

## **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 91<sup>st</sup> Avenue Wastewater Treatment Plant, which includes certain real property, and is located at 5615 South 91<sup>st</sup> Avenue in Tolleson, Arizona (the "Plant"). Lessor operates the Plant on behalf of the Subregional Operating 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 31<sup>st</sup> of that calendar year. Thereafter, the Rent shall be paid in advance by Lessee annually, beginning on the January 1<sup>st</sup> 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 Premises, 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, 8th Floor**  
**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 Potable 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 if 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, 9<sup>th</sup> 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.

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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

**LESSEE:**

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

By: \_\_\_\_\_  
Kathryn Sorensen  
Water Services Director

By: \_\_\_\_\_  
Michael T. Bakas  
Senior Vice President

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

**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.*

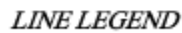
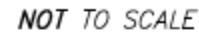
*CONTAINS 57600 SQUARE FEET OR 1.322 ACRES, MORE OR LESS.*

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- PAGE 2 OF 2



2152 SOUTH VINEYARD, SUITE 123  
MESA, ARIZONA 85210  
TEL 480.768.8600 - FAX 480.768.8609  
[www.sunrise-eng.com](http://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, 8<sup>th</sup> 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.

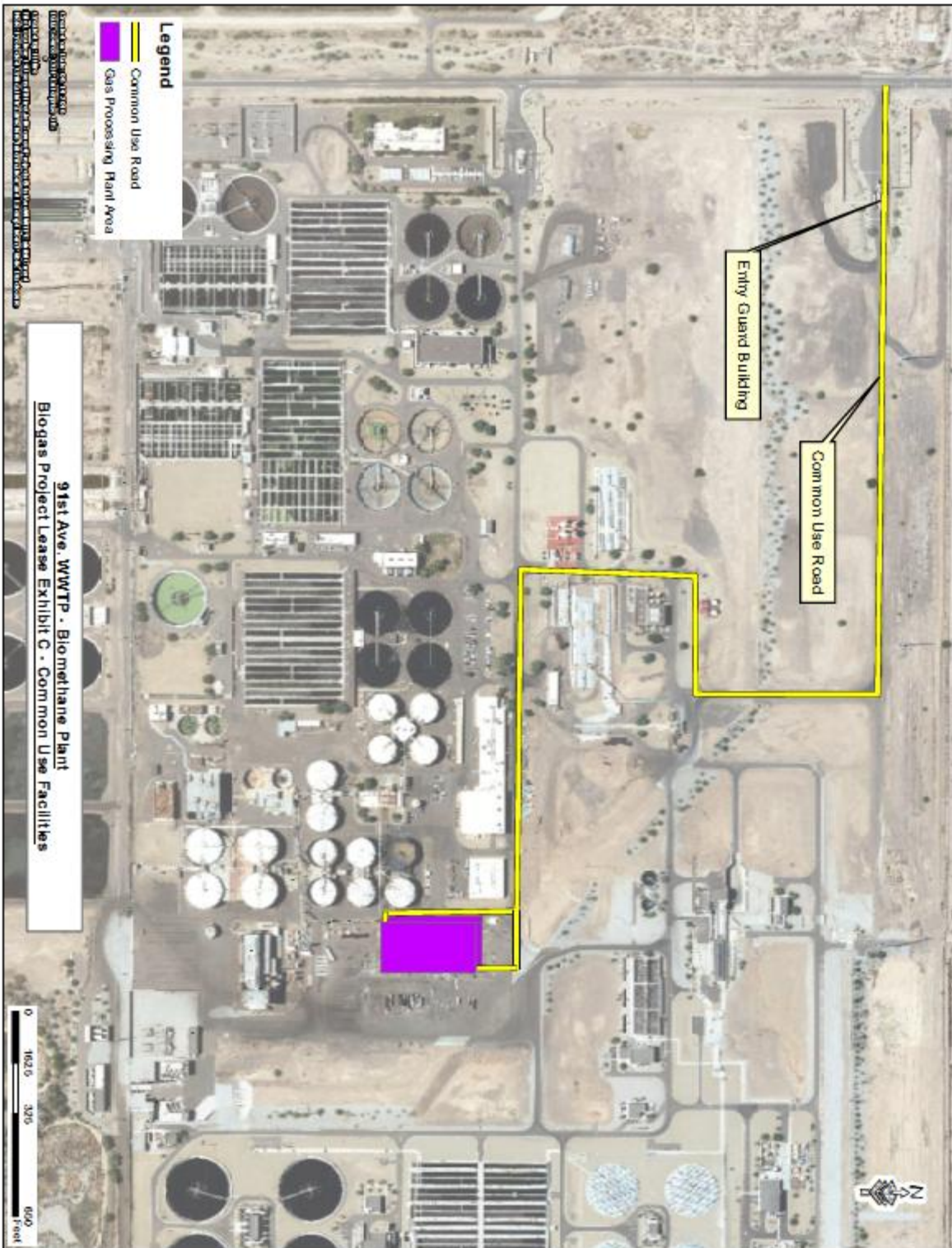
All certificates and any required endorsements are to be received and approved by the City before the Lease commences. Each insurance policy required by this Lease must be in effect at or prior to commencement of this Lease and remain in effect for the duration of the Lease. Failure to maintain the insurance 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, 8<sup>th</sup> 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.

