

LEASE AGREEMENT

This Lease Agreement (“**Lease**”) is made and entered into as of July 28, 2020, (“**Effective Date**”) by and between the City of Rialto, a municipal corporation (“**Landlord**”) and Rialto Bioenergy Facility, LLC (“**Tenant**”). Landlord and Tenant may be collectively referred to herein as “**Parties**” and each may be referred to individually as a “**Party**.”

1. **PROPERTY.**

1.1 **Property.** Landlord is the fee owner of certain real property located at 501 East Santa Ana Avenue, Rialto, California. Landlord agrees to lease to Tenant a certain portion of this real property, as depicted in **Exhibit A** attached hereto and incorporated herein by reference (“**Property**”). The Property is currently unimproved and vacant.

2. **TERM.**

2.1 **Initial Term.** The “**Term**” of this Lease shall be from the Effective Date and shall continue until December 31, 2020, unless terminated earlier as provided in this Lease.

3. **RENT.**

Payments of “**Rent**” under this Lease shall commence as of the Effective Date. Tenant shall pay to Landlord, at the following address: City of Rialto/Rialto Utility Authority, Attn: Customer Service/Billing, P.O. Box 800, Rialto, CA 92377, or at such other address as Landlord may from time to time designate in writing to Tenant for the payment of Rent, a monthly rent in the amount of Two Thousand Dollars (\$2,000.00) in advance, on the first day of each calendar month. If Rent is due for a period of less than a full month, it shall be prorated for such partial month on the basis of a 30-day month.

Tenant has been occupying and using the Property since April 1, 2020. Within thirty (10) days of the Effective Date, Tenant shall issue and deliver payment to Landlord in an amount of Eight Thousand Dollars and Zero Cents (\$8,000.00), for the time period between April 1, 2020 and July 31, 2020.

Any monetary payment due Landlord hereunder not received by Landlord when due shall bear interest from the due date at an interest rate of 10% per annum or, if less, the maximum rate permitted by law.

4. **PERMITTED USE.**

Tenant may use the property for the following purposes: the storage of spoils, piping, structural steel, and other non-hazardous construction materials; the storage of storage containers on the site that will contain piping materials, fittings and valves for the completion of construction of their facilities; parking during construction hours for not more than twenty (20) cars. All uses of the Property not explicitly set forth herein, are prohibited.

5. INSURANCE & INDEMNIFICATION.

5.1 Tenant's Insurance. During the Term of this Lease, Tenant shall obtain and keep in full force and effect, the following insurance which may be provided under blanket insurance policies covering other properties as well as the Property and shall be maintained with an insurance company rated at least A-VIII or better in Best's Insurance Reports. Upon Landlord's request, Tenant will provide Landlord with a certificate(s) evidencing such insurance.

5.1.1 Liability Insurance. Personal injury, bodily injury and property damage insurance, naming Landlord as an additional insured as its interest may appear from time to time, against liability arising out of Tenant's use, occupancy, or maintenance of the Property. Such insurance shall provide coverage for and shall be in an amount of not less than Three Million Dollars (\$3,000,000.00) for injury to or death of one person in any one accident or occurrence and in an amount of not less than Five Million Dollars (\$5,000,000.00) for injury to or death of more than one person in any one accident or occurrence. Tenant's insurance shall be primary with respect to any claim arising out of events that occur in the Property.

5.1.2 Property Insurance. Commercial property form insurance insuring the Property against damage and destruction by fire, vandalism, and other perils in the amount of the full replacement value of any buildings on the Property, as such value may exist from time to time. Tenant's policies shall not be contributing with or in excess of any coverage which Landlord shall carry on the Building.

5.2 Landlord's Insurance. During the Term of this Lease, Landlord shall obtain and keep in full force and effect, the following insurance from an insurance company rated at least A-VIII or better in Best's Insurance Reports. The insurance required to be carried by Landlord shall be referred to herein as "Landlord's Insurance." Upon Tenant's request, Landlord will provide Tenant with a copy of the certificate evidencing Landlord's Insurance.

5.2.1 Liability Insurance. Bodily injury, personal injury and property damage insurance insuring against claims of bodily injury or death, personal injury or property damage arising out of or in connection with Landlord's activities upon, in or about the Property in a limit of not less than One Million Dollars (\$1,000,000.00) for injury to or death of one person in any one accident or occurrence and in an amount of not less than Three Million Dollars (\$3,000,000.00) for injury to or death of more than one person in any one accident or occurrence. Landlord's Insurance shall be primary with respect to any claim arising out of events that occur outside the Property.

5.2.2 Property Insurance. Commercial property form insurance insuring the Property against damage and destruction by fire, vandalism, and other perils in the amount of the full replacement value of any buildings on the Property, as such value may exist from time to time.

5.3 Waiver of Subrogation. Neither Landlord nor Tenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other Party for any loss or damage to any building, structure or other tangible property, or any resulting loss of income and benefits, even though such loss or damage might have been occasioned by the

negligence of such Party, its agents or employees if any such loss or damage is covered by insurance benefiting the Party suffering such loss or damage or was required to be covered by insurance pursuant to this Lease. Landlord and Tenant shall require their respective insurance companies to include a standard waiver of subrogation provision in their respective policies.

5.4 Indemnification.

5.4.1 By Tenant. Tenant shall defend, indemnify, and hold Landlord and Landlord's agents, officers, directors, employees, and contractors harmless against and from any and all third party claims (such as injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands, including reasonable attorneys' fees) to the extent resulting from any intentional acts or negligence of Tenant or Tenant's agents, employees, or contractors. This indemnity does not include the willful misconduct or sole negligent acts or omissions of Landlord or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of the Lease.

5.4.2 By Landlord. Landlord shall defend, indemnify, and hold Tenant and Tenant's agents, officers, directors, employees, and contractors harmless against and from any and all third party claims (such as injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands, including reasonable attorneys' fees) to the extent resulting from any intentional acts or negligence of Landlord or Landlord's agents, employees, or contractors. This indemnity does not include the willful misconduct or sole negligent acts or omissions of Tenant or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of the Lease.

6. STATE OF TITLE.

This Lease is subject to all easements, covenants, conditions, restrictions, reservations, rights-of-way, and other matters of record ("**Permitted Exceptions**"). Tenant shall not permit mechanics' or other liens to be placed upon the Property. In the event a mechanics' or other lien is placed on the Property, Tenant, within 10 days of notice of such a lien, shall fully discharge any lien by settlement, by bonding, or by insuring over the lien in the manner prescribed by the applicable lien law and, if Tenant fails to do so, Tenant shall be deemed in default under this Lease and, in addition to any other remedies available to Landlord as a result of such default by Tenant, Landlord, at its option, may bond, insure over or otherwise discharge the lien. Tenant shall reimburse Landlord for any amount paid by Landlord, including, without limitation, reasonable attorneys' fees. Tenant will not cause title to the Property to be encumbered in any way. At all times title to the Property shall remain vested in Landlord and shall not pass to Tenant.

7. REPAIRS, TENANT IMPROVEMENTS & MAINTENANCE.

7.1 Maintenance. Tenant, at Tenant's expense, shall maintain the Property in good condition and repair.

7.2 Tenant Improvements. Tenant shall not be permitted to construct or install any

structures or permanent improvements on the Property without prior written consent of Landlord.

8. ENVIRONMENTAL MATTERS.

8.1 Environmental Compliance. Tenant shall, at their sole cost and expense, comply with all Federal, State or local laws from time to time in effect (“**Hazardous Materials Laws**”) concerning the management, use, generation, storage, transportation, presence, discharge or disposal of hazardous, toxic, radioactive or carcinogenic materials, substances or wastes (“**Hazardous Materials**”). Neither Tenant nor their agents, employees, contractors, sublessees, assignees or invitees shall use, handle, store, transport, release or dispose of any Hazardous Materials anywhere in, on, under or about the Property or any portion thereof. Landlord shall have the right to enter the Property from time to time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant's compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws.

8.2 Indemnification. Tenant shall indemnify, defend and hold Landlord harmless from any third party claims (such as causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses, including attorneys' fees and expenses) to the extent caused by the use, storage, generation, presence or release of Hazardous Materials in violation of Tenant's obligations under this Lease, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including without limitation, claims made against the Landlord with respect to bodily injury, death or property damage sustained by third parties caused or alleged to have been caused by the use, storage, generation, presence or release of Hazardous Materials in violation of Tenant's obligations under this Lease.

9. DEFAULT.

9.1 Events of Default. Where “**default**” is used in this Lease, default refers to any breach under this Lease, however brief. Where a default continues for the period specified below, it shall, at the other Party's option, constitute an Event of Default giving rise to the remedies below. The occurrence of any of the following events may constitute an “**Event of Default:**”

9.1.1 Tenant's failure to pay Rent on the date when due and the failure continuing for a period of 15 days after such payment is due; or

9.1.2 Either Party's failure to perform its covenants and obligations hereunder (except default in the payment of Rent) where such failure continues for a period of 15 days after the defaulting Party's receipt of written notice.

