1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

KING COUNTY

Signature Report

July 29, 2003

Ordinance 14723

Proposed No. 2003-0319.2 **Sponsors** Patterson and Phillips

AN ORDINANCE determining that unique circumstances exist that make a negotiated direct sale of the landfill gas generated at the Cedar Hills regional landfill in the best interests of the public and authorizing the county executive to enter into contracts with respect to the sale of the landfill gas.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. **Findings:**

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

B. The landfill currently collects approximately thirteen million cubic feet of LFG per day at its North Flare station, and the LFG is surplus property that currently is not put to beneficial use.

C. The LFG produced at the landfill was declared surplus to the county's needs in Motion 8591, passed by the King County council on April 6, 1992.

D. The quantity of gas produced and collected is estimated to be sufficient to generate enough electricity to serve approximately sixteen thousand households per year, eliminating the need for other energy sources and thereby providing environmental benefits to King County residents.

E. Putting the LFG to beneficial use will greatly reduce the amount of LFG that must be destroyed through flaring.

F. The unique nature of LFG and the complexity of converting it to a useable energy resource make a negotiated direct sale in the overall best interests of the public.

G. Factors involved in determining the most advantageous transaction include the purchaser's safety and environmental record, the purchaser's proposed technology for generating electricity, the potential ability of the purchaser to obtain tax credits and other factors.

H. The county issued a request for proposals ("RFP") to obtain proposals from qualified purchasers with respect to the LFG and its conversion in to energy, and asked prospective purchasers to provide information not only with respect to the price at which they were willing to purchase the LFG, but also information on technical expertise, environmental and safety records, experience with similar facilities and numerous other factors that are necessary for the county to consider in determining the transaction that is most beneficial to the public.

SECTION 2. A. The council hereby finds pursuant to K.C.C. 4.56.100 that unique circumstances exist that make a negotiated direct sale of the landfill gas generated at Cedar Hills Landfill in the best interests of the public.

B. The King County executive or the executive's designee is hereby authorized to enter into three agreements with respect to the sale and conversion into energy of landfill gas generated by Cedar Hills Landfill, substantially in the form of Attachments A, B, C and D to this ordinance.

C. Income earned from this project shall be deposited into the solid waste operating fund.

Ordinance 14723 was introduced on 7/7/2003 and passed by the Metropolitan King County Council on 7/28/2003, by the following vote:

Yes: 13 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Hammond, Mr. Gossett, Ms. Hague, Mr. Irons and Ms. Patterson
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Cynthia Sullivan, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this 7 day of August, 2003.

Ron Sims, County Executive

RECEIVED
2003 AUG -8 PM 4:03
CLERK
KING COUNTY COUNCIL

Attachments A. Landfill Gas Sales Agreement Cedar Hills Regional Landfill, B. Project Development Agreement, C. Plant Site Lease, D. Schedule 1.1 Definitions

LANDFILL GAS SALES AGREEMENT

CEDAR HILLS REGIONAL LANDFILL

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LANDFILL GAS SALES AGREEMENT
CEDAR HILLS REGIONAL LANDFILL

This Landfill Gas Sales Agreement (the "Agreement") is made as of _____, 2003 (the "GSA Effective Date") by and between King County Washington, a Washington municipal corporation ("Owner") and Bio Energy (Washington), LLC, a Delaware limited liability company ("Bio Energy"). The Owner and Bio Energy are referred to herein individually as a "Party" and, collectively, as the "Parties."

RECITALS:

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

B. Owner currently collects Landfill Gas in the Collection Facilities that are installed at the Landfill, which Landfill Gas is currently burned-off at the North Flare Station located at the Landfill.

C. Bio Energy desires to design, finance, own, construct, operate and maintain an electricity generating facility at the Landfill (as more specifically described in Schedule 1.1, the "Plant") on a site located within the Landfill Site and to obtain rights to Landfill Gas produced at the Landfill and collected by the Collection Facilities.

D. Owner is willing to sell and Bio Energy is willing to purchase all of the Landfill Gas collected by the Collection Facilities and delivered to the Gas Delivery Point upon the terms and subject to the conditions set forth herein.

E. This Agreement is integral to implementation of other agreements respecting the Landfill to which one or more Parties are parties, including a Project Development Agreement.

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

1. Definitions; Rules of Construction.

1.1 Definitions. Except as otherwise expressly provided herein, capitalized terms used herein shall have the meanings assigned thereto in Schedule 1.1.

1.2 Rules of Construction and Interpretation. Except as otherwise expressly provided herein, the rules of construction and interpretation set forth in Schedule 1.1 shall apply to this Agreement.

1.3 Negotiation of Agreement. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective legal counsel. Accordingly, this Agreement shall be deemed to be the product of each Party hereto, and there shall be no presumption that an ambiguity should be construed in favor of or against a Party solely as a result of such Party's actual or alleged role in the drafting of this Agreement.

2. Term.

2.1 Initial Term. The term of this Agreement (the "Initial GSA Term") shall commence on the GSA Effective Date and shall, unless sooner terminated as provided in Section 11 of this Agreement, remain in force and effect until the fifteenth (15th) anniversary of the Commercial Operation Date.

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

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

3. Conditions Precedent.

3.1 Conditions Precedent. The respective rights and obligations of the Parties under this Agreement (other than those contained in this Section 3 and Sections 4.4.2, 11, 13, 15, 16, 17, 18, 19 and 20, which are, accordingly, binding upon the Parties as of the GSA Effective Date) are subject to the satisfaction in full of the following conditions precedent:

3.1.1 Bio Energy shall have been granted all Required Permits either unconditionally or subject to conditions which do not materially prejudice its rights, the enjoyment of its benefits or the performance of its obligations under this Agreement and the other Project Contracts to which its is a party, and each such Required Permit shall be in full force and effect; and,

3.1.2 Financial Closing shall have occurred;

provided that, (a) the Parties, upon their mutual consent and approval, may waive the condition precedent set forth in Section 3.1.1 at any time and (b) Bio Energy may waive the condition precedent set forth in Section 3.1.2 upon providing a waiver notice to

Owner at any time prior to the date Owner delivers a termination notice to Bio Energy in accordance with and as authorized by Section 3.2.

3.2 Non-Fulfillment of Conditions Precedent.

3.2.1 If the Conditions Precedent have not been satisfied in full or waived on or before: (a) in the case of the condition precedent set forth in Section 3.1.1, the Target Permit Acquisition Date; or (b) in the case of the condition precedent set forth in Section 3.1.2, on or before the Target Closing Date, then either Party shall have the right, upon not less than ten (10) days notice to the other Party, to terminate this Agreement whereupon this Agreement shall terminate on the tenth (10^{th}) day following the effective date of such notice; provided, however, that a Party shall not have the right to terminate this Agreement due to the failure of the occurrence of a Condition Precedent if the failure of the Condition Precedent to occur is due to the act of such Party.

3.2.2 For purposes of clarification, if the relevant Condition Precedent is satisfied after the effective date of such termination notice but prior to the tenth (10^{th}) day following the effective date of such notice, such cure shall have no force and effect hereunder and shall not terminate, limit or restrict the terminating Party's right to terminate this Agreement.

3.2.3 Notwithstanding anything to the contrary set forth in this Agreement, in the event of the termination of this Agreement pursuant to this Section 3.2, neither Party shall have any liability or obligations to the other Party whatsoever as a result of such termination, except for any liability or obligation which arose or accrued under Section 13 prior to the effective date of a termination of this Agreement hereunder, which liabilities and obligations shall survive such termination as set forth in Section 13.7.

4. Sale of Landfill Gas.

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

4.2 Sale during Delivery Term. Subject to the terms and conditions of this Agreement, Owner agrees to sell and deliver to Bio Energy and Bio Energy agrees to buy from Owner and accept delivery of all Landfill Gas (excluding any portion thereof which is part of the Flared Gas Quantity) made available at the Gas Delivery Point during the Delivery Period.

4.3 Sales of Flared Gas.

4.3.1 Owner and Bio Energy acknowledge that at certain times the Plant will not be able to use all of the then-available Landfill Gas at the Plant for the generation of electricity and during such periods of time quantities of Landfill Gas will be burned-off in either the New Flare Station or the Plant Flare (all such quantities of Landfill Gas as flared, the "Flared Gas"). Flaring of Landfill Gas will be performed in accordance with the Flare Operation Procedures, such procedures (i) to be mutually agreed by the Parties no later than ninety (90) days prior to the Target Commercial Operation Date and (ii) following such agreement, to be incorporated into this Agreement as Exhibit D hereto.

4.3.2 The "Flared Gas Quantity" applicable to a particular Billing Period shall be the amount of Landfill Gas (measured in MMBTU) equal to the sum of: (a) all Flared Gas consumed during each Event of Force Majeure; (b) all Flared Gas consumed during each Scheduled Plant Outage that takes place during such Billing Period; (c) all Flared Gas consumed during the period of time required to repair and restart the Plant and synchronize operation of the Plant with the transmission system following an Unscheduled Collection Facilities Outage or an Event of Force Majeure (in each case that occurs or continues during such Billing Period); (d) all Flared Gas consumed at the Plant Flare; and (e) the Flared Gas consumed during each Flare Day that takes place in such Billing Period. For purposes of this Agreement, a "Flare Day" means each portion or full day during the Billing Period during which Flared Gas is burned-off at the New Flare Station (other than due to the causes set forth in clauses (a), (b) and (c) above), provided that (i) the consumption of such Flared Gas was conducted in accordance with the Flare Operation Procedures and (ii) Bio Energy shall only be entitled to claim thirty-six (36) Flare Days in any three hundred and sixty five (365) day period.

4.4 Sales Exclusively to Bio Energy.

4.4.1 Owner shall sell and deliver all Landfill Gas produced by the Collection Facilities to Bio Energy and shall not sell, deliver, transfer, use, divert or otherwise make available to any Person (other than Bio Energy) all or any part of, or any rights to purchase, extract, produce or otherwise take delivery of, any Landfill Gas.

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

4.5 WARRANTY DISCLAIMER. OWNER MAKES NO WARRANTIES AS TO THE QUALITY OR QUANTITY OF LANDFILL GAS DELIVERED TO BIO ENERGY PURSUANT TO THIS AGREEMENT. OWNER AND BIO ENERGY AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR

IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND DO NOT APPLY TO THE LANDFILL GAS SOLD HEREUNDER.

5. Consideration to Owner for Sale of Landfill Gas.

5.1 Consideration for Landfill Gas.

5.1.1 During each Billing Period occurring during the Start-up Period, as consideration for the Landfill Gas delivered to and consumed by the Plant, Bio Energy shall pay to Owner the Gas Sales Payment determined pursuant to the formula set forth on Part 1 of Schedule 5.1 for the quantity of Delivered Gas, but only to the extent accepted by Bio Energy and used for testing and commissioning activities at the Plant. For purposes of clarification, Bio Energy shall not have any obligation to pay for any Flared Gas during the Start-up Period.

5.1.2 During each Billing Period during the Delivery Period, as consideration for the Landfill Gas:

(a) For the quantity of Delivered Gas (other than any portion of the Flared Gas Quantity), Bio Energy shall pay to Owner the Gas Sales Payment determined pursuant to the formula set forth on Part 1 of Schedule 5.1;

(b) For the Flared Gas Quantity applicable to such Billing Period, Bio Energy shall pay to Owner the Gas Sales Payment determined pursuant to the formula set forth on Part 2 of Schedule 5.1; and

(c) Subject to Section 5.7, all of the electrical energy, free of charge, needed to operate the Collection Facilities.

5.2 Delay Charges.

5.2.1 If the Commercial Operation Date occurs after the Target Commercial Operation Date, Bio Energy shall (a) record all quantities of Landfill Gas that would have been delivered during the period commencing on the Target Commercial Operation Date and ending on the earlier to occur of the Commercial Operation Date and the date Owner provides a Notice of Intent to Terminate as set forth in Section 5.2.4 below, and subtract therefrom all landfill Gas paid for under Section 4.1 (such quantity, as measured in MMBTU, the "Make-up Quantity") and (b) accrue a Gas Sales Payment for the Make-up Quantity in accordance with Part 1 of Schedule 5.1 (the "Delay Charges"). Bio Energy shall pay Owner the Delay Charges in full within thirty (30) days following the Commercial Operation Date, or if this Agreement is terminated in accordance with Section 5.2.4, within five (5) days of the GSA Termination Date. Owner acknowledges and agrees that its sole and exclusive right and remedy in the event of Bio Energy's failure to achieve Commercial Operation by the Target Commercial Operation Date shall be the payment of Delay Charges as set forth in this Section 5.2.1.

5.2.2 Commencing on the fourteenth (14^{th}) anniversary of the Commercial Operation Date, Bio Energy shall be entitled to accept Delivered Gas free-of-charge until

the quantity of Delivered Gas delivered after such date is equal to the Make-up Quantity, at which time Bio Energy shall resume paying for Delivered Gas in accordance with Section 5.1.2(a).

5.2.3 Bio Energy and Owner acknowledge and agree that it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Owner as a result of Bio Energy's failure to achieve Commercial Operation by the Target Commercial Operation Date. The Parties acknowledge and agree that (a) Owner will be damaged by Bio Energy's failure to achieve Commercial Operation by the Target Commercial Operation Date, (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom, (c) the Delay Charges are in the nature of liquidated damages and not a penalty and are fair and reasonable and (d) such payment represents a reasonable estimate of fair compensation for the loss that may reasonably be anticipated as a result of such failure.

5.2.4 If the Plant has not achieved Commercial Operation on or before the date which is two hundred seventy (270) days following the Target Commercial Operation Date, Owner shall have the right to terminate this Agreement in accordance with Section 11.3; provided that Owner's sole and exclusive rights and remedies for Bio Energy's failure to achieve the Commercial Operation Date by such date shall be the right to terminate this Agreement and the payment of the Delay Charges.

5.3 Payments Due. Within thirty (30) days after the end of each Billing Period during the Start-up Period and the Delivery Period, Bio Energy shall pay to Owner the Gas Sales Payment due and owing pursuant to Section 5.1 for the quantity of Delivered Gas delivered during such Billing Period. Accompanying each Gas Sales Payment, Bio Energy shall provide Owner with an invoice setting forth (a) the total MMBTUs of Delivered Gas and the Flared Gas Quantity applicable to such Billing Period and (b) the calculation of the amounts due and owing by Bio Energy for such Billing Period pursuant to Section 5.1. Unless otherwise mutually agreed, all payments due and owing under this Agreement shall be made in immediately available funds and in U.S. currency by wire transfer to the bank account specified by the payee in writing to the payor.

5.4 Disputes. Within fifteen (15) days after receiving a Gas Sales Payment and the accompanying invoice pursuant to Section 5.3, Owner may, by notice to Bio Energy, dispute, in good faith, any amount set forth in such invoice. If any dispute under this Section 5.4 alleges the inaccuracy of a Gas Sales Payment due to the inaccuracy of the Billing Meters, either Party may, pursuant to Section 14.7, request an additional test or independent calibration of the Billing Meters, and the appropriate adjustment to such Gas Sales Payments shall be made in accordance with Section 14.6. If the dispute does not involve the accuracy of the Billing Meters and the Parties do not resolve such dispute within ten (10) days of the delivery of the dispute notice, then the dispute shall be resolved in accordance with Section 16. If the amount in dispute (or any portion thereof) is resolved against the Party receiving such dispute notice, such Party shall within ten (10) days of the date of such resolution pay the Party delivering such dispute notice the amount that has been resolved to be due and owing by receiving Party, plus interest at the Approved Rate from the date originally due until the date such amount is paid in full. Each Party will be deemed to have waived its right to dispute a specific invoice (without

the requirement to provide a written form of waiver) if such invoice is not disputed within fifteen (15) days of the date such invoice is delivered, subject to each Party's audit rights provided in Section 5.5.

5.5 Records and Audits.

5.5.1 Each Party shall keep and maintain complete and accurate records and all other data required by or of each of them for proper administration of this Agreement and related Project Contracts, including a copy of all of such Party's records that are necessary to demonstrate eligibility for the Alternative Energy Tax Credit, including records of Delivered Gas and Flared Gas, the MMBTU content of such Delivered Gas and Flared Gas, Bio Energy financial statements and all relevant books and records and any work papers (including those of the Parties' respective accountants). Each Party shall make such records and data available to the other Party or its designees or representatives, upon not less than three (3) Business Days' prior notice and during normal business hours, as may be required to determine whether all obligations are being performed in conformity with this Agreement. Each Party shall retain all of its books and records for three (3) years following the creation thereof or for such longer period as may be required by Applicable Law, provided that all records that are necessary to demonstrate eligibility for the Alternative Energy Tax Credit shall be retained for ten (10) years following the creation thereof or such longer period as may be required by Applicable Law.

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

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

(a) Any audit of an amount invoiced hereunder shall be requested within three hundred sixty five (365) days of the date of the delivery of the applicable invoice or invoice. Following an audit under Section 5.5.2, another audit shall not be performed for a period of twelve (12) months.

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

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

5.6 Delinquent Payments. All amounts payable under Section 5.1 shall accrue interest at the Approved Rate for the period of time during which such amounts are thirty (30) days or more past due until paid in full.

5.7 Electrical Energy Provided to Owner.

5.7.1 At all times when the Plant is operating and synchronized with the transmission system at the interconnection point, Bio Energy shall provide electrical energy to Owner at the Electricity Delivery Point in a quantity sufficient to energize the Collection Facilities. Owner acknowledges and agrees that: (a) during periods when the Plant is not operating and synchronized with the transmission system at the interconnection point (i) Owner shall be solely responsible for procuring back-up power for Owner's electrical requirements and (ii) Bio Energy shall not have any liability or obligation to Owner in the event that the supply of electrical energy does not meet all or any portion of Owner's requirements; (b) Owner shall not resell, assign or transfer in any manner whatsoever any electrical energy provided by Bio Energy to Owner hereunder; and (c) Bio Energy shall have the right to permanently cease deliveries of electrical energy to Owner if the Governmental Authority with jurisdiction over such matters determines that such continued deliveries would (x) subject Bio Energy to regulation as a "public service corporation," "electric utility company," "electric company," "public utility," "holding company" or similar entity under the laws of the State of Washington, the Federal Power Act, the Public Utility Holding Company Act of 1935 or any other Applicable Law or (y) would result in the termination of the Plant's "qualifying facility" status under PURPA.

5.7.2 Bio Energy shall retain title to and risk of loss for the electrical energy until such time as the electrical energy is delivered by Bio Energy to the Electricity Delivery Point. Owner shall take title to and incur risk of loss for electrical energy when it is made available to Owner at the Electricity Delivery Point. Until such delivery, Bio Energy shall be deemed to be in control of, be in possession of, and be responsible for such electrical energy. Upon such delivery, Owner shall be deemed to be in control of, be in possession of, and be responsible for such electrical energy. Owner shall be solely responsible for constructing all facilities needed to accept delivery of electrical energy at the Electricity Delivery Point, transform such electrical energy into the required voltage, and distribute such electrical energy to the various points of use, all of which shall be at Owner's sole cost and expense.

5.7.3 WARRANTY DISCLAIMER. BIO ENERGY MAKES NO WARRANTIES AS TO THE QUALITY OR QUANTITY OF ELECTRICAL ENERGY DELIVERED TO OWNER PURSUANT TO THIS AGREEMENT. OWNER AND BIO ENERGY AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND DO NOT APPLY TO THE ELECTRICAL ENERGY PROVIDED HEREUNDER.

6. Modifications Required upon Assignment. In the event Owner proposes to sell, transfer or assign the Collection Facilities and to assign this Agreement in connection with such sale, transfer or assignment, the Parties shall meet and discuss in good faith the proposed purchaser, transferee or assignee, the circumstances of the sale, transfer or assignment, and any modifications to this Agreement that are necessary to complete such sale, transfer or assignment to the mutual satisfaction of the Parties and the purchaser, transferee or assignee. Nothing in this Section 6 shall limit, restrict or supersede the execution and delivery of an Assignment Agreement by the Parties and the proposed purchaser, transferee or assignee as a condition precedent to such sale, transfer or assignment, as set forth in Section 15.2.

7. Landfill.

7.1 No Mineral Rights or Production Rights. Subject to the rights granted to Bio Energy in Section 4.4, nothing in this Agreement shall be deemed to grant to Bio Energy any rights to Landfill Gas in place or any production rights or other rights to, or interest in, any oil or natural gas or other minerals located under or in the Landfill except for the rights to Landfill Gas delivered to the Gas Delivery Point and Bio Energy shall have no right to drill for or, subject to Bio Energy's exercise of its rights granted pursuant to Section 12, otherwise operate the Collection Facilities to collect the Landfill Gas.

7.2 Continued Operation of Landfill. Owner shall have no obligation to continue operations of the Landfill; provided, however, that any suspension or termination of Landfill operations shall not (a) release Owner from its obligation to continue to operate and maintain the Collection Facilities in accordance with Section 7.3, (b) release the Owner from the performance of its obligations hereunder, or (c) suspend or terminate this Agreement or otherwise affect Bio Energy's rights hereunder, including its rights to take delivery of Landfill Gas.

7.3 Operation and Maintenance of Collection Facilities.

7.3.1 Owner shall at all times operate and maintain the Collection Facilities in accordance with this Agreement and in such a manner as to (a) protect public health and the environment surrounding the Landfill Site, (b) enable Owner to extract a quantity of Landfill Gas from the Landfill that is consistent with the quantity of Landfill Gas that an operator of landfill gas collection facilities, operating in accordance with Good Engineering Practices, would extract in the ordinary course of operations from such, (c) minimize Collection Facilities Outages and (d) optimize the useful life of the Collection Facilities, subject at all such times to Good Engineering Practices and Applicable Law. Owner shall provide (or cause to be provided) all materials, equipment, utilities, personnel and services necessary for Owner to operate and maintain the Collection Facilities in accordance with this Agreement. Owner shall maintain the Collection Facilities in good, clean, proper and orderly condition at all times and shall implement such repairs, and shall purchase and install such expansion and replacement equipment and parts for the Collection Facilities, as is necessary to enable the Collection Facilities to operate in accordance with Good Engineering Practices and all Applicable Law.

