

15872

Attachment A

**AMENDED AND RESTATED
PROJECT DEVELOPMENT AND
GAS SALES AGREEMENT**

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AMENDED AND RESTATED

PROJECT DEVELOPMENT AND GAS SALES AGREEMENT

This Amended and Restated Project Development and Gas Sales Agreement (the "Agreement") is made as of [May] __, 2007 (the "PDA Effective Date") by and between Bio Energy (Washington), LLC, a Delaware limited liability company ("Bio Energy") and King County Washington, a Washington municipal corporation ("County"). County and Bio Energy are referred to herein individually as a "Party" and, collectively, as the "Parties."

RECITALS :

A. County owns and operates the Cedar Hills Regional Landfill located in Maple Valley, Washington (as more specifically defined in Schedule 1.1, the "Landfill") and located on the Landfill Site (as more specifically defined in Exhibit A, the "Landfill Site").

B. County currently collects Landfill Gas in the Collection Facilities (as more specifically defined in Exhibit B, the "Collection Facilities") that are installed at the Landfill, which Landfill Gas is currently burned-off at the North Flare Station located at the Landfill.

C. Bio Energy desires to obtain rights to all Landfill Gas produced at the Landfill and collected by the Collection Facilities; to design, finance, own, construct, operate and maintain a facility (as more specifically defined in Schedule 1.1, the "Plant") at the Landfill on a site located within the Landfill Site (such site as more specifically described in the Plant Site Lease and the exhibits thereto, the "Plant Site") to process, convert, or otherwise use such Landfill Gas to generate alternate gas products or energy (including electricity); and to sell the products or energy (including electricity) resulting from such processing, conversion or use of the Landfill Gas at the Plant to one or more third parties.

D. County desires to (a) sell Landfill Gas to Bio Energy; (b) encourage Bio Energy's design, construction, financing, ownership, operation and maintenance of the Plant, its processing, conversion or use of the Landfill Gas, and its subsequent sale of the resulting products or energy; and (c) lease real property at the Landfill comprising the Plant Site (together with appropriate easements and rights of way) to Bio Energy for those purposes.

E. This Agreement is integral to implementation of other agreements respecting the Landfill to which one or more Parties are parties, including a site lease with respect to the plant (as more specifically defined in Schedule 1.1, the "Plant Site Lease") to be executed on the date hereof.

F. County and Bio Energy entered into the Original Project Development Agreement, the Gas Sales Agreement, and the Original Site Lease (collectively, the "Original Project Agreements") on January 20, 2004 (the "Original PDA Execution Date"). The Original Project Agreements contemplated Bio Energy purchasing Landfill Gas from County and primarily using such Landfill Gas to fuel an electricity generating facility located at the Landfill. Due to market conditions, use of the Landfill Gas for ultimate sale as processed gas is desirable

and this Agreement provides the flexibility for such a project (or other projects) in addition to the possible future use of the Landfill Gas to fuel an electricity generating facility.

G. Industrial Power Generating Company, LLC, a Delaware limited liability company ("Ingenco"), has proposed purchasing all of the membership interests of Bio Energy (the "Bio Energy Transfer"), with such Bio Energy Transfer being conditioned, in part, upon the execution of this Agreement on terms agreeable to Ingenco and the approval by the King County Metropolitan Council of this Agreement, the Plant Site Lease, and the transactions and projects contemplated herein and therein.

H. The Parties wish to combine the Original Project Development Agreement and the Gas Sales Agreement into this single Agreement, which shall supersede and replace each of the Original Project Development Agreement and the Gas Sales Agreement.

I. The original Gas Sales Agreement provided that Bio Energy would retain emission credits associated with the use of the Landfill Gas for energy. With the County's focus on mitigating climate change and its participation in the Chicago Climate Exchange, it is important to the County to retain all emissions credits associated with the Landfill Gas and this Agreement contains appropriate terms to that effect.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, and intending to be legally bound hereby, the Parties hereby agree as follows.

1. Definitions; Rules of Construction.

- 1.1 Definitions. Except as otherwise expressly provided herein, capitalized terms used herein shall have the meanings assigned thereto in Schedule 1.1.
- 1.2 Rules of Construction and Interpretation. Except as otherwise expressly provided herein, the rules of construction and interpretation set forth in Schedule 1.1 shall apply to this Agreement.
- 1.3 Negotiation of Agreement. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective legal counsel. Accordingly, this Agreement shall be deemed to be the product of each Party hereto, and there shall be no presumption that an ambiguity should be construed in favor of or against a Party solely as a result of such Party's actual or alleged role in the drafting of this Agreement.

2. Term.

- 2.1 Initial Term. The term of this Agreement (the "Initial PDA Term") shall commence on the PDA Effective Date and shall, unless sooner terminated as provided in Section 13 of this Agreement, remain in force and effect until the twentieth (20th) anniversary of the Commercial Operation Date.

2.2 Bio Energy Option to Extend. Bio Energy shall have the option to extend the Initial PDA Term for a period of five (5) years (the "First Extension Term") upon notice to County, such notice to be delivered to County not less than one hundred eighty (180) days prior to the expiration of the Initial PDA Term; provided however, that Bio Energy shall not have the right to extend the Initial PDA Term if a Bio Energy PDA Default has occurred and is continuing on the date Bio Energy provides such notice and Bio Energy is not diligently pursuing a cure for such Bio Energy PDA Default. The extension of this Agreement pursuant to the first sentence of this Section 2.2 shall be on the same terms and conditions provided herein (as such terms and conditions may have been amended or modified during the Initial PDA Term in accordance with Section 20.1).

2.3 Additional Extension by Parties. In the event that Bio Energy has exercised its option in accordance with Section 2.2, either Bio Energy or County may request an additional extension of the PDA Term for a period of five (5) years (the "Second Extension Term") upon notice to the other Party, such notice to be delivered to such other Party not less than one hundred eighty (180) days prior to the expiration of the First Extension Term. If both Parties agree to extend the PDA Term for the period of the Second Extension Term, the extension of this Agreement shall be on the same terms and conditions provided herein (as such terms and conditions may have been amended or modified during the Initial PDA Term or the First Extension Term in accordance with Section 20.1). Notwithstanding anything to the contrary set forth in this Agreement, in no event shall either Party be obligated to extend the PDA Term for the Second Extension Term, which decision shall be within the sole and absolute discretion of each Party.

3. Conditions Precedent.

3.1 Conditions Precedent. The respective rights and obligations of the Parties under this Agreement (other than those contained in this Section 3 and Sections 4.3; 4.4; 4.14; 4.15; 9.2; 10; 11; 13; 15; 16; 18; 19; and 20, which are, accordingly, binding upon the Parties as of the PDA Effective Date except to the extent set forth therein) are subject to the satisfaction in full of the following conditions precedent by the respective deadlines set forth in Section 3.2:

3.1.1 The Bio Energy Transfer shall have been consummated (the "Transfer Condition Precedent") and Ingenco shall have purchased all membership interests of Bio Energy; and

3.1.2 Bio Energy shall have been granted all Required Permits either unconditionally or subject to conditions that do not materially prejudice its rights, the enjoyment of its benefits or the performance of its obligations under this Agreement and the other Project Contracts to which it is a party, and each such Required Permit shall be in full force and effect and any appeal period shall have been expired or appeals exhausted. Upon mutual agreement, the Parties may waive the

conditions precedent set forth in this Section 3.1.2. (the "Permit Condition Precedent") at any time prior to the date a Termination Notice is delivered in accordance with and as authorized by Section 3.2.

3.1.3 Bio Energy shall have provided the County with written good faith warranty that it reasonably believes: a) it will be able to secure binding agreements with one or more third parties for the interconnection with and transportation of at least 5,000 MMBTU of Product Gas per day in such third party natural gas pipeline; b) capacity exists in such pipeline for transportation off of the Landfill of such amounts of Product Gas; and c) Product Gas will meet all gas quality and other requirements and specifications of such third party(ies) and applicable law for injection into and transportation in such third party pipeline ("Transportation Certification Condition Precedent").

3.2 Non-Fulfillment of Conditions Precedent.

3.2.1 Subject to this Section 3.2, if the Conditions Precedent have not been satisfied in full or (in the case of the Permit Condition Precedent) waived on or before: (a) in the case of the Transfer Condition Precedent, July 31, 2007; (b) in the case of the Permit Condition Precedent, the Target Permit Acquisition Date; or (c) in the case of the Transportation Certification Condition Precedent, thirty (30) days after the PDA Effective Date; then either Party shall have the right, upon not less than ten (10) days' notice to the other Party, to terminate this Agreement whereupon this Agreement shall Terminate on the tenth (10th) day following the effective date of such notice.

3.2.2 Notwithstanding Section 3.2.1, (a) any deadline set forth in Section 3.2.1 above may be extended if mutually agreed to by the Parties; (b) a Party shall not have the right to Terminate this Agreement due to the Permit Condition Precedent so long as Bio Energy is diligently pursuing each Required Permit (in the manner described in Section 3.3); and (c) a Party shall not have the right to Terminate this Agreement due to the Permit Condition Precedent if the Permit Condition Precedent is not satisfied primarily due to the actions (or inactions) of such Party

3.2.3 For purposes of clarification, if the relevant Condition Precedent is satisfied after the effective date of such Termination notice, such cure shall have no force and effect hereunder and shall not terminate, limit or restrict the Terminating Party's right to Terminate this Agreement.

3.2.4 Notwithstanding anything to the contrary set forth in this Agreement, in the event of the termination of this Agreement pursuant to this Section 3.2, neither Party shall have any liability or obligations to the other Party whatsoever as a result of such Termination, except for a failure to provide in good faith the written warranty under 3.1.3, a failure by Bio

Energy to have diligently pursued the Required Permits as required under Section 3.3, or any liability or obligation which arose or accrued under Section 11 prior to the effective date of a Termination of this Agreement hereunder, which liabilities and obligations shall survive such termination as set forth in Section 11.7. Any liabilities or obligations arising under this Section 3.2.4 shall be subject to Sections 11.3 through 11.8.

- 3.3 Obligation to Diligently Pursue Permits. Bio Energy anticipates issuance of all Permits required to construct the Plant by the Target Permit Acquisition Date. Upon the PDA Effective Date, Bio Energy shall present the County with a schedule for all permit applications and provide updates on at least a monthly basis as to the status of each application. Bio Energy shall notify the County of any known or identified delay in permit issuance, including the length of such delay and identify all steps Bio Energy is taking to satisfy the permit agency requirements, including providing additional information or clarification as may be requested, relating to a permit application. If Bio Energy anticipates a delay that will affect its ability to meet the Target Permit Acquisition Date, it shall promptly submit for County review and approval, such approval not to be unreasonably withheld, a request to extend the Target Permit Acquisition Date, stating the additional time needed, and the reasons why such delay is due to circumstances beyond Bio Energy's reasonable control. The failure to obtain all necessary permits by the Target Permit Acquisition Date shall not constitute an event of default unless Bio Energy has failed to diligently pursue all permits and government approvals required for construction and operation of the Plant and related facilities. This shall include, but not be limited to, timely filing completed applications for all necessary permits and approvals with the appropriate government agencies, timely completing any analysis or design necessary to support such application, promptly supplementing applications with any information necessary or requested by the permitting agency, and all other actions necessary to timely obtain the necessary permits and approvals. If at any time County believes Bio Energy is not diligently pursuing one or more permits, County shall promptly notify Bio Energy of such belief and the underlying basis for such belief; provided, however, that any such notice or lack thereof shall not for purposes of this Agreement establish that Bio Energy was or was not diligently pursuing any permit.

4. Development Activities.

4.1 Construction of the Plant.

- 4.1.1 Bio Energy shall be solely responsible for the design, installation and operation of the Plant. Bio Energy shall design, construct, install, operate, and maintain the Plant and obtain all Required Permits in accordance with (a) the timetable set forth on Schedule 4.1.1 hereto which includes specified Milestones (the "Timetable"), (b) Good Engineering Practices, (c) the Plant Site Lease, and (d) Applicable Law.

Bio Energy may, at its option (and in accordance with Good Engineering Practices), enter into agreements with County or Persons not party to this Agreement in order to satisfy its obligations under Section 4.1.1; provided, however, that Bio Energy not be relieved of any of its obligations or liabilities under this Agreement by reason of such agreements and Bio Energy shall remain responsible to County for the acts, omissions, defaults and negligence of such Persons and their respective Representatives or Subcontractors in connection with such Person's performance or non-performance of its obligations under the applicable agreement.

4.1.2 In addition to the requirements in Section 3.3, Bio Energy shall, if County so requests, hold quarterly on-site meetings with County, County's engineering consultants, if any, and any other person designated by County. Bio Energy shall make reasonable efforts to notify County in advance of any meeting with a Governmental Authority to obtain the Required Permits and to provide a Representative of County with the opportunity to accompany Bio Energy's Representatives to such meetings.

4.2 Project Milestones.

4.2.1 The Timetable attached as Schedule 4.1.1 to this Agreement sets forth a schedule of certain Milestones and the Milestone Date by which Bio Energy and County, as applicable, expect to complete or satisfy each such Milestone.

4.2.2 If Bio Energy fails to meet any of the Milestones by the applicable Milestone Date, then such failure will be considered a Bio Energy PDA Default and County shall, subject to the cure provisions set forth in Section 13.3.2 herein, have the right to terminate this Agreement in accordance with Section 13.3.

4.3 Interconnections. Bio Energy and County shall use good faith reasonable efforts to coordinate the design, construction, installation, operation- and maintenance of interconnections between the Plant and County's facilities required for operation of the Plant, including such interconnections required for a) the delivery of Landfill Gas to the Plant at the Gas Delivery Point, (b) the delivery of electrical energy to the Plant, (c) delivery of Product Gas from the Plant to the Product Gas Delivery Point, and (d) and the delivery of Condensate to the Condensate Delivery Point. Each Party will be solely responsible for designing, constructing and installing all equipment, pipes, conduits and related facilities required for, and shall bear all costs and expenses incurred in connection with, initially bringing their respective facilities to the Gas Delivery Point, the Product Gas Delivery Point and the Condensate Delivery Point, as applicable. The Parties will modify the interconnections between the Plant and the Collection Facilities from time to time to reflect changes to their respective facilities, with the cost of such

modifications borne by the Party whose facilities or decisions necessitate the modifications.

4.4 Flare Station Relocation. County shall relocate the North Flare Station to the New Flare Station Site pursuant to an engineering plan (“Flare Station Relocation Plan”) as mutually agreed by the Parties. The Parties shall use their best efforts to develop the Flare Station Relocation Plan within 180 days of the PDA Effective Date.

