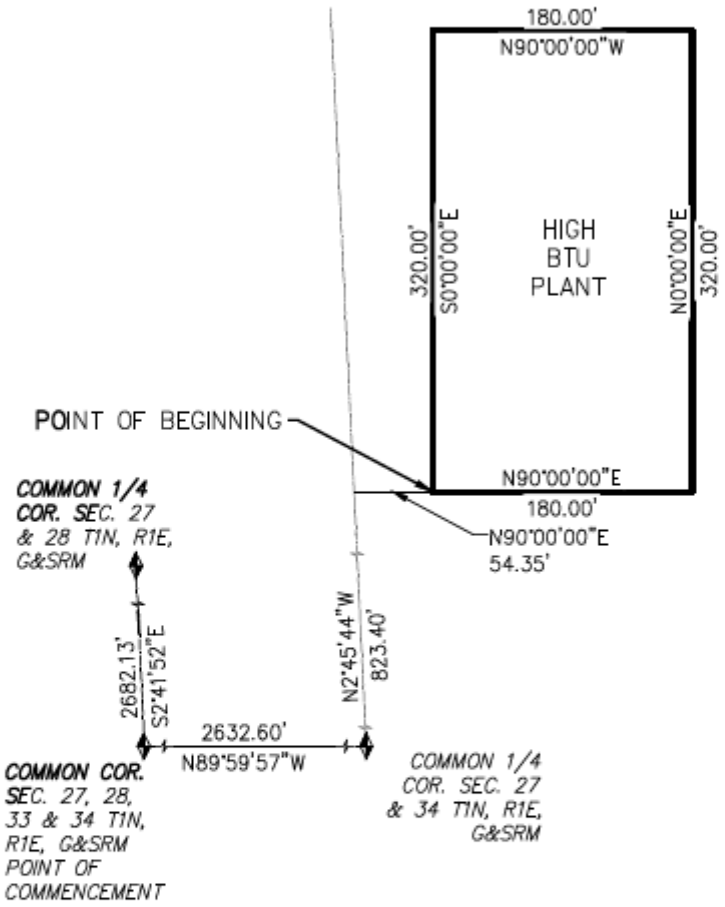
REGISTERED LAND SURVEYOR
54336
NICHOLAS W.
JARRETT
Date Signed 6/13/16
ARIZONA, U.S.A.
Expires 3/31/19

SUNRISE ENGINEERING

2152 SOUTH VINEYARD, SUITE 123
MESA, ARIZONA 85210
TEL 480.768.8600 · FAX 480.768.8609
www.sunrise-eng.com

EXHIBIT E

NOT TO SCALE



LINE LEGEND

- SUBJECT EASEMENT
- OTHER PROPERTY LINE
- SECTION LINE
- INTERIOR SECTION LINE
- EASEMENT CENTERLINE
- RIGHT OF WAY LINE
- SURVEY TIE LINE

REGISTERED LAND SURVEYOR
54336
NICHOLAS W.
JARRETT
Date Signed 6/13/16
ARIZONA, U.S.A.
Expires 3/31/19

SUNRISE ENGINEERING
2152 SOUTH VINEYARD, SUITE 123
MESA, ARIZONA 85210
TEL 480.768.8600 · FAX 480.768.8609
www.sunrise-eng.com

PAGE 2 OF 2

Exhibit F

Schematic of Biogas Delivery Point

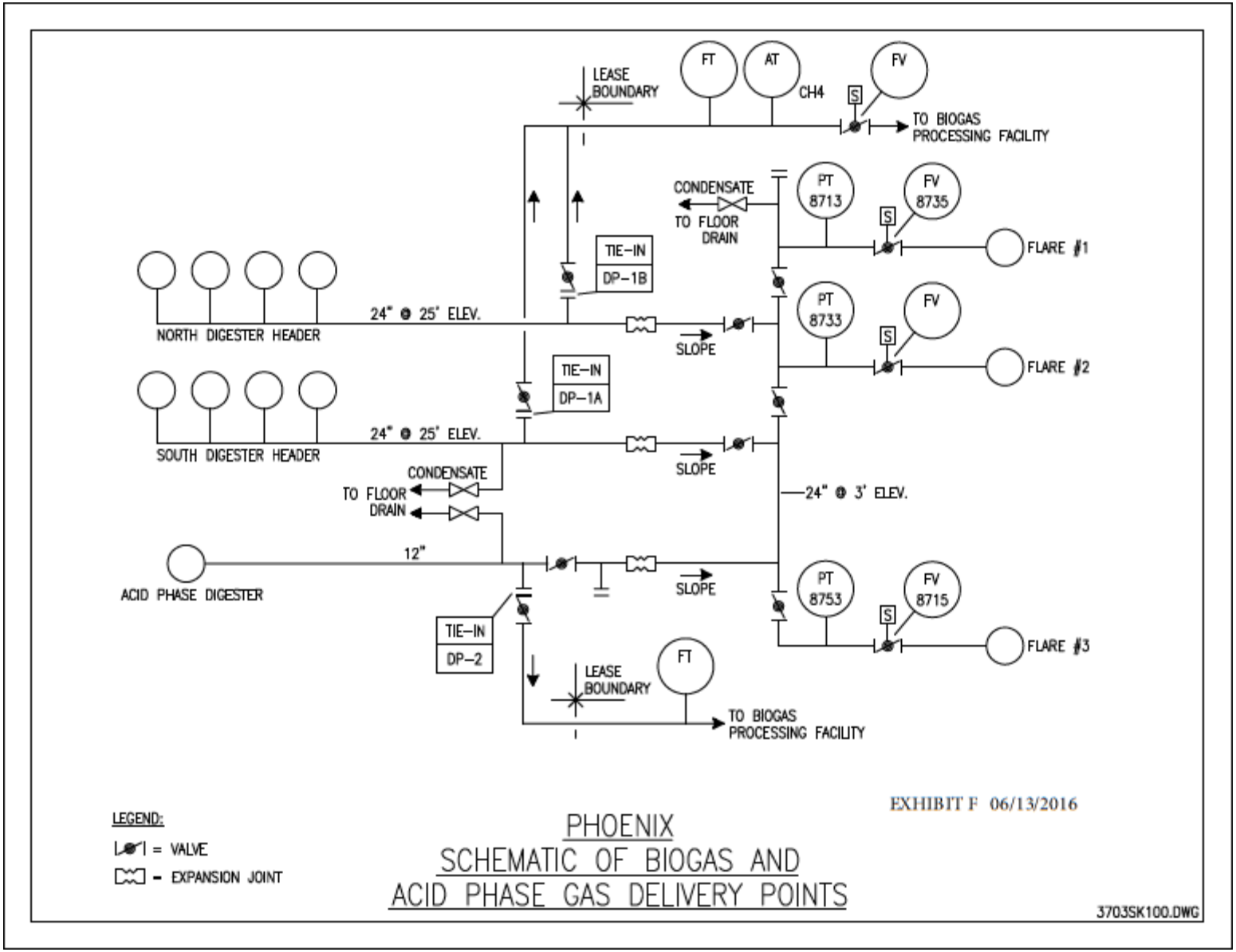

FT
AT
CH4
FV
S
LEASE BOUNDARY
TO BIOGAS PROCESSING FACILITY
CONDENSATE
TO FLOOR DRAIN
PT 8713
FV 8735
FLARE #1
TIE-IN
DP-1B
24" @ 25' ELEV.
NORTH DIGESTER HEADER
SLOPE
PT 8733
FV
FLARE #2
TIE-IN
DP-1A
SOUTH DIGESTER HEADER
24" @ 25' ELEV.
SLOPE
CONDENSATE
TO FLOOR DRAIN
24" @ 3' ELEV.
12"
ACID PHASE DIGESTER
SLOPE
PT 8753
FV 8715
FLARE #3
TIE-IN
DP-2
LEASE BOUNDARY
FT
TO BIOGAS PROCESSING FACILITY
LEGEND:
= VALVE
= EXPANSION JOINT
EXHIBIT F 06/13/2016
PHOENIX
SCHEMATIC OF BIOGAS AND
ACID PHASE GAS DELIVERY POINTS
3703SK100.DWG

Exhibit G

Biogas Metering Standards

EXHIBIT G

BIOGAS AND ACID PHASE GAS METERING STANDARDS

SUMMARY:

The Biogas shall be measured utilizing the following main components:

- Gas Chromatograph (GC) to determine the BTU content, composition and density of the Biogas
- Oxygen Analyzer to determine oxygen content of the Biogas
- Venturi, V-cone, orifice or rotary positive displacement flow meters to measure the flow rate of the Biogas
- Programmable Logic Controller (PLC) to calculate, totalize and store gas usage data
- Panelview Display and/or Human Machine Interface (HMI) to display the gas quality and the totalized volume and BTU energy metered.

The Gas Chromatograph (GC) shall be provided by Developer and located at a point in the process piping after the gas has been dehydrated. The gas chromatograph shall sample the Biogas at least once every 4 hours and be calibrated at least once per month.

The Oxygen Analyzer shall be provided by Developer.

Venturi, V-cone , orifice or rotary positive displacement flow meters shall be provided by Developer and located at the Developer's Facility in addition to a gas metering panel.

The BTU content measured by the GC will be relayed to the gas metering panel PLC via Ethernet connection. The PLC shall use the gas quality received from the GC and measured gas flow rate(s) to determine the instantaneous BTU usage rate(s). In the event that the GC data quality is bad the PLC will use a pre-determined "typical" gas quality for calculations.

The PLC shall totalize the accumulated BTU usage from the calculated BTU rate at 1 second intervals. The PLC shall maintain a daily and monthly totalized BTU rate, as well as final usage totals for the previous month. The Developer's HMI shall display the current gas flow(s) and Btu usage rate(s) of the Biogas, as well as the current gas quality as received from the GC. The HMI shall also record the accumulated BTU usage and gas quality at 15 minute intervals for backup data protection. The PLC and HMI shall be provided with conditioned UPS power to ensure no loss of data. Electronic components shall be housed within a NEMA-4 (outdoor) or NEMA-12 (indoor) enclosure for protection.

The Acid phase gas stream will have mass flow metering but will not have on line metering of Btu content.

A) GAS CHROMATOGRAPH SPECIFICATION

A1-Gas Btu Determination Includes the following:

- Chromatograph shall be Daniel Model 500, ABB NGC 8203, or equal.

- Sample Conditioning System:
  (1) vapor stream with stream bypass, sample filter, flow control & indication.
  (1) Genie Membrane Separator assembly in by pass configuration.
  (1) Provision for introducing calibration gas standard.

A2-Carrier Gas System

For Chromatograph - includes (2) cylinders of "Zero Grade" helium with dual stage regulators. The helium cylinders are connected by a special manifold that permits replacing empty cylinders without interrupting operation of chromatograph.

A3-Cylinder of Calibration Gas

Certified calibration standard #1 with regulator for this application.

A4-MEASUREMENT

Stream: 1

Stream Name: Biogas

Measurement Units: Mole %

STREAM COMPONENTS		STREAM CONCENTRATION	STREAM MEASUREMENT
Nitrogen	(N_2)	0-80%	0-80%
Oxygen	(O_2)	0-20%	0-20%
Methane	(C_1)	0-60%	0-60%
Carbon Dioxide	(CO_2)	0-60%	0-60%

B) OXYGEN ANALYZER

In addition to the Gas Chromatograph, a separate Oxygen Analyzer shall be used to measure oxygen content. The instrument shall be manufactured by Teledyne, AMI or equal.

C) GAS FLOW MEASUREMENT

Biogas and Acid Phase Gas volume flowrate measurement shall be by either orifice plate or, if greater turndown is necessary by Venturi, Universal Venturi Tube or V-cone. Mass flow measurement shall be temperature and pressure compensated, utilizing Rosemount 3051 series multivariate transmitter or approved equal.