7.3.2 Owner shall be solely responsible for operating and maintaining the Collection Facilities in accordance with the standards set forth in Section 7.3.1, and for all

costs and expenses associated therewith. Owner may, at its option (and in accordance with Good Engineering Practices), enter into agreements with Bio Energy or Persons not party to this Agreement in order to satisfy its obligation to operate and maintain the Collection Facilities pursuant to this Section 7.3; provided, however, that Owner shall not be relieved of any of its obligations or liabilities under this Agreement by reason of such agreement and Owner shall remain responsible to Bio Energy for the acts, omissions, defaults and negligence of such Persons and their respective Representatives in connection with such Person's performance or non-performance of its obligations under the applicable agreement.

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

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

7.4 Annual Maintenance Schedules.

7.4.1 No later than ninety (90) days prior to the beginning of each Operating Year during the Delivery Period: (a) Owner shall provide Bio Energy with a maintenance schedule for the Collection Facilities which shall describe in reasonable detail (i) the proposed schedule for Collection Facilities maintenance outages during the immediately succeeding Operating Year and (ii) any reduction in the quantity of Landfill Gas that will be delivered to the Gas Delivery Point during each proposed outage; and (b) Bio Energy shall provide Owner with a maintenance schedule for the Plant which shall describe in reasonable detail (i) the proposed schedule for Plant maintenance outages during the immediately succeeding Operating Year and (ii) any reduction in the quantity of Landfill Gas that Bio Energy will be able to accept at the Gas Delivery Point during each such proposed outage. Bio Energy and Owner shall meet and coordinate the proposed maintenance schedule for the Collection Facilities and Plant and shall seek to schedule outages during the same time periods, to the extent feasible and consistent with Good Engineering Practices. The Parties shall agree to a final Annual Maintenance Schedule for the Collection Facilities and the Plant on or before the date that is fifteen (15) days prior to the beginning of each Operating Year.

7.4.2 During the Delivery Period, Bio Energy or Owner may propose a revision to its respective Scheduled Outages as set forth on the then-effective Annual Maintenance Schedule to accommodate necessary or desirable changes thereto. The Parties shall consider, and shall in good faith attempt to accommodate, any such proposal by adjusting the then-effective Annual Maintenance Schedule;

provided, however, that, subject to its obligation to act in good faith, neither Party shall be obligated to consent to any such proposal.

7.4.3 In the event that Owner reasonably anticipates that any event or events may result in an Unscheduled Collection Facilities Outage, Owner shall endeavor to provide oral notice thereof, together with the expected duration thereof, to Bio Energy. As soon as practicable but not later than the day immediately following the occurrence of an Unscheduled Collection Facilities Outage, Owner shall provide notice to Bio Energy detailing to the extent known (a) the nature of the events causing the Unscheduled Collection Facilities Outage and (b) the expected effect such Unscheduled Collection Facilities Outage will have on Owner's ability to provide Landfill Gas to the Gas Delivery Point.

7.4.4 In the event that Bio Energy reasonably anticipates that any event or events may result in an Unscheduled Plant Outage, Bio Energy shall endeavor to provide oral notice thereof, together with the expected duration thereof, to Owner. As soon as practicable but not later than the day immediately following the occurrence of an Unscheduled Plant Outage, Bio Energy shall provide notice to Owner detailing to the extent known (a) the nature of the events causing the Unscheduled Plant Outage and (b) the expected effect such Unscheduled Plant Outage will have on Bio Energy's ability to accept Landfill Gas at the Gas Delivery Point.

7.5 Discharge of Third Party Claims. Bio Energy shall pay and timely discharge all its debts which may result in the assertion of any lien, mortgage, security interest or encumbrance, or any judgment, against the Landfill, Owner or any of the property of Owner, its agents or employees, or any materials or equipment comprising or otherwise a part of facilities at the Landfill, other than liens, mortgages, security interests or encumbrances on the property and rights of Bio Energy granted by Bio Energy to a Financing Party.

8. Compliance with Laws; Permits.

8.1 Compliance with Laws. Bio Energy and Owner, at their sole respective expense, shall comply with all Applicable Law to the extent applicable to their respective operations at the Landfill and the Plant.

8.2 Permits. Each Party, at such Party's sole expense, shall apply for, procure, obtain, maintain and comply with all Permits which may be required under any Applicable Laws for such Party to perform each of its obligations hereunder and which need to be procured and maintained by or in the name of such Party or jointly in the name of such Party and any third party. Each Party shall provide the other Party with such assistance and co-operation as may reasonably be required in order for such first Party to obtain and maintain all such Permits.

9. Force Majeure.

9.1 Effect of Event of Force Majeure. If a Party is prevented, hindered or delayed from performing any of its obligations under this Agreement (excluding an obligation hereunder of a Party to pay money to the other Party, pay Taxes or insurance premiums when due, or perform an indemnity obligation hereunder) but including a Party's ability to accept or deliver Landfill Gas because of an interruption of its operations) by an Event

of Force Majeure, then so long as that situation continues and such Party satisfies its obligations under Section 9.3.1, such Affected Party shall be excused from performance of such obligations to the extent it is so prevented, hindered or delayed, and the time for the performance of such obligations shall be extended accordingly.

9.2 Notice of Events of Force Majeure. The Affected Party shall notify the other party within three (3) days of the occurrence of the Event of Force Majeure, its effect or likely effect on the Affected Party's ability to perform its obligations hereunder and the likely duration of the Event of Force Majeure. The Affected Party shall keep the non-Affected Party informed of any changes in such circumstances, including when such Event of Force Majeure ends. Following the receipt of a notice given pursuant to this Section 9.2, the Parties shall consult in good faith to assess the Event of Force Majeure, the effects thereof and any ways in which it may be mitigated or avoided. Each Party shall attempt in good faith to notify the other Party of any events of which the notifying party is aware which may be reasonably expected, with the lapse of time or otherwise, to become an Event of Force Majeure.

9.3 Obligations Following Occurrence of Event of Force Majeure.

9.3.1 The Affected Party, subject to Section 9.3.3, shall use all reasonable efforts to remedy the circumstances constituting the Event of Force Majeure (if practicable), mitigate the adverse effects of the Event of Force Majeure and remedy the Event of Force Majeure expeditiously. The Affected Party shall notify the non-Affected Party of the remedy or other termination of the Event of Force Majeure and the date on which the Affected Party will resume its performance hereunder.

9.3.2 Suspension of any obligation as a result of an Event of Force Majeure shall not affect any rights or obligations which may have accrued prior to such suspension or, if the Event of Force Majeure affects only some rights and obligations, any other rights or obligations of the Parties. To the extent that the non-Affected Party is prevented, hindered or delayed from performing its obligations under this Agreement as a result of the Affected Party's failure to perform its obligations as the result of the Event of Force Majeure, such non-Affected Party shall be relieved of its obligations to the extent such non-Affected Party has been prevented, hindered or delayed by the Affected Party's failure in performance. So long as the Affected Party has at all times since the occurrence of the Event of Force Majeure complied with the obligations of Sections 9.2 and 9.3.1 and continues to so comply, then any performance deadline (including any Milestone Date) that the Affected Party is obligated to satisfy or achieve under this Agreement shall be extended on a day-for-day basis equal to the period commencing on the date the Event of Force Majeure occurs and ending on the date that such event is cured.

9.3.3 Notwithstanding anything to the contrary set forth in this Agreement, an Affected Party shall not be excused from the performance of its obligations hereunder as a result of an Event of Force Majeure to the extent that a failure or delay in performance would have nevertheless been experienced by the Affected Party had the Event of Force Majeure not occurred.

9.3.4 Neither Party shall be obliged to settle any strike or other labor actions, labor disputes or labor disturbances of any kind, except on terms wholly satisfactory to it.

9.4 Termination for Extended Force Majeure. Notwithstanding the foregoing, if an Event of Force Majeure has prevented an Affected Party from performing any of its obligations under this Agreement for one hundred eighty (180) consecutive days during the GSA Term and such Event of Force Majeure has not been remedied on the expiration of such 180-day period, then either Party, as its sole and exclusive right and remedy in the case of such extended Event of Force Majeure, may terminate this Agreement by providing a Notice of Intent to Terminate to the other Party. The terms and conditions of Section 11.3 shall apply in all respects to such Notice of Intent to Terminate in connection with the applicable extended Event of Force Majeure.

10. Title and Risk of Loss. Owner represents and warrants to Bio Energy that, as of the GSA Effective Date and at the time of delivery to Bio Energy of Landfill Gas at the Delivery Point, Owner owns and has good and marketable title to, free and clear of all liens, claims or encumbrances, all Landfill Gas delivered hereunder and has the exclusive right to extract, use, sell, dispose, assign or transfer all existing Landfill Gas to Bio Energy hereunder. Owner shall retain title to and risk of loss for the Landfill Gas until such time as the Landfill Gas is delivered by Owner to the Gas Delivery Point. Bio Energy shall take title to and incur risk of loss for Landfill Gas when it is made available to Bio Energy at the Gas Delivery Point. Until such delivery, Owner shall be deemed to be in control of, be in possession of, and be responsible for such Landfill Gas. Upon such delivery, Bio Energy shall be deemed to be in control of, be in possession of, and be responsible for such Landfill Gas.

11. Defaults, Termination and Remedies.

11.1 Bio Energy Events of Default. Each of the following events shall constitute events of default on the part of Bio Energy (each, a "Bio Energy GSA Default") which, if not cured within the time permitted (if any) to cure such event of default, shall entitle Owner to terminate this Agreement pursuant to Section 11.3; provided, however, that no such event shall be deemed to be a Bio Energy GSA Default if (a) it is caused by or is otherwise attributable to a breach by Owner of its obligations under this Agreement or any other Project Contract to which Owner is a party or (b) it occurs as a result of an Event of Force Majeure declared by Bio Energy or Owner in accordance with Section 9:

11.1.1 the failure by Bio Energy to make any payment required to be made under this Agreement to Owner when due (other than payments subject to dispute resolution pursuant to Section 5.4), where such failure shall have continued for ten (10) days after notice thereof has been given by Owner to Bio Energy;

11.1.2 the failure by Bio Energy to comply with any covenant, obligation or agreement of Bio Energy contained in this Agreement (other than any such failure which would constitute a Bio Energy GSA Default under Section 11.1.1), where such failure has a material adverse effect on Owner or Bio Energy's ability to perform its obligations under this Agreement and such failure shall not have been cured during the Initial Cure Period; provided that if the Initial Cure Period is not reasonably sufficient to permit a cure of such failure, and Bio Energy shall have diligently commenced to cure such default within the Initial Cure Period and

shall thereafter proceed with reasonable diligence to cure such failure, for such longer period as shall be reasonably necessary for Bio Energy to cure the same;

11.1.3 Bio Energy commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment or a trustee receiver, liquidator, custodian or other similar official of it or any substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

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

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

11.2 Owner Events of Default. Each of the following events shall constitute events of default on the part of Owner (each, an "Owner GSA Default") which, if not cured within the time permitted (if any) to cure such event of default, shall entitle Bio Energy to terminate this Agreement pursuant to Section 11.3; provided, however, that no such event shall be deemed to be an Owner GSA Default if (a) it is caused by or is otherwise attributable to a breach by Bio Energy of its obligations under this Agreement or any other Project Contract to which Bio Energy is a party or (b) it occurs as a result of an Event of Force Majeure declared by Bio Energy or Owner in accordance with Section 9:

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

11.2.2 the failure by Owner to make any payment required to be made under this Agreement to Bio Energy when due (other than payments subject to dispute

resolution pursuant to Section 5.4), where such failure shall have continued for ten (10) days after notice thereof has been given to Owner;

11.2.3 the failure by Owner to comply in any material respect with any covenant, obligation or agreement of Owner contained in this Agreement (other than any such failure which would constitute an Owner GSA Default under Sections 11.2.1 or 11.2.2), where such failure has a material adverse effect on Bio Energy or Owner's ability to perform its obligations under this Agreement and such failure shall not have been cured during the Initial Cure Period; provided that if the Initial Cure Period is not reasonably sufficient to permit a cure of such failure, and Owner shall have diligently commenced to cure such default within the Initial Cure Period and shall thereafter proceed with reasonable diligence to cure such failure, for such longer period as shall be reasonably necessary for Owner to cure the same;

11.2.4 Owner commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment or a trustee receiver, liquidator, custodian or other similar official of it or any substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

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

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

11.3 Termination Procedure.

11.3.1 Upon the occurrence of an Owner GSA Default or a Bio Energy GSA Default, as the case may be, that is not cured within the applicable period (if any) for cure,

the non-defaulting Party may, at its option, initiate termination of this Agreement by delivering a Notice of Intent to Terminate this Agreement to the defaulting Party; provided, however, that Bio Energy shall have no obligation to provide a Notice of Intent to Terminate in connection with, and Bio Energy shall be entitled to deliver a Termination Notice under Section 11.3.3 immediately upon the occurrence of, an Owner GSA Default under Section 11.2.1. The Notice of Intent to Terminate shall specify in reasonable detail the applicable GSA Default giving rise to the Notice of Intent to Terminate.

11.3.2 Following the giving of a Notice of Intent to Terminate, the Parties shall consult for the applicable Consultation Period as to the appropriate actions that should be taken to mitigate the consequences of the relevant GSA Default, taking into account all prevailing circumstances; provided, however, that no Consultation Period shall be provided for an Owner GSA Default under Section 11.2.1. During the Consultation Period, the defaulting Party may continue to undertake efforts to cure the relevant GSA Default, and if such default is cured at any time prior to the delivery of a Termination Notice in accordance with Section 11.3.3, then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured default.

11.3.3 Upon expiration of the Consultation Period, and unless the Parties shall have otherwise agreed or unless the GSA Default shall have been remedied during the Consultation Period, the Party that issued the Notice of Intent to Terminate may terminate this Agreement by delivering a Termination Notice to the defaulting Party, whereupon this Agreement shall terminate on the date set forth in the Termination Notice (which date shall in no event be earlier than the date such Termination Notice is delivered to the defaulting Party).

11.3.4 Notwithstanding anything to the contrary set forth in this Agreement, from and after the occurrence of the Financial Closing:

(a) Owner shall not seek to terminate this Agreement as the result of any default of Bio Energy without first giving a copy of any notices required to be given to Bio Energy under Sections 11.3.1 to the Financing Parties, such notice to be coupled with a request to the Financing Parties to cure any such default within the cure period specified in Section 11.3.2, and such cure period shall commence upon delivery of each such notice to the Financing Parties. If there is more than one Financing Party, the Financing Parties will designate in writing to Owner an Agent and any notice required hereunder shall be delivered to such Agent, such notice to be effective upon delivery to the Agent as if such notice had been delivered to each of the Financing Parties. Each such notice shall be in writing and shall be delivered and shall become effective in accordance with Section 18. The address and facsimile number for each Financing Party or Agent shall be provided to Owner by Bio Energy at Financial Closing and thereafter may be changed by the Financing Party or the Agent by subsequent delivery of a notice to Owner at the address or facsimile number for Owner provided in Section 18; and

(b) No rescission or termination of this Agreement by Owner shall be valid or binding upon the Financing Parties without such notice, the expiration of such cure period, and the expiration of the Extended Cure Period (as defined below) provided in this Section 11.3.4. The Financing Parties may make, but shall be under no obligation to make, any payment or perform any act that is required to be made or performed by Bio Energy, with the same effect as if made or performed by Bio Energy. If the Financing Parties fail to cure or are unable or unwilling to cure any Bio Energy GSA Default within the cure period under Section 11.3.2 as provided to Bio Energy in this Agreement, Owner shall have all its rights and remedies with respect to such default as set forth in this Agreement; provided, however, that if the Financing Parties notify Owner that they require further time to consider the cure of the Bio Energy GSA Default, the Financing Parties, upon the termination of such applicable cure period provided to Bio Energy (such cure period commencing on the delivery of such notice to the Financing Parties) shall be allowed a further period (the "Evaluation Period"), during which the Financing Parties shall evaluate such default, the condition of the Plant, and other matters relevant to the actions to be taken by the Financing Parties concerning such default, and which Evaluation Period shall end on the earlier to occur of (i) the Financing Parties' delivery to Owner of a notice that the Financing Parties have elected to pursue their remedies under the Financing Documents, including taking such action or actions as may be required to assume or transfer the rights and obligations of Bio Energy under this Agreement (an "Election Notice"), or (ii) thirty (30) days following the end of the applicable cure period provided to Bio Energy. Upon the delivery of the Election Notice, the Financing Parties shall be granted an additional period of one hundred eighty (180) days to cure any Bio Energy GSA Default (the "Extended Cure Period"). In the event that the Financing Parties fail to cure any Bio Energy GSA Default on or before the expiration of the Extended Cure Period, Owner may exercise its rights and remedies with respect to such default as set forth in this Agreement, Owner may immediately terminate this Agreement, and such termination shall be effective on delivery to the Financing Parties or the Agent of notice of such termination.

11.4 Other Termination Events. This Agreement shall terminate immediately without further action on behalf of either Party in the event the Project Development Agreement is terminated in accordance with Sections 3.2.2, 9.4 or 10 (other than Section 10.4) of the Project Development Agreement. For purposes of clarification, Section 11.3 shall not apply to any such termination.

11.5 Cumulative Remedies. In the event of a Bio Energy GSA Default or Owner GSA Default, the non-defaulting Party may, subject to this Section 11, pursue any remedy at law or in equity, including termination of this Agreement without prejudice to any rights or actions or remedies it may have in respect of any breach or default of this Agreement or any rights or obligations which expressly survive termination of this Agreement. Except as expressly provided to the contrary in this Agreement (including Sections 5.2.1, 5.2.4 and 9.4), all rights and remedies of either Party are cumulative of each other and of every other right or remedy available at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of

other rights and remedies. Notwithstanding any provision of this Agreement to the contrary, Bio Energy shall have the right to exercise the Cure Rights in accordance with Section 12 of this Agreement.

11.6 Survival. Upon the expiration or termination of this Agreement, this Agreement shall have no further force and effect, except that any rights and remedies that have arisen or accrued to either Party prior to such expiration or termination, or any obligations or liabilities that have arisen or accrued before such expiration or termination and that expressly survive such expiration or termination pursuant to this Agreement, shall in each case survive expiration or termination. The rights, remedies and obligations of the Parties set out in (a) Sections 16 (Dispute Resolution), 17 (Taxes), 18 (Notices) and 20 (Miscellaneous), shall survive in full force and effect the expiration or termination of this Agreement to the extent necessary to enable a Party to exercise any of such accrued rights and remedies, (b) Section 13 (Indemnification and Limitation of Liability) shall survive in full force and effect the expiration or termination of this Agreement in accordance with Section 13.7, and (c) Section 19 (Confidential Information) shall survive in full force and effect the expiration or termination of this Agreement in accordance with Section 19.6.

12. Triggering Events and Remedies Following Triggering Event.

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

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

12.2.1 The Party requesting selection of a Technical Expert shall provide notice thereof to the other Party within ten (10) Business Days of the expiration of the ten (10) Business Day review period provided in Section 12.2, which notice shall include the name and professional qualifications of the requesting Party's proposed Technical Expert. The receiving Party shall, within three (3) Business Days of its receipt of such notice, provide notice to the requesting Party that it either accepts or rejects such requesting Party's proposed Technical Expert. If receiving Party rejects the requesting Party's proposed Technical Expert, such reply notice shall

include the name and professional qualifications of the receiving Party's proposed Technical Expert.

12.2.2 If (a) the receiving Party fails to provide a reply notice within such three (3) Business Day period or (b) the receiving Party rejects the requesting Party's proposed Technical Expert but fails to identify its own proposed Technical Expert, then in either such case the requesting Party's proposed Technical Expert shall be deemed to be the Technical Expert for purposes of resolving the dispute. If receiving Party rejects the requesting Party's proposed Technical Expert and identifies its own proposed Technical Expert in its reply notice, the Parties shall meet and seek to agree upon and select a mutually acceptable Technical Expert. If the Parties are unable to agree upon a mutually acceptable Technical Expert within ten (10) Business Days of the requesting Party's notice requesting selection of a Technical Expert, then (i) the two proposed Technical Experts shall jointly review such matter and resolve the dispute, (ii) the terms of Sections 12.2.3 through 12.2.7 and Section 12.3 shall apply to each of such Technical Experts and (iii) references to "Technical Expert" therein shall be deemed to be a reference to the "Technical Experts."

12.2.3 The Technical Expert shall (a) determine whether a Triggering Event has occurred and (b) if such expert determines that a Triggering Event has occurred, whether the Owner Cure Plan is a reasonably expeditious and reasonably technically and economically feasible means for curing the Triggering Event. Each Party shall have the right to submit written materials to the Technical Expert in connection with the Triggering Event and the Owner Cure Plan. The Technical Expert shall (a) promptly fix a time and place for receiving information from the Parties and (b) issue a draft decision, together with all necessary supporting information and documentation, to each Party within ten (10) Business Days after the selection of the Technical Expert. Each Party will have three (3) Business Days to submit comments on the draft decision to the Technical Expert and the Technical Expert shall issue his final and binding determination in writing within three (3) Business Days of the expiration of such three (3) Business Day submission period. No meeting between the Technical Expert and the Parties or either of them shall take place unless both Parties are given a reasonable opportunity to attend any such meeting.