4.5 [Reserved]

4.6 Operation and Maintenance of Landfill and Collection Facilities.

4.6.1 The Parties agree that the primary responsibility of County is to operate the Landfill and Gas Collection System in a manner that meets County’s waste disposal, environmental and public health objectives and obligations. Bio Energy shall not interfere with County’s Landfill or Gas Collection System operations or facilities and the Parties shall work together in good faith to coordinate their respective activities at the Landfill to avoid any such interference. County shall at all times operate and maintain the Collection Facilities in accordance with this Agreement and in such a manner as to: (a) protect public health and the environment surrounding the Landfill Site; (b) enable County to extract a quantity of Landfill Gas from the Landfill that is consistent with the quantity of Landfill Gas that an operator of landfill gas collection facilities, operating in accordance with Good Engineering Practices, would extract in the ordinary course of operations from such landfill in order to provide a reasonably continuous supply of landfill gas; (c) minimize Collection Facilities Outages; and (d) optimize the useful life of the Collection Facilities, subject at all such times to Good Engineering Practices and Applicable Law. County shall maintain the Collection Facilities in good, clean, proper and orderly condition at all times and shall implement such repairs, and shall purchase and install such expansion and replacement equipment and parts for the Collection Facilities as is necessary to enable the Collection Facilities to operate in accordance with Good Engineering Practices and Applicable Law. County shall provide (or cause to be provided) all materials, equipment, utilities, personnel and services necessary for County to operate and maintain the Collection Facilities in accordance with Good Engineering Practices and all Applicable Law. Nothing in this Section is intended to provide a Landfill Gas quantity or quality guarantee.

4.6.2 County shall be solely responsible for operating and maintaining the Collection Facilities in accordance with the standards set forth in Section 4.6.1 and for all costs and expenses associated therewith. County may, at its option (and in accordance with Good Engineering Practices), enter into agreements with Bio Energy or Persons not party to this Agreement

in order to satisfy its obligation to operate and maintain the Collection Facilities pursuant to this Section 4.6; provided, however, that County shall not be relieved of any of its obligations or liabilities under this Agreement by reason of such agreement and County shall remain responsible to Bio Energy for the acts, omissions, defaults and negligence of such Persons and their respective Representatives in connection with such Person's performance or non-performance of its obligations under the applicable agreement.

4.6.3 County shall provide Bio Energy a copy of any written notice that County sends to, or receives from, a Governmental Authority with respect to the noncompliance or alleged noncompliance by County or the Collection Facilities with any Applicable Law, within three (3) Business Days of sending or receiving, as applicable, any such notice. Bio Energy shall provide County a copy of any written notice that Bio Energy sends to, or receives from, a Governmental Authority with respect to the noncompliance or alleged noncompliance by Bio Energy or any of its facilities with any Applicable Law, within three (3) Business Days of sending or receiving, as applicable, any such notice.

4.6.4 County shall prepare and maintain manuals containing operation and maintenance procedures applicable to the Collection Facilities and, from time to time, update such manuals as required to account for changes in the equipment, components, systems and operating practices and procedures employed at the Collection Facilities. Upon reasonable notice to County, Bio Energy shall have the right to review and inspect such manuals.

4.7 Annual Maintenance Schedules.

4.7.1 No later than ninety (90) days prior to the beginning of each Operating Year during the Delivery Period: (a) County shall provide Bio Energy with a maintenance schedule for the Collection Facilities which shall describe in reasonable detail (i) the proposed schedule for Collection Facilities maintenance outages during the immediately succeeding Operating Year and (ii) any known reduction in the quantity of Landfill Gas that will be delivered to the Gas Delivery Point during each proposed outage; and (b) Bio Energy shall provide County with a maintenance schedule for the Plant which shall describe in reasonable detail (i) the proposed schedule for Plant maintenance outages during the immediately succeeding Operating Year and (ii) any reduction in the quantity of Landfill Gas that Bio Energy will be able to accept at the Gas Delivery Point during each such proposed outage. Bio Energy and County shall meet and coordinate the proposed maintenance schedule for the Collection Facilities and Plant and shall seek to schedule outages during the same time periods, to the extent feasible and consistent with Good Engineering Practices. The Parties shall agree to a final Annual

Maintenance Schedule for the Collection Facilities and the Plant on or before the date that is fifteen (15) days prior to the beginning of each Operating Year.

- 4.7.2 During the Delivery Period, Bio Energy or County may propose a revision to its respective Scheduled Outages as set forth on the then-effective Annual Maintenance Schedule to accommodate necessary or desirable changes thereto. The Parties shall consider, and shall in good faith attempt to accommodate, any such proposal by adjusting the then-effective Annual Maintenance Schedule; provided, however, that, subject to its obligation to act in good faith, neither Party shall be obligated to consent to any such proposal.
- 4.7.3 In the event that County reasonably anticipates that any event or events may result in an Unscheduled Collection Facilities Outage, County shall endeavor to provide oral notice thereof, together with the expected duration thereof, to Bio Energy. As soon as practicable but not later than the day immediately following the occurrence of an Unscheduled Collection Facilities Outage, County shall provide written notice to Bio Energy detailing to the extent known (a) the nature of the events causing the Unscheduled Collection Facilities Outage and (b) the expected effect such Unscheduled Collection Facilities Outage will have on County's ability to provide Landfill Gas to the Gas Delivery Point.
- 4.7.4 In the event that Bio Energy reasonably anticipates that any event or events may result in an Unscheduled Plant Outage, Bio Energy shall endeavor to provide oral notice thereof, together with the expected duration thereof, to County. As soon as practicable but not later than the day immediately following the occurrence of an Unscheduled Plant Outage, Bio Energy shall provide notice to County detailing to the extent known (a) the nature of the events causing the Unscheduled Plant Outage and (b) the expected effect such Unscheduled Plant Outage will have on Bio Energy's ability to accept Landfill Gas at the Gas Delivery Point.
- 4.8 Commitment for Future Landfill Gas Collection Capacity. County will promptly install, and will operate, repair and maintain, Expansion Collection Facilities in such a manner as to: (a) protect public health and the environment surrounding the Landfill Site; (b) enable County to extract a quantity of Landfill Gas or from any Landfill Expansion Cells that is consistent with the quantity of Landfill Gas that an operator of landfill gas collection facilities, operating in accordance with Good Engineering Practices, would extract in the ordinary course of operations from such Landfill Expansion Cells in order to provide a reasonably continuous supply of landfill gas; and (c) assure compliance by the Expansion Collection Facilities with all Applicable Law.

4.9 Continued Operation of Landfill. County shall have no obligation to continue operations of the Landfill; provided, however, that any suspension or termination of Landfill operations shall not: (a) release County from its obligation to continue to operate and maintain the Collection Facilities and any Expansion Collection Facilities in accordance with Section 4.6 and 4.8 of this Agreement; (b) release County from the performance of its obligations hereunder or the other Project Contracts to which it is a party; or (c) suspend or terminate this Agreement or otherwise affect Bio Energy's rights hereunder, including its rights to take delivery of Landfill Gas.

4.10 Condensate.

4.10.1 Except as provided in this Section 4.10, County shall accept delivery of all quantities of Plant Condensate delivered by Bio Energy to the Condensate Delivery Point, and shall at its own cost and expense dispose of such Plant Condensate in accordance with Applicable Law. The County will apply for a modification to its Wastewater discharge permit and its Title V Air Operating permit to reflect the introduction of Plant Condensate into its waste water collection system.

4.10.2 Bio Energy will provide the county sufficient information regarding quality and quantity, and location of discharges, to support the County's request for a modification to its Wastewater discharge permit and Title V Air Operating permit. County will use commercially reasonable efforts to apply for the permit modifications noted in Section 4.10.1 within 60 days of receiving from Bio Energy all information required by County to support such modifications.

4.10.3 If no substantive requirements are added as permit conditions as a result of permit modifications to either its Waster Discharge Permit or its Title Air Operating Permit, County shall accept delivery of Plant Condensate at its own cost and expense.

4.10.4 If substantive requirements are added to either the Waste Discharge Permit or the Title V Air Operating Permit, such as additional treatment steps and/or additional testing, then County shall accept delivery of Plant Condensate, but Bio Energy shall bear the cost and expense of meeting those additional requirements.

4.10.5 Notwithstanding Section 4.10.3 and 4.10.4, if (i) County cannot accept Plant Condensate for processing at its wastewater treatment facility at the Landfill under Applicable Law; or (ii) County discovers that the quality of the waste-water produced by County's waste-water treatment facilities at the landfill fails to satisfy one or more quality specifications as set forth in the County's waste-water discharge permit (each of items (i) and (ii), a "Condensate Quality Failure"), then County shall have the right to generate, sample and test condensate created from Landfill Gas

taken at the Gas Delivery Point prior to processing by Bio Energy (the "Pre-Process Condensate"), and to sample and test the Plant Condensate after return by Bio Energy to County at the Condensate Delivery Point (in each case in accordance with customary sampling and testing procedures) to determine if Plant Condensate is the cause for the Condensate Quality Failure.

4.10.6 County's obligation to accept and dispose of all quantities of Plant Condensate delivered by Bio Energy to the Condensate Delivery Point shall continue in place unless such sampling and testing demonstrates that the Condensate Quality Failure (i) was caused by Plant Condensate, and (ii) would not have occurred if the condensate was handled in the County's system existing prior to construction and operation of the Plant. In that event, the Plant Condensate shall be referred to as "Nonconforming Condensate" to the extent it is the cause of the Condensate Quality Failure. County shall not be obligated to accept Nonconforming Condensate, but shall continue to accept and dispose of as much Plant Condensate as possible without resulting in a Condensate Quality Failure.

4.10.7 Subject to Section 4.10.4, all of the costs and expenses of sampling and disposal of Plant Condensate (and, subject to Section 11 hereto, any damages and liabilities arising from Plant Condensate) shall be the sole responsibility of County, unless such Plant Condensate is Non-Conforming Condensate, in which case all such costs, expenses, liability and damages with respect to Non-Conforming Condensate shall be the sole responsibility of Bio Energy. County agrees to use commercially reasonable efforts to cooperate with Bio Energy in determining and effecting a method for Bio Energy's disposal of Non-Conforming Condensate that is low cost and complies with all Applicable Laws.

4.11 Plant Site Lease Improvements. County shall, at its sole cost and expense, complete each of the Plant Site Lease Improvements on or before the Target Construction Start Date. For the avoidance of doubt, County's failure to complete such Plant Site Lease Improvements by the Target Construction Start Date shall entitle Bio Energy to a day-for-day extension of the Target Construction Start Date and all other Milestone Dates until all such improvements are completed.

4.12 Tax Credits other than Alternative Energy Tax Credits. To the extent New Tax Credits are available pursuant to the transactions contemplated herein, Bio Energy shall pay to County one-half of any proceeds received by Bio Energy in connection with such New Tax Credits in addition to all other payments hereunder. The formula set forth in Schedule 5.1 of this Agreement shall be amended to take into account such New Tax Credits and the allocation of value as set forth herein. Notwithstanding anything in this Agreement to the contrary, Bio Energy shall not have any obligation hereunder to monetize or otherwise obtain the benefits of any Tax Credit or any New Tax Credit.

- 4.13 Emissions Credits. The County shall own and specifically retains any and all rights to any Emissions Credits attributable to or generated or otherwise provided in connection with the Plant, the Plant Site, or the generation or sale of Product Gas or otherwise attributable to or generated or otherwise provided in connection with the Landfill or the Landfill Site.
- 4.14 Title to Landfill Gas, Facilities and Condensate.
- 4.14.1 Title to Landfill Gas at PDA Effective Date. County represents and warrants to Bio Energy, as a material inducement for Bio Energy to enter into this Agreement and the other Project Contracts, that as of the PDA Effective Date, County owns and has good and marketable title to, free and clear of all liens, claims or encumbrances, all Landfill Gas and has the exclusive right to extract, use, sell, dispose, assign or transfer all existing and future Landfill Gas hereunder.
- 4.14.2 Title to Landfill Gas at Delivery Date. County represents and warrants to Bio Energy that at the time of delivery to Bio Energy of Landfill Gas at the Gas Delivery Point, County shall own and have good and marketable title to, free and clear of all liens, claims or encumbrances, all Landfill Gas delivered hereunder and have the exclusive right to extract, use, sell, dispose, assign or transfer all existing Landfill Gas to Bio Energy hereunder. County shall retain title to and risk of loss for the Landfill Gas until such time as the Landfill Gas is delivered by County to the Gas Delivery Point. Bio Energy shall take title to and incur risk of loss for Landfill Gas when it is made available to Bio Energy at the Gas Delivery Point. Until such delivery, County shall be deemed to be in control of, be in possession of, and be responsible for such Landfill Gas. Upon such delivery, Bio Energy shall be deemed to be in control of, be in possession of, and be responsible for such Landfill Gas. Except as expressly set forth in this or another agreement between the Parties, prior to Bio Energy taking delivery of any Landfill Gas at the Gas Delivery Point, Bio Energy shall have no obligations with respect to monitoring, collecting, control, flaring or disposal of any Landfill Gas.
- 4.14.3 Title to Facilities. As between the Parties, it is conclusively presumed that Bio Energy owns (a) all gas delivery pipelines and equipment downstream of the Gas Delivery Point; (b) all facilities and equipment located on the Plant Site; and (c) the Plant Transmission Line, and that County owns all other facilities at or associated with the Landfill.]
- 4.14.4 Title to Condensate. Bio Energy shall retain title to and risk of loss for any Plant Condensate until such time as such Plant Condensate is delivered by Bio Energy to the Condensate Delivery Point. Subject to Section 4.10 of this Agreement, County shall take title to and incur risk of loss for Plant Condensate when it is made available to County at the Condensate Delivery Point. Until the Plant Condensate is so made

available to County, Bio Energy shall be deemed to be in control of, be in possession of, and be responsible for such Plant Condensate. Upon the Plant Condensate being so made available, County shall be deemed to be in control of, be in possession of, and be responsible for such Condensate.

4.14.5 No Mineral Rights or Production Rights. Subject to the rights granted to Bio Energy in Section 4.15 and Section 5.4, nothing in this Agreement shall be deemed to grant to Bio Energy any rights to Landfill Gas in place or any production rights or other rights to, or interest in, any oil or natural gas or other minerals located under or in the Landfill except for the rights to Landfill Gas delivered to the Gas Delivery Point and Bio Energy shall have no right to drill for or, subject to Bio Energy's exercise of its rights granted pursuant to Section 14, otherwise operate the Collection Facilities to collect the Landfill Gas.

4.15 Restrictions on Transfer of Collection System, Landfill Gas, and Expansion Collection Facilities.

4.15.1 Commencing on the PDA Effective Date, neither County or any of its Representatives shall, without the prior consent of Bio Energy, enter into any negotiations] with any third party (other than Bio Energy) concerning the sale of all or any portion of the Landfill Gas, or approve the sale, transfer, assignment or other disposition of all or any portion of the Landfill Gas to any third party (other than Bio Energy).

