



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**July 24, 2007**

**Ordinance 15872**

**Proposed No.** 2007-0366.1

**Sponsors** Phillips and Dunn

1 AN ORDINANCE authorizing the King County executive  
2 to enter into amended and restated contracts with respect to  
3 the sale of landfill gas generated at the Cedar Hills regional  
4 landfill.

5  
6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 **SECTION 1. Findings:**

8 A. The Cedar Hills regional landfill ("the landfill") produces landfill gas, a  
9 valuable green energy resource created by the anaerobic decomposition of organic  
10 wastes, containing methane, carbon dioxide and trace concentrations of other compounds  
11 that may be utilized as a marketable energy product.

12 B. The King County council previously found in Ordinance 14723 that, pursuant  
13 to K.C.C. 4.56.100, unique circumstances existed that made a negotiated direct sale of the  
14 landfill gas generated by the landfill in the best interest of the public. Ordinance 14723  
15 also:

16 1. Authorized the King County executive or the executive's designee to enter  
17 into three agreements with Bio Energy (Washington), LLC ("Bio Energy") for the sale

18 and conversion into energy of landfill gas generated by the landfill: Landfill Gas Sales  
19 Agreement Cedar Hills Regional; Project Development Agreement; and Plant Site Lease  
20 (collectively, "the original project agreements"); and

21 2. Directed that income earned from this project shall be deposited into the solid  
22 waste operating fund.

23 C. King County and Bio Energy entered into the original project agreements on  
24 January 20, 2004. Industrial Power Generating Company, LLC, a Delaware limited  
25 liability company ("Ingenco"), has proposed purchasing all of the membership interests  
26 of Bio Energy, such purchase being conditioned, in part, upon amending the original  
27 project agreements on terms acceptable to Ingenco and the county.

28 D. The solid waste division and Ingenco have completed negotiations on  
29 amendments to the original project agreements.

30 SECTION 2. The King County executive or the executive's designee is hereby  
31 authorized to enter into two agreements amending and restating the original project

32 agreements for the sale of landfill gas generated by the Cedar Hills regional landfill,  
33 substantially in the form of Attachments A, B, C, D and E to this ordinance.

34


Ordinance 15872 was introduced on 7/2/2007 and passed by the Metropolitan King  
County Council on 7/23/2007, by the following vote:

Yes: 9 - Mr. Gossett, Ms. Patterson, Ms. Lambert, Mr. von Reichbauer, Mr.  
Dunn, Mr. Ferguson, Mr. Phillips, Ms. Hague and Mr. Constantine  
No: 0  
Excused: 0

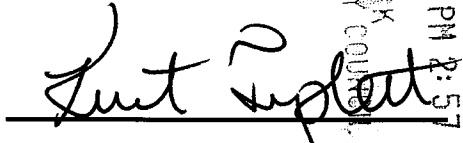
KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

  
Larry Gossett, Chair

ATTEST:

  
\_\_\_\_\_  
Anne Noris, Clerk of the Council

APPROVED this 31<sup>st</sup> day of August, 2007.

  
\_\_\_\_\_  
Ron Sims, County Executive

2007 AUG -3 PM 2:57  
KING COUNTY COUNCIL

RECEIVED

**Attachments** A. Amended and Restated Project Development and Gas Sales Agreement, B. King  
County Amended and Restated Plant Site Lease, C. Schedule 1.1 (Plant Site Lease)  
(Amended and Restated Project Development and Gas Sales Agreement) Definitions,  
D. Schedule 4.1.1 Project Timetable, E. Schedule 5.1 Gas Sale Payment

**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 (20<sup>th</sup>) 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 (CH<sub>4</sub>) 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:

**15872**

Attachment B

**KING COUNTY  
AMENDED AND RESTATED  
PLANT SITE LEASE**

**AMENDED AND RESTATED PLANT SITE LEASE**

This Amended and Restated Plant Site Lease ("Lease") is made as of May \_\_, 2007 (the "Lease 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"), (collectively the "Parties" or each individually, a "Party").

**RECITALS:**

WHEREAS, 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 legally described in Exhibit A, the "Landfill Site");

WHEREAS, Bio Energy desires to obtain rights to all Landfill Gas produced at the Landfill and collected by the Collection Facilities and Expansion 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 the Plant Site (as defined below) to process, convert, or otherwise use such Landfill Gas to generate alternate gas products or energy (including Product Gas and electricity); and to sell such products or energy resulting from such processing, conversion or use of the Landfill Gas at the Plant to one or more third parties

WHEREAS, 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.

WHEREAS, in furtherance of the other agreements respecting the Landfill to which County and Bio Energy are parties, including the Amended and Restated Project Development and Gas Sales Agreement (the "Amended PDA"), County desires to lease a portion of the Landfill Site to Bio Energy upon the terms and conditions set forth below.

WHEREAS, 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 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 the Amended PDA 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. This Lease amends and restates the Original Site Lease in connection with the Amended PDA.

WHEREAS, 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 Lease on terms agreeable to Ingenco and the approval by the King County

Metropolitan Council of this Lease, the Amended PDA, and the transactions and projects contemplated herein and therein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and in the Amended PDA 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; Conditions Precedent.

- 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 Lease.
- 1.3 Conditions Precedent. The respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full or waiver of the conditions precedent set forth in Section 3.1 of the Amended PDA.

2. Plant Site.

- 2.1 Description. County does hereby lease to Bio Energy, and Bio Energy does hereby lease from County, upon the terms and conditions herein set forth, certain real property (as more specifically described in Exhibits B and B-1, as amended from time to time, the "Plant Site") consisting of a portion of the Landfill Site together with all improvements now existing on the Plant Site. A sketch showing the general location of the Plant Site is shown on the map in Exhibit B attached hereto. The Parties acknowledge that (a) other than the Easement Areas, the Plant Site is not expected to exceed 2.5 acres in size; (b) the Plant Site was mutually agreed to by the Parties following discussions and technical consultations between them; (c) as of the PDA Effective Date, the final parameters of the Plant Site (the "Final Parameters") have not been determined; and (d) determination of the Final Parameters is contingent on the future determination by each of Bio Energy and the County of several engineering factors. Following the PDA Effective Date, each of Bio Energy and County will use commercially reasonable efforts to determine such engineering factors and mutually agreeable Final Parameters, or to the extent both parties mutually agree, an alternative location for the Plant Site. Upon determination of the such Final Parameters (the date of such determination, the "Plant Site Determination Date"), Exhibit B shall be amended to reflect such Final Parameters. Within sixty (60) days of the Plant Site Determination Date, the Parties shall (a) conduct, or cause to be conducted, a survey of the area identified on Exhibit B to create a legal description of the Plant Site and (b) following completion of such survey and the mutual agreement of the Parties on the legal description, amend this Lease to incorporate into this Lease as Exhibit B-1 hereto such legal description.

2.2 Easement Areas. The County hereby grants to Bio Energy non-exclusive easements for the Lease Term for ingress; egress; construction staging and lay-down; utilities to serve the Plant; evacuation and transmission of Product Gas from the Plant to the Product Gas Delivery Point (the "Product Gas Pipeline Easement"); evacuation and transmission of electric energy from the Plant to an interconnection point where such electric energy will be delivered to the electric transmission system (the "Transmission Line Easement"); and all other uses reasonably necessary for the design, construction, operation and maintenance of the Plant over and across those portions of the Landfill Site in the locations indicated on the map in Exhibit B, as amended from time to time, or otherwise approved in advance by County (the "Easement Areas"). The Parties acknowledge that (a) as of the Lease Effective Date, the Easement Areas may not have been finalized; and (b) in that event, finalizing the Easement Areas is contingent on the future determination by each of Bio Energy and the County of several engineering factors, including the determination of the Final Parameters and the location of the Product Gas Delivery Point. Each of Bio Energy and County will use commercially reasonable efforts to finalize the Easement Areas, and upon such determination, Exhibit B shall be amended to reflect the Easement Areas and a legal description of the Easement Areas will be attached hereto as Exhibit B-2. If Bio Energy subsequently determines that one or more additional easements is necessary for the construction, operation or maintenance of the Plant, the Parties shall agree to a mutually acceptable Easement Area for such easement and Exhibits B and B-2 shall be amended as appropriate to include such additional Easement Area.

3. Term. This Lease shall be coterminous with the Initial PDA Term (approximately twenty (20) years after the Commercial Operation Date) (the "Initial Lease Term") and shall be: (i) automatically extended by a period equal to the First Extension Term and the Second Extension Term (as each such term is defined in Section 2 of the Amended PDA), to the extent such extension terms become effective under the Amended PDA; and (b) automatically terminated as of the PDA Termination Date (provided, that no such termination shall relieve Bio Energy from its Restoration Obligations as described in Section 10 below). The extension of this Lease pursuant to the first sentence of this Section 3 shall be on the same terms and conditions provided herein (as such terms and conditions may have been amended or modified during the Initial Lease Term or during an extension term in accordance with Section 26.5)(the Initial Lease Term, as so extended, the "Lease Term"). Bio Energy shall be entitled to possession of the Plant Site upon substantial completion by the County of the Plant Site Lease Improvements described in Section 8.2.1, which will occur not later than sixty (60) days prior to the Target Construction Start Date; provided, however, that failure to meet this sixty day requirement will not extend any Milestone Date except to the extent set forth in Section 4.11 of the Project Development Agreement. The date on which the County actually delivers possession of the Plant Site with the Plant Site Lease Improvements substantially completed shall be deemed the "Commencement Date" of this Lease. Within thirty (30) days of the Commencement Date, the County and Bio Energy shall execute an amendment to this Lease in a form suitable for recording confirming the Commencement Date and approximate termination date of the Initial Lease Term.

4. Base Rent. The Parties agree that the consideration for the County's lease of the Plant Site is Bio Energy's payment of monthly rent in the amount of one thousand dollars \$1,000.00("Base Rent") and the payment of sums denominated as "additional rent" under Sections 5, 6 and 25.4. Bio Energy shall not be required to pay any monthly rent for the lease of the Plant Site other than the sums denominated as Base Rent or additional rent. The Parties understand and acknowledge that the Base Rent is a negotiated amount and reflects a fair market value for the Plant Site.

Base Rent shall be remitted to:

King County Solid Waste Division  
201 South Jackson, Suite 701  
Seattle, WA 98104-3855  
Attn: Fiscal Services Manager

5. Taxes. In addition its obligations under Section 19 of the Amended PDA, Bio Energy shall pay all Taxes that may, from and after the Commencement Date, be levied upon, assessed against or otherwise applicable to the Plant, the Plant Site, the Plant Site Lease Improvements, this Lease, or Bio Energy's business operations on the Plant Site, and any other property, including personal property, that it owns or operates in connection with this Lease. Any statutory leasehold excise tax imposed by Chapter 82.29A RCW, shall be paid directly to the County when due as additional rent. In the event an audit conducted by the Washington State Department of Revenue finds due and owing additional leasehold excise taxes, Bio Energy shall pay to the County or other appropriate governmental agency the amounts stated in the audit. Except with respect to leasehold excise taxes, Bio Energy shall be responsible for collecting and remitting any amounts owed pursuant to this section and shall be responsible for any errors or omissions in connection therewith. "Taxes" do not include any state or federal taxes applicable to County as a result of County receiving any income or other compensation under this Lease, the Amended PDA, or any other Project Contract.