12.2.4 Subject to the relief provided in Section 12.2.7, if the Technical Expert decides that no Triggering Event has occurred, then such decision shall be final and binding on the Parties in respect of the specific incident that caused Bio Energy to provide the Triggering Event Notice. If the Technical Expert decides that a Triggering Event has occurred and that the Owner Cure Plan, subject to modifications (if any) made by the Technical Expert, is a reasonably expeditious and reasonably technically and economically feasible means for curing the Triggering Event, then Owner shall at its sole cost and expense diligently pursue such Cure Plan and cure the Triggering Event within the time period set forth in the Cure Plan.

12.2.5 The Technical Expert shall be a person qualified by education, experience and training in the operation and maintenance of landfill gas collection facilities, including Good Engineering Practices and Applicable Law related to such

facilities. Neither the Technical Expert nor (if he is an individual) any member of his immediate family nor (in other cases) any partner in or officer or director of the Technical Expert shall be (or within three (3) years before his appointment have been) a director, officer or employee of, or directly or indirectly retained as a consultant or advisor to, Bio Energy or its Affiliates or Owner or its Affiliates.

12.2.6 Subject to the Records Act, the Technical Expert shall be required to keep confidential (a) all confidential information that is disclosed to the Technical Expert or otherwise comes to his knowledge during the course of his appointment and (b) all matters concerning the existence and resolution of the dispute. Each Party shall bear its own expenses (including attorneys' fees) with respect to a dispute resolution by a Technical Expert. The costs and expenses of the Technical Expert shall be borne equally by the Parties.

12.2.7 The Technical Expert shall act as an expert and not as an arbitrator and the provisions of the Federal Arbitration Act and the law relating to arbitration shall not apply to the Technical Expert or his determination or the procedure by which he reaches his determination. The determination of the Technical Expert shall be final and binding upon the Parties, but shall not be binding upon the Parties in the event of fraud, manifest error or failure by the Technical Expert to disclose any interest or duty which conflicts with his functions under his appointment as Technical Expert.

12.3 Bio Energy Cure Rights. If Owner fails to diligently pursue the Cure Plan, then Bio Energy may assume responsibility, in place of Owner, to implement such Cure Plan and undertake efforts to remedy the Triggering Event. Bio Energy shall have the right to exercise the Cure Rights until the earlier of (a) the time such Triggering Event is remedied or has otherwise ceased to exist or (b) Bio Energy elects, upon not less than thirty (30) days' prior notice to Owner, to terminate the exercise of the Cure Rights whether or not the applicable Triggering Event has been cured.

12.3.1 Bio Energy shall, in consultation with Owner, diligently pursue a cure of the Triggering Event in accordance with the Cure Plan; provided, however, that Bio Energy shall not have any obligation to incur any out-of-pocket costs, assume or guarantee any liabilities or otherwise suffer any expenses (other than any charges due and payable by Bio Energy to Owner under this Agreement), renegotiate any fees or charges payable under any Project Contract or waive any rights or remedies available to it under the Project Contracts in connection with efforts to cure the Triggering Event.

12.3.2 Owner shall reimburse Bio Energy for all costs and expenses incurred by Bio Energy in implementing the Cure Plan and curing the circumstances giving rise to the Triggering Event. Except for capital expenditures required by the Cure Plan or otherwise approved by Owner, Bio Energy shall not incur any capital expenditure in respect of the Collection Facilities during the exercise of the Cure Rights.

12.3.3 During Bio Energy's exercise of the Cure Rights (a) Bio Energy shall be an independent contractor of Owner and (b) Owner shall cause the operator of the Collection Facilities (and any other Person within the control of Owner or in

control of the Collection Facilities or access thereto) to provide Bio Energy and its Representatives access to the Landfill and the Collection Facilities to the extent necessary to enable Bio Energy to implement the Cure Plan and exercise the Cure Rights.

12.4 No Transfer of Title. In no event shall Bio Energy's election to exercise the rights pursuant to this Section 12 be deemed to constitute a transfer of title to the Collection Facilities or a transfer of any of Owner's obligations as owner thereof.

13. Indemnities and Limitation of Liability.

13.1 Owner's Obligation to Indemnify.

13.1.1 Owner shall indemnify, defend, and hold Bio Energy harmless from and against all (i) Losses suffered by any Bio Energy Indemnified Party for death and/or personal injury of any third parties or of any Bio Energy Indemnified Party, or damage to or loss of property of any third parties or of any Bio Energy Indemnified Party and (ii) all Claims related to the foregoing, to the extent any such Loss or Claim is:

(a) a result of the breach of this Agreement by Owner or any of its Affiliates;

(b) attributable to the negligent or reckless act or omission or willful misconduct of Owner, its Representatives or any Subcontractor of Owner, whether within or beyond the scope of any such party's duties and authority hereunder.

13.1.2 Owner agrees to indemnify, defend and hold harmless each of the Bio Energy Indemnified Parties from and against any and all Environmental Claims brought against such Bio Energy Indemnified Party and any and all Environmental Expenses imposed upon or reasonably incurred by such Indemnified Party in connection with any Environmental Conditions that give rise to, or could give rise to, Environmental Claims or other liabilities, or Environmental Noncompliances located at or otherwise relating to the Plant Site or the Landfill Site, to the extent arising out of circumstances that (a) exist at the Commencement Date or (b) which come into existence after the Commencement Date otherwise than as a result of the matters described in Section 13.2.2. Owner's obligations hereunder shall exist regardless of whether any Bio Energy Indemnified Party is alleged or held to be strictly or jointly and severally liable under any action, legal provision, permit, rule, regulation, order or otherwise.

13.2 Bio Energy's Obligation to Indemnify.

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

(a) a result of the breach of this Agreement by Bio Energy or any of its Affiliates; or

(b) attributable to the negligent or reckless act or omission or willful misconduct of Bio Energy, its Representatives or any Subcontractor of Bio Energy, whether within or beyond the scope of such party's duties and authority hereunder.

13.2.2 Bio Energy agrees to indemnify, defend and hold harmless each of the Owner Indemnified Parties from and against any and all Environmental Claims brought against such Owner Indemnified Party and any and all Environmental Expenses imposed upon or reasonably incurred by such Indemnified Party in connection with any Environmental Conditions that give rise to, or could give rise to, Environmental Claims or other liabilities, or Environmental Noncompliances located at or otherwise relating to the Plant Site, to the extent arising out of the operation of the Plant by Bio Energy, its Affiliates or their Representatives or invitees (other than Owner or its Representatives and Subcontractors) on the Plant Site or which otherwise comes into existence after the Commencement Date as a result of a breach of this Agreement by Bio Energy or its Affiliates or the negligent or reckless acts or omissions or willful misconduct of Bio Energy, its Affiliates or their Representatives or invitees (other than Owner or its Representatives and Subcontractors) on the Plant Site. Bio Energy's obligations hereunder shall exist regardless of whether any Owner Indemnified Party is alleged or held to be strictly or jointly and severally liable under any action, legal provision, permit, rule, regulation, order or otherwise.

13.3 Joint Liability. In the event that any Losses, Claims, Environmental Claims or Environmental Expenses, as applicable, arise, directly or indirectly, in whole or in part, out of the joint or concurrent negligence of an Indemnified Party and an Indemnifying Party, or their respective Affiliates or Representatives, each Party's liability therefor shall be limited to such Party's proportionate degree of fault.

13.4 Conduct of Claims.

13.4.1 The Indemnified Party shall notify the Indemnifying Party of any Indemnity Claim that may result in an indemnity payment becoming due or payable hereunder within seven (7) Business Days following notice of or the discovery of such Indemnity Claim, which notice shall include (a) a reasonably detailed description of the facts and circumstances relating to such Indemnity Claim, (b) a reasonably detailed description of the basis for its potential claim for indemnification with respect thereto, and (c) a complete copy of all notices, pleadings and other papers related thereto that have been received by the Indemnified Party prior to the date of such notice; provided that failure to give such notice or to provide such information and documents within such seven (7) Business Day period shall not relieve the Indemnifying Party of any indemnification obligation it may have under this Section 13 unless such failure shall materially diminish the ability of the Indemnifying Party to respond to or to defend the Indemnified Party.

13.4.2 The Indemnified Party and the Indemnifying Party shall consult and cooperate with each other regarding the response to and the defense of any such Indemnity Claim and the Indemnifying Party shall, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party, be entitled to and shall assume the defense or represent the interests of the Indemnified Party in respect of such Indemnity Claim, which shall include the right to (a) select and direct legal counsel and other consultants to appear in proceedings on behalf of such Indemnified Party and (b) propose, accept or reject offers of settlement, all at the Indemnifying Party's sole cost and expense. In such circumstances, the Indemnified Party shall provide the Indemnifying Party with such information and assistance as the Indemnifying Party shall reasonably request and may retain, at Indemnified Party's sole cost and expense, its own counsel to participate in its defense of the Indemnity Claim.

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

13.5 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT: (A) Owner and Bio Energy shall only be liable for direct damages suffered by the other Party as a result of a breach or default of this Agreement by the defaulting Party; and (B) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (including cost of money, lost profits, loss of use of capital or revenue) or for claims of non-party customers or punitive or exemplary damages WHATSOEVER WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER ANY CLAIM FOR SUCH DAMAGES SHALL ARISE UNDER THIS AGREEMENT, FROM STATUTORY OR REGULATORY NONCOMPLIANCE, IN TORT (WHETHER NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), or any other cause or form of action whatsoever; provided that the foregoing limitation on liability shall not limit a Party's obligation to indemnify, defend and hold harmless the other Party for any Losses occasioned by third party claims (other than the claims of non-party customers) against the Indemnified Party.

13.6 Insurance; Insurance Proceeds. Each Party agrees that at all times during the term of this Agreement it will maintain insurance in accordance with the terms and conditions set forth in Exhibit G. Any amount paid to a Bio Energy Indemnified Party for an Indemnity Claim hereunder shall be net of any insurance proceeds paid to such party under Bio Energy's insurance policies in connection with such Indemnity Claim. Any amount paid to an Owner Indemnified Party for an Indemnity Claim hereunder shall be net of any insurance proceeds paid to such party under Owner's insurance policies in connection with such Indemnity Claim.

13.7 Survival. Notwithstanding the application of any other statute of limitations (which statute hereby is expressly waived with respect to any potential claim as between the Parties), the indemnity obligations contained in (a) Sections 13.1.1 and 13.2.1 shall survive the termination of this Agreement until the fifth (5^{th}) anniversary of the GSA Termination Date and (b) Sections 13.1.2 and 13.2.2 shall survive the termination of this Agreement until the tenth (10^{th}) anniversary of the GSA Termination Date. The rights and obligations of the Parties under this Section 13 are in addition to and cumulative with the rights and obligations of the Parties under any other agreements relating to the Landfill. This Agreement is not intended to limit the scope of any other agreement between the Parties relating to the Landfill, or the Parties' rights and remedies under any such agreement.

13.8 No Release of Insurers. The provisions of this Section 13 shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies. In the event any insurer providing insurance covering any judgment obtained by an Indemnified Party against an Indemnifying Party for an indemnified Loss refuses to pay such judgment, the Party against or through whom the judgment is obtained shall, at the request of the prevailing Party, execute such documents as may be necessary to effect an assignment of its contractual rights against the non-paying insurer and thereby give the prevailing Party the opportunity to enforce its judgment directly against such insurer, provided that nothing in this Section 13.8 shall relieve the Indemnifying Party of its liability hereunder to pay such Loss, Environmental Claim or Environmental Expense.

14. Measurement.

14.1 Measurement Standards. The unit of volume for measurement of Landfill Gas delivered hereunder shall be one thousand (1,000) cubic feet of Landfill Gas corrected to a base temperature of sixty (60) degrees Fahrenheit and at an absolute pressure of 14.65 pounds per square inch and saturated with water vapor. All fundamental constants, observations, records and procedures involved in determining the quantity of Landfill Gas delivered hereunder shall be in accordance with the standards prescribed in Report No. 3 of the American Gas Association, as now in effect and from time to time amended or supplemented.

14.2 Meter Station. Owner shall at is own cost install, maintain and operate Billing Meters at the Gas Delivery Point and the New Flare Station. Bio Energy shall at is own cost install, maintain and operate Billing Meters at the Plant Flare. The Billing Meters shall be equipped with orifice meters, recording gauges, or other types of meter or meters of standard make and design commonly acceptable in the industry, in order to accomplish the accurate measurement of Landfill Gas delivered hereunder. Such meters shall include all equipment necessary to measure the MMBTU value of all Landfill Gas delivered to the Gas Delivery Point, the Plant Flare and the New Flare Station. Owner shall, at its own cost, change and integrate the charts and calibrate and adjust the meters for the Billing Meters at the Gas Delivery Point and Bio Energy shall, at its own cost, change and integrate the charts and calibrate and adjust the meters for the Billing Meters at the Plant Flare.

14.3 Check Meters. Bio Energy may, at its option and expense, install check meters for checking the Billing Meters. Bio Energy's check maters shall be installed in a manner that will not interfere with the operation of the Billing Meters.

14.4 Temperature. The temperature of the Landfill Gas flowing through the meter shall be determined by the continuous use of a recording thermometer installed by Owner at its own cost on the upstream side of the Billing Meters so that such thermometer will property record the temperature of the Landfill Gas flowing through the Billing Meters.

14.5 Tests, Records and Calibration. Each Party shall have the right to be present at the time of any installing, reading, sampling, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other Party's Meters used in measuring Landfill Gas deliveries hereunder. The records from such measuring equipment shall remain the property of their owner, but upon request, each Party will submit to the other Party its records and charts, together with calculations therefrom subject to return within thirty (30) days after receipt thereof. The records and charts shall be kept on file for a period of ten (10) years or such longer period as may be required by Applicable Law. If a Party elects to request the other Party's records and charts as provided above on a regularly recurring basis, such records and charts for a particular Billing Period will only be provided to such Party once with respect to such Billing Period. At least once every one hundred eighty (180) days, or more often if necessary, each Party shall calibrate its Meters or cause the same to be calibrated. Each Party shall give the other Party sufficient notice in advance of such tests so that the latter may, at its election, be present in person or by its representative to observe adjustments, if any, which are made. For the purpose of measurement and meter calibration, the atmospheric pressure shall be determined by Bio Energy at the Gas Delivery Point.

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

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

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation; or

(c) By estimating the quantity of deliveries during preceding periods under similar conditions when the meter was registering accurately.

14.7 Costs of Tests. If Owner shall notify Bio Energy, or if Bio Energy shall notify Owner, at any time that a special test of any Meter is desired, the Parties shall cooperate to secure an immediate verification of the accuracy of such Meter and joint observation of any adjustments. All tests of the Billing Meters, except those performed in accordance with Section 14.6 at the election of Bio Energy, shall be made at Owner's expense, except that Bio Energy shall bear the expense of test made at its request if the inaccuracy found is two percent (2%) or less. Expenses reimbursable to Owner hereunder shall be limited to the actual costs of Owner incurred in connection with conducting such testing and shall not include any costs incurred by Bio Energy as the result of witnessing said testing.

14.8 System Conditions. The Parties recognize that moisture, pressure, or other conditions within the system may prevent available metering equipment from maintaining proper calibrations. If such conditions persist, the Parties will attempt to manually determine a protocol for estimating Landfill Gas deliveries using such data as is available. If the Parties cannot mutually agree, they will appoint a mutually acceptable third party consultant to estimate Landfill Gas deliveries during such times that such conditions persist.

15. Assignment.

15.1 General. Neither Party may assign or transfer its rights or obligations under this Agreement without the prior consent of the other Party, such consent not be unreasonably withheld or delayed; provided, however, that Bio Energy shall have the right, without obtaining Owner's consent, to:

15.1.1 assign to, mortgage, or grant a security interest or liens in favor of, the Financing Parties in Bio Energy's rights and interests under or pursuant to (a) this Agreement, (b) the Plant, (c) the Plant Site, (d) the property of Bio Energy or (e) the revenues or any other rights or assets of Bio Energy; or

15.1.2 assign this Agreement to an Affiliate of Bio Energy, provided such assignee agrees in writing to be bound by the terms of this Agreement as a condition precedent to the effectiveness of such assignment.

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

15.2 Assignment Agreement. Subject to the restrictions on assignment set forth in this Section 15, in the event that Owner desires to sell, transfer or assign the Collection Facilities and, in connection with such sale, assign this Agreement, the Owner shall require any proposed permitted assignee to execute and deliver an assignment agreement between each of the Parties hereto and the permitted assignee as a condition precedent to the effectiveness of such sale, transfer or assignment. For purposes of clarification, Owner shall not have the right to assign this Agreement except to the assignee or purchaser of the Collection Facilities contemporaneously with such assignment or purchase.

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

16. Dispute Resolution.

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

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

17. Taxes.

17.1 Definition. For purposes of Sections 17.2 and 17.3 below, the term "Taxes" shall mean all federal, state, local and other net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property, leasehold excise, tax, customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

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

17.3 Excise Taxes. Bio Energy shall pay any sales tax that is assessed against either Party based on the sale by Owner of Delivered Gas and Flared Gas Quantity, and Bio Energy shall be responsible for collecting and remitting same and shall be responsible for any errors or omissions in connection therewith. Bio Energy shall pay any applicable excise taxes in connection with its operations of the Plant.

17.4 Depletion. Each Party shall be entitled to all income tax deductions, credits, depletion and similar allowances and other benefits relating to equipment or property owned by it and to sales of gas and other products derived from Landfill Gas which it is entitled to take under applicable tax laws, rules and regulations.

17.5 Responsibility for Tax Consequences. Except as expressly provided herein, Owner and Bio Energy are each responsible for their own respective tax consequences in connection with the transactions contemplated hereby and neither of them shall be responsible for such other Party's tax consequences.

18. Notice.

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

If to Owner, to:

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

With a copy to:

King County Prosecutor
500 Fourth Avenue, 9th Floor
Seattle, WA 98104-5039
Fax: (206) 296 [ ]

If to Bio Energy, to:

Bio Energy (Washington), LLC
c/o Energy Developments, Inc.
Attn: Commercial Manager
7700 San Felipe, Suite 480
Houston, TX 77063-1613
Fax: (713) 300-3330

With a copy to:

Energy Developments Limited
848 Boundary Road
Richlands, Queensland 4077
Australia
Attn: Company Secretary
Fax: 61-3217-0722

18.2 Receipt and Effectiveness of Notice. All notices, requests, demands, approvals and other communications which are required to be given, or may be given, from one Party to the other Party under this Agreement shall be deemed to have been duly given, received and effective: (a) if personally delivered, on the date of delivery; (b) in the case of a notice sent by facsimile communication, on the day of actual receipt if a Business Day and received prior to 4:30 p.m. at the place of receipt, or if not so received, on the next following Business Day in the place of receipt, provided that sender's facsimile machine has received the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by telephone to sender that he has received the facsimile message; (c) in the case of a notice sent by mail, when actually received by the addressee; and (d) the Business Day immediately following the day it is sent, if sent for next day delivery to a domestic address by a nationally-recognized overnight courier or delivery service. The addressee, when requested by the sender, shall promptly provide the sender with facsimile acknowledgment of receipt but the delay or failure to give or receive any such acknowledgment will not affect the validity or effectiveness of the notice, communication, consent or approval in respect of which such acknowledgment of receipt is sought.

19. Confidentiality; Public Disclosure.

19.1 Confidential Information. Owner and Bio Energy agree that this Agreement and all documents and information provided from one Party to the other Party in connection with this Agreement is confidential and proprietary information ("Confidential Information") and shall not, except to the extent that disclosure is compelled pursuant to a public

records request under the Records Act, be disclosed by the Recipient Party or any of its Representatives. The Recipient Party shall not disclose or provide access to any of the Confidential Information (a) to any employees of the Recipient Party aside from those employees who have a specific need to know such information for the purposes permitted hereunder, or (b) to any third person or entity for any purpose at any time, except as otherwise provided herein, and shall take all steps as are necessary to prevent such disclosure or access and to maintain the confidentiality and secrecy of the Confidential Information. The Recipient Party shall inform each Related Party of the Recipient Party to whom any Confidential Information shall be disclosed or be accessible of the confidentiality restrictions imposed by this Section 19 and each such Related Party shall be bound by such restrictions to the same extent as the Recipient Party is bound hereby. The Recipient Party acknowledges and agrees that it shall be liable to the Disclosing Party for any breach of this Section 19 by any Related Party of the Recipient Party.

19.2 Disclosures.

19.2.1 In the event the Recipient Party receives a request for disclosure of the Confidential Information, or faces legal action seeking its disclosure, the Recipient Party shall not, except as provided by Section 19.2.2, make any voluntary disclosure without the prior written authorization of the Disclosing Party, and the Recipient Party shall take such steps as it, in its sole discretion, deems reasonable to resist disclosure in order to maintain the confidential and secret nature of the Confidential Information. The Recipient Party shall provide the Disclosing Party with prompt notice of any such requests or orders so that the Disclosing Party can take independent steps to limit or narrow such requests or orders and seek and obtain appropriate protective orders or other reliable assurances of nondisclosure, and the Recipient Party shall reasonably cooperate with the Disclosing Party, at the Disclosing Party's cost and expense, in connection therewith.

19.2.2 The Parties acknowledge that (a) Owner is a "state agency" subject to the Records Act, (b) this Agreement may constitute a public document under the Records Act, and (c) Owner cannot ensure that the Confidential Information will not be subject to release pursuant to a public disclosure request properly made in accordance with the Records Act. In the event the Owner receives a public disclosure request seeking production of Confidential Information, the Owner will promptly advise Bio Energy and will not release such Confidential Information for a period of not less than ten (10) days from the date such notice is provided to Bio Energy in order to give Bio Energy an opportunity to take independent steps to limit or narrow such requests and seek and obtain appropriate protective orders or other reliable assurances of nondisclosure, and the Owner shall reasonably cooperate with Bio Energy, at Bio Energy's cost and expense, in connection therewith. Absent such protective order, Owner may release the Confidential Information, and Bio Energy hereby waives any right to recover damages from Owner for disclosure or non-disclosure of any documents to the extent the Owner complies with the procedures set forth above.

19.3 Certain Exceptions. The provisions of this Section 19 shall not be applicable to information which: (a) is or becomes generally available to the public other than as a direct or indirect result of an intentional or inadvertent disclosure by the Recipient Party

or any Related Parties of the Recipient Party or anyone to whom the Recipient Party or any of its Related Parties transmits the information; (b) was available to the Recipient Party prior to its disclosure to the Recipient Party by the Disclosing Party or any of the Disclosing Party's Related Parties, provided that such information is not known to the Recipient Party to be subject to another confidentiality agreement with, or other obligation of secrecy to, the Disclosing Party or another party; (c) becomes available to the Recipient Party from a source other than the Disclosing Party or any of the Disclosing Party's Related Parties, provided that such source is not known to the Recipient Party to be subject to another confidentiality agreement with, or other obligation of secrecy to, the Disclosing Party or another party; or (d) is independently developed by the Recipient Party, other than in connection with this Agreement.

19.4 No Obligation to Disclose. Notwithstanding any other provision of this Section 19, the Disclosing Party has not affirmatively agreed to disclose or provide any particular Confidential Information to the Recipient Party and the Disclosing Party shall have no obligation to disclose or provide any such information whatsoever. The Recipient Party acknowledges and agrees that the Disclosing Party makes no warranty or representation whatsoever concerning the Confidential Information, whether as to the accuracy or completeness thereof or the applicability or usefulness thereof to any product or activity of the Recipient Party or otherwise. Neither the Disclosing Party nor any Related Parties of the Disclosing Party shall be liable to the Recipient Party.

19.5 Return of Confidential Information. Upon (a) the termination of this Agreement for any reason, (b) the delivery at any time by the Disclosing Party to the Recipient Party of a written notice or demand requesting the return of the Confidential Information to the Disclosing Party, or (c) the breach or default by the Recipient Party in the performance or observance of any material provision, condition, representation, warranty, restriction or limitation of this Section 19, the Recipient Party (i) shall immediately return to the Disclosing Party any and all Confidential Information and all other materials related thereto at its own cost and expense and (ii) shall not thereafter make any use whatsoever of any Confidential Information of the Disclosing Party.

19.6 Survival. Notwithstanding the application of any other statute of limitations (which statute hereby is expressly waived with respect to any potential claim as between the Parties), the obligations contained in this Section 19 shall survive the termination of this Agreement until the fifth (5^{th}) anniversary of the GSA Termination Date.

20. Miscellaneous.

20.1 Modification. This Agreement shall not be amended, changed or modified except by a subsequent agreement in writing which indicates that such writing is intended to amend the terms of this Agreement and is signed by duly authorized officers of both Parties. The Parties agree that this Agreement shall not be amended in any manner by any course of dealing between the Parties.

20.2 Waiver. No delay or forbearance by a Party in exercising any right, power or remedy accruing to such Party upon the occurrence of any breach or default by any other Party hereto under this Agreement shall impair any such right, power or remedy of such Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereafter occurring, nor shall any waiver of

any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party hereto of any such breach or default under this Agreement, or any waiver on the part of any Party hereto of any provision or condition of this Agreement, must be in writing signed by the Party to be bound by such waiver and shall be effective only to the extent specifically set forth in such writing.

20.3 Entire Agreement. This Agreement contains and integrates the complete agreement between the Parties with respect to the subject matter hereof and supersedes all other agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof; provided, however, that the Confidentiality Agreement shall survive the execution and delivery of this Agreement with respect to any Confidential Information (as defined in the Confidentiality Agreement) provided by a Party to the other Party prior to the GSA Effective Date.

20.4 Decision-Making by Parties. Except where this Agreement expressly provides for a different standard, whenever this Agreement provides for a determination, decision, permission, consent or approval of a Party, the Party shall make such determination, decision, grant or withholding of permission, consent or approval in a commercially reasonable manner and without unreasonable delay. Any denial of an approval, permission, decision, determination or consent required to be made in a commercially reasonable manner shall include in reasonable detail the reason for denial or aspect of the request that was not acceptable.

20.5 Relationship of Parties. The relationship of the Parties shall be that of independent contractors. Neither this Agreement nor the performance by the Parties of their respective obligations under this Agreement, shall create or constitute, or be construed to create or constitute, a partnership, joint venture or association, or establish a fiduciary relationship, principal and agent relationship or any other relationship of a similar nature, between Owner and Bio Energy.

20.6 No Third Party Beneficiary. This Agreement is for the sole and exclusive benefit of the Parties hereto and shall not create a contractual relationship with, or cause of action in favor of, any third party.

20.7 Governing Law. This Agreement and any provisions contained herein shall be governed by, and construed and interpreted in accordance with, the laws of the State of Washington without regard to its conflicts of law principles; provided, that with respect to matters of law concerning the internal corporate affairs of any corporate entity which is a party to this Agreement, the law of the jurisdiction under which the respective entity derives its powers shall govern.

20.8 Further Assurances. Each Party agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by, and to carry out the intent of, this Agreement, including the execution and delivery of additional documents. Without limiting the generality of the foregoing, Owner shall cooperate with Bio Energy and its Financing Parties in connection with Bio Energy's construction and long-term financing for the Plant, including the furnishing of such information, the giving of such certificates and the furnishing of a consent to the collateral assignment of this Agreement to the Financing Parties (substantially in the form set forth in Exhibit F with such changes

required by the Financing Parties) and such opinions of counsel and other matters as Bio Energy and its Financing Parties may reasonably request, provided that the foregoing undertaking shall not obligate the Owner to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of the Owner under this Agreement.

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

20.10 No Recourse to Affiliates. This Agreement is solely and exclusively between Owner and Bio Energy, and any obligations created herein on the part of any Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, joint venturer, Affiliate, director or officer of any other Party for performance of such obligations unless such obligations were assumed in writing by the Person against whom recourse is sought.

20.11 Costs. Each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Agreement and shall not have any right to claim or seek reimbursement of such costs and expenses from the other Party.

20.12 Unavailability or Revision to Index. If any index used herein at any time becomes unavailable, whether as a result of such index no longer being published or the material alteration of the basis for calculating such index, then the Parties shall meet to agree upon a substitute index or indices which most closely approximate the unavailable index. If the Parties cannot agree on a substitute index, the matter shall be resolved pursuant to Section 16. If the base date of any such index is at any time reset, then the change to the index resulting therefrom shall be adjusted accordingly for purposes of this Agreement.

20.13 Specific Performance. Notwithstanding the dispute resolution procedures set forth in Section 16, and except as the context specifically otherwise requires, if a Party breaches or threatens to breach any provision of this Agreement, the other Party shall have the right to have such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the other Party and that money damages will not provide adequate remedy. All rights under this Section 20.13 shall be in addition to, and not in lieu of, any other rights and remedies available to either Party at law or in equity, all of which shall be independent of the other and severally enforceable.

20.14 Time is of the Essence. Except as the context specifically otherwise requires, time is of the essence with respect to all dates and time periods set forth in this Agreement.

20.15 Schedules; Exhibits. The Schedules and Exhibits to this Agreement are incorporated by reference into, and shall form part of this Agreement, and shall have full force and effect as though they were expressly set out in the body of this Agreement; provided, however, that in the event of any conflict between the terms, conditions and provisions of this Agreement (excluding the Exhibits and Schedules thereto) and the Schedules or Exhibits hereto, the terms of this Agreement (excluding the Exhibits and Schedules thereto) shall prevail.

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

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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

KING COUNTY, WASHINGTON

By: _____
Title: _____

BIO ENERGY (WASHINGTON), LLC
By: [_____], its sole member

By: _____
Title: _____

LIST OF SCHEDULES AND EXHIBITS

Schedules

Exhibits

SCHEDULE 1.1

DEFINITIONS

SCHEDULE 5.1

Gas Sale Payment

Part 1 – Delivered Gas

1.1 Gas Sales Payment Calculation

During the Start-up Period and Delivery Period, Bio Energy shall pay Owner for all Delivered Gas the Gas Sales Payment, calculated as set forth below:

$$GP_{BP} = DG_{BP} * (Unit\,\Pr ice * \frac{CPI_n}{CPI_{base}})$$

where:

GP	=	The Gas Sales Payment due for Delivered Gas in Billing Period "BP".
DG_{BP}	=	The quantity of Delivered Gas (measured in MMBTU) for Billing Period "BP."
Unit Price	=	The Unit Price per MMBTU, as determined in accordance with the formula set forth below.
CPI_n	=	CPI_n as in effect during the Operating Year that includes Billing Period "BP."
CPI_{base}	=	CPI_{base}

1.2 Unit Price and Adjustment to Unit Price

(a) During (i) the Start-up Period and (ii) the Delivery Period until the first anniversary of the Commercial Operation Date, the Unit Price shall be equal to $0.0154 per MMBTU. Beginning on the first anniversary of the Commercial Operation Date, the Unit Price shall be equal to the price as determined in accordance with the following formula:

$$\$UP = \text{Max}\,(\$0.0154, (-0.19847 - (1.4869E^{-08} * \text{Capex}) - (0.95679 * \text{Interest Rate}) + (0.35776 * \text{Debt Ratio}) + (0.0774 * \text{Debt Term}) + (0.01606 * \text{Power Price})$$

Where:

Capex is the sum of the following subsections 1, 2, 3 and 4	=	1. EPC (Engineering-Procurement-Construction) Costs: all of the following costs related to engineering design, procurement of equipment and material, construction and commissioning of the Plant and Plant Site, including without limitation: • Engineering, design and drawings, including all preliminary engineering and design and changes thereto made during the course of development and construction and including all "as-built" drawings • Equipment, machinery, supplies, materials and consumables, including applicable freight, taxes and duties

		• Labor, including all employee benefits • Contractor mobilization and demobilization • Civil, structural, mechanical and electrical erection, construction and installation • Infrastructure such as road, gas supply, water supply, drainage, wastewater treatment and discharge, sanitary sewer, electric transmission and distribution, telephone and data, meters and measuring devices (including devices required for Plant operations and environmental compliance) • Construction equipment and machinery not incorporated into the Plant • Vehicles and other machinery, tools and equipment to be used at the Plant • Engineering supervision by EDI or its designated engineer • Construction supervision by EDI or its designated engineer • Project Management by EDI or its designated engineer • Commissioning, testing and start-up activities • Profit, margin and bonuses (if any) paid to the construction contractor and equipment suppliers under the construction contract and equipment supply contracts • Insurance, payment and performance bonds, letters of credit or other credit support provided under the terms of any construction or equipment supply contract • All additional costs incurred under any change order related to the Plant • Initial spares and consumables 2. Development Costs: all of the following development costs related to the to development of the Plant and Plant Site: • Engineering, design and Environmental consultants • Legal fees and expenses • Permitting fees and expenses • Travel expenses • EDI Internal (labor) cost, including employee benefits 3. Finance-Related Costs: all of the following costs related to the financing of the Plant and Plant Site, up to the Commercial Operation Date (COD), provided that if the Plant is constructed in phases (for example, with a first phase including gas turbine generators and associated equipment and a second phase including a steam turbine and associated equipment) then for purposes of determining the "Finance-Related Costs" the Commecial Operation Date shall be the date on which the last phase of the Plant has completed testing, start-up and commissioning activities: • Financing Parties Engineer fees and costs • Financing Parties Legal fees and costs • All of Financing Parties' fees in connection with the financing, including any Initiation fees and commitment fees

		• Interest During Construction • All amounts to be held in reserve accounts, to the extent required by the Financing Parties, including any Debt Service Reserve, or Major Maintenance Reserve • The face amount of all letters of credit and all related letter of credit fees for letters of credit required to be posted by Bio Energy for the benefit of any counter-party under a Project Contract or for the benefit of the Financing Parties
Interest Rate	=	The rate of interest charged by the Financing Parties for the permanent financing of the Plant, provided that if the debt is issued in more than one tranche and each tranche bears a different interest rate, the interest rate shall be determined as the weighted average interest rate of such tranches based upon the portion of the debt subject to each such interest rate.
Debt Ratio	=	The quotient, expressed as a percentage, of: (a) the original principal amount of the debt under the Financing Documents for the permanent financing, plus all interest during construction accrued during the construction financing period; divided by (b) Capex.
Debt Term	=	The number of years during which the original principal amount of the permanent financing shall be repaid pursuant to the Financing Documents for the permanent financing (excluding any repayment based upon the acceleration of the debt).
Power Price	=	The price per kilowatt hour paid by the purchaser of electricity generated by the Plant as set forth in the Power Purchase Agreement.

(b) Bio Energy shall determine each of the variables set forth in the table above on or before the first anniversary of the Commercial Operation Date. At Owner's request, the Interest Rate, Debt Term and Debt Ratio variables shall be confirmed in writing by the Financing Parties. For purposes of clarification, Owner shall not have any right to request, receive or review the Financing Documents.

1.3 Adjustment to Unit Price Following Certain Adjustment Events

(a) Bio Energy may request an adjustment (a "Price Adjustment") to the Gas Sales Price if Bio Energy is required to incur capital expenditures in order to modify the Plant as a result of, and in order to accommodate: (i) any modification of any Collection Facilities or a change in the method of operation of any Collection Facilities; or (ii) any Change in Law (clauses (i) through (ii) being referred to as "Adjustment Events").

(b) In the event that Bio Energy believes that an Adjustment Event has occurred which may lead to a claim for a Price Adjustment, Bio Energy shall, as soon as practicable under the circumstances, submit a notice of an Adjustment Event to Owner, which notice shall include (i) a detailed description of the capital improvement that is required to accommodate such Adjustment Event (the "Improvement") and (ii) the estimated cost (including all related design, engineering and construction costs) (the "Improvement Cost") that are expected to be incurred by Bio Energy in order to implement such Improvement. For purposes of clarification, except for the Price Adjustment, Owner shall not have any obligation to pay all or any part of the Improvement Cost.

(c) Bio Energy shall provide Owner with a statement showing the final Improvement Cost and setting forth the Gas Sales Price, as adjusted to include the Improvement Cost. The Gas Sales Price will be adjusted by recalculating the Unit Price under Section 1.2 of this Schedule 5.1 to include the final Improvement Cost within the "Capex" variable as set forth in Section 1.2 of this Schedule 5.1. The Price

Adjustment will begin in the Billing Period during which Bio Energy provides the final Improvement Cost statement to Owner. Any dispute between Bio Energy and Owner with respect to the final Improvement Cost or the Price Adjustment shall be resolved in accordance with Section 16, provided that such Price Adjustment shall be effective as set forth above pending resolution of such dispute.

Part 2 – Flared Gas Quantity

During the Delivery Period, Bio Energy shall pay Owner for the Flared Gas Quantity the Gas Sales Payment, calculated as set forth below:

$$GP_{BP} = FGQ_{BP} * (Unit\ \Pr ice * \frac{CPI_n}{CPI_{base}})$$

where:

GP	=	The Gas Sales Payment due for the Flared Gas Quantity in Billing Period "BP".
FGQ_{BP}	=	The Flared Gas Quantity (measured in MMBTU) for Billing Period "BP."
Unit Price	=	$0.01 per MMBTU
CPI_n	=	CPI_n as in effect during the Operating Year that includes Billing Period "BP."
CPI_{base}	=	CPI_{base}

EXHIBIT A

DESCRIPTION OF COLLECTION FACILITIES

EXHIBIT B

DESCRIPTION OF CEDAR HILLS REGIONAL LANDFILL

EXHIBIT C

DESCRIPTION OF LANDFILL SITE

EXHIBIT D

FLARE OPERATIONS AND PROCEDURES

To be agreed by the Parties no later than ninety (90) days prior to the Target Commercial Operation Date.

EXHIBIT E

FORM OF CONSENT TO COLLATERAL ASSIGNMENT TO FINANCING PARTIES[1]

CONSENT AND AGREEMENT

CONSENT AND AGREEMENT, dated as of [Month][Day], 200_ (this "Agreement") made by KING COUNTY, WASHINGTON, a municipal corporation organized and existing under the laws of the State of Washington ("Consenting Party"), BIO ENERGY (WASHINGTON) LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Company") and [_____], as agent (in such capacity, together with its successors in such capacity, the "Agent") for the equal and ratable benefit of the Secured Parties (as defined in the Security Agreement). Consenting Party, Company and Agent are referred to individually as a "Party" and, one or more of such parties collectively, as the "Parties."

RECITALS

A. Company proposes to develop, own, finance, construct, operate and maintain an electric generating plant and related facilities (as further defined in the Project Development Agreement, the "Plant").

B. The Company and Consenting Party are party to the Assigned Agreements that are integral to the development, construction, operation and maintenance of the Plant.

C. Pursuant to the [Loan Agreement] dated as of [Month][Day], 200_ among the Company, [_____], as Agent for the Secured Parties, [*identify other lead banks by name*] (the "Loan Agreement"), and pursuant to the other Financing Documents, the Secured Parties have agreed to make certain loans for the benefit of the Company for the purpose of financing the construction of the Plant.

D. As security for Company's obligation to pay all amounts due to the Secured Parties pursuant to the Loan Agreement, Company has assigned all of its right, title and interest in the, to and under the Assigned Agreements to the Agent for the benefit of the Secured Parties pursuant to (a) the Security Agreement, dated as of _____, 200_ (the "Security Agreement") between the Company and the Agent and (b) the [Leasehold Mortgage], dated as of _____, 200_ (the "Mortgage") between Company and Agent (the Security Agreement and Mortgage, individually a "Security Document" and collectively, the "Security Documents").

E. It is a condition precedent under the Financing Documents to the obligations of any Secured Party to make a disbursement of funds under the Financing Documents, that the Consenting Party shall have executed and delivered this Agreement.

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

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[1] Note that this form contemplates a commercial bank financing. If bond financing is used, this form will be modified as required to reflect the bond financing structure.

1. Definitions.

1.1. The following terms shall have the following meanings:

(a) "Assigned Agreements" shall mean each document set forth on Exhibit A attached hereto and any document executed by the Company and the Consenting Party in connection with the Project Documents and the Financing Documents (collectively, the "Transaction Documents") after the date hereof, and any document executed and delivered by the Consenting Party in connection with any of the transactions contemplated by the Transaction Documents after the date hereof. Exhibit A is a true, correct and complete list of all the Transaction Documents in effect between the Consenting Party and the Company as of the date hereof.

(b) "Consenting Party Obligations" shall mean all obligations of the Consenting Party under the Assigned Agreements.

1.2. The term "Financing Parties" as used in the Assigned Agreement shall mean and include the Secured Parties.

1.3. Unless otherwise defined herein, each capitalized term used in this Agreement and not otherwise defined herein shall have the definition assigned to such term (whether by reference to another agreement or otherwise) in the Security Agreement as of the date hereof. Unless otherwise stated, references herein to any Person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities. Principles of construction shall be consistent with those found in the Security Agreement as of the date hereof.

2. Acknowledgments, Consents and Agreements. Consenting Party hereby:

2.1. Acknowledges that (i) it has received and reviewed a copy of the Security Documents and (ii) the Secured Parties are extending credit to the Company in reliance upon the execution, delivery and performance by the Consenting Party of each Assigned Agreement and this Agreement.

2.2. Consents to the assignment by the Company to the Agent pursuant to the Security Documents of all of the Company's right, title and interest in each Assigned Agreement, including all monies payable to the Company, if any, by the Consenting Party under the Assigned Agreements, as a first priority collateral security interest for the Secured Obligations.

2.3. Acknowledges that the execution and delivery of this Agreement constitutes notice to it of the assignment, conveyance and transfer by the Company by way of security of all the Company's right, title and interest in and to the Assigned Agreements pursuant to the Security Documents.

2.4. Recognizes the appointment by the Company of the Agent as the true and lawful attorney-in-fact of the Company to do, perform and exercise all things, acts and rights on behalf and for the account of the Company upon the occurrence of an Event of Default and for so long as such an Event of Default is continuing and has not been waived by the Secured Parties as provided in the Security Documents, and agrees to and shall (i) comply with any and all written instructions received from the Agent in place and stead of the Company in accordance with the Assigned Agreements, (ii) treat such instructions as coming directly from the

Company and (iii) with effect as of the date of receipt of such instructions, direct to the Agent in lieu of the Company, if so instructed, all of the communications in correspondence that would have otherwise been directed to the Company arising out of or in connection with each of the Assigned Agreements (it being understood that nothing herein shall be deemed to limit, expand or otherwise modify the obligations of the Consenting Party to deliver communications and correspondence to the Agent as required by the Assigned Agreements).

2.5. Acknowledges the right of the Agent, in the exercise of its rights and remedies as attorney-in-fact pursuant to this Agreement, upon the occurrence of an Event of Default and for so long as such an Event of Default is continuing and has not been waived by the Secured Parties under the Security Documents and at the times provided for therein, to make all demands, give all notices, take all actions in exercise all rights and remedies of the Company (whether or not the Company has been dissolved, liquidated or wound-up) under the Assigned Agreements, and agrees that in such event the Consenting Party shall continue to perform the Consenting Party Obligations in accordance with the Assigned Agreements.

2.6. Agrees that if the Agent shall notify the Consenting Party that it has elected to exercise its rights, upon the occurrence of an Event of Default and for so long as such an Event of Default is continuing and has not been waived by the Secured Parties, under the Security Documents and Section 3.1 herein to have itself or its designee substituted for the Company under the Assigned Agreements (whether or not the Company has been dissolved, liquidated or wound-up), then the Agent or its designee, as the case may be, shall be substituted for the Company under the Assigned Agreements, and agrees that in such event the Consenting Party will continue to perform the Consenting Party Obligations in accordance with the Assigned Agreements.

2.7. Agrees that if the Agent shall, upon the occurrence of an Event of Default and for so long as such an Event of Default is continuing and has not been waived by the Secured Parties, sell, assign, transfer or otherwise dispose of the Collateral under the Security Documents (whether through judicial or nonjudicial foreclosure, deed-in-lieu of foreclosure, or otherwise), the purchaser of such Collateral shall be substituted for the Company under the Assigned Agreements, and agrees that in such event the Consenting Party will continue to perform the Consenting Party Obligations in accordance with the Assigned Agreements.

2.8. Agrees that, in the event of a default by Company in the performance of any of its obligations under any Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under any Assigned Agreement which would immediately or with the passage of any grace period or the giving of notice, or both, constitute a default, the Consenting Party will continue to perform in accordance with such Assigned Agreement and will not, that without the prior written consent of the Agent, exercise any of its rights expressly allowed in the Assigned Agreement to cancel or terminate, or suspend performance under, the Assigned Agreement until such time that the Consenting Party has fully complied with, and Secured Parties have exercised their rights provided under, provisions of this Agreement and the Assigned Agreements (the "Cure Provisions") that require Consenting Party to provide default and termination notices and time periods for Secured Parties to cure any Company default under such Assigned Agreements.

2.9. Agrees that Consenting Party will not, without the prior written consent of the Agent, take any action to: (i) consent to or accept any cancellation, termination or suspension of any Assigned Agreement; (ii) amend, supplement or otherwise modify any Assigned Agreement

(as in effect on the date hereof); or (iii) sell, assign or otherwise dispose of (by operation of law or otherwise) any part of its interest in any Assigned Agreement.

2.10. Agrees that the Agent, the Secured Parties or their respective designee shall have the right, but not the obligation, to exercise the right to cure a default that is the subject of a default notice received by Agent or the Secured Parties in accordance with Section 2.8 or the Cure Provisions; provided, however, that this Section 2.10 shall not affect any right of the Consenting Party to receive payments or any other relief pursuant to the Assigned Agreements.

2.11. Agrees that, in the event that any Assigned Agreement is terminated by reason of the bankruptcy, insolvency, winding-up or liquidation of the Company or by reason of the rejection of such Assigned Agreement by the Company, any debtor-in-possession, or any trustee for the Company under any Applicable Law, the Consenting Party will, if requested by the Agent, enter into a new agreement with the Agent or its designee having terms the same as the terms of such Assigned Agreement; provided, that (i) no amounts payable by the Company to the Consenting Party under such Assigned Agreement upon or prior to its termination remain unpaid, (ii) any default other than a payment default which occurred under such Assigned Agreement prior to its termination, which by its nature is curable and cure of which is necessary for the continued performance by the Consenting Party of the Consenting Party Obligations under such Assigned Agreement, must be cured within the periods set forth the Cure Provisions after such new Assigned Agreement is effective, (iii) any right of the Consenting Party to receive payments or any other relief pursuant to the Assigned Agreements shall not be affected by such termination and new agreement, and (iv) the conditions set forth in Section 3.2 shall apply to the Agent or such designee. References in this Agreement to an "Assigned Agreement" shall be deemed also to refer to the new Assigned Agreement.

2.12. Agrees that: (i) none of the Agent or its designees or any Secured Party shall be subject to any duty or obligation under the Assigned Agreements, unless and until the Agent exercises its rights upon the occurrence of an Event of Default pursuant to the Security Documents and this Agreement to substitute itself or its respective designee for the Company with respect to its obligations (and not solely with respect to its rights) under the Assigned Agreements; and (ii) in the event the Agent substitutes itself or its designee or the purchaser of Collateral for the Company with respect to its obligations (and not solely with respect to its rights) under the Assigned Agreements pursuant to this Agreement, or enters into a new Assigned Agreement pursuant to this Agreement with respect to such obligations, (x) any recourse to such substituted party shall be limited to any right, title and interest of such party in and to the Collateral, (y) such substituted party shall, within the respective time period provided in the Cure Provisions, be required to cure any payment defaults and any other default which by its nature is capable of being cured and cure of which is necessary for the continued performance by the Consenting Party of the Consenting Party Obligations under the Assigned Agreements, and (z) such substituted party shall otherwise become subject to the provisions of the Assigned Agreements, or such new Assigned Agreements, with the obligation to perform thereunder in the same manner as the Company would have been obligated to perform the obligations thereafter accruing.

2.13. Agrees that: (i) no further consent or other acknowledgment to the transactions described in Sections 2.1 through 2.12 shall be required from the Consenting Party in connection with or otherwise relating to such transactions; provided, however, that if requested by the Agent, the Consenting Party shall execute any acknowledgment or other instruments similar to this

Agreement as may be reasonably requested; and (ii) no such transactions described in Sections 2.1 through 2.12 shall constitute a breach of or default under any of the Assigned Agreements.

2.14. Agrees that no waiver (other than a waiver by the Consenting Party of performance by the Company), amendment, supplement or other modification of any of the Assigned Agreements shall be effective until the prior written consent of the Agent has been obtained.

2.15. Agrees that Consenting Party shall deliver to the Agent at the address set forth in Section 6, or at such other address as the Agent may designate in writing from time to time to Consenting Party, concurrently with the delivery thereof to Company, a copy of each material notice, request or demand given by Consenting Party pursuant to any Assigned Agreement.

2.16. Notwithstanding any other provision contained in this Agreement, the Consenting Party agrees that the Agent, in the event of an uncured material default by any party (other than the Company or any party substituted therefor) to the Assigned Agreements, shall have the right to terminate the relevant Assigned Agreements at any time, but only to the extent permitted by the terms of such Assigned Agreements to the extent such terms are enforceable under the governing law of such Assigned Agreements.

3. Substitution; Conflicting Notices.

3.1. The Company agrees that upon the occurrence of an Event of Default and for so long as such an Event of Default shall be continuing and shall not have been waived by the Secured Parties, then at all such times, the Agent shall the right to be, or have its respective designee, substituted for the Company under the Assigned Agreements.

3.2. The right of the Agent, its designee or the purchaser of Collateral (the "Assuming Party") to be substituted for the Company under and to assume the Assigned Agreements pursuant to this Agreement, shall be subject to the following conditions: (i) the Assuming Party shall be bound by all then effective instructions and notices given by the Company to the Consenting Party pursuant to the terms of the Assigned Agreements until such instructions are amended, modified or supplemented by the Assuming Party pursuant to the Assigned Agreements; and (ii) the Consenting Party shall be notified that the Assuming Party shall be substituted as, and assume the capacity of, the Company under the Assigned Agreements. In no event shall anything in this Agreement require the Consenting Party, to the extent the Consenting Party duly performs its obligations under the Assigned Agreement, to perform any such obligations more than once.

3.3. Any notice, instruction or other communication received by the Consenting Party from the Agent hereunder shall be deemed to be a notice, instruction or other communication from the Company and the Consenting Party shall be entitled to rely on and act in accordance with such notice.

3.4. In the event that the Consenting Party believes in good faith that there is a conflict between any notice, instruction or other communication given by the Company under the Assigned Agreements, on the one hand, and any notice, instruction or other communication given by the Agent hereunder, on the other hand, then the Consenting Party (i) shall notify the Agent and the Company and (ii) unless otherwise directed by the Agent within five (5) Business Days of the date such notice is delivered, shall give effect to the notices, instructions or other communications given by the Agent. The Consenting Party shall be deemed entitled to

receive payments or other relief that may be permitted pursuant to the Assigned Agreements due to any action or inaction arising from such conflicting notices including those arising during such five (5) Business Day period if permitted under the Assigned Agreements.

3.5. The Consenting Party shall have no liability to the Agent or the Company for any action or inaction on its part which is inconsistent with that contemplated by any of the conflicting notices, instructions or other communications described in Section 3.4. The Company hereby consents to the Consenting Party giving effect to the notice, instruction or other communication of the Agent as contemplated by this Section 3.

4. Representations and Warranties. Consenting Party hereby represents and warrants that:

4.1. Consenting Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified to do business in the State of Washington and in all other jurisdictions where necessary in light of the business it conducts, properties it owns and the transactions contemplated by the Assigned Agreement (as defined below).

4.2. Consenting Party has the full power, authority and legal right to execute and deliver this Agreement and each Assigned Agreement and to perform its obligations hereunder and thereunder.

4.3. The execution, delivery and performance by Consenting Party of this Agreement and the Assigned Agreements have been duly authorized by all necessary corporate action by the Consenting Party. This Agreement and each Assigned Agreement have been duly executed and delivered by Consenting Party and constitute the legal, valid and binding obligations of Consenting Party enforceable against Consenting Party in accordance with their respective terms.

4.4. The execution and delivery by the Consenting Party of this Agreement and the Assigned Agreements and the performance by the Consenting Party of its obligations hereunder and thereunder will not: (i) violate any provision of any law, rule, regulation, order, writ, judgment, decree, determination or award applicable to Consenting Party; (ii) violate or conflict with any provision of Consenting Party's organizational and governing documents; (iii) violate, conflict with, or result in a breach of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any of the terms, conditions or provisions of any contract, agreement, indenture, loan or credit agreement or instrument to which Consenting Party is a party or by which Consenting Party or any of its properties or assets are bound or affected; or (iv) result in, or require, the creation of any lien or encumbrance upon or with respect to any of the assets or properties of Consenting Party.

4.5. Each Permit required (i) for the execution, delivery or performance of this Agreement and the Assigned Agreement by Consenting Party and (ii) for the exercise by the Agent of its rights and remedies hereunder has been validly issued and duly obtained, taken or made, is not subject to any condition, does not impose restrictions or requirements inconsistent with the terms hereof or of the Assigned Agreement, is in full force and effect and is not subject to appeal. Each such Permit is listed on Exhibit B hereto.

4.6. There are no suits or proceedings at law or in equity or by or before any Governmental Authority now pending (or to the best knowledge of Consenting Party, threatened) against or affecting Consenting Party or any of its properties, rights or assets which (i) if adversely determined, individually or in the aggregate, could reasonably be expected to have a material and adverse effect on its ability to perform its obligations hereunder or under the Assigned Agreement or (ii) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement or any action taken or to be taken pursuant hereto or thereto or the transactions contemplated hereby or thereby.

4.7. Consenting Party is not in default under any material covenant or obligation hereunder or under any Assigned Agreement and no such default has occurred prior to the date hereof. To the best knowledge of Consenting Party, Company is not in default under any material covenant or obligation under any Assigned Agreement and no such default has occurred prior to the date hereof. After giving effect to the assignment by Company to the Agent of each Assigned Agreement pursuant to the Security Documents, and after giving effect to the acknowledgment of and consent to such assignment by Consenting Party, there exists no event or condition which would constitute a default, or which would, with the giving of notice or lapse of time or both, constitute a default under any Assigned Agreement. Consenting Party and, to the best knowledge of Consenting Party, Company have complied with all conditions precedent to the respective obligations of such party to perform under each Assigned Agreement. All representations and warranties made by the Consenting Party and the Assigned Agreements are true and cracked and all material respects as of the date hereof.

4.8. This Agreement and each Assigned Agreement constitutes and includes all agreements entered into by Consenting Party relating to, and required for the consummation of, the transactions contemplated by this Agreement and the Assigned Agreements.

4.9. None of the Assigned Agreement has been amended, supplemented or otherwise modified except as set forth herein or by such Assigned Agreement.

5. Arrangements Regarding Payments. All payments to be made by Consenting Party to Company under the Assigned Agreement shall be made in lawful money of the United States of America, directly to the Agent, for deposit into the [Revenue Account] (Account No. _____), at the principal office of the Agent at [_____][*insert address of Agent*], Attention: [_____] or to such other Person and/or at such other address as the Agent may from time to time specify in writing to Consenting Party and shall be accompanied by a notice from Consenting Party stating that such payments are made under the Gas Sales Agreement.

6. Notices.

6.1. Address for and Method of Notice. Except as otherwise expressly provided in this Agreement, whenever this Agreement requires that a notice be given by one Party to the other Party or to any third party, or a Party's action requires the approval or consent of the other Party, then: (a) each such notice shall be given in writing and each such consent or approval shall be provided in writing; (b) no notice shall be effective unless it is provided in writing and otherwise satisfies any particular requirements as specified herein for such notice; and (c) the Party from whom approval or consent is sought shall not be bound by any consent or approval except to the extent such consent or approval is in writing. Any such notice, consent or approval that fails to conform to the foregoing requirements shall be null and void and have no force and effect. All notices shall be addressed to such Party at the address of

such Party set out below or at such other address as such Party may have substituted therefor by notice to the other Party and shall be either (i) delivered personally, (ii) sent by facsimile communication, (iii) sent by nationally-recognized overnight courier or delivery service or (iv) sent by registered mail, return receipt requested; provided that (x) any notice, demand, request or other communication made or delivered in connection with an alleged breach or default hereunder or under any Assigned Agreement shall only be delivered personally or by a nationally-recognized overnight courier or delivery service and (y) electronic mail shall not be an effective or acceptable means for providing any notice hereunder.

If to Agent, to:

[*Insert name of Agent*]
[*Insert address of Agent]*
Attention: [_____]
Fax: [_____]

If to Consenting Party, to:

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

With a copy to:

King County Prosecutor
_____
_____

If to Company, to:

Bio Energy (Washington), LLC
c/o Energy Developments, Inc.
Attn: Commercial Manager
7700 San Felipe, Suite 480
Houston, TX 77063-1613
Fax: (713) 300-3330

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

Business Day immediately following the day it is sent, if sent for next day delivery to a domestic address by a nationally-recognized overnight courier or delivery service. The addressee, when requested by the sender, shall promptly provide the sender with facsimile acknowledgment of receipt but the delay or failure to give or receive any such acknowledgment will not affect the validity or effectiveness of the notice, communication, consent or approval in respect of which such acknowledgment of receipt is sought.

7. Miscellaneous.

7.1. This Agreement shall be binding upon and shall inure to the benefit of Consenting Party, Company, the Secured Parties, the Agent and their respective successors and permitted assigns; provided, however, that neither the Company nor the Consenting Party shall transfer or assign all or any portion of its obligations under this Agreement or any of the Assigned Agreements without (a) the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, and (b) receipt of notice from the Agent that the Secured Parties have consented to such assignment. Any purported assignment that fails to comply with the requirements of this Section 7.1 shall be null and void and shall have no force or effect.

7.2. This Agreement and the obligations of Consenting Party hereunder shall terminate and be of no further force and effect on the earlier to occur of: (i) the date on which Consenting Party shall have received notice in writing from the Agent that all of the Secured Obligations shall have been paid or performed in full, that the commitment to provide a loan under the Loan Agreement shall have been terminated or expired and that the security interests, pledges and other liens of the Security Documents shall have been extinguished; and (ii) with respect to a particular Assigned Agreement, the termination or expiration of such Assigned Agreement in accordance with the terms thereof and the terms of this Agreement.

7.3. This Agreement shall not be amended, changed or modified except by a subsequent agreement in writing which indicates that such writing is intended to amend the terms of this Agreement and is signed by duly authorized officers of each Party.

7.4. No delay or forbearance by a Party in exercising any right, power or remedy accruing to such Party upon the occurrence of any breach or default by any other Party hereto under this Agreement shall impair any such right, power or remedy of such Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party hereto of any such breach or default under this Agreement, or any waiver on the part of any Party hereto of any provision or condition of this Agreement, must be in writing signed by the Party to be bound by such waiver and shall be effective only to the extent specifically set forth in such writing.

7.5. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF [_____]. EACH OF CONSENTING PARTY, COMPANY AND THE AGENT HEREBY IRREVOCABLY (1) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR**

THE ASSIGNED AGREEMENTS MAY BE BROUGHT IN A COURT OF RECORD IN THE STATE OF [_____] OR IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SUCH STATE, (2) CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF EACH SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING, (3) WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY OF SUCH COURTS AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND (4) WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE ASSIGNED AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

7.6. Consenting Party hereby agrees that the agreement of the Secured Parties to extend credit to Company in accordance with the terms and conditions set forth in the Financing Documents is solely for the benefit of Company, and Consenting Party shall not have any rights under the Financing Documents or, as against the Agent, under any other instrument or document relating thereto, or with respect to the proceeds thereof.

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

7.8. The headings used in this Agreement are for convenience only and will not affect the construction of any of the terms of this Agreement.

7.9. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned by its officer duly authorized has caused this Agreement to be duly executed and delivered as of this____ day of _____, 200_.

KING COUNTY, WASHINGTON

By _____
Title:

Accepted:

[_____], as Agent

By _____
Title:

Acknowledged and Agreed:

BIO ENERGY (WASHINGTON) LLC

By: [_____], its sole member

By _____
Title:

EXHIBIT A
to Consent and Agreement

ASSIGNED AGREEMENTS

1. Gas Sales Agreement between King County, Washington and Bio Energy (Washington) LLC, dated as of _____, 2003.

2. Project Development Agreement between King County, Washington and Bio Energy (Washington) LLC, dated as of _____, 2003.

3. Lease Agreement between King County, Washington and Bio Energy (Washington) LLC, dated as of _____, 2003.

EXHIBIT B
to Consent and Agreement

PERMITS

PROJECT DEVELOPMENT AGREEMENT

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PROJECT DEVELOPMENT AGREEMENT

This Project Development Agreement (the "Agreement") is made as of _____, 2003 (the "PDA Effective Date") by and between Bio Energy (Washington), LLC, a Delaware limited liability company ("Bio Energy") and King County Washington, a Washington municipal corporation ("County"). The County and Bio Energy are referred to herein individually as a "Party" and, collectively, as the "Parties."

RECITALS:

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

B. County currently collects Landfill Gas in the Collection Facilities that are installed at the Landfill, which Landfill Gas is currently burned-off at the North Flare Station located at the Landfill.

C. Bio Energy desires to design, finance, own, construct, operate and maintain an electricity generating facility at the Landfill (as more specifically described in Schedule 1.1, the "Plant") on a site located within the Landfill Site and to obtain rights to all Landfill Gas produced at the Landfill and collected by the Collection Facilities.

D. County desires to (a) encourage Bio Energy's design, construction, financing, ownership, operation and maintenance of the generating facility, (b) lease real property at the Landfill (together with appropriate easements and rights of way) to Bio Energy for that purpose, and (c) sell Landfill Gas to Bio Energy.

E. This Agreement is integral to implementation of other agreements respecting the Landfill to which one or more Parties are parties, including a Gas Sales Agreement.

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

1. Definitions; Rules of Construction.

1.1 Definitions. Except as otherwise expressly provided herein, capitalized terms used herein shall have the meanings assigned thereto in Schedule 1.1.

1.2 Rules of Construction and Interpretation. Except as otherwise expressly provided herein, the rules of construction and interpretation set forth in Schedule 1.1 shall apply to this Agreement.

1.3 Negotiation of Agreement. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective legal counsel. Accordingly, this Agreement shall be deemed to be the product of each Party hereto, and there shall be no presumption that an ambiguity should be construed in favor of or against a Party solely as a result of such Party's actual or alleged role in the drafting of this Agreement.

2. Term

2.1 Initial Term. The term of this Agreement (the "Initial PDA Term") shall commence on the PDA Effective Date and shall, unless sooner terminated as provided in Section 10 of this Agreement, remain in force and effect until the fifteenth (15^{th}) anniversary of the Commercial Operation Date.

2.2 Bio Energy Option to Extend. Bio Energy shall have the option to extend the Initial PDA Term for a period of five (5) years (the "First Extension Term") upon notice to County, such notice to be delivered to County not less than one hundred eighty (180) days prior to the expiration of the Initial PDA Term; provided however, that Bio Energy shall not have the right to extend the Initial PDA Term if a Bio Energy PDA Default has occurred and is continuing on the date Bio Energy provides such notice. The extension of this Agreement pursuant to the first sentence of this Section 2.2 shall be on the same terms and conditions provided herein (as such terms and conditions may have been amended or modified during the Initial PDA Term in accordance with Section 17.1).

2.3 Additional Extension by Parties. In the event that Bio Energy has exercised its option in accordance with Section 2.2, either Bio Energy or County may request an additional extension of the PDA Term for a period of five (5) years (the "Second Extension Term") upon notice to the other Party, such notice to be delivered to such other Party not less than one hundred eighty (180) days prior to the expiration of the First Extension Term. If both Parties agree to extend the PDA Term for the period of the Second Extension Term, the extension of this Agreement shall be on the same terms and conditions provided herein (as such terms and conditions may have been amended or modified during the Initial PDA Term or the First Extension Term in accordance with Section 17.1). Notwithstanding anything to the contrary set forth in this Agreement, in no event shall either Party be obligated to extend the PDA Term for the Second Extension Term, which decision shall be within the sole and absolute discretion of each Party.

3. Development Activities.

3.1 Construction of the Plant.

3.1.1 Bio Energy shall be solely responsible for the design, installation and operation of the Plant. Bio Energy shall design, construct, install, operate,

and maintain the Plant and obtain all Required Permits in accordance with (a) the timetable set forth on Schedule 3.1.1 hereto which includes specified Milestones (the "Timetable"), (b) Good Engineering Practices, (c) the Plant Site Lease, and (d) Applicable Law.

3.1.2 During the period in which any portion of the Plant is being, or is required to be, designed, constructed or installed, Bio Energy shall provide County, on the tenth (10^{th}) Business Day of each calendar quarter, a written status report summarizing in reasonable detail (a) Bio Energy's progress with respect to such design, construction or installation as of the end of the immediately preceding calendar quarter (including a description of Bio Energy's progress towards achieving the Milestones) and (b) the status of any applications for Required Permits. Bio Energy shall, if County so requests, hold quarterly on-site meetings with County, County's engineering consultants, if any, and any other person designated by County. Bio Energy shall make reasonable efforts to notify County in advance of any meeting with a Governmental Authority to obtain the Required Permits and to provide a Representative of County with the opportunity to accompany Bio Energy's Representatives to such meetings.

3.2 Project Milestones.

3.2.1 The Timetable attached as Schedule 3.1.1 to this Agreement sets forth a schedule of certain Milestones and the Milestone Date by which Bio Energy and County, as applicable, expect to complete or satisfy each such Milestone. The failure by Bio Energy or County to complete or satisfy any of the Milestones (or any other performance deadline) by the respective Milestone Date for such Milestone shall not (a) constitute a breach of or a default under this Agreement or a breach of a representation, warranty, covenant or obligation for purposes of Section 10 or (b) except as set forth in Section 3.2.2 with respect to the Primary Milestones, otherwise provide County or Bio Energy with any right to terminate this Agreement.

3.2.2 If Bio Energy fails to meet any of the Primary Milestones by the applicable Milestone Date, then County shall have the right to terminate this Agreement in accordance with Section 10.3; provided, however, that County's termination rights under this Section 3.2.2 must be exercised on or before the thirtieth (30^{th}) day following the applicable Milestone Date which Bio Energy has failed to satisfy. If County does not exercise such termination right within such thirty (30) day period, then this Agreement shall continue in full force and effect and County's right to terminate this Agreement in connection with Bio Energy's failure to achieve such Milestone shall be automatically terminated on the expiration of such thirty (30) day period.

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

3.4 Flare Station Relocation. County shall relocate the North Flare Station to the New Flare Station Site pursuant to an engineering and cost plan ("Flare Station Relocation Plan") as mutually agreed by the Parties. Bio Energy shall pay County the lesser of (i) one-half of the costs of relocating the North Flare Station to the New Flare Station Site, or (ii) $200,000. Such payment shall be made at Bio Energy's sole discretion, pursuant to one of the following (a) full payment within thirty (30) days of the Commercial Operation Date, (b) three (3) equal annual payments commencing on the thirtieth (30^{th}) day following the Commercial Operation Date, (c) four (4) equal quarterly payments commencing on the thirtieth (30^{th}) day following the Commercial Operation Date, or (d) a set-off against all amounts as they become due and payable from County to Bio Energy from time to time until Bio Energy's portion of such relocation costs has been fully set-off and the remaining set-off balance reduced to zero. The Parties shall use their best efforts to develop the Flare Station Relocation Plan by the Flare Station Relocation Plan Milestone Date set forth on Schedule 3.1.1 in order to facilitate the timely construction of the Plant by the Target Commercial Operation Date. In the event the Parties cannot agree upon a Flare Station Relocation Plan by the Flare Station Relocation Plan Milestone Date, then either Party shall have the right to request that a Technical Expert review the County's proposed Flare Station Relocation Plan to determine if it is reasonably expeditious and reasonably technically feasible plan for the relocation of the North Flare Station to the New Flare Station Site.

3.4.1 The Party requesting selection of a Technical Expert shall provide notice thereof to the other Party within ten (10) Business Days of the expiration of the Flare Station Relocation Plan Milestone Date set forth on Schedule 3.1.1, which notice shall include the name and professional qualifications of the requesting Party's proposed Technical Expert. The receiving Party shall, within three (3) Business Days of its receipt of such notice, provide notice to the requesting Party that it accepts or rejects such

requesting Party's proposed Technical Expert. If receiving Party rejects the requesting Party's proposed Technical Expert, such reply notice shall include the name and professional qualifications of the receiving Party's proposed Technical Expert.

3.4.2 If (a) the receiving Party fails to provide a reply notice within such three (3) Business Day period or (b) the receiving Party rejects the requesting Party's proposed Technical Expert but fails to identify its own proposed Technical Expert, then in either such case the requesting Party's proposed Technical Expert shall be deemed to be the Technical Expert for purposes of resolving the dispute. If receiving Party rejects the requesting Party's proposed Technical Expert and identifies its own proposed Technical Expert in its reply notice, the Parties shall meet and seek to agree upon and select a mutually acceptable Technical Expert. If the Parties are unable to agree upon a mutually acceptable Technical Expert within ten (10) Business Days of the requesting Party's notice requesting selection of a Technical Expert, then (i) the two proposed Technical Experts shall jointly review such matter and resolve the dispute, (ii) the terms of Sections 3.4.3 through 3.4.7 shall apply to each of such Technical Experts and (iii) references to "Technical Expert" therein shall be deemed to be a reference to the "Technical Experts."

3.4.3 The Technical Expert shall determine whether County's Flare Station Relocation Plan is reasonably expeditious and reasonably technically feasible for the relocation of the North Flare Station to the New Flare Station Site. Each Party shall have the right to submit written materials to the Technical Expert in connection with the Flare Station Relocation Plan. The Technical Expert shall (a) promptly fix a time and place for receiving information from the Parties and (b) issue a draft decision, together with all necessary supporting information and documentation, to each Party within ten (10) Business Days after the selection of the Technical Expert. Each Party will have three (3) Business Days to submit comments on the draft decision to the Technical Expert and the Technical Expert shall issue his final and binding determination in writing within three (3) Business Days of the expiration of such three (3) Business Day submission period. No meeting between the Technical Expert and the Parties or either of them shall take place unless both Parties are given a reasonable opportunity to attend any such meeting.

3.4.4 Subject to the relief provided in Section 3.4.7, if the Technical Expert decides that the County's Flare Station Relocation Plan is reasonably expeditious and reasonably technically feasible plan for the relocation of the North Flare Station to the New Flare Station Site, then such decision shall be final and binding on the Parties. If the Technical Expert decides that the County's Flare Station Relocation Plan is not reasonably expeditious and reasonably technically feasible for the relocation of the

North Flare Station to the New Flare Station Site, then the County shall at its sole cost and expense revise its Flare Station Relocation Plan within twenty (20) Business Days of such decision, which revision shall include any modifications required by the Technical Expert.

3.4.5 The Technical Expert shall be a person qualified by education, experience and training in the operation and maintenance of landfill gas collection facilities, including Good Engineering Practices and Applicable Law related to such facilities. Neither the Technical Expert nor (if he is an individual) any member of his immediate family nor (in other cases) any partner in or officer or director of the Technical Expert shall be (or within three (3) years before his appointment have been) a director, officer or employee of, or directly or indirectly retained as a consultant or advisor to, Bio Energy or its Affiliates or County or its Affiliates.

3.4.6 Subject to the Records Act, the Technical Expert shall be required to keep confidential (a) all confidential information that is disclosed to the Technical Expert or otherwise comes to his knowledge during the course of his appointment and (b) all matters concerning the existence and resolution of the dispute. Each Party shall bear its own expenses (including attorneys' fees) with respect to a dispute resolution by a Technical Expert. The costs and expenses of the Technical Expert shall be borne equally by the Parties.

3.4.7 The Technical Expert shall act as an expert and not as an arbitrator and the provisions of the Federal Arbitration Act and the law relating to arbitration shall not apply to the Technical Expert or his determination or the procedure by which he reaches his determination. The determination of the Technical Expert shall be final and binding upon the Parties, but shall not be binding upon the Parties in the event of fraud, manifest error or failure by the Technical Expert to disclose any interest or duty which conflicts with his functions under his appointment as Technical Expert.

3.5 Commitment for Future Landfill Gas.

3.5.1 County represents and warrants to Bio Energy, as a material inducement for Bio Energy to enter into this Agreement and the other Project Contracts, that as of the PDA Effective Date County owns and has good and marketable title to, free and clear of all liens, claims or encumbrances, all Landfill Gas and Expansion Landfill Gas and has the exclusive right to extract, use, sell, dispose, assign or transfer all existing and future Landfill Gas and all Expansion Landfill Gas. The Parties acknowledge that County may in the future, with the prior consent and approval of Bio Energy, as set forth in Sections 6 and 15.2 of the Gas Sales Agreement, transfer ownership in the Collection Facilities and assign all of County's rights to all or a portion of the Landfill Gas to a third party and following

such transfer, the County may not own the Landfill Gas or otherwise retain any rights to extract or control the use or disposition of such Landfill Gas.

3.5.2 Notwithstanding a transfer of ownership in the Collection Facilities together with a transfer of all or a portion of the Landfill Gas by County in accordance with the terms of Section 3.5.1, County shall sell to Bio Energy all Landfill Gas and Expansion Landfill Gas that County may own as of the PDA Effective Date or thereafter at any time during the PDA Term, including (a) all Landfill Gas collected by the Collection Facilities to the extent the County retains the rights to such Landfill Gas or such rights revert to County at a future date (which Landfill Gas shall be sold to Bio Energy in accordance with the Gas Sale Agreement) and (b) all Expansion Landfill Gas collected from Expansion Collection Equipment (which Expansion Landfill Gas shall be sold to Bio Energy in accordance with the terms and conditions of a Landfill Gas Sales Agreement to be entered into by the County and Bio Energy on terms substantially similar to the Gas Sales Agreement).

3.6 Commitment for Future Landfill Gas Collection Capacity. County will not encumber or transfer any ownership interest in any Expansion Collection Equipment or Expansion Landfill Gas without Bio Energy's prior consent. County will promptly install, repair and maintain Expansion Collection Equipment in such a manner as (a) to protect public health and the environment surrounding the Landfill Site, (b) enable Owner to extract a quantity of Landfill Gas from the Landfill that is consistent with the quantity of Landfill Gas that an operator of landfill gas collection facilities, operating in accordance with Good Engineering Practices, would extract in the ordinary course of operations from such landfill in order to provide a reasonably continuous supply of landfill gas to a power generation facility that sources its fuel supply solely or predominantly from such landfill, and (c) to assure compliance by the Expansion Collection Facilities with all Applicable Law.

3.7 Continued Operation of Landfill. County shall have no obligation to continue operations of the Landfill; provided, however, that any suspension or termination of Landfill operations shall not (a) release County from its obligation to continue to operate and maintain the Collection Facilities in accordance with Section 7.2 of the Gas Sales Agreement; (b) release the County from the performance of its obligations hereunder or the other Project Contracts to which it is a party; or (c) suspend or terminate this Agreement or otherwise affect Bio Energy's rights hereunder, including its rights to take delivery of Landfill Gas.

3.8 Condensate. County shall accept delivery of all quantities of Condensate delivered by Bio Energy to the Condensate Delivery Point, and shall dispose of such Condensate in accordance with Applicable Law; provided, however, that if the County discovers that the quality of the waste-water in the County's waste-

water treatment facilities fails to satisfy one or more quality specifications as set forth in the County's waste-water discharge permit (the "Quality Specifications"), then (a) County shall have the right to sample and test the Condensate before delivery to Bio Energy and after return by Bio Energy to County at the Condensate Delivery Point in accordance with customary sampling and testing procedures to determine if the Condensate satisfies the Quality Specifications. If such Condensate meets the Quality Specifications when delivered to Bio Energy but then when tested upon return by Bio Energy to the County fails to satisfy one or more of such Quality Specifications (such Condensate, the "Nonconforming Condensate"), County shall not be obligated to accept Nonconforming Condensate until such time as the Condensate satisfies the applicable Quality Specifications. All of the costs and expenses of such sampling and testing shall be the sole responsibility of County, unless such Condensate is determined to be Nonconforming Condensate, in which case such costs and expenses shall be the sole responsibility of Bio Energy.

3.9 Electrical Energy Provided to County.

3.9.1 At all times when the Plant is operating and synchronized with the transmission system at the interconnection point, Bio Energy shall provide electrical energy to County at the Electricity Delivery Point in a quantity sufficient to energize the New Flare Station and any Expansion Collection Equipment. County acknowledges and agrees that: (a) during periods when the Plant is not operating and synchronized with the transmission system at the interconnection point (i) County shall be solely responsible for procuring back-up power for County's electrical requirements and (ii) Bio Energy shall not have any liability or obligation to County in the event that the supply of electrical energy does not meet all or any portion of County's requirements; (b) County shall not resell, assign or transfer in any manner whatsoever any electrical energy provided by Bio Energy to County hereunder; and (c) Bio Energy shall have the right to permanently cease deliveries of electrical energy to County if the Governmental Authority with jurisdiction over such matters determines that such continued deliveries would (x) subject Bio Energy to regulation as a "public service corporation," "electric utility company," "electric company," "public utility," "holding company" or similar entity under the laws of the State of Washington, the Federal Power Act, the Public Utility Holding Company Act of 1935 or any other Applicable Law or (y) would result in the termination of the Plant's "qualifying facility" status under PURPA.

3.9.2 Bio Energy shall retain title to and risk of loss for the electrical energy until such time as the electrical energy is delivered by Bio Energy to the Electricity Delivery Point. County shall take title to and incur risk of loss for electrical energy when it is made available to County at the Electricity Delivery Point. Until such delivery, Bio Energy shall be deemed to be in

control of, be in possession of, and be responsible for such electrical energy. Upon such delivery, County shall be deemed to be in control of, be in possession of, and be responsible for such electrical energy. County shall be solely responsible for constructing all facilities needed to accept delivery of electrical energy at the Electricity Delivery Point, transform such electrical energy into the required voltage and distribute such electrical energy to the various points of use, all of which shall be at County's sole cost and expense.

3.9.3 WARRANTY DISCLAIMER. BIO ENERGY MAKES NO WARRANTIES AS TO THE QUALITY OR QUANTITY OF ELECTRICAL ENERGY DELIVERED TO COUNTY PURSUANT TO THIS AGREEMENT. COUNTY AND BIO ENERGY AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND DO NOT APPLY TO THE ELECTRICAL ENERGY PROVIDED HEREUNDER.

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

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

3.12 Emissions Credits. Bio Energy specifically retains any and all rights to any Emissions Credits attributable to or generated or otherwise provided in connection with the Plant or the Plant Site and County specifically retains any and all rights to any Emissions Credits attributable to or generated or otherwise provided in connection with the Landfill or the Landfill Site.

4. Rights of First Offer.

4.1 Bio Energy hereby grants to the County the right of first offer to purchase the Plant ("Right of First Offer") at any such time that (a) Bio Energy permanently and completely ceases operation of the Plant and the sale of energy generated by the Plant and (b) such permanent cessation is not attributable to a County PDA Default, Owner GSA Default or Event of Force Majeure; provided that such Right of First Offer shall be subject in all respects to, and at all times subordinate to, the rights of the Financing Parties under the Financing Documents.

4.2 If Bio Energy proposes to permanently and completely cease operation of the Plant and the sale of energy generated by the Plant, it will give County written notice (the "Rights Notice") of Bio Energy's intention to do so, describing the price and the general terms upon which Bio Energy is willing to sell the Plant. County will have sixty (60) days from the date of delivery of the Rights Notice (the "Exercise Period") to agree to purchase the Plant for the price and upon the general terms specified in the Rights Notice by giving written notice to Bio Energy.

4.3 If County (a) fails to exercise its Rights of First Offer hereunder and reach mutual agreement on the terms of such purchase within the Exercise Period, or (b) fails to consummate such transaction within sixty (60) days of the date of the execution and delivery of the applicable purchase documents (the "Purchase Period"), Bio Energy will have one hundred and eighty (180) days after the end of the Exercise Period, or if County has exercised its Right of First Offer, one hundred and eighty (180) days after the end of the Purchase Period, to sell the Plant at a price and upon general terms no more favorable to the purchasers thereof than the price and general terms specified in the Rights Notice. If Bio Energy does not sell the Plant within such one hundred and eighty (180) day period as provided in the preceding sentence, Bio Energy will not thereafter sell the Plant without complying with the provisions of Section 4.2 above. The Parties agree that the 180-day period shall be extended as may be necessary for any waiting or similar periods to expire under Applicable Law or to finalize the transfer of any Permits to the purchaser.

4.4 The Rights of First Offer granted in this Section 4 shall (a) not apply to the sale, transfer or conveyance of all or a portion of the Plant to or among any Financing Party or any Affiliate of Bio Energy, and (b) terminate in the event County is not the owner of the Landfill.

5. Compliance with Laws; Permits.

5.1 Compliance with Laws. Bio Energy and County, at their sole respective expense, shall comply with all Applicable Law to the extent applicable to their respective operations at the Landfill and the Plant.

5.2 Permits. Each Party, at such Party's sole expense, shall apply for, procure, obtain, maintain and comply with all Permits which may be required under any Applicable Laws for such Party to perform each of its obligations hereunder and which need to be procured and maintained by or in the name of such Party or jointly in the name of such Party and any third party. Each Party shall provide the other Party with such assistance and co-operation as may reasonably be required in order for such first Party to obtain and maintain all such Permits.

6. Title and Risk of Loss.

6.1 Title to Facilities. As between the Parties, it is conclusively presumed that Bio Energy owns (a) all equipment downstream of the Gas Delivery Point and located on the Plant Site and (b) the Plant Transmission Line, and that County owns all facilities at or associated with the Landfill except for the Plant Transmission Line and all facilities located on the Plant Site.

6.2 Title to Condensate. Bio Energy shall retain title to and risk of loss for the Condensate until such time as the Condensate is delivered by Bio Energy to the Condensate Delivery Point. County shall take title to and incur risk of loss for Condensate when it is made available to County at the Condensate Delivery Point. Until such delivery, Bio Energy shall be deemed to be in control of, be in possession of, and be responsible for such Condensate. Upon such delivery, County shall be deemed to be in control of, be in possession of, and be responsible for such Condensate, except for any quantity of Nonconforming Condensate.

7. Representations And Warranties

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

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

7.1.2 Authorization. The execution and delivery of, and the consummation of the transactions contemplated by, this Agreement and the Gas Sales Agreement have been duly authorized by all necessary action of the County. This Agreement and the Gas Sales Agreement constitute legal, valid and binding obligations of the County.

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

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

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

7.2.1 Organization. Bio Energy is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State of Washington and in every other jurisdiction where the nature of its business requires it to be so qualified, and has the full power and authority to enter into the transactions contemplated hereunder, and to execute, deliver and perform its respective obligations under, this Agreement and the Gas Sales Agreement.

7.2.2 Authorization. Bio Energy's execution and delivery of, and the consummation of the transactions contemplated by, this Agreement and the Gas Sales Agreement have been duly authorized by all necessary action of Bio Energy. This Agreement and the Gas Sales Agreement constitute legal, valid and binding obligations of Bio Energy.

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

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

8. Indemnities and Limitation of Liability.

8.1 County's Obligation to Indemnify.

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

(a) a result of the breach of this Agreement by County or any of its Affiliates;

(b) attributable to the negligent or reckless act or omission or willful misconduct of County, its Representatives or any Subcontractor of County or Representatives of such a Subcontractor, whether within or beyond the scope of any such Person's duties and authority.

8.1.2 County agrees to indemnify, defend and hold harmless each of the Bio Energy Indemnified Parties from and against any and all Environmental

Claims brought against such Bio Energy Indemnified Party and any and all Environmental Expenses imposed upon or reasonably incurred by such Indemnified Party in connection with any Environmental Conditions that give rise to, or could give rise to, Environmental Claims or other liabilities, or Environmental Noncompliances located at or otherwise relating to the Plant Site or the Landfill Site, to the extent arising out of circumstances that (a) exist at the Commencement Date or (b) which come into existence after the Commencement Date otherwise than as a result of the matters described in Section 8.2.2. County's obligations hereunder shall exist regardless of whether any Bio Energy Indemnified Party is alleged or held to be strictly or jointly and severally liable under any action, legal provision, permit, rule, regulation, order or otherwise.

8.2 Bio Energy's Obligation to Indemnify.

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

(a) a result of the breach of this Agreement by Bio Energy or any of its Affiliates; or

(b) attributable to the negligent or reckless act or omission or willful misconduct of Bio Energy, its Representatives or any Subcontractor of Bio Energy or Representatives of such Subcontractor, whether within or beyond the scope of such Person's duties and authority hereunder.

8.2.2 Bio Energy agrees to indemnify, defend and hold harmless each of the County Indemnified Parties from and against any and all Environmental Claims brought against such County Indemnified Party and any and all Environmental Expenses imposed upon or reasonably incurred by such Indemnified Party in connection with any Environmental Conditions that give rise to, or could give rise to, Environmental Claims or other liabilities, or Environmental Noncompliances located at or otherwise relating to the Plant Site, to the extent arising out of the operation of the Plant by Bio Energy, its Affiliates or their Representatives or invitees (other than County or its Representatives and Subcontractors) on the Plant Site or which otherwise comes into existence after the Commencement Date as a result of a breach of this Agreement by Bio Energy or its Affiliates or the negligent or reckless acts or omissions or willful misconduct of Bio Energy, its Affiliates or their Representatives or invitees (other than County or its Representatives and Subcontractors) on

the Plant Site. Bio Energy's obligations hereunder shall exist regardless of whether any County Indemnified Party is alleged or held to be strictly or jointly and severally liable under any action, legal provision, permit, rule, regulation, order or otherwise.

8.3 Joint Liability. In the event that any Losses, Claims, Environmental Claims or Environmental Expenses, as applicable, arise, directly or indirectly, in whole or in part, out of the joint or concurrent negligence of an Indemnified Party and an Indemnifying Party, or their respective Affiliates or Representatives, each Party's liability therefor shall be limited to such Party's proportionate degree of fault.

8.4 Conduct of Claims.

8.4.1 The Indemnified Party shall notify the Indemnifying Party of any Indemnity Claim that may result in an indemnity payment becoming due or payable hereunder within seven (7) Business Days following notice of or the discovery of such Indemnity Claim, which notice shall include (a) a reasonably detailed description of the facts and circumstances relating to such Indemnity Claim, (b) a reasonably detailed description of the basis for its potential claim for indemnification with respect thereto, and (c) a complete copy of all notices, pleadings and other papers related thereto that have been received by the Indemnified Party prior to the date of such notice; provided that failure to give such notice or to provide such information and documents within such seven (7) Business Day period shall not relieve the Indemnifying Party of any indemnification obligation it may have under this Section 8 unless such failure shall materially diminish the ability of the Indemnifying Party to respond to or to defend the Indemnified Party.