Orifice plate shall be FlowLin MK-52 or Rosemount 1495, 1195 or 3051integral orifice series (or approved equal), meeting ASME and AGA standards.

V-cone primarly elements shall be McCrometer or approved equal, constructed of stainless steel with a designed turndown of at least 8:1.

Rotary positive displacement meter type shall be Roots, series B3 or approved equal, with pressure and temperature compensation.

Venturi tube (UVT) shall be Preso type LPL or SSM design (or approved equal). The gas metering primary element venturi shall be of the pressure differential producing type. The unit shall be designed in accordance with ANSI B31.1 and hydro-tested to 1.5X the design working pressure of the pipe line. Materials of construction shall be stainless steel 316/304, design working pressure and flange rating shall be in accordance with the design specification of the venturi.

The Flow Coefficient (Cd) of the UVT shall have a value of approximately 0.98 and shall be constant for pipe Reynolds Numbers (RD) approximately 75000 and greater. The guaranteed accuracy of the Venturi shall be indicated in the design specification for the Venturi.

Venturi approval data shall include the following:

- Dimensional drawing of the unit.
- Flow vs. Differential Pressure Curves.
- Code calculations per ANSI B 31.1.
- Substantiating data showing the value of the Flow Coefficient (CD).
- Certified dimensional inspection report of the unit.

D) OPERATOR DISPLAY AND BACKUP DATA LOGGER

The primary data logger shall be an Allen Bradley CompactLogix gas metering PLC (or approved equal) with the following programming features.

- Daily standard cubic foot (SFC) and mmBtu totals for each flow meter
- Previous daily SCF and mmBtu totalizers for each meter
- Rolling monthly SCF and mmBtu totalizers for each meter
- Previous month SCF and mmBtu totalizers for each meter

The backup data logger shall be the high Btu plant HMI computer which shall store 1 minute data in the historical log. The HMI computer historical shall be backed up to a local network addressable storage (NAS) drive at a minimum of once per month.

Exhibit H

Form of Easement Agreement

BIOGAS PROJECT
EASEMENT AGREEMENT

THIS BIOGAS PROJECT EASEMENT AGREEMENT (this "Easement") is dated as of the ___ day of _____, 2016 ("Effective Date") by and between CITY OF PHOENIX, a municipal corporation ("Grantor"), and Ninety-First Avenue Renewable Biogas, LLC, a Delaware limited liability company ("Grantee")(each a "Party" and collectively the "Parties").

RECITALS

D. Grantor is an owner of the 91st Avenue Wastewater Treatment Plant, which includes certain real property, and is located at 5615 South 91st Avenue in Tolleson, Arizona (the "Plant"). Grantor operates the Plant on behalf of the Subregional Operating Group Cities.

E. Grantor and Grantee concurrently herewith have entered into a Biogas Project Agreement ("BPA") whereby Grantor has agreed, *inter alia*, to provide Grantee with a continuous supply of Biogas produced from the wastewater treatment processes at the Plant for conversion into either burner-tip, feedstock, fuel, or other commercial application, in return for payment by Grantee to Grantor for the supplied Biogas.

F. Grantor and Grantee concurrently herewith have also entered into a Biogas Project Lease Agreement ("BPLA") whereby Grantor has, *inter alia*, leased to Grantee, and Grantee has leased from Grantor a site at the Plant (as defined in Section 2 of the BPLA, the "Leased Premises") so that Grantee may construct and operate the Processing Facility at the Leased Premises and deliver the output of the Processing Facility to one or more purchasers.

G. Pursuant to the BPA and the BPLA, Grantor has agreed to grant certain exclusive and non-exclusive easements in favor of Grantee, and Grantee desires to accept such grants from Grantor, over that certain portion of the Plant (as defined in Section 2 hereof, the "Easement Area") as more particularly described in Section 2 of this Easement and upon the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the Parties agree as follows:

1. DEFINITIONS.

1.1 Definitions. All capitalized terms used in this Easement shall, except to the extent otherwise defined herein, have the respective meanings assigned to them in the BPA and the BPLA.

2. THE EASEMENT AREA.

Grantor hereby grants to Grantee, its heirs, legal representatives, successors and assigns, and to any future Lessee under the BPLA, for the term set forth in Section 3 below, at the rental and pursuant to the provisions set forth herein, an easement in, under, upon, about, over and through the real property (the "Easement Area") described in the legal description attached hereto as Exhibit "A" for the purpose of allowing the Grantee to construct and operate the Processing Facility and any related facilities and deliver the output therefrom to one or more purchasers. Except to the extent explicitly stated in this Easement or the BPA, the Easement Area subject to this Easement is in "as-is where-is" condition and Grantor shall have no obligation to make any improvements to the Easement Area before or during the term of this Easement. The easement granted hereby is exclusive as to the portion of the Easement Area labeled as Area 1 on Exhibit A and is non-exclusive as to all other portions of the Easement Area.

3. TERM OF EASEMENT.

The term of this Easement shall commence on the Effective Date and shall continue in full force and effect for as long as the BPA remains in effect, and this Easement shall terminate upon the expiration or termination, for any reason, of the BPA and shall be renewed or extended to the same extent that the BPA is renewed or extended.

4. RENT.

4.1 Rent Amount. In consideration for the grant of this easement with respect to the Easement Area, Grantee shall pay to Grantor during the Term of this Easement without setoff or deduction, Rent in the amount of $11,700.00 per year, plus applicable taxes, levies or other assessments. Grantee's obligation to pay Rent under this Easement coincides with and commences on the day that Commencement of Construction occurs.

4.2 Rent Schedule. Rent payable for the calendar year in which Commencement of Construction occurs, will be pro-rated beginning on the Commencement of Construction date and ending on December 31st of that calendar year. Thereafter, the Rent shall be paid in advance by Grantee annually, beginning on the January 1st of each calendar year following the year in which Commencement of Construction occurs; provided, that Grantee may elect to pay all rent due for the entire Term of this Easement as a lump sum within sixty (60) days after the Commercial Operations Date. In the event that Grantee pays the rent as a lump sum and the Easement is later terminated for any reason other than a default by Grantee under this Easement or the BPA, Grantor shall repay a *pro rata* portion of the advance Rent.

4.3 Payments. All payments of rent must be made and paid by Grantee to Grantor at:

City of Phoenix
P.O. Box 29115
Phoenix AZ 85038-9115

or at such other place as or may, from time to time, designate in writing, and such rent will come due and be paid in each instance on the date it is due. If no place is specified as the place at which Grantsor desires the rent to be paid, then it will be paid at the last place in which the rent was paid or was specified to be paid. All rent must be payable in current legal tender of the United States. Any extension, indulgence, or waiver granted or permitted by Grantor in the time, manner or mode of payment of rent, upon any given occasion, may not be construed as a continuing extension, indulgence or waiver, and will not preclude Grantor from demanding strict compliance herewith.

5. USE OF EASEMENT AREA, IMPROVEMENTS AND EQUIPMENT.

5.1 Use. The Parties have entered into the BPA whereby Grantor has agreed to sell and Grantee has agreed to purchase Biogas produced by the Plant. The Easement Area may be used by Grantee for those purposes consistent with the construction, operation and maintenance of Biogas processing, transportation and use facilities. Grantee agrees that in using the Easement Area, Grantee shall at all times, possess all necessary construction or operating permits and licenses as required by law. Grantee shall have the right to enter the Easement Area at any time. Grantee has the right at its sole cost and expense to erect, maintain and operate in, under, upon, about, over, and through the Easement Area all facilities necessary or convenient to conduct the Project, including without limitation the Processing Facility and the Biogas transportation, facilities, a condensate pipeline, communications facilities, utility lines, transmission pipelines (including without limitation interconnection facilities), and supporting equipment and structures thereto, as Grantee deems necessary, in Grantee's reasonable judgment (collectively the "Improvements") subject to Grantee obtaining all required governmental approvals, stipulations, modifications, variances or permits necessary for the permitted use. In connection therewith, Grantee has the right at its sole cost and expense to perform all work necessary to prepare, maintain and alter the Easement Area for Grantee's business operations. In addition, Sections 2.01(b) (Processing Facility Use) and 11.02 (Project Site Use) of the BPA are incorporated herein by reference but apply only to Grantee's use of the Easement Area.

6. TITLE.

Grantor and Grantee intend and agree that the Improvements shall be and remain the personal property of Grantee, and shall at no time become a fixture with respect to the Easement Area. Title to any Improvements, whether situated or erected on the Easement Area, as permitted herein, or any alteration, change or addition thereto, shall remain solely in Grantee, or in one or more Financing Parties.

7. CONSTRUCTION, IMPROVEMENTS AND ALTERATION.

7.1 Construction Costs. The entire cost of the Processing Facility and any Improvements shall be paid by Grantee. Subject to Section 17 hereof, Grantee must keep the Easement Area and the Improvements to be constructed thereon at all times free and clear of all liens and encumbrances arising out of, or claimed by reason of, any work performed, material furnished or obligations incurred by or at the instance of Grantee, and must indemnify, defend

and save Grantor harmless for all such liens or claims of lien and all attorneys' fees and other costs and expenses incurred by reason thereof.

7.2 Personal Property, Equipment and Fixtures. Section 5.13 (Surrender) of the BPA is incorporated herein by reference, but applies only to Grantee's use of the Easement Area.

7.3 Repairs and Ordinary Maintenance. From and after the Effective Date, Grantee, at its sole cost and expense, shall, to the extent such conditions result from its actions, keep and maintain the Easement Area in a clean and neat condition, consistent with all applicable federal, state, county, and city laws, rules, regulations and ordinances, including, without limitation, those relating to environmental and health. Section 5.12 of the BPA is incorporated herein by reference, but applies only to Grantee's use of the Easement Area.

7.4 Dust Control; Compliance with Applicable Laws. Grantee must comply with all applicable environmental laws, including those particularly described in the BPA and incorporated herein by this reference, but only to Grantee's use of the Easement Area. All dust control required for Grantee's use of the Easement Area or required by any law, rule, regulation or ordinance, shall be at the cost of Grantee. Dust control shall include, without limitation, treatment with a dust inhibiting agent on all primary and non-primary surface roads on the Easement Area used exclusively in connection with the Project in accordance with all applicable laws.

Grantee must pay all fines for penalties resulting from any violation of dust control or other environmental laws caused by Grantee or Grantee's contractors or subcontractors. Grantor shall take responsibility for all dust generated by Grantor and those for whom Grantor is responsible.

8. INSURANCE AND INDEMNIFICATION:

8.1 Indemnification. Section 11.02(b) and Article XVIII of the BPA are incorporated herein by reference.

8.2 Required Insurance. Grantee must procure and maintain for the duration of the Easement, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Easement. See Insurance Specifications, Exhibit "B" attached hereto and made a part of this Easement. Copies of all required Insurance Certificate(s) indicating such coverage is in full force and shall be provided to Grantor as follows:

City of Phoenix
Finance/Real Estate
251 W. Washington Street, 8thFloor
Phoenix AZ 85003
Easement No. _____

The insurance requirements herein are minimum requirements for the Easement and in no way limit the indemnity covenants contained in this Easement. Grantor in no way warrants that the minimum limits contained herein are sufficient to protect the Grantee from liabilities that might arise out of this Easement. Grantee is free to purchase such additional insurance as Grantee determines necessary.

9. GRANTOR PROVIDED SERVICES.

9.1 **Electrical Power.** Grantor shall supply electrical service as reasonably required by Interconnection Authority to the Easement Area as a submetered source located inside the Unified Plant Main Substation. Grantee shall be responsible for all costs associated with constructing and maintaining the interconnection point for the transfer of the electrical service to Grantee or Interconnection Authority.

10. ACCESS AND RIGHTS OF WAY.

(a) Access. Section 11.04(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.