4.15.2 In the event County proposes to sell, transfer or assign the Collection Facilities and to assign this Agreement in connection with such sale, transfer or assignment, the Parties shall meet and discuss in good faith the proposed purchaser, transferee or assignee, the circumstances of the sale, transfer or assignment, and any modifications to this Agreement that are necessary to complete such sale, transfer or assignment to the mutual satisfaction of the Parties and the purchaser, transferee or assignee. As a condition precedent to any such sale transfer or assignment, County shall require any proposed assignee to execute and deliver an assignment agreement under which transferee assumes all of the County's rights and obligations under this Agreement. For purposes of clarification, County shall not have the right to assign this Agreement except to the assignee, transferee or purchaser of the Collection Facilities contemporaneously with such assignment, transfer or purchase.

4.15.3 County will not sell, transfer or assign the Expansion Collection Facilities separately from the Collection Facilities. Any sale, transfer or assignment of the Expansion Collection Facilities will be subject to the

terms and conditions set forth in Section 4.15.2 with respect to a sale, transfer or assignment of the Collection Facilities.

4.16 Discharge of Third Party Claims. Bio Energy shall pay and timely discharge all its debts which may result in the assertion of any lien, mortgage, security interest or encumbrance, or any judgment, against the Landfill, County or any of the property of County, its agents or employees, or any materials or equipment comprising or otherwise a part of facilities at the Landfill, other than (a) liens, mortgages, security interests or encumbrances on the property and rights of Bio Energy granted by Bio Energy to a Financing Party; and (b) prior to the Commercial Operation Date, construction and mechanics liens granted by Bio Energy in connection with an EPC Agreement.

5. Sale of Landfill Gas.

5.1 Sale During Start-up Period. County agrees to sell and deliver to Bio Energy and Bio Energy agrees to buy from County and accept delivery of such quantities of Landfill Gas as may be required by Bio Energy to conduct testing, start-up and commissioning activities at the Plant. Bio Energy shall provide County not less than seven (7) days' prior notice of the date that Bio Energy intends to commence testing and commissioning activities and an estimate of the approximate quantity of Landfill Gas that Bio Energy will require during each day of the Start-up Period. Such estimates shall not in any manner be binding upon Bio Energy and Bio Energy may update such estimates from time to time during the Start-up Period.

5.2 Sale during Delivery Term.

5.2.1 During the Delivery Period, County shall sell and deliver to Bio Energy, in accordance with this Agreement, all Landfill Gas collected by the Collection Facilities or the Expansion Collection Facilities to the extent the County retains the rights to such Landfill Gas or such rights revert to County at a future date.

5.2.2 County shall make all deliveries of Landfill Gas contemplated by this Agreement to Bio Energy at the Gas Delivery Point at a pressure of at least 2" water column. County will operate and maintain blowers as required to make such deliveries.

5.2.3 Subject to the terms and conditions of this Agreement, Bio Energy agrees to buy from County all Landfill Gas made available at the Gas Delivery Point during the Delivery Period in accordance with this Section 5.2. Bio Energy shall accept delivery of all such Landfill Gas other than any Flared Gas that is burned off in the New Flare Station.

5.3 Sales of Flared Gas. County and Bio Energy acknowledge that at certain times the Plant will not be able to use all of the then-available Landfill Gas or Partially Processed Gas at the Plant for the generation of product gas or electricity, and

during such periods of time quantities of Landfill Gas or Partially Processed Gas will be burned-off in either the New Flare Station (all such Landfill Gas as flared at the New Flare Station, the "Flared Gas") or the Plant Flare. Flaring of Landfill Gas or Partially Processed Gas will be performed in accordance with the Flare Operation Procedures, such procedures to be mutually agreed by the Parties no later than ninety (90) days prior to the Target Commercial Operation Date.

- 5.4 Sales Exclusively to Bio Energy. County shall sell and make available for delivery to Bio Energy all Landfill Gas produced or collected by the Collection Facilities or the Expansion Collection Facilities, and shall not sell, deliver, transfer, use, divert or otherwise make available to any Person (other than Bio Energy) all or any part of, or any rights to purchase, extract, produce or otherwise take delivery of, any Landfill Gas without Bio Energy's prior written consent.
- 5.5 WARRANTY DISCLAIMER. OWNER MAKES NO WARRANTIES AS TO THE QUALITY OR QUANTITY OF LANDFILL GAS DELIVERED TO BIO ENERGY PURSUANT TO THIS AGREEMENT. OWNER AND BIO ENERGY AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND DO NOT APPLY TO THE LANDFILL GAS SOLD HEREUNDER.

6. Consideration to County for Sale of Landfill Gas.

- 6.1 Consideration for Landfill Gas. Except as otherwise provided herein, Bio Energy shall pay to County the payments determined pursuant to the formulas set forth in Schedule 5.1.
- 6.2 Delay Payment. If, for any reason, the Commercial Operation Date has not occurred prior to four hundred eighty one (481) days after the Permit Acquisition Date, Bio Energy shall begin paying the County at the rate of \$0.20 per MMBTU for all Gas collected by the Landfill Gas Collection System ("Delay Payment") as determined by the County. The Delay Payment shall be paid for all Gas collected by the Landfill Gas Collection System until the earlier of the date the Additional Delay Payment is applied in accordance with this Section or the Commercial Operation Date. Following the Commercial Operation Date, payments for Gas collected will thereafter be determined in accordance with Schedule 5.1.

Notwithstanding any provision to the contrary, if for any reason the Commercial Operation Date has still not occurred as of six hundred (600) days after the Permit Acquisition Date, the Delay Payment shall increase to \$0.60 per MMBTU for all Gas collected by the Landfill Gas Collection System ("Additional Delay Payment") as determined by the County. This Additional Delay Payment will be paid for all Gas collected by the Landfill Gas Collection System until the earlier of the Commercial Operation Date (at which time payments for Gas collected will

thereafter be determined in accordance with Schedule 5.1) or termination of this Agreement by the County.

- 6.3 Payments Due. Within thirty (30) days after the end of each month Bio Energy shall pay to County the Delay or Additional Delay Payment, if any, and the Gas Sales Payment due and owing pursuant to Section 6. Accompanying each Gas Sales Payment, Bio Energy shall provide County with an invoice setting forth (a) the total MMBTUs of Delivered Gas and the Flared Gas Quantity applicable to such Billing Period and (b) the calculation of the amounts due and owing by Bio Energy for such Billing Period pursuant to Section 6.1. Unless otherwise mutually agreed, all undisputed payments due and owing under this Agreement shall be made in immediately available funds and in U.S. currency by wire transfer to the bank account specified by the payee in writing to the payor.
- 6.4 Disputes. Within fifteen (15) days after receiving a Gas Sales Payment and the accompanying invoice pursuant to Section 6.3, County may, by notice to Bio Energy, dispute, in good faith, any amount set forth in such invoice. If any dispute under this Section 6.4 alleges the inaccuracy of a Gas Sales Payment due to the inaccuracy of the Billing Meters, either Party may, pursuant to Section 7.4, request an additional test or independent calibration of the Billing Meters, and the appropriate adjustment to such Gas Sales Payments shall be made in accordance with Section 7.3. If the dispute does not involve the accuracy of the Billing Meters and the Parties do not resolve such dispute within ten (10) days of the delivery of the dispute notice, then the dispute shall be resolved in accordance with Section 16. If the amount in dispute (or any portion thereof) is resolved against the Party receiving such dispute notice, such Party shall within ten (10) days of the date of such resolution pay the Party delivering such dispute notice the amount that has been resolved to be due and owing by receiving Party, plus interest at the Approved Rate from the date originally due until the date such amount is paid in full. Each Party will be deemed to have waived its right to dispute a specific invoice (without the requirement to provide a written form of waiver) if such invoice is not disputed within fifteen (15) days of the date such invoice is delivered, subject to each Party's audit rights provided in Section 6.5.
- 6.5 Records and Audits.
- 6.5.1 Each Party shall keep and maintain complete and accurate records and all other data required by or of each of them for proper administration of this Agreement, including a copy of all of such Party's records that are necessary to determine the gas sales payments to be made to County pursuant to this Agreement, including records of Delivered Gas, Flared Gas, and Product Gas quantities and sale prices. Each Party shall make such records and data available to the other Party or its designees or representatives, upon not less than three (3) Business Days prior notice and during normal business hours, as may be required to determine whether all obligations are being performed in conformity with this Agreement. Each Party shall retain all of its books and records for three

(3) years following the creation thereof or for such longer period as may be required by Applicable Law, provided that all records that are necessary to demonstrate eligibility for the Alternative Energy Tax Credit shall be retained for ten (10) years following the creation thereof or such longer period as may be required by Applicable Law.

6.5.2 Either Party will have the right, at its own cost and expense, from time to time and upon reasonable notice to the other Party and during normal business hours, to (a) examine the records and data of the other Party required to be maintained under Section 6.5.1 and (b) cause an audit to be made by an independent certified public accountant with respect to any amount invoiced or otherwise claimed as being due from one Party to the other Party hereunder.

6.5.3 Notwithstanding anything to the contrary set forth in this Agreement:

(a) Any audit of an amount invoiced hereunder shall be requested within three hundred sixty five (365) days of the date of the delivery of the applicable invoice or invoice. Following an audit under Section 6.5.2, another audit shall not be performed for a period of twelve (12) months.

(b) Any examination or audit of the books and records of Bio Energy that is requested by County (i) shall be conducted by an independent certified accounting firm of national standing as chosen by County and reasonably acceptable to Bio Energy, (ii) shall be conducted in Bio Energy's offices where the relevant books and records are maintained or such other location as is mutually agreed by the Parties. None of such books and records shall be removed from Bio Energy's offices or such other location as the audit is conducted in connection with such audit.

(c) All of the fees and expenses of any examination or audit (including the fees and expenses of any third party engaged by such Party to perform such examination or audit) shall be the sole responsibility of the Party requesting the examination or audit.

6.6 Delinquent Payments. All amounts payable under Section 6 shall accrue interest at the Approved Rate for the period of time during which such amounts are thirty (30) days or more past due until paid in full.

7. Measurement.

7.1 Measurement Standards. The unit of volume for measurement of Landfill Gas delivered hereunder (each such unit, an "SCF") shall be one cubic foot of Landfill Gas corrected to a base temperature of sixty (60) degrees Fahrenheit and at an absolute pressure of 14.65 pounds per square inch and saturated with water vapor.

All fundamental constants, observations, records and procedures involved in determining the quantity of Landfill Gas delivered hereunder shall be in accordance with the standards prescribed in Report No. 3 of the American Gas Association, as now in effect and from time to time amended or supplemented. The unit of energy for measurement of Landfill Gas shall be the British Thermal Unit ("BTU"). The energy content of the Landfill Gas shall be determined by multiplying (i) the volume of Landfill Gas in SCF; by (ii) the methane (CH₄) fraction; by (iii) a fixed quantity of 1012 BTU per SCF. Meter Station. Each Party shall have the right to be present at the time of any installing, reading, sampling, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other Party's Meters used in measuring Landfill Gas deliveries hereunder. The records from such measuring equipment shall remain the property of their owner, but upon request, each Party will submit to the other Party its records and charts, together with calculations therefrom subject to return within thirty (30) days after receipt thereof. The records and charts shall be kept on file for a period of ten (10) years or such longer period as may be required by Applicable Law. If a Party elects to request the other Party's records and charts as provided above on a regularly recurring basis, such records and charts for a particular Billing Period will only be provided to such Party once with respect to such Billing Period. At least once every one hundred eighty (180) days, or more often if necessary, each Party shall calibrate its Meters or cause the same to be calibrated. Each Party shall give the other Party sufficient notice in advance of such tests so that the latter may, at its election, be present in person or by its representative to observe adjustments, if any, which are made. For the purpose of measurement and meter calibration, the atmospheric pressure shall be determined by Bio Energy at the Gas Delivery Point.

7.3 Corrections. If upon any tests the Billing Meters are found to be inaccurate by two percent (2%) or more, registration thereof and any payment based upon such registration shall be corrected at the rate of such inaccuracy for any period of inaccuracy which is definitely known or agreed upon, or if not known or agreed upon, then for period extending back one-half of the time elapsed since the date of the most recent calibration of such Billing Meters, not exceeding, however, forty-five (45) days. Following any test, any Billing Meter found to be inaccurate to any degree shall be adjusted immediately to measure accurately. If for any reason any Billing Meter is out of service or out of repair so that the quantity of Landfill Gas delivered through such Billing Meter cannot be ascertained or computed from the readings thereof, the quantity of Landfill Gas so delivered during such period shall be estimated and agreed upon by the Parties hereto upon the basis of the best available data using the first of the following methods which is feasible:

7.3.1 By using the registration of any check metering equipment of Bio Energy, if installed and registering accurately;

7.3.2 By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation, or

- 7.3.3 By estimating the quantity of deliveries during preceding periods under similar conditions when the meter was registering accurately.
- 7.4 Costs of Tests. If County shall notify Bio Energy, or if Bio Energy shall notify County, at any time that a special test or calibration of any Meter is desired, the Parties shall cooperate to secure an immediate verification of the accuracy of such Meter and joint observation of any adjustments. All tests of the Billing Meters shall be made at County's expense, except that Bio Energy shall bear the expense of tests made at its request if the inaccuracy found is two percent (2%) or less. Expenses reimbursable to County hereunder shall be limited to the actual costs County incurred in connection with conducting such testing and shall not include any costs incurred by Bio Energy as the result of witnessing said testing. The Party requesting such test or calibration may request that such test or calibration be conducted by an independent third party contractor with expertise in testing and calibrating meters. Such third party contractor shall be selected by the Party requesting the test and shall be acceptable to the other Party.
- 7.5 System Conditions. The Parties recognize that moisture, pressure, or other conditions within the system may prevent available metering equipment from maintaining proper calibrations. If such conditions persist, the Parties will attempt to mutually determine a protocol for estimating Landfill Gas deliveries using such data as is available. If the Parties cannot mutually agree, they will appoint a mutually acceptable third party consultant to estimate Landfill Gas deliveries during such times that such conditions persist.
8. Rights of First Offer.
- 8.1 Bio Energy hereby grants to County the right of first offer to purchase the Plant ("Right of First Offer") at any such time that (a) Bio Energy permanently and completely ceases operation of the Plant and the sale of Product Gas, electricity, or other energy generated by the Plant (including due to the termination this Agreement) and (b) such permanent cessation is not attributable to a County PDA Default; provided that such Right of First Offer shall be subject in all respects to, and at all times subordinate to, the rights of the Financing Parties under any Financing Documents.
- 8.2 Subject to Section 8.1(b), if Bio Energy proposes to permanently and completely cease operation of the Plant and the sale of Product Gas, electricity, or other energy generated by the Plant, it will give County written notice (the "Rights Notice") of Bio Energy's intention to do so, describing the price and the general terms upon which Bio Energy is willing to sell the Plant. County will have sixty (60) days from the date of delivery of the Rights Notice (the "Exercise Period") to agree to purchase the Plant for the price and upon the general terms specified in the Rights Notice by giving written notice to Bio Energy.
- 8.3 If County (a) fails to exercise its Rights of First Offer hereunder and reach mutual agreement on the terms of such purchase within the Exercise Period, or (b) fails to

consummate such transaction within sixty (60) days of the date of the execution and delivery of the applicable purchase documents (the "Purchase Period"), Bio Energy will have one hundred and eighty (180) days after the end of the Exercise Period, or if County has exercised its Right of First Offer, one hundred and eighty (180) days after the end of the Purchase Period, to sell the Plant at a price and upon general terms no more favorable to the purchasers thereof than the price and general terms specified in the Rights Notice. If Bio Energy does not sell the Plant within such one hundred and eighty (180) day period as provided in the preceding sentence, Bio Energy will not thereafter sell the Plant without complying with the provisions of Section 8.2 above. The Parties agree that the 180-day period shall be extended as may be necessary for any waiting or similar periods to expire under Applicable Law or to finalize the transfer of any Permits to the purchaser. If permanent cessation of operation of the Plant was attributable to a County PDA Default, Bio Energy will have 180 days from such cessation (subject to extension as provided in the immediately preceding sentence) to sell the Plant to a third party purchaser.

