

**GROUND SUBLEASE**

**By and Between**

**RIALTO UTILITY AUTHORITY**

**and**

**RIALTO BIOENERGY FACILITY LLC**

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## GROUND SUBLEASE

This **GROUND SUBLEASE** (the "Sublease") is made as of April 1, 2016 (the "Effective Date"), by and between the **RIALTO UTILITY AUTHORITY**, a joint exercise of powers authority (the "Authority" or "Lessor"), and **RIALTO BIOENERGY FACILITY LLC**, a Delaware limited liability company (the "Lessee"), who are collectively referred to herein as the "Parties".

### RECITALS

A. On February 21, 2006 the City Council of the City of Rialto ("City"), the Rialto Utility Authority ("RUA"), and the Rialto Redevelopment Agency ("RDA") approved agreements with Enertech Environmental California ("Enertech") for the clean closure of the area which encompasses part of the site, as such term is further defined below, comprising the former Rialto Municipal Landfill and the development of the Enertech Biosolids Recycling Facility ("Enertech Facility"). The landfill closure was completed in early 2007, Enertech commenced construction and opened for business in 2009. The Enertech Facility encountered numerous technical problems during start-up operations, its creditors withdrew support, and the facility closed in the fall, 2012.

B. On May 28, 2013, the City, the RUA, and the Successor Agency to the Rialto Redevelopment Agency ("SA") approved a Termination of Disposition and Development Agreement, Facility Operating Agreement, Ground Lease and Ground Sub-Lease Agreement ("Termination Agreement") by and among the City, RUA, SA, and Enertech. The Termination Agreement dismissed all development and operating agreements related to the regional biosolids processing facility at 503 East Santa Ana Street. On May 31, 2013 the Oversight Board approved the Termination Agreement and the State Department of Finance ("DOF") consented to the Termination Agreement by letter dated July 11, 2013.

C. Concurrently, the City, the RUA, and the SA approved a Site Use Agreement and Consent to Buyer's Activities ("Site Use Agreement") with Hackman Capital Acquisition Company LLC, Tiger Valuation Services LLC, and Hunter Consulting Inc. (collectively "Buyer"). The Buyer acquired equipment from the Assignee for Enertech. The Site Use Agreement provided a short-term rental of the Site to allow for an orderly disposition of the plant and equipment.

D. On November 5, 2013 the Buyer sold the equipment to Anaergia, which then formed the Lessee entity. On November 13, 2013 the City Council of the City consented to an assignment of rights from the Buyer to Lessee allowing it to undertake reasonable due diligence on the Site. On February 25, 2014 the City and RUA approved a Site Use Agreement that granted Lessee access to the Site for due diligence investigation purposes. The City and Lessee entered into ten extensions of the Site Use Agreement, with the tenth extension expiring on March 31, 2016.

E. City Staff negotiated the terms of (1) this Sub-Lease, (2) a Recognition and Attornment Agreement, and (3) an Easement Agreement to encourage re-occupancy of the Site for uses generally consistent with the original goals of the City and the former Redevelopment Agency. Lessee and RWS negotiated the terms of a Side Letter Access Agreement to govern RWS's entry on to the Site to perform responsibilities under the Concession Agreement.

F. Lessee intends to use the Site pursuant to this Sublease, and subject to the approval of a Facility Operation Agreement and additional conditions precedent identified herein and existing permits and entitlements to process various sources of organic waste including food waste in the

form of source separated organics and wet fraction from mixed waste sources, liquid waste, digestate, and biosolids from treatment plants throughout the region. After processing and converting these materials into renewable biogas and other reusable products, such products can be used onsite and/or exported off-site and used as an alternative fuel or for other industrial applications.

## **1. SUBJECT OF SUBLEASE.**

**1.1 Purpose of Sublease.** The purpose of this Sublease of the "Site" (as hereinafter defined – Exhibit B) to Lessee is for the development and operation of an organic waste recycling facility (the "Facility"). The development and operation of the Facility is conditional upon Lessee securing appropriate permits, authorizations and entitlement from the City of Rialto and any other appropriate governmental entities with jurisdiction over the Facility, as further provided in Sections 4.2, 20.1 and 20.2 of this Sublease. The Facility is intended to process various sources of organic waste including, food waste in the form of Source Separated Organics and Wet Fraction from mixed waste sources, liquid waste, digestate and biosolids from treatment plants throughout the region. After processing and converting these materials into renewable biogas and other reusable products, such products can be used onsite and/or exported off-site, and used as an alternative fuel or for other industrial applications. Biosolids and digestate means dewatered solids, which are the bi-product of anaerobic digestion of sewage sludge or other organic waste materials such as food waste. Liquid waste received at the site may be treated and discharged directly into the Inland Empire Brine Line located on the Site or any other proper disposal method, subject to Lessee complying with all applicable laws and permits. Biogas generated on the Site may be used to convert biosolids into fertilizer or a soil amendment, generate electrical power, or transferred to an offsite user for creating bioenergy elsewhere. Lessee may reconfigure the Facility processes and expand its digestion and drying capacity so long as it remains capable of performing and carrying out the activities described in this Section 1.1 (the "Purposes of this Sublease") and as lawfully permitted under Section 4.2. This Sublease consists of Lessee's personal property assets, including equipment, permits, licenses and approvals ("Lessee's Assets"). Lessee hereby acknowledges that this Sublease does not, in itself, convey any rights to Lessee to develop or operate the Facility, or any component thereof and is subject to such government approvals, authorizations and entitlements.

**1.2 Ownership of Facility.** The Facility shall be and remain Lessee's personal property at all times and shall not be a fixture on the Site. The Facility and its components may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Authority, with Authority's fee or leasehold interest in the Site, except as provided in Section 14 below upon termination of this Sublease. Authority shall not cause or permit the Facility or any party thereof to become subject to any lien, encumbrance, pledge, levy or attachment arising by, under or through Authority.

## **2. SUBLEASE OF THE SITE.**

Authority, for and in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of Lessee to be paid, kept, performed and observed by Lessee, hereby leases to Lessee, and Lessee hereby leases from Authority, that certain real property in the City of Rialto shown on the "Site Map" attached hereto as Exhibit "A" and incorporated herein by this reference, and having the legal description in the "Site Description" attached hereto as Exhibit B and incorporated herein by this reference (the "Site"). Except as expressly provided to the contrary in this Sublease, reference to the Site is to the described land, exclusive of any improvements now or hereafter located on the land.

Authority represents and warrants that it now has, and it covenants to maintain for the term of this Sublease, a valid leasehold and possessory interest in the Site and full right to enter into this Sublease. Authority further represents and warrants that there are no existing conditions or use restrictions that prevent the construction, installation or operation of the Facility on the Site. The Authority's interest in the Site is subject to the following, but Lessee is not responsible for, the following obligations (the "Existing Authority Agreements"): (i) that certain "Lease Agreement" entered into by and between the City and Authority, which is dated as of May 1, 2001, and pursuant to which the Authority leased the Site from the City; (ii) that certain "Concession Agreement" entered into by and among the City, Authority and Rialto Water Services, LLC ("RWS"), which is dated as of March 27, 2012 (the "Concession Agreement"), and pursuant to which Rialto Water Services, LLC acquired certain licenses or other rights to access the Site; and (iii) that certain "Access Agreement" entered into among the City, Authority and RWS and dated November 29, 2012 (the "Access Agreement"). The Site is also subject to the liens, mortgages, security interests, easements, covenants, rights of way, conditions, restrictions and other encumbrances of record as of the date of this Sublease, other than the Existing Authority Agreements, as set forth in the title report attached hereto as Exhibit G and incorporated herein by this reference and Lessee takes this Sublease subject to those encumbrances of record (the "Existing Title Encumbrances"). The Lease Agreement between the City and Authority is hereby supplemented with the Recognition and Attornment Agreement between City, Authority and Lessee (the "City Consent Agreement"). This Sublease, and Lessee's lease of the Site as provided herein, is also subject to Authority's reservation of the right to access all or any portion of the Site as provided in the RWS Access Letter Agreement (as defined in Exhibit F). During the Term, Authority agrees that Lessee will peaceably and quietly hold and enjoy the Site and the Facility without disturbance, hindrance or ejection, including, without limitation, any disturbance, hindrance or ejection resulting from any claim or action by RWS or the City or any person or entity acting by or through RWS or the City, whether under any of the Existing Authority Agreements or otherwise, and Authority will at all times defend Lessee's right to such use and occupancy. The Authority will discharge in full when due all of its and the City's covenants and obligations under the Existing Authority Agreements.

### **3. SUBLEASE TERM.**

Lessee shall lease the Site from Authority and Authority shall lease the Site to Lessee for a term extending from April 1, 2016, or the date upon which all of the conditions set forth in Section 20 of this Sublease have been satisfied or waived, whichever occurs later (the "Commencement Date"), until the twenty-second (22nd) anniversary of the Commencement Date (the "Original Term"), unless sooner terminated as provided for herein. In the event that the Lessee is not in default of this Lease, the Lessee shall have the right to extend the Term for up to two (2) additional consecutive five (5) year periods (each an "Option Period" and collectively the "Option Periods"), with the start of the first Option Period beginning immediately upon the end of the Original Term, by written notice thereof to Authority not less than six (6) months prior to the expiration of the Original Term or the first Option Period, as applicable. All of the terms and conditions of this Lease for the Original Term shall apply and remain the same during each Option Period, except that Rent shall be adjusted as provided in Section 5.3. As used herein, "Term" means the Original Term and, as applicable, one or both of the Option Periods.

### **4. USE OF THE SITE.**

**4.1 Use of the Site.** Lessee covenants and agrees for itself, its successors and assigns, that during the Term, the Site and the Facility shall be devoted to those uses as set forth in this

Sublease, as may be amended from time to time. Lessee shall have, during the Term, the right to use the Site for construction, installation, operation, maintenance, repair, replacement and removal of the Facility so as to carry out the activities set forth in the Facility Operation Agreement described in Section 6.2 of this Sublease, subject to Lessee's obligation to first secure appropriate permits from the City and any other applicable governmental entities; provided that Lessee shall continue to have the right to use the Site for all activities that do not require permits from the City before the Commencement Date, including as authorized under Lessee's Solid Waste Facility Permit; provided further that Lessee shall not knowingly conduct any activities that would materially violate the City's Solid Waste Franchise Agreement. Authority shall provide any duly amended, extended, transferred or reassigned Solid Waste Franchise Agreements to Lessee within ten (10) days of the execution of such amendment, extension, transfer or reassignment. Lessee may also remove equipment from the Site, subject to Lessee's obligation to first secure a demolition permit from the City when applicable. Lessee covenants and agrees to cause the Facility to be used only for the purposes set forth in Section 6 hereof; provided, however, that Lessee may use the Site and the Facility for any other purpose so long as such use does not obstruct or impede the purposes set forth in Section 6 hereof. Lessee's right to use of the Site shall further be limited to the restrictions identified in the Side Letter Access Agreement, a copy of which is attached as Exhibit F hereto. Additionally, Lessee is hereby granted a license to access the area encompassed by the Easement Agreement (described in Recital E above and included in Exhibit H hereto) and encroachment areas (described in Section 20.2(a) below) until such time as the parties approve the Easement Agreement and a permanent encroachment is secured from the County.

**4.2 Only Lawful Uses Permitted.** Lessee shall not use the Site or the Facility for any purpose that is in violation of any law, ordinance or regulation of any federal, state, county or local governmental agency, body or entity. Furthermore, Lessee shall not maintain or commit any nuisance or unlawful conduct (as now or hereafter defined by any applicable statutory or decisional law) on the Site or the Facility, or any part thereof. The Parties acknowledge and agree that nothing contained in this Sublease in itself constitutes the City's approval of the construction, installation, expansion, demolition, operation, maintenance or repair of the Facility; Lessee agrees to and shall secure from the City all necessary permits, land use entitlements or other approvals, as and to the extent required by applicable law and/or the City's Municipal Code, prior to commencing such work.

## **5. RENT.**

**5.1 Net Sublease.** It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Authority and that Lessee shall pay all costs, taxes, charges, and expenses of every kind and nature against the Site and the Facility which may arise or become due during the Term, and which, except for execution hereof, would or could have been payable by Authority (other than under the Existing Authority Agreements).

**5.2 Rent During Original Term.** During the first five (5) years of the Term, Lessee agrees to pay in advance monthly rent in the amount of Ten Thousand Dollars (\$10,000) for the Site (the "Original Term Rent"). The Original Term Rent shall be paid on the first day of each month beginning on the Commencement Date. The Authority may adjust the Original Term Rent effective as of the beginning of the fifth (5th) anniversary of the Commencement Date, and effective as of the beginning of the tenth (10th) anniversary of the Commencement Date, and effective as of the beginning of the fifteenth (15th) anniversary of the Commencement Date in proportion to the cumulative increase during the preceding sixty (60) month period (ending ninety (90) days before the relevant anniversary date to allow for a lag in reporting) in the Consumer Price Index published by



the Bureau of Labor Statistics of the U.S. Department of Labor for Urban Wage Earners and Clerical Workers, Los Angeles-Riverside-Orange County, California (1982-84=100) "All Items", or any successor index thereto as hereinafter provided (the "Index"). Each adjustment of the Original Term Rent as provided in this Section 5.2 shall result in an increase of at least five percent (5%), but shall not result in an increase of more than ten percent (10%). To effectuate the process of the adjustment of the Original Term Rent, Authority shall notify Lessee of the adjustment in writing, no later than thirty (30) days before the fifth (5th) anniversary of the Commencement Date, no later than thirty (30) days before the tenth (10th) anniversary of the Commencement Date, and no later than thirty (30) days before the fifteenth (15th) anniversary of the Commencement Date; provided, however, that Authority's failure to provide such written notice shall not constitute a default of this Sublease and shall not in any way prevent or delay the effectiveness of any adjustment of the Original Term Rent.

**5.3 Rent During Option Periods.** Commencing upon the twentieth (20th) anniversary of the Commencement Date, and only if Lessee exercises the option set forth in Section 3 of this Sublease, Lessee agrees to pay in advance monthly rent (the "Option Period Rent") in the amount of the then-current fair market rental value of the Site, exclusive of the improvements and Lessee's Assets (the "Fair Rental Value"). In the event Lessee exercises the option set forth in Section 3 of this Sublease, then prior to the twentieth (20th) anniversary of the Commencement Date, the Parties shall attempt to agree upon the Fair Rental Value. If the Parties are unable to agree within 30 days, Authority and Lessee shall obtain an appraisal of the Fair Rental Value from an M.A.I. or other certified appraiser with experience in appraising properties similar to and in similar geographic areas as the Site (a "Qualified Appraiser"), which Qualified Appraiser shall be mutually selected by the Authority and Lessee at their shared expense. The Qualified Appraiser appointed under this paragraph must base its determination upon the comparable industrial property of the Site in the City of Rialto, County of San Bernardino, [taking into account the existing improvements in the Site], and taking into account items that certified appraisers or M.A.I.'s customarily consider. The results of the Qualified Appraiser's determination of Fair Rental Value shall be conclusively deemed the Option Period Rent.

The Authority may adjust the Option Period Rent for the second Option Period in proportion to the cumulative increase during the preceding sixty (60) month period (ending ninety (90) days before the relevant anniversary date to allow for a lag in reporting) of the Index (defined in Section 5.2). The adjustment of the Option Period Rent as provided in this paragraph shall result in an increase of at least three percent (3%), but shall not result in an increase of more than ten percent (10%). To effectuate the process of the adjustment of the Option Period Rent, Authority shall notify Lessee in writing, no later than thirty (30) days before the start of the second Option Period; provided, however, that Authority's failure to provide such written notice shall not constitute a default of this Sublease and shall not in any way prevent or delay the effectiveness of any adjustment of the Option Period Rent.

**5.4 Payment of Rent.** Pursuant and as limited under the terms of the Concession Agreement described in Section 2 of this Sublease, all rent that becomes due and payable pursuant to this Sublease shall be paid to Rialto Water Services, LLC at 150 California Street, Suite 600-A, San Francisco, California 94111, or to such other entity as Lessor may from time to time designate by written notice to the Lessee without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension or deduction.

## **6. OPERATING COVENANTS.**

**6.1 Use in Accordance with Ground Sublease.** The Lessee covenants and agrees to devote, use, operate, and maintain the Facility at the Site in accordance with this Sublease. All uses conducted on the Site, including, without limitation, all activities undertaken by the Lessee pursuant to this Sublease, shall conform to all applicable provisions of the City Municipal Code and the recorded documents pertaining to and running with the Site. Notwithstanding the foregoing, Lessee is expressly not responsible for the conditions, maintenance, repairs or removal resulting from the following conditions existing prior to the Term: a) any condition of the detention pond located upon the Site; b) any Hazardous Materials on the Site prior to the Term, including those as identified by LOR Geotechnical Group, Inc. in its Phase I Environmental Site Assessment dated February 24, 2014 concerning the Site, a copy of which is on file with the City's Development Services Department, an any updated Phase 1 assessment provided prior to the Commencement Date; c) weed abatement and other site maintenance conditions prior to the Term. Lessor shall repair such conditions prior to the Commencement Date or Lessee may repair such conditions and Lessor shall promptly reimburse Lessee for such work.

**6.2 Operation of Facility.** As a condition precedent to the development or operation of the Facility, the Lessee shall enter into a mutually acceptable facility operating agreement (the "Facility Operation Agreement") with the City with respect to the operation of the Facility. The operation of the Facility shall be conducted in accordance with the Facility Operation Agreement.

## **7. UTILITIES AND TAXES.**

**7.1 Utilities.** Lessee shall pay all charges for gas, electricity, garbage collection, and other utilities furnished to the Site and as Lessee determines as necessary for the operations of the Facility and all hookup or similar charges or assessments for utilities levied against the Site and the Facility for any period included within the Term, which may be separately metered.

### **7.2 Real Estate Taxes.**

(a) As used herein, the term "real estate taxes" shall mean all real estate taxes, assessments for improvements to the Site, municipal or county water and sewer rates and charges, or any other assessments or taxes, which shall be levied against the Site or the Facility, or any interest therein, and which become a lien thereon and accrue during the Term.

(b) Lessee shall have the right, at Lessee's expense, to contest the amount or validity of any real estate taxes, in whole or in part, by appropriate administrative and legal proceedings.

(c) The Authority is responsible for all assessments, real estate taxes, liens and encumbrances on the Site that first became due prior to the Term. The Parties acknowledge the Lessee is leasing the land free and clear of liens and encumbrances that may have been created and/or incurred by a third party or the Authority prior to the Term of this Sublease.

(d) Neither the Authority, the City nor any Governmental Agency controlled by the City or the Authority shall levy any additional tax specifically on the Lessee. Any increased taxes imposed specifically on the Lessee by the Authority, the City or other such Governmental Agency shall result in a commensurate decrease in the rent payments. Notwithstanding the foregoing, the provisions of this paragraph shall not apply to any generally applicable tax.

**7.3 Personal Property and Possessory Interest Taxes.** Subject to any and all protest rights provided by law, Lessee covenants and agrees to pay before delinquency all personal property taxes, assessments and liens of every kind and nature upon all personal property as may be from time to time situated within the Site and/or the Facility and that is assessed and first becomes due during the Term of this Sublease. Additionally, the possessory interest created by this Sublease may be subject to taxation, and Lessee may be subject to the payment of taxes levied on such interest. Lessee acknowledges its actual knowledge of the existence of a possessory interest tax and receipt of this notice of Lessee's potential tax liability. Lessee agrees that it is solely responsible for the timely payment before delinquency of possessory interest taxes and any other tax, levy or assessment upon the Site, the Facility, Lessee's personal property, improvements, and fixtures upon the Site subsequent to its purchase of the assets from the Buyer. Lessee shall have the right, at Lessee's expense, to contest the amount or validity of any such personal property or possessory interest taxes, in whole or in part, by appropriate administrative and legal proceedings

## **8. OWNERSHIP OF IMPROVEMENTS, FIXTURES AND FURNISHINGS.**

**8.1 Ownership During Term.** All improvements constructed on the Site by Lessee as permitted by this Sublease and all improvements constructed on the Site prior to the Commencement Date that have been acquired by Lessee, Lessee's Assets (collectively, the "Facility") shall, during the Term, be and remain the property of Lessee; provided, however, that Lessee's rights and powers with respect to the Facility are subject to the terms and limitations of this Sublease.

**8.2 Removal of Facility upon Termination of Ground Sublease.** Within one hundred twenty (120) days of the termination of this Sublease, whether by expiration of the Term or otherwise, Lessee shall, at Lessee's sole cost and expense, fully demolish and remove the Facility and any other improvements to the Site, other than concrete slabs, foundations and asphalt, unless otherwise directed in writing by the City. Within thirty (30) days of the Commencement Date, Lessee shall deposit with the Authority an adequate and satisfactory performance bond (the "Removal Security") that fully secures the Removal Gap (as defined in this Section 8.2). The Removal Security shall be executed by a surety acceptable to the Authority. The Removal Gap amount shall be determined as of the Effective Date and then every five (5) years thereafter (each, a "Removal Gap Determination"). After each Removal Gap Determination, Lessee shall deposit with the Authority substitute Removal Security in the amount of the newly determined Removal Gap amount. City acknowledges the Removal Security will be renewed annually with the right of the Surety to cancel the Removal Security with ninety (90) days written notice to the Authority. Should the Removal Security be cancelled by the Surety, Lessee shall promptly, as reasonably possible, obtain equal or better Removal Security in replacement of the cancelled Removal Security.

The "Removal Gap" shall be the difference between the cost of demolishing and removing the Facility as required by this Section 8.2 and the fair market scrap value of the Facility as mutually determined and agreed upon by the Parties. If the Parties are unable to agree as to the cost of demolishing and removing the Facility as required by this Section 8.2 and/or the fair market scrap value of the Facility, In determining the fair market scrap value of the Facility, the appraisal shall

take into account items that certified appraisers or M.A.I. customarily consider. The costs of the estimator and/or appraiser, shall be borne equally by the parties. Nothing herein, shall preclude the parties from negotiating a mutually acceptable Removal Gap amount in lieu of the appraisal method set forth above.

**8.3 Encumbrances.** The Authority shall not directly or indirectly create or permit to be created or to remain, and shall promptly discharge or bond any Encumbrance or Lien arising in relation to the Lessee's Assets.