11. RESTRICTIONS ON ASSIGNMENT OF EASEMENT; RESTRICTIONS ON TRANSFER CONTROL.

This Easement is non-assignable by Grantee unless at the time of an assignment by Grantee to the assignee of the Easement, Grantee simultaneously assigns the BPA and Grantee simultaneously transfers all of its right, title and interest in and to the entirety of the Project to the assignee of the Easement or a Controlled Affiliate of the assignee of the Easement, in compliance with the restrictions on assignment and transfer set forth in the BPA. Any assignee of the Easement must acknowledge that the Easement is subject to the terms and conditions of the BPA that are incorporated by reference in the Easement. Notwithstanding the foregoing, Grantee may substitute for itself Interconnecting Authority to the extent of and with respect to any use of the Easement Area by Interconnection Authority related to the Interconnection Agreement.

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

13. TERMINATION.

13.1 Termination Without Liability. Any termination of this Easement that is caused by the termination of the BPA that is specified to occur without liability shall also be without liability under this Easement.

14. DEFAULT AND REMEDIES.

14.1 Default by Grantee. Grantee shall be deemed to be in material default of this Easement, if:

(a) Grantee should vacate or abandon the Easement Area and the default continues for thirty (30) days after receipt of written notice from Grantor; or

(b) Grantee should materially fail to observe or perform any other material provision of this Easement where such failure continues unremedied for thirty (30) consecutive days after receipt of written notice from Grantor; *provided, however,* that if the nature of the failure is such that more than thirty (30) days are required for performance, Grantee shall not be deemed to be in default if Grantee promptly commences substantial remedial performance within thirty (30) days, and thereafter diligently proceeds to completion.

14.2 Remedies of Grantor. If Grantee shall be in material default with respect to any of the covenants herein contained, Grantor shall promptly notify Grantee of the specifics and circumstances of the default in writing, and if any such default continues for thirty (30) days after such notice to Grantee, Grantor may terminate this Easement if Grantee fails to cure, or commence cure of, any default within the thirty (30) day period immediately following receipt of Grantor's written notice of default, and, after said period, to diligently pursue the cure to completion. If Grantor elects to terminate this Easement, Grantor shall be entitled to receive from Grantee reasonable attorneys' fees and all costs incurred in recovering the Easement Area. No remedy in this Easement conferred upon Grantor shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, including, but not limited to, the right to maintain an action to recover all amounts due hereunder. Grantor may exercise its rights and remedies at any time, in any order, to any extent, and as often as Grantor deems advisable.

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

14.4 Default Waiver. 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.

15. CONDEMNATION. If all or any part of the Easement Area shall be condemned, appropriated or otherwise taken for public, quasi-public or any other use under any governmental law, ordinance or regulation, or by right of eminent domain, or by consent to sale in lieu thereof, or access to the Easement Area shall be impaired by a taking, and such taking substantially interferes with the Project, Grantee shall have the right to terminate this Easement, the BPLA

and the BPA without liability on thirty (30) days notice to Grantor provided that said election to terminate shall be made within sixty (60) days after receipt of the notice of said taking. Such termination shall be deemed to be a termination for convenience by Grantor under Section 5.15 of the BPA and Grantee shall have no claim against Grantor for the value of any unexpired portion of the Easement term. Such deemed termination for convenience shall be deemed to be under Section 5.15(a)(i) unless Grantor gives notice otherwise. In the event that Grantee elects to terminate this Easement under this Section 15, then all compensation or damages awarded for any such taking or transfer shall belong to and be the property of Grantor.

16. DESTRUCTION OF THE EASEMENT AREA. In the event the Improvements located on the Easement Area are partially or totally damaged or destroyed, Grantee may elect to terminate this Easement, the BPLA and the BPA without liability as of the date of the damage or destruction, by giving notice to Grantor no more than thirty (30) days following the date of such damage or destruction, condemnation or transfer in lieu of condemnation, in which event Grantee shall comply with the provisions of Section 5.14 (Surrender) of the BPA.

17. PROHIBITION AGAINST GRANTEE CREATING LIENS AGAINST EASEMENT AREA. It is expressly agreed by and between the Parties hereto that nothing in this Easement contained shall authorize Grantee to do any act which will in any way encumber the title of Grantor in and to the Easement Area, nor shall the interest or estate of the Grantor in the Easement Area 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 Grantee, and any claim to or lien upon the Easement Area arising from any act or omission of Grantee shall accrue only against the easement estate of Grantee and shall in all respects be subject and subordinate to the paramount title and rights of Grantor in and to the Easement Area and the buildings and improvements thereon. Grantee will not permit the Easement Area to become subject to any mechanics', laborers' or material men's lien on account of labor or material furnished to the Grantee in connection with work of any character performed or claimed to have been performed on the Easement Area by or at the direction or sufferance of the Grantee; provided, however, that Grantee shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claimed lien.

18. OVERDUE AMOUNTS TO BEAR INTEREST. Any amount of money owed by one Party to the other in accordance with this Easement that is more than thirty (30) days beyond the date such amount is due and payable under this Easement 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.

19. GRATUITIES. Grantor may, by written notice to Grantee, terminate this Easement without notice or cure if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Grantee or any agent or representative of Grantee, to any officer or employee of Grantor making any determinations with respect to the Project or Grantee. In the event this Easement terminated by Grantor pursuant to this Section 19, Grantor will be entitled, in addition to any other rights and remedies, to recover or withhold from Grantee the amount of the gratuity.

20. MISCELLANEOUS.

20.1 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 BPA, provided, that a copy shall also be provided to Grantor at the following address:

To Grantor: City of Phoenix
Water Services Department
200 W. Washington Street, 9th Floor
Phoenix, AZ 85003
Attention: Assistant Water Services Director, Wastewater Division
Telephone No. 602-534-7938
Facsimile No. 602-495-5542

or such other place or places as Grantor may from time to time designate in writing.

20.2 Governing Law. THIS EASEMENT 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 EASEMENT.**

20.3 Representations and Warranties. Each of the parties gives to the other with respect to this the same representations and warranties it gives with respect to the BPA in Article XVI thereof.

20.4 Waiver. No delay or failure by either Party to exercise any of its rights, powers or remedies under this Easement 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 Easement, shall be effective only if in writing and then only to the extent specifically set forth in such writing. The acceptance by Grantor of compensation provided for by this Easement or the Biogas Project Agreement after a default by Grantee shall not be deemed a waiver of any preceding breach by Grantee other than the failure to pay the particular amount so accepted. The waiver by Grantor and/or Grantee of the breach of any covenant or condition of this Easement shall not constitute a waiver of any other breach past or future regardless of knowledge thereof.

20.5 Entire Agreement. This Easement contains the entire agreement of the Parties hereto with respect to the matters covered thereby, and no other agreement, statement or promise made by any Party hereto, or to any employee, officer or agent of any Party hereto, which is not contained herein shall be binding or valid. This Easement supersedes any and all prior oral or written agreements and understandings between the Parties concerning such subject matter.

20.6 Amendment. This Easement may not be amended except by a written instrument of the Parties.

20.7 Easement Binding Upon Successors and Assigns. Each of the terms, covenants and conditions of this Easement shall extend to, and be binding on and inure to the benefit of, Grantor and Grantee, and their successors and assigns.

20.8 Relationship of Parties. The relationship of the Parties hereto is that of Grantor and Grantee. It is expressly understood and agreed that Grantor does not in any way nor for any purpose become a partner, joint venturer, or agent of Grantee in the conduct of Grantee's operations or otherwise.

20.9 Time of the Essence. Time is expressly declared to be of the essence of this Easement.

20.10 Captions and Section Headings. The headings used throughout this Easement 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.

20.11 Partial Invalidity. If any term or provision of this Easement is held to be void, invalid or unenforceable by a court of competent jurisdiction, the same shall be severable from the remainder of this Easement and shall not affect or render invalid, void or unenforceable any other provision or term of this Easement. In the event any term or provision of this Easement 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 Easement as nearly as possible to its original intent.

20.12 Quiet Enjoyment. Grantor warrants that it owns the Easement Area in fee simple and has rights of access thereto, and has the full right to grant and perform this Easement. Upon the observance and performance of all of the covenants, terms and conditions on Grantee's part to be observed and performed, Grantee shall lawfully, peaceably and quietly hold, occupy and enjoy the Easement Area for the term without hindrance, including equitably claiming by, through or under Grantor.

20.13 Counterparts. This Easement may be executed in one or more counterparts which, taken together, shall constitute one agreement. Faxed signatures to be followed by originals by a nationally recognized overnight courier or delivery service shall be accepted for closing.

20.14 Incorporation of Exhibits. All Exhibits attached hereto are by this reference incorporated herein as though set forth in full.

20.15 Employment and Organization Disclaimer. This Easement is not intended to, and will not, constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind as existing between the parties, and the rights and the obligations of the parties shall be only those expressly set forth herein. The parties agree that no person supplied by Grantee in the performance of Grantee's obligations under this Easement are Grantor's employees, and no rights under Grantor's Civil Service, retirement, or personnel rules accrue to such persons. Grantee shall have the sole and total responsibility for all salaries, wages, bonuses, retirement, withholding, workers' compensation, occupational disease compensation, unemployment compensations, other employee benefits, and all taxes and premiums appurtenant thereto concerning such persons used by it in the performance of this Easement, and Grantee shall save and hold Grantor harmless with respect thereto.

20.16 Transactional Conflicts of Interest. As required by the provisions of Arizona Revised Statutes Section 38-511, as amended, notice is hereby given that Grantor may, within three (3) years of its execution, cancel this easement without penalty or further obligations, if any person significantly involved in initiating, negotiation, securing, drafting or creating this Easement on behalf of Grantor is, at any time while this Easement or any extension of this Easement is in effect, an employee or agent of Grantee or a consultant to Grantee with respect to the subject matter of this Easement. The cancellation shall be effective when written notice from Grantor is received by Grantee unless the notice specifies a later time. In addition to the right to cancel this Easement, Grantor may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Easement in behalf of Grantor from Grantee arising as a result of this Easement.

20.17 Compliance With The Immigration Reform and Control Act of 1986 (IRCA). Grantee understands and acknowledges the applicability of the IRCA to it. Grantee shall comply with the IRCA in performing this Easement and shall permit Grantor to verify such compliance.

20.18 Anti-Discrimination in Employment. Grantee shall comply with the provisions of this Easement, and with the requirements of Chapter 18, Phoenix City Code, Articles 4 and 5 pertaining to discrimination in the acceptance of applications and in the hiring of employees. In this context the following language is required to appear:

> Grantee, in performing under this Easement, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. Grantee will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, 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. Grantee further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled

and union labor, or who may perform any such labor or services in connection with this Easement, and that this clause will be incorporated in all subcontracts, job-consultant agreements or subeasements of this agreement entered into by Grantee. If Grantee employs more than 35 employees, Grantee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

20.19 Legal Worker Provisions. Grantor is prohibited by A.R.S. §41-4401 from awarding an agreement to any entity who fails, or whose subcontractors fail, to comply with A.R.S. §23-214(A).

a) Grantee warrants its compliance with all federal immigration laws and regulations that relate to their employees and their compliance with §23-214, subsection A.

b) A breach of warranty under this section shall be deemed a material breach of the Easement and is subject to penalties up to and including termination of the Easement.

c) Grantor retains the legal right to inspect the papers of the Grantee or employee(s).

20.20 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 Easement and the transactions contemplated hereby.

20.21 No Third-Party Beneficiary. This Easement and each of the other Project Agreements is intended solely for the benefit of the Parties hereto and thereto. Nothing in this Easement 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 Grantor.

20.22 Brokerage. Grantor and Grantee represent that they have dealt with no broker or agent with respect to this Easement 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.

20.23 Time is of the Essence. Time is of the essence in the Parties' performance of their obligations under this Easement.