- 8.4 The Rights of First Offer granted in this Section 8 shall (a) not apply to the sale, transfer or conveyance of all or a portion of the Plant to or among any Financing Party or any Affiliate of Bio Energy, [or to any sale, transfer or conveyance of all or any portion of the membership interests of Bio Energy to any Person]; and (b) terminate in the event County is not the owner of the Landfill.
- 8.5 Notwithstanding anything to the contrary in this Section 8, if Bio Energy permanently and completely ceases operation of the Plant and the sale of Product Gas, electricity, or other energy generated by the Plant due to the expiration of this Agreement, and the County fails to exercise its Rights of First Offer, then Bio Energy shall not be permitted to sell the Plant to another purchaser without the prior written consent of the County. In the absence of County consent, the provisions of Section 13.5 ("Site Restoration; Restoration Costs") shall apply.

9. Compliance with Laws; Permits.

- 9.1 Compliance with Laws. Bio Energy and County, at their sole respective expense, shall comply with all Applicable Law to the extent applicable to their respective operations at the Landfill and the Plant.
- 9.2 Permits. Each Party, at such Party's sole expense, shall apply for, procure, obtain, maintain and comply with all Permits (including the Required Permits) which may be required under any Applicable Law for such Party to perform each of its obligations hereunder and which need to be procured and maintained by or in the name of such Party or jointly in the name of such Party and any third party. Each Party shall provide the other Party with such assistance and cooperation as may reasonably be required in order for such first Party to obtain and maintain all such Permits.

10. Representations and Warranties.

10.1 Representations and Warranties of County. County makes the following representations and warranties to Bio Energy, all of which are made as of the PDA Effective Date, but which shall survive the PDA Effective Date:

10.1.1 Organization. County is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington, is qualified to do business in the State of Washington and in every other jurisdiction where the nature of its business requires it to be so qualified, and has the full power and authority to enter into the transactions contemplated hereunder, and to execute, deliver and perform its obligations under, this Agreement.

10.1.2 Authorization. The execution and delivery of, and the consummation of the transactions contemplated by, this Agreement have been duly authorized by all necessary action of County. This Agreement constitutes a legal, valid and binding obligation of County and is enforceable against it in accordance with its terms, except as such enforcement may be limited by any bankruptcy, insolvency, moratorium or similar law or by general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law).

10.1.3 Litigation, etc. To County's knowledge, there are no actions, suits, claims, complaints, investigations or legal or administrative or arbitration proceedings pending or threatened, whether at law or in equity, whether civil or criminal in nature, or whether before any Governmental Authority or arbitrator against or affecting, County, which could reasonably be expected to have a material adverse effect on County or its ability to perform its obligations under this Agreement or the Site Lease. There is no outstanding order, writ, injunction, decree, judgment or award by any court, arbitration panel or Governmental Authority against or affecting County or its Affiliates which could reasonably be expected to have a material adverse effect on County or its ability to perform its obligations under this Agreement or the Site Lease.

10.1.4 No Conflict. None of the execution or delivery of this Agreement, the performance by County of its obligations hereunder, or the fulfillment of the terms and conditions hereof shall: (i) conflict with or violate any provision of County's organizational documents; (ii) conflict with, violate or result in a breach of, any Applicable Law in effect as of the PDA Effective Date; or (iii) conflict with, violate or result in a breach of, or constitute a default under or result in the imposition or creation of, any security under any agreement or instrument to which County is a party or by which it or any of its properties or assets are bound.

- 10.2 Representations and Warranties of Bio Energy. Bio Energy makes the following representations and warranties to County, all of which are made as of the PDA Effective Date, but which shall survive the PDA Effective Date:
- 10.2.1 Organization. Bio Energy is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State of Washington and in every other jurisdiction where the nature of its business requires it to be so qualified, and has the full power and authority to enter into the transactions contemplated hereunder, and to execute, deliver and perform its obligations under, this Agreement.
- 10.2.2 Authorization. Bio Energy's execution and delivery of, and the consummation of the transactions contemplated by, this Agreement have been duly authorized by all necessary action of Bio Energy. This Agreement constitutes a legal, valid and binding obligation of Bio Energy and is enforceable against it in accordance with its respective terms, except as such enforcement may be limited by any bankruptcy, insolvency, moratorium or similar law or by general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law).
- 10.2.3 Litigation, etc. To Bio Energy's knowledge, there are no actions, suits, claims, complaints, investigations or legal or administrative or arbitration proceedings pending or threatened, whether at law or in equity, whether civil or criminal in nature, or whether before any Governmental Authority or arbitrator against or affecting Bio Energy or its Affiliates which could reasonably be expected to have a material adverse effect on Bio Energy or its ability to perform its obligations under this Agreement or the Site Lease. There is no outstanding order, writ, injunction, decree, judgment or award by any court, arbitration panel or Governmental Authority against or affecting Bio Energy or its Affiliates which could reasonably be expected to have a material adverse effect on Bio Energy or its ability to perform its obligations under this Agreement or the Site Lease.
- 10.2.4 No Conflict. None of the execution or delivery of this Agreement, the performance by Bio Energy of its obligations hereunder, or the fulfillment of the terms and conditions hereof shall: (i) conflict with or violate any provision of Bio Energy's organizational documents; (ii) conflict with, violate or result in a breach of, any Applicable Law in effect as of the PDA Effective Date; or (iii) conflict with, violate or result in a breach of, or constitute a default under or result in the imposition or creation of, any security under any agreement or instrument to which Bio Energy is a party or by which it or any of its properties or assets are bound.

11. Indemnities and Limitation of Liability. County's Obligation to Indemnify.

11.1.1 County shall indemnify, defend, and hold each Bio Energy Indemnified Party harmless from and against all (i) Losses for injuries to persons, death and/or damage to or loss of property of any third parties or of any Bio Energy Indemnified Party and (ii) all Claims related to the foregoing, to the extent any such Loss or Claim is:

- (a) a result of the breach of this Agreement by County or any of its Affiliates;
- (b) attributable to the negligent or reckless act or omission or willful misconduct of County, its Representatives or any Subcontractor of County or Representatives of such a Subcontractor.

11.1.2 County agrees to indemnify, defend and hold harmless each of the Bio Energy Indemnified Parties from and against any and all Environmental Claims brought against such Bio Energy Indemnified Party and any and all Environmental Expenses imposed upon or reasonably incurred by such Indemnified Party in connection with any Environmental Conditions that give rise to, or could give rise to, Environmental Claims or other liabilities, or Environmental Noncompliances: (a) located at or under, or otherwise relating to, the Landfill Site; or (b) located at or otherwise relating to the Plant Site, to the extent arising out of circumstances that (i) exist prior to the Commencement Date or (ii) which come into existence after the Commencement Date other than as a result of the matters described in Section 11.2.2. County's obligations hereunder shall exist regardless of whether any Bio Energy Indemnified Party is alleged or held to be strictly or jointly and severally liable under any action, legal provision, permit, rule, regulation, order or otherwise.

11.2 Bio Energy's Obligation to Indemnify.

11.2.1 Bio Energy shall indemnify, defend and hold County Indemnified Parties harmless from and against all (i) Losses for injuries to persons, death and/or damage to or loss of property of any third parties or of any County Indemnified Party and (ii) all Claims related to the foregoing, to the extent any such Loss or Claim is:

- (a) a result of the breach of this Agreement by Bio Energy or any of its Affiliates; or
- (b) attributable to the negligent or reckless act or omission or willful misconduct of Bio Energy, its Representatives or any Subcontractor of Bio Energy or Representatives of such Subcontractor.

- 11.2.2 Bio Energy agrees to indemnify, defend and hold harmless each of the County Indemnified Parties from and against any and all Environmental Claims brought against such County Indemnified Party and any and all Environmental Expenses imposed upon or reasonably incurred by such Indemnified Party in connection with any Environmental Conditions that give rise to, or could give rise to, Environmental Claims or other liabilities, or Environmental Noncompliances located at or otherwise relating to the Plant Site, to the extent (a) arising out of the occupancy, use, construction and/or operation of the Plant by Bio Energy, its Affiliates or their Representatives or invitees (other than County or its Representatives and Subcontractors) on the Plant Site or (b) which otherwise comes into existence after the Commencement Date as a result of a breach of this Agreement by Bio Energy or its Affiliates or the negligent or reckless acts or omissions or willful misconduct of Bio Energy, its Affiliates or their Representatives or invitees (other than County or its Representatives and Subcontractors) on the Plant Site. Bio Energy's obligations hereunder shall exist regardless of whether any County Indemnified Party is alleged or held to be strictly or jointly and severally liable under any action, legal provision, permit, rule, regulation, order or otherwise.
- 11.3 Joint Liability. In the event that any Losses, Claims, Environmental Claims or Environmental Expenses, as applicable, arise, directly or indirectly, in whole or in part, out of the joint or concurrent negligence of an Indemnified Party and an Indemnifying Party, or their respective Affiliates or Representatives, each Party's liability therefor shall be limited to such Party's proportionate degree of fault.
- 11.4 Conduct of Claims.
- 11.4.1 The Indemnified Party shall notify the Indemnifying Party of any Indemnity Claim that may result in an indemnity payment becoming due or payable hereunder within seven (7) Business Days following notice of or the discovery of such Indemnity Claim, which notice shall include (a) a reasonably detailed description of the facts and circumstances relating to such Indemnity Claim, (b) a reasonably detailed description of the basis for its potential claim for indemnification with respect thereto, and (c) a complete copy of all notices, pleadings and other papers related thereto that have been received by the Indemnified Party; provided that failure to give such notice or to provide such information and documents within such seven (7) Business Day period shall not relieve the Indemnifying Party of any indemnification obligation it may have under this Section 11 unless such failure shall materially diminish the ability of the Indemnifying Party to respond to or to defend the Indemnified Party.
- 11.4.2 The Indemnified Party and the Indemnifying Party shall consult and cooperate with each other regarding the response to and the defense of

any such Indemnity Claim and the Indemnifying Party shall, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party, be entitled to and shall assume the defense or represent the interests of the Indemnified Party in respect of such Indemnity Claim, which shall include the right to (a) select and direct legal counsel and other consultants to appear in proceedings on behalf of such Indemnified Party and (b) propose, accept or reject offers of settlement, all at the Indemnifying Party's sole cost and expense, provided, however, that any settlement offer to or proposal from County that would require any modification to the Plant or its operation must be consented to by Bio Energy. In such circumstances, the Indemnified Party shall provide the Indemnifying Party with such information and assistance as the Indemnifying Party shall reasonably request and may retain, at Indemnified Party's sole cost and expense, its own counsel to participate in its defense of the Indemnity Claim.

- 11.4.3 The obligations of an Indemnifying Party shall not extend to any Loss (including all related costs and expenses) which may result from (a) the settlement or compromise of any Indemnity Claim brought against the Indemnified Party that is made or effected by Indemnified Party or (b) the admission by the Indemnified Party of any Indemnity Claim or the taking by the Indemnified Party of any action (unless required by law or applicable legal process), which settlement, compromise, admission or action would prejudice the successful defense of the Indemnity Claim, without, in any such case, the prior consent of the Indemnifying Party (such consent not to be unreasonably withheld in a case where the Indemnifying Party has not, at the time such consent is sought, assumed the defense of the Indemnity Claim).

11.5 Limitation of Liability.

- 11.5.1 NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, BUT SUBJECT TO THE PROVISIO SET FORTH HEREIN: (a) COUNTY and BIO ENERGY shall only be liable for direct damages suffered by the other Party as a result of a breach or default of this Agreement by the defaulting Party, and (B) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (including cost of money, lost profits, loss of use of capital or revenue) or for claims of non-party customers or punitive or exemplary damages WHATSOEVER WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER ANY CLAIM FOR SUCH DAMAGES SHALL ARISE UNDER THIS AGREEMENT, FROM STATUTORY OR REGULATORY NONCOMPLIANCE, IN TORT (WHETHER NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), or any other cause or form of action whatsoever, provided that the foregoing limitation on liability shall not

limit a Party's obligation to indemnify, defend and hold harmless the other Party for any Losses occasioned by third party claims (other than the claims of non-party customers) pursuant to Sections 11.1.1 and/or 11.2.1 against the Indemnified Party.

11.5.2 Notwithstanding the foregoing limitation set forth in Section 11.5.1, in any and all claims against:

(a) Bio Energy by any Representative of County, the indemnification obligations of County herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for County under Applicable Law, including any workers compensation and industrial insurance acts, disability benefit acts, or other employee benefits acts (including the Washington State Industrial Insurance Act, RCW Title 51, as well as any similar coverage required for this work by applicable Federal law or "other states" state law) (collectively, the "Acts");

(b) County by any Representative of Bio Energy, the indemnification obligations of Bio Energy herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Bio Energy under the Acts.