## **9. INDEMNIFICATION: FAITHFUL PERFORMANCE.**

Lessee shall not suffer or permit any liens to be enforced against the fee simple estate in reversion of Authority as to the Site and Facility, nor against Lessee's leasehold interest therein by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone holding the Site and the Facility, or any part thereof, through or under Lessee. Lessee agrees to defend, indemnify, and hold Authority and City and their respective officers, officials, employees, agents, and representatives, harmless against such liens. If any such lien shall at any time be filed against the Site or the Facility, Lessee shall, within thirty (30) days after notice to Lessee of the filing thereof, cause the same to be discharged of record; provided, however, that Lessee shall have the right to contest the amount or validity, in whole or in part, of any such lien by appropriate proceedings but in such event, Lessee shall notify Authority and promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of California or provide other security acceptable to Authority. Lessee shall prosecute such proceedings with due diligence. Nothing in this Sublease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of Authority, express or implied, by inference or otherwise, to any person, firm or limited partnership for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Site, the Facility, or any part thereof. Prior to commencement of construction of the Facility on the Site, or any repair or alteration thereto, Lessee shall give Authority not less than thirty (30) days advance notice in writing of intention to begin said activity in order that non-responsibility notices may be posted and recorded as provided by State and local laws.

## **10. MAINTENANCE AND REPAIR.**

Except as and to the extent otherwise expressly provided in this Sublease, Lessee agrees to assume full responsibility for the management, operation and maintenance of the Facility and the Site throughout the Term without expense to Authority, and to perform all repairs and replacements necessary to maintain and preserve the Facility and the Site in good repair, in a neat, clean, safe and orderly condition consistent with the Purposes of this Sublease and in compliance with all applicable laws. Lessee shall maintain the Facility, all buildings, all exterior facades, all sidewalks, and all exterior areas, in a safe and sanitary fashion. The Lessee agrees to provide utility services, administrative services, supplies, contract services, maintenance, maintenance reserves, and management which are necessary for the maintenance of the entire Facility. Authority shall be responsible, and Lessee may reasonably cooperate with Authority, to maintain, repair or service any unknown prior condition existing at or before the Term, including those items stated in Section 6.1. Authority is responsible for obtaining and maintaining an access easement, which allows Lessee commercially reasonable access to the Site in order for Lessee to operate the Facility under the Facility Operation Agreement. Lessee agrees that, except as and to the extent otherwise expressly provided in this Sublease, including but not limited to Section 6.1, Authority shall not be required to

perform any maintenance, repairs or services or to assume any expense in connection with the Facility and the Site. Lessee is expressly not responsible for maintenance or repairs resulting from any condition of the detention pond located upon the Site that existed prior to the Term and Lessor is obligated to repair such conditions. Lessee hereby waives all rights to make repairs or to cause any work to be performed at the expense of Authority as may be provided for in Section 1941 and 1942 of the California Civil Code, if applicable. The Lessee shall manage and maintain the Facility on the Site in conformity with the Rialto Municipal Code. Parking lots, lighting fixtures, trash enclosures, and all areas which can be seen from the adjacent streets shall be kept free from any debris or waste materials by regularly scheduled maintenance.

## 11. ENVIRONMENTAL MATTERS.

**11.1 Definitions.** For the purposes of this Sublease, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

(a) The term "Hazardous Materials" shall mean any substance, material, or waste (other than biosolids) which is or becomes regulated by any local governmental authority, the County of San Bernardino, the State of California, regional governmental authority or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903) or (x) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*

(b) The term "Hazardous Materials Contamination" shall mean the contamination (hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Site by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether after the Term) emanating from the Site due to Lessee's activities only.

(c) The term "Governmental Requirements" shall mean all existing and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Site is located, and any other state, county city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over Authority, Lessee or the Site.

**11.2 Site Evaluation.** Lessee acknowledges and agrees that Lessee has had an opportunity, prior to the Commencement Date of this Sublease, to engage its own environmental

consultant to make such investigations of the Site as Lessee has deemed necessary, as demonstrated by the Phase I Assessment and any updated Phase I Assessment. Lessee assumes any and all responsibility and Liabilities (as defined in Section 11.3 of this Sublease) for all Hazardous Materials Contamination of the Site which is created or incurred by Lessee, if any, during the Term of this Sublease or extension thereof.

**11.3 Indemnification.** Upon and after the Commencement Date of this Sublease, Lessee agrees to indemnify, defend and hold Authority harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees and expert witness fees), resulting from, arising out of, or based upon (i) Lessee's release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site during the term of this Sublease, or (ii) Lessee's violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site during the term of this Sublease. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. Lessee's obligations under this Section 11.3 shall survive the expiration of this Sublease.

Although Lessee's own inspection before the Commencement Date of this Sublease detected no Hazardous Materials Contamination at the Site beyond what is described in the Phase I Assessment conducted by Lessee's environmental consultant, Authority agrees to indemnify, defend and hold Lessee and its officers, employees, agents and representatives harmless from and against any claim, action, suit, proceeding, damage, liability, deficiency, fine, penalty, or punitive damage (including, without limitation, reasonable attorneys' fees and expert witness fees), resulting from, arising out of, or based upon the negligence or willful misconduct of the Authority or its officers, employees, agents, representatives or contractors (collectively, "Authority Parties") with respect to the disposal or handling of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site by any Authority Parties, including the City. At the request of the Authority, the Lessee shall cooperate with and assist the Authority in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the Lessee shall not be obligated to incur any expense in connection with such cooperation or assistance. Authority shall indemnify, defend and hold Lessee and its officers, employees, agents and representatives harmless from and against any claim, action, suit, proceeding, damage, liability, deficiency, fine, penalty, or punitive damage (including, without limitation, reasonable attorneys' fees and expert witness fees), resulting from, arising out of, or based upon (i) the environmental condition of the Site and/or any Hazardous materials on the Site created, disgorged, generated, stored or disposed of on the Site or affecting the Site, prior to the Term of this Sublease; (ii) a violation or alleged violation of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Material on under, in or about, to or from the Site, resulting from acts or omissions occurring prior to the Term of this Sublease. Authority's obligations under this Section 11.3 shall survive the expiration of this Sublease.

**11.4 Duty to Prevent Hazardous Material Contamination.** Lessee shall take all commercially reasonable precautions to prevent the release of any Hazardous Materials into the environment during the Term. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Lessee shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards generally applied by similar industrial facilities as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials.

Authority shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Site in violation of any applicable law or regulation. If Authority becomes aware any such hazardous toxic or dangerous materials, Authority shall promptly notify Lessee of the type and location of such materials in writing. Authority agrees to assume full responsibility for any liability, investigation or cleanup obligations for any contamination or pollution or breach of environmental laws which are attributable to activities on the Site preceding the Term or due to any Authority act or omission during the Term.

**11.5 Obligation of Lessee to Remediate Premises.** Notwithstanding the obligation of indemnification pursuant to Section 11.3 of this Sublease, Lessee shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state, regional, or local governmental agency or political subdivision or any Governmental Requirements and (ii) all actions necessary and commercially reasonable to develop and operate the Facility in accordance with this Sublease, which requirements or necessity arise from the presence upon, about or beneath the Site of any Hazardous Materials or Hazardous Materials Contamination. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Site, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. Lessee shall take all actions necessary to promptly restore the Site to the condition the Site was on the day before the Commencement Date of this Sublease notwithstanding any lesser standard of remediation allowable under applicable Governmental Requirements. The Lessee's duties hereunder shall not affect any rights Lessee has pursuant to Section 11.3 hereof.

**11.6 Right of Entry.** Notwithstanding any other term or provision of this Sublease, Lessee shall permit Authority or its agents or employees to enter the Site at any time during normal business hours (or, in the event of an emergency, at any time), without prior notice in the event of an emergency, and with not less than forty-eight (48) hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency or long term remedial action with respect to Hazardous Materials and Hazardous Materials Contamination on or affecting the Site, or to discharge Lessee's obligations hereunder with respect to such Hazardous Materials and Hazardous Materials Contamination when Lessee has failed to do so after notice from Authority and an opportunity to cure such deficiency. All reasonable costs and expenses incurred by Authority in connection with performing Lessee's obligations hereunder shall be reimbursed by Lessee, upon Authority providing proper supporting documentation, to Authority within thirty (30) days of Lessee's receipt of written request therefor.

**11.7 Storage or Handling of Hazardous Materials.** With the exception of Section 6.1, Lessee, at its sole cost and expense, shall comply and shall cause its subtenants, if any, employees, agents, contractors, subcontractors, suppliers, consultants, and any and all persons with access to the Site (collectively, "Lessee's Permittees") to comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Site, including without limitation wastes generated in connection with the uses conducted on the Site. In

the event Lessee or Lessee's Permittees will store, use, transport, handle or dispose of any Hazardous Materials, Lessee shall notify Authority in writing at least ten (10) days prior to their first appearance on the Site and Lessee's failure to do so shall constitute a material default under this Sublease. Lessee shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, pursuant to an applicable law or Governmental Requirement, Authority may require Lessee, at Lessee's sole cost and expense, to conduct specific and reasonable monitoring or testing activities with respect to Hazardous Materials on the Site. Such monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials on the Site, shall be satisfactory to Authority, in Authority's reasonable discretion. Lessee shall further be solely responsible, and shall reimburse Authority, for all costs and expenses incurred by Authority arising out of or connected with the removal, clean up and/or restoration work and materials necessary to return the Site and any property adjacent to the Site affected by Hazardous Materials emanating from the Site to their condition existing at the time of the Lessee's Site Evaluation. Lessee's obligations hereunder shall survive the termination of this Sublease.

**11.8 Environmental Inquiries.** The Party who receives notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials, shall promptly notify the other Party and provide to the other Party a copy or copies, of the environmental permits, disclosures, applications, entitlements or inquiries relating to the Site. The Parties shall report to each other, as soon as possible after each incident, any unusual, potentially important environmental incidents from the Site or nearby adjacent properties during Lessee's Term.

In the event of a release of any Hazardous Materials into the environment, both Parties shall, as soon as possible after the release, furnish to the other a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the other Party, a Party shall furnish to the other a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site including, but not limited to, all permit applications, permits and reports including, without limitation, those relevant reports and other relevant documents which may be characterized as confidential.

## **12. CONSTRUCTION AND ALTERATION OF IMPROVEMENTS.**

In addition to any improvements existing on the Site as of the Commencement Date, Lessee may construct such additional improvements upon the Site as may be necessary in order to operate the Facility; provided, however, that the construction of any such improvements shall be subject to this Sublease, the Facility Operation Agreement and all applicable laws and regulations. Once it becomes operational, Lessee shall not make or permit to be made any structural alteration of the exterior of the Facility, nor demolish all or any part of the Facility, without obtaining all required City permits and entitlements, and without obtaining the prior written consent of Authority, which consent shall not be unreasonably withheld, conditioned or delayed. The parties acknowledge and anticipate that Lessee may elect to expand the Facility after its initial construction to accommodate a greater volume of organic waste or for other business and technical purposes permitted pursuant to this Sublease. The foregoing shall not prohibit or restrict the repair and/or replacement of the Facility by Lessee in accordance with Section 10 hereof. In requesting such consent of the



Authority, Lessee shall submit to Authority detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. Authority shall review the detailed plans and specifications and shall, within thirty (30) days of receiving such detailed plans and specifications, issue to Lessee a written approval or denial of the detailed plans and specifications and, in the case of a denial, a written explanation of the decision. This provision shall not limit or set aside any obligation of Lessee under this Sublease to maintain the Facility and the Site in a clean and safe condition, including structural repair and restoration of damaged Facility. Notwithstanding the Authority's obligations in this Agreement, such as its obligation to provide commercially reasonable access to the Site, Authority shall not be obligated by this Sublease to make any improvements to the Site. Lessee shall not commit or suffer to be committed any waste or impairment of the Site or the Facility, or any part thereof, except as otherwise permitted pursuant to this Sublease.

If, during the Term of this Sublease, any law, regulation, or rule requires that an alteration, addition, or other change be made to the Site or Facility, Lessee shall make such alteration, addition, or other change and shall bear all expense connected therewith.

### **13. DAMAGE OR DESTRUCTION.**

**13.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance.** Subject to Section 13.3 below, if the Facility shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Lessee, and there is an excess of seven (7) years remaining in the Term, Lessee shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Facility as and to the extent necessary in order to facilitate the Purpose of this Sublease. Subject to Section 25.22, in no event shall the repair, replacement, or restoration period exceed one (1) year from the date Lessee obtains insurance proceeds unless Authority's Director or designee, in his or her sole and absolute discretion, approves a longer period of time. Authority shall cooperate with Lessee, at no expense to Authority, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Site do not permit the repair, replacement, or restoration, Lessee may elect not to repair, replace, or restore the Facility by giving notice to Authority (in which event Lessee will be entitled to all insurance proceeds, subject to Lessee's obligations to lenders or other third parties, but Lessee shall be required to remove all debris from the Site) or Lessee may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by the City, Authority, and the other governmental agency or agencies with jurisdiction. In the event Lessee elects not to repair, replace, or restore and give Authority notice of such election as provided herein, this Sublease shall terminate. Notwithstanding any provision of this Sublease, in the event the Facility is totally or partially destroyed and insurance proceeds are inadequate or it is not economically feasible to reconstruct the Facility, Lessee may terminate this Sublease upon written notice to Authority.

**13.2 Continued Operations.** During any period of repair, Lessee shall continue, or cause the continuation of, the operation of the Facility on the Site to the extent reasonably practicable from the standpoint of prudent business management.

**13.3 Damage or Destruction Due to Cause Not Required to be Covered by Insurance.** If the Facility is completely destroyed or substantially damaged by a casualty for which Lessee is not required to (and has not) insured against, then Authority shall deliver written notice to Lessee of its

obligations under this Section 13.3 within thirty (30) days of such event of substantial damage or destruction, and Lessee shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing Authority with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. In such event, Lessee shall remove all debris from the applicable portion of the Site. As used in this Section 13.3, "substantial damage" caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is fifteen percent (15%) or more of the replacement cost of the improvements comprising the Facility. In the event that the Authority delivers such notice to Lessee but Lessee does not timely elect not to repair, replace, or restore the Facility as set forth in the first sentence of this Section 13.3, Lessee shall be conclusively deemed to have waived its right not to repair, replace, or restore the Facility and thereafter Lessee shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed Facility in accordance with Section 13.1 above and continue operation of the Facility during the period of repair (if practicable) in accordance with Section 13.2 above. In the event Lessee elects not to repair, replace, or restore, and gives Authority notice of such election as provided herein, this Sublease shall terminate.

#### **14. SALE, ASSIGNMENT, SUBLEASE OR OTHER TRANSFER.**

Lessee may not sell, assign, sublease, or otherwise transfer this Sublease or any right herein, or make a total or partial sale, assignment, sublease, or transfer in any other mode or form the whole or any part of the Site or the Facility (each of which events is referred to in this Sublease as an "Assignment"), without prior written approval of Authority; provided, however, Lessee may assign, sublease or otherwise transfer this Sublease to an Affiliate ("Affiliate" shall mean any person, corporation or other entity that is controlled by or is under common control with a party which has direct or indirect ownership of fifty percent (50%) or more of all voting stock of any corporation or fifty percent (50%) or more of all of the legal and equitable interest in any other business entity), subsidiary or other related company without approval of Authority. Any such Assignment shall not prevent, impede, obstruct or in any way interfere with the Purposes of this Sublease.

Authority may assign or transfer any of its rights or obligations under this Sublease with the approval of the Lessee, which approval shall not be unreasonably withheld; provided, however, that Authority may assign or transfer any of its interests hereunder to the City at any time without the consent of the Lessee. Lessee further acknowledges that Authority is a joint powers authority pursuant to Cal. Government Code sections 6500 et seq., comprised of the City of Rialto and former Rialto Redevelopment Agency (now, Successor Agency of the Rialto Redevelopment Agency) and may replace one or more of its member agencies without the consent of Lessee.

#### **15. FINANCING.**

Authority acknowledges that Lessee will be financing the Facility, and Authority agrees it shall reasonably cooperate with Lessee and its financing parties in connection with such financing. Unless for Lessee financing purposes, Lessee shall not, without the prior written consent of Authority, which may be given or withheld in Authority's sole discretion, mortgage, pledge, hypothecate or otherwise encumber Lessee's right, title and interest pursuant to this Sublease and the leasehold estate hereby, or any portion thereof. Such financing is a condition subsequent to the effectiveness of the Sublease and FOA. Should Lessee not be able to finance the Facility then Lessee may terminate this Sublease and the FOA within thirty (30) days written Notice to the Authority, without any liability to the Authority other than as may be provided under Section 8.2.

## **16. INDEMNITY.**

Lessee shall defend, indemnify and hold Authority, its officials, officers, employees, agents, and representatives harmless from, all claims, demands, damages, defense costs or liability of any kind or nature (including attorneys' fees and costs) and for (A) any damages to property or injuries to persons, including accidental death, which may be caused by or arise out of (a) Lessee's performance or failure to perform its obligations pursuant to this Sublease, whether such activities or performance thereof be by the Lessee or by anyone employed or contracted with by Lessee and whether such damage shall accrue or be discovered before or after termination of this Sublease, or (b) any defect in the Site or the Facility existing during the Term of this Sublease, or (c) from any displacement of persons or property or liability for relocation assistance pursuant to Government Code Section 7260, et seq., due to the acts or omissions of Lessee hereunder, (B) the use or occupancy of the Premises by Lessee or any person claiming under Lessee, (C) any activity, work or thing done, or permitted or suffered by Lessee in or about the Premises, and (D) any breach, violation, or non-performance by Lessee or any person claiming under Lessee, or the contractors agents, employees, invitees of visitors of Lessee or an such person of any term covenant or provision or this Lease or any law, ordinance or governmental requirement of any kind. Lessee shall not be liable for property damage or bodily injury occasioned by the sole negligence of, willful misconduct of, or breach of this Sublease by Authority or its agents or employees.

Authority shall defend, indemnify, assume all responsibility for, and hold Lessee and its officers, employees, agents, and representatives harmless from, all claims, demands, damages, defense costs or liability of any kind or nature (including attorneys' fees and costs) and for any damages or affectation to the Facility and/or to the property or injuries to persons, including accidental death which may be caused by or arise out of the Authority's performance or failure to perform its obligations pursuant to this Sublease, whether such activities or performance thereof be by the Authority or by anyone employed or contracted with by the Authority and whether such damage shall accrue or be discovered before or after termination of this Agreement. Authority shall not be liable for property damage or bodily injury occasioned by the negligence of, willful misconduct of, or breach of this Agreement by Lessee or its agents or employees.

## **17. INSURANCE.**

**17.1 Insurance to be Provided by Lessee.** During the Term, Lessee, at its sole cost and expense, shall itself take out and maintain, or cause to be taken out and maintained, the following insurance coverage:

(a) Maintain a policy or policies of all-risk property insurance. Such insurance policy shall be maintained in an amount not less than one hundred percent (100%) of the "Full Insurable Value" of the Facility, as defined herein in this Section 17.

(b) Maintain, in an amount not less than One Million Dollars (\$1,000,000), commercial general liability policy including contractual liability, with umbrella liability in the minimum amount of Ten Million Dollars (\$10,000,000). The required amount of insurance shall be subject to increases as Authority may reasonably require from time to time, but not more frequently than every twenty-four (24) months. In no event shall such increase or increases exceed the increase during such period in the CPI.

(c) Maintain a comprehensive automobile liability policy in not less than the amount of One Million Dollars (\$1,000,000) combined single limit. The required amount of insurance shall be subject to increases as Authority may reasonably require from time to time, but not more frequently than every twenty-four (24) months. In no event shall such increase or increases exceed the increase during such period in the CPI.

(d) Maintain, or cause its affiliates to maintain, worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Lessee and/or Property Manager in connection with the Site and the Facility and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for on behalf of any person incurring or suffering injury or death in connection with the Site or the Facility or the operation thereof by Lessee.

(e) Maintain until the completion of construction of the Facility a builder's risk policy and a contractor's pollution legal liability policy in the minimum amount of Five Million Dollars (\$5,000,000).

(f) Upon the Facility becoming operational, maintain a pollution legal liability policy in the minimum amount of Five Million Dollars (\$5,000,000).

**17.2 Definition of "Full Insurable Value".** The term "Full Insurable Value" as used in this Article 17 shall mean the actual replacement cost of the Facility, architectural and engineering fees, applicable governmental fees, and inspection and supervision. Lessee shall maintain the insurance policy required by Section 17.1(a) hereof at the current Full Insurable Value of the Facility.

**17.3 General Insurance Provisions.** All policies of insurance provided for in this Section 17, except for the workers' compensation insurance, shall name Lessee and any subtenant as the insured. Authority and the City, and their respective officers, employees, agents, and representatives, will be named certificate holders of the additional insured certificates. Lessee agrees to timely pay or cause to be timely paid all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Lessee agrees to submit policies of all insurance required by this Section 17 of this Sublease, or certificates evidencing the existence thereof, to Authority on or before the effective date of this Sublease, indicating full coverage of the contractual liability imposed by this Sublease. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Authority. All policies shall be written by good and solvent insurers qualified to do business in California and reasonably acceptable to the Authority's Executive Director or designee. All policies or certificates of insurance shall also: (i) provide that such policies shall not be cancelled or limited in any manner without at least thirty (30) days prior written notice to Authority; and (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by Authority and shall contain a waiver of subrogation for the benefit of the City and Authority. Lessee agrees that provisions of this Section as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, activities of its sublessees or the activities of any other person or persons for which Lessee is otherwise responsible.

**17.4 Failure to Maintain Insurance.** If Lessee fails or refuses to procure or maintain insurance as required by this Sublease, Authority shall have the right, at Authority's election, and upon ten (10) days prior notice to Lessee, to procure and maintain such insurance. The premiums paid by Authority shall be treated as added rent due from Lessee, to be paid on the first day of the month following the date on which the premiums were paid. Authority shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

**17.5 Insurance Proceeds Resulting from Loss or Damage to Facility.** All proceeds of insurance with respect to loss or damage to the Facility during the term of this Sublease shall be payable, under the provisions of the policy of insurance, to Lessee.