20.24 Rules of Interpretation. Sections 1.06 (Rules of Interpretation) and 1.07 (Agreement Authorship; Construe Agreement with Lease) of the BPA is incorporated herein by reference.

20.25 Successor and Assigns. This Easement shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns.

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IN WITNESS WHEREOF, this Easement has been executed by the Parties hereto as of the date and year first hereinabove written.

GRANTOR:

CITY OF PHOENIX, a municipal corporation
ED ZUERCHER, CITY MANAGER

By:_____
Kathryn Sorensen
Water Services Director

GRANTEE:

NINETY-FIRST AVENUE RENEWABLE BIOGAS LLC, a Delaware limited liability company
By: Ameresco, Inc., its sole member

By:_____
Michael T. Bakas
Senior Vice President

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

1236994v1

EXHIBIT "A"

DESCRIPTION OF THE EASEMENT AREA

EASEMENT AGREEMENT – EXHIBIT A1

LEGAL DESCRIPTION FOR GAS LINE:

THAT PORTION OF SECTIONS 27, 28, 32 AND 33 OF TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE GILA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE COMMON CORNER TO SECTIONS 29, 30, 31 AND 32, OF SAID TOWNSHIP, FROM WHICH THE COMMON QUARTER CORNER TO SAID SECTIONS 31 AND 32 BEARS SOUTH 1°00'51 EAST A DISTANCE OF 2601.11;

THENCE ALONG THE COMMON SECTION LINE OF SAID SECTIONS 31 AND 32, SOUTH 01°00'51" EAST 1300.55 FEET TO THE NORTH SIXTEENTH LINE OF SAID SECTION 32;

THENCE ALONG SAID SIXTEENTH LINE NORTH 89°18'50" EAST 1648.34 FEET;

THENCE SOUTH 00°41'10" EAST 61.41 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING THE BEGINNING OF A 60.00 FOOT WIDE PARCEL LYING 20.00 FEET TO THE SOUTH AND 40.00 FEET TO THE NORTH OF THE FOLLOWING DESCRIBED LINE;

THENCE NORTH 75°00'50" EAST 100.00 FEET TO THE TERMINUS OF SAID PARCEL AND THE POINT OF BEGINNING OF A STRIP OF LAND BEING 40.00 FEET WIDE, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS;

THENCE CONTINUING NORTH 75°00'50" EAST 16.03 FEET;

THENCE NORTH 68°47'41" EAST 65.22 FEET;

THENCE NORTH 63°13'02" EAST 72.94 FEET;

THENCE NORTH 57°51'55" EAST 79.04 FEET;

THENCE NORTH 57°19'48" EAST 109.08 FEET;

THENCE NORTH 59°25'22" EAST 117.36 FEET;

THENCE NORTH 57°35'46" EAST 95.47 FEET;

THENCE NORTH 61°14'35" EAST 109.52 FEET;

THENCE NORTH 66°55'01" EAST 155.50 FEET;

THENCE NORTH 70°07'32" EAST 111.22 FEET;

THENCE NORTH 74°46'00" EAST 510.28 FEET;

REGISTERED LAND SURVEYOR
54336
NICHOLAS W. JARRETT
Date Signed 6/13/16
ARIZONA, U.S.A.
Expires 3/31/19

SUNRISE ENGINEERING
2152 SOUTH VINEYARD, SUITE 123
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EASEMENT AGREEMENT – EXHIBIT A1

LEGAL DESCRIPTION FOR GAS LINE: (CONTINUED)

THENCE NORTH 82°32'17" EAST 203.17 FEET;

THENCE NORTH 86°16'34" EAST 206.15 FEET;

THENCE SOUTH 85°26'21" EAST 212.15 FEET;

THENCE SOUTH 83°33'40" EAST 204.51 FEET;

THENCE SOUTH 80°37'01" EAST 170.25 FEET;

THENCE SOUTH 78°12'25" EAST 168.82 FEET;

THENCE SOUTH 75°48'57" EAST 237.56 FEET;

THENCE SOUTH 71°40'47" EAST 198.10 FEET;

THENCE SOUTH 70°29'01" EAST 238.69 FEET;

THENCE SOUTH 72°18'41" EAST 107.52 FEET;

THENCE SOUTH 81°56'11" EAST 121.88 FEET;

THENCE SOUTH 86°03'56" EAST 75.54 FEET TO THE COMMON SECTION LINE BETWEEN SAID SECTIONS 32 AND 33 FROM WHICH THE COMMON CORNER TO SAID SECTIONS 28, 29 32 AND 33 BEARS NORTH 1°43'45" WEST A DISTANCE OF 1208.31 FEET;

THENCE CONTINUING SOUTH 86°03'56" EAST 55.80 FEET;

THENCE SOUTH 87°58'28" EAST 1215.59 FEET;

THENCE NORTH 49°38'56" EAST 104.18 FEET;

THENCE NORTH 01°21'53" WEST 198.28 FEET;

THENCE NORTH 07°02'09" WEST 150.21 FEET;

THENCE NORTH 06°46'28" WEST 150.97 FEET;

THENCE NORTH 00°13'36" EAST 272.04 FEET;

THENCE NORTH 07°02'57" EAST 154.69 FEET;

THENCE NORTH 05°24'31" EAST 96.81 FEET;

REGISTERED LAND SURVEYOR
CERTIFICATE NO. 54336
NICHOLAS W. JARRETT
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EASEMENT AGREEMENT – EXHIBIT A1

LEGAL DESCRIPTION FOR GAS LINE: (CONTINUED)

THENCE NORTH 02°38'42" EAST 97.54 FEET;

THENCE NORTH 06°54'28" EAST 23.91 FEET;

THENCE NORTH 01°03'24" WEST 0.35 FEET TO A POINT ON THE COMMON LINE BETWEEN SAID SECTIONS 28, AND 33 FROM WHICH THE COMMON CORNER TO SAID SECTIONS 28, 29 32 AND 33 BEARS NORTH 88°04'32" WEST A DISTANCE OF 1382.75 FEET;

THENCE CONTINUING NORTH 01°03'24" WEST 1143.46 FEET;

THENCE NORTH 07°54'07" EAST 4.80 FEET;

THENCE NORTH 11°04'13" EAST 45.86 FEET;

THENCE NORTH 19°17'22" EAST 36.03 FEET;

THENCE NORTH 25°25'15" EAST 39.95 FEET;

THENCE NORTH 30°49'39" EAST 21.09 FEET;

THENCE NORTH 02°11'06" WEST 155.43 FEET;

THENCE NORTH 28°40'36" WEST 71.26 FEET;

THENCE NORTH 05°13'16" WEST 104.45 FEET;

THENCE NORTH 08°33'12" EAST 160.15 FEET;

THENCE NORTH 03°04'14" WEST 644.41 FEET;

THENCE NORTH 23°25'40" EAST 95.23 FEET;

THENCE NORTH 89°50'23" EAST 2486.77 FEET;

THENCE NORTH 87°28'20" EAST 177.24 FEET;

THENCE NORTH 89°50'23" EAST 133.63 FEET;

THENCE SOUTH 45°13'54" EAST 912.50 FEET;

THENCE NORTH 89°56'47" EAST 478.80 FEET;

REGISTERED LAND SURVEYOR
CERTIFICATE NO. 54336
NICHOLAS W. JARRETT
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EASEMENT AGREEMENT – EXHIBIT A1

LEGAL DESCRIPTION FOR GAS LINE: (CONTINUED)

THENCE NORTH 89°58'48" EAST 42.01 FEET TO THE COMMON LINE BETWEEN SAID SECTION 27 AND 28 FROM WHICH THE QUARTER CORNER TO SAID SECTIONS 27 AND 28 BEARS NORTH 2°41'52 WEST A DISTANCE OF 676.90 FEET;

THENCE CONTINUING NORTH 89°58'48" EAST 2019.58 FEET;

THENCE SOUTH 50°47'43" EAST 664.62 FEET;

THENCE SOUTH 00°13'57" EAST 93.22 FEET;

THENCE SOUTH 50°52'38" EAST 236.19 FEET;

THENCE SOUTH 00°08'23" WEST 73.21 FEET;

THENCE NORTH 89°46'07" EAST 95.70 FEET;

THENCE SOUTH 00°08'23" WEST 126.14 FEET TO THE POINT OF TERMINUS.

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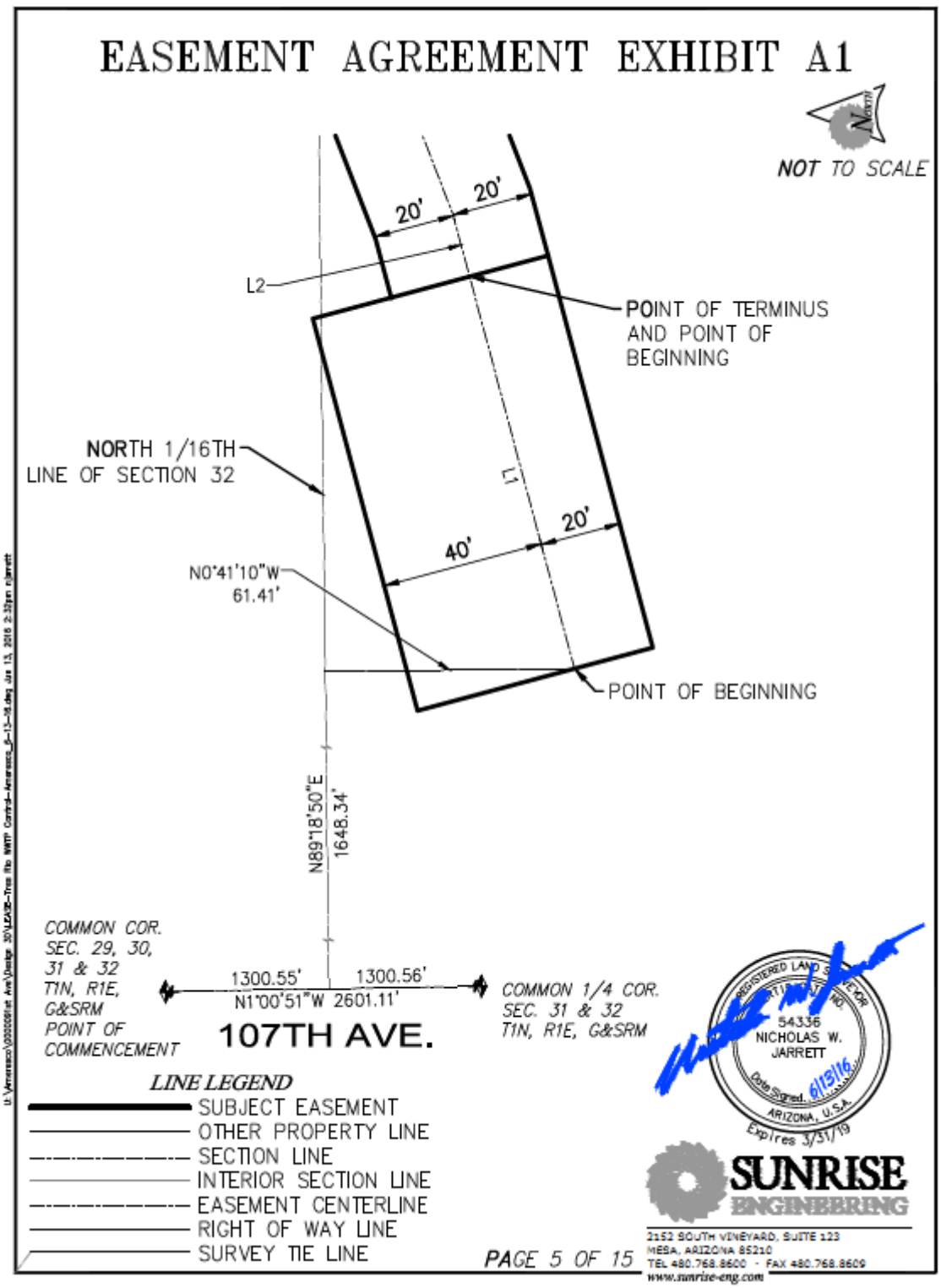
EASEMENT AGREEMENT EXHIBIT A1