9.2 Remedies.

9.2.1 Termination. In the event of the occurrence of any Event of Default, the Party claiming default shall have the right to give a written termination notice to the other Party and, on the date specified in such notice (which date shall be at least two business days following the date of delivery of such notice), this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and/or

all other Events of Default at the time existing shall have been fully remedied to the satisfaction of the non-defaulting Party.

A. Repossession. Following termination by Landlord, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Property upon voluntary surrender by Tenant or remove Tenant therefrom and any other persons occupying the Property, using such legal proceedings as may be available; (ii) repossess the Property or re-let the Property or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Property; and (iii) remove all personal property therefrom.

B. Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable law, including the right to recover from Tenant: (a) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (b) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant proves could have been reasonably avoided, (c) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (d) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

10. ASSIGNMENT AND SUBLETTING.

Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of law, this Lease, the Property or any part thereof, without Landlord's prior written approval, which may be granted in Landlord's reasonable discretion. Any sublease or assignment or other transfer agreements shall be subject to Landlord's prior written approval, which may be granted in Landlord's reasonable discretion. Tenant's attempted assignment/subletting without first obtaining Landlord's written consent shall be void at Landlord's election. Landlord's consent to one assignment or subletting shall not be deemed consent to subsequent assignments and/or sublets. This Lease may not be assigned by operation of law. Any purported assignment or subletting contrary to the provisions hereof shall be void at Landlord's election and shall constitute an Event of Default hereunder.

Notwithstanding the foregoing, Landlord acknowledges that Tenant has financed the construction of the facilities referred to in Section 4, and agrees that Landlord shall reasonably cooperate with Tenant and the trustee under the indenture relating to such financing (the "Trustee") in taking such action as the Trustee may reasonably request to evidence more effectively the interest of the Trustee in Tenant's interest under this Lease or in the property of Tenant located thereon.

11. MISCELLANEOUS.

11.1 Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Property and there are no agreements either oral or written other than as set forth herein.

11.2 Time of Essence. Time is of the essence of this Lease.

11.3 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

11.4 Law. This Lease shall be construed and enforced in accordance with the law of the state of California, without reference to its choice of law provisions.

11.5 Successors and Assigns. Subject to the assignment provisions herein, this Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and Tenant.

11.6 Third Party Beneficiaries. Nothing herein is intended to create any third-party benefit.

11.7 Memorandum of Lease; Title. Tenant may elect to have either this Lease or a short form memorandum hereof recorded pursuant to the requirements of California Government Code section 37393. Landlord shall cooperate with Tenant in executing and acknowledging any such memorandum of lease.

11.8 Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the Parties hereto shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the Parties hereto or any relationship other than the relationship of landlord and tenant.

11.9 Interpretation. The titles to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. As used in this Lease, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Lease shall be interpreted as though prepared jointly by both Parties.

11.10 Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either Party of any provision under this Lease shall be effective unless in writing and signed by such Party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

11.11 Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or

courier delivery, or sent by email (with receipt confirmation), or sent by facsimile (immediately followed by one of the preceding methods), to the address below, or to such other place as Landlord or Tenant may designate in a written notice given to the other Party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

LANDLORD: City of Rialto
c/o City Manager
150 S. Palm Avenue
Rialto, CA 92376

TENANT: Rialto Bioenergy Facility, LLC
(Also Known As "Anaergia")
c/o Director of Project Execution
5780 Fleet Street
Suite 310
Carlsbad, CA 92008

With a copy to: Legal-usa@anaergia.com

11.12 Brokerage Commission. Each Party hereby represents and warrants that it has not obtained the services of a broker in connection with this Lease.

11.13 Authorization. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she or it is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

11.14 Surrender. Upon the termination of this Lease or Tenant's right to possession of the Property, Tenant will surrender the Property in good condition and repair, reasonable wear and tear excepted.

***** SIGNATURES ON NEXT PAGE *****

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

CITY:

CITY OF RIALTO,
a Municipal Corporation

By: _____
Rod Foster, City Manager

ATTEST:

By: _____
Barbara A. McGee, City Clerk

APPROVED AS TO FORM:

BURKE, WILLIAMS & SORENSEN, LLP

By: _____
Eric S. Vail, Interim City Attorney

PROPERTY OWNER/TENANT:

By: _____
Name:

Its:

By: _____
Name:

Its:

Exhibit A

DEPICTION OF THE PROPERTY