6. Utilities.

- 6.1 Bio Energy shall pay all charges for each utility or service provided to the Plant Site (including, but not limited to charges for water, telephone service, data lines, garbage collection, and sewage connection and service) from and after the Commencement Date. Bio Energy shall pay such charges, or cause such charges to be paid when and if due, to the provider of such utility or service or, to the extent Bio Energy connects to County's existing utilities and/or services for any utilities or services, as additional rent directly to County at County's election, and shall indemnify, protect and hold harmless County and the Plant Site from all such charges during the Lease Term beginning with the Commencement Date. If Bio Energy connects to County's existing utilities and/or services for any utilities or services, then Bio Energy shall pay all costs and expenses to establish such connection, including any metering that County may elect to have installed to measure Bio Energy's use of such utility or service. Bio Energy and County will agree to a schedule and method for installing such connections, and such



installation shall be performed by Bio Energy or its contractors, in a manner that will not materially and adversely impact the provision of such utility service to County, except to the extent agreed to between Bio Energy and County.

- 6.2 Prior to the installation of any utility lines and service within the Plant Site, Bio Energy shall submit to the County plans and specifications for the proposed utility or service. County shall confirm that the installation of the utilities will not adversely affect the utility service provided to the County.
- 6.3 After installation, subject to any agreements or understandings with a utility provider, Bio Energy shall be responsible for maintaining all utility services located within the Plant Site in good order and repair. In addition to all other rights and remedies of County herein, after reasonable notice to Bio Energy and an opportunity for Bio Energy, working in conjunction with the applicable utility service provider, to cure the claimed condition, County shall have the right, subject to any agreements or understandings with a utility provider, to enter onto the Plant Site to repair or maintain any utility systems or services if Bio Energy fails to do so and the condition of the utility service on the Plant Site is materially and adversely impacting the provision of utility service to County. Bio Energy shall reimburse County's actual costs as reasonably incurred in connection with any remedial action taken by the County pursuant to this Section 6.3. Any dispute between County and Bio Energy concerning the adequacy of the design of Bio Energy's utility systems or the compliance of Bio Energy with the maintenance requirements of this Section 6.3 shall be resolved in accordance with the procedures set forth in Section 15.

7. Uses.

- 7.1 Plant Site. The Plant Site is leased to Bio Energy for the purposes of (a) constructing, operating and maintaining the Plant and related improvements, (b) processing, converting, or otherwise using Landfill Gas and other fuels to generate Product Gas, other alternate gas products, or other energy (including electricity); (c) making sales of Product Gas, electric energy, or other energy or commodities generated by the Plant, or the gas production or electric capacity of the Plant, to one or more Persons; and (d) for any other use or uses contemplated by the Amended Project Development Agreement (items (a) – (d) collectively, the "Permitted Uses"). Bio Energy shall not commit or allow to be committed any waste upon the Plant Site, or any public or private nuisance or other act which violates Applicable Law.
- 7.2 Easement Areas. The Easement Areas are granted to Bio Energy for the Permitted Uses, subject to the exclusive control and management thereof by County at all times. Bio Energy shall not commit or allow to be committed any waste upon the Easement Areas, or any public or private nuisance or other act which violates Applicable Law, and Bio Energy shall not deposit any solid waste on the Easement Areas or any other portion of the Landfill Site. County shall have the right to (i) establish, modify and enforce reasonable rules and regulations

with respect to the Easement Areas, (ii) enter into, modify and terminate agreements with third parties (other than Bio Energy) permitting their non-exclusive use of the Easement Areas, (iii) except for the Product Gas Pipeline Easement, temporarily restrict Bio Energy's access to all or any portion of the Easement Areas to such extent as may, in the reasonable opinion of County, be necessary to enable County to operate the Landfill, (iv) do and perform such other acts in and to the Easement Areas as County deems advisable; provided that County (A) shall not exercise any of its rights (including the foregoing rights) with respect to the Easement Areas in a manner which will materially and adversely interfere with Bio Energy's use the Plant Site or the Easement Areas or the ownership, operation and maintenance of the Plant; and (B) shall use reasonable efforts to minimize the duration of any acts that otherwise interfere with Bio Energy's use the Plant Site or the Easement Areas or the ownership, operation and maintenance of the Plant.Compliance With Law. Bio Energy shall, at Bio Energy's expense, comply promptly with all Applicable Law regulating the use, occupancy or improvement of the Plant Site or Easement Areas by Bio Energy.

7.4 Environmental Obligations. Notwithstanding anything in this Section 7 (but subject to Section 7.4.3):

7.4.1 County shall be responsible for undertaking any investigation, assessment, plan development, clean up, remediation, or other action ordered, imposed, or requested by any Governmental Authority with respect to any Environmental Conditions or Environmental Non-Compliance relating to the Plant Site, any Easement Area, or any portion of the Landfill Site;

7.4.2 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 Bio Energy 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 otherwise relating to the Landfill Site; or (b) located at or under, or otherwise relating to, the Plant Site or any Easement Area, 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 7.4.3. 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;

- 7.4.3 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.
- 7.4.4 Bio Energy (i) shall have no obligation to operate the Landfill; and (ii) shall not share in any of Owner's responsibilities or obligations as the owner and operator of the Landfill with respect to waste disposal, environmental, or public health objectives.
- 7.5 Upon request from Bio Energy, County shall promptly and at its sole expense collect and dispose of any waste or refuse material that is directly or indirectly deposited or otherwise found at the Plant Site due to the operations of the Landfill, including without limitation any such materials that were blown or directed onto the Plant Site by wind or other weather conditions.

8. Acceptance of Plant Site.

- 8.1 "As Is" Condition. Bio Energy hereby accepts the Plant Site and Easement Areas "as-is" in their condition existing as of the Plant Site Determination Date, except for (a) County's obligations with respect to subdivision, tax parcel segregation, and the Plant Site Lease Improvements described in Sections 8.2.1, 8.2.2 and 8.2.3 below) to be undertaken by County prior to the Commencement Date and (b) County's indemnity obligations set forth in Section 7.4 of this Lease and Section 8.1.2 of the Project Development Agreement. County shall have no obligation of any kind to alter, repair, improve, or rebuild the Plant Site in connection with Bio Energy's occupancy thereof or Easement Areas in connection with Bio Energy's use thereof except as specifically stated in this Lease. Bio Energy acknowledges that neither County nor any County Representative has made any representation or warranty as to the suitability of the Plant Site or the Easement Areas for the conduct of Bio Energy's business or performance of the

Amended PDA, except as expressly set forth herein or in the Amended PDA, and other than with respect to any such express representations or warranties, Bio Energy hereby waives any rights, claims or actions against County under any express or implied warranties of suitability.

8.2 County Actions Prior to Commencement Date. Prior to the Commencement Date, the County shall undertake and complete the following actions with respect to the Plant Site and Easement Areas:

8.2.1 County shall: (a) remove all buildings, sheds and warehouses located on the Plant Site at its own cost; (b) take such additional acts as mutually agreed upon by County and Bio Energy following determination of the Final Parameters (such additional acts, collectively with the matters described in (a) – (b), the "Plant Site Lease Improvements") at its own cost to the extent such costs are included in the agreement entered into by County and Bio Energy as set forth in Section 8.2.1(iii) below (or if no such agreement is entered into, all such costs except as otherwise mutually agreed by the Parties). With respect to any Plant Site Lease Improvements, unless otherwise set forth in the agreement entered into by County and Bio Energy as set forth in Section 8.2.1(iii) below; (i) County shall supply all labor and materials, at its own cost, and shall undertake such Plant Site Lease Improvement in accordance with Bio Energy's instructions and quality specifications, (ii) Bio Energy shall be responsible for developing design standards and quality control specification and shall supervise the work to confirm that such work complies with such instructions, standards and quality specifications and (iii) County and Bio Energy will, to the extent necessary, enter into a separate agreement, on terms mutually acceptable to County and Bio Energy, that will govern such work.

8.2.2 County shall at its sole expense cause the Plant Site to be in compliance with all applicable subdivision laws and ordinances so that the Plant Site constitutes a single, legally subdivided lot. County shall be responsible for, and shall bear all expenses relating to, preparing, undertaking, developing, building, constructing, grading, establishing, creating, or otherwise putting into place any facilities, plans, tests, developments, improvements, or other requirements necessary in order for the Plant Site to so become a single, legally subdivided lot.

8.2.3 County shall cause the tax segregation of the Plant Site by the King County Assessor to be configured so that no other portion of the Landfill, the Landfill Site or any other real property, is included within the tax parcels comprising the Plant Site.

8.2.4 Subject to the provisions of Section 6, County shall provide easement rights to permit all necessary utility services, including water service, sanitary and storm sewer service, waste-water treatment service,

telephone and electrical utility service, to be available at the boundary of the Plant Site at points mutually agreed by Bio Energy and County; provided that County shall have no obligation to contract for or to cause any such services or utilities to be provided to the Plant Site or to the edge of any such easement areas to be made available pursuant to this sentence, or to construct any improvements on any such easement areas or the Plant Site to enable such services or utilities to be provided thereto, all of which shall be at the sole risk, cost and expense of Bio Energy and/or the provider(s) thereof. Notwithstanding the foregoing, County shall accept for delivery and treatment all Condensate delivered by Bio Energy to the Condensate Delivery Point, in accordance with the terms of Section 4.10 of the Amended PDA.

9. Bio Energy Improvements and Alterations. Bio Energy shall construct and maintain the Plant and other improvements on the Plant Site and Easement Areas pursuant to the terms and conditions of the Amended PDA. Subject to County's obligation to cooperate set forth in Section 9.2 of the Amended PDA, Bio Energy is solely responsible for obtaining all Permits required for the construction of the Plant on the Plant Site and Easement Areas. Bio Energy shall pay, when due, all claims for labor or materials furnished to or for Bio Energy at or for use in the Plant Site or related to Bio Energy work in the Easement Areas, which claims are or may be secured by any mechanics' or materialmen's liens against the Plant Site or any interest therein. The Plant and other improvements constructed by Bio Energy, including all additions, alterations and improvements thereto or replacements thereof, the pipeline constructed on the Product Gas Pipeline Easement, and any transmission line constructed on the Transmission Line Easement, shall be the property of Bio Energy.
10. Plant Site Restoration. Upon the expiration or earlier termination of this Lease, if County has exercised its Right of First Offer in accordance with Section 8 of the Amended PDA, then, as of the closing date of such purchase transaction, 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, shall become the property of County. If County does not exercise its Right of First Offer and Bio Energy has not otherwise sold the Plant as contemplated in Section 8.3 of the Amended PDA, then subject to Section 13.5.3 of the Amended PDA, Bio Energy shall restore the Plant Site to the extent of, and in accordance with, the Restoration Obligations set forth in Section 13.5 of the Amended PDA. Unless County exercises its Right of First Offer, improvements to the Plant Site and Easement Areas made by Bio Energy shall not become property of the County.
11. Care of Plant Site. Throughout the Lease Term, Bio Energy shall maintain and repair the Plant Site and the Plant at its expense in good order and condition, subject to normal wear and tear.
12. Access. Bio Energy shall permit County and its Representatives to enter the Plant Site upon not less than three (3) days' prior notice and during normal business hours for the purpose of inspecting same and inspecting Bio Energy's compliance with the terms of this

Lease and the Amended PDA, provided County and its Representatives shall comply at such times while on the Plant Site with Bio Energy's health and safety procedures and policies and such inspection shall not interfere with the construction, operation or maintenance of the Plant. Prior to the Commencement Date, Bio Energy may enter onto the Plant Site and the Easement Areas for the purpose of conducting preliminary studies reasonably necessary in determining the Final Parameters and in preparation for the construction of the Plant, including soils testing and surveys; provided (i) Bio Energy shall not do any invasive testing, sampling or drilling at the Plant Site without first obtaining the County's prior written consent, which consent may be subject to an employee or agent of the County accompanying Bio Energy and/or its consultants in connection with any such access but shall not be unreasonably withheld; and (ii) Bio Energy shall promptly restore the Plant Site to substantially the same condition which existed prior to any such investigations, tests, surveys and other analyses, at Bio Energy's sole cost and expense.