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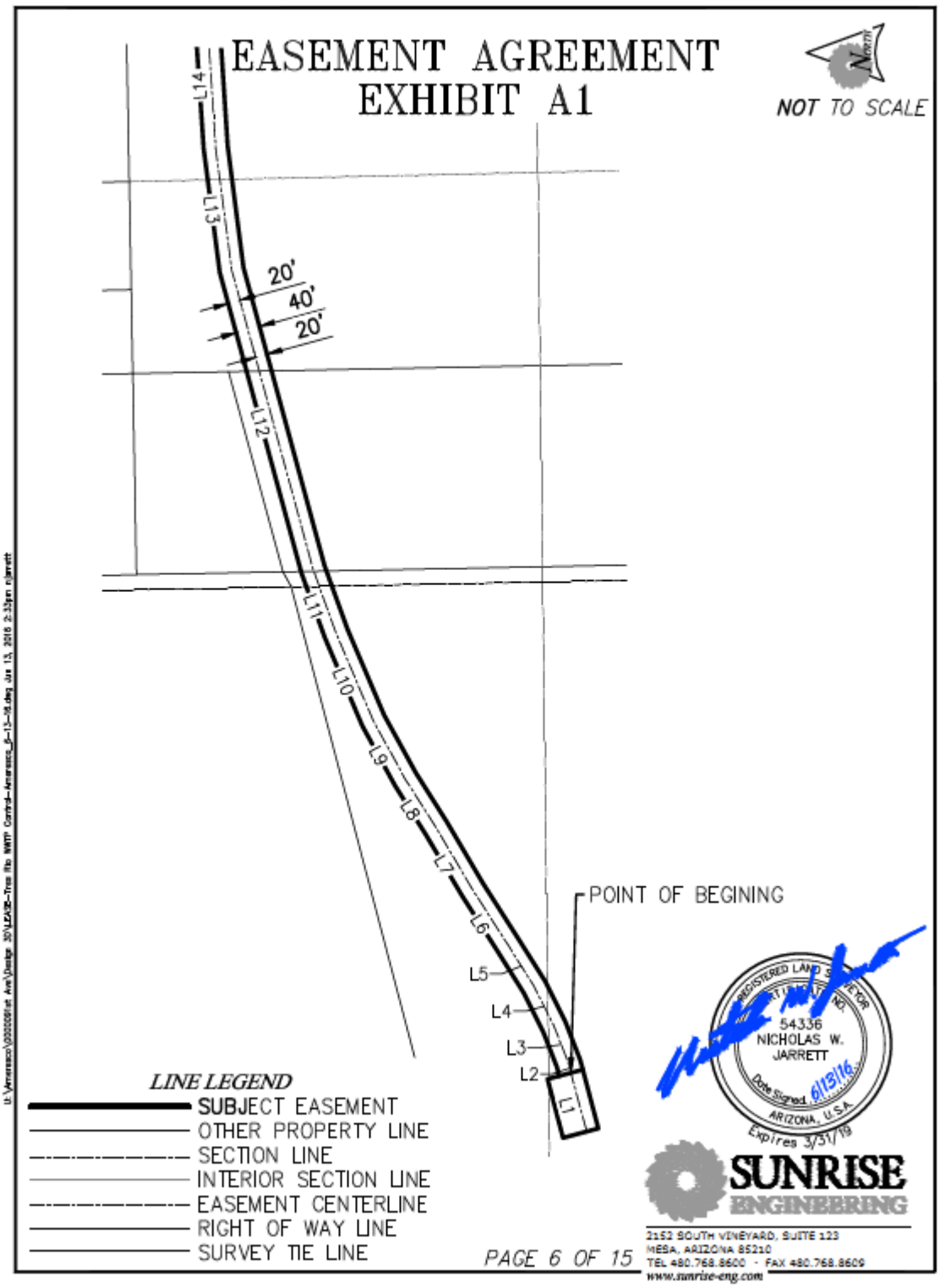
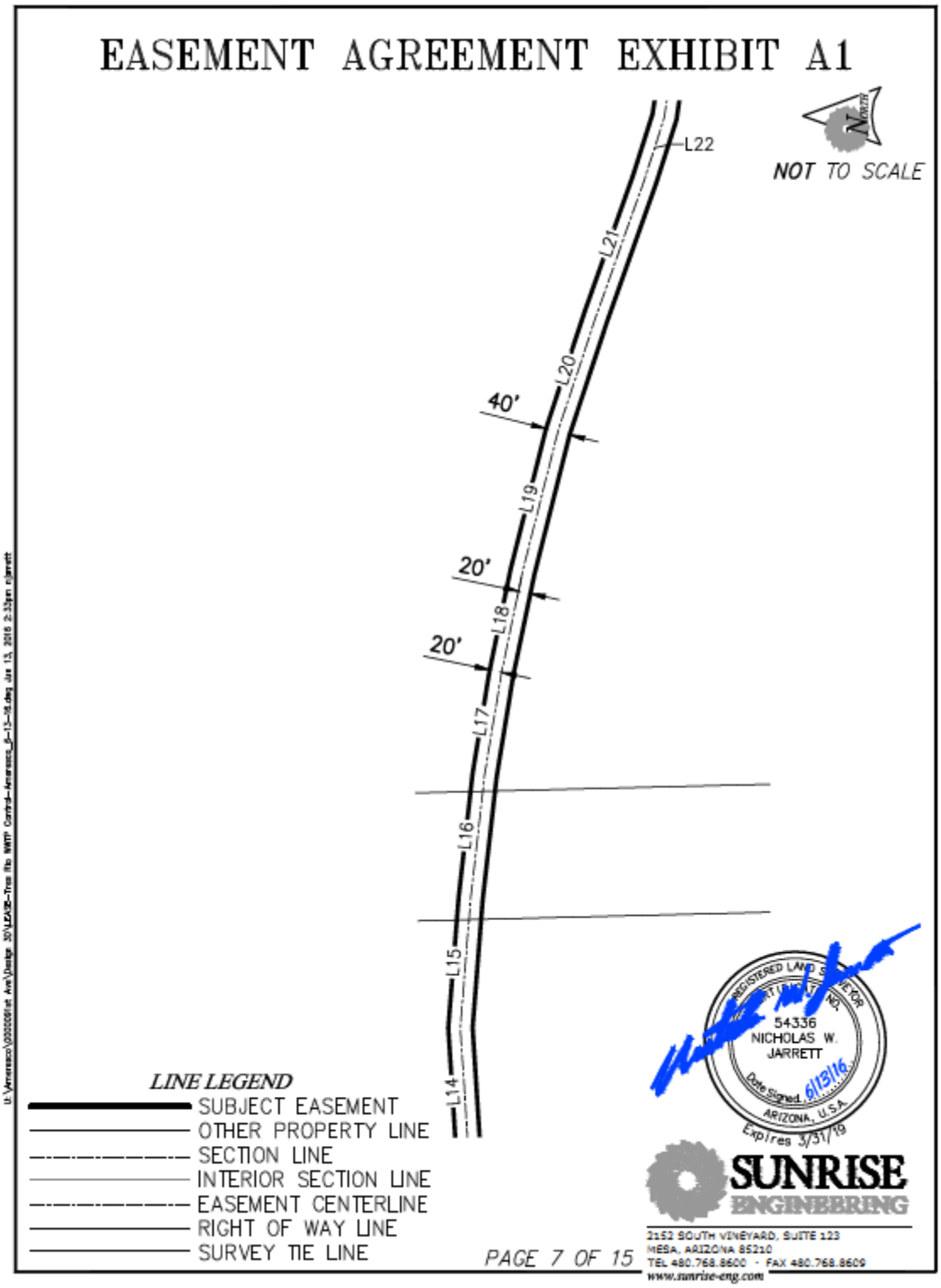
EASEMENT AGREEMENT
EXHIBIT A1



PAGE 6 OF 15

EASEMENT AGREEMENT EXHIBIT A1



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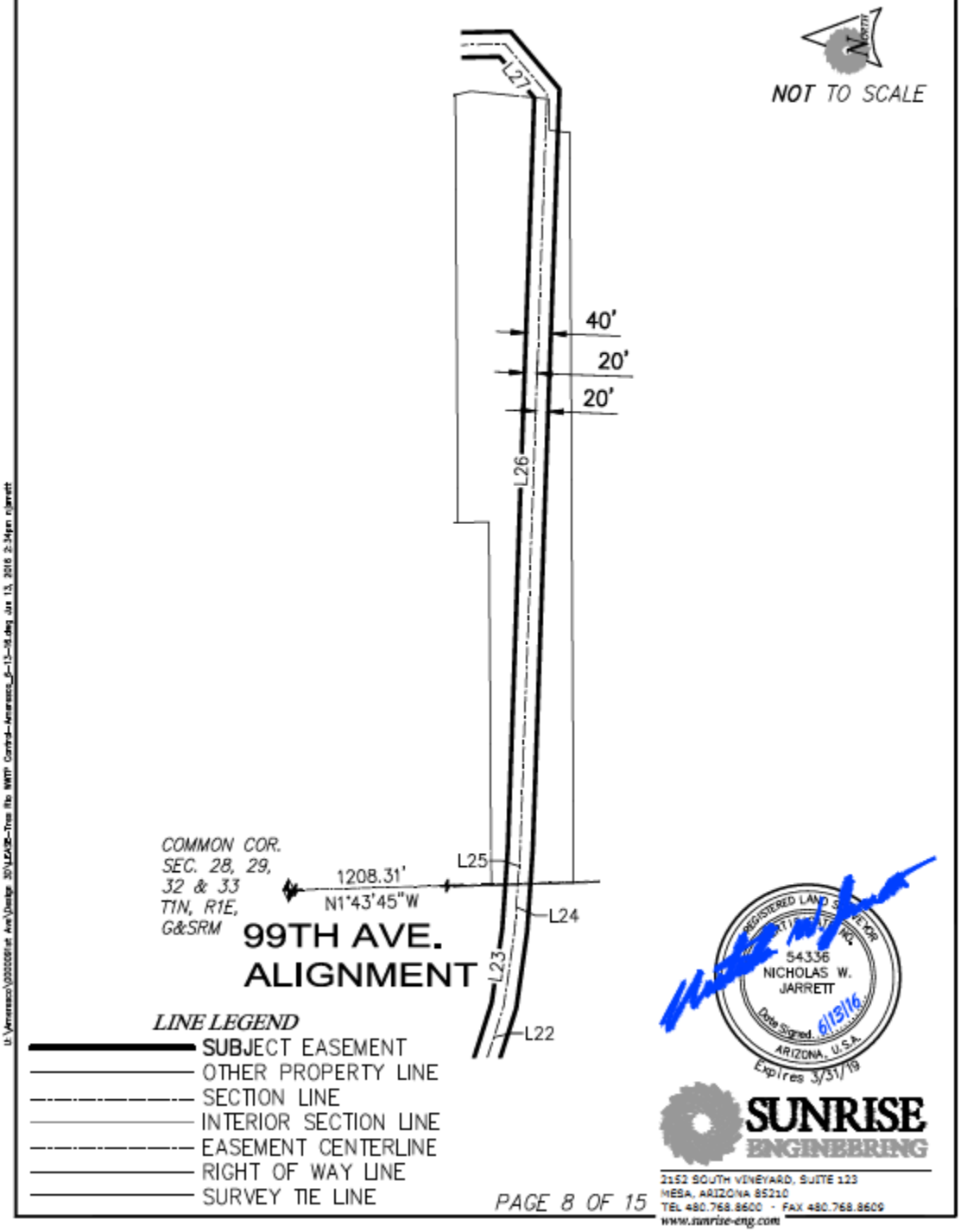
EASEMENT AGREEMENT EXHIBIT A1