11.5.3 EACH OF BIO ENERGY AND COUNTY HEREBY SPECIFICALLY AND EXPRESSLY WAIVES ANY AND ALL IMMUNITY TO WHICH SUCH PARTY MAY BE ENTITLED UNDER SUCH ACTS (INCLUDING SUCH PARTY'S IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND ANY EQUIVALENT ACTS), TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING RCW SECTION 4.24.115, AND EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY, EXPENSES AND LOSSES (INCLUDING ATTORNEYS' FEES AND COSTS) FOR ACTIONS BROUGHT AGAINST AN INDEMNIFIED PARTY BY THE INDEMNIFYING PARTY'S EMPLOYEES; PROVIDED, HOWEVER, THAT INDEMNIFYING PARTY'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS SECTION 11.5.3 EXTENDS ONLY TO CLAIMS AGAINST INDEMNIFYING PARTY BY OR ON BEHALF OF AN INDEMNIFIED PARTY UNDER OR PURSUANT TO THIS AGREEMENT, AND DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS MADE BY INDEMNIFYING PARTY'S EMPLOYEES DIRECTLY AGAINST INDEMNIFYING PARTY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE FOREGOING WAIVER HAS BEEN SPECIFICALLY AND MUTUALLY NEGOTIATED BY THE PARTIES TO THIS AGREEMENT AND

EACH PARTY HAS HAD THE OPPORTUNITY, AND HAS BEEN ENCOURAGED, TO CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

- 11.5.4 Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the Parties agree that if the provisions of RCW Section 4.24.115 are deemed to apply to any indemnity claim by an Indemnified Party against an Indemnifying Party under this Agreement, then, if indemnification is sought for damages arising out of bodily injury to persons or damage to property resulting from the concurrent negligence of Indemnified Party (or its Representatives) and Indemnifying Party (or its Representatives), Indemnifying Party shall indemnify Indemnified Party for such damages only to the extent of Indemnifying Party's negligence or the negligence of its Representatives.
- 11.6 Insurance; Insurance Proceeds. Any amount paid to a Bio Energy Indemnified Party for an Indemnity Claim hereunder shall be net of any insurance proceeds paid to such party under any insurance policies in connection with such Indemnity Claim. Any amount paid to an County Indemnified Party for an Indemnity Claim hereunder shall be net of any insurance proceeds paid to such party under any insurance policies in connection with such Indemnity Claim.
- 11.7 Survival. The Indemnity provisions of this Agreement shall survive the termination of this Agreement as follows: the indemnity obligations contained in (a) Sections 11.1.1 and 11.2.1 shall survive the termination of this Agreement until the fifth (5th) anniversary of the PDA Termination Date and (b) Sections 11.1.2 and 11.2.2 shall survive the termination of this Agreement until the tenth (10th) anniversary of the PDA Termination Date. The Limitations of Liability provisions of this Agreement shall survive the termination of this Agreement indefinitely. The rights and obligations of the Parties under this Section 11 are in addition to and cumulative with the rights and obligations of the Parties under any other agreements relating to the Landfill. This Agreement is not intended to limit the scope of any other agreement between the Parties relating to the Landfill or the Parties' rights and remedies under any such agreement.
- 11.8 No Release of Insurers. The provisions of this Section shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies. In the event any insurer providing insurance covering any judgment obtained by an Indemnified Party against an Indemnifying Party for an indemnified Loss refuses to pay such judgment, the Party against or through whom the judgment is obtained shall at the request of the prevailing Party, execute such documents as may be necessary to effect an assignment of its contractual rights against the non-paying insurer and thereby give the prevailing Party the opportunity to enforce its judgment directly against such insurer, provided that nothing in this Section 11.8 shall relieve the Indemnifying Party of

its liability hereunder to pay such Loss, Environmental Claim or Environmental Expense.

11.9 Release of Claims. County hereby waives, and releases all Bio Energy Indemnified Parties and Bio Energy hereby waives and releases County and County Indemnified Parties, from, any and all claims, counterclaims, actions or rights of any kind or character, in law or in equity, known or unknown, asserted or unasserted, foreseen or unforeseen, that such Party could assert against the other and that arose on or before the Transfer Condition Precedent Satisfaction Date (under any of the Original Project Agreements or otherwise).

12. Force Majeure.

12.1 Effect of Event of Force Majeure. If a Party is prevented, hindered or delayed from performing any of its obligations under this Agreement (excluding an obligation hereunder of a Party to pay money to the other Party, pay Taxes or insurance premiums when due, or perform any indemnity obligation hereunder) but including a Party's ability to accept or deliver Landfill Gas because of an interruption of its operations) by an Event of Force Majeure, then so long as that situation continues and such Party satisfies its obligations under Section 12.3.1, such Affected Party shall be excused from performance of such obligations to the extent it is so prevented, hindered or delayed, and the time for the performance of such obligations shall be extended accordingly.

12.2 Notice of Events of Force Majeure. The Affected Party shall notify the other party within three (3) days of the occurrence of the Event of Force Majeure, its effect or likely effect on the Affected Party's ability to perform its obligations hereunder and the likely duration of the Event of Force Majeure. The Affected Party shall keep the non-Affected Party informed of any changes in such circumstances, including when such Event of Force Majeure ends. Following the receipt of a notice given pursuant to this Section 12.2, the Parties shall consult in good faith to assess the Event of Force Majeure, the effects thereof and any ways in which it may be mitigated or avoided. Each Party shall attempt in good faith to notify the other Party of any events of which the notifying party is aware which may be reasonably expected, with the lapse of time or otherwise, to become an Event of Force Majeure.

12.3 Obligations Following Occurrence of Event of Force Majeure.

12.3.1 The Affected Party subject to Section 12.3.3, shall use all reasonable efforts to remedy the circumstances constituting the Event of Force Majeure (if practicable), mitigate the adverse effects of the Event of Force Majeure and remedy the Event of Force Majeure expeditiously. The Affected Party shall notify the non-Affected Party of the remedy or other termination of the Event of Force Majeure and the date on which the Affected Party will resume its performance hereunder.

- 12.3.2 Suspension of any obligation as a result of an Event of Force Majeure shall not affect any rights or obligations which may have accrued prior to such suspension or, if the Event of Force Majeure affects only some rights and obligations, any other rights or obligations of the Parties. To the extent that the non-Affected Party is prevented, hindered or delayed from performing its obligations under this Agreement as a result of the Affected Party's failure to perform its obligations as the result of the Event of Force Majeure, such non-Affected Party shall be relieved of its obligations to the extent such non-Affected Party has been prevented, hindered or delayed by the Affected Party's failure in performance. So long as the Affected Party has at all times since the occurrence of the Event of Force Majeure complied with the obligations of Sections 12.2 and 12.3.1 and continues to so comply, then any performance deadline (including any Milestone Date) that the Affected Party is obligated to satisfy or achieve under this Agreement shall be extended on a day-for-day basis equal to the period commencing on the date the Event of Force Majeure occurs and ending on the date that such event is cured.
- 12.3.3 Notwithstanding anything to the contrary set forth in this Agreement, an Affected Party shall not be excused from the performance of its obligations hereunder as a result of an Event of Force Majeure to the extent that a failure or delay in performance would have nevertheless been experienced by the Affected Party had the Event of Force Majeure not occurred.
- 12.3.4 Neither Party shall be obliged to settle any strike or other labor actions, labor disputes or labor disturbances of any kind, except on terms wholly satisfactory to it.
- 12.4 Termination for Extended Force Majeure. Notwithstanding the foregoing, if an Event of Force Majeure has prevented an Affected Party from performing any of its obligations under this Agreement for one hundred eighty (180) consecutive days during the PDA Term and such Event of Force Majeure has not been remedied on the expiration of such 180-day period, then either Party, as its sole and exclusive right and remedy in the case of such extended Event of Force Majeure, may terminate this Agreement by providing a Notice of Intent to Terminate to the other Party. The terms and conditions of Section 13.3 shall apply in all respects to such Notice of Intent to Terminate in connection with the applicable extended Event of Force Majeure.

13. Defaults, Termination and Remedies.

- 13.1 Bio Energy Events of Default. Each of the following events shall constitute events of default on the part of Bio Energy (each, a "Bio Energy PDA Default") which, if not cured within the time permitted (if any) to cure such event of default, shall entitle County to terminate this Agreement pursuant to Section 13.3; provided, however, that no such event shall be deemed to be a Bio Energy PDA

Default if (a) it is caused by or is otherwise attributable to a breach by County of its obligations under this Agreement or any other Project Contract to which County is a party or (b) it occurs as a result of an Event of Force Majeure declared by Bio Energy or County in accordance with Section 12:

- 13.1.1 Bio Energy terminates or suspends the design, permitting, construction or operation of the Plant (excluding termination or suspension due to Events of Force Majeure or a County PDA Default), which continues for a period of sixty (60) days in any ninety (90) day period, without notice to, and the consent of, County;
- 13.1.2 the failure by Bio Energy to make any payment required to be made under this Agreement to County when due, where such failure shall have continued for ten (10) days after notice thereof has been given by County to Bio Energy;
- 13.1.3 the failure by Bio Energy to comply with any covenant, obligation or agreement of Bio Energy contained in this Agreement (other than any such failure which would constitute a Bio Energy PDA Default under Sections 13.1.1 through 13.1.2) where such failure has a material adverse effect on County or Bio Energy's ability to perform its obligations under this Agreement
- 13.1.4 Bio Energy commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;
- 13.1.5 Bio Energy has an involuntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property and such involuntary case or other proceeding shall remain undismissed for a period of sixty (60) days; or an order for relief shall be entered against it under the federal bankruptcy laws as now or hereafter in effect;
- 13.1.6 Any representation or warranty made by Bio Energy in this Agreement shall prove to have been incorrect in any material respect when made or

when deemed to have been made and such failure has a material adverse effect on County or Bio Energy's ability to perform its obligations under this Agreement

13.1.7 A failure to achieve Commercial Operations on or before the Commercial Operation Deadline.

13.2 County Events of Default. Each of the following events shall constitute events of default on the part of County (each, a "County PDA Default") which, if not cured within the time permitted (if any) to cure such event of default, shall entitle Bio Energy to terminate this Agreement pursuant to Section 13.3; provided, however, that no such event shall be deemed to be a County PDA Default if (a) it is caused by or is otherwise attributable to a breach by Bio Energy of its obligations under this Agreement or any other Project Contract to which Bio Energy is a party or (b) it occurs as a result of an Event of Force Majeure declared by Bio Energy or County in accordance with Section 12:

13.2.1 any Abandonment of the operation of the Collection Facilities or the Expansion Collection Facilities by County for a period of sixty (60) days in any ninety (90) day period, without notice to, and the consent of, Bio Energy;

13.2.2 the failure by County to make any payment required to be made under this Agreement to Bio Energy when due, where such failure shall have continued for ten (10) days after notice thereof has been given by Bio Energy to County;

13.2.3 the failure by County to comply in any material respect with any covenant, obligation or agreement of County contained in this Agreement (other than any such failure which would constitute a County PDA Default under Sections 13.2.1 or 13.2.2), where such failure has a material adverse effect on Bio Energy or County's ability to perform its obligations under this Agreement and such failure shall not have been cured (i) during the Initial Cure Period; or (ii) for such longer period as shall be reasonably necessary for County to cure the same, if the Initial Cure Period is not reasonably sufficient to permit a cure of such failure, and County shall have diligently commenced to cure such default within the Initial Cure Period and thereafter proceeds with reasonable diligence to cure such failure;

13.2.4 County commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or

other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

13.2.5 County has an involuntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property and such involuntary case or other proceeding shall remain undismissed for a period of sixty (60) days; or an order for relief shall be entered against it under the federal bankruptcy laws as now or hereafter in effect; or

13.2.6 Any representation or warranty made by County in this Agreement shall prove to have been incorrect in any material respect when made or when deemed to have been made and such failure has a material adverse effect on Bio Energy or County's ability to perform its obligations under this Agreement and such failure shall not have been cured (i) during the Initial Cure Period, or (ii) for such longer period as shall be reasonably necessary for County to cure the same, if the Initial Cure Period is not reasonably sufficient to permit a cure of such failure, and County shall have diligently commenced to cure such default within the Initial Cure Period and thereafter proceeds with reasonable diligence to cure such failure.

13.3 Termination Procedure.

13.3.1 Upon the occurrence of a County PDA Default or a Bio Energy PDA Default, as the case may be, that is not cured within the applicable period (if any) for cure, or a termination event under Section 12.4 of this Agreement, the Party seeking to terminate this Agreement (the "Terminating Party") may, at its option, initiate termination of this Agreement by delivering a Notice of Intent to Terminate this Agreement to the other Party (the "Non-Performing Party"); The Notice of Intent to Terminate shall specify in reasonable detail the applicable PDA Default giving rise to the Notice of Intent to Terminate.

13.3.2 Except as otherwise provided herein, if the basis for termination is a failure to perform that can be cured, the termination shall not take effect so long as the defaulting party either (1) cures the default within thirty (30) days of service of the Notice of Intent to Terminate, or (2) provides within said thirty (30) days a reasonable written plan of action to cure the default within one hundred twenty (120) days of service of the termination notice and then cures the default within said one hundred twenty (120) day period ("Cure Period"). Unless the PDA Default shall

have been remedied during the Cure Period, the Party that issued the Notice of Intent to Terminate may terminate this Agreement by delivering a Termination Notice to the Non-Performing Party, whereupon this Agreement shall terminate on the date set forth in the Termination Notice (which date shall in no event be earlier than the date such Termination Notice is delivered to the Non-Performing Party). No Cure Period shall be provided for a default under Section 13.1.1, 13.1.2, or 13.1.7. The Agreement may be terminated by a Termination Notice based upon a default of Section 13.1.1, 13.1.2 or 13.1.7 if the default is not fully remedied within ten (10) days of the sending of the Notice of Intent to Terminate.

- 13.3.3 Notwithstanding anything to the contrary set forth in this Agreement, from and after the occurrence of any Financial Closing:
- (a) County shall not seek to terminate this Agreement as the result of any default of Bio Energy without first giving a copy of any notices required to be given to Bio Energy under Sections 13.3.1 to the Financing Parties, such notice to be coupled with a request to the Financing Parties to cure any such default within the cure period specified in Section 13.3.2, and such cure period shall commence upon delivery of each such notice to the Financing Parties. If there is more than one Financing Party, the Financing Parties will designate in writing to County an Agent and any notice required hereunder shall be delivered to such Agent, such notice to be effective upon delivery to the Agent as if such notice had been delivered to each of the Financing Parties. Each such notice shall be in writing and shall be delivered and shall become effective in accordance with Section 18. The address and facsimile number for each Financing Party or Agent shall be provided to County by Bio Energy at Financial Closing and thereafter may be changed by the Financing Party or the Agent by subsequent delivery of a notice to County at the address or facsimile number for County provided in Section 18; and
 - (b) No rescission or termination of this Agreement by County shall be valid or binding upon the Financing Parties without such notice, the expiration of such cure period, and the expiration of the Extended Cure Period (as defined below) provided in this Section 13.3.4. The Financing Parties may make, but shall be under no obligation to make, any payment or perform any act that is required to be made or performed by Bio Energy, with the same effect as if made or performed by Bio Energy. If the Financing Parties fail to cure or are unable or unwilling to cure any Bio Energy PDA Default within the cure period under Section 13.3.2 as provided to Bio Energy in this Agreement, County shall have all its rights and remedies with respect to such

default as set forth in this Agreement; provided, however, that if the Financing Parties notify County that they require further time to consider the cure of the Bio Energy PDA Default, the Financing Parties, upon the termination of such applicable cure period provided to Bio Energy (such cure period commencing on the delivery of such notice to the Financing Parties) shall be allowed a further period (the "Evaluation Period"), during which the Financing Parties shall evaluate such default, the condition of the Plant and other matters relevant to the actions to be taken by the Financing Parties concerning such default, and which Evaluation Period shall end on the earlier to occur of (i) the Financing Parties' delivery to County of a notice that the Financing Parties have elected to pursue their remedies under the Financing Documents, including taking such action or actions as may be required to assume or transfer the rights and obligations of Bio Energy under this Agreement (an "Election Notice"), or (ii) thirty (30) days following the end of the applicable cure period provided to Bio Energy. Upon the delivery of the Election Notice, the Financing Parties shall be granted an additional period of one hundred eighty (180) days to cure any Bio Energy PDA Default (the "Extended Cure Period"). In the event that the Financing Parties fail to cure any Bio Energy PDA Default on or before the expiration of the Extended Cure Period, County may exercise its rights and remedies with respect to such default as set forth in this Agreement, County may immediately terminate this Agreement, and such termination shall be effective on delivery to the Financing Parties or the Agent of notice of such termination.