13. Condemnation; Relocation.

13.1 Total Taking — Relocation. If all or such portions of the Plant Site or the Landfill Site as may be required for the reasonable use of the Plant are taken by the exercise of the power of eminent domain by a Governmental Authority (in such capacity, the "Condemning Authority") (which event is referred to as a "Total Taking") the Parties shall identify a suitable relocation site for the Plant Site at or adjacent to the Landfill Site that, following such relocation and the related reconstruction of the Plant, will: (a) enable the Plant to operate in substantially the same manner that the Plant operated before the Total Taking and relocation; and (b) provide Bio Energy with financial and economic benefits that are at least equal to the financial and economic benefits that Bio Energy received prior to such Total Taking and relocation.

13.2 Total Taking — Allocation of Condemnation Award. In the event of a Total Taking, Bio Energy shall have the right to seek a Condemnation Award that includes, without limitation, (a) the value of Bio Energy's remaining leasehold interest under this Lease, (b) the fair market value of the Plant 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 or any Easement Area, and (c) the cost to relocate the Plant Site as contemplated in Section 13.1 (items (a) – (c) collectively, the "Bio Energy Condemnation Value"). The Condemnation Award awarded by the Condemning Authority, or by a court determining such issue in the event of a dispute between the Parties and the Condemning Authority, shall be allocated between Bio Energy and the County as follows: (A) first, Bio Energy shall receive an amount equal to the Bio Energy Condemnation Value; (b) next, the County shall receive the fair market value of the Plant Site and Landfill Site; and (c) the remainder of the Condemnation Award, if any, shall be divided between County and Bio Energy in proportion to their respective shares of the Condemnation Award as determined under (a) and (b) above.

13.3 Partial Taking. In the event of a taking or condemnation of less than that portion of the Plant Site that would require the relocation of the Plant pursuant to Section 13.1 (which event is referred to as a "Partial Taking"), the Lease Term shall continue and the Condemnation Award awarded by the Condemning Authority, or by a court determining such issue in the event of a dispute between the Parties and the Condemning Authority, shall be allocated between Bio Energy and the County as follows: (a) first, Bio Energy shall receive an amount necessary to repair, restore, replace any portion of the Plant 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 or any Easement Area, to the extent damaged or taken by such Partial Taking; and (b) next, the remainder of such Condemnation Award shall be paid to the County.

13.4 Allocation of Award by Condemning Authority or Court. In the case of either a Total Taking or a Partial Taking, to the extent provided by Applicable Law, either Party may request that the court having jurisdiction over the condemnation proceedings allocate the Condemnation Award between the Parties in accordance with the terms of Sections 13.2 and 13.3, as applicable.

13.5 Temporary Taking; Taking of Leasehold Interest. If the whole or any part of the Plant Site, the Plant, the Easement Areas or of Bio Energy's interest under this Lease (in whole or in part) is taken or condemned by any Condemning Authority for its temporary use or occupancy, and Bio Energy (or the Condemning Authority or another third party) shall continue to pay, in the manner and at the times herein specified, all sums due under this Lease, then this Lease shall continue and, except only to the extent that Bio Energy may be prevented from so doing pursuant to the terms of the order of the Condemning Authority, Bio Energy shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Bio Energy to be performed and observed, as though such taking or condemnation had not occurred. In the event of any such temporary taking or condemnation, or taking in whole or in part of Bio Energy's leasehold interest, Bio Energy shall be entitled to receive the entire amount of any Condemnation Award made for such taking or condemnation, whether paid by way of damages, rent or otherwise, allocable to the temporary use or occupancy of the Plant, Plant Site and Easement Areas prior to the Lease Termination Date.

13.6 County's Participation in Exercise of Eminent Domain Powers.

13.6.1 County agrees that it shall not act as a Condemning Authority with respect to the Plant, the Plant Site, any Easement Area, or this Lease.

14. Default.

14.1 Default By Bio Energy. Each of the following events shall constitute events of default on the part of Bio Energy (each, a "Bio Energy Lease Default") which, if not cured within the time permitted (if any) to cure such event of default, shall

entitle County to terminate this Lease pursuant to Section 14.3; provided, however, that no such event shall be deemed to be a Bio Energy Lease Default if (a) it is caused by or is otherwise attributable to a breach by County of its obligations under this Lease 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 19:

14.1.1 the failure by Bio Energy to make any payment required to be made by Bio Energy hereunder, as and when due, where such failure shall have continued for ten (10) days after notice thereof has been given by County to Bio Energy; or

14.1.2 the failure by Bio Energy to comply with any covenant, obligation or agreement of Bio Energy contained in this Lease (other than any such failure which would constitute a Bio Energy Lease Default under Section 14.1.1), where such failure has a material adverse effect on County or its ability to perform its obligations under this Lease and such failure shall not have been cured during the Initial Cure Period; provided that if the Initial Cure Period is not reasonably sufficient to permit a cure of such failure, and Bio Energy shall have diligently commenced to cure such default within the Initial Cure Period and shall thereafter proceed with reasonable diligence to cure such failure, for such longer period as shall be reasonably necessary for Bio Energy to cure the same.

14.2 Default By County. Each of the following events shall constitute events of default on the part of County (each, a "County Lease Default") which, if not cured within the time permitted (if any) to cure such event of default, shall entitle Bio Energy to terminate this Lease pursuant to Section 14.3; provided, however, that no such event shall be deemed to be a County Lease Default if (a) it is caused by or is otherwise attributable to a breach by Bio Energy of its obligations under this Lease 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 19:

14.2.1 the failure by County to comply in any material respect with any covenant, obligation or agreement of County contained in this Lease, where such failure has a material adverse effect on Bio Energy or its ability to perform its obligations under this Lease and such failure shall not have been cured during the Initial Cure Period; provided that 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 shall thereafter proceed with reasonable diligence to cure such failure, for such longer period as shall be reasonably necessary for County to cure the same.

14.3 Termination Procedure.



- 14.3.1 upon the occurrence of a County Lease Default or a Bio Energy Lease Default, as the case may be, that is not cured within the applicable period (if any) for cure, the non-defaulting Party may, at its option, initiate termination of this Lease by delivering a Notice of Intent to Terminate this Lease to the defaulting Party. The Notice of Intent to Terminate shall specify in reasonable detail the applicable Lease Default giving rise to the Notice of Intent to Terminate.
- 14.3.2 Following the giving of a Notice of Intent to Terminate, the Parties shall consult for the applicable Consultation Period as to the appropriate actions that should be taken to mitigate the consequences of the relevant Lease Default, taking into account all prevailing circumstances. During the Consultation Period, the defaulting Party may constitute to undertake efforts to cure the relevant Lease Default, and if such default is cured at any time prior to the delivery of a Termination Notice in accordance with Section 14.3.3, then the non-defaulting Party shall have no right to terminate this Lease in respect of such cured default.
- 14.3.3 Upon expiration of the Consultation Period, and unless the Parties shall have otherwise agreed or unless the Lease Default shall have been remedied during the Consultation Period, the Party that issued the Notice of Intent to Terminate may terminate this Lease by delivering a Termination Notice to the defaulting Party, whereupon this Lease shall terminate on the date set forth in the Terminated Notice (which date shall in no event be earlier than the date such Termination Notice is delivered to the defaulting Party).
- 14.3.4 Notwithstanding anything to the contrary set forth in this Lease, from and after the occurrence of any Financial Closing:
- (a) County shall not seek to terminate this Lease 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 14.3.1 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 14.3.2, 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 23. 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 23.

- (b) No rescission or termination of this Lease 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 14.3.4. 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 Lease Default within the cure period under Section 14.3.2 as provided to Bio Energy in this Lease, County shall have all its rights and remedies with respect to such default as set forth in this Lease; provided, however, that if the Financing Parties notify County that they require further time to consider the cure of the Bio Energy Lease 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 (a) 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 Lease (an "Election Notice"), or (b) 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 Lease Default (the "Extended Cure Period"). All the event that the Financing Parties fail to cure any Bio Energy Lease 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 Lease, County may immediately terminate this Lease, and such termination shall be effective on delivery to the Financing Parties or the Agent of notice of such termination.

- 14.4 Other Termination Events. This Lease shall terminate immediately without further action on behalf of either Party in the event the Amended PDA is terminated. For purposes of clarification, Section 14.3 shall not apply to any such termination.

15. Dispute Resolution.

15.1 Venue; Jurisdiction. Venue for any suit, legal action or other legal proceeding arising out of or relating to this Lease 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.

15.2 Resolution Procedures. Except as otherwise expressly provided in this Lease and before any Party initiates any law suit or legal proceedings pursuant to Section 15.1, the Parties will attempt in good faith to resolve through negotiations any dispute, claim or controversy arising out of or relating to this Lease; 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.

16. Surrender of Possession. Upon the Lease Termination Date and following any period of time permitted under Sections 8 and 13 of the Amended PDA for Bio Energy to (a) consummate a sale of the Plant to County (pursuant to County's Right of First Offer) or to a third party purchaser, or (b) if no such sale occurs, to enable Bio Energy to restore the Plant Site (to the extent of its obligation, if any to do so), Bio Energy shall, in the absence of any sale, peacefully surrender the Plant Site and Easement Areas to County in good condition, reasonable use, wear and tear and damage as the result of casualty loss excepted. Such surrender shall occur (A) where Bio Energy is required to restore the Plant Site, promptly following Bio Energy's completion of such restoration; and (B) where Bio Energy has no obligation to restore the Plant Site, within 180 days of the Lease Termination Date. Except to the extent covered by the purchase of the Plant, Bio Energy shall, to the extent of its Restoration Obligations under Section 10 of this Lease and Section 13.5 of the Amended PDA, remove 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. Any property not so removed shall be deemed abandoned and may be sold or otherwise disposed of as County deems advisable. Bio Energy may, at its election, opt (at its own expense) to secure and abandon in place any or all Improvements located underground or below grade.

17. Indemnity; Limitation of Liability.

17.1 Indemnity. The provisions of Sections 11.1.1, 11.2.1, 11.3, 11.4, 11.6, 11.7 and 11.8 of the Amended PDA are incorporated into this Lease by reference, *mutatis mutandis*. Each Party's indemnity obligations shall apply from and after the first date on which Bio Energy or any of its employees, agents, or contractors enters onto any portion of the Landfill or the Landfill Site for any purpose hereunder.