## **18. EMINENT DOMAIN.**

In the event that the Site and/or the Facility or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then, as between Authority and Lessee, the interests of Authority and Lessee in the award and the effect of the taking upon this Sublease shall be as follows:

(a) In the event of such taking of only a part of the Site, leaving the remainder of the Site in such location and in such form, shape and size as to be used effectively and practicably for the conduct thereon of the uses permitted hereunder, this Sublease shall terminate and end as to the portion of the Site so taken as of the date the title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Site not so taken and from and after such date the rental required by this Sublease to be paid by Lessee to Authority shall be reduced in the proportion which the number of square feet so taken bears to the total number of square feet in the Site.

(b) In the event of taking of only a part of the Site, leaving the remainder of the Site in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable and economically feasible for the conduct thereon of the uses permitted hereunder, as reasonably determined by the Lessee, this Sublease and all right, title and interest thereunder shall cease on the date title to the Site or the portion thereof so taken vests in the condemning authority.

(c) In the event the entire Site is taken, this Sublease and all of the right, title and interest thereunder, shall cease on the date title to the Site so taken vests in the condemning authority.

(d) In the event of taking of only Lessee's leasehold interest in the Site, this Sublease shall terminate.

(e) Promptly after a partial taking, at Lessee's expense and in the manner specified in provisions of this Sublease related to maintenance, repairs, and alterations, Lessee shall restore the Facility, to the extent possible and as permitted by law, and to the extent of condemnation proceeds received by Lessee, so as to place them in a condition suitable for the uses and purposes for which the Site was leased.

(f) In the event of any taking under subparagraphs (a), (b), (c) or (d) hereinabove, that portion of any award of compensation attributable to the fair market value of the Site or portion thereof taken, valued as subject to this Sublease, shall belong to Authority. That portion of any award attributable to the fair market value of Lessee's leasehold interest in the Site

and Improvements pursuant to this Sublease, and any separate award made to Lessee for loss of business or for the taking of Lessee's fixtures and improvements, shall belong to Lessee.

(g) In the event of a partial taking, where the Sublease remains in effect and Lessee is obligated to restore or repair the Facility, then Lessee shall be entitled to any portion of the award attributable to severance damages to the remaining Facility to the extent necessary to restore or repair the Facility and any remaining severance damages shall be payable to Authority. Said award shall be used for the restoration, repair or rebuilding of the Facility in accordance with plans and specifications approved in writing by Authority to the extent necessary to restore or repair the Facility and any remaining severance damages shall be payable to Authority. The value of each interest for the purpose of apportionment under this Section shall be the fair market value of such interests at the time of the taking.

(h) Notwithstanding the foregoing provisions of this Section, Authority may, in its discretion and without affecting the validity and existence of this Sublease, transfer Authority's interests in the Site in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by Authority, Lessee (or mortgagee if a mortgage is then in effect) and Authority shall retain whatever rights they may have to recover from said authority the fair market value of their respective interests in the Facility taken by the authority.

(i) All valuations to be made pursuant to this Section 18 shall be made by mutual agreement of Authority and Lessee.

## **19. OBLIGATION TO REFRAIN FROM DISCRIMINATION.**

Lessee, for itself and its successors and assigns, agrees that during the operation of the Facility provided for in this Sublease, and during any work of repair or replacement, Lessee shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, physical or mental disability, sexual orientation, ancestry or national origin, or on the basis of any other category or status protected by law and shall not discriminate in the provision of services or products at or originating from the Site and/or Facility against any person on the basis of sex, race, color, creed, or national origin or on the basis of any other category or status protect by law.

## **20. CONDITIONS TO EFFECTIVENESS OF SUBLEASE.**

**20.1 Conditions Precedent.** Each of the following shall be and is a condition precedent to the effectiveness of this Sublease:

(a) Authority and City shall have executed and delivered a Lessee approved City Consent Agreement to Lessee, in the form of Exhibit E attached to this Sublease;

(b) Lessee shall have executed and delivered to Authority a counterpart of the City Consent Agreement;

(c) RWS shall have executed and delivered to Lessee an agreement with respect to the Existing Authority Agreements (the "Side Letter Access Agreement"), in the form of Exhibit F to this Sublease, providing, among other things, for limitations on RWS's access to the Site;

(d) Authority shall have obtained an encroachment permit for right of way over the Rialto Flood Control Channel in Lessee's name from the San Bernardino County Flood Control District, permitting access to and use of the paved access road constructed by Enertech Environmental to provide a 24 foot driveway to the Site from Santa Ana Avenue;

(e) Authority shall have obtained, at Authority's cost and expense, an ALTA leasehold owner's policy of title insurance issued in Lessee's name, together with such endorsements as are reasonably requested by the Lessee; Authority and RWS shall have approved entered into that certain Contract Administration Memorandum ("CAM"), substantially in the form attached as Exhibit D, whereby RWS consents to this Sublease and related agreements, as further described in Exhibit D; and

(f) Authority's obligation to address the issues identified in Section 6.1.

(g) The Parties resolve outstanding issues on the Title Report, which may be amended during this period.

(h) Authority and Lessee shall have entered into the Facility Operation Agreement as set forth in Section 6.2 of this Sublease;

Each condition precedent set forth in this Section 20.1 shall be satisfied or waived by Parties within one hundred twenty (120) days of the Effective Date of this Sublease. In the event any condition precedent set forth in this Section 20.1 is not satisfied or waived by Parties within one hundred twenty (120) days of the Effective Date of this Sublease, this Sublease shall automatically terminate and be of no further force or effect. It is also a covenant of the Authority to make the delivery under paragraph (a) above on or before all of the other conditions in this Section 20.1 have been satisfied or waived. The time periods set forth in herein may be altered or amended only by written agreement signed by both Licensee and Authority. The Authority's Executive Director shall have the authority to approve extensions of time for good cause, without Authority Board action not to exceed a cumulative total of ninety (90) days.

**20.2 Conditions Subsequent.** Each of the following shall be and is a condition subsequent to the effectiveness of this Sublease. Should the following Conditions Subsequent not be met within eighteen (18) months from the Commencement Date, either Party may terminate this Agreement without liability to the other Party, unless otherwise set forth in this Agreement, in which case, Lessee shall remove the Facility per the terms of the Site Use Agreement. Upon Lessee's request for an extension of time, the Authority's Executive Director shall have the authority to approve extensions of time for good cause, without Authority Board action, not to exceed a cumulative total of ninety (90) days. Additionally, this Sublease shall terminate without further action of the parties if Lessee fails to approve in writing all applicable conditions of approval related to the PPD, CDP and any other entitlements within thirty (30) days of the City's approval of such entitlements:

(a) Authority shall use its best efforts to secure and maintain annual renewal of the encroachment permit(s) issued by the San Bernardino County Flood Control District (for access rights and utility maintenance and operation) and secure long-term easement(s) for the paved road that provides the sole point of access, both ingress and egress, to the Site and the water line that serves the Site. In the event the San Bernardino County Flood Control District fails or refuses to renew such encroachment permit(s), license agreement(s), or easement(s), Authority shall cooperate

with Lessee in good faith and utilize its best efforts in an effort to secure reasonable alternate access to the Site and alternate water line connections. In the event reasonable alternate access or water line connections are unavailable, Lessee shall have the right to terminate this Sublease upon written notice to the Authority; provided, however, that such termination shall be Lessee's sole and exclusive remedy and Lessee shall not be entitled to recover any form of damages or restitution.

(b) Lessee securing a Precise Plan of Design ("PPD") from the City pursuant to the requirements of City Resolution No. 2507 for property located in the Heavy Industrial, Agua Mansa Specific Plan.

(c) Lessee securing a Conditional Development Permit ("CDP") from the City pursuant to Rialto Zoning Code, Chapter 18.108 for recycling facilities.

(d) Prior compliance with CEQA for approval of the PPD and CDP.

(e) Parties approving and recording the Easement Agreement in the form attached as Exhibit H.

(f) All other necessary permits and entitlements to operate and maintain the Facility.

## **21. COMPLIANCE WITH LAW.**

Lessee agrees, at its sole cost and expense, to itself comply, and to use its best commercially reasonable efforts to secure compliance by all contractors, invitees and subtenants of the Site and Facility, with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Site and the Facility, as well as operations conducted thereon, and to faithfully observe and secure compliance by all contractors, invitees and subtenants of the Site and Facility with, in the use of the Site and the Facility all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees, if any, assessor levied upon Lessee or the Site or the Facility, including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the Site and the Facility. Lessee shall use good faith efforts to prevent subtenants from maintaining any nuisance or other unlawful conduct on or about the Property, and shall take such actions as are reasonably required to abate any such violations by subtenants of the Site and Facility. The judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee in any action or proceeding against them, or any of them, whether Authority be a party thereto or not, that Lessee, sublessee or permittee has violated any such ordinance or statute in the use of the Site or the Facility shall be conclusive of that fact as between Authority and Lessee, or such sublessee or permittee.

## **22. ENTRY AND INSPECTION.**

Authority reserves and shall have the right during reasonable business hours (except in cases of emergency), upon forty-eight (48) hours prior notice; provided Authority avoids interruptions as much as reasonably possible with Lessee's operations on the Site, to Lessee by the Director of Authority or designee, to enter the Site and the Facility, with a representative of Lessee, for the



purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Site, subject to the Authority's indemnification obligations as set forth in Article 16 hereof.

### **23. RIGHT TO MAINTAIN.**

In the event that the entry or inspection by Authority pursuant to Section 22 hereof discloses that the Site or the Facility are not in a decent, safe, and sanitary condition, by applicable industry standards, Authority shall have the right, after thirty (30) days written notice to Lessee (except in case of emergency, in which event no notice shall be necessary), to have any necessary maintenance work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and all reasonable costs incurred by Authority in having such necessary maintenance work done in order to keep the Site and the Facility in a decent, safe and sanitary condition, by applicable industry standards, provided that the Authority delivers such notice which is required hereunder. The rights reserved in this Article shall not create any obligations on Authority or increase obligations elsewhere in this Sublease imposed on Authority.

### **24. EVENTS OF DEFAULT AND REMEDIES.**

**24.1 Events of Default by Lessee.** Subject to the force majeure provisions of Section 25.22 hereof, the occurrence of any one (1) or more of the following shall constitute an event of default hereunder:

- (a) Lessee's breach of the Facility Operation Agreement, subject to any applicable cure period provided therein; or
- (b) Lessee shall abandon or surrender the Site or the Facility; or
- (c) Lessee shall fail or refuse to pay, within thirty (30) days of notice from Authority that the same is due, any installment of rent or any other sum required by this Sublease to be paid by Lessee; or
- (d) Lessee shall fail to materially perform any covenant or condition of this Sublease, other than as set forth in subparagraphs (a) or (b) above, and any such failure is not cured within thirty (30) days following the service on Lessee of a written notice from Authority specifying the failure complained of, or if it is not reasonably practicable to cure or remedy such failure within such thirty (30) day period, then Lessee shall not be deemed to be in default if Lessee shall commence such cure within such thirty (30) day period and thereafter diligently prosecute such cure to completion; or
- (e) Subject to any restrictions or limitations placed on Authority by applicable laws governing bankruptcy, Lessee's (i) application for, consent to or suffering of the appointment of a receiver, trustee or liquidator for all or for a substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (iv) becoming unable to or failing to pay its debts as they mature; (v) being adjudged a bankrupt; (vi) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (vii) convening a meeting of its creditors or any class thereof for purposes of effecting a moratorium, extension or composition of its debts; or (viii) suffering or permitting to continue unstayed and in effect for thirty

(30) consecutive days any attachment, levy, execution or seizure of all or a portion of Lessee's assets or of Lessee's interest in this Sublease.

#### **24.2 Remedies of Authority.**

In the event of any such default as described in Section 24.1, Authority may, at its option:

(a) Correct or cause to be corrected said default and charge the reasonable costs thereof (including actual and reasonable costs incurred by Authority in enforcing this provision) to the account of Lessee, which charge shall be due and payable within thirty (30) days after presentation by Authority of a statement of all or part of said costs;

(b) Correct or cause to be corrected said default and pay the reasonable costs thereof (including actual and reasonable costs incurred by Authority in enforcing this provision) from the proceeds of any insurance;

(c) Exercise its right to maintain any and all actions at law or suits in equity to compel Lessee to correct or cause to be corrected said default; and

(d) Maintain and operate the Site and the Facility, without terminating this Sublease.

In the event the foregoing measures have failed to cure the default, Lessor may exercise the additional remedy of having a receiver appointed to take possession of Lessee's interest in the Site and the Facility, with power in said receiver to administer Lessee's interest in the Site and the Facility, to collect all funds available to Lessee in connection with its operation and maintenance of the Site and the Facility; and to perform all other consistent with Lessee's obligation under this Sublease as the court deems proper.

In the event that Lessee's default has not been cured within one hundred twenty (120) days from the date of Authority's notice pursuant to Section 24.1, in addition to the foregoing remedies Authority shall also be entitled to terminate this Sublease and immediately regain possession of the Site.

**24.3 Notice of Default to Lender and Lender's Right to Cure.** Authority shall give written notice of an event of default pursuant to Section 24.1 to Lessee's lender(s) prior and as a condition to exercising Authority's right to terminate this Sublease pursuant to Section 24.2. Following an event of default by Lessee under this Sublease, Authority may require Lessee or Lessee's lender(s) to provide to Authority a report concerning the status of efforts by Lessee or its lender(s) to develop a plan to cure the event of default and the expected timeframe within which any cure is expected to be implemented. Authority will have no further right to require the report with respect to a particular event of default after that event of default has been cured. Upon written notice from a lender to Authority of lender's plan to cure the event of default, such lender will have sixty (60) days to cure the event of default on behalf of Lessee. If a lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such lender may assume all of Lessee's obligations arising under this Sublease and all related agreements (subject to such limits on liability as are mutually agreed to by Lessee, Authority, and the lender); provided, before such assumption, if Authority advises the lender that Authority will require lender cure (or cause to be cured) any event of default in order to avoid

the exercise by Authority of Authority's right to terminate this Sublease with respect to such event of default, then the lender at its option, and in its sole discretion, may elect to either: (i) cause such event of default to be cured; or (ii) allow the Sublease to terminate unimpeded either by operation of law or the terms of this Sublease, as applicable. The provisions of this Section 24.3 shall apply only to a lender that has submitted to Authority a written request for a copy of notices of default, which request shall include the mailing address to which Authority shall send a copy of any notice of default under Section 24.1.

**24.4 Events of Default by Authority.** Subject to the force majeure provisions of Section 25.22 hereof, Authority's failure or refusal to timely perform or observe any material obligation pursuant to this Sublease or City's failure or refusal to timely perform or observe any material obligation pursuant to the Facility Operation Agreement shall constitute an event of default by Authority.

**24.5 Lessee's Remedies Upon Authority's Default.** If Authority's default has occurred and if Authority fails to correct or cure the conditions causing such default within sixty (60) days after the date on which Lessee gives Authority written notice of Lessee's intent to terminate this Sublease as a result of such default, then in its sole discretion Lessee may either: (i) terminate this Sublease, in which case the Sublease shall terminate immediately and be of no further force or effect; or (ii) seek an order from a court of competent jurisdiction compelling Authority to cure such default.

**24.6 Damages.** Damages which a party recovers in the event of default under this Sublease shall be those which are then available under applicable California case and statutory law to lessors or lessees for leases in the State of California including, but not limited to, any accrued but unpaid rent. Notwithstanding any other remedies and damages available under this Sublease, neither Authority nor Lessee shall be liable to the other for incidental, special, consequential, punitive or indirect damages, including loss of profits, arising out of this Sublease, whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from the breach of this Sublease. In addition to all other remedies that may be available to each party at law or in equity, each party shall be entitled to seek injunctive relief, specific performance or other equitable relief.

**24.7 Rights and Remedies are Cumulative.** The remedies provided by this Section 24 are not exclusive and shall be cumulative to all other rights and remedies possessed by a party. The exercise by a party of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

## **25. MISCELLANEOUS.**

**25.1 Governing Law.** The laws of the State of California shall govern the interpretation and enforcement of this Sublease.

**25.2 Legal Actions.** In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Sublease. Such legal actions must be instituted in the Superior Court of San Bernardino County, State of California.

**25.3 Acceptance of Service of Process.** In the event that any legal action is commenced by Lessee against Authority, service of process on Authority shall be made by personal service upon the City Clerk/Secretary or designee of Authority, or in such other manner as may be provided by law.

In the event that any legal action is commenced by Authority against Lessee, service of process on Lessee shall be made by personal service upon Lessee or in such other manner as may be provided by law, and shall be effective whether made within or without the State of California.

**25.4 Execution in Counterparts.** This Sublease may be executed in counterparts, and when all counterparts have been executed, each counterpart shall be considered an original but when assembled shall constitute one and the same instrument, and shall have the same force and effect as though all of the signatories had executed a single signature page. The Parties agree that facsimile and/or electronic signatures are authorized and binding on all Parties to this Sublease.

**25.5 Attorneys' Fees, Expert Witness Fees, And Court Costs.** In the event that either Authority or Lessee shall bring or commence an action to enforce the terms and conditions of this Sublease or to obtain damages against the other party arising from any default under or violation of this Sublease, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees, expert witness fees and court costs therefor in addition to whatever other relief such prevailing party may be entitled.

**25.6 Inspection of Books And Records.** Authority shall have the right (at Lessee's office, upon not less than five (5) business days' notice, and during normal business hours) to inspect the relevant books and records of Lessee pertaining to the Site as pertinent to the purposes of this Sublease.

**25.7 Interest.** Any amount due Authority that is not paid when due shall bear interest from the date such amount becomes due until it is paid. Interest shall be at a rate equal to the lesser of (i) the discount rate established by the San Francisco office of the Federal Reserve Bank, plus two percent (2%), on the first day of the month such amount becomes due, and (ii) the maximum rate permitted by applicable law.

**25.8 Notices.** All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified or registered mail, return receipt requested, postage prepaid, and addressed as follows:

To Authority:                Rialto Utility Authority  
   150 South Palms Avenue  
   Rialto, California 92376  
   Attention: Executive Director

To Lessee:                     Rialto Bioenergy Facility LLC  
   5780 Fleet Street, Suite 310  
   Carlsbad, California 92008  
   Attention: Legal Department

or to such other address as either party shall later designate for such purposes by written notice to the other party. Notices shall be deemed effective upon personal delivery or within three (3) days after mailing thereof as provided above; provided, however that refusal to accept delivery after reasonable attempts thereto shall constitute receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice to the delivering party shall be effective on the third day after the attempted delivery or deposit in the United States mail.

**25.9 Time is of the Essence.** Time is of the essence in the performance of the terms and conditions of this Sublease.

**25.10 Non Merger of Fee And Leasehold Estates.** If both Authority's and Lessee's estates in the Site or the Facility or both become vested in the same owner, this Sublease shall nevertheless not be destroyed by application of the doctrine of merger except at the express election of Authority and Lessee's Mortgagee. The voluntary or other surrender of this Sublease by Lessee, or a mutual cancellation thereof, shall not work as a merger and shall, at the option of Authority, terminate all or any existing sublease or subtenancies or may, at the option of Authority, operate as an assignment to Authority of any or all such existing subleases or subtenancies.

**25.11 Holding Over.** The occupancy of the Site after the expiration of the Term of this Sublease shall be construed to be a tenancy from month to month, and all other terms and conditions of this Sublease shall continue in full force and effect.

**25.12 Conflict of Interest.** No member, official or employee of Authority shall have any personal interest, direct or indirect, in this Sublease nor shall any such member, official or employee participate in any decision relating to the Sublease which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested.

Lessee warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Sublease.

**25.13 Non Liability of Authority and City Officials And Employees.** No member, official, officer, employee, agent, or representative of Authority or City shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by Authority or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Sublease.

**25.14 No Recourse to Affiliates.** This Sublease is solely and executed between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have any recourse to any parent, subsidiary, partner, member, affiliates, lender, director, officer, or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the person or entity against which recourse is sought.

**25.15 Relationship.** The relationship between the parties hereto shall at all times be deemed to be that of landlord and tenant. The parties do not intend nor shall this Sublease be deemed to create a partnership or joint venture.

**25.16 Waivers And Amendments.** All waivers of the provisions of this Sublease must be in writing and signed by the appropriate authorities of Authority or Lessee. The waiver by Authority

of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Authority shall not be deemed to be a waiver of any preceding breach of Lessee of any term, covenant or condition of this Sublease, regardless of Authority's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of Authority to require or exact full and complete compliance with any of the covenants or conditions of this Sublease shall not be construed as in any manner changing the terms hereof and shall not prevent Authority from enforcing any provision hereof. All amendments hereto must be in writing and signed by the appropriate authorities of Authority and Lessee. The Lessee's mortgagee permitted by this Sublease shall not be bound by any waiver or amendment to this Sublease without Lessee's mortgagee giving its prior written consent.

**25.17 Entire Agreement; Duplicate Originals; Counterparts.** This Sublease, including the exhibits hereto, sets forth the entire understanding of the parties with respect to Lessee's Ground Sublease of the Site. This Sublease is executed in three (3) duplicate originals and counterparts, each of which is deemed to be an original.

**25.18 Severability.** If any provision of this Sublease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Sublease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

**25.19 Terminology.** All personal pronouns used in this Sublease, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of sections are for convenience only, and neither limit nor amplify the provisions of the Sublease itself.

**25.20 Recordation.** A short form memorandum of this Sublease, in the form attached hereto as Exhibit C, shall be recorded at or within five (5) working days after the Commencement Date.

**25.21 Binding Effect.** This Sublease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

**25.22 Estoppel Certificate.** Each of the parties shall at any time and from time to time upon not less than twenty (20) days' prior notice by the other, execute, acknowledge and deliver to such other party a statement in writing certifying that this Sublease is unmodified and is in full force and effect (or if there shall have been modifications that this Sublease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid, and stating whether or not to the best knowledge of the signer of such certificate such other party is in default in performing or observing any provision of this Sublease, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other party may reasonably request, it being intended that any such statement delivered by Lessee may be relied upon by Authority or any successor in interest to Authority or any prospective mortgagee or encumbrancer thereof, and it being further intended that any such statement delivered by Authority may be relied upon by any prospective assignee of Lessee's interest in this Sublease or any prospective mortgagee or encumbrancer thereof. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge.

**25.23 Force Majeure.** In addition to specific provisions of this Sublease, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Sublease shall be extended, where delays or Defaults are due to causes beyond the control or without the fault of the party claiming an extension of time to perform, which may include the following: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather; acts or omissions of the other party; or acts or failures to act of any public or governmental agency or entity (other than the acts or failures to act of Authority, RWS or the City which shall not excuse performance by Authority). Notwithstanding anything to the contrary in this Sublease, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Sublease may also be extended in writing by the mutual agreement of Authority and Lessee.

**25.24 Termination Due to Force Majeure.** If a Force Majeure event shall have occurred that has materially and adversely affected a Party's performance of its obligations hereunder and that event has continued for a period of six (6) consecutive months, and the Parties provided their best efforts to remedy the Force Majeure event during this time, then either Party shall be entitled to terminate this Agreement upon thirty (30) days prior written notice to the other. If at the end of such thirty (30) day period such Force Majeure Event shall still continue, this Agreement shall automatically terminate. Upon such termination for a Force Majeure event, neither Party shall have any liability to the other.

**25.25 Quiet Enjoyment.** Authority does hereby covenant, promise and agree to and with Lessee that Lessee, for so long as Lessee is not in default hereof, shall and may at all times peaceably and quietly have, hold, use, occupy and possess the Site throughout the Term.

**25.26 Authority Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by Authority, the Executive Director of Authority or his or her designee is authorized to act on behalf of Authority unless specifically provided otherwise or the law otherwise requires.


**IN WITNESS WHEREOF**, the parties hereto have caused this Sublease to be executed by their lawfully authorized officers.

**AUTHORITY:**

**RIALTO UTILITY AUTHORITY**, a joint exercise of powers authority

By: 

**ATTEST:**

  
Authority Secretary

**APPROVED AS TO FORM:**  
**ALESHIRE & WYNDER, LLP**

  
Fred Galante, Authority Counsel

**LESSEE:**

**RIALTO BIOENERGY FACILITY LLC**, a Delaware limited liability company

By:   
Arun Sharma, President





## EXHIBIT B

### SITE DESCRIPTION

The land referred to in this Commitment is situated in the City of Rialto, County of San Bernardino, State of California, and is described as follows:

PARCEL 1A OF LOT LINE ADJUSTMENT NO. LLA-222, AS EVIDENCED BY A CERTIFICATE OF COMPLIANCE NO. 222 RECORDED APRIL 23, 2015 INSTRUMENT NO. 2015-0164097 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING PORTIONS OF GOVERNMENT LOTS 3 AND 7 IN THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 5 WEST, S.B.M. ALSO BEING A PORTION OF "RANCHO JURUPA" AS PER MAP RECORDED IN BOOK 1 OF MAPS, PAGE 47 RECORDS OF SAID COUNTY, SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER LINE INTERSECTION OF ACACIA AVENUE AND SANTA ANA AVENUE, SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;

THENCE ALONG THE NORTHERLY LINE OF SAID GOVERNMENT LOT 3 NORTH 89° 45' 33" EAST 290.35 FEET TO THE POINT OF BEGINNING.

THENCE ALONG SAID NORTHERLY LINE NORTH 89° 45' 33" EAST, 20.81 FEET TO A POINT ON THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY DEED RECORDED IN BOOK 7623, PAGE 373 OF OFFICIAL RECORDS OF SAID COUNTY, SAID WESTERLY LINE BEING A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1350.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 37° 13' 10" EAST;

THENCE LEAVING SAID NORTHERLY LINE AND ALONG SAID WESTERLY LINE THE FOLLOWING COURSES:

1. SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 1039.63 FEET THROUGH A CENTRAL ANGLE OF 44° 07' 24";
2. TANGENT TO SAID CURVE, SOUTH 08° 39' 26" EAST, 446.94 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1050.00 FEET;

3. SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 94.70 FEET THROUGH A CENTRAL ANGLE OF 05° 10' 02";

THENCE LEAVING SAID WESTERLY LINE SOUTH 68° 13' 08" WEST, 75.80 FEET;

THENCE NORTH 44° 26' 08" WEST, 194.19 FEET;

THENCE NORTH 42° 24' 56" WEST, 275.06 FEET;

THENCE NORTH 27° 37' 03" EAST, 97.40 FEET;

THENCE NORTH 10° 58' 15" EAST, 59.57 FEET;

THENCE NORTH 02° 29' 19" EAST, 176.91 FEET;

THENCE NORTH 07° 41' 36" EAST, 89.42 FEET;

THENCE NORTH 37° 49' 16" WEST, 98.42 FEET;

THENCE NORTH 31° 08' 44" WEST, 106.94 FEET;

THENCE NORTH 60° 18' 16" EAST, 105.98 FEET;

THENCE NORTH 35° 21' 07" EAST, 16.18 FEET;

THENCE NORTH 14° 41' 52" EAST, 20.17 FEET;

THENCE NORTH 12° 15' 26" WEST, 20.08 FEET;

THENCE NORTH 29° 40' 01" WEST, 200.01 FEET;

THENCE NORTH 07° 47' 20" WEST, 9.44 FEET;

THENCE NORTH 29° 02' 09" WEST, 119.87 FEET;

THENCE NORTH 48° 34' 55" WEST, 182.66 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM SAID LOT 3, 1/2 OF ALL OIL, GAS, PETROLEUM, NAPHTHA AND OTHER HYDROCARBON SUBSTANCES AND MINERALS TOGETHER WITH THE RIGHT OF ENTRY, AS RESERVED IN DEED FROM THE FEDERAL LAND BANK OF BERKELEY TO FRANK L. CALDWELL AND LILLIAN B. CALDWELL, HIS WIFE, AS JOINT TENANTS, RECORDED SEPTEMBER 22, 1941, IN BOOK 1499, PAGE 190, OFFICIAL RECORDS.

EXCEPTING THEREFROM SAID LOT 7, 1/2 OF ALL GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES WITHIN OR UNDERLYING SAID

PROPERTY AS RESERVED BY FRANK C. MORTIMER, BUILDING AND LOAN COMMISSIONER OF THE STATE OF CALIFORNIA, BY DEED RECORDED MARCH 27, 1946, IN BOOK 1875, PAGE 273, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM SAID LAND WITHIN THE JURUPA RANCHO, AN UNDIVIDED ONE HALF INTEREST IN FEE IN AND TO ALL OIL, GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES OR OTHER MINERALS IN THE REAL PROPERTY BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF SAID REAL PROPERTY PROVIDED, HOWEVER, THIS INTEREST SHALL NOT INCLUDE THE RIGHT OF SURFACE ENTRY FOR THE PURPOSE OF EXPLORING, MINING, DRILLING OR IN ANY OTHER WAY EXTRACTING OIL, GAS, MINERALS OR OTHER KINDRED SUBSTANCES FROM SAID REAL PROPERTY, BY DEED RECORDED DECEMBER 23, 1971, IN BOOK 7821, PAGE 894, OFFICIAL RECORDS.

APN: 0258-151-24-0-000

**EXHIBIT C**

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )

Rialto Utility Authority )  
150 South Palm Avenue )  
Rialto, California 92376 )  
Attention: Executive Director )

Exempt From Recording Fee Pursuant to Government Code Section 27383

**MEMORANDUM OF SUBLEASE**

**THIS MEMORANDUM OF SUBLEASE** ("Memorandum") is hereby entered into as of \_\_\_\_\_, 20\_\_ by and between the **RIALTO UTILITY AUTHORITY**, a public body corporate and politic (the "Authority"), and **RIALTO BIOENERGY FACILITY LLC**, a Delaware limited liability company (the "Lessee").

**RECITALS**

A. Authority and Lessee have entered into a "Ground Sublease" dated concurrently herewith for that certain parcel of real property which is legally described in Attachment No. 1 attached hereto and incorporated herein by reference (the "Site"). A copy of the Ground Sublease is available for public inspection at Authority's office at 150 South Palm Avenue, Rialto, California.

The term of the Ground Sublease expires upon the twenty second (22nd) anniversary of the Commencement Date, unless sooner terminated as provided for therein. Lessee shall have two five-year options to extend the term.

B. The Ground Sublease provides (1) that the Facility shall be and remains Lessee's personal property at all times and shall not be a fixture on the Site; (2) the Facility and its components may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Authority, with Authority's fee or leasehold interest in the Site; and (3) Authority shall not cause or permit the Facility or any part thereof to become subject to any lien, encumbrance, pledge, levy or attachment arising by, under or through Authority.

C. The Ground Sublease provides that a short form memorandum of the Ground Sublease shall be executed and recorded in the Official Records of San Bernardino County, California.

**NOW, THEREFORE**, the parties, incorporating the Recitals herein, hereto certify as follows:

Authority, pursuant to the Ground Sublease, hereby subleases the Site to the Lessee upon the terms and conditions provided for therein. This Memorandum of Sublease is not a complete summary of the Ground Sublease, and shall not be used to interpret the provisions of the Ground Sublease.

**AUTHORITY:**

**RIALTO UTILITY AUTHORITY**, a joint exercise of powers authority

By: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Authority Secretary

**APPROVED AS TO FORM:**

**ALESHIRE & WYNDER, LLP**

\_\_\_\_\_  
Fred Galante, Authority Counsel

**LESSEE:**

**RIALTO BIOENERGY FACILITY LLC**, a Delaware limited liability company

By: \_\_\_\_\_

Arun Sharma, President

**ATTACHMENT NO. 1 TO MEMORANDUM OF SUBLEASE**

**LEGAL DESCRIPTION**

The land referred to in this Commitment is situated in the City of Rialto, County of San Bernardino, State of California, and is described as follows:

PARCEL 1A OF LOT LINE ADJUSTMENT NO. LLA-222, AS EVIDENCED BY A CERTIFICATE OF COMPLIANCE NO. 222 RECORDED APRIL 23, 2015 INSTRUMENT NO. 2015-0164097 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING PORTIONS OF GOVERNMENT LOTS 3 AND 7 IN THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 5 WEST, S.B.M. ALSO BEING A PORTION OF "RANCHO JURUPA" AS PER MAP RECORDED IN BOOK 1 OF MAPS, PAGE 47 RECORDS OF SAID COUNTY, SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER LINE INTERSECTION OF ACACIA AVENUE AND SANTA ANA AVENUE, SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;

THENCE ALONG THE NORTHERLY LINE OF SAID GOVERNMENT LOT 3 NORTH 89° 45' 33" EAST 290.35 FEET TO THE POINT OF BEGINNING.

THENCE ALONG SAID NORTHERLY LINE NORTH 89° 45' 33" EAST, 20.81 FEET TO A POINT ON THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY DEED RECORDED IN BOOK 7623, PAGE 373 OF OFFICIAL RECORDS OF SAID COUNTY, SAID WESTERLY LINE BEING A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1350.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 37° 13' 10" EAST;

THENCE LEAVING SAID NORTHERLY LINE AND ALONG SAID WESTERLY LINE THE FOLLOWING COURSES:

1. SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 1039.63 FEET THROUGH A CENTRAL ANGLE OF 44° 07' 24";
2. TANGENT TO SAID CURVE, SOUTH 08° 39' 26" EAST, 446.94 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1050.00 FEET;

3. SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 94.70 FEET THROUGH A CENTRAL ANGLE OF 05° 10' 02";

THENCE LEAVING SAID WESTERLY LINE SOUTH 68° 13' 08" WEST, 75.80 FEET;

THENCE NORTH 44° 26' 08" WEST, 194.19 FEET;

THENCE NORTH 42° 24' 56" WEST, 275.06 FEET;

THENCE NORTH 27° 37' 03" EAST, 97.40 FEET;

THENCE NORTH 10° 58' 15" EAST, 59.57 FEET;

THENCE NORTH 02° 29' 19" EAST, 176.91 FEET;

THENCE NORTH 07° 41' 36" EAST, 89.42 FEET;

THENCE NORTH 37° 49' 16" WEST, 98.42 FEET;

THENCE NORTH 31° 08' 44" WEST, 106.94 FEET;

THENCE NORTH 60° 18' 16" EAST, 105.98 FEET;

THENCE NORTH 35° 21' 07" EAST, 16.18 FEET;

THENCE NORTH 14° 41' 52" EAST, 20.17 FEET;

THENCE NORTH 12° 15' 26" WEST, 20.08 FEET;

THENCE NORTH 29° 40' 01" WEST, 200.01 FEET;

THENCE NORTH 07° 47' 20" WEST, 9.44 FEET;

THENCE NORTH 29° 02' 09" WEST, 119.87 FEET;

THENCE NORTH 48° 34' 55" WEST, 182.66 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM SAID LOT 3, 1/2 OF ALL OIL, GAS, PETROLEUM, NAPHTHA AND OTHER HYDROCARBON SUBSTANCES AND MINERALS TOGETHER WITH THE RIGHT OF ENTRY, AS RESERVED IN DEED FROM THE FEDERAL LAND BANK OF BERKELEY TO FRANK L. CALDWELL AND LILLIAN B. CALDWELL, HIS WIFE, AS JOINT TENANTS, RECORDED SEPTEMBER 22, 1941, IN BOOK 1499, PAGE 190, OFFICIAL RECORDS.



EXCEPTING THEREFROM SAID LOT 7, 1/2 OF ALL GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES WITHIN OR UNDERLYING SAID PROPERTY AS RESERVED BY FRANK C. MORTIMER, BUILDING AND LOAN COMMISSIONER OF THE STATE OF CALIFORNIA, BY DEED RECORDED MARCH 27, 1946, IN BOOK 1875, PAGE 273, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM SAID LAND WITHIN THE JURUPA RANCHO, AN UNDIVIDED ONE HALF INTEREST IN FEE IN AND TO ALL OIL, GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES OR OTHER MINERALS IN THE REAL PROPERTY BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF SAID REAL PROPERTY PROVIDED, HOWEVER, THIS INTEREST SHALL NOT INCLUDE THE RIGHT OF SURFACE ENTRY FOR THE PURPOSE OF EXPLORING, MINING, DRILLING OR IN ANY OTHER WAY EXTRACTING OIL, GAS, MINERALS OR OTHER KINDRED SUBSTANCES FROM SAID REAL PROPERTY, BY DEED RECORDED DECEMBER 23, 1971, IN BOOK 7821, PAGE 894, OFFICIAL RECORDS.

APN: 0258-151-24-0-000

## EXHIBIT D

### CONTRACT ADMINISTRATION MEMORANDUM WITH RWS

#### CONTRACT ADMINISTRATION MEMORANDUM No. 9 REGARDING CONCESSION AGREEMENT SERVICE CONTRACT FOR THE DESIGN, CONSTRUCTION AND FINANCING OF UPGRADES AND FOR THE OPERATION OF THE RIALTO UTILITY AUTHORITY WASTEWATER FACILITY AND WATER FACILITY

This Contract Administration Memorandum No. 9 regarding the Concession Agreement: Service Contract for the Design, Construction and Financing of Upgrades and for the Operation of the Rialto Utility Authority Wastewater Facility and Water Facility (this "Memorandum") is entered into and effective as of April 28, 2015 by and between:

- (a) Rialto Water Services, LLC, a Delaware limited liability company (the "Concessionaire");
- (b) the Rialto Utility Authority, a California joint powers authority (the "Authority"); and
- (c) the City of Rialto, a municipal corporation of the State of California (the "City") and, together with the Concessionaire and the Authority, the "Parties".

#### BACKGROUND:

A. The Concessionaire, as successor in interest to Rialto Water Services, LP, a Delaware limited partnership, the Authority and the City are parties to that certain Concessionaire Agreement: Service Contract for the Design, Construction and Financing of Upgrades and for the Operation of the Rialto Utility Authority Wastewater Facility and Water Facility, entered into and effective as of March 27, 2012 (the "Agreement"). Capitalized terms used but not defined herein shall have the respective meanings set forth in the Agreement. Unless otherwise indicated, all section and schedule references are to the Sections and Schedules of the Agreement.

B. Pursuant to Section 25.6 of the Agreement, the Concessionaire, the Authority and the City entered into the following Contract Administration Memorandums ("CAMs") as set forth in the attached Schedule A.

C. The City of Rialto and the Rialto Utility Authority intend to enter into various agreements with Rialto Bioenergy Facility LLC ("RBF") related to a portion of the "EnerTech Site" as defined in Schedule A.2 of the Agreement.

D. In or about 2012, the assets of EnerTech, including those located on the EnerTech Site, were assigned for the benefit of EnerTech creditors, and RBF subsequently purchased the assets on the EnerTech Site following such assignment.

E. In accordance with the Agreement, the Concessionaire has the non-exclusive right of access with respect to the EnerTech Site as set forth in Section 3.2 of the Agreement, although the Concessionaire's rights and obligations with respect to the EnerTech Site were generally limited to the outfall pipe that traverses the EnerTech Site and then discharges to the Santa Ana River.

F. The City represented in Section 3.2(g)(vi) of the Agreement that it would not grant a leasehold interest or sub-leasehold interest with respect to the Wastewater Facility Site (inclusive of the EnerTech Site), without the consent of the Concessionaire. Prior to considering any leasehold or sub-leasehold agreements, the City and Authority shall provide written notice of the proposed lease to Concessionaire, including the following information:

- (i) The identity of the proposed lessee or sub-lessee;
- (ii) The nature of the access to be provided;
- (iii) A copy of the proposed lease agreement; and
- (iv) Other information that the Concessionaire requests.

G. The Concessionaire shall then advise the City and Authority whether the proposed lease would or is reasonably likely to violate the Concessionaire's right of non-interference as set forth in the first sentence of Section 3.2(g).

H. The Concessionaire, the Authority, and the City have determined that the meaning, interpretation, or application of certain other provisions of the Agreement shall be documented in this subsequent Memorandum.

NOW, THEREFORE, the following reflects the resolution reached by the Concessionaire, the Authority, and the City:

1. Concessionaire's Consent to Sub-Lease Agreement and Related Agreements with RBF. In accordance with the Agreement, the City and Authority submitted the identity of the proposed sub-lessee (RBF), a copy of the proposed Ground Sub-Lease Agreement, a copy of the proposed Facility Operation Agreement, a copy of the proposed Side Letter Access Agreement, a copy of the proposed Recognition and Attornment Agreement, a copy of the proposed Lot Line Adjustment and other documentation (collectively the "Sub-Lease Agreements") describing the terms of lease and operation of RBF upon a portion of the EnerTech Site as described in Schedule A.2 of the Agreement. The Site, as described in the Sub-Lease Agreements, differs from the EnerTech Site, as described in the Agreement, by

completely removing the outfall pipe, thereby reducing the Site area from 6.4 acres to 5.7 acres. On July 13, 2015 the City recorded Quitclaim Deeds (Document No.'s 2015-0297256 and 2015-0297257 affirming the Lot Line Adjustment pursuant to Certificate of Compliance No. 222, and locating the outfall pipe entirely within the Wastewater Treatment Plant.

While the lot line adjustment removed the outfall pipe, a 24" storm drain pipe traverses the southwest corner of the Site. The storm drain is an integral facility for the operation of the Wastewater Treatment Plant, and RBF shall not excavate or install any improvements within the Restricted Area (as defined in the Ground Sub-Lease Agreement or otherwise inhibit the ability of RWS to operate, maintain, repair or replace this storm drain. This limitation shall be incorporated in the Ground Sub-Lease Agreement and Side Letter Access Agreement.

The Concessionaire reviewed the documentation and determines that the proposed lease and related agreements do not violate the Concessionaire's right of non-interference as set forth in Section 3.2(g) of the Agreement. Concessionaire has further reviewed the Lot Line Adjustment and consents to the reconfiguration of the EnerTech Site, as described therein.

2. Rents Considered Wastewater Facility User Fees for Purposes of Agreement. In accordance with Section 5.8(a)(i)(D) of the Agreement, the rents paid by RBF to the Authority under the Ground Sub-Lease Agreement shall be considered other income or revenue derived by, or on behalf of, the Authority from the use or operation of the Wastewater Facility. The rents shall be deposited with the Trustee pursuant to the Trust Agreement dated November 29, 2012 by and among Rialto Water Services LLC, the Rialto Utility Authority, the City of Rialto, and Union Bank and distributed according to its terms.

3. All Other Payments to be Retained by City. The Facility Operation Agreement entitles the City to a Host Fee as mitigation for the burdens imposed on City infrastructure and a potential payment for the lease or purchase of the City's ownership interest in the Santa Ana Regional Interceptor line ("SARI Line"). These revenues derive from activities that are either (a) unrelated to the use or operation of the Wastewater Facility, (b) a payment to the City to mitigate for service or infrastructure burdens imposed, or (c) a payment for a City asset that is not part of the Wastewater Facility and is the sole and separate property of the City and not the Authority. As such, all revenues from the Facility Operation Agreement shall be retained by and be the sole property of the City.

4. Miscellaneous

a. As of the date first set forth above, this Memorandum supersedes any prior resolution, agreement or understanding, written or oral, concerning the subject matter of this Memorandum, and any such prior resolutions, agreements and understandings hereby cease to have any force or effect and may not be used by any party or admissible in any proceeding to construe, interpret or vary from the Agreement or this Memorandum.

b. Except as specifically set forth herein and in the CAMS entered into as set forth in the attached Schedule A, the Agreement remains unmodified and in full force and effect.

c. If any provision of this Memorandum is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way. If, however, the absence of the eliminated provision is contrary to the initial intention of the parties hereto, the parties hereto resolve to negotiate a mutually acceptable substitute provision.

d. This Memorandum is made with reference to, and shall be governed by and construed in accordance with the laws of the State of California, without regard to conflict of laws provisions.

e. This Memorandum may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

[Signature page follows.]

IN WITNESS WHEREOF, the parties to this Memorandum, intending to be legally bound, have executed this Memorandum as of the date first written above.

RIALTO WATER SERVICES, LLC

By: \_\_\_\_\_  
Name:  
Its: General Manager

**RIALTO UTILITY AUTHORITY**

**By:** \_\_\_\_\_

**Name:** Michael E. Story

**Its:** Executive Director

**CITY OF RIALTO**

**By:** \_\_\_\_\_

**Name:** Robert Eisenbeisz

**Its:** Director of Public Works

**APPROVED AS TO FORM AND LEGALITY**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**SCHEDULE A**  
**REGISTER OF CONTRACT ADMINISTRATIVE MEMORANDUMS**

**REGARDING**

**CONCESSION AGREEMENT**  
**SERVICE CONTRACT FOR THE DESIGN, CONSTRUCTION AND FINANCING OF**  
**UPGRADES AND FOR THE OPERATION OF THE RIALTO UTILITY AUTHORITY**  
**WASTEWATER FACILITY AND WATER FACILITY**

CAM No. 1 entered into and effective as of September 14, 2012 pursuant to the Agreement to address certain matters of interpretation and application arising during the course of the performance of their obligations under the Agreement.

CAM No. 2 entered into and effective as of November 29, 2012 pursuant to the Agreement to evidence the resolution reached by such parties as to matters of interpretation and application with respect to the Agreement and the form documents attached as schedules to the Agreement.

CAM No. 3 entered into and effective as of November 29, 2012 pursuant to the Agreement to evidence the resolution reached by such parties as to certain adjustments to the Capital Charges attached as schedules to the Agreement.

CAM No. 4 entered into and effective as of November 1, 2013 pursuant to the Agreement to clarify the nature of the professional liability or errors and omissions insurance required.

CAM No. 5 entered into and effective as of June 30, 2014 pursuant to the Agreement to document certain mutually agreeable adjustments to Schedules F and F-1 to the Agreement (as previously modified by CAM No.3) and to add a new Schedule F-2 to the Agreement specifying the annual Capital Charge Limits over the entire Term of the Agreement.

CAM No. 6 entered into and effective as of April 16, 2015 pursuant to the Agreement to correct the calculation of the CPI Change and the ECI Change components of the Wastewater Adjustment Escalator and the Water Adjustment Escalator.

CAM No. 7 entered into and effective as of April 28, 2015 pursuant to the Agreement to document a mutually agreeable project delivery method for Water Facility Improvements

CAM No. 8 entered into and effective as of June \_\_\_\_, 2015 pursuant to the Agreement to document Concessionaire's Consent to the City and Authority's Agreement with AWR to provide a service line insurance program.



**EXHIBIT E**

**CITY CONSENT AGREEMENT**

**Recording Requested By and  
When Recorded Mail To:**

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

**RECOGNITION AND ATTORNMENT AGREEMENT**

This RECOGNITION AND ATTORNMENT AGREEMENT (“Agreement”) is made on \_\_\_\_\_, 2016, by and among the CITY OF RIALTO, a municipal corporation (“Master Landlord”), RIALTO UTILITY AUTHORITY, a joint powers authority duly organized under the laws of the State of California (“Landlord”), and RIALTO BIOENERGY FACILITY LLC, a Delaware limited liability company (“Tenant”), with reference to the facts set forth in the Recitals below:

**1.1 RECITALS**

A. Master Landlord is the owner in fee of certain real property, as such property is more particularly described in Exhibit “A” attached hereto and incorporated herein by reference (“Property”).

B. Master Landlord leased the Property to Landlord pursuant to a Lease Agreement dated May 1, 2001 (the “Master Lease”). Master Landlord and Landlord agree and acknowledge that the Master Lease has not been terminated and is still in full effect.

C. Landlord and Tenant intend to enter into a Ground Sublease (“Sublease”), dated April 1, 2016, for the use of a certain portion of the Property as more particularly described in Exhibit “B” attached hereto and incorporated herein (the “Site”) for the installation, construction, maintenance, and operation of an organics recycling facility (“Facility”). Master Landlord hereby acknowledges having received and reviewed a copy of the Sublease.

D. The parties hereto desire to assure to Tenant possession of the Site for the entire term of the Sublease even if Landlord defaults under the Master Lease or if the Master Lease terminates prior to expiration of the Sublease, and to provide Tenant with any assistance Tenant may need in its proposed use of the Site as contemplated herein and under the Sublease, on all of the terms and conditions set forth below.

## 1.2 AGREEMENT

NOW THEREFORE, in consideration of the above Recitals, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are herein incorporated into this Agreement.
2. Master Landlord's Consent to the Sublease. Notwithstanding anything to the contrary in the Master Lease or any other documents encumbering the Site, Master Landlord hereby consents to Landlord and Tenant entering into the Sublease and Tenant's installation, operation, and maintenance of Tenant's proposed Facility on the Site.
3. Recognition and Attornment. If Landlord defaults under the Master Lease and all applicable cure periods have expired, Master Landlord shall notify Tenant of such default. Upon receipt of such notice from Master Landlord, Tenant shall attorn to Master Landlord and perform all of Tenant's obligations under the Sublease directly to Master Landlord as if Master Landlord were the original landlord under the Sublease. If and so long as Tenant is not in substantial and material default under the Sublease (after receipt of written notice and the expiration of the required cure period), Master Landlord shall continue to recognize the estate of Tenant created under the Sublease and the Sublease shall continue with the same force and effect as if Master Landlord and Tenant had entered into a lease on the same terms and conditions as those contained in the Sublease.
4. Tenant's Liability to Landlord. From the date Tenant attorns to Master Landlord in accordance with Section 3 of this Agreement, Tenant shall not be further liable to Landlord for performance under the Sublease, and Landlord shall return to Tenant, immediately upon Tenant's demand, any unearned (i.e., a prorated) portion of any prepaid annual rent and any other unearned sums which Tenant prepaid to Landlord under the provisions of the Sublease. Tenant shall pay any such sums that are paid to it by Landlord to Master Landlord.
5. Expiration of Master Lease. In the event the Master Lease is terminated pursuant to the terms thereof, or due to the natural expiration of the Master Lease, provided Tenant is not in substantial and material default of the Sublease (after receipt of written notice and the expiration of the required cure period), Master Landlord shall succeed to the interest of Landlord under the Sublease and the Sublease shall remain in full force and effect for the full term thereof, including extensions. Tenant shall attorn to Master Landlord and perform all of Tenant's obligations under the Sublease directly to Master Landlord as if Master Landlord were the original landlord under the Sublease.
6. Master Lease. Master Landlord and Landlord represent and warrant to Tenant that the Master Lease is in full force and effect, all obligations of the parties to the Master Lease have been satisfied, and Master Landlord has not given or received a notice of default pursuant to the Master Lease. In addition, Master Landlord and Landlord warrant and covenant that they will not enter into any modification of the Master Lease, which would prevent Tenant from occupying and/or using the Property as provided in the Sublease. In addition, Master Landlord and Landlord represent and warrant that both (1) the Lease dated March 1, 2007 between

Redevelopment Agency of the City of Rialto, as lessor, and Rialto Utility Authority, as lessee; and (2) the Lease dated March 1, 2007 between Redevelopment Agency of the City of Rialto, as lessor, and Enertech Environmental California, LLC, as lessee, are null and void and no longer in effect.

7. Facility.

a. Notwithstanding anything in the Master Lease, upon the expiration or termination of the Master Lease, title to any and all improvements and structures on the Site (including without limitation, the Facility) which are owned by Tenant shall remain fully vested in Tenant, and Master Landlord shall have no ownership or other interest therein.

b. Master Landlord and Landlord waives any lien it may have, by operation of law or otherwise, in and to the Facility or to any personal property of Tenant. The foregoing waiver shall not apply to any lien on the Facility which Master Landlord may otherwise have by operation of law, as successor to Landlord under the Sublease, arising from Tenant's failure to pay any rent due pursuant to the Sublease after the receipt of notice and the expiration of the cure period provided under the Sublease. Master Landlord further agrees to notify any purchaser of the Property, and any subsequent mortgagee or other encumbrance holder, of the existence of the foregoing waiver of Master Landlord's lien, which shall be binding upon the executors, administrators, successors and transferees of Master Landlord, and shall inure to the benefit of the successors and assigns of Tenant and any of Tenant's lenders. Master Landlord consents to Tenant placing a security interest in the Facility and waives all right of distraint or seizure for rent and all claims and demands of every kind against the Facility, such waiver to continue so long as any sum remains owing from Tenant to any such lender. Master Landlord agrees that the Facility shall not be subject to distraint or execution by, or to any claim of, Master Landlord.

8. Condemnation. Should title or possession of all of the Property or the Site be taken in condemnation proceedings by a government agency, governmental body or private party under the exercise of the right of eminent domain, or should a partial taking render the remaining portion of the Site wholly unsuitable for Tenant's use, then the Sublease and this Agreement shall terminate upon such vesting of title or taking of possession. In the event of condemnation of only a portion of the Site, Tenant shall have the right to terminate this Agreement and the Sublease upon written notice to Landlord and Master Landlord. Also, Tenant or Tenant's designee or assignee shall have the right to participate in any settlement discussions involving Master Landlord, Landlord and the condemning authority. Master Landlord and Landlord shall receive all condemnation payments except that Tenant is entitled to any amount awarded to compensate for: 1) the removal or relocation of the Facility; 2) loss or damage to any portion of the Facility which Tenant cannot remove or is required not to remove; and 3) loss of use or value of the Sublease.

9. Miscellaneous.

a. No Effect on Master Lease. Nothing in this Agreement shall be deemed to change in any manner the provisions of the Master Lease as between Master Landlord and Landlord or to waive any right that Master Landlord may now have or later acquire against Landlord by reason of the Master Lease. Master Landlord and Landlord expressly agree that any

provision in the Master Lease inconsistent with any of the terms and conditions of the Sublease, shall not apply to the Sublease, and shall have no force and effect between Tenant and Master Landlord and/or Landlord. In the event there is a conflict between the Master Lease and the Sublease, as between Master Landlord and Tenant, or Landlord and Tenant, the Sublease shall control.

b. Notices. Any notice, demand, request, consent, approval, or communication which any party is required to give to any other party hereunder shall be in writing and either sent by certified United States mail or via recognized overnight courier service, addressed to the other party at the address set forth below:

Master Landlord: City of Rialto  
150 S. Palm Avenue  
Rialto, California 92376  
Attention: City Administrator

Landlord: Rialto Utility Authority  
150 S. Palm Avenue  
Rialto, California 92376  
Attention: Executive Director

Tenant: Rialto Bioenergy Facility LLC  
5780 Fleet Street, Suite 310  
Carlsbad, California 92008  
Attention: President

Any party may change its address by notifying the other parties of the change of address. Notices shall be deemed communicated only upon receipt.

c. Successors. This Agreement shall be binding upon, and shall insure to the benefit of, the parties and their respective successors and assigns.

d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

e. Conflict. In the event of any conflict between the provisions of this Agreement and the provisions of the Sublease, the provisions of this Agreement shall control.

f. Recording. This Agreement shall be recorded upon the request of any party hereto. In addition, Master Landlord and Landlord shall execute, acknowledge, and deliver a short form memorandum of the Master Lease for recording purposes upon the request of any party hereto.

[Signatures on the following page]

EXHIBIT "A"  
PROPERTY LEGAL DESCRIPTION

The Rialto Wastewater Treatment Plant consists of the following parcels:

Parcel No. 1

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 4 OF PARCEL MAP NO. 11516 IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON MAP RECORDED IN BOOK 128 PAGE 60 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN # 0258-141-15 (Approximately 7.93 acres)

Parcel No. 2

PARCEL 1A OF LOT LINE ADJUSTMENT NO. LLA-222, AS EVIDENCED BY A CERTIFICATE OF COMPLIANCE NO. 222 RECORDED APRIL 23, 2015 AS INSTRUMENT NO. 2015-0164097 OF OFFICAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING PORTIONS OF GOVERNMENT LOTS 3 AND 7 IN THE SOUTHWEST ¼ OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 5 WEST, S.B.M. ALSO BEING A PORTION OF "RANCHO JURUPA" AS PER MAP RECORDED IN BOOK 1 OF MAPS PAGE 47 RECORDS OF SAID COUNTY, SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF ACACIA AVENUE AND SANTA ANA AVENUE, SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;

THENCE ALONG THE NORTHERLY LINE OF SAID GOVERNMENT LOT 3 NORTH 89°45'33" EAST 290.35 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHERLY LINE NORTH 89°45'33" EAST, 20.81 FEET TO A POINT ON THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY

DEED RECORDED IN BOOK 7623 AT PAGE 373 OF OFFICIAL RECORDS OF SAID COUNTY, SAID WESTERLY LINE BEING A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1350.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 37°13'10" EAST;

THENCE LEAVING SAID NORTHERLY LINE AND ALONG SAID WESTERLY LINE THE FOLLOWING COURSES:

1. SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 1039.63 FEET THROUGH A CENTRAL ANGLE OF 44°07'24";
2. TANGENT TO SAID CURVE, SOUTH 08°39'26" EAST, 446.94 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1050.00 FEET;
3. SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 94.70 FEET THROUGH A CENTRAL ANGLE OF 05°10'02";

THENCE LEAVING SAID WESTERLY LINE SOUTH 68°13'08" WEST, 75.80 FEET;

THENCE NORTH 44°26'08" WEST, 194.19 FEET;

THENCE NORTH 42°24'56" WEST, 275.06 FEET;

THENCE NORTH 27°37'03" EAST, 97.40 FEET;

THENCE NORTH 10°58'15" EAST, 59.37 FEET;

THENCE NORTH 02°29'19" EAST, 176.91 FEET;

THENCE NORTH 07°41'36" EAST, 89.42 FEET;

THENCE NORTH 37°49'16" WEST, 98.42 FEET;

THENCE NORTH 31°08'44" WEST, 106.94 FEET;

THENCE NORTH 60°18'16" EAST, 105.98 FEET;

THENCE NORTH 35°21'07" EAST, 16.18 FEET;

THENCE NORTH 14°41'52" EAST, 20.17 FEET;

THENCE NORTH 12°15'26" WEST, 20.08 FEET;

THENCE NORTH 29°40'01" WEST, 200.01 FEET;

THENCE NORTH 07°47'20" WEST, 9.44 FEET;

THENCE NORTH 29°02'09" WEST, 119.87 FEET;

THENCE NORTH 48°34'55" WEST, 182.66 FEET TO THE POINT OF BEGINNING.

APN # 0258-151-24 (Approximately 5.67 acres)

Parcel No. 3

PARCEL 2A OF LOT LINE ADJUSTMENT NO. LLA-222, AS EVIDENCED BY A CERTIFICATE OF COMPLIANCE NO. 222 RECORDED APRIL 23, 2015 AS INSTRUMENT NO. 2015-0164097 OF OFFICAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING PORTIONS OF GOVERNMENT LOTS 3 AND 7 IN THE SOUTHWEST ¼ OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 5 WEST, S.B.M., ALSO BEING A PROTION OF "RANCH JURUPA" AS PER MAP RECORDED IN BOOK 1 OF MAPS PAGE 47 RECORDS OF SAID COUNTY, SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTERLINE OF ACACIA AVENUE AND SANTA ANA AVENUE, SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;

THENCE ALONG SAID NORTHERLY LINE OF SAID LOT 3; NORTH 89°45'33" EAST, 290.35 FEET;

THENCE LEAVING SAID NORTHERLY LINE SOUTH 48°34'55" EAST, 182.66 FEET;

THENCE SOUTH 29°02'09" EAST, 119.87 FEET;

THENCE SOUTH 07°47'20" EAST, 9.44 FEET;

THENCE SOUTH 29°40'01" EAST, 200.01 FEET;

THENCE SOUTH 12°15'26" EAST, 20.08 FEET;

THENCE SOUTH 14°41'52" WEST, 20.17 FEET;

THENCE SOUTH 35°21'07" WEST, 16.18 FEET;

THENCE SOUTH 60°18'16" WEST, 105.98 FEET;

THENCE SOUTH 31°08'44" EAST, 106.94 FEET;

THENCE SOUTH 37°49'16" EAST, 98.42 FEET;

THENCE SOUTH 07°41'36" WEST, 89.42 FEET;

THENCE SOUTH 02°29'19" WEST, 176.91 FEET;

THENCE SOUTH 10°58'15" WEST, 59.37 FEET;

THENCE SOUTH 27°37'03" WEST, 97.40 FEET;

THENCE SOUTH 42°24'56" EAST, 275.06 FEET;

THENCE SOUTH 44°26'08" EAST, 194.19 FEET;

THENCE NORTH 68°13'08" EAST, 75.80 FEET TO A POINT ON THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY DEED RECORDED IN BOOK 7623 AT PAGE 373 OF OFFICIAL RECORDS OF SAID COUNTY, SAID WESTERLY LINE BEING A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1050.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 76°10'32" WEST;

THENCE SOUTHEASTERLY ALONG SAID WESTERLY LINE AN ARC DISTANCE OF 186.27 FEET THROUGH A CENTRAL ANGLE OF 10°09'55";

THENCE CONTINUING ALONG SAID WESTERLY LINE TANGENT TO SAID CURVE, SOUTH 23°59'23" EAST, 27.49 FEET TO THE NORTHERLY LINE OF TRACT NO. 1 OF THE CUTTLE TRACT AS PER PLAT RECORDED IN BOOK 16 AT PAGE 23 OF MAPS, RECORDS OF SAID COUNTY;

THENCE ALONG SAID NORTHERLY LINE SOUTH 69°03'40" WEST, 1043.61 FEET;

THENCE ALONG THE WESTERLY LINE OF SAID GOVERNMENT LOTS 3 AND 7, NORTH 00°20'19" WEST, 1979.33 FEET TO THE POINT OF BEGINNING.

APN # 0258-151-25 (Approximately 26.34 acres)

Parcel No. 4

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING PORTIONS OF GOVERNMENT LOTS 3 AND 7 IN THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 5 WEST, S.B.M., ALSO BEING A PORTION OF "RANCHO JURUPA" AS PER MAP RECORDED IN BOOK 1 OF MAPS PAGE 47 RECORDS OF SAID COUNTY, SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF ACACIA AVENUE AND SANTA ANA AVENUE, SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;



THENCE ALONG THE NORTHERLY LINE OF SAID GOVERNMENT LOT 3, NORTH 89°45'33" EAST, 466.90 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHERLY LINE NORTH 89°45'33" EAST, 559.64 FEET TO THE NORTHERLY PROLONGATION OF THE EAST LINE OF THE WEST 25 ACRES OF SAID LOT 7;

THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°20'19" EAST, 1464.79 FEET ALONG SAID PROLONGATION AND SAID EAST LINE AND THE SOUTHERLY PROLONGATION THEREOF TO A POINT OF CUSP ON A CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 950.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 71°12'06" WEST, SAID CURVE BEING THE EASTERLY LINE OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY DEED RECORDED IN BOOK 7623 AT PAGE 373 OF OFFICIAL RECORDS OF SAID COUNTY;

THENCE LEAVING SAID SOUTHERLY PROLONGATION, NORTHERLY ALONG SAID EASTERLY LINE AND SAID CURVE AN ARC DISTANCE OF 168.15 FEET THROUGH A CENTRAL ANGLE OF 10°08'28"

THENCE CONTINUING ALONG SAID EASTERLY LINE, TANGENT TO SAID CURVE NORTH 08°39'26" WEST, 446.94 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1450.00 FEET;

THENCE CONTINUING ALONG SAID EASTERLY LINE, NORTHWESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 992.87 FEET THROUGH A CENTRAL ANGLE OF 39°13'57" TO THE TRUE POINT OF BEGINNING.

APN # 0258-151-23 (Approximately 6.09 acres)

EXHIBIT "B"  
SITE LEGAL DESCRIPTION

The land referred to in this Commitment is situated in the City of Rialto, County of San Bernardino, State of California, and is described as follows:

PARCEL 1A OF LOT LINE ADJUSTMENT NO. LLA-222, AS EVIDENCED BY A CERTIFICATE OF COMPLIANCE NO. 222 RECORDED APRIL 23, 2015 INSTRUMENT NO. 2015-0164097 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING PORTIONS OF GOVERNMENT LOTS 3 AND 7 IN THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 5 WEST, S.B.M. ALSO BEING A PORTION OF "RANCHO JURUPA" AS PER MAP RECORDED IN BOOK 1 OF MAPS, PAGE 47 RECORDS OF SAID COUNTY, SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER LINE INTERSECTION OF ACACIA AVENUE AND SANTA ANA AVENUE, SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;

THENCE ALONG THE NORTHERLY LINE OF SAID GOVERNMENT LOT 3 NORTH 89° 45' 33" EAST 290.35 FEET TO THE POINT OF BEGINNING.

THENCE ALONG SAID NORTHERLY LINE NORTH 89° 45' 33" EAST, 20.81 FEET TO A POINT ON THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY DEED RECORDED IN BOOK 7623, PAGE 373 OF OFFICIAL RECORDS OF SAID COUNTY, SAID WESTERLY LINE BEING A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1350.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 37° 13' 10" EAST;

THENCE LEAVING SAID NORTHERLY LINE AND ALONG SAID WESTERLY LINE THE FOLLOWING COURSES:

1. SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 1039.63 FEET THROUGH A CENTRAL ANGLE OF 44° 07' 24";
2. TANGENT TO SAID CURVE, SOUTH 08° 39' 26" EAST, 446.94 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1050.00 FEET;
3. SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 94.70 FEET THROUGH A CENTRAL ANGLE OF 05° 10' 02";

THENCE LEAVING SAID WESTERLY LINE SOUTH 68° 13' 08" WEST, 75.80 FEET;  
THENCE NORTH 44° 26' 08" WEST, 194.19 FEET;  
THENCE NORTH 42° 24' 56" WEST, 275.06 FEET;  
THENCE NORTH 27° 37' 03" EAST, 97.40 FEET;  
THENCE NORTH 10° 58' 15" EAST, 59.57 FEET;  
THENCE NORTH 02° 29' 19" EAST, 176.91 FEET;  
THENCE NORTH 07° 41' 36" EAST, 89.42 FEET;  
THENCE NORTH 37° 49' 16" WEST, 98.42 FEET;  
THENCE NORTH 31° 08' 44" WEST, 106.94 FEET;  
THENCE NORTH 60° 18' 16" EAST, 105.98 FEET;  
THENCE NORTH 35° 21' 07" EAST, 16.18 FEET;  
THENCE NORTH 14° 41' 52" EAST, 20.17 FEET;  
THENCE NORTH 12° 15' 26" WEST, 20.08 FEET;  
THENCE NORTH 29° 40' 01" WEST, 200.01 FEET;  
THENCE NORTH 07° 47' 20" WEST, 9.44 FEET;  
THENCE NORTH 29° 02' 09" WEST, 119.87 FEET;  
THENCE NORTH 48° 34' 55" WEST, 182.66 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM SAID LOT 3, 1/2 OF ALL OIL, GAS, PETROLEUM, NAPHTHA AND OTHER HYDROCARBON SUBSTANCES AND MINERALS TOGETHER WITH THE RIGHT OF ENTRY, AS RESERVED IN DEED FROM THE FEDERAL LAND BANK OF BERKELEY TO FRANK L. CALDWELL AND LILLIAN B. CALDWELL, HIS WIFE, AS JOINT TENANTS, RECORDED SEPTEMBER 22, 1941, IN [BOOK 1499, PAGE 190](#), OFFICIAL RECORDS.

EXCEPTING THEREFROM SAID LOT 7, 1/2 OF ALL GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES WITHIN OR UNDERLYING SAID PROPERTY AS RESERVED BY FRANK C. MORTIMER, BUILDING AND LOAN

COMMISSIONER OF THE STATE OF CALIFORNIA, BY DEED RECORDED MARCH 27, 1946, IN [BOOK 1875, PAGE 273](#), OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM SAID LAND WITHIN THE JURUPA RANCHO, AN UNDIVIDED ONE HALF INTEREST IN FEE IN AND TO ALL OIL, GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES OR OTHER MINERALS IN THE REAL PROPERTY BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF SAID REAL PROPERTY PROVIDED, HOWEVER, THIS INTEREST SHALL NOT INCLUDE THE RIGHT OF SURFACE ENTRY FOR THE PURPOSE OF EXPLORING, MINING, DRILLING OR IN ANY OTHER WAY EXTRACTING OIL, GAS, MINERALS OR OTHER KINDRED SUBSTANCES FROM SAID REAL PROPERTY, BY DEED RECORDED DECEMBER 23, 1971, IN [BOOK 7821, PAGE 894](#), OFFICIAL RECORDS.

APN: 0258-151-24-0-000

## EXHIBIT F

### SIDE LETTER ACCESS AGREEMENT

This SIDE LETTER ACCESS AGREEMENT (“Agreement”) is made effective April 1, 2016 (“Effective Date”), by and between Rialto Bioenergy Facility, LLC, a Delaware limited liability company (“Lessee”), and Rialto Water Services, LLC (“RWS”), a Delaware limited liability company. Lessee and RWS may be referred to herein as “Party”, and collectively as “Parties”, and this Agreement is entered into with regard to the following:

#### RECITALS

- A. WHEREAS, City of Rialto (“City”) owns certain real property (the “Property”) located in the City of Rialto, California, and more particularly described in Exhibit “A” attached hereto and incorporated herein by reference;
- B. WHEREAS, under a Lease Agreement dated May 1, 2001, City leased the Property to Rialto Utility Authority (“Landlord”);
- C. WHEREAS, RWS, City and Landlord entered into a Concession Agreement dated March 27, 2012 (as such may be amended or modified, the “Concession Agreement”) and an Access Agreement dated November 29, 2012 (as such may be amended, modified or extended, the “Access Agreement”, and collectively with the Concession Agreement, the “RWS Agreements”);
- D. WHEREAS, concurrently with this Agreement, Landlord and Lessee are entering into a Ground Sub-lease Agreement dated the same date as this Agreement (as such may be amended, modified or extended, “Sublease”), granting to Lessee the right to lease a portion of the Property (the “Site”), which Site is more particularly described in Exhibit “B” attached hereto and incorporated herein by this reference;
- E. WHEREAS, among other things, the Lease permits Lessee to install, construct, maintain, operate and control a bioenergy facility, which is partially composed of personal property assets purchased by Lessee from a previous owner (the “Facility”) on the Site;
- F. WHEREAS, the RWS Agreements provide RWS with certain rights in and access to the Site;
- G. WHEREAS, the Parties desire to set forth, during the term of the Sublease (the “Term”), certain limitations on RWS’s rights in and access to the Site as contemplated in the terms and conditions set forth below;
- I. WHEREAS the Parties hereto desire to assure to Lessee possession and recognize lessee’s quiet enjoyment of the Site for the entire term of the Lease;
- J. WHEREAS, Lessee would not enter into the Sublease without the agreements of RWS set forth in this Agreement; and

K. WHEREAS, RWS sees it as beneficial having Lessee enter into the Sublease.

NOW THEREFORE, in consideration of the above Recitals, it is hereby agreed that RWS' access to the Property shall be subject to the following conditions and is limited as follows:

### AGREEMENT

1. **Incorporation of Recitals.** The Recitals set forth above are herein incorporated into this Agreement.
2. **RWS' Consent to the Lease.** Notwithstanding anything to the contrary in the Concession Agreement or Access Agreement, or any other documents encumbering the Site, RWS hereby consents to Landlord and Lessee entering into the Lease and Lessee's installation, operation, and maintenance of Lessee's Facility on the Site.
3. **Definitions.** Definitions may include the following definitions as well as any terms that may be defined throughout the Agreement.

"Dispute Resolution Procedures" means the procedures defined in Section 5 of this Agreement.

"Facility" means the Lessee's biosolids recycling facility, and any expansion thereof, which is owned, operated, and maintained by Lessee.

"Hazardous Materials" means any substance, material, or waste (other than biosolids) which is or becomes regulated by any local governmental authority, the County of San Bernardino, the State of California, regional governmental authority or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (x) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq.

“Notice” means the process of notifying the other party to the Agreement under Section 8(a).

“Property” means the property to be leased by Lessee and is identified with a specific real property description and/or map attached as Exhibit A to the Agreement.

“Restricted Access Area” means the area depicted in Exhibit C.

“Services” or “Service” shall have the meaning ascribed to such term in the Concession Agreement.

“Stormwater Pipes” shall mean the area depicted as Restricted Access Area in Exhibit A.

“Term” shall mean the sublease term of the Ground Sublease between the Authority and Lessee.

#### 4. Nonexclusive Right of Access to Restricted Access Area

a) Generally. RWS acknowledges that the Authority has subleased the Property to the Lessee for (i) Lessee’s exclusive use as to all areas except for the Restricted Access Area and (ii) for Lessee’s non-exclusive use of the Restricted Access Area in common with the Authority, its assigns, agents and concessionaires, including RWS. RWS acknowledges that it has consented to such Sublease and notified RWS’s noteholders to such Sublease, subject to the retained non-exclusive access and use rights of the Authority and its agents, assigns and concessionaires, including RWS.

With respect to the Restricted Access Area of the Property, RWS agrees that, during the Term, RWS will not (i) authorize any person or entity, or assign or transfer any right to any person or entity, to enter onto the Property other than the Restricted Access Areas, as may be applicable; (ii) exercise any rights granted under either or both of the RWS Agreements with respect to the Property other than the Restricted Access Areas, subject to this Agreement, or (iii) assign or transfer to any person or entity the right to exercise any rights under either or both of the RWS Agreements with respect to the Property other than with respect to the Restricted Access Area without the consent of Lessee.

b) Access of the Restricted Access Areas. RWS’s access to and activities in the Restricted Access Area shall be limited to observance of the area and necessary repairs and maintenance of the Stormwater Pipes, and RWS shall and shall cause its agents to use commercially reasonable efforts not to interfere materially with Lessee’s access to and quiet enjoyment and use of the Property, including the Facility. RWS, or its agents, shall provide forty eight (48) hour Notice for any access on the Property to the Restricted Access Area; provided that, RWS shall provide reasonable notice for purposes of access in emergency and non-customary access, and such access is subject to Section 2 a.

5. Lessee Representation. Notwithstanding anything to the contrary in the Sublease or this Agreement, RWS shall retain and be authorized to exercise rights to maintain, repair and replace the Stormwater Pipes in the Restricted Access Area, granted to it pursuant to the RWS Agreements and subject to this Agreement, with respect to its access to, in, along or

across the Restricted Access Area as necessary, required or desirable for the performance of the Services and other obligations relating to the Stormwater Pipes, and Lessee shall not otherwise deny, interfere with, or challenge such rights of RWS to access and use the Restricted Access Area, subject to this Agreement. Lessee will not excavate, construct or build any permanent structures, such as fences, vegetation or buildings on the Restricted Access Area.

6. **RWS Representation.** At all times, RWS shall act, and shall cause its agents and representatives to act, in compliance with all laws, ordinances, regulations and rulings, and any binding administrative or judicial interpretation thereof, in each case of any governmental authority, agency or body of competent jurisdiction, including without limitation laws or legal requirements governing Hazardous Materials pertaining to RWS' access to the Property at all times.
7. **Quiet Enjoyment.** RWS hereby covenants, promises and agrees to and with Lessee, that Lessee, for so long as Lessee is not in default hereof, shall and may at all times peaceably and quietly, have, hold, use, occupy and possess the Property throughout the Term.
8. **Dispute Resolution.** The Parties shall follow dispute resolution procedures as set forth in this Section. The Parties shall initially and promptly enter into negotiations to attempt to address and resolve any disputes that may arise concerning this Agreement. In connection with such negotiations, the party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. Upon the expenditure of reasonable efforts towards resolution of a dispute through informal negotiations without reaching agreement, a party may request non-binding mediation. The non-requesting party may decline the request in its reasonable discretion. If there is a concurrence that a matter be mediated, the costs of such non-binding mediation shall be divided equally between the Parties. Nothing in this Section shall operate to limit, interfere with or delay the right of either party to commence judicial legal proceedings upon a breach of this agreement, whether in lieu of, concurrently with, or at the conclusion of any non-binding mediation.
9. **Termination.** If at any time RWS's obligations to provide Services under the Concession Agreement and its rights to access the Service Area under the RWS Agreements expire or are otherwise terminated pursuant to the terms of the RWS Agreements, then the terms of this Agreement, and the obligations of Lessee and RWS hereunder, shall be immediately terminated.
10. **City and Authority General Access.** Under no circumstances shall any default, breach, violation or other event of non-compliance with any of the terms of this Agreement by any party constitute grounds to delay, restrict, terminate or otherwise limit access to the Restricted Service Area by the Authority and City.
11. **Ownership Remains with Lessee.** Nothing in this Agreement grants to RWS any ownership interest in the Site, the Facility or any of Lessee's property.



## 12. Miscellaneous.

a. Notices. Any notice, demand, request, consent, approval, or communication which either Party is required to give the other hereunder shall be in writing and either sent by certified United States mail or via recognized overnight courier service, or by facsimile transmission or by electronic mail addressed to the other party at the address set forth below:

RWS: Rialto Water Services, LLC  
150 California Street, #600  
San Francisco, CA 94965

Megan Matson  
mmatson@t-rockcap.com

Lessee: Rialto Bioenergy Facility, LLC  
Attn: Legal Department  
5780 Fleet Street, Suite 301  
Carlsbad, CA 92008  
Legal-usa@anaergia.com

Attn: Operations Department  
5780 Fleet Street, Suite 301  
Carlsbad, CA 92001  
Phone: (760) 436-8870  
Fax: (760) 448-6847

Any party may change its address by notifying the other parties of the change of address. Notices shall be deemed communicated only upon receipt. All notices sent pursuant to the terms of this Section shall be deemed received (i) if personally delivered or if sent by facsimile transmission or electronic mail, then on the date of delivery, (ii) if sent by recognized overnight courier service, then on the next business day immediately following the day sent, or (iii) if sent by certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

b. Successors. Subject to the following sentence, this Agreement shall be binding upon, and shall inure to the benefit of the Parties and their respective successors and assigns. Neither Party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other Party, which consent may be given or withheld in such Party's sole discretion. Any assignment made in violation of this Agreement is automatically null and void, and no Party will be required to recognize any such assignment for any purpose.

c. Governing Law; Jurisdiction; Forum. This Agreement shall be governed and construed in accordance with the laws of the state of California (without regard to any jurisdiction's conflict of laws principles) exclusively governs the interpretation, construction and enforcement of this Agreement and all other matters based upon, arising out of or relating in any way to this Agreement, including all controversies, disputes, claims and causes of action arising

out of or relating to this Agreement. The Parties agree that any action, suit or proceeding by or between Lessee and RWS may be brought in whichever court of proper subject matter jurisdiction over the dispute and waives any objection that the other Party may now or hereafter have regarding the choice of forum, whether on personal jurisdiction, venue, forum non-conveniens or any other ground.

d. Integration. This Agreement embodies the final agreement between the parties and is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are merged into and superseded by this Agreement. In entering into this Agreement, no party has relied upon another person's statement, representation, warranty, or agreement except for those set forth in this Agreement.

e. Specific Terms. The terms "including," "include," "includes" and the like when appearing in this Agreement are not intended as terms of limitation and, therefore, shall be deemed to be followed by "without limitation." Use of the term "herein", "hereof", "hereto" and the like in this Agreement refer to this Agreement as a whole, and not to the specific paragraph, section or subsection of this Agreement in which such term appears.

f. Counterparts. This Agreement may be executed in counterparts and all such executed counterparts will constitute one Agreement binding on both Parties. Facsimile and electronic signatures (including signatures sent by pdf) will be binding upon receipt, and the Parties agree to exchange original signatures within five days after the facsimile or electronic transmission; provided, however, that the failure to provide original signatures will not invalidate the binding facsimile or electronic signatures. Nothing in this Agreement is intended or under any circumstance will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained in this Agreement. The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and do not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner. The failure of a Party to exercise any rights in respect of any breach or alleged breach of this Agreement by another Party will not constitute a waiver of said breach or of any provision of this Agreement, and a failure to promptly exercise any right under this Agreement will not be deemed a waiver or bar to the exercise of such right in the future. Any provision of this Agreement that may be prohibited by or otherwise held invalid, void, or unenforceable will be ineffective only to the extent of such prohibition or invalidity and will not invalidate or otherwise render ineffective any other provisions of this Agreement. No provision of this Agreement may be amended, modified or waived except in a writing that references this Agreement and is signed by both Parties.

g. Fees and Costs. In the event of any controversy, dispute, claim or cause of action arising out of or relating to this Agreement, including the construction or interpretation of any provision of this Agreement, the prevailing party shall be awarded from the other party the prevailing party's reasonable attorneys' fees and costs (including costs of in-house counsel) incurred in connection with such controversy, dispute, claim or cause of action.

IN WITNESS WHEREOF, the parties have duly executed this Limited Access Agreement on the day and year first written above.

**[SIGNATURES ON THE FOLLOWING PAGE]**

**EXHIBIT A**

**PROPERTY**

The Rialto Wastewater Treatment Plant consists of the following parcels:

**Parcel No. 1**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 4 OF PARCEL MAP NO. 11516 IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON MAP RECORDED IN BOOK 128 PAGE 60 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN # 0258-141-15 (Approximately 7.93 acres)

**Parcel No. 2**

PARCEL 1A OF LOT LINE ADJUSTMENT NO. LLA-222, AS EVIDENCED BY A CERTIFICATE OF COMPLIANCE NO. 222 RECORDED APRIL 23, 2015 AS INSTRUMENT NO. 2015-0164097 OF OFFICAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING PORTIONS OF GOVERNMENT LOTS 3 AND 7 IN THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 5 WEST, S.B.M. ALSO BEING A PORTION OF "RANCHO JURUPA" AS PER MAP RECORDED IN BOOK 1 OF MAPS PAGE 47 RECORDS OF SAID COUNTY, SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF ACACIA AVENUE AND SANTA ANA AVENUE, SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;

THENCE ALONG THE NORTHERLY LINE OF SAID GOVERNMENT LOT 3 NORTH  $89^{\circ}45'33''$  EAST 290.35 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHERLY LINE NORTH  $89^{\circ}45'33''$  EAST, 20.81 FEET TO A POINT ON THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY DEED RECORDED IN BOOK 7623 AT PAGE 373 OF OFFICIAL RECORDS OF SAID COUNTY, SAID WESTERLY LINE BEING A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1350.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH  $37^{\circ}13'10''$  EAST;

THENCE LEAVING SAID NORTHERLY LINE AND ALONG SAID WESTERLY LINE THE FOLLOWING COURSES:

1. SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 1039.63 FEET THROUGH A CENTRAL ANGLE OF 44°07'24";
2. TANGENT TO SAID CURVE, SOUTH 08°39'26" EAST, 446.94 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1050.00 FEET;
3. SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 94.70 FEET THROUGH A CENTRAL ANGLE OF 05°10'02";

THENCE LEAVING SAID WESTERLY LINE SOUTH 68°13'08" WEST, 75.80 FEET;

THENCE NORTH 44°26'08" WEST, 194.19 FEET;

THENCE NORTH 42°24'56" WEST, 275.06 FEET;

THENCE NORTH 27°37'03" EAST, 97.40 FEET;

THENCE NORTH 10°58'15" EAST, 59.37 FEET;

THENCE NORTH 02°29'19" EAST, 176.91 FEET;

THENCE NORTH 07°41'36" EAST, 89.42 FEET;

THENCE NORTH 37°49'16" WEST, 98.42 FEET;

THENCE NORTH 31°08'44" WEST, 106.94 FEET;

THENCE NORTH 60°18'16" EAST, 105.98 FEET;

THENCE NORTH 35°21'07" EAST, 16.18 FEET;

THENCE NORTH 14°41'52" EAST, 20.17 FEET;

THENCE NORTH 12°15'26" WEST, 20.08 FEET;

THENCE NORTH 29°40'01" WEST, 200.01 FEET;

THENCE NORTH 07°47'20" WEST, 9.44 FEET;

THENCE NORTH 29°02'09" WEST, 119.87 FEET;

THENCE NORTH 48°34'55" WEST, 182.66 FEET TO THE POINT OF BEGINNING.

APN # 0258-151-24 (Approximately 5.67 acres)

Parcel No. 3

PARCEL 2A OF LOT LINE ADJUSTMENT NO. LLA-222, AS EVIDENCED BY A CERTIFICATE OF COMPLIANCE NO. 222 RECORDED APRIL 23, 2015 AS INSTRUMENT NO. 2015-0164097 OF OFFICAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING PORTIONS OF GOVERNMENT LOTS 3 AND 7 IN THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 5 WEST, S.B.M., ALSO BEING A PROTION OF "RANCH JURUPA" AS PER MAP RECORDED IN BOOK 1 OF MAPS PAGE 47 RECORDS OF SAID COUNTY, SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTERLINE OF ACACIA AVENUE AND SANTA ANA AVENUE, SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;

THENCE ALONG SAID NORTHERLY LINE OF SAID LOT 3; NORTH  $89^{\circ}45'33''$  EAST, 290.35 FEET;

THENCE LEAVING SAID NORTHERLY LINE SOUTH  $48^{\circ}34'55''$  EAST, 182.66 FEET;

THENCE SOUTH  $29^{\circ}02'09''$  EAST, 119.87 FEET;

THENCE SOUTH  $07^{\circ}47'20''$  EAST, 9.44 FEET;

THENCE SOUTH  $29^{\circ}40'01''$  EAST, 200.01 FEET;

THENCE SOUTH  $12^{\circ}15'26''$  EAST, 20.08 FEET;

THENCE SOUTH  $14^{\circ}41'52''$  WEST, 20.17 FEET;

THENCE SOUTH  $35^{\circ}21'07''$  WEST, 16.18 FEET;

THENCE SOUTH  $60^{\circ}18'16''$  WEST, 105.98 FEET;

THENCE SOUTH  $31^{\circ}08'44''$  EAST, 106.94 FEET;

THENCE SOUTH  $37^{\circ}49'16''$  EAST, 98.42 FEET;

THENCE SOUTH  $07^{\circ}41'36''$  WEST, 89.42 FEET;

THENCE SOUTH  $02^{\circ}29'19''$  WEST, 176.91 FEET;

THENCE SOUTH 10°58'15" WEST, 59.37 FEET;

THENCE SOUTH 27°37'03" WEST, 97.40 FEET;

THENCE SOUTH 42°24'56" EAST, 275.06 FEET;

THENCE SOUTH 44°26'08" EAST, 194.19 FEET;

THENCE NORTH 68°13'08" EAST, 75.80 FEET TO A POINT ON THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY DEED RECORDED IN BOOK 7623 AT PAGE 373 OF OFFICIAL RECORDS OF SAID COUNTY, SAID WESTERLY LINE BEING A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1050.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 76°10'32" WEST;

THENCE SOUTHEASTERLY ALONG SAID WESTERLY LINE AN ARC DISTANCE OF 186.27 FEET THROUGH A CENTRAL ANGLE OF 10°09'55";

THENCE CONTINUING ALONG SAID WESTERLY LINE TANGENT TO SAID CURVE, SOUTH 23°59'23" EAST, 27.49 FEET TO THE NORTHERLY LINE OF TRACT NO. 1 OF THE CUTTLE TRACT AS PER PLAT RECORDED IN BOOK 16 AT PAGE 23 OF MAPS, RECORDS OF SAID COUNTY;

THENCE ALONG SAID NORTHERLY LINE SOUTH 69°03'40" WEST, 1043.61 FEET;

THENCE ALONG THE WESTERLY LINE OF SAID GOVERNMENT LOTS 3 AND 7, NORTH 00°20'19" WEST, 1979.33 FEET TO THE POINT OF BEGINNING.

APN # 0258-151-25 (Approximately 26.34 acres)

Parcel No. 4

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING PORTIONS OF GOVERNMENT LOTS 3 AND 7 IN THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 5 WEST, S.B.M., ALSO BEING A PORTION OF "RANCHO JURUPA" AS PER MAP RECORDED IN BOOK 1 OF MAPS PAGE 47 RECORDS OF SAID COUNTY, SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF ACACIA AVENUE AND SANTA ANA AVENUE, SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;

THENCE ALONG THE NORTHERLY LINE OF SAID GOVERNMENT LOT 3, NORTH 89°45'33" EAST, 466.90 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHERLY LINE NORTH 89°45'33" EAST, 559.64 FEET TO THE NORTHERLY PROLONGATION OF THE EAST LINE OF THE WEST 25 ACRES OF SAID LOT 7;

THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°20'19" EAST, 1464.79 FEET ALONG SAID PROLONGATION AND SAID EAST LINE AND THE SOUTHERLY PROLONGATION THEREOF TO A POINT OF CUSP ON A CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 950.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 71°12'06" WEST, SAID CURVE BEING THE EASTERLY LINE OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY DEED RECORDED IN BOOK 7623 AT PAGE 373 OF OFFICIAL RECORDS OF SAID COUNTY;

THENCE LEAVING SAID SOUTHERLY PROLONGATION, NORTHERLY ALONG SAID EASTERLY LINE AND SAID CURVE AN ARC DISTANCE OF 168.15 FEET THROUGH A CENTRAL ANGLE OF 10°08'28"

THENCE CONTINUING ALONG SAID EASTERLY LINE, TANGENT TO SAID CURVE NORTH 08°39'26" WEST, 446.94 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1450.00 FEET;

THENCE CONTINUING ALONG SAID EASTERLY LINE, NORTHWESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 992.87 FEET THROUGH A CENTRAL ANGLE OF 39°13'57" TO THE TRUE POINT OF BEGINNING.