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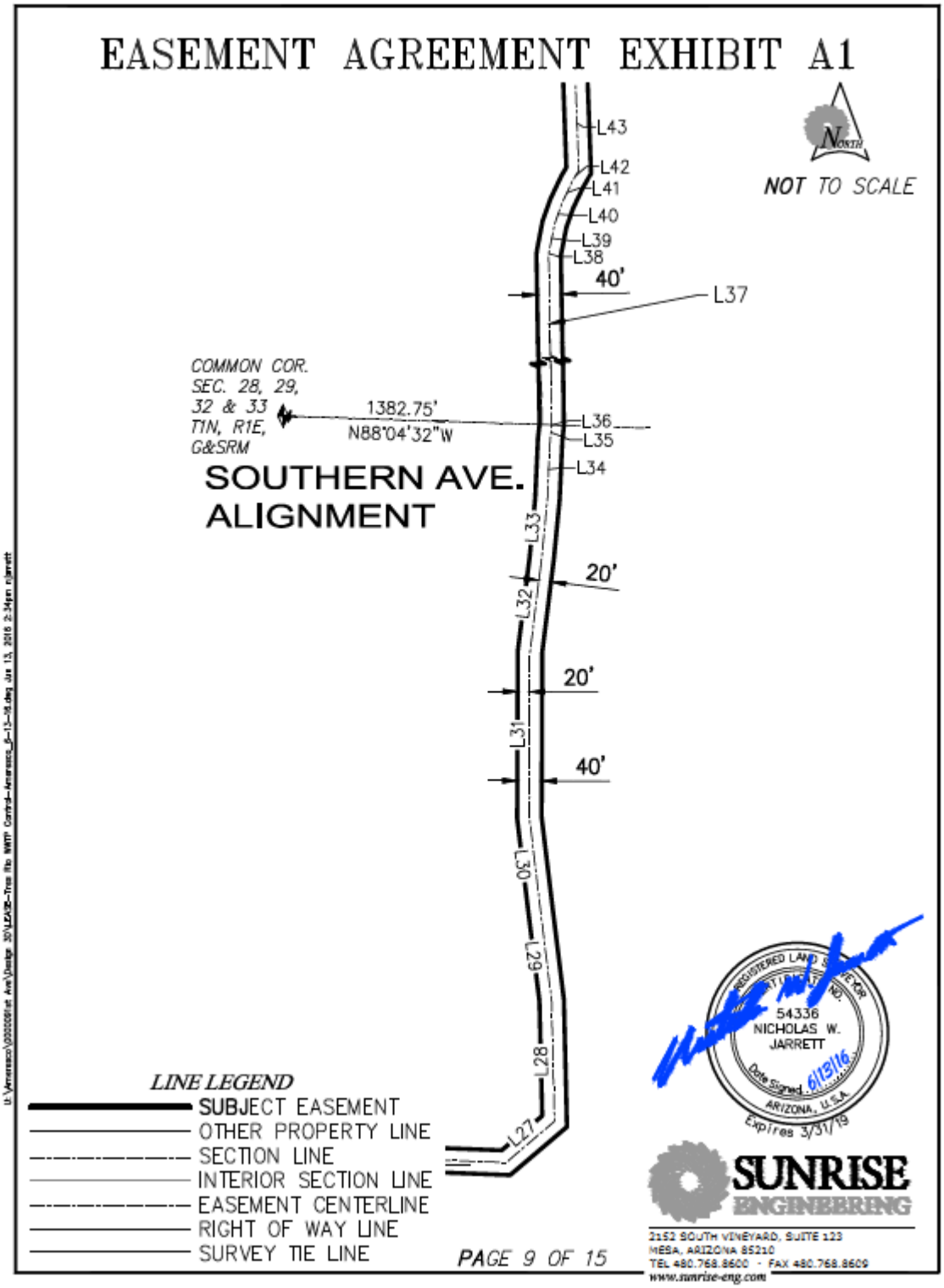

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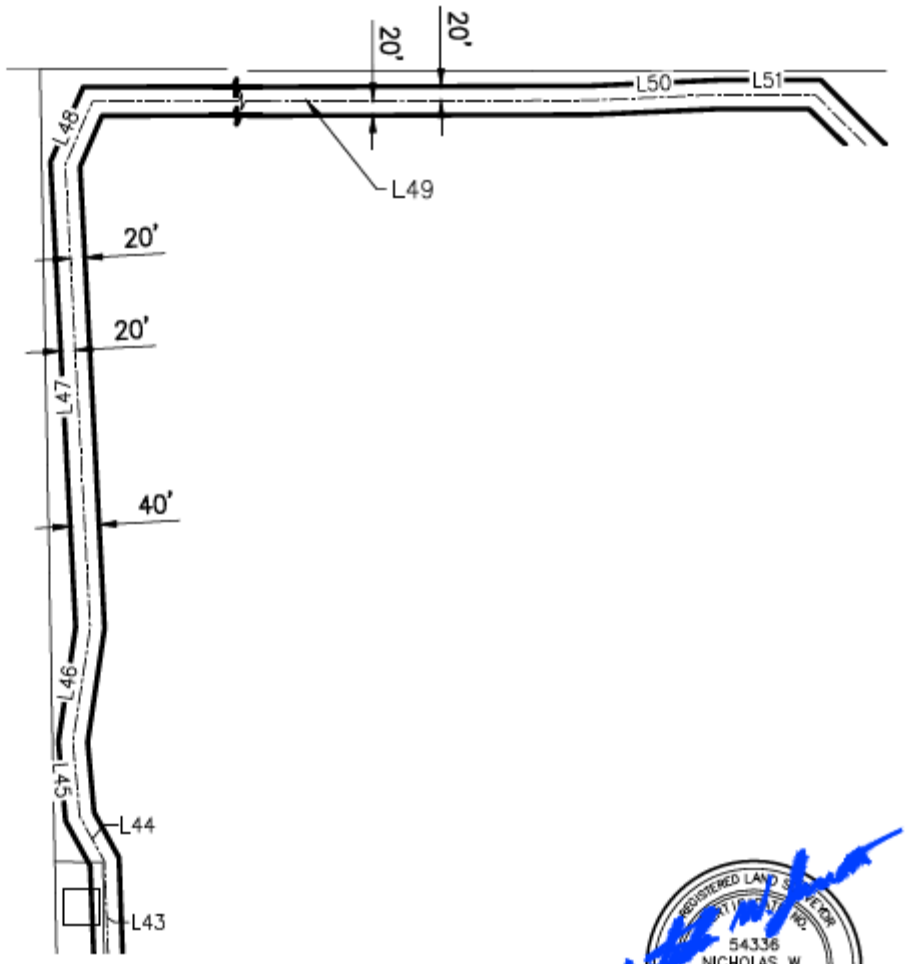

LINE LEGEND

- SUBJECT EASEMENT
- OTHER PROPERTY LINE
- SECTION LINE
- INTERIOR SECTION LINE
- EASEMENT CENTERLINE
- RIGHT OF WAY LINE
- SURVEY TIE LINE

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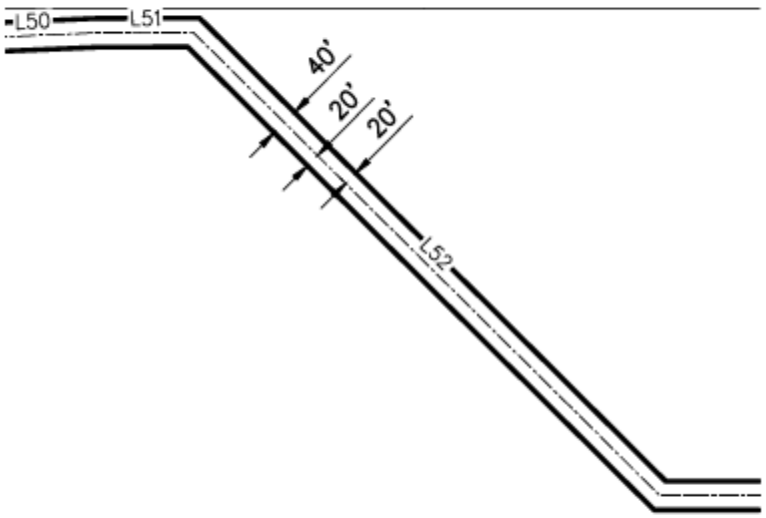
EASEMENT AGREEMENT EXHIBIT A1

NORTH

NOT TO SCALE



LINE LEGEND

- SUBJECT EASEMENT
- OTHER PROPERTY LINE
- SECTION LINE
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- RIGHT OF WAY LINE
- SURVEY TIE LINE

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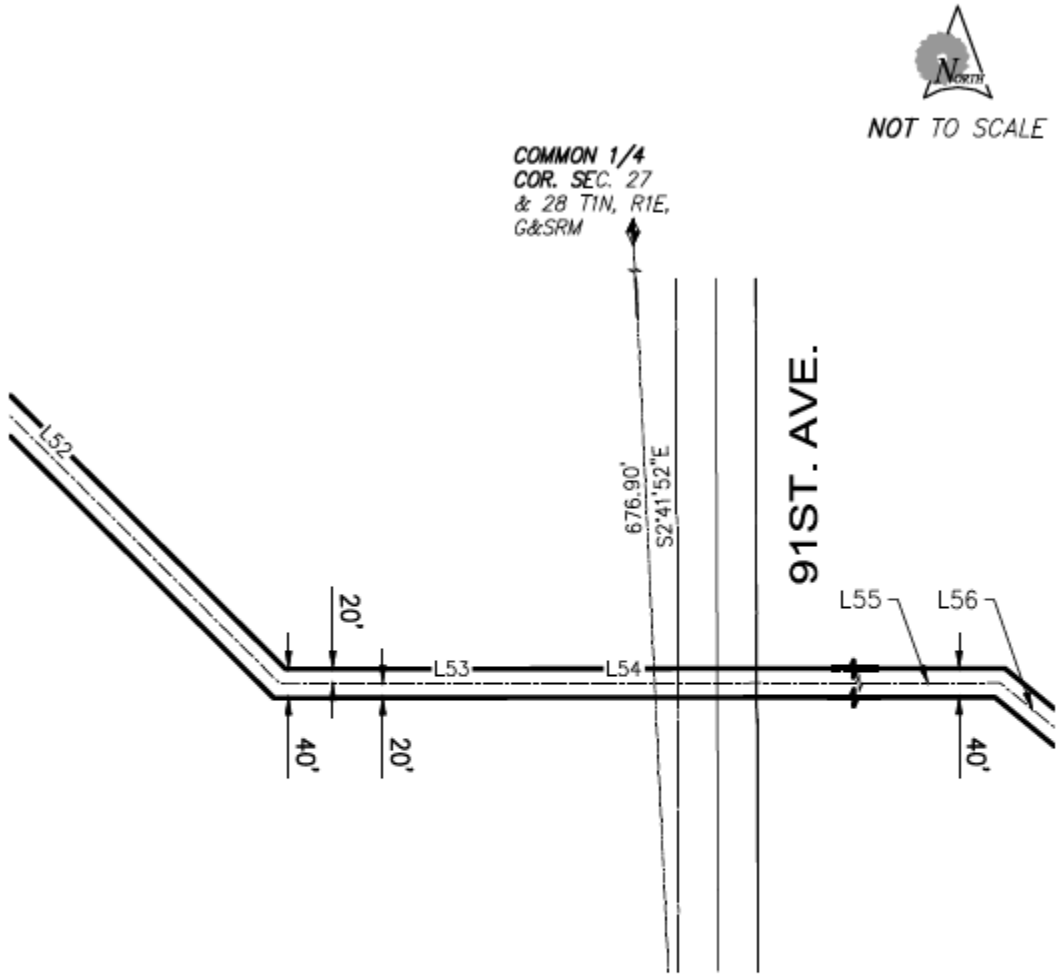
EASEMENT AGREEMENT EXHIBIT A1