13.4 Cumulative Remedies. In the event of a Bio Energy PDA Default or County PDA Default, the Terminating Party may, subject to this Section 13, pursue any remedy at law or in equity, including termination of this Agreement without prejudice to any rights or actions or remedies it may have in respect of any breach or default of this Agreement or any rights or obligations which expressly survive termination of this Agreement. Except as expressly provided to the contrary in this Agreement (including Sections 6.2 and 12.4), all rights and remedies of either Party are cumulative of each other and of every other right or remedy available at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights and remedies. Notwithstanding any provision of this Agreement to the contrary, Bio Energy shall have the right to exercise the Cure Rights in accordance with Section 14 of this Agreement.

13.5 Site Restoration; Restoration Costs.

13.5.1 If County does not exercise its Right of First Offer in accordance with and subject to Section 8 and Bio Energy has not within one hundred and

eighty (180) days after the end of the Exercise Period or Purchase Period, as applicable, sold the Plant at a price and upon general terms no more favorable to the purchasers thereof than the price and general terms specified in the Rights Notice, then within one hundred and eighty (180) days following the end of the Exercise Period or Purchase Period, as applicable, Bio Energy shall remove and dispose of any and all fixtures, equipment, trade fixtures, improvements, and any additions, alterations, replacements and betterments thereof and thereto, constructed by or for Bio Energy on the Plant Site and the Easement Areas (collectively, "Improvements"), and restore the affected portions of the Plant Site and Easement Areas to grade level at Bio Energy's sole expense. Notwithstanding the foregoing, with respect to any Improvements located underground or below grade, Bio Energy at its sole cost may, subject to County approval which shall not be unreasonably withheld, secure and abandon in place any or all such Improvements. Bio Energy shall repair any damage to the Plant Site or Easement Areas caused by such removal. The foregoing obligations of Bio Energy under this Section 13.5 shall be hereinafter referred to as the "Restoration Obligations."

13.5.2 If such removal and restoration is not completed within one hundred and eighty (180) days of the Exercise Period, then County shall have the right to take over the restoration process and all costs and expenses reasonably incurred by County to complete the removal and restoration (the "Restoration Costs"), up to but not exceeding \$2,000,000, shall be reimbursed by Bio Energy to County. County shall invoice Bio Energy within ten (10) days of the end of each month during which County incurs Restoration Costs, setting forth the amount of such Restoration Costs in such detail as reasonably requested by Bio Energy to verify the work performed and the associated cost of such work. Bio Energy shall pay County the amount set forth in each invoice within ten (10) days of its receipt thereof, provided Bio Energy retains its right following such payment to dispute any unreasonable amount set forth in an invoice. Notwithstanding the foregoing, Bio Energy's liability to reimburse County for Restoration Costs shall terminate for any costs incurred after the date which is one hundred and eighty (180) days following the date of County's takeover of the restoration process.

13.5.3 Notwithstanding the foregoing, Bio Energy shall not have any Restoration Obligations in the event (i) the PDA was terminated by Bio Energy following a County PDA Default or by County pursuant to Section 12.4; (ii) the County exercises its Right of First Offer; or (iii) Bio Energy sells the Plant to a third party purchaser, as contemplated in Section 8.

13.6 Survival. Upon the expiration or termination of this Agreement, this Agreement shall have no further force and effect, except that any rights and remedies that

have arisen or accrued to either Party prior to such expiration or termination, or any obligations or liabilities that have arisen or accrued before such expiration or termination and that expressly survive such expiration or termination pursuant to this Agreement, shall in each case survive expiration or termination. The rights, remedies and obligations set out in (a) Sections 16 (Dispute Resolution), 18 (Notices) and 20 (Miscellaneous), shall survive in full force and effect the expiration or termination of this Agreement to the extent necessary to enable a Party to exercise any of such accrued rights and remedies, and (b) Section 11 (Indemnification and Limitation of Liability) shall survive in full force and effect the expiration or termination of this Agreement in accordance with Section 11.7.

13.7 Termination Payment. If County issues a Termination Notice and terminates this Agreement based upon a Bio Energy PDA Default under Section 13.1.1 or 13.1.7, then Bio Energy shall, within thirty (30) days following the PDA Termination Date, pay County an amount equal to \$1,000,000 as liquidated damages (“Termination Payment”). If County terminates this Agreement on any such basis, Bio Energy and County acknowledge and agree that it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by County as a result of such Bio Energy PDA Default. The Parties acknowledge and agree that (a) County will be damaged by such Bio Energy PDA Default, (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom, (c) the Termination Payments are in the nature of liquidated damages and not a penalty and are fair and reasonable, and (d) such payment represents a reasonable estimate of fair compensation for the loss that may reasonably be anticipated as a result of such Bio Energy PDA Default.

13.8 Performance Security – Letter of Credit.

13.8.1 No later than thirty (30) days after the PDA Effective Date, Bio Energy shall obtain and deliver to the County an original irrevocable letter of credit (the “Letter of Credit”) naming the County as beneficiary. The Letter of Credit shall be in the face amount (as subsequently adjusted pursuant to Section 13.8.7, the “LC Amount”) of (i) \$2,000,000 until the Commercial Operations Date, (ii) \$500,000 from the Commercial Operations Date until the twenty year anniversary of the Commercial Operations Date; and (iii) notwithstanding item (ii), in the amount required under Section 13.8.9 if Bio Energy is required to perform Restoration Obligations. The Letter of Credit shall be substantially in the form of Exhibit C attached hereto and issued by a financial institution (an “LC Issuer”) that has: (a) not less than \$500 Million in net current assets; (b) a financial rating of not less than 40 as rated by Sheshunoff Information Services, Inc. (or any equivalent rating thereto from any successor or substitute rating service selected by the County); (c) an investment grade rating from each of Standard & Poors and Moody’s Investors Service, Inc.; and (d) either (i) have a letter of credit counter located in King County, Washington upon which draws can be made in person without delay, or (ii) has a local correspondent based in

King County, Washington upon which draws can be made in person without delay.

- 13.8.2 The Letter of Credit shall be for a term of not less than one (1) year from the date of issue and irrevocable during that term. A Letter of Credit covering each subsequent period shall be obtained and delivered to the County not less than thirty (30) days prior to the expiration of the then-existing Letter of Credit. Upon issuance of each replacement Letter of Credit, the prior Letter of Credit shall terminate and be returned to Bio Energy.
- 13.8.3 The Letter of Credit shall provide that it will be honored upon a signed statement by the County or its agent that the County is entitled to draw upon the Letter of Credit, and shall require no signature or statement from any party other than the County or such agent. No notice to Bio Energy shall be required to enable the County to draw upon the Letter of Credit. Each Letter of Credit shall also provide that, following the honor of any drafts in an amount less than the aggregate amount of the Letter of Credit, the LC Issuer shall return the original Letter of Credit to the County and the County's rights as to the remaining amount of the Letter of Credit will not be extinguished.
- 13.8.4 In the event of a transfer of the County's interest in the Plant Site, the Landfill, or this Agreement, the County and its transferees shall have the right, and the Letter of Credit shall expressly so provide, without any requirement of consent of Bio Energy or the LC Issuer (except to the extent required under Section 15), to transfer the Letter of Credit to its transferee (and its transferee(s) may successively so transfer the Letter of Credit) and the County thereupon shall, without any further agreement between the parties, be released by Bio Energy from all liability therefor and thereunder, and it is agreed that the provisions hereof shall apply to every transfer or assignment of the Letter of Credit to any such transferee.
- 13.8.5 If the LC Issuer shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency act, make an assignment for the benefit of its creditors, consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof (each of the foregoing, an "LC Issuer Insolvency"), then Bio Energy shall obtain a replacement Letter of Credit, within thirty (30) days of such act or event, from another financial institution that satisfies the conditions set forth in Section 13.8.1.

- 13.8.6 The County shall have the right to draw upon a Letter of Credit solely upon the occurrence of the following events (each, a “Draw Event”):
- (a) If Bio Energy fails to pay any Restoration Costs when and as due under Section 13.5, such draw to be limited to the amount of Restoration Costs due and owing as of the draw date;
 - (b) If Bio Energy fails to pay all or a portion of the Termination Payment, when and as due, such draw to be limited to the unpaid amount of the Termination Payment as of the draw date;
 - (c) If Bio Energy fails to pay all or a portion of the Gas Sales Payment or any other payments owed the County hereunder, such draw to be limited to the amount of the Gas Sales Payment or other payment owed to the County hereunder as of the draw date;
 - (d) If Bio Energy fails to obtain any replacement Letter of Credit as and when required hereunder, the then-existing LC Amount, subject to Section 13.8.8; or
 - (e) After an event constituting an LC Issuer Insolvency, the then-existing LC Amount, subject to Section 13.8.8.
- 13.8.7 The County may draw upon the then-existing Letter of Credit to the extent provided for by a particular Draw Event without giving any further notice or time to cure to Bio Energy. The LC Amount shall be reduced by the amount of any such draw. If all or any portion of a Letter of Credit is drawn against by the County, Bio Energy shall, within seven (7) Business Days after demand by the County, cause the LC Issuer of such Letter of Credit to issue to the County, at Bio Energy’s expense, a replacement or supplementary Letter of Credit in substantially the form attached hereto as Exhibit C such that at all times during the Term, the County shall have the ability to draw on one or more Letters of Credit totaling, in the aggregate, the then-current LC Amount.
- 13.8.8 If County draws a Letter of Credit in connection with a Draw Event under Section 13.8.6(d) or Section 13.8.6(e), the proceeds of such draw shall be deposited into a special trust account to be held and maintained in the name of the trustee for the benefit of County and Bio Energy, provided that:
- (a) until such time as a replacement Letter of Credit is provided to County in accordance with Section 13.8.2 or 13.8.5, as applicable, County shall have the right to withdraw funds from such account in an amount equal to the amount that County would have been entitled to draw under a Draw Event described

in Section 13.8.6 had the Letter of Credit been in place as of the time of such draw; and

- (b) as soon as a replacement Letter of Credit is furnished to County in accordance with Section 13.8.2 or 13.8.5, as applicable, the balance of funds in such trust account shall be released to Bio Energy.

13.8.9 If Bio Energy is obligated to perform the Restoration Obligations pursuant to Section 13.5, then, within thirty (30) days after Bio Energy's requirement to perform the Restoration Obligations arises, Bio Energy shall cause a new or supplemental Letter of Credit to be issued in favor of the County so that the total amount of the Letter(s) of Credit then being held by the County equal or exceed Bio Energy's reasonable estimate of the Restoration Costs; provided that, if such estimate is lower than the then-existing face amount of all Letters of Credit then being held by the County, a new or supplemental Letter of Credit shall not be required.

13.9 Cross-Termination with Amended PDA. The Amended PDA shall terminate upon any termination of the Site Lease.

14. Triggering Events and Remedies Following Triggering Event.

14.1 Notice of Triggering Event. Upon the occurrence of an event that Bio Energy believes constitutes a Triggering Event, Bio Energy may notify County of the occurrence of such Triggering Event. Within five (5) Business Days of the date County receives the Triggering Event Notice, County and Bio Energy shall meet to discuss the circumstances giving rise to the Triggering Event, County's efforts to remedy such circumstances and any additional proposals for curing such circumstances. Not less than one (1) Business Day prior to such meeting, County shall provide Bio Energy with a copy of its County Cure Plan.

14.2 Dispute Regarding County Cure Plan. If (a) Bio Energy does not accept all or part of the County Cure Plan and the Parties are unable to mutually agree to modifications to such County Cure Plan within ten (10) Business Days of the date County received the Triggering Event Notice or (b) County notifies Bio Energy that County disputes the occurrence of a Triggering Event, then either Party shall have the right to request that a Technical Expert review the circumstances giving rise to the delivery of the Triggering Event Notice to determine (i) whether or not a Triggering Event has occurred and (ii) if the Technical Expert determines that a Triggering Event has occurred, whether the County Cure Plan is sufficient to remedy such circumstances or whether such County Cure Plan requires modification to provide for a reasonably expeditious cure of such circumstances.

14.2.1 The Party requesting selection of a Technical Expert shall provide notice thereof to the other Party within ten (10) Business Days of the expiration

of the ten (10) Business Day review period provided in Section 14.2, which notice shall include the name and professional qualifications of the requesting Party's proposed Technical Expert. The receiving Party shall, within three (3) Business Days of its receipt of such notice, provide notice to the requesting Party that it either accepts or rejects such requesting Party's proposed Technical Expert. If receiving Party rejects the requesting Party's proposed Technical Expert, such reply notice shall include the name and professional qualifications of the receiving Party's proposed Technical Expert.

- 14.2.2 If (a) the receiving Party fails to provide a reply notice within such three (3) Business Day period or (b) the receiving Party rejects the requesting Party's proposed Technical Expert but fails to identify its own proposed Technical Expert, then in either such case the requesting Party's proposed Technical Expert shall be deemed to be the Technical Expert for purposes of resolving the dispute. If receiving Party rejects the requesting Party's proposed Technical Expert and identifies its own proposed Technical Expert in its reply notice, the Parties shall meet and seek to agree upon and select a mutually acceptable Technical Expert. If the Parties are unable to agree upon a mutually acceptable Technical Expert within ten (10) Business Days of the requesting Party's notice requesting selection of a Technical Expert, then (i) the two proposed Technical Experts shall jointly review such matter and resolve the dispute, (ii) the terms of Sections 14.2.3 through 14.2.7 and Section 14.3 shall apply to each of such Technical Experts and (iii) references to "Technical Expert" therein shall be deemed to be a reference to the "Technical Experts."
- 14.2.3 The Technical Expert shall (a) determine whether a Triggering Event has occurred and (b) if such expert determines that a Triggering Event has occurred, whether the County Cure Plan is a reasonably expeditious and reasonably technically and economically feasible means for curing the Triggering Event. Each Party shall have the right to submit written materials to the Technical Expert in connection with the Triggering Event and the County Cure Plan. The Technical Expert shall (a) promptly fix a time and place for receiving information from the Parties and (b) issue a draft decision, together with all necessary supporting information and documentation, to each Party within ten (10) Business Days after the selection of the Technical Expert. Each Party will have three (3) Business Days to submit comments on the draft decision to the Technical Expert and the Technical Expert shall issue his final and binding determination in writing within three (3) Business Days of the expiration of such three (3) Business Day submission period. No meeting between the Technical Expert and the Parties or either of them shall take place unless both Parties are given a reasonable opportunity to attend any such meeting.