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

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

8.5 Limitation of Liability.

8.5.1 NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT: (A) COUNTY and BIO ENERGY shall only be liable for direct damages suffered by the other Party as a result of a breach or default of this Agreement by the defaulting Party; and (B) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (including cost of money, lost profits, loss of use of capital or revenue) or for claims of non-party customers or punitive or exemplary damages WHATSOEVER WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER ANY CLAIM FOR SUCH DAMAGES SHALL ARISE UNDER THIS AGREEMENT, FROM STATUTORY OR REGULATORY NONCOMPLIANCE, IN TORT (WHETHER NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), or any other cause or form of action whatsoever; provided that the foregoing limitation on liability shall not limit a Party's obligation to indemnify, defend and hold harmless the other Party for any Losses occasioned by third party claims (other than the claims of non-party customers) against the Indemnified Party.

8.5.2 Notwithstanding the foregoing limitation set forth in Section 8.5.1, in any and all claims against:

(a) Bio Energy by any Representative of County, the indemnification obligations of County herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for County under Applicable Law, including any workers compensation and industrial insurance acts, disability benefit acts, or other employee benefits acts (including the

Washington State Industrial Insurance Act, RCW Title 51) (collectively, the "Acts"); or

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

8.5.3 EACH OF BIO ENERGY AND COUNTY HEREBY SPECIFICALLY AND EXPRESSLY WAIVES ANY AND ALL IMMUNITY TO WHICH SUCH PARTY MAY BE ENTITLED UNDER SUCH ACTS (INCLUDING SUCH PARTY'S IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND/OR ANY EQUIVALENT ACTS), TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING RCW SECTION 4.24.115 AND EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY, EXPENSES AND LOSSES (INCLUDING ATTORNEYS' FEES AND COSTS) FOR ACTIONS BROUGHT AGAINST AN INDEMNIFIED PARTY BY THE INDEMNIFYING PARTY'S EMPLOYEES; PROVIDED, HOWEVER, THAT INDEMNIFYING PARTY'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS SECTION 8.5.3 EXTENDS ONLY TO CLAIMS AGAINST INDEMNIFYING PARTY BY OR ON BEHALF OF AN INDEMNIFIED PARTY UNDER OR PURSUANT TO THIS AGREEMENT, AND DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS MADE BY INDEMNIFYING PARTY'S EMPLOYEES DIRECTLY AGAINST INDEMNIFYING PARTY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE FOREGOING WAIVER HAS BEEN SPECIFICALLY AND MUTUALLY NEGOTIATED BY THE PARTIES TO THIS AGREEMENT AND EACH PARTY HAS HAD THE OPPORTUNITY TO, AND HAS BEEN ENCOURAGED, TO CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

8.5.4 Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the Parties agree that if the provisions of RCW Section 4.24.115 are deemed to apply to any indemnity claim by an Indemnified Party against an Indemnifying Party under this Agreement, then, with respect to such claim, (1) in no event shall Indemnifying Party be obligated to indemnify Indemnified Party for damages arising out of bodily injury to persons or damage to property resulting from the sole negligence of Indemnified Party or its Representatives, and (2) if indemnification is sought for damages arising out of bodily injury to persons or damage to property resulting from the concurrent negligence of Indemnified Party (or its Representatives) and Indemnifying Party (or its Representatives), Indemnifying Party shall indemnify Indemnified Party

for such damages only to the extent of Indemnifying Party's negligence or the negligence of its Representatives.

8.6 Insurance Proceeds. Any amount paid to a Bio Energy Indemnified Party for an Indemnity Claim hereunder shall be net of any insurance proceeds paid to such party under Bio Energy's insurance policies in connection with such Indemnity Claim. Any amount paid to a County Indemnified Party for an Indemnity Claim hereunder shall be net of any insurance proceeds paid to such party under County's insurance policies in connection with such Indemnity Claim.

8.7 Survival. Notwithstanding the application of any other statute of limitations (which statute hereby is expressly waived with respect to any potential claim as between the Parties), the indemnity obligations contained in (a) Sections 8.1.1 and 8.2.1 shall survive the termination of this Agreement until the fifth (5^{th}) anniversary of the PDA Termination Date and (b) Sections 8.1.2 and 8.2.2 shall survive the termination of this Agreement until the tenth (10^{th}) anniversary of the PDA Termination Date. The rights and obligations of the Parties under this Section 8 are in addition to and cumulative with the rights and obligations of the Parties under any other agreements relating to the Landfill. This Agreement is not intended to limit the scope of any other agreement between the Parties relating to the Landfill or the Parties' rights and remedies under any such agreement.

8.8 No Release of Insurers. The provisions of this Section 8 shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies. In the event any insurer providing insurance covering any judgment obtained by an Indemnified Party against an Indemnifying Party for an indemnified Loss refuses to pay such judgment, the Party against or through whom the judgment is obtained shall, at the request of the prevailing Party, execute such documents as may be necessary to effect an assignment of its contractual rights against the non-paying insurer and thereby give the prevailing Party the opportunity to enforce its judgment directly against such insurer, provided that nothing in this Section 8.8 shall relieve the Indemnifying Party of its liability hereunder to pay such Loss, Environmental Claim or Environmental Expense.

9. Force Majeure.

9.1 Effect of Event of Force Majeure. If a Party is prevented, hindered or delayed from performing any of its obligations under this Agreement (excluding an obligation hereunder of a Party to pay money to the other Party, pay Taxes or insurance premiums when due, or perform any indemnity obligation hereunder) but including a Party's ability to accept or deliver Landfill Gas because of an interruption of its operations) by an Event of Force Majeure, then so long as that situation continues and such Party satisfies its obligations under Section 9.3.1, such Affected Party shall be excused from performance of such obligations to the

extent it is so prevented, hindered or delayed, and the time for the performance of such obligations shall be extended accordingly.

9.2 Notice of Events of Force Majeure. The Affected Party shall notify the other party within three (3) days of the occurrence of the Event of Force Majeure, its effect or likely effect on the Affected Party's ability to perform its obligations hereunder and the likely duration of the Event of Force Majeure. The Affected Party shall keep the non-Affected Party informed of any changes in such circumstances, including when such Event of Force Majeure ends. Following the receipt of a notice given pursuant to this Section 9.2, the Parties shall consult in good faith to assess the Event of Force Majeure, the effects thereof and any ways in which it may be mitigated or avoided. Each Party shall attempt in good faith to notify the other Party of any events of which the notifying party is aware which may be reasonably expected, with the lapse of time or otherwise, to become an Event of Force Majeure.

9.3 Obligations Following Occurrence of Event of Force Majeure.

9.3.1 The Affected Party, subject to Section 9.3.3, shall use all reasonable efforts to remedy the circumstances constituting the Event of Force Majeure (if practicable), mitigate the adverse effects of the Event of Force Majeure and remedy the Event of Force Majeure expeditiously. The Affected Party shall notify the non-Affected Party of the remedy or other termination of the Event of Force Majeure and the date on which the Affected Party will resume its performance hereunder.

9.3.2 Suspension of any obligation as a result of an Event of Force Majeure shall not affect any rights or obligations which may have accrued prior to such suspension or, if the Event of Force Majeure affects only some rights and obligations, any other rights or obligations of the Parties. To the extent that the non-Affected Party is prevented, hindered or delayed from performing its obligations under this Agreement as a result of the Affected Party's failure to perform its obligations as the result of the Event of Force Majeure, such non-Affected Party shall be relieved of its obligations to the extent such non-Affected Party has been prevented, hindered or delayed by the Affected Party's failure in performance. So long as the Affected Party has at all times since the occurrence of the Event of Force Majeure complied with the obligations of Sections 9.2 and 9.3.1 and continues to so comply, then any performance deadline (including any Milestone Date) that the Affected Party is obligated to satisfy or achieve under this Agreement shall be extended on a day-for-day basis equal to the period commencing on the date the Event of Force Majeure occurs and ending on the date that such event is cured.

9.3.3 Notwithstanding anything to the contrary set forth in this Agreement, an Affected Party shall not be excused from the performance of its

obligations hereunder as a result of an Event of Force Majeure to the extent that a failure or delay in performance would have nevertheless been experienced by the Affected Party had the Event of Force Majeure not occurred.

9.3.4 Neither Party shall be obliged to settle any strike or other labor actions, labor disputes or labor disturbances of any kind, except on terms wholly satisfactory to it.

9.4 Termination for Extended Force Majeure. Notwithstanding the foregoing, if an Event of Force Majeure has prevented an Affected Party from performing any of its obligations under this Agreement for one hundred eighty (180) consecutive days during the PDA Term and such Event of Force Majeure has not been remedied on the expiration of such 180-day period, then either Party, as its sole and exclusive right and remedy in the case of such extended Event of Force Majeure, may terminate this Agreement by providing a Notice of Intent to Terminate to the other Party. The terms and conditions of Section 10.3 shall apply in all respects to such Notice of Intent to Terminate in connection with the applicable extended Event of Force Majeure.

10. Defaults, Termination and Remedies.

10.1 Bio Energy Events of Default. Each of the following events shall constitute events of default on the part of Bio Energy (each, a "Bio Energy PDA Default") which, if not cured within the time permitted (if any) to cure such event of default, shall entitle County to terminate this Agreement pursuant to Section 10.3; provided, however, that no such event shall be deemed to be a Bio Energy PDA Default if (a) it is caused by or is otherwise attributable to a breach by County of its obligations under this Agreement or any other Project Contract to which County is a party or (b) it occurs as a result of an Event of Force Majeure declared by Bio Energy or County in accordance with Section 9:

10.1.1 the failure by Bio Energy to achieve the Commercial Operation Date on or before the date which is two hundred seventy days (270) days following the Target Commercial Operation Date;

10.1.2 Bio Energy terminates or suspends the construction of the Plant (excluding termination or suspension due to Events of Force Majeure, a County PDA Default or an Owner GSA Default), which continues for a period of sixty (60) consecutive days or for a period of sixty (60) days in any ninety (90) day period, without notice to, and the consent of, County;

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

10.1.4 the failure by Bio Energy to comply with any covenant, obligation or agreement of Bio Energy contained in this Agreement (other than any such failure which would constitute a Bio Energy PDA Default under Sections 10.1.1 through 10.1.3), where such failure has a material adverse effect on County or Bio Energy's ability to perform its obligations under this Agreement and such failure shall not have been cured during the Initial Cure Period; provided that if the Initial Cure Period is not reasonably sufficient to permit a cure of such failure, and Bio Energy shall have diligently commenced to cure such default within the Initial Cure Period and shall thereafter proceed with reasonable diligence to cure such failure, for such longer period as shall be reasonably necessary for Bio Energy to cure the same;

10.1.5 Bio Energy commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment or a trustee receiver, liquidator, custodian or other similar official of it or any substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

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

10.1.7 Any representation or warranty made by Bio Energy in this Agreement shall prove to have been incorrect in any material respect when made or when deemed to have been made and such failure has a material adverse effect on County or Bio Energy's ability to perform its obligations under this Agreement and such failure shall not have been cured during the Initial Cure Period; provided that if the Initial Cure Period is not reasonably sufficient to permit a cure of such failure, and Bio Energy shall have diligently commenced to cure such default within the Initial Cure Period and shall thereafter proceed with reasonable diligence to cure such

failure, for such longer period as shall be reasonably necessary for Bio Energy to cure the same.

10.2 County Events of Default. Each of the following events shall constitute events of default on the part of County (each, a "County PDA Default") which, if not cured within the time permitted (if any) to cure such event of default, shall entitle Bio Energy to terminate this Agreement pursuant to Section 10.3; provided, however, that no such event shall be deemed to be a County PDA Default if (a) it is caused by or is otherwise attributable to a breach by Bio Energy of its obligations under this Agreement or any other Project Contract to which Bio Energy is a party or (b) it occurs as a result of an Event of Force Majeure declared by Bio Energy or County in accordance with Section 9:

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

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

10.2.3 the failure by County to comply in any material respect with any covenant, obligation or agreement of County contained in this Agreement (other than any such failure which would constitute a County PDA Default under Sections 10.2.1 or 10.2.2), where such failure has a material adverse effect on Bio Energy or County's ability to perform its obligations under this Agreement and such failure shall not have been cured during the Initial Cure Period; provided that if the Initial Cure Period is not reasonably sufficient to permit a cure of such failure, and County shall have diligently commenced to cure such default within the Initial Cure Period and shall thereafter proceed with reasonable diligence to cure such failure, for such longer period as shall be reasonably necessary for County to cure the same;

10.2.4 County commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment or a trustee receiver, liquidator, custodian or other similar official of it or any substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they

become due, or shall take any corporate action to authorize any of the foregoing;

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

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

10.3 Termination Procedure.

10.3.1 Upon the occurrence of a County PDA Default or a Bio Energy PDA Default, as the case may be, that is not cured within the applicable period (if any) for cure, or a termination event under Section 3.2.2 of this Agreement, the terminating Party (or in the case of termination under 3.2.2, the County) may, at its option, initiate termination of this Agreement by delivering a Notice of Intent to Terminate this Agreement to the non-terminating Party; provided, however, that Bio Energy shall have no obligation to provide a Notice of Intent to Terminate in connection with, and Bio Energy shall be entitled to deliver a Termination Notice under Section 10.3.3 immediately upon the occurrence of, a County PDA Default under Section 10.2.1. The Notice of Intent to Terminate shall specify in reasonable detail the applicable PDA Default giving rise to the Notice of Intent to Terminate.

10.3.2 Following the giving of a Notice of Intent to Terminate, the Parties shall consult for the applicable Consultation Period as to the appropriate actions that should be taken to mitigate the consequences of the relevant PDA Default, taking into account all prevailing circumstances; provided, however, that no Consultation Period shall be provided for a County PDA

Default under Section 10.2.1. During the Consultation Period, the non-terminating Party may continue to undertake efforts to cure the relevant PDA Default, and if such default is cured at any time prior to the delivery of a Termination Notice in accordance with Section 10.3.3, then the terminating Party shall have no right to terminate this Agreement in respect of such cured default.

10.3.3 Upon expiration of the Consultation Period, and unless the Parties shall have otherwise agreed or unless the PDA Default shall have been remedied during the Consultation Period, the Party that issued the Notice of Intent to Terminate may terminate this Agreement by delivering a Termination Notice to the non-terminating Party, whereupon this Agreement shall terminate on the date set forth in the Termination Notice (which date shall in no event be earlier than the date such Termination Notice is delivered to the non-terminating Party).

10.3.4 Notwithstanding anything to the contrary set forth in this Agreement, from and after the occurrence of the Financial Closing:

(a) County shall not seek to terminate this Agreement as the result of any default of Bio Energy without first giving a copy of any notices required to be given to Bio Energy under Sections 10.3.1 to the Financing Parties, such notice to be coupled with a request to the Financing Parties to cure any such default within the cure period specified in Section 10.3.2, and such cure period shall commence upon delivery of each such notice to the Financing Parties. If there is more than one Financing Party, the Financing Parties will designate in writing to County an Agent and any notice required hereunder shall be delivered to such Agent, such notice to be effective upon delivery to the Agent as if such notice had been delivered to each of the Financing Parties. Each such notice shall be in writing and shall be delivered and shall become effective in accordance with Section 15. The address and facsimile number for each Financing Party or Agent shall be provided to County by Bio Energy at Financial Closing and thereafter may be changed by the Financing Party or the Agent by subsequent delivery of a notice to County at the address or facsimile number for County provided in Section 15; and.

(b) No rescission or termination of this Agreement by County shall be valid or binding upon the Financing Parties without such notice, the expiration of such cure period, and the expiration of the Extended Cure Period (as defined below) provided in this Section 10.3.4. The Financing Parties may make, but shall be under no obligation to make, any payment or perform any act that is required to be made or performed by Bio Energy, with the same effect as if made or performed by Bio Energy. If the Financing

Parties fail to cure or are unable or unwilling to cure any Bio Energy PDA Default within the cure period under Section 10.3.2 as provided to Bio Energy in this Agreement, County shall have all its rights and remedies with respect to such default as set forth in this Agreement; provided, however, that if the Financing Parties notify County that they require further time to consider the cure of the Bio Energy PDA Default, the Financing Parties, upon the termination of such applicable cure period provided to Bio Energy (such cure period commencing on the delivery of such notice to the Financing Parties) shall be allowed a further period (the "Evaluation Period"), during which the Financing Parties shall evaluate such default, the condition of the Plant, and other matters relevant to the actions to be taken by the Financing Parties concerning such default, and which Evaluation Period shall end on the earlier to occur of (a) the Financing Parties' delivery to County of a notice that the Financing Parties have elected to pursue their remedies under the Financing Documents, including taking such action or actions as may be required to assume or transfer the rights and obligations of Bio Energy under this Agreement (an "Election Notice"), or (b) thirty (30) days following the end of the applicable cure period provided to Bio Energy. Upon the delivery of the Election Notice, the Financing Parties shall be granted an additional period of one hundred eighty (180) days to cure any Bio Energy PDA Default (the "Extended Cure Period"). In the event that the Financing Parties fail to cure any Bio Energy PDA Default on or before the expiration of the Extended Cure Period, County may exercise its rights and remedies with respect to such default as set forth in this Agreement, County may immediately terminate this Agreement, and such termination shall be effective on delivery to the Financing Parties or the Agent of notice of such termination.

10.4 Other Termination Events. This Agreement shall terminate immediately without further action on behalf of either Party in the event the Gas Sales Agreement is terminated in accordance with Sections 3.2, 5.2.4, 9.4 or 11 (other than Section 11.4) of the Gas Sales Agreement. For purposes of clarification, Section 10.3 shall not apply to any such termination.

10.5 Cumulative Remedies. In the event of a Bio Energy PDA Default or County PDA Default, the terminating Party may, subject to this Section 10, pursue any remedy at law or in equity, including termination of this Agreement without prejudice to any rights or actions or remedies it may have in respect of any breach or default of this Agreement or any rights or obligations which expressly survive termination of this Agreement. Except as expressly provided to the contrary in this Agreement (including Sections 3.2.2, 9.4 and 10.7), all rights and remedies of either Party are cumulative of each other and of every other right or remedy available at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or

impair the concurrent or subsequent exercise of other rights and remedies. Notwithstanding any provision of this Agreement to the contrary, Bio Energy shall have the right to exercise the Cure Rights in accordance with Section 12 of the Gas Sales Agreement.

10.6 Site Restoration; Restoration Costs.

10.6.1 If County does not exercise its Right of First Offer in accordance with and subject to Section 4 within one hundred and eighty (180) days following the PDA Termination Date Bio Energy shall remove and dispose of any and all fixtures, equipment, trade fixtures, improvements, and any additions, alterations, replacements and betterments thereof and thereto, constructed by or for Bio Energy on the Plant Site and the Easement Areas, and restore the affected portions of the Plant Site and Easement Areas to grade level (including without limitation removing any items underground or below-grade), at Bio Energy's sole expense. Bio Energy shall repair any damage to the Plant Site or Easement Areas caused by such removal. The foregoing obligations of Bio Energy under this Section 10.6 shall be hereinafter referred to as the "Restoration Obligations."

10.6.3 If such removal and restoration is not completed within one hundred and eighty (180) days of the PDA Termination Date, then County shall have the right to take over the restoration process and all costs and expenses reasonably incurred by County to complete the removal and restoration (the "Restoration Costs"), up to but not exceeding $3,000,000, shall be reimbursed by Bio Energy to County. County shall invoice Bio Energy within ten (10) days of the end of each month during which County incurs Restoration Costs, setting forth the amount of such Restoration Costs in such detail as reasonably requested by Bio Energy to verify the work performed and the associated cost of such work. Bio Energy shall pay County the amount set forth in each invoice within ten (10) days of its receipt thereof, provided Bio Energy retains its right following such payment to dispute any unreasonable amount set forth in an invoice. Notwithstanding the foregoing, Bio Energy's liability to reimburse County for Restoration Costs shall terminate for any costs incurred after the date which is one hundred and eighty (180) days following the date of County's takeover of the restoration process.

10.7 Termination Payment. If County issues a Termination Notice and terminates this Agreement based upon a Bio Energy PDA Default under Section 10.1.2, then Bio Energy shall, within thirty (30) days following the PDA Termination Date, pay County an amount equal to $2,000,000 as liquidated damages (the "Termination Payment") for such Bio Energy PDA Default; provided that such $2,000,000 amount shall be reduced by the amount of all Delay Charges that have become due and payable by Bio Energy in accordance with Section 5.2 of the Gas Sales Agreement. Bio Energy and County acknowledge and agree that it is difficult or

impossible to determine with precision the amount of damages that would or might be incurred by County as a result of a Bio Energy PDA Default under Section 10.1.2. The Parties acknowledge and agree that (a) County will be damaged by such Bio Energy PDA Default, (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom, (c) the Termination Payment is in the nature of liquidated damages and not a penalty and are fair and reasonable, and (d) such payment represents a reasonable estimate of fair compensation for the loss that may reasonably be anticipated as a result of such Bio Energy PDA Default. County acknowledges and agrees that its sole and exclusive right and remedy in the event of termination of this Agreement by County under Section 10.1.2 shall be the payment of the Restoration Costs as set forth in Section 10.6 and the Termination Payment as set forth in this Section 10.7.