17.2 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS LEASE: (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 LEASE BY THE DEFAULTING PARTY; AND (B) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, 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 LEASE, WHETHER ANY CLAIM FOR SUCH DAMAGES SHALL ARISE UNDER THIS LEASE, FROM STATUTORY OR REGULATORY NONCOMPLIANCE, IN TORT (WHETHER NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), OR ANY OTHER CAUSE OR FORM OF ACTION WHATSOEVER. The provisions of Sections 8.5.2 through 8.5.4 of the Project Development Agreement are incorporated into this Lease by reference, *mutatis mutandis*.

18. Representations And Warranties.

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

The County has the full power and authority to enter into the transactions contemplated hereunder, and to execute, deliver and perform its respective obligations under, this Lease.

18.1.2 Authorization. The execution and delivery of, and the consummation of the transactions contemplated by, this Lease have been duly authorized by all necessary action of the County. This Lease constitutes a legal, valid and binding obligation of the County.

- 18.1.3 Title. The County owns and has good and marketable title to the Plant Site and the Easement Areas free and clear of all mortgages, liens, pledges, easements, servitudes, claims and encumbrances of any kind, except: (a) all matters that are disclosed in the title policies and related surveys issued to Bio Energy in connection with such the Plant Site; and (b) imperfections or irregularities of title and other liens, easements, servitudes or encumbrances that would not, individually or in the aggregate, have a material adverse effect on Bio Energy's ability to occupy the Plant Site and use the Easement Areas and perform its obligations under the Project Documents.
- 18.2 Representations and Warranties of Bio Energy. Bio Energy makes the following representations and warranties to County, all of which are made as of the Lease Effective Date, but which shall survive the Lease Effective Date:
- 18.2.1 Authority. Bio Energy has the full power and authority to enter into the transactions contemplated hereunder, and to execute, deliver and perform its respective obligations under, this Lease.
- 18.2.2 Authorization. The execution and delivery of, and the consummation of the transactions contemplated by, this Lease have been duly authorized by all necessary action of Bio Energy. This Lease constitutes a legal, valid and binding obligation of Bio Energy.
19. Force Majeure.
- 19.1 Effect of Event of Force Majeure. If a Party (the "Affected Party") is prevented, hindered or delayed from performing any of its obligations under this Lease by an Event of Force Majeure, then so long as that situation continues and such Party otherwise complies with its obligations under this Lease, the 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. The provisions of this Section 19 shall not relieve Bio Energy from its obligation to make any payments required under this Lease as and when due hereunder.
- 19.2 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 19.2, 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.

19.3 Obligations Following Occurrence of Event of Force Majeure.

19.3.1 The Affected Party, subject to Section 19.3.3, 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.

19.3.2 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 Lease 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 19.2 and 19.3.1 and continues to so comply, then any performance deadline that the Affected Party is obligated to satisfy or achieve under this Lease 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.

19.3.3 Notwithstanding anything to the contrary set forth in this Lease, 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.

19.3.4 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.

20. Assignment.

20.1 General. Except as provided in this Section 20, neither Party may assign or transfer its rights or obligations under this Lease without the prior consent of the other Party, such consent not to be unreasonably withheld or delayed. Bio Energy

shall not transfer, assign or hypothecate its rights or interests herein, or sublease or license ally portion of the Plant Site or permit any third party to occupy or operate from any portion thereof, except in connection with (i) Bio Energy's grant of a mortgage, deed of trust, or other security interest to a Financing Party as provided in Section 20.2, or (ii) Bio Energy's sale of all or substantially all of its interest in the Plant, this Lease, and the Amended PDA. Any purported assignment that fails to comply with the requirements of this Section 20 shall be, at the option of the Party not making such assignment, null and void and shall have no force or effect (provided such option must be exercised within thirty (30) days of such Party becoming aware of such assignment).

20.2 Financing Parties. Bio Energy shall have the right, without County's prior consent, to:

20.2.1 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 Lease, (b) the Plant, or (c) the Plant Site. Bio Energy shall provide reasonable prior notice of any such financing.

20.2.2 assign this Lease to an Affiliate of Bio Energy, provided that prompt notice of such assignment is provided to County, and that any such assignee (i) has a net worth that is sufficient to enable it to satisfy and perform all of Bio Energy's obligations under the Lease; and (ii) agrees in writing to be bound by the terms of this Lease as a condition precedent to the effectiveness of such assignment.

20.3 Successors and Assigns. The terms and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the successors and permitted assigns of the respective Parties hereto.

21. Further Assurances; Bio Energy Financing. Each Party agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by, and to carry out the intent of, this Lease, including the execution and delivery of additional documents. County acknowledges that Bio Energy will enter into Financing Documents with the Financing Parties in connection with the construction and long-term financing of the Plant and, in order to facilitate such financing, Bio Energy, and its successors and assigns, shall have the right to mortgage its interests under this Lease to provide security for such financing. 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, at no cost or risk to the County, including the furnishing of such information, the giving of such certificates and the furnishing of a consent to the leasehold mortgage and collateral assignment of this Lease to the Financing Parties (substantially in the form set forth in Exhibit C with such changes required by the Financing Parties and are reasonably acceptable to the County), provided that the foregoing undertaking shall not obligate the County to materially change any rights or benefits to which it is entitled hereunder, materially reduce the

duties or obligations of Bio Energy under this Lease, or materially increase any burdens, liabilities or obligations of the County under this Lease.

22. Insurance. During the Lease Term, Bio Energy shall obtain and maintain the insurance coverages as and when required pursuant to Section 17 of the Amended PDA.

23. Notices.

23.1 Address for and Method of Notice. Except as otherwise expressly provided in this Lease, whenever this Lease 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 23.1) 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, 9<sup>th</sup> 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

- 23.2 Receipt and Effectiveness of Notices. All notices, requests, demands, approvals and other communications to be given, or may be given, from one Party to which are required the other Party under this Lease 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.Survival.

Upon the expiration or termination of this Lease, this Lease 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 Lease, shall in each case survive expiration or termination. The rights, remedies and obligations set out in (a) Sections 13 (Condemnation; Relocation), 15 (Dispute Resolution) and 23 (Notices), shall survive in full force and effect the expiration or termination of this Lease to the extent necessary to enable a Party to exercise any of such accrued rights and remedies, (b) Section 17 (Limitation of Liability) shall survive in full force and effect the expiration or termination of this Lease and (c) Section 10 (Plant Site Restoration) shall survive in full force and effect the expiration or termination of this Lease in accordance with Section 10.1.

25. Miscellaneous.

25.1 No Brokers. Bio Energy represents and warrants to County, and County represents and warrants to Bio Energy, that such Party has not engaged any broker, finder or other person who would be entitled to any commission or fees in respect of the negotiation, execution/or delivery of this Lease and shall indemnify and hold harmless the other Party against any loss, cost, liability or expense incurred by such other Party as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of such Party.

25.2 Recording. Bio Energy shall not record this Lease; provided that, at the request of Bio Energy or a Financing Party, County agrees to execute a short form or "memorandum" of this Lease which Bio Energy or such Financing Party may record at its expense.

25.3 Quiet Enjoyment. During the Lease Term, County represents and warrants to Bio Energy that, subject to compliance with the terms and conditions of this Lease, Bio Energy shall have the peaceful and quiet enjoyment of the Plant Site and Easement Areas.

25.4 Interest; Late Charge. Any sums payable by Bio Energy to County that are not paid by the due date thereof shall bear interest at a rate equal to the Approved Rate per annum calculated from the date of delinquency to the date of payment. Such interest and late charges shall be deemed additional rent due upon demand, and County shall have rights with respect to such non-payment as it has with respect to any other non-payment of rent hereunder.

- 25.5 Modification. This Lease 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 Lease and is signed by duly authorized officers of both Parties. The Parties agree that this Lease shall not be amended in any manner by any course of dealing between the Parties.
- 25.6 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 Lease 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 Lease, or any waiver on the part of any Party hereto of any provision or condition of this Lease, 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.
- 25.7 Entire Agreement. This Lease (including those portions of the Amended PDA specifically incorporated by reference into this Lease) contains and integrates the complete agreement between the Parties with respect to the subject matter hereof and supersedes all other agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof, including without limitation the Original Site Lease.
- 25.8 Decision-Making by Parties. Except where this Lease expressly provides for a different standard, whenever this Lease 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.
- 25.9 Relationship of Parties. The relationship of County to Bio Energy shall be that of landlord to tenant. Neither this Lease nor the performance by the Parties of their respective obligations under this Lease, 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.
- 25.10 No Third Party Beneficiary. Except as set forth below in this Section 26.10, this Lease 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

Lease and may specifically enforce its terms on behalf of Bio Energy; and (ii) any action under this Lease taken by Bio Energy shall be conditioned upon County receiving the prior written approval of Ingenco with respect to such action.

- 25.11 Governing Law. This Lease 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 Lease, the law of the jurisdiction under which the respective entity derives its powers shall govern.
- 25.12 Severability. Any provision of this Lease 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 Lease 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 Lease 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.
- 25.13 No Recourse to Affiliates. This Lease 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, partner, joint venturer, Affiliate (other than subsidiaries controlled by such Party), 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.
- 25.14 Costs. Each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Lease and shall not have any right to claim or seek reimbursement of such costs and expenses from the other Party.
- 25.15 Specific Performance. Except as provided in the dispute resolution procedures set forth in Section 15, and except as the context specifically otherwise requires, if a Party breaches or threatens to breach any provision of this Lease, the other Party shall have the right to have such provision (including the provisions of Section 15) 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 25.15 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.

- 25.16 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 Lease.
- 25.17 Schedules; Exhibits. The Schedules and Exhibits to this Lease are incorporated by reference into, and shall form part of this Lease, and shall have full force and effect as though they were expressly set out in the body of this Lease; provided, however, that in the event of any conflict between the terms, conditions and provisions of this Lease (excluding the Exhibits and Schedules thereto) and the Schedules or Exhibits hereto, the terms of this Lease (excluding the Exhibits and Schedules thereto) shall prevail.
- 25.18 Counterparts. This Lease may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Lease.

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:

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a Washington municipal corporation, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of May, 2007.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,  
residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the President of EDL Holdings (US), Inc., to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of May, 2007.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,  
residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

## **LIST OF SCHEDULES AND EXHIBITS**

### **Schedules**

- 1.1 Definitions and Rules of Construction

### **Exhibits**

- A Legal Description of Landfill Site
- B Plant Site Map
- B-1 Legal Description of Plant Site
- B-2 Legal Description of Easement Areas
- C Form of Consent to Collateral Assignment to Financing Parties



**Schedule 1.1**  
(Plant Site Lease)

(Amended and Restated Project Development and Gas Sales Agreement)

**Definitions**

"Abandonment" means, except to the extent due to an Event of Force Majeure, the voluntary termination by County of the operation of the Collection Facilities or the Expansion Collection Facilities.

"Acts" has the meaning given in Section 11.5.2 of the Project Development Agreement.

"Affected Party" means a party that seeks relief from the performance of its respective obligations under a Primary Project Contract due to an Event of Force Majeure.

"Affiliate" of a specified Person means any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. As used in this definition the terms "control," "controlled by" or "under common control with" means possession, directly or indirectly, or power to direct or cause the direction of management or policies of such Person (whether through the ownership of securities or other partnership, membership or other ownership interests, by operation of law, by contract or otherwise); provided that in any event, any Person which owns directly, indirectly or beneficially fifty percent (50%) or more of the securities having voting power for the election of directors or other governing body of a corporation or fifty percent (50%) or more of the partnership interests or other ownership interests of any other Person will be deemed to control such Person. Notwithstanding the foregoing, no individual shall be deemed to be an Affiliate of a Person solely by reason of his being a director, committee member, officer or employee of such Person.