- 14.2.4 Subject to the relief provided in Section 14.2.7, if the Technical Expert decides that no Triggering Event has occurred, then such decision shall be final and binding on the Parties in respect of the specific incident that caused Bio Energy to provide the Triggering Event Notice. If the Technical Expert decides that a Triggering Event has occurred and that the County Cure Plan, subject to modifications (if any) made by the Technical Expert, is a reasonably expeditious and reasonably technically and economically feasible means for curing the Triggering Event, then County shall at its sole cost and expense diligently pursue such Cure Plan and cure the Triggering Event within the time period set forth in the Cure Plan.
- 14.2.5 The Technical Expert shall be a person qualified by education, experience and training in the operation and maintenance of landfill gas collection facilities, including Good Engineering Practices and Applicable Law related to such facilities. Neither the Technical Expert nor (if he is an individual) any member of his immediate family nor (in other cases) any partner in or officer or director of the Technical Expert shall be (or within three (3) years before his appointment have been) a director, officer or employee of, or directly or indirectly retained as a consultant or advisor to, Bio Energy or its Affiliates or County or its Affiliates.
- 14.2.6 Subject to the Records Act, the Technical Expert shall be required to keep confidential (a) all confidential information that is disclosed to the Technical Expert or otherwise comes to his knowledge during the course of his appointment and (b) all matters concerning the existence and resolution of the dispute. Each Party shall bear its own expenses (including attorneys' fees) with respect to a dispute resolution by a Technical Expert. The costs and expenses of the Technical Expert shall be borne equally by the Parties.
- 14.2.7 The Technical Expert shall act as an expert and not as an arbitrator and the provisions of the Federal Arbitration Act and the law relating to arbitration shall not apply to the Technical Expert or his determination or the procedure by which he reaches his determination. The determination of the Technical Expert shall be final and binding upon the Parties, but shall not be binding upon the Parties in the event of fraud, manifest error or failure by the Technical Expert to disclose any interest or duty which conflicts with his functions under his appointment as Technical Expert.

15. Assignment.

- 15.1 General. Neither Party may assign or transfer its rights or obligations under this Agreement without the prior consent of the other Party, such consent, subject to Section 4.15 of this Agreement, not be unreasonably withheld or delayed;

provided, however, that Bio Energy shall have the right, without obtaining County's consent, to:

- 15.1.1 assign to, mortgage, or grant a security interest or liens in favor of, the Financing Parties in Bio Energy's rights and interests under or pursuant to (a) this Agreement, (b) the Plant, (c) the Plant Site, (d) the property of Bio Energy or (e) the revenues or any other rights or assets of Bio Energy;
- 15.1.2 assign this Agreement to an Affiliate of Bio Energy or to a party purchasing the Plant from Bio Energy pursuant to Section 8 of this Agreement, provided any such assignee agrees in writing to be bound by the terms of this Agreement as a condition precedent to the effectiveness of such assignment.

Any purported assignment that fails to comply with the requirements of this Section 15.1 shall be null and void and shall have no force or effect.

- 15.2 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors and permitted assigns of the respective Parties hereto.
- 15.3 Modifications Required upon Assignment. The Parties agree that, in connection with a sale, assignment or transfer of the Collection Facilities and / or Expansion Collection Facilities, County, Bio Energy and the purchaser, assignee or transferee (the "Purchaser") shall enter into such agreements as are necessary to provide that, upon termination of this Agreement (as so assigned to the Purchaser) due to any default by the Purchaser: (a) this Agreement shall automatically novate to County; (b) the Collection Facilities and / or Expansion Collection Facilities, together with all other assets as may be required to enable County to operate and maintain the Collection Facilities / Expansion Collection Facilities and perform its obligations thereunder in accordance with the terms and conditions of this Agreement, shall be automatically transferred and assigned by Purchaser to County; (c) the Purchaser, Bio Energy and County shall take all actions and execute and deliver all instruments and agreements as may be required to (i) transfer and assign the Collection Facilities and / or Expansion Collection Facilities and all such related assets to County and vest good and marketable title therein with County and (ii) novate this Agreement to County; and (d) during any period of time between the termination of this Agreement and the completion of such transfer and assignment, County shall have the right to operate and maintain the Collection Facilities and / or Expansion Collection Facilities in place of the Purchaser. The Parties agree that the terms of such agreements shall be reasonably acceptable to each Party and the Purchaser.

16. Dispute Resolution.

16.1 Venue; Jurisdiction. Venue for any suit, legal action or other legal proceeding arising out of or relating to this Agreement shall be brought in the Superior Court of Washington for King County or the United States District Court for the Western District of Washington and located in Seattle. Each Party consents to the jurisdiction of any such court in any such suit, action or proceeding and waives any objection or defense which such Party may have to the laying of venue of any such suit, action or proceeding in any such court, including the defense of an inconvenient forum to the maintenance in such court of such suit, action or proceeding. The Parties agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or by any other manner provided by law. Each Party shall pay its own attorneys' fees and costs in connection with any legal action hereunder.

16.2 Resolution Procedures. Except as otherwise expressly provided in this Agreement and before any Party initiates any law suit or legal proceedings pursuant to Section 16.1, the Parties will attempt in good faith to resolve through negotiations any dispute, claim or controversy arising out of or relating to this Agreement; provided, however, that either Party may seek interim relief to the extent necessary to preserve its rights hereunder or protect its property during the continuance of the resolution process described herein. Either Party may initiate negotiations by providing notice to the other Party, setting forth the subject of the dispute and the relief requested. The recipient of such notice shall respond within seven (7) days with a written statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each Party with full settlement authority will meet at a mutually agreeable time and place within ten (10) days of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the Parties do not resolve such dispute within twenty (20) days of the initial notice, then either Party shall at any time thereafter have the right to exercise any of its rights and remedies provided to it hereunder or otherwise available at law or in equity.

17. Insurance.

17.1 Bio Energy Required Insurance.

17.1.1 Bio Energy Insurance during Operation. Bio Energy shall obtain, not later than the Commencement Date, and maintain during the PDA Term the minimum insurance set forth below, provided that the Pollution Liability coverage set forth in subsection (e) and the Property insurance set forth in subsection (f) shall be obtained not later than the Commercial Operation Date. By requiring such minimum insurance, County shall not be deemed or construed to have assessed the risks that may be applicable to Bio Energy. Bio Energy shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or

broader coverage. Each insurance policy shall be written on an "occurrence" form, except that insurance for professional liability, errors and omissions when required, may be provided on a "claims made" form, reasonably acceptable to County. If coverage is approved by County and purchased on a "claims made" basis, Bio Energy warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is the subject of this Agreement. Insurance coverage shall be at least as broad as stated below and with limits no less than:

- (a) **General Liability.** Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 Ed. 11-88 covering **COMMERCIAL GENERAL LIABILITY**, with limits not less than \$1,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$1,000,000 aggregate limit. The policy shall not exclude coverage for sudden and accidental explosion, collapse and underground damage (XCU) to property of others.
- (b) **Automobile Liability.** Automobile liability insurance providing coverage at least as broad as Insurance Services Office form number CA 00 01 Ed. 12/90 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, with limits not less than \$1,000,000 combined single limit per accident.
- (c) **Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.
- (d) **Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the "Stop Gap" endorsement to the general liability policy. Coverage shall be for a limit of no less than \$1,000,000.
- (e) **Pollution Liability Insurance** coverage in the amount of \$8,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the physical injury or destruction of tangible property, loss of use, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed. Coverage for Pollution Conditions shall include vibration, noise and odors. Coverage shall be endorsed to include:

- (i) On-Site Clean-up of New Conditions
- (ii) Third Party Claims for On-Site Bodily Injury and Property Damage
- (iii) Third Party Claims for Off-site Bodily Injury and Property Damage
- (iv) Third Party Claims for Off-site Clean-up
- (f) **Property insurance** for the Plant, with a limit of not less than 100% of the replacement cost values for all risk perils, including earthquake and flood.
- (g) **Umbrella Liability insurance** covering claims in excess of and following the terms of the underlying insurance as set forth in Sections 17.1.1(a), (b) and (d) with limits not less than \$8,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$8,000,000 aggregate limit.

17.1.2 Bio Energy Insurance during Design and Construction. In addition to Bio Energy's maintenance of the above insurance, Bio Energy shall procure or cause its construction contractor to procure the following insurance described below for the period from the beginning of the Design Phase until the Commercial Operation Date and, for the insurance described in (g) below, from the Construction Start Date until the Commercial Operation Date:

- (a) **General Liability.** Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 Ed. 11-88 covering **COMMERCIAL GENERAL LIABILITY**, with limits not less than \$1,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$1,000,000 aggregate limit. The policy shall not exclude coverage for sudden and accidental explosion, collapse and underground damage (XCU) to property of others.
- (b) **Automobile Liability.** Automobile liability insurance providing coverage at least as broad as Insurance Services Office form number CA 00 01 Ed. 12/90 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, with limits not less than \$1,000,000 combined single limit per accident.
- (c) [Reserved]
- (d) **Workers' Compensation.** Statutory requirements of the State of residency. Coverage shall be at least as broad as

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

- (e) **Employer's Liability or "Stop Gap"**. Coverage shall be at least as broad as the protection provided by the "Stop Gap" endorsement to the general liability policy. Coverage shall be for a limit of no less than \$1,000,000.
- (f) **Contractors' Pollution Liability** coverage in the amount of \$8,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the physical injury or destruction of tangible property, loss of use, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed.
- (g) **Builder's Risk coverage**: "All Risk" Builder's Risk Insurance in a form at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP1030 (Causes of Loss Special Form) including coverage for collapse, theft and property in transit. Coverage shall be endorsed to include Earthquake and Flood. The coverage shall insure for direct physical loss to property of the entire Plant construction project, for 100% of the replacement cost value thereof. The policy shall be endorsed to cover the interests, as they may appear, of County.
- (h) **Umbrella Liability insurance** covering claims in excess of and following the terms of the underlying insurance as set forth in Sections 17.1.2(a), (b) and (e) with limits not less than \$9,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$9,000,000 aggregate limit.

17.2 County Required Insurance.

17.2.1 County shall maintain, throughout the PDA Term, the equivalent of the following types of insurance coverages and limits as specified below:

- (a) **General Liability**. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 Ed. 11-88 covering **COMMERCIAL GENERAL LIABILITY**, with limits not less than \$10,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$10,000,000 aggregate limit. The policy shall not exclude coverage for sudden and accidental explosion, collapse and underground damage (XCU) to property of others.

- (b) **Automobile Liability.** Automobile liability insurance providing coverage at least as broad as Insurance Services Office form number CA 00 01 Ed. 12/90 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, with limits not less than \$1,000,000 combined single limit per accident.
- (c) **Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.
- (d) **Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the "Stop Gap" endorsement to the general liability policy. Coverage shall be for a limit of no less than \$5,000,000.
- (e) **Pollution Liability Insurance** coverage in the amount of \$10,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the physical injury or destruction of tangible property, loss of use, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed. Coverage for Pollution Conditions shall include vibration, noise and odors. Coverage shall be endorsed to include:
 - (i) On-Site Clean-up of New Conditions
 - (ii) Third Party Claims for On-Site Bodily Injury and Property Damage
 - (iii) Third Party Claims for Off-site Bodily Injury and Property Damage
 - (iv) Third Party Claims for Off-site Clean-up;

provided that County shall only be required to maintain such insurance coverage until the policy of Pollution Liability insurance, as in force and effect as of the PDA Effective Date expires, at which time County shall not have any further obligation to provide pollution coverage hereunder or to replace or renew such previously provided coverage.

17.2.2 Self-Insurance.

- (a) King County, a home rule charter county government under the constitution of the State of Washington, hereinafter referred to as "County", maintains a fully funded Self-Insurance program as defined in King County Code 4.12 for the protection and handling of County's liabilities including injuries to persons and damage to property.
- (b) Bio Energy acknowledges, agrees and understands that County is self-funded for all of its liability exposures and that County has represented that such self-insurance satisfies County's insurance obligations set forth in this Agreement. County agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liability exposures for this Agreement. County agrees to provide Bio Energy with at least 30 days prior written notice of any material change in County's self-funded program and will provide Bio Energy with a certificate of self-insurance as adequate proof of coverage. Bio Energy further acknowledges, agrees and understands that County does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore County does not have the ability to add Bio Energy as an additional insured.
- (c) In the event that County elects to cease its self-insurance program and/or purchase commercial insurance, of the types and limits specified, County will notify Bio Energy and provide Certificates of Insurance evidencing such coverage.
- (d) Property Insurance. As respects damage to property, King County is protected from physical loss under County's blanket property insurance policy. The policy is an "ALL Risk" policy, including Earthquake and Flood that provides County with protection for County property and property in County's care, custody or control, wherever located.

17.3 Terms and Conditions Applicable to all Insurance Coverages Specified Above.

- 17.3.1 Deductibles/Self-Insured Retentions. In no event shall the deductibles and/or self-insured retentions on any commercial insurance policy exceed \$250,000 per incident or \$750,000 in the aggregate. The deductible and/or self-insured retention of the policies shall not limit or apply to (a) Bio Energy's liability to County and shall be the sole responsibility of Bio Energy, or (b) County's liability to Bio Energy and shall be the sole responsibility of County.

17.3.2 Other Insurance Provisions. The insurance policies required by this Agreement are to contain and be endorsed to contain the following provisions:

- (a) With respect to the all Liability policies except Workers Compensation and Professional Liability, Errors and Omissions:
 - (i) County and its Representatives are to be covered as additional insureds on policies provided by Bio Energy their contractors and subcontractors of all tiers in connection with this Agreement. Bio Energy and its Representatives are to be covered as additional insureds on commercial insurance policies provided by County, if commercially insured, in connection with this Agreement. In each case, ISO Form CG 20 26 or its effective equivalent shall be used. The policies shall provide that (a) under no circumstances shall any additional insured be responsible for payment of any premium under such policy and (b) the failure of the named insured to report a claim under such policy shall not prejudice the rights to coverage by such policy of the additional insureds.
- (b) Bio Energy's and its construction contractors' of all tiers insurance coverage shall be primary and not excess to any insurance or self-insurance maintained by County or its Representatives. Any insurance or self-insurance maintained by County or its Representatives shall not contribute with Bio Energy's or its construction contractors' insurance or benefit Bio Energy or the construction contractor in any way.
- (c) Bio Energy's and its construction contractors' insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- (d) The insurance company shall provide each Party with at least thirty (30) days prior written notice of any cancellation or intended non-renewal of such insurance policy.