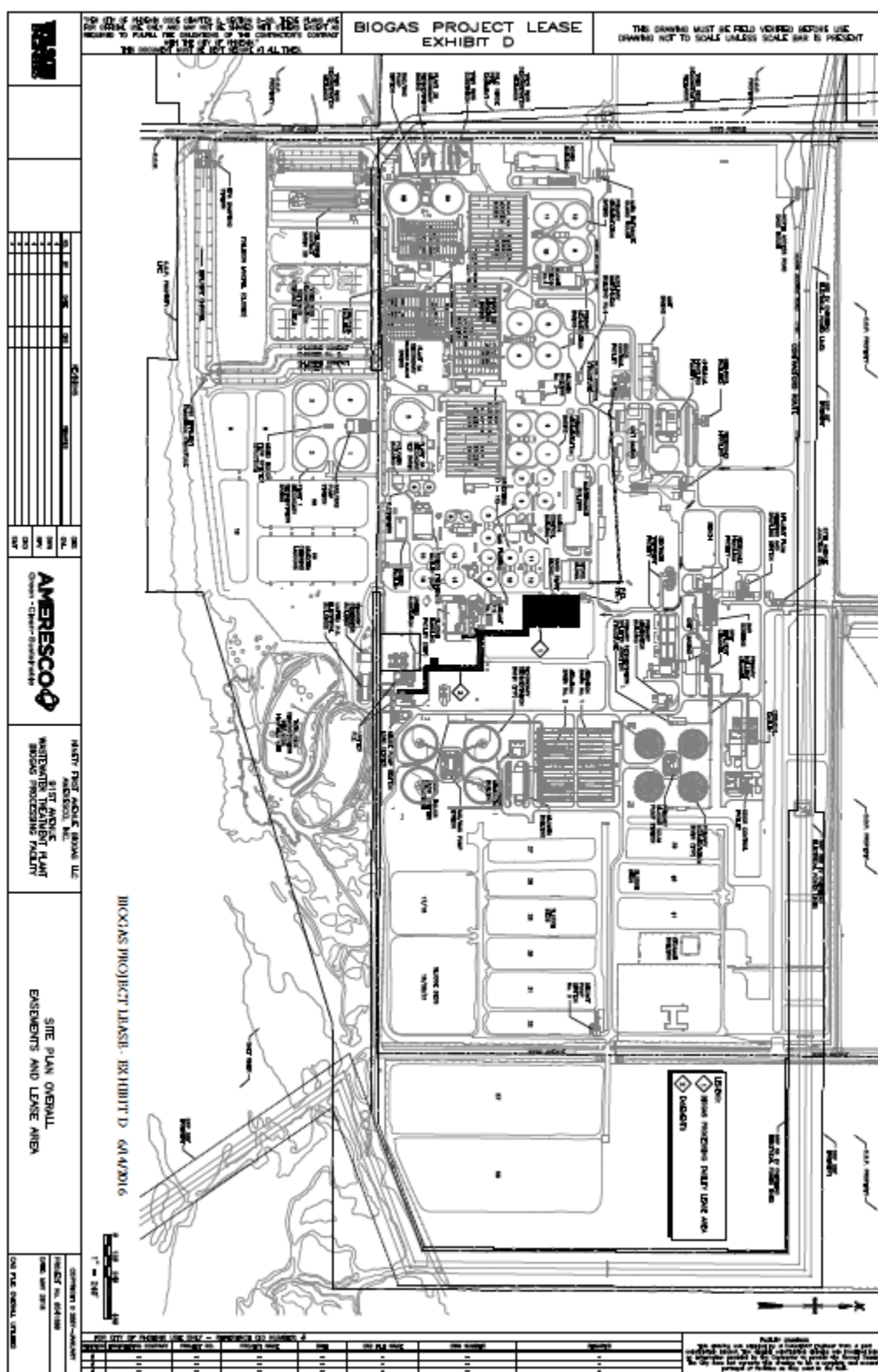
**EXHIBIT “C”**

**COMMON FACILITIES MAP**



**EXHIBIT “D”**

**PROCESSING FACILITY UTILITY CONNECTIONS**





**EXHIBIT “E”**

**UTILITY CONNECTIONS ORIENTATION FIGURE**