"Agent" means a Person designated by the Financing Parties to receive notice.

"Alternative Energy Tax Credit" means that tax credit for producing fuel from a nonconventional source as described in Section 29 of the Internal Revenue Code of 1986, as it may be amended from time to time.

"Annual Maintenance Schedule" means an annual schedule for repair and maintenance outages for each of the Collection Facilities and Plant as developed and mutually agreed by County and Bio Energy in accordance with Section 4.7. of the Project Development Agreement.

"Applicable Law" means any Governmental Rule which is applicable to or affects the construction, operation, maintenance, ownership or use of the Plant, the Collection Facilities, the Plant Site or the Landfill Site, including any Governmental Rule pertaining to zoning or land use restrictions, environmental protection, pollution or sanitation, and any waiver, exemption, release, variance, order, Permit, authorization, right or license of, from, imposed or otherwise issued by a Governmental Authority.

"Approved Rate" means the Prime Rate plus two percent (2%) per annum, in either case not to exceed the maximum interest rate allowed by then-applicable law.

"Billing Meters" means Landfill Gas measuring stations installed, operated and maintained at (a) County's expense at (i) County's side of the Gas Delivery Point and (ii) the New Flare Station, and (b) at Bio Energy's expense at (iii) each initial entry point to Bio Energy's gas processing or electricity generating facilities at the Plant.

"Billing Period" means each calendar month during each Operating Year, provided, that (a) the first Billing Period of the first Operating Year shall commence on the Commercial Operating Date and end on the last day of the first full month thereafter and (b) the final Billing Period shall terminate on the PDA Termination Date.

"Bio Energy Condemnation Value" has the meaning given in Section 13.2 of the Plant Site Lease.

"Bio Energy Indemnified Parties" means Bio Energy, its officers, directors, agents, attorneys, Financing Parties and employees, Ingenco, and any other direct or indirect equity holders of Bio Energy .

"Bio Energy Lease Default" has the meaning given in Section 14.1 of the Plant Site Lease.

"Bio Energy PDA Default" has the meaning given in Section 13.1 of the Project Development Agreement.

"Business Day" means any day, other than a Saturday, Sunday or day that financial institutions in Seattle, Washington are authorized or are required to be closed.

"CAA" means the Clean Air Act, 42 U.S.C. § 7401 et seq.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.C.S. § 9601 et seq.

"Change in Law" means any of the following events occurring after the PDA Effective Date: (a) the enactment of any new Applicable Law; (b) the modification of any Applicable Law; (c) the commencement of any Applicable Law which has not entered into effect; (d) a change in the interpretation of any Applicable Law; (e) the imposition of a requirement for a Permit that was not required as of the PDA Effective Date, but excluding any Permits which were not required at the PDA Effective Date but the requirement for which was reasonably foreseeable at the PDA Effective Date; provided that none of foregoing shall constitute a "Change in Law" to the extent that it enforces compliance with obligations existing under Applicable Law with which a party is obligated to comply at the PDA Effective Date or (ii) such circumstances arose as a result of any default or neglect on the part of a party, its Subcontractors or its or their respective Representatives.

"Claims" means demands, actions, causes of action, proceedings, judgments, awards, debts, deficiencies, liabilities, damages, costs, expenses (including reasonable attorneys' fees and costs of investigation), penalties and fines.

"Collection Facilities" means the network of recovery wells and connecting pipes together with attendant valves, pumps, monitoring devices, knock-out vessels, vacuum pumps, blowers and compressors, and other extraction related equipment installed for the purpose of extracting and recovering Landfill Gas at the Landfill, as more specifically described in Exhibit B to the Project Development Agreement; provided that "Collection Facilities" shall expressly exclude the Expansion Collection Facilities; provided further, that "Collection Facilities" shall exclude the area known as landfill cell no. 1.

"Collection Facilities Outage" means any interruption in the ability of County or the Collection Facilities to deliver Landfill Gas to the Gas Delivery Point.

"Commencement Date" means the date that Bio Energy takes possession and control of the Plant Site in accordance with the terms of the Plant Site Lease.

"Commercial Operation" means that the gas processing generation equipment within the Plant has completed testing, start-up and commissioning activities and is prepared to commence deliveries of Product Gas in accordance with the requirements of the receiving pipeline.

"Commercial Operation Date" means the date upon which Commercial Operation occurs.

"Commercial Operation Deadline" means 600 days after the Permit Acquisition Date.

"Condemnation Award" shall mean the amount of compensation awarded to Bio Energy and County in connection with a Total Taking or Partial Taking, as set forth in Section 13.2 or 13.3, respectively, of the Plant Site Lease.

"Condemning Authority" has the meaning given in Section 13.1 of the Plant Site Lease.

"Condensate" means water and other liquids derived from the Landfill Gas delivered to the Plant.

"Condensate Delivery Point" means the location at the Plant Site boundary at which the Plant will deliver Condensate to County, as will be mutually agreed by Bio Energy and County.

"Condensate Quality Failure" has the meaning assigned thereto in Section 4.10.5 of the Project Development Agreement.

"Conditions Precedent" means the conditions precedent set forth in Sections 3.1.1 and 3.1.2 of the Project Development Agreement, individually or collectively, as the context may require.

"Confidential Information" has the meaning assigned thereto in the applicable Primary Project Contract.

"Confidentiality Agreement" means the Confidentiality Agreement dated as of February 13, 2003 between Energy Developments, Inc. and King County, Washington.

"Conforming Process Gas" has the meaning assigned thereto in Schedule 5.1 to the Project Development Agreement.

"Construction Start Date" means the date that Bio Energy begins mobilization activities at the Plant Site with one or more construction contractors.

"Consultation Period" means the period of time commencing on the date of delivery of a Notice of Intent to Terminate and ending: (i) ten (10) days following delivery of such notice in case of a Bio Energy PDA Default under Section 13.1.2 of the Project Development Agreement or a County PDA Default under Section 13.2.2 of the Project Development Agreement; and (ii) thirty (30) days following delivery of such notice with respect to any other PDA Default; or (c) in the case of the Plant Site Lease, thirty (30) days following delivery of such notice with respect to a Lease Default.

"County" means King County, Washington, a municipal corporation organized under the laws of the State of Washington.

"County Cure Plan" means the plan provided by County to Bio Energy in accordance with Section 14.1 of the Project Development Agreement that details County's proposed method and timetable for curing the circumstances that have given rise to a particular Triggering Event Notice.

"County Indemnified Parties" means the County and its agents, attorneys and employees.

"County Lease Default" has the meaning given in Section 14.2 of the Plant Site Lease.

"County PDA Default" has the meaning given in Section 13.2 of the Project Development Agreement.

"Cure Plan" means the County Cure Plan as adopted by the Technical Expert, including all modifications (if any) thereto made by the Technical Expert.

"Cure Rights" means Bio Energy's rights to assume implementation of the Cure Plan from County in accordance with Section 14.3 of the Project Development Agreement.

"CWA" means the Clean Water Act, 33 U.S.C. § 1251 et seq.

"Delivered Gas" means, for any given time period, the quantity of all Landfill Gas produced or collected by the Collection Facilities and the Expansion Collection Facilities and delivered to the Gas Delivery Point, as measured by the applicable Billing Meter. For purposes of clarification, Delivered Gas does not include Flared Gas, but does include both Processed Gas and Landfill Gas that is delivered to the Plant Flare.

"Delivery Period" means the period commencing on the earlier of (a) the Commercial Operations Date; or (b) 14 months following the Permit Acquisition Date and ending on the PDA Termination Date.

"Disclosing Party" means a party providing another party with Confidential Information.

"Draw Event" has the meaning given in Section 13.8.6 of the Project Development Agreement.

"Easement Area" has the meaning given in Section 2.2 of the Plant Site Lease.

"Election Notice" has the meaning given (a) in connection with the Project Development Agreement, in Section 13.3.4(b) of the Project Development Agreement, and (b) in connection with the Plant Site Lease, in Section 14.3.4(b) of the Plant Site Lease.

"Emissions Credits" means all emissions credits, offsets and allowances generated by, and associated with, the generation, collection, distribution, sale or use of fuel or energy, or generated by, and associated with, alternative or renewable energy projects, reforestation projects, or conservation activities. Such emissions credits, offsets and allowances shall include, but are not limited to, those credits and allowances for reductions of sulfur dioxide and other sulfur compounds, acid rain precursors, methane, carbon dioxide, carbon monoxide, chlorinated hydrocarbons and other carbon compounds, nitrogen-oxygen compounds, other greenhouse gases, other ozone precursors, particulate matter, metals and toxic air pollutants.

"Environmental Claims" means all claims, demands, suits, causes of action for injuries to persons or property damage ((a) excluding any such claims, demands, suits or causes of action for depreciation of property values, lost use of property, lost revenues, costs of specific performance or consequential or punitive damages suffered directly by any party to the Project Development Agreement, and (b) including any such claims, demands, suits or causes of action occasioned by the claims, demands, suits or causes of action of persons not party to the Project Development Agreement, as applicable) arising out of Environmental Conditions or Environmental Noncompliance, including actual or threatened damages to natural resources; claims for the recovery of response costs, or administrative or judicial orders directing the performance of investigations, removal, remedial or other response actions directing the performance of investigations, removal, remedial or other response actions under CERCLA, RCRA or other Environmental Laws; a requirement to implement "corrective action" pursuant to any order or permit issued pursuant to RCRA; claims for restitution, contribution or equitable indemnity from third parties or any Governmental Authority; fines, penalties, liens against property; and claims for injunctive relief or other orders or notices of violation from any Governmental Authority.

"Environmental Conditions" means any environmental conditions, circumstances or other matters of fact, pertaining to, relating to or otherwise affecting the environment, including any natural resources (including flora and fauna), soil, vibration, surface water, ground water, any present or potential drinking water supply, subsurface strata, sound or the ambient air, and relating to or arising out of the presence, use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping, pouring, emptying, discharging, injecting,

escaping, leaching, disposal (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials), dumping or threatened release (as such term is used in CERCLA or other similar Environmental Laws) of Hazardous Materials.

"Environmental Expenses" means all liabilities, losses, costs and expenses arising out of Environmental Conditions or Environmental Noncompliances, including costs of investigation, cleanup, remedial, removal or other response action, the costs associated with posting financial assurances for the completion of response, remedial or corrective actions, the preparation of any closure or other necessary or required plans or analyses, or other reports or analyses submitted to or prepared by Governmental Authorities, including the cost of health risk assessments, epidemiological studies and the like, retention of engineers and other expert consultants, legal counsel, capital improvements, operation and maintenance testing and monitoring costs, power and utility costs and pumping taxes or fees, and administrative, oversight and other costs incurred by Governmental Authorities; provided, however, that "Environmental Expenses" shall only include those Environmental Expenses which are reasonably necessary and are in reasonable amounts in view of the then existing circumstances giving rise to such Environmental Expenses.

"Environmental Laws" means any law, regulation, rule or ordinance now or hereinafter in effect relating to Environmental Conditions, including CERCLA, the TSCA, the RCRA, the CWA, the CAA, the FIFRA, the AEA, the EPCRA, the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, the Oil Pollution Act of 1990, 33 U.S.C. § 2761, the Occupational Health and Safety Act, 29 U.S.C. § 651 et seq., and the Pollution Prevention Act, 42 U.S.C. 13101 et seq.; the Washington Environmental Laws; any amendments thereto now or hereafter adopted or that otherwise become effective; any plans, rules, regulations, or ordinances adopted (including fire, land use, zoning, and other codes and regulations relating to Environmental Conditions), or other guidelines, guidance or policies promulgated pursuant to the preceding laws; and any common law principles (including decisions by or orders of courts, agencies, boards of appeals or similar bodies with mandatory or persuasive authority) relating to the Environmental Conditions.

"Environmental Noncompliance" means any violation of Environmental Laws, including: (a) the discharge, emission, release or threatened release (as such term is used in CERCLA, the CWA, the CAA or other similar Environmental Laws) of any Hazardous Materials in violation of any Environmental Laws; (b) any noncompliance with Environmental Laws regarding the construction, modification, operation and maintenance of physical structures, equipment, processes or facilities; (c) any noncompliance with federal, state or local requirements governing occupational safety and health related to Hazardous Materials; (d) any facility operations, procedures, designs, or other matters which do not conform to the statutory or regulatory requirements of Environmental Laws, including the CAA, the CWA, the TSCA and the RCRA; (e) the failure to have obtained or to maintain in full force and effect Permits, variances or other authorizations necessary for the legal operation of any equipment, process, facility or any other activity, to the extent required for compliance with Environmental Laws; or (f) the operation of any facility, process, or equipment in violation of any permit condition, schedule of compliance, administrative or court order, to the extent required for compliance with Environmental Laws.

"EPC Agreement" means the Engineering, Procurement and Construction Agreement, to be entered into between Bio Energy or Ingenco and a construction contractor in connection with the design, engineering and construction of, and the procurement of equipment for, the Plant.

"EPCRKA" means the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001 et seq.

"Equipment Delivery Date" means the date Bio Energy takes delivery at the Plant Site of the gas processing equipment that will be incorporated into the Plant.

"Equipment Order Date" means the date that Bio Energy (either itself or by or through its representative or contractors) has provided written purchase orders to the applicable equipment suppliers for all major gas processing equipment that will be incorporated into the Plant. The Equipment Order Date is a Milestone that is scheduled to be achieved by the end of the [30th day] following the Permit Acquisition Date.

"Evaluation Period" has the meaning given (a) in connection with the Project Development Agreement, in Section 13.3.4(b) of the Project Development Agreement, and (b) in connection with the Plant Site Lease, in Section 14.3.4(b) of the Plant Site Lease.

"Event of Force Majeure" means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen on the PDA Effective Date) which is (a) not attributable to the act, neglect, omission, breach of contract or of statutory duty, gross negligence or willful misconduct of the Affected Party, its Representatives or its Subcontractors and (b) which could not have been prevented, overcome or remedied by the Affected Party through its exercise of reasonable diligence under the circumstances. "Events of Force Majeure" include the following events and circumstances to the extent that they, or their effects and consequences, satisfy the requirements set forth in clauses (a) and (b) of the immediately preceding sentence:

- (a) act of God, landslides, fire, lightning, flood, storm, tornado, volcanic eruption, earthquakes or extreme adverse weather or environmental conditions (but excluding adverse weather conditions which are within the range of conditions historically experienced at the Landfill Site);
- (b) act of public enemy, armed conflicts or act of foreign enemy (including acts of terrorism (whether state-sponsored or otherwise)), blockades, embargoes, insurrections, riots, sabotage or epidemics, civil disturbances, explosions and wars (whether declared or undeclared);
- (c) Changes in Law;
- (d) breakdowns in machinery, equipment or facilities on the transmission and distribution system of the Person with whom the Plant is interconnected and which transmits Product Gas generated by the Plant or any other event or disturbance on such system which causes a forced outage of the Plant; and
- (e) strikes, whether widespread or local, that effect the delivery of critical equipment that cannot be substituted on a commercially reasonable basis.

provided, however, that lack of money, financial inability to perform or changes in a Party's costs of performing its obligations hereunder shall not constitute an Event of Force Majeure.

"Exercise Period" has the meaning given in Section 8.2 of the Project Development Agreement.

"Expansion Collection Facilities" means the network of recovery wells and connecting pipes together with attendant valves, pumps, monitoring devices, knock-out vessels, vacuum pumps, blowers and compressors, and other extraction related equipment installed for the purpose of extracting and recovering Landfill Gas from a Landfill Expansion Cell.

"Extended Cure Period" has the meaning given (a) in connection with the Project Development Agreement, in Section 13.3.3(b) of the Project Development Agreement, and (b) in connection with the Plant Site Lease, in Section 14.3.4(b) of the Plant Site Lease.

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.

"Financial Closing" means the execution and delivery of the Financing Documents by each of the parties thereto and the satisfaction of all conditions precedent to the initial draw-down under such Financing Documents.

"Financing Documents" means the loan agreements, leases, partnership agreements, notes, indentures, underwriting agreements, security agreements, and related documents entered into in connection with any construction financing or permanent financing of the Plant, provided, that if initial financing includes only construction financing then (i) such term shall only include such documents entered into in connection with such construction financing and (ii) after Financial Closing, such term shall include all such documents entered into in connection with such permanent financing.

"Financing Party" or "Financing Parties" means any Person(s) providing financing under the terms of any Financing Document.

"Flared Gas" has the meaning given in Section 5.3. of the Project Development Agreement. For purposes of clarification, Flared Gas does not include Delivered Gas (including any Delivered Gas that is burned in the Plant Flare).

"Flared Gas Quantity" means the quantity in MMBTUs of Flared Gas burned in the New Flare during a Billing Period.

"Gas Delivery Point" means the location at which the Collection Facilities connect to the Plant at the Landfill, as mutually agreed to by the Parties.

"Gas Sales Agreement" means the Landfill Gas Sales Agreement between Bio Energy (Washington), LLC and King County dated January 20, 2004.



"Gas Sale Payment" means the gas sale payment payable by Bio Energy to County for the Delivered Gas and Flared Gas Quantity pursuant to Section 6.1 of the Project Development Agreement, as calculated in accordance with the formulas set forth in Schedule 5.1 to the Project Development Agreement.

"Good Engineering Practice" means the practices, methods, standards, procedures and acts which meet or exceed manufacturer's specifications, which are generally accepted and followed by a prudent, diligent, skilled and experienced operator acting in accordance with standards generally adopted by (i) in the case of the Collection Facilities and Expansion Collection Facilities, operators of landfill gas collection facilities located in the United States that have similar characteristics to the Collection Facilities and Expansion Collection Facilities and (ii) in the case of the Plant, operators of gas processing generation facilities located in the United States that have similar characteristics to the Plant, and which in each such case, at the particular time in question, in the exercise of reasonable judgment by an independent engineering professional in light of the facts known, or which in the exercise of due diligence, should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with reliability, safety, environmental protection, project economics and Applicable Law. "Good Engineering Practices" is not intended to be limited to the consideration of any one practice, method, standard, procedure or act to the exclusion of all others, but rather is intended to include the consideration of that spectrum of possible practices, methods or acts which, in the exercise of reasonable judgment of an independent engineering professional in light of the facts known, might yield the desired result, and includes taking reasonable steps to ensure that:

(a) adequate materials, resources and supplies, are available to meet the needs of the Collection Facilities and Plant, as applicable, under normal conditions and reasonably anticipated abnormal conditions;

(b) sufficient operating personnel are available and are adequately experienced and trained to operate the Collection Facilities and Plant, as applicable, properly, efficiently and taking appropriate account of applicable Manufacturers' Recommendations and are capable of responding to abnormal conditions;

(c) preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, taking account of applicable Manufacturers' Recommendations, and such maintenance and repairs are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures;

(d) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions; and

(e) equipment is operating in a manner safe to workers, the general public, the environment, plant and equipment.

"Governmental Authority" means any federal, provincial, state, municipal, local or territorial government and any political subdivision thereof, or any other governmental, quasi-governmental, judicial, public or statutory department, ministry, agency, authority, board, bureau, corporation, commission, entity, or instrumentality or any arbitrator with authority to bind a party at law.

"Governmental Rule" means (a) any constitution, statute, law, regulation, ordinance, rule, judgment, order, decree, Permit, concession, agreement, directive, guideline, policy, requirement or other governmental restriction or (b) any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, in each such case having the effect or force of law, including Environmental Laws.

"Hazardous Materials" means hazardous wastes, hazardous substances, hazardous constituents, air contaminants or toxic substances, whether solids, liquids or gases, including substances defined or otherwise regulated as "hazardous materials," "regulated substances," "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," "contaminants," "carcinogens," "hazardous air pollutants," "criteria pollutants," "reproductive toxins," "radioactive materials," "toxic chemicals," or other similar designations in, or otherwise subject to regulation under, any Environmental Laws, including petroleum hydrocarbons, asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls and radionuclides.

"Improvements" has the meaning set forth in Section 13.5.1 of the Project Development Agreement.

"Indemnified Party" means a County Indemnified Party or Bio Energy Indemnified Party, as the context may require.

"Indemnifying Party" means a Party that is required to defend, indemnify and hold harmless an Indemnified Party in accordance with the terms of the applicable Primary Project Contract.

"Indemnity Claim" means a claim for indemnity, as notified by an Indemnified Party to an Indemnifying Party, in connection with a particular Claim or Environmental Claim.

"Ingenco" means Industrial Power Generating Company, LLC, a Delaware limited liability company.

"Initial Cure Period" means thirty (30) days after written notice of a default has been given by a party that is entitled to performance to a party obligated to render such performance under any of the Primary Project Contracts.

"Initial Lease Term" has the meaning given in Section 3 of the Plant Site Lease.

"Initial PDA Term" has the meaning given in Section 2.1 of the Project Development Agreement.

"Interconnection Agreement" means the agreement to be entered into between Bio Energy and a third party providing for the construction and installation of the facilities that are required to interconnect the Plant with the third party's applicable transmission or distribution system or gas pipeline.

"Landfill" means the existing landfill (including the Collection Facilities) commonly known as the Cedar Hills Regional Landfill and which is owned and operated by County and located on the Landfill Site. The term "Landfill" includes each Landfill Expansion Cell and any Expansion Collection Facilities installed with respect to any Landfill Expansion Cell.

"Landfill Expansion Cell" means a portion of the Landfill that is opened for collecting waste after the PDA Effective Date.

"Landfill Gas" means (a) methane, carbon dioxide and other gases produced by the anaerobic decomposition of waste material within the Landfill, and (b) any and all, other materials, including entrained liquids, recovered in association with such methane, carbon dioxide and other gases, including all of the foregoing items set forth in clauses (a) and (b) that are generated in the Landfill and collected by the Collection Facilities or the Expansion Collection Facilities; provided that "Landfill Gas" shall expressly exclude any landfill gas generated in the landfill from the area known as cell no. 1.

"Landfill Site" means the real property consisting of an approximately 920 acre site located in Maple Valley, King County, Washington, as such real property is further described on Exhibit A to the Project Development Agreement (which, after the Commencement Date, shall exclude the Plant Site).

"LC Amount" has the meaning given in Section 13.8.1 of the Project Development Agreement.

"LC Issuer" has the meaning given in Section 13.8. of the Project Development Agreement.

"LC Issuer Insolvency" has the meaning given in Section 13.8.5 of the Project Development Agreement.

"Lease Default" means a County Lease Default or a Bio Energy Lease Default, individually or collectively, as the context may require.

"Lease Term" has the meaning given in Section 3 of the Plant Site Lease.

"Lease Termination Date" means the earlier of (a) the last day of the Lease Term; and (b) the date the Lease is terminated by County or Bio Energy pursuant to a Termination Notice issued in accordance with the terms of the Plant Site Lease or is otherwise terminated in accordance with the terms thereof.

"Letter of Credit" has the meaning given in Section 13.8.1 of the Project Development Agreement.

"Loss" means any loss, liability, cost, expense, claim, deficiency, penalty, award or damage and any deductible paid in accordance with any insurance.

"Manufacturer's Recommendations" means the instructions, procedures and recommendations which are issued by the manufacturer of any plant or equipment used at the Collection Facilities or the Plant, as applicable, and which relate to the operation, maintenance or repair of such plant and equipment, together with any revisions or updates thereto that are issued from time to time by the manufacturer.

"Meter" means a Billing Meter as described in Section 7 of the Project Development Agreement, individually or collectively as the context may require.

"Milestones" means any specific tasks or achievements necessary to complete the Plant and achieve Commercial Operation, as set forth on Schedule 4.1.1 to the Project Development Agreement.

"Milestone Date" means, with respect to any particular Milestone, the date by which such Milestone is scheduled to be completed, as set forth on Schedule 4.1.1 to the Project Development Agreement.

"MMBTU" mean one million Btus, where a "Btu" means the amount of heat required to raise the temperature of one avoirdupois pound of pure water from 60 degrees Fahrenheit to 61 degrees Fahrenheit.

"New Flare Station" means the North Flare Station relocated pursuant to the Flare Station Relocation Plan developed by Bio Energy and County in accordance with Section 4.4 of the Project Development Agreement.

"New Flare Station Site" means the real property located within the Landfill Site where the New Flare Station will be located.

"New Tax Credit" means tax credits or other applicable incentives, other than the Alternative Energy Tax Credit that are adopted, increased or expanded after the PDA Effective Date.

"Nonconforming Condensate" has the meaning given in Section 4.10.6 of the Project Development Agreement.

"Non-Performing Party" has the meaning given in Section 13.3.1 of the Project Development Agreement.

"North Flare Station" means the flare station located at the northern side of the Landfill comprised of five flares (and associated ancillary equipment) that are used for burning-off Landfill Gas.

"Notice of Intent to Terminate" means a notice by a non-defaulting Party to a defaulting Party of its intent to terminate the Project Development Agreement, in accordance with its terms

"Operating Year" means (a) for the first Operating Year, the period beginning on the Commercial Operation Date and ending on the first anniversary of the last day of the month during which the Commercial Operation Date occurs and (b) thereafter, each three hundred sixty-five (365) day period beginning on an anniversary of the first day of the month immediately following the month during which the Commercial Operation Date occurs and ending on the immediately succeeding anniversary of such date; provided, that the final Operating Year shall terminate on the PDA Termination Date.

"Original Project Agreements" has the meaning provided in Recital F to the Project Development Agreement.

"Original Project Development Agreement" means Project Development Agreement between Bio Energy (Washington), LLC and King County dated January 20, 2004.

"Original Site Lease" means the Power Plant Site Lease between Bio Energy (Washington), LLC and King County dated January 20, 2004.

"Outage" means (a) in the case of the Plant, any interruption in the ability of the Plant to accept Landfill Gas at the Gas Delivery Point and (b) in the case of the Collection Facilities, any interruption in the ability of the Collection Facilities to deliver Landfill Gas to the Gas Delivery Point.

"Party" or "Parties" has, with respect to a particular Primary Project Contract, the respective meaning assigned to it in the applicable Primary Project Contract.

"PDA" or "Project Development Agreement" or "Amended PDA" means the Amended and Restated Project Development and Gas Sales Agreement dated May \_\_, 2007, by and between Bio Energy and County.

"PDA Default" means a County PDA Default or a Bio Energy PDA Default, individually or collectively, as the context may require.

"PDA Effective Date" has the meaning given in the introductory paragraph of the Project Development Agreement.

"PDA Term" means the Initial PDA Term, as extended by the First Extension Term and the Second Extension Term (as each such term is defined in Section 2 of the Project Development Agreement), in accordance with the terms of Sections 2.2 and 2.3 of the Project Development Agreement.

"PDA Termination Date" means the earlier of (a) the last day of the PDA Term; and (b) the date the PDA is terminated by County or Bio Energy pursuant to a Termination Notice issued in accordance with the terms of the Project Development Agreement or is otherwise terminated in accordance with the terms thereof.

"Permit" means any authorization, consent, approval, license, franchise, ruling, permit, certification, exemption, filing, variance, order, judgment, decree, publication, notices to, declarations of or registration by or with any Governmental Authority in connection with the

ownership, financing, design, engineering, construction, operation or maintenance of the Collection Facilities or the Plant, as the case may be.

"Permit Acquisition Date" means the date upon which Bio Energy has obtained each of the Required Permits and all actions taken by the Governmental Authority issuing each such Required Permit has become final and non-appealable by all Persons.

"Permit Condition Precedent" has the meaning given in Section 3.1.2 of the Project Development Agreement.

"Permit Filing Date" means the date that is thirty (30) days following the SEPA Completion Date, by which date Bio Energy shall have submitted applications for each of the Required Permits; provided that such thirty (30) day period shall be extended by a number of days equal to the number of days by which such submissions have been delayed by: (a) an Event of Force Majeure; or (b) County's failure to perform or delay in performing any of its respective obligations under any Project Contract to which it is a party; and provided, further, that if Bio Energy is required to apply for a Prevention of Significant Deterioration permit, then Bio Energy and County shall mutually agree to an appropriate extension of the Permit Filing Date. For purposes of satisfying the Permit Filing Date, an application will be deemed to have been submitted as of the filing date, notwithstanding that a Governmental Authority may seek or request additional information from Bio Energy in connection with the initial filing.

"Permitted Uses" has the meaning given in Section 7.1 of the Plant Site Lease.

"Person" means any natural person, firm, corporation, company, voluntary association, general or limited partnership, joint venture, trust, unincorporated organization, Governmental Authority or any other entity, whether acting in an individual, fiduciary or other capacity.

"Plant" means the gas processing facility to be owned and constructed by Bio Energy on the Plant Site, whether completed or at any stage of its construction, including without regard to level of development, land, engineering and design documents, all gas processing or energy producing equipment (including electric generating equipment) and its auxiliary equipment, fuel storage and handling facilities and equipment, a switchyard, interconnection facilities and electric transmission line; all pipelines, compressors, flares located on the Plant Site; any of the foregoing items or equipment located on the Plant Site or the Easement Areas which may be required from time to time to deliver or carry Landfill Gas or other fuel to the Plant or processed gas or electricity to from the Plant, including the Plant Transmission Line; and all other improvements related solely to the gas processing facility and located on the Plant Site or the Easement Areas, as more particularly described in the Plant Site Lease, plus appurtenant easements and rights of way between the Parties.

"Plant Flare" means the flare and / or thermal oxidizer located at the Plant (and associated ancillary equipment) that is used for burning-off Landfill Gas and [reject gas by-products of processing].

"Plant Site" has the meaning given in Section 2.1 of the Plant Site Lease.

"Plant Site Lease" means the Plant Site Lease, dated as of May \_\_, 2007 between Bio Energy and County.

"Plant Site Lease Improvement" means each of the leasehold improvements on the Plant Site that will be completed by the County, as more fully set forth in the Plant Site Lease.

"Plant Transmission Line" means the gas transmission line and related interconnection facilities that will be built on an Easement Area as described in the Plant Site Lease, which line will deliver Product Gas to the Product Gas Delivery Point.

"Primary Project Contracts" means the Plant Site Lease and the Project Development Agreement, individually or collectively, as the context may require.

"Prime Rate" means the "Prime Rate" of interest per annum published in the *Wall Street Journal*.

"Process Gas" means Delivered Gas that is processed at the Plant by Ingenco into Product Gas or for the generation of electricity. Process Gas does not include Delivered Gas that is burned in the Plant Flare.

"Product Gas" means the gas produced by the Plant that is pipeline quality and suitable for injection into the interstate natural gas pipeline owned by Northwest Pipeline Company, its successor, or into any other pipeline interconnected to the Plant.

"Product Gas Delivery Point" means the location at which the Product Gas is delivered from the Plant into the interstate natural gas pipeline owned by Northwest Pipeline Company or its successor, or into any other third party's applicable transmission or distribution system or gas pipeline.

"Product Gas Pipeline Easement" has the meaning given in Section 2.2 of the Plant Site Lease.

"Project Contracts" means the Plant Site Lease, the Project Development Agreement, and the Interconnection Agreement; provided, however, that each Project Contract that has a stated term (including any stated renewal term) that has expired in full at the end of such stated term (or stated renewal term) and each Project Contract which does not have a stated term that has been fully performed in accordance with its terms (including through the final payment of all amounts due or to become due thereunder) shall cease to be a Project Contract as of the date thereof.

"PSCAA" means the Puget Sound Clean Air Agency.

"Purchase Period" has the meaning given in Section 8.3 of the Project Development Agreement.

"Purchaser" has the meaning given in Section 15.3 of the Project Development Agreement.

"Quality Specification" has the meaning given in Section 4.10.2 of the Project Development Agreement.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

"RCW" means the Revised Code of Washington.

"Recipient Party" means a party receiving Confidential Information from another party.

"Records Act" means the Washington State Public Records Act, Section 42.17.250 et seq.

"Related Parties" shall mean, with respect to a particular Person, the Affiliates and Representatives of such Person.

"Representative" means, with respect to any Person, any shareholder, officer, director, attorney, agent, employee or other representative of such Person.

"Required Permit" means each Permit set forth on Schedule 4.1.1 to the Project Development Agreement, to the extent such Permits are required to be obtained by Bio Energy under Applicable Law.

"Restoration Costs" has the meaning given in Section 13.5.2 of the Project Development Agreement.

"Restoration Obligations" has the meaning given in Section 13.5.2 of the Project Development Agreement.

"Right of First Offer" has the meaning given in Section 8.1 of the Project Development Agreement.

"Rights Notice" has the meaning given in Section 8.2 of the Project Development Agreement.

"SCF" has the meaning given in Section 7.1 of the Project Development Agreement.

"Scheduled Collection Facilities Outage" means the temporary shutdown of all or any portion of the Collection Facilities for the inspection, repair or maintenance thereof, the timing and duration of which shutdown shall be set forth on the Annual Maintenance Schedule.

"Scheduled Outage" means a Scheduled Collection Facilities Outage or a Scheduled Plant Outage, individually or collectively, as the context may require.

"Scheduled Plant Outage" means the temporary shutdown of all or any portion of the Plant for the inspection, repair or maintenance thereof, the timing and duration of which shutdown shall be set forth on the Annual Maintenance Schedule.



"SEPA Checklist" means the environmental checklist relating to the Plant filed in accordance with Ch. 43.21C of the RCW (and state and local regulations and ordinances implementing such provisions).

"SEPA Completion Date" means the date upon which Bio Energy has either (a) received a determination of non-significance under SEPA in respect of the Plant, or (b) an environmental impact statement has been completed in accordance with SEPA in respect of the Plant on terms and conditions satisfactory to Bio Energy, and in the case of both (a) and (b), all actions taken by the Governmental Authority issuing such approval have become final and non-appealable by all Persons.

"Start-up Period" means the period commencing on the date as set forth in the notice provided by Bio Energy to County pursuant to Section 5.1 of the Project Development Agreement and ending on the Commercial Operation Date.

"State" means the State of Washington.

"Subcontractor" means, in relation to any Person, any other Person that has a contract with such first person to perform any obligation of such first Person under a Project Contract.

"Target Construction Start Date" means the date that is two hundred and sixty (260) days following the Equipment Order Date, by which date Bio Energy shall have begun mobilization activities at the Plant Site with one or more construction contractors; provided that such two hundred sixty (260) day period shall be extended by a number of days equal to the number of days by which Construction Start has been delayed by: (a) an Event of Force Majeure; (b) County's failure to perform or delay in performing any of its respective obligations under any Project Contract to which it is a party; or (c) Bio Energy's failure to receive processing equipment from its chosen equipment manufacturer on or before the delivery date specified in the applicable equipment purchase order, provided that an extension for a delay in equipment delivery shall not exceed ninety (90) days.

"Target Equipment Order Date" means the date that is thirty (30) days following the Permit Acquisition Date; provided that such thirty (30) day period shall be extended by a number of days equal to the number of days by which the Equipment Order Date has been delayed by: (a) an Event of Force Majeure; or (b) County's failure to perform or delay in performing any of its respective obligations under any Project Contract to which it is a party.

"Target Permit Acquisition Date" means the date that is 210 days following the SEPA Completion Date; provided that such 210 day period shall be extended by a number of days equal to the number of days by which the Permit Acquisition Date has been delayed by: (a) an Event of Force Majeure; (b) County's failure to perform or delay in performing any of its respective obligations under any Project Contract to which it is a party; or (c) the failure of a Governmental Authority to grant or otherwise issue a Required Permit after application for such Required Permit has been timely made and satisfies all material requirements under Applicable Law; and provided, further, that such date shall be extended until such time as all actions taken by the Governmental Authority issuing each such Required Permit become final and non-appealable by all Persons; and provided, further, that if Bio Energy is required to apply for a

Prevention of Significant Deterioration permit, then Bio Energy and County shall mutually agree to an appropriate extension of the Target Additional Permit Acquisition Date.

"Target SEPA Filing Date" means the date that is sixty (60) days following the PDA Effective Date, by which Bio Energy will file the SEPA Checklist; provided that such sixty (60) day period shall be extended by a number of days equal to the number of days by which such filing has been delayed by: (a) an Event of Force Majeure; or (b) County's failure to perform or delay in performing any of its respective obligations under any Project Contract to which it is a party.

"Tax" means each federal, state, local and other net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property or leasehold excise tax, customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

"Technical Expert" means the third party selected by the County and Bio Energy in accordance with Section 14.2 of the Project Development Agreement to resolve disputes regarding an County Cure Plan.

"Terminating Party" has the meaning given in Section 13.3.1 of the Project Development Agreement.

"Termination Notice" means a termination notice delivered by a non-defaulting Party to a defaulting Party under the Project Development Agreement or the Plant Site Lease, as applicable, as authorized by and delivered in accordance with the terms of such agreement.

"Total Taking" has the meaning given in Section 13.1 of the Plant Site Lease.

"Transfer Condition Precedent" has the meaning given in Section 3.1.1 of the Project Development Agreement.

"Transfer Condition Precedent Satisfaction Date" means the date on which the Bio Energy Transfer is consummated, resulting in the satisfaction of the Transfer Condition Precedent.

"Transmission Line Easement" has the meaning given in Section 2.2 of the Plant Site Lease.

"Triggering Event" means an Unscheduled Collection Facilities Outage that causes Landfill Gas volumes at the Gas Delivery Point to drop by at least two (2) standard deviations below the mean gas volume (as previously measured at the Gas Delivery Point for the preceding six (6) months) for at least seven (7) consecutive days.

"Triggering Event Notice" Means notice provided by Bio Energy to County in accordance with Section 14.1 of the Project Development Agreement that Bio Energy believes that a Triggering Event has occurred.

"TSCA" means the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.

"Unscheduled Collection Facilities Outage" means any Outage that is not a Scheduled Collection Facilities Outage or an Outage attributable to, and to the extent of, an Event of Force Majeure with respect to the Collection Facilities.

"Unscheduled Outage" means an Unscheduled Collection Facilities Outage or an Unscheduled Plant Outage, individually or collectively, as the context may require.

"Unscheduled Plant Outage" means any Outage that is not a Scheduled Plant Outage or an Outage attributable to, and to the extent of, an Event of Force Majeure with respect to the Plant.

"Washington Environmental Laws" means any state or local law, regulation, rule or ordinance now or hereafter in effect relating to Environmental Conditions including the Model Toxics Control Act, Ch. 70.105D RCW; Ch. 70.105 RCW, Hazardous Waste Management; Ch. 70.95 RCW, Solid Waste Management – Reduction and Recycling; and the Washington Clean Air Act, Ch. 70.94 RCW; and amendments thereto now or hereafter adopted or that otherwise become effective; any plans, rules, regulations, orders or ordinances adopted or that otherwise become effective; any plans, rules, regulations, orders or ordinances adopted (including fire, land, use, zoning and other codes and regulations relating to Environmental Conditions), or other guidance or policies promulgated pursuant to the preceding laws; any local laws, ordinances, codes or regulations pertaining to or otherwise addressing Environmental Conditions; or any terms or conditions in state or local permits, licenses or other authorizations relating to Environmental Conditions; and any common law principles (including decisions by or orders of courts, agencies, boards of appeals or similar bodies with mandatory or persuasive authority) relating to Environmental Conditions.

### **Rules of Construction and Interpretation**

1. The singular number includes the plural number and vice versa.
2. Reference to any Person includes such Person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by the applicable agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individuality.
3. Reference to any gender includes each other gender.
4. References to "or" shall be deemed to be disjunctive but not necessarily exclusive.
5. Reference to any agreement, document, or instrument means (i) such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and (ii) includes all exhibits, schedules and other attachments thereto.
6. Reference to any section, exhibit or schedule means such section of, or such exhibit or schedule to, the agreement in which it is used, as the case may be, and references in any section or definition to any clause means such clause of such section or definition.
7. "Hereunder," "hereof," "hereto," "herein" and words of similar import shall be deemed references to the agreement in which it is used as a whole and not to any particular section or other provision of such agreement.
8. "Including" (and with correlative meaning "include") means including without limitation on the generality of any description preceding such term.
9. Headings are for convenience of reference only and shall not be used for purposes of construction or interpretation of the subject agreement.
10. References to any Applicable Law shall be construed as a reference to such Applicable Law as it may have been, or may from time to time be, amended, replaced or re-enacted and shall include any subordinate legislation, rule or regulation issued or promulgated under any such statute.
11. Where reference is made herein to any document being submitted to a party, such submission shall be deemed to require such Party's written approval, unless such approval is specifically not required.
12. References to (i) days (other than Business Days) shall refer to calendar days, (ii) weeks shall refer to calendar weeks, (iii) months shall refer to calendar months and (iv) years (other than Operating Years) shall refer to calendar years.
13. All accounting terms used but not expressly defined herein have the meanings given to them under generally accepted accounting principles of the United States of America as consistently applied by the Person to which they relate.
14. In computing any period of time prescribed or allowed under an agreement (i) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including," (ii) the day of the act, event or default from which the designated period of time begins to run shall be included, (iii) for any given period of time used in an agreement, such period shall be computed as beginning at 12:00 midnight on the first day of such period Seattle, Washington time and ending at 12:00 midnight Seattle, Washington time on the last day of such period, and (iv) if the last day of the period so computed is not a Business Day in the place where performance is due, then the period shall run until the close of business on the immediately succeeding Business Day.

15. In the event of any discrepancy between the Project Development Agreement and the Plant Site Lease, Bio Energy and the County shall negotiate in good faith to reach a mutually agreeable construction or method of handling the applicable inconsistency. If the parties cannot agree on such a construction or method, the terms of the Project Development Agreement shall control.

## SCHEDULE 4.1.1

### PROJECT TIMETABLE

<b>Milestone</b>	<b>Milestone Date</b>
Permit Filing Date for Required Permits	SEPA Completion Date + 30 days
Target Permit Acquisition Date	SEPA Completion Date + 210 days
Target Equipment Order Date	Permit Acquisition Date + 30 days
Target Construction Start Date	Equipment Order Date + 260 days
Commercial Operation Deadline	Permit Acquisition Date + 600 days

#### Required Permits

1. Air Operating Permit from PSCAA.

**SCHEDULE 5.1****Gas Sale Payment**

Payment for all Landfill Gas shall be as follows:

1.1 Base Gas Payment

During the Start-up Period and Delivery Period, Bio Energy shall pay Owner for all Flared Gas and Delivered Gas the Base Gas Payment. The Base Gas Payment shall be \$0.15 per MMBTU.

1.2 Process Gas Price

During (i) the Start-up Period and (ii) the Delivery Period until the first anniversary of the Commercial Operation Date, there will be no Process Gas Price.

Beginning on the first anniversary of the Commercial Operation Date, the Process Gas Price shall be \$0.30 per MMBTU for all Conforming Process Gas delivered to Bio Gas for the production of Product Gas for sale into the Northwest Pipeline system or for self-generation of electricity. The Process Gas Price shall be paid only for "Conforming Process Gas", herein defined as Process Gas with no less than 45% methane and no more than 10% Nitrogen. No other parameters shall apply.

1.3 Premium Price

Conforming Process Gas delivered by Owner to Bio Gas during Delivery Period will be entitled to a Premium Price of 25% of the amount by which the average sales price of Product Gas sold by Bio Energy during the Billing Period exceeds \$6.50 per MMBTU. For example, if the average sales price of Product Gas for an applicable Billing Period is \$7.50 per MMBTU, then the Premium Price shall be \$0.25 per MMBTU (\$7.50 minus \$6.50 times 25%) for Conforming Process Gas delivered in that Billing Period.

1.4 Total Monthly Price for Landfill Gas

During the (i) Start-up Period and (ii) the Delivery Period until the first anniversary of the Commercial Operation Date the price paid monthly to Owner is the following:

$$GP_{BP} = (FG_{BP} + DG_{BP}) * \$0.15 + (CPG_{BP} * 0.25 * (ASP_{BP} - \$6.50))$$

Beginning on the first anniversary date of the Commercial Operation Date, the price paid monthly to Owner shall be the following:

$$GP_{BP} = (FG_{BP} + DG_{BP}) * \$0.15 + (CPG_{BP} * 0.25 * (ASP_{BP} - \$6.50)) + (CPG_{BP} * \$0.30)$$

Where:

$GP_{BP}$  = Gas Sales Payment due for the Billing Period "BP".

$DG_{BP}$  = Quantity of Delivered Gas for the Billing Period "BP".

$CPG_{BP}$  = Quantity of Conforming Process Gas for the Billing Period "BP".

$FG_{BP}$  = Quantity of Flared Gas for the Billing Period "BP".

$ASP_{BP}$  = the greater of (i) the average sales price of Product Gas for the Billing Period "BP", or (ii) \$6.50 per MMBTU.