LINE LEGEND

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- OTHER PROPERTY LINE
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- INTERIOR SECTION LINE
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- RIGHT OF WAY LINE
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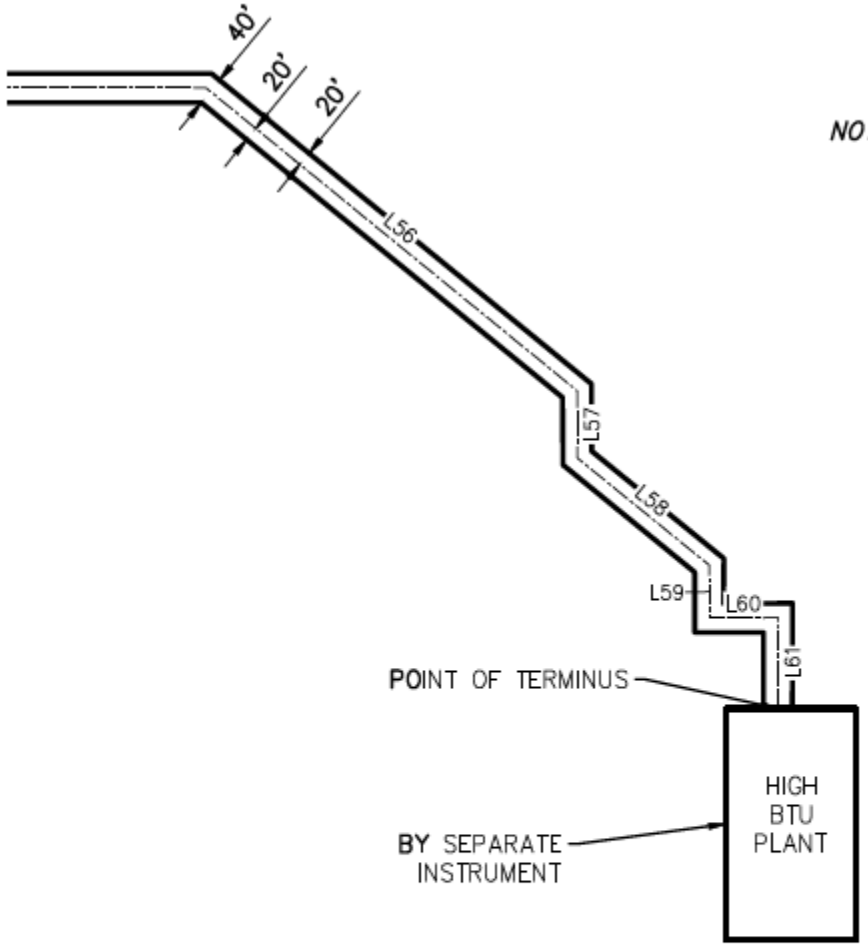
EASEMENT AGREEMENT EXHIBIT A1



NOT TO SCALE

LINE LEGEND

- SUBJECT EASEMENT
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- INTERIOR SECTION LINE
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- SURVEY TIE LINE

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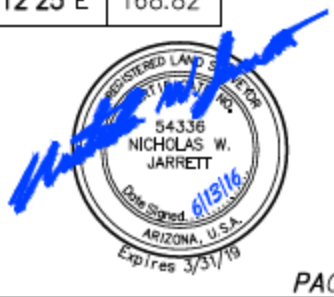
PAGE 13 OF 15

EASEMENT AGREEMENT EXHIBIT A1

Line Table		
Line #	Direction	Length
L1	N75°00'50"E	100.00'
L2	N75°00'50"E	16.03'
L3	N68°47'41"E	65.22'
L4	N63°13'02"E	72.94'
L5	N57°51'55"E	79.04'
L6	N57°19'48"E	109.08'
L7	N59°25'22"E	117.36'
L8	N57°35'46"E	95.47'
L9	N61°14'35"E	109.52'
L10	N66°55'01"E	155.50'
L11	N70°07'32"E	111.22'
L12	N74°46'00"E	510.28'
L13	N82°32'17"E	203.17'
L14	N86°16'34"E	206.15'
L15	S85°26'21"E	212.15'
L16	S83°33'40"E	204.51'
L17	S80°37'01"E	170.25'
L18	S78°12'25"E	168.82'

Line Table		
Line #	Direction	Length
L19	S75°48'57"E	237.56'
L20	S71°40'47"E	198.10'
L21	S70°29'01"E	238.69'
L22	S72°18'41"E	107.52'
L23	S81°56'11"E	121.88'
L24	S86°03'56"E	75.54'
L25	S86°03'56"E	55.80'
L26	S87°58'28"E	1215.59'
L27	N49°38'56"E	104.18'
L28	N1°21'53"W	198.28'
L29	N7°02'09"W	150.21'
L30	N6°46'28"W	150.97'
L31	N0°13'36"E	272.04'
L32	N7°02'57"E	154.69'
L33	N5°24'31"E	96.81'
L34	N2°38'42"E	97.54'
L35	N6°54'28"E	23.91'
L36	N1°03'24"W	0.35'



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EASEMENT AGREEMENT EXHIBIT A1

Line Table		
Line #	Direction	Length
L37	N1°03'24"W	1143.46'
L38	N7°54'07"E	4.80'
L39	N11°04'13"E	45.86'
L40	N19°17'22"E	36.03'
L41	N25°25'15"E	39.95'
L42	N30°49'39"E	21.09'
L43	N2°11'06"W	155.43'
L44	N28°40'36"W	71.26'
L45	N5°13'16"W	104.45'
L46	N8°33'12"E	160.15'
L47	N3°04'14"W	644.41'
L48	N23°25'40"E	95.23'
L49	N89°50'23"E	2486.77'
L50	N87°28'20"E	177.24'
L51	N89°50'23"E	133.63'
L52	S45°13'54"E	912.50'
L53	N89°56'47"E	478.80'
L54	N89°58'48"E	42.01'

Line Table		
Line #	Direction	Length
L55	N89°58'48"E	2019.58'
L56	S50°47'43"E	664.62'
L57	S0°13'57"E	93.22'
L58	S50°52'38"E	236.19'
L59	S0°08'23"W	73.21'
L60	N89°46'07"E	95.70'
L61	S0°08'23"W	126.14'

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REGISTERED LAND SURVEYOR
54336
NICHOLAS W. JARRETT
Date Signed 6/13/16
ARIZONA, U.S.A.
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PAGE 15 OF 15

EASEMENT AGREEMENT – EXHIBIT A2

LEGAL DESCRIPTION FOR KINDER MORGAN EASEMENT:

THAT PORTION OF SECTION 32 OF TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE GILA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE COMMON CORNER TO SECTIONS 29, 30, 31 AND 32, OF SAID TOWNSHIP, FROM WHICH THE COMMON QUARTER CORNER TO SAID SECTIONS 31 AND 32 BEARS SOUTH 1°00'51 EAST A DISTANCE OF 2601.11;

THENCE ALONG THE COMMON SECTION LINE OF SAID SECTIONS 31 AND 32, SOUTH 01°00'51" EAST 1300.55 FEET TO THE NORTH SIXTEENTH LINE OF SAID SECTION 32;

THENCE ALONG SAID SIXTEENTH LINE NORTH 89°18'50" EAST 1626.67 FEET;

THENCE NORTH 00°41'10" WEST 20.35 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 15°31'52" EAST 100.00 FEET;

THENCE NORTH 74°28'08" EAST 100.00 FEET;

THENCE NORTH 15°31'52" WEST 100.00 FEET;

THENCE SOUTH 74°28'08" WEST 100.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 10000 SQUARE FEET OR 0.2296 ACRES, MORE OR LESS.

REGISTERED LAND SURVEYOR
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NICHOLAS W.
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ARIZONA, U.S.A.
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EASEMENT AGREEMENT – EXHIBIT A2

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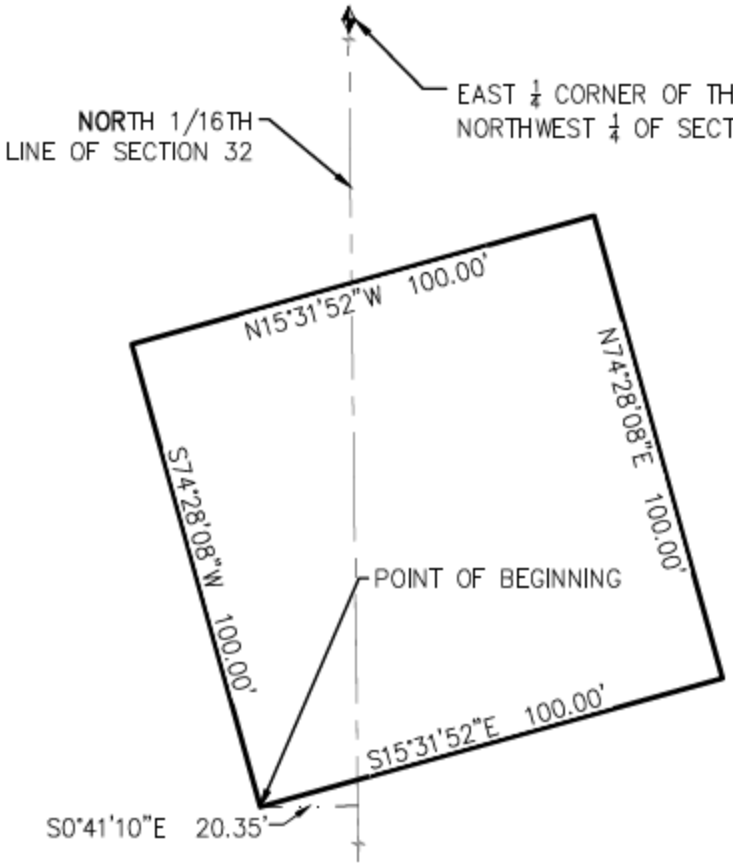

LINE LEGEND

- SUBJECT EASEMENT
- SECTION LINE
- INTERIOR SECTION LINE
- SURVEY TIE LINE

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PAGE 2 OF 2

EASEMENT AGREEMENT – EXHIBIT A3

LEGAL DESCRIPTION FOR UTILITY EASEMENT:

THAT PORTION OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE GILA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE COMMON CORNER TO SECTIONS 27, 28, 33 AND 34 OF SAID TOWNSHIP FROM WHICH THE COMMON QUARTER CORNER TO SAID SECTIONS 27 AND 28 BEARS NORTH 2°41'52" WEST A DISTANCE OF 2682.13;

THENCE ALONG THE COMMON LINE BETWEEN SAID SECTIONS 27 AND 34 SOUTH 89°59'57" EAST 2632.60 FEET TO THE COMMON QUARTER CORNER TO SAID SECTIONS 27 AND 34;

THENCE ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 27, NORTH 02°45'44" WEST 823.40 FEET;

THENCE EAST 234.35 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING EAST 22.69 FEET;

THENCE SOUTH 00°13'45" WEST 242.51 FEET;

THENCE SOUTH 22°43'45" WEST 21.82 FEET;

THENCE SOUTH 00°00'44" WEST 7.66 FEET;

THENCE SOUTH 89°59'16" EAST 10.00 FEET;

THENCE NORTH 58°33'53" EAST 22.64 FEET;

THENCE SOUTH 30°54'18" EAST 27.24 FEET;

THENCE SOUTH 00°13'45" WEST 61.68 FEET;

THENCE SOUTH 89°46'15" EAST 10.00 FEET;

THENCE NORTH 00°13'45" EAST 64.46 FEET;

THENCE NORTH 30°54'18" WEST 23.98 FEET;