17.4 Acceptability of Insurers. Unless otherwise approved by (i) County, with respect to Bio Energy's insurance obligations or (ii) Bio Energy, with respect to County's insurance obligations, if commercially insured:

- (a) Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

- (b) Professional Liability, Errors and Omissions insurance may be placed with insurers with a Bests' rating of B+:VII.
- (c) If at any time the foregoing policies shall fail to meet the above requirements, as to form or substance, or if a company issuing any such policy shall fail to meet the standards above, the Party required to maintain such insurance shall, upon notice to that effect from the other Party, meet with the insuring Party to determine if such circumstances indicate that insuring Party should procure a new policy to replace the deficient policy.

17.5 Evidence of Insurance. Bio Energy shall furnish County, and County, if commercially insured, shall furnish Bio Energy, with certificates of insurance and endorsements required by this Agreement, which evidence compliance with the requirements of this Agreement, within ten (10) days before the date such insurance is required to be placed into effect and upon the renewal of any such policy of insurance. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies and the expiration date of the policy. Upon request each Party agrees to allow the other Party to inspect copies of required insurance policies at a mutually agreeable time and date in King County. In the event of a loss, upon request, each Party shall furnish certified copies of requested insurance policies to the other Party.

17.6 Reasonableness of Insurance. Notwithstanding anything to the contrary set forth in this Agreement, in the event that the cost of obtaining and maintaining insurance coverage required by this Agreement materially increases from the cost that applies to such insurance coverage as of the Commencement Date, or if any risk required to be insured in connection with this Agreement becomes uninsurable after the Commencement Date, then at the insuring Party's request the Parties shall review using reasonably prudent risk management practices and insurance industry standards, the insuring Party's insurance obligations hereunder and mutually agree, which agreement shall not unreasonably be withheld, to such amendments to these provisions that will enable insuring Party to provide insurance to the extent available on commercially reasonable terms; provided that neither Party will be materially and adversely affected by such event or circumstance.

To the extent that the insurance policies and coverage that a Party is required to procure under this Agreement is the same as the insurance policies and coverage required to be procured by such Party under one or more of the other Primary Project Contracts, the Parties agree that the Party required to provide such insurance is only required to provide one set of such policies and coverage, which shall satisfy the requirements under each Primary Project Contract; provided, the insurance underwriter(s) of each policy in the set, acknowledges coverages applicable to this PDA and other Primary Project Contracts; and further provided,

that if the policy limit, deductibles or policy terms differ among the Primary Project Contracts, the most stringent standard or policy term shall be procured by the insuring Party.

17.7 Waiver of Subrogation Required. Each Party shall require the carriers of the required property insurance coverage to waive all rights of subrogation against the other Party and its Representatives.

17.8 Failure Constitutes Material Breach. Failure on the part of either Party to procure or maintain required insurance coverages as contractually agreed, or defined by reasonable risk management practices and insurance industry standards shall constitute a material breach of this Agreement for purposes of Section 13.1.3 or 13.2.3, as applicable. All insurance required shall be maintained in force at all times.

18. Notices.

18.1 Address for and Method of Notice. Except as otherwise expressly provided in this Agreement, whenever this Agreement requires that a notice be given by one Party to the other Party or to any third party, or a Party's action requires the approval or consent of the other Party, then: (a) each such notice shall be given in writing and each such consent or approval shall be provided in writing; (b) no notice shall be effective unless it is provided in writing and otherwise satisfies any particular requirements as specified herein for such notice; and (c) the Party from whom approval or consent is sought shall not be bound by any consent or approval except to the extent such consent or approval is in writing. Any such notice, consent or approval that fails to conform to the foregoing requirements shall be null and void and have no force and effect. All notices shall be addressed to such Party at the address of such Party set out below or at such other address as such Party may have substituted therefor by notice to the other Party in accordance with this Section 18.1, and shall be either (i) delivered personally, (ii) sent by facsimile communication, (iii) sent by nationally-recognized overnight courier or delivery service or (iv) sent by registered mail, return receipt requested; provided that (x) any notice, demand, request or other communication made or delivered in connection with an alleged breach or default hereunder shall only be delivered personally or by a nationally-recognized overnight courier or delivery service and (y) electronic mail shall not be an effective or acceptable means for providing any notice hereunder.

If to County, to:

Department of Natural Resources
King St. Center
201 South Jackson, Suite 701
Seattle, WA 98104-3855
Attn: Solid Waste Division Director
Fax: (206) 205-0197

With a copy to:

King County Prosecuting Attorney
Kathryn A. Killinger
Senior Deputy Prosecuting Attorney
500 Fourth Avenue, 9th Floor
Seattle, WA 98104-5039
Fax: (206) 296-0415
Tel: (206) 296-0430

If to Bio Energy, to:

Bio Energy (Washington), LLC
c/o Industrial Generating Company LLC
Attn: President
2250 Dabney Road
Richmond, Virginia 23230
Fax: (804) 521-3583

With a copy to:

First Reserve Corporation
One Lafayette Place
Greenwich, Connecticut 06830
Attention: General Counsel
Fax: (203) 661-6729

and a copy to:

Gibson, Dunn & Crutcher LLP
1801 California Street, Suite 4200
Denver, Colorado 80202
Attention: Beau Stark
Fax: (303) 296-5310

- 18.2 Receipt and Effectiveness of Notice. All notices, requests, demands, approvals and other communications which are required to be given, or may be given, from one Party to the other Party under this Agreement shall be deemed to have been duly given, received and effective: (a) if personally delivered, on the date of delivery; (b) in the case of a notice sent by facsimile communication, on the day of actual receipt if a Business Day and received prior to 4:30 p.m. at the place of receipt, or if not so received, on the next following Business Day in the place of receipt, provided that sender's facsimile machine has received the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by telephone to sender that he has received the facsimile message; (c) in the case of a notice sent by mail, when actually received by the addressee; and (d) the Business Day immediately following the day it is sent, if sent for next day delivery to a domestic address by a

nationally-recognized overnight courier or delivery service. The addressee, when requested by the sender, shall promptly provide the sender -with facsimile acknowledgment of receipt but the delay or failure to give or receive any such acknowledgment will not affect the validity or effectiveness of the notice, communication, consent or approval in respect of which such acknowledgment of receipt is sought.

19. Taxes.

19.1 General. Bio Energy shall pay all Taxes that may be levied upon or assessed against the Plant Site Lease, Plant or the Plant Site and any other property, including personal property, that it owns in connection with this Agreement. County shall pay all Taxes that may be levied upon or assessed against the Collection Facilities or the Landfill Site and any other property that it owns in connection with this Agreement. Each Party shall bear all Taxes imposed on its own income.

19.2 Excise Taxes on the Purchase of Landfill GasAs between Bio Energy and County, Bio Energy is responsible for the payment of all taxes and assessments (other than County's income taxes) imposed upon Bio Energy with respect to the purchase of Landfill Gas from County. County shall clearly identify as a separate line item on each invoice to be sent to Bio Energy the amount of all sales taxes and other assessments owed by Bio Energy and required to be collected by County. Bio Energy shall pay or cause to be paid all sales taxes or assessments identified on each invoice directly to County and County covenants and agrees to timely remit the amount of such payment directly to the Washington State Department of Revenue and any other local taxing jurisdiction as required by law. Notwithstanding the foregoing, if Bio Energy provides County with a valid resale certificate or other certificate, document, or other evidence of exemption for payment of withholding of sales taxes or other assessments (collectively, the "Resale Certificate"), County will not collect the amount of sales tax or other assessments covered by such Resale Certificate. In the event Bio Energy fails to provide County with a valid Resale Certificate or the Resale Certificate does not cover certain purchases of Landfill Gas, County may require that Bio Energy pay to County the applicable sales tax or other assessments for the purchase of Landfill Gas. In the event an audit conducted by the Washington State Department of Revenue finds due and owing additional excise taxes ("Additional Tax") from Bio Energy's purchase of Landfill Gas from County, Bio Energy shall pay to County the amounts stated in the audit; provided, however, that Bio Energy reserves the right to challenge the accuracy of any such audit subject to County's approval, which approval will not be unreasonably withheld, in which case County and Bio Energy shall cooperate in good faith in contesting the amount of the Additional Tax imposed by the Washington State Department of Revenue as a result of such audit. If a challenge to the audit results in a reduction in the amount of Additional Tax owed by County, County shall promptly refund to Bio Energy the difference between the amount of Additional Tax paid by Bio Energy and the final determination of the Additional Tax.

- 19.3 Depletion. Except as otherwise provided in this Agreement or the Plant Site Lease, each Party shall be entitled to all income tax deductions, credits, depletion and similar allowances and other benefits relating to equipment or property owned by it and to sales of gas and other products derived from Landfill Gas which it is entitled to take under applicable tax laws, rules and regulations.
- 19.4 Responsibility For Tax Consequences Except as expressly provided herein, County and Bio Energy are each responsible for their own respective tax consequences in connection with the transactions contemplated hereby and neither of them shall be responsible for such other Party's tax consequences.

20. Miscellaneous.

- 20.1 Modification. This Agreement shall not be amended, changed or modified except by a subsequent agreement in writing which indicates that such writing is intended to amend the terms of this Agreement and is signed by duly authorized officers of both Parties. The Parties agree that this Agreement shall not be amended in any manner by any course of dealing between the Parties.
- 20.2 Waiver. No delay or forbearance by a Party in exercising any right, power or remedy accruing to such Party upon the occurrence of any breach or default by any other Party hereto under this Agreement shall impair any such right, power or remedy of such Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of 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, permit, consent or approval of any kind or character on the part of any Party hereto of any such breach or default under this Agreement, or any waiver on the part of any Party hereto of any provision or condition of this Agreement, must be in writing signed by the Party to be bound by such waiver and shall be effective only to the extent specifically set forth in such writing.
- 20.3 Entire Agreement. This Agreement and the Landfill Gas Project Agreement dated July 12, 2006, contain and integrate the complete agreement between the Parties with respect to the subject matter hereof and supersede all other agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof, including the Original Project Development Agreement and the Gas Sales Agreement.
- 20.4 Decision-Making by Parties. Except where this Agreement expressly provides for a different standard, whenever this Agreement provides for a determination, decision, permission, consent or approval of a Party, the Party shall make such determination, decision, grant or withholding of permission, consent or approval in a commercially reasonable manner and without unreasonable delay. Any denial of an approval, permission, decision, determination or consent required to be made in a commercially reasonable manner shall include in reasonable detail the reason for denial or aspect of the request that was not acceptable. In the case

of an assignment of this Agreement by a Party to a proposed assignee, the withholding of consent to such assignment shall be deemed to be unreasonable for purposes of Section 15.1 if the proposed assignee has the financial resources and technical expertise that are customarily required to enable such proposed assignee to perform its obligations under this Agreement.

- 20.5 Relationship of Parties. The relationship of the Parties shall be that of independent contractors. Neither this Agreement nor the performance by the Parties of their respective obligations under this Agreement shall create or constitute, or be construed to create or constitute, a partnership, joint venture or association, or establish a fiduciary relationship, a principal and agent relationship or any other relationship of a similar nature, between County and Bio Energy.
- 20.6 Third Party Beneficiary. Except as set forth below in this Section 20.6, this Agreement is for the sole and exclusive benefit of the Parties hereto and shall not create a contractual relationship with, or cause of action in favor of, any third party. Notwithstanding the foregoing, prior to the Transfer Condition Precedent Satisfaction Date, (i) Ingenco is intended to be a third party beneficiary of this Agreement and may specifically enforce its terms on behalf of Bio Energy; and (ii) any action under this Agreement taken by Bio Energy (including any assignment of this Agreement by Bio Energy pursuant to Section 15 hereto) shall be conditioned upon County receiving the prior written approval of Ingenco with respect to such action.
- 20.7 Governing Law. This Agreement and any provisions contained herein shall be governed by, and construed and interpreted in accordance with, the laws of the State of Washington without regard to its conflicts of law principles; provided, that with respect to matters of law concerning the internal corporate affairs of any corporate entity which is a party to this Agreement, the law of the jurisdiction under which the respective entity derives its powers shall govern.
- 20.8 Further Assurances. Each Party agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by, and to carry out the intent of, this Agreement, including the execution and delivery of additional documents. Without limiting the generality of the foregoing, County shall cooperate with Bio Energy and its Financing Parties in connection with Bio Energy's construction and long-term financing for the Plant, including the furnishing of such information, the giving of such certificates and the furnishing of a consent to the collateral assignment of this Agreement to the Financing Parties (substantially in the form set forth in Exhibit D) and such opinions of counsel and other matters as Bio Energy and its Financing Parties may reasonably request, provided that the foregoing undertaking shall not obligate County to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of County under this Agreement.
- 20.9 Severability. Any provision of this Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to

the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In the event any such provision of this Agreement is so held invalid, the Parties shall, within seven (7) days of such holding, commence to renegotiate in good faith new provisions to restore this Agreement as nearly as possible to its original intent and effect. To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

- 20.10 No Recourse to Affiliates. This Agreement is solely and exclusively between County and Bio Energy, and any obligations created herein on the part of any Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, joint venturer, Affiliate, director or officer of any other Party for performance of such obligations unless such obligations were assumed in writing by the Person against whom recourse is sought.
- 20.11 Costs. Each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Agreement and shall not have any right to claim or seek reimbursement of such costs and expenses from the other Party.
- 20.12 Specific Performance. Notwithstanding the dispute resolution procedures set forth in Section 16, and except as the context specifically otherwise requires, if a Party breaches or threatens to breach any provision of this Agreement, the other Party shall have the right to have such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the other Party and that money damages will not provide adequate remedy. All rights under this Section 20.12 shall be in addition to, and not in lieu of, any other rights and remedies available to either Party at law or in equity, all of which shall be independent of the other and severally enforceable.
- 20.13 Time is of the Essence. Except as the context specifically otherwise requires, time is of the essence with respect to all dates and time periods set forth in this Agreement.
- 20.14 Schedules; Exhibits. The Schedules and Exhibits to this Agreement are incorporated by reference into, and shall form part of this Agreement, and shall have full force and effect as though they were expressly set out in the body of this Agreement; provided, however, that in the event of any conflict between the terms, conditions and provisions of this Agreement (excluding the Exhibits and Schedules thereto) and the Schedules or Exhibits hereto, the terms of this Agreement (excluding the Exhibits and Schedules thereto) shall prevail.

20.15 Counterparts. This Agreement may be executed in one or more counterparts (including facsimile copies) each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date and year first herein above set forth.

KING COUNTY, a municipal corporation of Washington

By: _____

Title: _____

BIO ENERGY (WASHINGTON) LLC

By: Industrial Power Generating Company, LLC, as Member

By: _____

Name:

Title: