

FIRST AMENDMENT TO GROUND SUBLEASE

This **FIRST AMENDMENT TO GROUND SUBLEASE** (“Amendment”) is made as of January 9, 2018 (the “Effective Date”), by and between the **RIALTO UTILITY AUTHORITY**, a joint exercise of powers authority (“Authority” or “Lessor”), and **RIALTO BIOENERGY FACILITY LLC**, a Delaware limited liability company (“Lessee”), who are collectively referred to herein as the “Parties”.

RECITALS

A. On or about April 1, 2016, the Parties entered into that certain Ground Sublease (“Sublease”) and related agreements for the sublease of the Site and, on July 26, 2016, a Facility Operation Agreement to operate the Facility 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. Unless otherwise stated herein, all capitalized terms used in this Amendment shall have the definitions ascribed under Sublease.

B. The Parties wish to amend the Sublease to extend the time for Lessee’s obligation to satisfy the Conditions Subsequent and provide for Authority’s rights to terminate the Sublease.

C. The Parties wish to memorialize said amendments pursuant to the terms of this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Authority and Lessee hereby agree as follows:

1. **Section 20.2.** Section 20.2, entitled “Conditions Subsequent” at the introductory paragraph therein, shall be amended to replace the time for the condition subsequent to occur from 18 months to 24 months so that the second sentence of such introductory paragraph shall be replaced with the following sentence and the provisions of Subsection 20.2 (f) be deleted in its entirety, with the other provisions of Section 20.2 remaining unmodified and in full force and effect:

“20.2 Conditions Subsequent. . . . Should the following Conditions Subsequent not be met within ~~eighteen (18)~~ twenty-four (24) 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. . . .”

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

2. **Section 24.8.** A new Section 24.8 shall be added to the Sublease to read as follows, with all other provisions of Section 24 remaining unmodified and in full force and effect:

24.8 Further Rights of Authority to Terminate. Should Lessee fail to meet the following Facility development schedule or any extensions approved by the Authority as set forth in this Section, the Parties agree such failure will not be considered an Event of Default by Lessee, *provided however*, Authority may terminate this Agreement without liability to and of Lessee, and without following the procedures set forth in Section 24.2. Upon such failure to meet the following Facility development schedule, Authority shall give Lessee notice of termination pursuant to this Section 24.8, which termination shall be effective ninety (90) calendar days from the date of the notice of termination without further action by Authority and if Lessee does not meet each or any of the dates below prior to the effective date of termination. Notwithstanding the foregoing, Lessee may request an extension of time, and 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 one hundred eighty (180) days from the original date(s) set forth below.

(a) **Commencement of Construction:** Lessee shall commence construction of the Facility pursuant to duly issued construction permits, no later than June 1, 2019.

(b) **Completion of Construction.** Lessee shall complete construction of the Facility, as evidenced by a Certificate of Occupancy issued by the City of Rialto and any other applicable permits from governmental agencies having jurisdiction over such construction, no later than June 1, 2021.

(c) **Commencement of Commercial Operations.** Lessee shall commence commercial operations so that the Facility is fully functional and operational, as contemplated under Section 1 of the Facility Operation Agreement, no later than December 31, 2021.

3. **Continuing Effect of Agreement.** Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment.
4. **Adequate Consideration.** The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.
5. **Counterparts.** This Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.
6. **Conflict of Interest.** Pursuant to Rialto Municipal Code section 2.48.145, Lessee represents that it has disclosed whether it or its officers or employees is related to any officer or employee

of the City by blood or marriage within the third degree which would subject such officer or employee to the prohibition of California Government Sections 87100 et. seq., Fair Political Practices Commission Regulation Section 18702, or Government Code Section 1090. To this end, by approving this Agreement, Lessee attests under penalty of perjury, personally and on behalf of Lessee, as well its officers, representatives, that it/they have no relationship, as described above, or financial interests, as such term is defined in California Government Section 87100 et. seq., Fair Political Practices Commission Regulation Section 18702, or Government Code Section 1090, with any City of Rialto elected or appointed official or employee, except as specifically disclosed to the City in writing.

7. **Corporate Authority.** The persons executing this Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

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