THENCE SOUTH 89°46'15" EAST 161.13 FEET;

THENCE SOUTH 44°46'15" EAST 12.83 FEET;

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EASEMENT AGREEMENT – EXHIBIT A3

LEGAL DESCRIPTION FOR UTILITY EASEMENT CONTINUED:

THENCE SOUTH 00°13'45" WEST 218.90 FEET;

THENCE NORTH 89°46'15" WEST 39.65 FEET;

THENCE SOUTH 00°13'45" WEST 37.56 FEET;

THENCE SOUTH 89°46'15" EAST 27.56 FEET;

THENCE NORTH 00°13'45" EAST 11.56 FEET;

THENCE SOUTH 89°46'15" EAST 12.09 FEET;

THENCE SOUTH 00°13'45" WEST 50.57 FEET;

THENCE SOUTH 89°46'15" EAST 134.19 FEET;

THENCE SOUTH 00°13'45" WEST 153.37 FEET;

THENCE EAST 22.89 FEET;

THENCE NORTH 05°56'28" EAST 18.75 FEET;

THENCE NORTH 89°46'15" WEST 9.05 FEET;

THENCE NORTH 00°13'45" EAST 39.65 FEET;

THENCE EAST 12.96 FEET;

THENCE NORTH 05°49'40" EAST 5.03 FEET;

THENCE WEST 9.15 FEET;

THENCE NORTH 00°13'45" EAST 111.95 FEET;

THENCE NORTH 89°46'15" WEST 132.19 FEET;

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MESA, ARIZONA 85210
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EASEMENT AGREEMENT – EXHIBIT A3

LEGAL DESCRIPTION FOR UTILITY EASEMENT CONTINUED:

THENCE NORTH 00°13'45" EAST 311.54 FEET;

THENCE NORTH 89°46'15" WEST 194.83 FEET;

THENCE NORTH 00°13'45" EAST 265.52 FEET;

THENCE WEST 52.84 FEET;

THENCE SOUTH 36.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 30488 SQUARE FEET OR 0.700 ACRES, MORE OR LESS.

REGISTERED LAND SURVEYOR
54336
NICHOLAS W.
JARRETT
Date Signed 6/13/16
ARIZONA, U.S.A.
Expires 3/31/19

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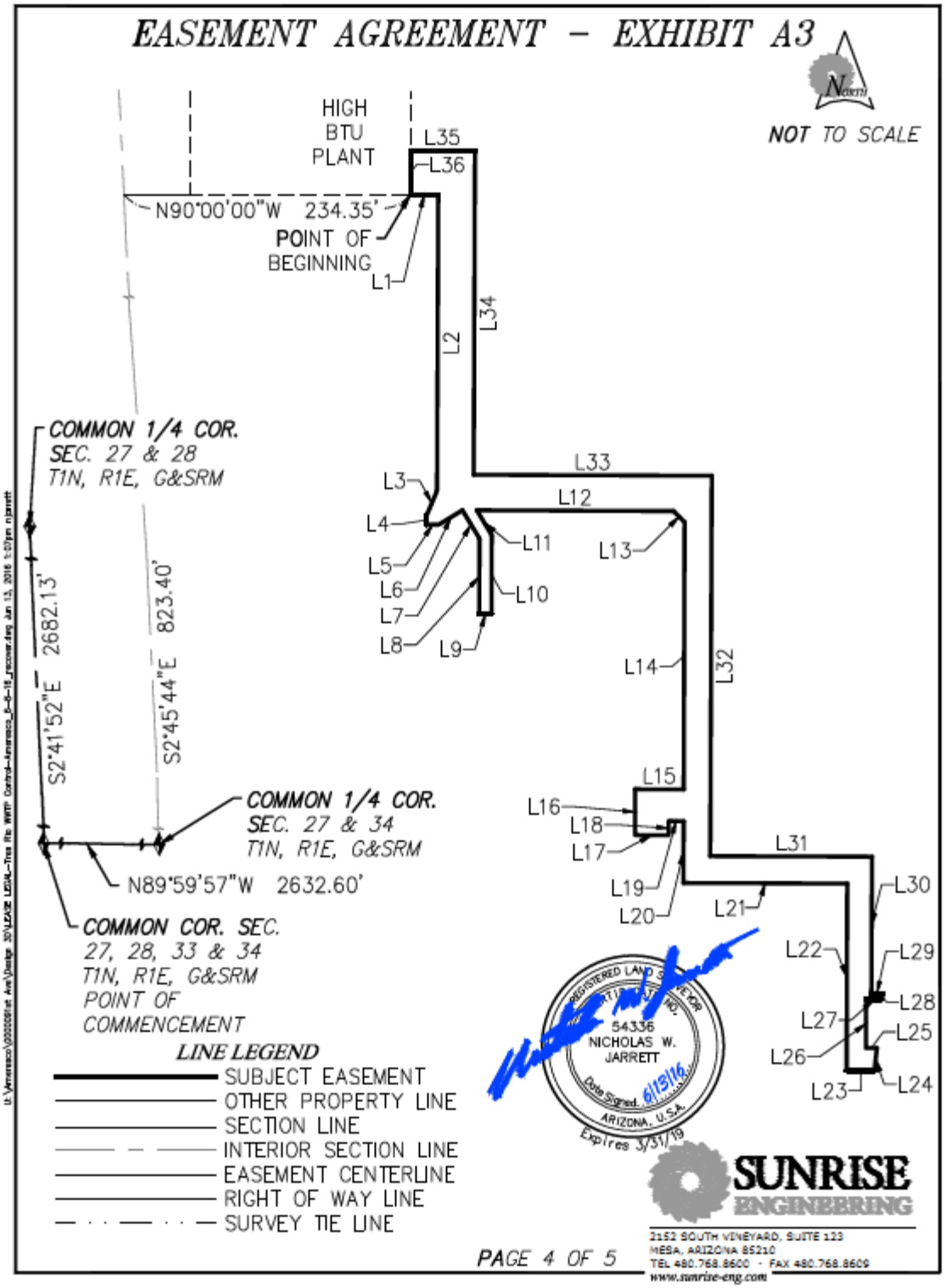
EASEMENT AGREEMENT – EXHIBIT A3
North
NOT TO SCALE
HIGH BTU PLANT
L35
L36
N90°00'00"W 234.35'
POINT OF BEGINNING
L1
L2
L34
L33
L3
L12
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L22
L29
L28
L27
L25
L26
L24
L23
COMMON 1/4 COR.
SEC. 27 & 28
T1N, R1E, G&SRM
2682.13'
S2°41'52"E
823.40'
S2°45'44"E
COMMON 1/4 COR.
SEC. 27 & 34
T1N, R1E, G&SRM
N89°59'57"W 2632.60'
COMMON COR. SEC.
27, 28, 33 & 34
T1N, R1E, G&SRM
POINT OF
COMMENCEMENT
LINE LEGEND
SUBJECT EASEMENT
OTHER PROPERTY LINE
SECTION LINE
INTERIOR SECTION LINE
EASEMENT CENTERLINE
RIGHT OF WAY LINE
SURVEY TIE LINE
REGISTERED LAND SURVEYOR
54336
NICHOLAS W. JARRETT
Date Signed 6/15/16
ARIZONA, U.S.A.
Expires 3/31/19
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PAGE 4 OF 5

EASEMENT AGREEMENT – EXHIBIT A3

Line Table		
Line #	Direction	Length
L1	N90°00'00"E	22.69'
L2	S0°13'45"W	242.51'
L3	N22°43'45"E	21.82'
L4	S0°00'44"W	7.66'
L5	S89°59'16"E	10.00'
L6	N58°33'53"E	22.64'
L7	S30°54'18"E	27.24'
L8	S0°13'45"W	61.68'
L9	S89°46'15"E	10.00'
L10	S0°13'45"W	64.46'
L11	S30°54'18"E	23.98'
L12	S89°46'15"E	161.13'
L13	S44°46'15"E	12.83'
L14	S0°13'45"W	218.90'
L15	S89°46'15"E	39.65'
L16	N0°13'45"E	37.56'
L17	S89°46'15"E	27.56'
L18	N0°13'45"E	11.56'
L19	S89°46'15"E	12.09'
L20	S0°13'45"W	50.57'

Line Table		
Line #	Direction	Length
L21	S89°46'15"E	134.19'
L22	S0°13'45"W	153.37'
L23	N90°00'00"E	22.89'
L24	N5°56'28"E	18.75'
L25	S89°46'15"E	9.05'
L26	S0°13'45"W	39.65'
L27	N90°00'00"W	12.96'
L28	S5°49'40"W	5.03'
L29	N90°00'00"W	9.15'
L30	S0°13'45"W	111.95'
L31	S89°46'15"E	132.19'
L32	S0°13'45"W	311.54'
L33	S89°46'15"E	194.83'
L34	S0°13'45"W	265.52'
L35	N90°00'00"E	52.84'
L36	S0°00'00"E	36.00'

REGISTERED LAND SURVEYOR
54336
NICHOLAS W. JARRETT
Date Signed 6/13/16
ARIZONA, U.S.A.
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PAGE 5 OF 5

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EXHIBIT "B"

INSURANCE REQUIREMENTS

GRANTEE shall procure and maintain for the duration of the Easement, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Easement.

The insurance requirements herein are minimum requirements for this Easement and in no way limit the indemnity covenants contained in this Easement. Grantor in no way warrants that the minimum limits contained herein are sufficient to protect Grantee from liabilities that might arise out of this Easement. Grantee is free to purchase such additional insurance as Grantee determines necessary. Some or all of the insurance requirements listed below may be Self-Insured by Grantee .

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Grantee shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – Occurrence Form**
Policy shall include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	$2,000,000
Products – Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Damage to Rented Premises)	$100,000

3. **Property Insurance**

Coverage for Grantee's improvements	Replacement Value
Coverage on building (required if Grantee is sole occupant)	Replacement Value

c. Property insurance shall be written on an all risk, replacement cost coverage, including coverage for flood and earth movement, subject to customary sublimits.

d. Policy shall be in force at the time of substantial completion of the facility's construction and continue until the termination of the easement or until title to the facility passes to the City of Phoenix, whichever is earlier.

B. **NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Easement, Grantee must provide to Grantor, within five (5) business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to**: City of Phoenix, Finance/Real Estate, Attn: Property Management, 251 West Washington Street, 8th Floor, Phoenix, AZ 85003**

C. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. Grantor in no way warrants that the above-required minimum insurer rating is sufficient to protect Grantee from potential insurer insolvency.

D. **VERIFICATION OF COVERAGE:** Grantee shall furnish Grantor with certificates of insurance (ACORD form or equivalent approved by Grantor) as required by this Easement. A self-insurance letter is acceptable in lieu of certificate. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by Grantor before the Easement commences. Each insurance policy required by this Easement must be in effect at or prior to commencement of this Easement and remain in effect for the duration of the Easement. Failure to maintain the insurance policies as required by this Easement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Easement shall be sent directly to **City of Phoenix, Finance/Real Estate, Attn: Property Management, 251 West Washington Street, 8th Floor, Phoenix, AZ 85003.** The City Department, Easement agreement number and location description are to be noted on the certificate of insurance. Grantor reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Easement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

E. **APPROVAL:** Any modification or variation from the insurance requirements in this Lease must have prior approval from the City of Phoenix Law Department, whose decision shall be final. Such action will not require a formal easement amendment, but may be made by administrative action.

Exhibit I

Form of Monthly Production Report

Phoenix Monthly Use Report for [MONTH & YEAR]											
Day	Incoming Total KSCF	Incoming Total MMBtu	Methane %	Pipeline Delivery KSCF	Pipeline Delivery MMBtu						
1											
2											
3											
4											
5											
6											
7											
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9											
10											
11											
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Exhibit J

Processing Facility Surrender Cost

and

Processing Facility Demobilization and Removal Cost

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