APN # 0258-151-23 (Approximately 6.09 acres)



## EXHIBIT B

### SITE

The land referred to in this Commitment is situated in the City of Rialto, County of San Bernardino, State of California, and is described as follows:

PARCEL 1A OF LOT LINE ADJUSTMENT NO. LLA-222, AS EVIDENCED BY A CERTIFICATE OF COMPLIANCE NO. 222 RECORDED APRIL 23, 2015 INSTRUMENT NO. 2015-0164097 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING PORTIONS OF GOVERNMENT LOTS 3 AND 7 IN THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 5 WEST, S.B.M. ALSO BEING A PORTION OF "RANCHO JURUPA" AS PER MAP RECORDED IN BOOK 1 OF MAPS, PAGE 47 RECORDS OF SAID COUNTY, SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER LINE INTERSECTION OF ACACIA AVENUE AND SANTA ANA AVENUE, SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;

THENCE ALONG THE NORTHERLY LINE OF SAID GOVERNMENT LOT 3 NORTH 89° 45' 33" EAST 290.35 FEET TO THE POINT OF BEGINNING.

THENCE ALONG SAID NORTHERLY LINE NORTH 89° 45' 33" EAST, 20.81 FEET TO A POINT ON THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY DEED RECORDED IN BOOK 7623, PAGE 373 OF OFFICIAL RECORDS OF SAID COUNTY, SAID WESTERLY LINE BEING A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1350.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 37° 13' 10" EAST;

THENCE LEAVING SAID NORTHERLY LINE AND ALONG SAID WESTERLY LINE THE FOLLOWING COURSES:

1. SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 1039.63 FEET THROUGH A CENTRAL ANGLE OF 44° 07' 24";
2. TANGENT TO SAID CURVE, SOUTH 08° 39' 26" EAST, 446.94 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1050.00 FEET;
3. SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 94.70 FEET THROUGH A CENTRAL ANGLE OF 05° 10' 02";

THENCE LEAVING SAID WESTERLY LINE SOUTH 68° 13' 08" WEST, 75.80 FEET;  
THENCE NORTH 44° 26' 08" WEST, 194.19 FEET;  
THENCE NORTH 42° 24' 56" WEST, 275.06 FEET;  
THENCE NORTH 27° 37' 03" EAST, 97.40 FEET;  
THENCE NORTH 10° 58' 15" EAST, 59.57 FEET;  
THENCE NORTH 02° 29' 19" EAST, 176.91 FEET;  
THENCE NORTH 07° 41' 36" EAST, 89.42 FEET;  
THENCE NORTH 37° 49' 16" WEST, 98.42 FEET;  
THENCE NORTH 31° 08' 44" WEST, 106.94 FEET;  
THENCE NORTH 60° 18' 16" EAST, 105.98 FEET;  
THENCE NORTH 35° 21' 07" EAST, 16.18 FEET;  
THENCE NORTH 14° 41' 52" EAST, 20.17 FEET;  
THENCE NORTH 12° 15' 26" WEST, 20.08 FEET;  
THENCE NORTH 29° 40' 01" WEST, 200.01 FEET;  
THENCE NORTH 07° 47' 20" WEST, 9.44 FEET;  
THENCE NORTH 29° 02' 09" WEST, 119.87 FEET;  
THENCE NORTH 48° 34' 55" WEST, 182.66 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM SAID LOT 3, 1/2 OF ALL OIL, GAS, PETROLEUM, NAPHTHA AND OTHER HYDROCARBON SUBSTANCES AND MINERALS TOGETHER WITH THE RIGHT OF ENTRY, AS RESERVED IN DEED FROM THE FEDERAL LAND BANK OF BERKELEY TO FRANK L. CALDWELL AND LILLIAN B. CALDWELL, HIS WIFE, AS JOINT TENANTS, RECORDED SEPTEMBER 22, 1941, IN BOOK 1499, PAGE 190, OFFICIAL RECORDS.

EXCEPTING THEREFROM SAID LOT 7, 1/2 OF ALL GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES WITHIN OR UNDERLYING SAID PROPERTY AS RESERVED BY FRANK C. MORTIMER, BUILDING AND LOAN

COMMISSIONER OF THE STATE OF CALIFORNIA, BY DEED RECORDED MARCH 27, 1946, IN [BOOK 1875, PAGE 273](#), OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM SAID LAND WITHIN THE JURUPA RANCHO, AN UNDIVIDED ONE HALF INTEREST IN FEE IN AND TO ALL OIL, GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES OR OTHER MINERALS IN THE REAL PROPERTY BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF SAID REAL PROPERTY PROVIDED, HOWEVER, THIS INTEREST SHALL NOT INCLUDE THE RIGHT OF SURFACE ENTRY FOR THE PURPOSE OF EXPLORING, MINING, DRILLING OR IN ANY OTHER WAY EXTRACTING OIL, GAS, MINERALS OR OTHER KINDRED SUBSTANCES FROM SAID REAL PROPERTY, BY DEED RECORDED DECEMBER 23, 1971, IN [BOOK 7821, PAGE 894](#), OFFICIAL RECORDS.

APN: 0258-151-24-0-000

**EXHIBIT C**  
**RESTRICTED AREA**

A STRIP OF LAND 8.00 FEET WIDE IN PARCEL 1A PER CERTIFICATE OF COMPLIANCE NO. 222, RECORDED APRIL 23, 2015 AS DOCUMENT NO. 2015-0164097 AND ALSO SHOWN ON RECORD OF SURVEY 15-0110 RECORDED AUGUST 25, 2015 IN BOOK 156 PAGE 44 OF RECORDS OF SURVEY, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA,

THE WESTERLY LINE OF SAID STRIP DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE ON THE WESTERLY LINE OF SAID PARCEL 1A HAVING A BEARING AND LENGTH OF N02°29'19"E, 176.91 FEET;

THENCE S02°29'19"W ALONG SAID COURSE AND WESTERLY LINE OF PARCEL 1A, A DISTANCE OF 176.91 FEET;

THENCE CONTINUING ALONG SAID WESTERLY LINE OF PARCEL 1A, S10°58'15"W, A DISTANCE OF 59.37 FEET;

THENCE CONTINUING ALONG SAID WESTERLY LINE OF PARCEL 1A, S27°37'09"W, A DISTANCE OF 28.17 FEET;

THENCE LEAVING SAID WESTERLY LINE OF PARCEL 1A, S02°03'18"E, A DISTANCE OF 100.48 FEET TO SAID WESTERLY LINE OF PARCEL 1A.

THE EASTERLY LINE OF SAID STRIP OF LAND SHALL BE PROLONGATED S02°03'18"E TO TERMINATE IN SAID WESTERLY LINE OF PARCEL 1A.



*Carleton W. Lockwood, Jr.*  
04/21/16

NW CORNER  
GVMT LOT 3  
POC

ACACIA AVENUE  
VACATED PER  
O.R. 473/516

SANTA ANA  
AVENUE

N 89°45'33" E

290.35'

N 48°34'55" W  
182.66'

N 29°02'09" W  
119.87'

N 07°47'20" W  
9.44'

N 29°40'01" W  
200.01'

N 12°15'29" W  
20.08'

N 14°41'52" E  
20.17'

GOV'T LOT 3  
GOV'T LOT 7

N 60°18'16" E  
105.98'

N 35°21'07" E  
16.18'

SW 1/4, SEC 25  
T18, R10W

N 31°08'44" W  
106.94'

N 37°49'16" W  
98.42'

N 07°41'36" E  
89.42'

PARCEL 2A  
POINT OF  
BEGINNING

PER  
CERTIFICATE OF COMPLIANCE No. 222  
DOC# 2015-0164097

N 02°29'19" E  
176.91'

8'  
CERTIFICATE OF COMPLIANCE No. 222  
DOC# 2015-0164097

F.S. 11516  
P.M.B. 123/06

N 10°58'15" E  
59.37'

N 27°37'09" E  
28.17'

N 02°03'18" W  
100.48'

PARCEL 1A  
PER  
CERTIFICATE OF COMPLIANCE No. 222  
DOC# 2015-0164097

RANCHO JURUPA  
M.B. 1/47

GOV'T LOT 7

JURUPA RANCHO LINE - SOUTH LINE OF SECTION 25

CITY OF RIALTO  
CITY OF COLTON



EXHIBIT "B"

SCALE



( IN FEET )  
1 inch = 200 ft.

**EXHIBIT G**

**TITLE REPORT**

[Title Commitment No. NCS-652745-LA2 dated August 19, 2015 as amended on August 19, 2015, August 31, 2015, and March 23, 2016 attached hereto]

**Amended  
08/19/2015;  
Amended  
08/31/2015 legal  
description;  
Amended  
03/23/2016 legal  
description**



**First American Title Company  
National Commercial Services**

**777 South Figueroa Street, Suite 400  
Los Angeles, CA 90017**

August 19, 2015

Greg Lantz  
City of Rialto  
150 South Palm Avenue  
Rialto, CA 92376  
Phone: (909)820-2525x2439

Title Officer:	Anthony Rivera	Title Assistant:	Silvia Aispuro
Phone:	(213)271-1723	Phone:	(213)271-1700
Email:	arivera@firstam.com	Email:	X_saispuro@firstam.com

Order Number: NCS-652745-LA2

Property: Vacant Land, County of San Bernardino, CA

Attached please find the following item(s):

Commitment

Thank You for your confidence and support. We at First American Title Insurance Company maintain the fundamental principle:

***Customer First!***

**First American Title Insurance Company**  
**INFORMATION**

The Title Insurance Commitment is a legal contract between you and the company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

This information is not part of the title insurance commitment.

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4. Description of the Land	4
Schedule B-1 - Requirements	
Schedule B-2 - Exceptions	
Conditions	

**YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.**  
**If you have any questions about the Commitment,**  
**please contact the issuing office.**



COMMITMENT FOR TITLE INSURANCE

Issued by

*First American Title Insurance Company*

Agreement to Issue Policy

We agree to issue a policy to you according to the terms of this Commitment.

When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.

The Requirements in Schedule B-1.

The Exceptions in Schedule B-2.

The Conditions.

This Commitment is not valid without Schedule A and Sections 1 and 2 of Schedule B.

**SCHEDULE A**

1. Commitment Date: August 05, 2015 at 7:30 A.M.
2. Policy or Policies to be issued: Amount
  - (A) ALTA Owner's Policy \$
  - Proposed Insured: \$TBD
  - (B) ALTA Extended Loan Policy \$TBD
  - Proposed Insured: \$TBD
  - To Be Determined \$TBD
3. (A) The estate or interest in the land described in this Commitment is:
  - Fee Simple
  - (B) Title to said estate or interest at the date hereof is vested in:  
City of Rialto, a municipal corporation
4. The land referred to in this Commitment is situated in the City of Rialto, County of San Bernardino, State of California, and is described as follows:

PARCEL 1A OF LOT LINE ADJUSTMENT NO. LLA-222, AS EVIDENCED BY A CERTIFICATE OF COMPLIANCE NO. 222 RECORDED APRIL 23, 2015 INSTRUMENT NO. 2015-0164097 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING PORTIONS OF GOVERNMENT LOTS 3 AND 7 IN THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, ALSO BEING A PORTION OF "RANCHO JURUPA" AS PER MAP RECORDED IN BOOK 1 OF MAPS, PAGE 47 RECORDS OF SAID COUNTY, SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER LINE INTERSECTION OF ACACIA AVENUE AND SANTA ANA AVENUE, SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;

THENCE ALONG THE NORTHERLY LINE OF SAID GOVERNMENT LOT 3 NORTH 89° 45' 33" EAST 290.35 FEET TO THE POINT OF BEGINNING.

THENCE ALONG SAID NORTHERLY LINE NORTH 89° 45' 33" EAST, 20.81 FEET TO A POINT ON THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY DEED RECORDED IN BOOK 7623, PAGE 373 OF OFFICIAL RECORDS OF SAID COUNTY, SAID WESTERLY LINE BEING A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1350.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 37° 13' 10" EAST;

THENCE LEAVING SAID NORTHERLY LINE AND ALONG SAID WESTERLY LINE THE FOLLOWING COURSES:

1. SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 1039.63 FEET THROUGH A CENTRAL ANGLE OF 44° 07' 24";
2. TANGENT TO SAID CURVE, SOUTH 08° 39' 26" EAST, 446.94 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1050.00 FEET;
3. SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 94.70 FEET THROUGH A CENTRAL ANGLE OF 05° 10' 02";

THENCE LEAVING SAID WESTERLY LINE SOUTH 68° 13' 08" WEST, 75.80 FEET;

THENCE NORTH 44° 26' 08" WEST, 194.19 FEET;

THENCE NORTH 42° 24' 56" WEST, 275.06 FEET;

THENCE NORTH 27° 37' 03" EAST, 97.40 FEET;

THENCE NORTH 10° 58' 15" EAST, 59.37 FEET;

THENCE NORTH 02° 29' 19" EAST, 176.91 FEET;

THENCE NORTH 07° 41' 36" EAST, 89.42 FEET;

THENCE NORTH 37° 49' 16" WEST, 98.42 FEET;

THENCE NORTH 31° 08' 44" WEST, 106.94 FEET;

THENCE NORTH 60° 18' 16" EAST, 105.98 FEET;

THENCE NORTH 35° 21' 07" EAST, 16.18 FEET;

THENCE NORTH 14° 41' 52" EAST, 20.17 FEET;

THENCE NORTH 12° 15' 26" WEST, 20.08 FEET;

THENCE NORTH 29° 40' 01" WEST, 200.01 FEET;

THENCE NORTH 07° 47' 20" WEST, 9.44 FEET;

THENCE NORTH 29° 02' 09" WEST, 119.87 FEET;

THENCE NORTH 48° 34' 55" WEST, 182.66 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM SAID LOT 3, 1/2 OF ALL OIL, GAS, PETROLEUM, NAPHTHA AND OTHER HYDROCARBON SUBSTANCES AND MINERALS TOGETHER WITH THE RIGHT OF ENTRY, AS RESERVED IN DEED FROM THE FEDERAL LAND BANK OF BERKELEY TO FRANK L. CALDWELL AND LILLIAN B. CALDWELL, HIS WIFE, AS JOINT TENANTS, RECORDED SEPTEMBER 22, 1941, IN [BOOK 1499, PAGE 190](#), OFFICIAL RECORDS.

EXCEPTING THEREFROM SAID LOT 7, 1/2 OF ALL GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES WITHIN OR UNDERLYING SAID PROPERTY AS RESERVED BY FRANK C. MORTIMER, BUILDING AND LOAN COMMISSIONER OF THE STATE OF CALIFORNIA, BY DEED RECORDED MARCH 27, 1946, IN [BOOK 1875, PAGE 273](#), OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM SAID LAND WITHIN THE JURUPA RANCHO, AN UNDIVIDED ONE-

HALF INTEREST IN FEE IN AND TO ALL OIL, GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES OR OTHER MINERALS IN THE REAL PROPERTY BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF SAID REAL PROPERTY PROVIDED, HOWEVER, THIS INTEREST SHALL NOT INCLUDE THE RIGHT OF SURFACE ENTRY FOR THE PURPOSE OF EXPLORING, MINING, DRILLING OR IN ANY OTHER WAY EXTRACTING OIL, GAS, MINERALS OR OTHER KINDRED SUBSTANCES FROM SAID REAL PROPERTY, BY DEED RECORDED DECEMBER 23, 1971, IN BOOK 7821, PAGE 894, OFFICIAL RECORDS.

APN: 0258-151-24-0-000

## SCHEDULE B

### SECTION ONE REQUIREMENTS

The following requirements must be met:

- (A) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (B) Pay us the premiums, fees and charges for the policy.
- (C) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (D) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (E) Releases(s) or Reconveyance(s) of Item(s): None
- (F) Other: None
- (G) You must give us the following information:
  - 1. Any off record leases, surveys, etc.
  - 2. Statement(s) of Identity, all parties.
  - 3. Other: None

The following additional requirements, as indicated by "X", must be met:

- (H) Provide information regarding any off-record matters, which may include, but are not limited to: leases, recent works of improvement, or commitment statements in effect under the Environmental Responsibility Acceptance Act, Civil Code Section 850, et seq.

The Company's Owner's Affidavit form(as provided by company) must be completed and submitted prior to close in order to satisfy this requirement. This Commitment will then be subject to such further exceptions and/or requirements as may be deemed necessary.

- (I) An ALTA/ACSM survey of recent date, which complies with the current minimum standard detail requirements for ALTA/ACSM land title surveys, must be submitted to the Company for review. This Commitment will then be subject to such further exceptions and/or requirements as may be deemed necessary.
- (J) The following LLC documentation is required:
  - (i) a copy of the Articles of Organization
  - (ii) a copy of the Operating Agreement, if applicable
  - (iii) a Certificate of Good Standing and/or other evidence of current Authority to Conduct Business within the State
  - (iv) express Company Consent to the current transaction

- (K) The following partnership documentation is required :
  - (i) a copy of the partnership agreement, including all applicable amendments thereto
  - (ii) a Certificate of Good Standing and/or other evidence of current Authority to Conduct Business within the State
  - (iii) express Partnership Consent to the current transaction
  
- (L) The following corporation documentation is required:
  - (i) a copy of the Articles of Incorporation
  - (ii) a copy of the Bylaws, including all applicable Amendments thereto
  - (iii) a Certificate of Good Standing and/or other evidence of current Authority to Conduct Business within the State
  - (iv) express Corporate Resolution consenting to the current transaction
  
- (M) Based upon the Company's review of that certain partnership/operating agreement dated **Not disclosed** for the proposed insured herein, the following requirements must be met:

Any further amendments to said agreement must be submitted to the Company, together with an affidavit from one of the general partners or members stating that it is a true copy, that said partnership or limited liability company is in full force and effect, and that there have been no further amendments to the agreement. This Commitment will then be subject to such further requirements as may be deemed necessary.
  
- (N) A copy of the complete lease, as referenced in Schedule A, #3 herein, together with any amendments and/or assignments thereto, must be submitted to the Company for review, along with an affidavit executed by the present lessee stating that it is a true copy, that the lease is in full force and effect, and that there have been no further amendments to the lease. This Commitment will then be subject to such further requirements as may be deemed necessary.
  
- (O) Approval from the Company's Underwriting Department must be obtained for issuance of the policy contemplated herein and any endorsements requested thereunder. This Commitment will then be subject to such further requirements as may be required to obtain such approval.
  
- (P) Potential additional requirements, if ALTA Extended coverage is contemplated hereunder, and work on the land has commenced prior to close, some or all of the following requirements, and any other requirements which may be deemed necessary, may need to be met:
  
- (Q) The Company's "Mechanic's Lien Risk Addendum" form must be completed by a Company employee, based upon information furnished by the appropriate parties involved.
  
- (R) The Company's "Indemnity Agreement I" must be executed by the appropriate parties.
  
- (S) Financial statements from the appropriate parties must be submitted to the Company for review.
  
- (T) A copy of the construction contract must be submitted to the Company for review.
  
- (U) An inspection of the land must be performed by the Company for verification of the phase of construction.

## SCHEDULE B

### SECTION TWO

#### EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction. The printed exceptions and exclusions from the coverage of the policy or policies are set forth in Exhibit A attached. Copies of the policy forms should be read. They are available from the office which issued this Commitment.

1. General and special taxes and assessments for the fiscal year 2015-2016, a lien not yet due or payable.
2. General and special taxes and assessments for the fiscal year 2014-2015 are exempt. If the exempt status is terminated an additional tax may be levied. A.P. No.: 0258-151-24-0-000.
3. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
4. Rights of the public in and to that portion of the land lying within the boundaries of any road, street or highway.
5. A right of way for ditches and canals as reserved by the United States of America in the patent recorded in [Book H of Patents, Page 122](#).
6. This item has been intentionally deleted.
7. An easement for pole lines and incidental purposes, recorded November 26, 1948 in [Book 2326, Page 295](#) of Official Records.  
In Favor of: California Electric Power Company  
Affects: As described therein
8. This item has been intentionally deleted.
9. This item has been intentionally deleted.
10. An easement for either or both pole lines, conduits and incidental purposes, recorded July 21, 1961 in [Book 5490, Page 57](#) of Official Records.  
In Favor of: California Electric Power Company  
Affects: As described therein
11. An easement for either or both pole lines, conduits and incidental purposes, recorded September 11, 1981 as Instrument No. [81-202921](#) of Official Records.  
In Favor of: Southern California Edison Company, a corporation  
Affects: As described therein
12. The terms and provisions contained in the document entitled "Assignment of Trust Agreement" recorded November 22, 1988 as Instrument No. [88-394354](#) of Official Records.

13. This item has been intentionally deleted.
14. The terms and provisions contained in the document entitled "Sale Agreement" recorded May 04, 1993 as Instrument No. [93-190768](#) of Official Records. By and between City of Rialto, California and City of Rialto Nonprofit Public Building Authority.
15. The terms and provisions contained in the document entitled "Installment Purchase Agreement" recorded May 04, 1993 as Instrument No. [93-190769](#) of Official Records. By and between City of Rialto Nonprofit Public Building Authority and City of Rialto, California.
16. The effect of a map purporting to show the land and other property, filed in [Book 133, Page 15](#) of Record of Surveys.
17. Terms and provisions of an unrecorded lease dated March 01, 2007, by and between City of Rialto, California, a municipal corporation as lessor and Rialto Utility Authority, a joint powers authority, duly organized under the laws of the State of California as lessee, as disclosed by a Memorandum of Lease recorded March 30, 2007 as Instrument No. [2007-0199733](#) of Official Records.  
  
Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.
18. Terms and provisions of an unrecorded lease dated March 01, 2007, by and between Redevelopment Agency of the City of Rialto, a public body corporate and politic as lessor and Rialto Utility Authority, a joint powers authority, duly organized under the laws of the State of California as lessee, as disclosed by a Memorandum of Lease recorded March 30, 2007 as Instrument No. [2007-0199734](#) of Official Records.  
  
Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.
19. Terms and provisions of an unrecorded lease dated March 01, 2007, by and between Redevelopment Agency of the City of Rialto, a public body corporate and politic as lessor and Energetech Environmental California, LLC, a California limited liability company as lessee, as disclosed by a document recorded March 30, 2007 as Instrument No. [2007-0199735](#) of Official Records.  
  
Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.
20. The terms and provisions contained in the document entitled "Easement Agreement" recorded August 16, 2007 as Instrument No. [2007-0478193](#) of Official Records.
21. This item has been intentionally deleted.
22. Rights of parties in possession.



**INFORMATIONAL NOTES**

1. The property covered by this report is vacant land.
2. According to the public records, there has been no conveyance of the land within a period of twenty four months prior to the date of this report, except as follows:

A document recorded July 13, 2015 as Instrument No. [2015-0297256](#) and [2015-0297257](#), both of Official Records.

From: City of Rialto, a municipal corporation

To: City of Rialto, a municipal corporation

3. This preliminary report/commitment was prepared based upon an application for a policy of title insurance that identified land by street address or assessor's parcel number only. It is the responsibility of the applicant to determine whether the land referred to herein is in fact the land that is to be described in the policy or policies to be issued.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

***\*\*\*\*\*To obtain wire instructions for deposit of funds to your escrow file please contact your Escrow Officer.\*\*\*\*\****

## CONDITIONS

### 1. DEFINITIONS

(a) "Mortgage" means mortgage, deed of trust or other security instrument.

(b) "Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

### 2. LATER DEFECTS

The Exceptions in Schedule B - Section Two may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section One are met. We shall have no liability to you because of this amendment.

### 3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

### 4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section One

or

eliminate with our written consent any Exceptions shown in Schedule B - Section Two.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

### 5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this commitment and is subject to its terms.



## First American Title

### Privacy Information

#### We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

#### Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

#### Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

#### Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

#### Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

#### Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

#### Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site. There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

#### Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

#### Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive. [FirstAm.com](http://FirstAm.com) uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

#### Fair Information Values

**Fairness** We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

**Public Record** We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

**Use** We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

**Accuracy** We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

**Education** We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

**Security** We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

**EXHIBIT A**  
**LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)**

**1. CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990**  
**SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:  
(a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;  
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;  
(c) resulting in no loss or damage to the insured claimant;  
(d) attaching or created subsequent to Date of Policy; or  
(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by their policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**2. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970**  
**SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

**3. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970**  
**WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 2 above are used and the following exceptions to coverage appear in the policy.

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

**4. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant, (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder, (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

**5. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association Lenders Policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy, the exclusions set forth in paragraph 4 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1.
  - (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
  - (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or

- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:  
Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**ALTA RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
  - (a) and use
  - (b) improvements on the land
  - (c) and division
  - (d) environmental protectionThis exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
  - (a) a notice of exercising the right appears in the public records on the Policy Date
  - (b) the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
  - (a) that are created, allowed, or agreed to by you
  - (b) that are known to you, but not to us, on the Policy Date -- unless they appeared in the public records
  - (c) that result in no loss to you
  - (d) that first affect your title after the Policy Date -- this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
  - (a) to any land outside the area specifically described and referred to in Item 3 of Schedule A OR
  - (b) in streets, alleys, or waterways that touch your landThis exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

**11. EAGLE PROTECTION OWNER'S POLICY**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998  
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998**

Covered Risks 14 (Subdivision Law Violation), 15 (Building Permit), 16 (Zoning) and 18 (Encroachment of boundary walls or fences) are subject to Deductible Amounts and Maximum Dollar Limits of Liability

### EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. land use
  - d. improvements on the land
  - e. land division
  - f. environmental protection

This exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.  
This exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
  - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.

This exclusion does not limit the coverage described in Covered Risk 11 or 18.

### 12. THIRD GENERATION EAGLE LOAN POLICY AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (1/01/08)

#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions, or location of any improvement erected on the Land; (iii) the subdivision of land; or (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.  
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

### 13. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006

#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to



- (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
- or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
- (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
- (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

#### 14. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006 WITH REGIONAL EXCEPTIONS

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 13 above are used and the following exceptions to coverage appear in the policy.

##### SCHEDULE B

- This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:
- 1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
  - 2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
  - 3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
  - 4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
  - 5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

#### 15. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006 EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- 1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
- 4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
- 5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

**16. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 15 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

- 1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
- 2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
- 3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- 4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
- 5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

## Robb Steel

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**From:** Devereaux, Greg <Greg.Devereaux@cao.sbcounty.gov>  
**Sent:** Sunday, April 17, 2016 7:42 AM  
**To:** Robb Steel  
**Cc:** Mike Story; Gina Gibson; George Harris  
**Subject:** Re: Island Annexations

Robb, I will ask my assistant Angelica to arrange.

On Apr 15, 2016, at 4:57 PM, Robb Steel <[rsteel@rialto.ca.gov](mailto:rsteel@rialto.ca.gov)> wrote:

Greg,

The City has completed its analysis of the operating and capital costs associated with the annexation of the five north Rialto islands. City staff inventoried the capital deficiencies and Stan Hoffman analyzed the operating impacts. We have a Council sub-committee meeting scheduled next week to review the reports, and expect to deliver the reports to your office and LAFCO shortly thereafter.

We would like to schedule a meeting with you for the week of April 25<sup>th</sup> to review the reports and discuss the ramifications before our scheduled hearing date before LAFCO on May 18<sup>th</sup>. Rialto participants would include Mike Story (CA), Gina Gibson (Planning Manager), George Harris (CFO), and myself. If necessary, we would also have Stan Hoffman (for operating cost support) join as well as our City Engineer (for capital cost support).

Please let me know if there is a date and time (or two) that works for you and I will coordinate the Rialto entourage.

Thank you.

Robb R. Steel  
Assistant City Administrator/Development Services Director  
(909) 820-8008 (direct line)

Please consider the environment before printing this e-mail.

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**EXHIBIT H**  
**EASEMENT AGREEMENT**

[To be provided]

**EXHIBIT H**

**EASEMENT AGREEMENT**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Rialto Bioenergy Facility LLC  
5780 Fleet Street, Suite 300  
Carlsbad, California 92008  
Attn: President

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

**EASEMENT AGREEMENT**

**THIS EASEMENT AGREEMENT** (the “Agreement”) is made as of \_\_\_\_\_, 2016, by and between the **CITY OF RIALTO**, a California municipal corporation (the “City”), and **RIALTO BIOENERGY FACILITY LLC**, a Delaware limited liability company (the “Developer”).

**RECITALS**

A. Developer, City and the Rialto Utility Authority (the “Authority”) have entered into a “Ground Sublease” dated as of \_\_\_\_\_, 2016, for the purpose of developing a organic waste recycling facility (the “Organic Waste Recycling Facility”) on an approximately 5.7 acre site adjacent to the Rialto Wastewater Treatment Plant (“RWTP”) as illustrated on Exhibit “A” attached hereto. A Memorandum of the Ground Sublease has been recorded in the official records of San Bernardino County concurrently with this Agreement.

B. The RWTP and the site of the RWTP (the “RWTP Site”) is owned by the City and leased to the Authority, and operated by the City on behalf of the Authority. The City owns the site that is intended for development of the Organic Waste Recycling Facility (the “Organic Waste Recycling Facility Site”), which is a portion of the real property leased from the City to the Authority under a Lease Agreement dated as of May 1, 2001. The Organic Waste Recycling Facility Site is legally described on Exhibit “B” which is attached hereto and incorporated herein.

C. The Ground Sublease provides for the City to grant to Developer an easement over a portion of the RWTP Site for the purposes of the construction, maintenance and landscaping of an access road and cul-de-sac, and for water, gas and electric lines necessary for the Organic Waste Recycling Facility, as more specifically described herein.

**NOW, THEREFORE,** in consideration of the above recitals, City and Developer hereby agree as follows:

**1. Grant of Easement.** For valuable consideration, the receipt and adequacy of which is hereby acknowledged by City, City hereby grants to and for the benefit of Developer an easement (the "Easement") over and across the portion of the RWTP Site depicted on the Site Map which is attached hereto as Exhibit "A" and incorporated herein (the "Easement Area"). The Easement Area is more fully described on Exhibit "C" which is attached hereto and incorporated herein. The Easement granted herein shall bind and inure to the benefit of the respective successors and assigns of all parties, and shall be solely for the benefit of Developer.

**2. Use of the Easement Area.** Developer may use the Easement Area for only the following purposes:

- a. The construction, operation, maintenance and landscaping of an access road to Santa Ana Avenue.
- b. The construction, operation, maintenance and landscaping of a cul-de-sac at the end of Santa Ana Avenue.
- c. The construction, operation and maintenance of a pipeline, with appurtenant connections, meters, backflow prevention and other equipment, to the West Valley Water District potable water pipeline.
- d. The construction, operation and maintenance of a pipeline, with appurtenant connections, meters, backflow prevention and other equipment, to the West Valley Water District fire water pipeline.
- e. The construction, operation and maintenance of a pipeline, with appurtenant connections, meters, backflow prevention and other equipment, to the Southern California Gas natural gas pipeline.
- f. The construction, operation and maintenance of transmission lines to the Southern California Edison electrical lines.

Developer shall not remove or alter any existing improvements located in the Easement Area, including without limitation a retaining wall and fencing currently located within the Easement Area, without the approval of the City, which shall not be unreasonably withheld. Except as set forth above in this Section 2, Developer shall not cause or permit any other improvements to be constructed or located upon the Easement Area. Developer shall not permit any mechanics', materialmen's or other liens of any kind or nature ("Liens") to be filed or enforced against the Easement Area or the RWTP Site in connection with its use of the Easement Area. Developer shall indemnify, defend and hold harmless City, the Authority and their officers, employees, agents, representatives, successors and assigns from all liability for any and all liens, claims and demands, together with costs of defense and reasonable attorneys' fees, arising from any Liens.

**3. Maintenance of the Easement Area.** Developer shall be responsible at its sole cost for maintaining and keeping the Easement Area in good condition at all times during the term of this Agreement, except that Developer shall not be responsible for the maintenance of the improvements located in the Easement Area made by persons other than the Developer.

**4. Easement Term.** This Agreement and the Easement shall commence upon the date hereof and shall remain in effect during the term of the Ground Sublease. Upon the expiration or termination of the Ground Sublease, this Agreement shall terminate, and Developer shall have no further rights or obligations with respect to the use of the Easement Area.

**5. Allocation of Real Property Taxes.** Developer shall pay all real property taxes and assessments on the Developer's interest in the Easement Area, if any.

**6. Indemnification and Insurance.** Developer hereby agrees to, and does hereby, indemnify and hold City, the Authority and their officers, employees, agents, representatives, successors and assigns harmless from any liability or responsibility whatsoever for any damage or injury of any kind whatsoever to any person or property by reason of Developer's use of the Easement Area, or from the negligent acts or omissions or willful misconduct of Developer or its officers, employees, representatives, agents, customers or invitees. Developer shall maintain in full force and effect during the term of the Easement and this Agreement a policy of comprehensive general liability insurance in accordance with all of the requirements of the Ground Sublease, which covers the Easement Area, and shall cause the City, the Authority and their officers, employees, agents, and representatives to be named as additionally insured parties under such policy of insurance.

**7. Reservation of Rights.** City shall retain any and all rights not specifically granted herein, including without limitation any and all rights which are not incompatible with the easements granted herein, and the right to grant easements to other third parties over, under and through the Easement Area for utility easements which do not unreasonably interfere with the rights granted to Developer hereunder. The City shall be entitled to dedicate the Easement Area for public street purposes, and may use the existing road constructed by Developer or improve or replace such road, without compensation to the Developer, provided that Developer shall retain the ability to use such road or an alternate road for vehicular access from the Organic Waste Recycling Facility to Santa Ana Avenue. In such event the Developer's rights hereunder to use the Easement Area for the construction, operation, maintenance and landscaping of an access road to Santa Ana Avenue and a cul-de-sac at the end of Santa Ana Avenue shall terminate concurrently with the dedication of the public street. In the event that any of the utility lines installed by Developer need to be relocated as a result of the City's construction, improvement or replacement of the public street within the Easement Area, the City shall relocate the utility lines at the City's expense, except where such costs are the responsibility of the utility provider.

**8. Amendments of this Agreement.** No amendment to this Agreement or any agreement or notice purporting to terminate this Agreement shall be effective unless written approval is given to such amendment, agreement or notice by the City and the Developer, or their respective successors and assigns.

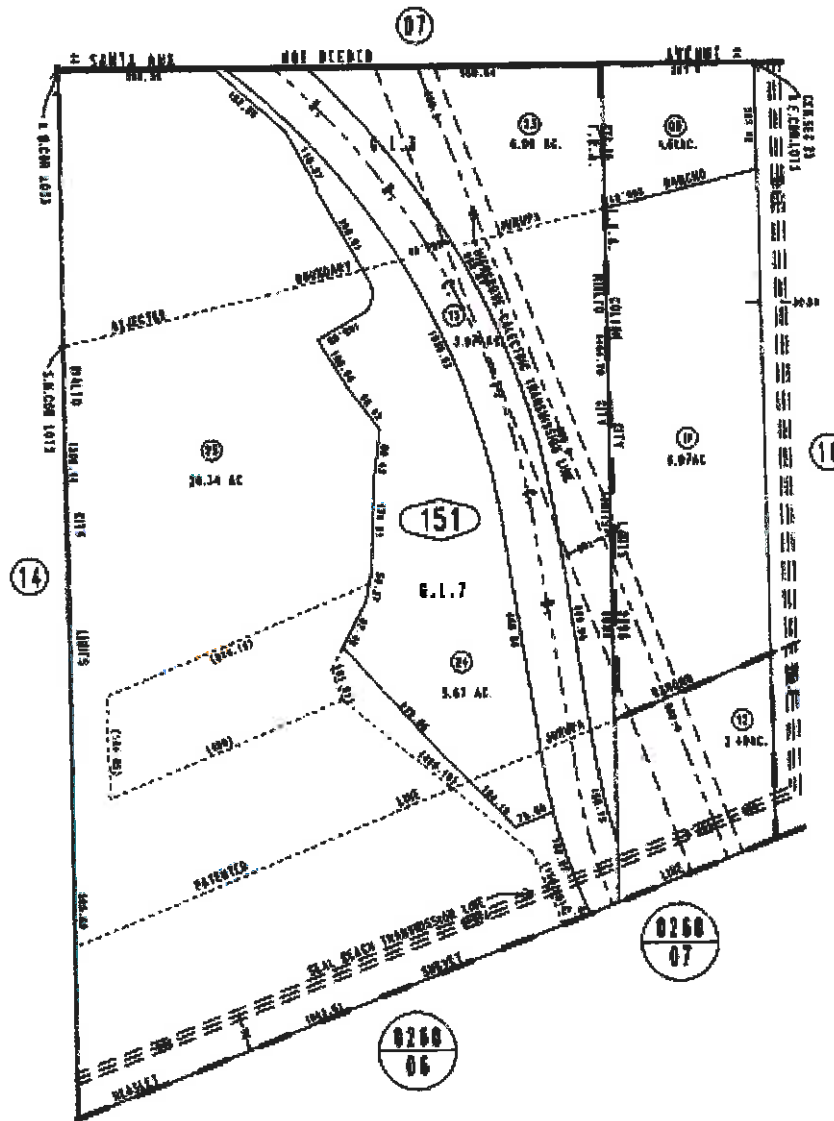
**9. Binding Covenants.** The Easement granted herein is appurtenant to the Organic Waste Recycling Facility Site and shall bind the owners of the RWTP Site. The parties intend that the covenants, conditions and restrictions contained herein shall be enforceable as equitable servitudes and shall constitute covenants, the burdens and benefits of which shall run with the land and bind successive owners of the affected portions of the RWTP Site and the Organic Waste Recycling Facility Site.

**10. Recordation of Agreement.** This Agreement shall be recorded in the Office of the Recorder of the County of San Bernardino, State of California.

# EXHIBIT A

## SITE MAP

The Site is APN 0258-151-24 as shown on the Assessor's Parcel Map below. The Site consists of approximately 5.7 acres.





## EXHIBIT B

### LEGAL DESCRIPTION OF ORGANIC WASTE RECYCLING FACILITY SITE

The land referred to in this Commitment is situated in the City of Rialto, County of San Bernardino, State of California, and is described as follows:

PARCEL 1A OF LOT LINE ADJUSTMENT NO. LLA-222, AS EVIDENCED BY A CERTIFICATE OF COMPLIANCE NO. 222 RECORDED APRIL 23, 2015 INSTRUMENT NO. 2015-0164097 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING PORTIONS OF GOVERNMENT LOTS 3 AND 7 IN THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 5 WEST, S.B.M. ALSO BEING A PORTION OF "RANCHO JURUPA" AS PER MAP RECORDED IN BOOK 1 OF MAPS, PAGE 47 RECORDS OF SAID COUNTY, SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER LINE INTERSECTION OF ACACIA AVENUE AND SANTA ANA AVENUE, SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;

THENCE ALONG THE NORTHERLY LINE OF SAID GOVERNMENT LOT 3 NORTH 89° 45' 33" EAST 290.35 FEET TO THE POINT OF BEGINNING.

THENCE ALONG SAID NORTHERLY LINE NORTH 89° 45' 33" EAST, 20.81 FEET TO A POINT ON THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL BY DEED RECORDED IN BOOK 7623, PAGE 373 OF OFFICIAL RECORDS OF SAID COUNTY, SAID WESTERLY LINE BEING A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1350.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 37° 13' 10" EAST;

THENCE LEAVING SAID NORTHERLY LINE AND ALONG SAID WESTERLY LINE THE FOLLOWING COURSES:

1. SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 1039.63 FEET THROUGH A CENTRAL ANGLE OF 44° 07' 24";
2. TANGENT TO SAID CURVE, SOUTH 08° 39' 26" EAST, 446.94 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1050.00 FEET;
3. SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 94.70 FEET THROUGH A CENTRAL ANGLE OF 05° 10' 02";

THENCE LEAVING SAID WESTERLY LINE SOUTH 68° 13' 08" WEST, 75.80 FEET;  
THENCE NORTH 44° 26' 08" WEST, 194.19 FEET;  
THENCE NORTH 42° 24' 56" WEST, 275.06 FEET;  
THENCE NORTH 27° 37' 03" EAST, 97.40 FEET;  
THENCE NORTH 10° 58' 15" EAST, 59.57 FEET;  
THENCE NORTH 02° 29' 19" EAST, 176.91 FEET;  
THENCE NORTH 07° 41' 36" EAST, 89.42 FEET;  
THENCE NORTH 37° 49' 16" WEST, 98.42 FEET;  
THENCE NORTH 31° 08' 44" WEST, 106.94 FEET;  
THENCE NORTH 60° 18' 16" EAST, 105.98 FEET;  
THENCE NORTH 35° 21' 07" EAST, 16.18 FEET;  
THENCE NORTH 14° 41' 52" EAST, 20.17 FEET;  
THENCE NORTH 12° 15' 26" WEST, 20.08 FEET;  
THENCE NORTH 29° 40' 01" WEST, 200.01 FEET;  
THENCE NORTH 07° 47' 20" WEST, 9.44 FEET;  
THENCE NORTH 29° 02' 09" WEST, 119.87 FEET;  
THENCE NORTH 48° 34' 55" WEST, 182.66 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM SAID LOT 3, 1/2 OF ALL OIL, GAS, PETROLEUM, NAPHTHA AND OTHER HYDROCARBON SUBSTANCES AND MINERALS TOGETHER WITH THE RIGHT OF ENTRY, AS RESERVED IN DEED FROM THE FEDERAL LAND BANK OF BERKELEY TO FRANK L. CALDWELL AND LILLIAN B. CALDWELL, HIS WIFE, AS JOINT TENANTS, RECORDED SEPTEMBER 22, 1941, IN [BOOK 1499, PAGE 190](#), OFFICIAL RECORDS.

EXCEPTING THEREFROM SAID LOT 7, 1/2 OF ALL GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES WITHIN OR UNDERLYING SAID PROPERTY AS RESERVED BY FRANK C. MORTIMER, BUILDING AND LOAN COMMISSIONER OF THE STATE OF CALIFORNIA, BY DEED RECORDED MARCH 27, 1946, IN [BOOK 1875, PAGE 273](#), OFFICIAL RECORDS.

UNDIVIDED ONE HALF INTEREST IN FEE IN AND TO ALL OIL, GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES OR OTHER MINERALS IN THE REAL PROPERTY BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF SAID REAL PROPERTY PROVIDED, HOWEVER, THIS INTEREST SHALL NOT INCLUDE THE RIGHT OF SURFACE ENTRY FOR THE PURPOSE OF EXPLORING, MINING, DRILLING OR IN ANY OTHER WAY EXTRACTING OIL, GAS, MINERALS OR OTHER KINDRED SUBSTANCES FROM SAID REAL PROPERTY, BY DEED RECORDED DECEMBER 23, 1971, IN [BOOK 7821, PAGE 894](#), OFFICIAL RECORDS.

APN: 0258-151-24-0-000

**EXHIBIT C**

**LEGAL DESCRIPTION OF EASEMENT**

**ACCESS EASEMENT  
ALONG SANTA ANA AVENUE  
RIALTO WASTEWATER TREATMENT PLANT**

REAL PROPERTY IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 3 OF LOT LINE ADJUSTMENT 163 (LLA-163) AS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE DATED JUNE 7, 2006 AND RECORDED JULY 26, 2006 AS INSTRUMENT NO. 2006-0504129, IN OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, SAID PORTION BEING DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHWEST CORNER OF SAID PARCEL 3, SAID CORNER BEING THE CENTERLINE INTERSECTION ACACIA AVENUE AND SANTA ANA AVENUE;

THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 3 SOUTH 00°20'19" EAST, 34.00 FEET;

THENCE LEAVING SAID WESTERLY LINE SOUTH 89°50'46" EAST, 331.08 FEET TO THE GENERALLY WESTERLY LINE OF PARCEL 1 OF SAID LOT LINE ADJUSTMENT;

THENCE ALONG SAID GENERALLY WESTERLY LINE NORTH 48°34'55" WEST, 54.58 FEET TO THE NORTHERLY LINE OF SAID PARCEL 3 AND SAID CENTERLINE OF SANTA ANA AVENUE;

THENCE ALONG SAID NORTHERLY LINE AND SAID CENTERLINE SOUTH 89°45'33" WEST, 290.35 FEET TO THE POINT OF BEGINNING.

THE HEREINABOVE DESCRIBED PARCEL IS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

W. J. MCKEEVER INC.  
CIVIL ENGINEERING



*Larry L. Walker* 3/6/07  
LARRY L. WALKER LS 4463  
LICENSE EXPIRES 09-30-07

STATE OF CALIFORNIA

)  
) ss.  
)

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited
- General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above