10.8 Survival. Upon the expiration or termination of this Agreement, this Agreement shall have no further force and effect, except that any rights and remedies that have arisen or accrued to either Party prior to such expiration or termination, or any obligations or liabilities that have arisen or accrued before such expiration or termination and that expressly survive such expiration or termination pursuant to this Agreement, shall in each case survive expiration or termination. The rights, remedies and obligations set out in (a) Sections 13 (Dispute Resolution), 15 (Notices) and 17 (Miscellaneous), shall survive in full force and effect the expiration or termination of this Agreement to the extent necessary to enable a Party to exercise any of such accrued rights and remedies, (b) Section 8 (Indemnification and Limitation of Liability) shall survive in full force and effect the expiration or termination of this Agreement in accordance with Section 8.7, and (c) Section 16 (Confidential Information) shall survive in full force and effect the expiration and termination of this Agreement in accordance with Section 16.6.

10.9 Letter of Credit.

10.9.1 On or prior to the Construction Start, Bio Energy shall obtain and deliver to the County an original irrevocable letter of credit (the "Letter of Credit") in the face amount of $2,000,000 (the "LC Amount") naming the County as beneficiary, which Letter of Credit shall be substantially in the form of Exhibit C attached hereto and issued by a financial institution (an "LC Issuer") that has: (a) not less than $500 Million in net current assets; (b) a financial rating of not less than 40 as rated by Sheshunoff Information Services, Inc. (or any equivalent rating thereto from any successor or substitute rating service selected by the County); (c) an investment grade rating from each of Standard & Poors and Moody's Investors Service, Inc.; and (d) either (i) have a letter of credit counter located in King County, Washington upon which draws can be made in person without delay, or (ii) has a local correspondent based in King County, Washington upon which draws can be made in person without delay.

10.9.2 The Letter of Credit shall be for a term of not less than one (1) year from the date of issue and irrevocable during that term. A Letter of Credit covering each subsequent period shall be obtained and delivered to the County not less than thirty (30) days prior to the expiration of the then-existing Letter of Credit. Upon issuance of each replacement Letter of Credit, the prior Letter of Credit shall terminate and be returned to Bio Energy.

10.9.3 The Letter of Credit shall provide that it will be honored upon a signed statement by the County or its agent that the County is entitled to draw upon the Letter of Credit, and shall require no signature or statement from any party other than the County or such agent. No notice to Bio Energy shall be required to enable the County to draw upon the Letter of Credit. Each Letter of Credit shall also provide that, following the honor of any drafts in an amount less than the aggregate amount of the Letter of Credit, the LC Issuer shall return the original Letter of Credit to the County and the County's rights as to the remaining amount of the Letter of Credit will not be extinguished.

10.9.4 In the event of a transfer of the County's interest in the Plant Site, the Landfill, or this Agreement, the County and its transferees shall have the right, and the Letter of Credit shall expressly so provide, without any requirement of consent of Bio Energy or the LC Issuer (except to the extent required under Section 12), to transfer the Letter of Credit to its transferee (and its transferee(s) may successively so transfer the Letter of Credit) and the County thereupon shall, without any further agreement between the parties, be released by Bio Energy from all liability therefor and thereunder, and it is agreed that the provisions hereof shall apply to every transfer or assignment of the Letter of Credit to any such transferee.

10.9.5 If the LC Issuer shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency act, make an assignment for the benefit of its creditors, consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof (each of the foregoing, an "LC Issuer Insolvency"), then Bio Energy shall obtain a replacement Letter of Credit, within thirty (30) days of such act or event, from another financial institution that satisfies the conditions set forth in Section 10.9.1.

10.9.6 The County shall have the right to draw upon a Letter of Credit solely upon the occurrence of the following events (each, a "Draw Event"):

(a) If Bio Energy fails to pay any Restoration Costs when and as due under Section 10.6.2, such draw to be limited to the amount of Restoration Costs due and owing as of the draw date;

(b) If Bio Energy fails to pay all or a portion of the Termination Payment, when and as due under Section 10.7, such draw to be limited to the unpaid amount of the Termination Payment as of the draw date;

(c) If Bio Energy fails to pay all or a portion of the Gas Sales Payment;

(d) If Bio Energy fails to obtain any replacement Letter of Credit as and when required hereunder, the then-existing LC Amount, subject to Section 10.9.7; or

(e) After an event constituting an LC Issuer Insolvency, the then-existing LC Amount, subject to Section 10.9.7.

The County may draw upon the then-existing Letter of Credit to the extent provided for by a particular Draw Event without giving any further notice or time to cure to Bio Energy. If all or any portion of a Letter of Credit is drawn against by the County, Bio Energy shall, within seven (7) Business Days after demand by the County, cause the LC Issuer of such Letter of Credit to issue to the County, at Bio Energy's expense, a replacement or supplementary Letter of Credit in substantially the form attached hereto as Exhibit C such that at all times during the Term, the County shall have the ability to draw on one or more Letters of Credit totaling, in the aggregate, the then-current LC Amount.

10.9.7 If Bio Energy is obligated to perform the Restoration Obligations pursuant to Section 10.1, then, within thirty (30) days after Bio Energy's requirement to perform the Restoration Obligations arises, Bio Energy shall cause a new or supplemental Letter of Credit to be issued in favor of the County so that the total amount of the Letter(s) of Credit then being held by the County equal or exceed Bio Energy's reasonable estimate of the Restoration Costs; provided that, if such estimate is lower than the then-existing face amount of all Letter of Credit then being held by the County, a new or supplemental Letter of Credit shall not be required.

10.9.8 Notwithstanding anything to the contrary set forth in this Agreement, Bio Energy's obligation to provide a Letter of Credit shall terminate upon the earlier to occur of: (a) County's exercise of its Right of First Offer in accordance with and subject to Section 4; (b) Bio Energy's completion of the Restoration Obligations; (c) if County has exercised its right to take-over the Plant Site restoration process in accordance with Section 10.7, two hundred and ten (210) days following the date of County's takeover of the restoration process; and (d) if no Restoration Obligation exists as of the PDA Termination Date, the PDA Termination Date.

11. Triggering Event; Cure Plan. In the event County assigns its interest in the Gas Sales Agreement and enters into an agreement for the operation and maintenance of the Collection Facilities, County hereby acknowledges and agrees that it will be bound by, and will comply with the provisions set forth in, Section 12 of the Gas Sales Agreement.

12. Assignment.

12.1 General. Neither Party may assign or transfer its rights or obligations under this Agreement without the prior consent of the other Party, such consent not be unreasonably withheld or delayed; provided, however, that Bio Energy shall have the right, without obtaining County's consent, to:

12.1.1 assign to, mortgage, or grant a security interest or liens in favor of, the Financing Parties in Bio Energy's rights and interests under or pursuant to (a) this Agreement, (b) the Plant, (c) the Plant Site, (d) the property of Bio Energy or (e) the revenues or any other rights or assets of Bio Energy, or

12.1.2 assign this Agreement to an Affiliate of Bio Energy, provided such assignee agrees in writing to be bound by the terms of this Agreement as a condition precedent to the effectiveness of such assignment.

Any purported assignment that fails to comply with the requirements of this Section 12.1 shall be null and void and shall have no force or effect.

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

12.3 Modifications Required upon Assignment.

12.3.1 In the event County proposes to sell, transfer or assign the Collection Facilities and to assign the Gas Sales Agreement in connection with such sale, transfer or assignment, the Parties shall meet and discuss in good faith the proposed purchaser, transferee or assignee, the circumstances of the sale, transfer or assignment, and any modifications to this Agreement that are necessary to complete such sale, transfer or assignment to the mutual satisfaction of the Parties and the purchaser, transferee or assignee. Nothing in this Section 12.4 shall limit restrict, or supersede the execution and delivery of an Assignment Agreement by the Parties and the proposed purchaser, transferee or assignee as a condition precedent to such assignment, as set forth in Section 15.2 of the Gas Sales Agreement.

12.3.2 The Parties agree that, in connection with a sale, assignment or transfer of the Collection Facilities, County, Bio Energy and the purchaser, assignee or transferee (the "Purchaser") shall enter into such agreements as are necessary to provide that, upon termination of the Gas Sales Agreement (as so assigned to the Purchaser): (a) the Gas Sales Agreement shall automatically novate to County; (b) the Collection Facilities, together with all other assets as may be required to enable County to operate and maintain the Collection Facilities and perform its obligations thereunder in accordance with the terms and conditions of the Gas Sales Agreement, shall be automatically transferred and assigned by Purchaser to County; (c) the Purchaser, Bio Energy and County shall take all actions and execute and deliver all instruments and agreements as may be required to (i) transfer and assign the Collection Facilities and all such related assets to County and vest good and marketable title therein with County and (ii) novate the Gas Sales Agreement to County; and (c) during any period of time between the termination of the Gas Sales Agreement and the completion of such transfer and assignment, County shall have the right to operate and maintain the Collection Facilities in place of the Purchaser. The Parties agree that the terms of such agreements shall be reasonably acceptable to each Party and the Purchaser.

13. Dispute Resolution.

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

13.2 Resolution Procedures. Except as otherwise expressly provided in this Agreement and before any Party initiates any law suit or legal proceedings pursuant to Section 13.1, the Parties will attempt in good faith to resolve through negotiations any dispute, claim or controversy arising out of or relating to this Agreement; provided, however, that either Party may seek interim relief to the extent necessary to preserve its rights hereunder or protect its property during the continuance of the resolution process described herein. Either Party may initiate negotiations by providing notice to the other Party, setting forth the subject of the dispute and the relief requested. The recipient of such notice shall respond within seven (7) days with a written statement of its position on, and recommended

solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each Party with full settlement authority will meet at a mutually agreeable time and place within ten (10) days of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the Parties do not resolve such dispute within twenty (20) days of the initial notice, then either Party shall at any time thereafter have the right to exercise any of its rights and remedies provided to it hereunder or otherwise available at law or in equity.

14. Insurance

14.1 County Required Insurance. County shall obtain, on or before the Commencement Date, and maintain during the PDA Term the types of insurance coverage with policy limits that satisfy the policy limits required under Sections 14.2.1(a), (b), (e) and (f) (in such case, with respect to property insurance covering the County's Facilities).

14.2 Bio Energy Required Insurance

14.2.1 Bio Energy Insurance Construction and Operation. Bio Energy shall obtain, not later than the Commencement Date, and maintain during the PDA Term the minimum insurance set forth below. By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to Bio Energy. Bio Energy shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form, except that insurance for professional liability, errors and omissions when required, may be provided on a "claims made" form, reasonably acceptable to County. If coverage is approved by the County and purchased on a "claims made" basis, Bio Energy warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is the subject of this Agreement. Insurance coverage shall be at least as broad as stated below and with limits no less than:

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

(b) **Automobile Liability.** Automobile liability insurance providing coverage at least as broad as Insurance Services Office form number CA 00 01 Ed. 12/90 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, with limits not less than $1,000,000 combined single limit per accident.

(c) **Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

(d) **Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the "Stop Gap" endorsement to the general liability policy. Coverage shall be for a limit of no less than $5,000,000.

(e) **Pollution Liability Insurance** coverage in the amount of $10,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the physical injury or destruction of tangible property, loss of use, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed. Coverage for Pollution Conditions shall include vibration, noise and odors Coverage shall be endorsed to include:

(i) On-Site Clean-up of New Conditions

(ii) Third Party Claims for On-Site Bodily Injury and Property Damage

(iii) Third Party Claims for Off-site Bodily Injury and Property Damage

(iv) Third Party Claims for Off-site Clean-up

(f) Property insurance for the Plant, with a limit of not less than $2,000,000 for all risk perils.

14.2.2 Bio Energy Insurance During Construction. In addition to the above insurance, Bio Energy shall procure or cause its construction contractors to procure the following insurance for the period from the Construction Start Date until the Commercial Operation Date:

(a) Professional Liability, Errors, and Omissions: $1,000,000 per claim and in the aggregate.

(b) Contractors' Pollution Liability coverage in the amount of $10,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the physical injury or destruction of tangible property, loss of use, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed.

(c) Builder's Risk: Bio Energy shall procure and maintain or cause its construction contractor to procure and maintain "All Risk" Builder's Risk Insurance in a form at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft and property in transit. Coverage shall be endorsed to include Earthquake and Flood. The coverage shall insure for direct physical loss to property of the entire Plant construction project, for 100% of the replacement cost value thereof. The policy shall be endorsed to cover the interests, as they may appear, of County.

(d) Explosion & Collapse, Underground Damage (XCU) Endorsement. $10,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a $10,000,000 aggregate limit.

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

14.2.4 Other Insurance Provisions. The insurance policies required by Bio Energy, its construction contractors or County in this Agreement are to contain and be endorsed to contain the following provisions:

(a) With respect to the all Liability policies except Workers Compensation and Professional Liability, Errors and Omissions:

(i) The County and its Representatives are to be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of Bio Energy in connection with this Agreement. Bio Energy and its Representatives are to be covered as additional insureds

with respect to liability arising out of activities performed by or on behalf of Bio Energy in connection with this Agreement. In each case, ISO Form CG 20 37 or its equivalent shall be used. The policies shall provide that (A) under no circumstances shall any additional insured be responsible for payment of any premium under such policy and (B) the failure of the named insured to report a claim under such policy shall not prejudice the rights to coverage by such policy of the additional insureds.

(b) Bio Energy's and its construction contractors' insurance coverage shall be primary and not excess to any insurance or self-insurance maintained by County or Representatives. Any insurance or self-insurance maintained by County or its Representatives shall not contribute with Bio Energy's or its construction contractors' insurance or benefit Bio Energy or the construction contractor in any way. County's insurance coverage shall be primary and not excess to any insurance maintained by Bio Energy or its Representatives. Any insurance and/or self-insurance maintained by Bio Energy or its Representatives shall not contribute with County's insurance or benefit Count in any way.

(c) The construction contractors' and Bio Energy's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(d) The insurance company shall provide each Party with at least thirty (30) days prior written notice of any cancellation or intended non-renewal of such insurance policy or nay material change in the coverage or limits of coverage provided by such policy.

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

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

(b) Professional Liability, Errors and Omissions insurance may be placed with insurers with a Bests' rating of B+:VII.

(c) If at any time the foregoing policies shall fail to meet the above requirements, as to form or substance, or if a company issuing any such policy shall fail to meet the standards above, the Party required to maintain such insurance shall, upon notice to that effect

from the other Party, meet with the insuring Party to determine if such circumstances indicate that insuring Party should procure a new policy to replace the deficient policy.

14.2.6 Evidence of Insurance. Bio Energy shall furnish the County, and County shall furnish Bio Energy, with Certificates of Insurance and endorsements required by this Agreement within ten (10) days after the date such insurance is required to be placed into effect and upon the renewal of any such policy of insurance. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date of the policy. Each Party shall bear the cost of procuring and maintaining all insurance as required to be procured and maintained by such Party under this Agreement.

14.2.7 Reasonableness of Insurance. Notwithstanding anything to the contrary set forth in this Agreement, in the event that the cost of obtaining and maintaining insurance cover required by this Agreement materially increases from the cost that applies to such insurance cover as of the PDA Effective Date, or if any risk required to be insured in connection with this Agreement becomes uninsurable after the PDA Effective Date, then at the insuring Party's request the Parties shall review the insuring Party's insurance obligations hereunder and mutually agree to such amendments to these provisions that will enable insuring Party to provide insurance to the extent available on commercially reasonably terms; provided that neither Party will be materially and adversely affected by such event or circumstance.

14.3 Waiver of Subrogation Required. Each Party shall require the carriers of the required coverage to waive all rights of subrogation against the other Party and its Representatives. In the event that a Party self-insures risks hereunder, such Party shall release the other Party to the extent the released Party would have been free from such claims due to a waiver of subrogation required to be provided in its favor hereunder.

14.4 Subcontractors' Insurance. Subject to Section 14.2.2, each Party shall require any Subcontractor to maintain a program of workers' compensation insurance or a State-approved self-insurance program in an amount and form to meet all applicable requirements of applicable State law.

14.5 Failure Constitutes Material Breach. Failure on the part of either Party to procure or maintain required insurance for any reason shall constitute a material breach of this Agreement for purposes of Section 10.1.4 or 10.2.3, as applicable. The non-defaulting Party may elect, in its sole discretion and in lieu of exercising any right to terminate this Agreement, to procure or renew such insurance and pay any and

all premiums in connection therewith, and all monies so paid shall be repaid by the defaulting Party upon demand by the non-defaulting Party. All insurance required shall be maintained in force at all times.

15. Notices.

15.1 Address for and Method of Notice. Except as otherwise expressly provided in this Agreement, whenever this Agreement requires that a notice be given by one Party to the other Party or to any third party, or a Party's action requires the approval or consent of the other Party, then: (a) each such notice shall be given in writing and each such consent or approval shall be provided in writing; (b) no notice shall be effective unless it is provided in writing and otherwise satisfies any particular requirements as specified herein for such notice; and (c) the Party from whom approval or consent is sought shall not be bound by any consent or approval except to the extent such consent or approval is in writing. Any such notice, consent or approval that fails to conform to the foregoing requirements shall be null and void and have no force and effect. All notices shall be addressed to such Party at the address of such Party set out below or at such other address as such Party may have substituted therefor by notice to the other Party in accordance with this Section 15.1, and shall be either (i) delivered personally, (ii) sent by facsimile communication, (iii) sent by nationally-recognized overnight courier or delivery service or (iv) sent by registered mail, return receipt requested; provided that (x) any notice, demand, request or other communication made or delivered in connection with an alleged breach or default hereunder shall only be delivered personally or by a nationally-recognized overnight courier or delivery service and (y) electronic mail shall not be an effective or acceptable means for providing any notice hereunder.

If to County, to:

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

With a copy to:

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

If to Bio Energy, to:

Bio Energy (Washington), LLC
c/o Energy Developments, Inc.
Attn: Commercial Manager
7700 San Felipe, Suite 480
Houston, TX 77063-1613
Fax: (713) 300-3330

With a copy to:

Energy Developments Limited
848 Boundary Road
Richlands, Queensland 4077
Australia
Attn: Company Secretary
Fax 61-3217-0722

15.2 Receipt and Effectiveness of Notice. All notices, requests, demands, approvals and other communications which are required to be given, or may be given, from one Party to the other Party under this Agreement shall be deemed to have been duly given, received and effective: (a) if personally delivered, on the date of delivery; (b) in the case of a notice sent by facsimile communication, on the day of actual receipt if a Business Day and received prior to 4:30 p.m. at the place of receipt, or if not so received, on the next following Business Day in the place of receipt, provided that sender's facsimile machine has received the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by telephone to sender that he has received the facsimile message; (c) in the case of a notice sent by mail, when actually received by the addressee; and (d) the Business Day immediately following the day it is sent, if sent for next day delivery to a domestic address by a nationally-recognized overnight courier or delivery service. The addressee, when requested by the sender, shall promptly provide the sender with facsimile acknowledgment of receipt but the delay or failure to give or receive any such acknowledgment will not affect the validity or effectiveness of the notice, communication, consent or approval in respect of which such acknowledgment of receipt is sought.

16. Confidentiality; Public Disclosure.

16.1 Confidential Information. County and Bio Energy agree that this Agreement and all documents and information provided from one Party to the other Party in connection with this Agreement is confidential and proprietary information ("Confidential Information") and shall not, except to the extent that disclosure is compelled pursuant to a public records request in under the Records Act, be disclosed by the Recipient Party or any of its Representatives. The Recipient

Party shall not disclose or provide access to any of the Confidential Information (a) to any employees of the Recipient Party aside from those employees who have a specific need to know such information for the purposes permitted hereunder, or (b) to any third person or entity for any purpose at any time, except as otherwise provided herein, and shall take all steps as are necessary to prevent such disclosure or access and to maintain the confidentiality and secrecy of the Confidential Information. The Recipient Party shall inform each Related Party of the Recipient Party to whom any Confidential Information shall be disclosed or be accessible of the confidentiality restrictions imposed by this Section 16 and each such Related Party shall be bound by such restrictions to the same extent as the Recipient Party is bound hereby. The Recipient Party acknowledges and agrees that it shall be liable to the Disclosing Party for any breach of this Section 16 by any Related Party of the Recipient Party.

16.2 Disclosures.

16.2.1 In the event the Recipient Party receives a request for disclosure of the Confidential Information, or faces legal action seeking its disclosure, the Recipient Party shall not, except as provided by Section 16.2.2, make any voluntary disclosure without the prior written authorization of the Disclosing Party, and the Recipient Party shall take such steps as it, in its sole discretion, deems reasonable to resist disclosure in order to maintain the confidential and secret nature of the Confidential Information. The Recipient Party shall provide the Disclosing Party with prompt notice of any such requests or orders so that the Disclosing Party can take independent steps to limit or narrow such requests or orders and seek and obtain appropriate protective orders or other reliable assurances of nondisclosure, and the Recipient Party shall reasonably cooperate with the Disclosing Party, at the Disclosing Party's cost and expense, in connection therewith.

16.2.2 The Parties acknowledge that (a) County is a "state agency" subject to the Records Act, (b) this Agreement may constitute a public document under the Records Act, and (c) County cannot ensure that the Confidential Information will not be subject to release pursuant to a public disclosure request properly made in accordance with the Records Act. In the event the County receives a public disclosure request seeking production of Confidential Information, the County will promptly advise Bio Energy and will not release such Confidential Information for a period of not less than ten (10) days from the date such notice is provided to Bio Energy in order to give Bio Energy an opportunity to take independent steps to limit or narrow such requests and seek and obtain appropriate protective orders or other reliable assurances of nondisclosure, and the County shall reasonably cooperate with Bio Energy, at Bio Energy's cost and expense, in connection therewith. Absent such protective order, County may release the Confidential Information, and Bio Energy hereby waives any

right to recover damages from County for disclosure or non-disclosure of any documents to the extent the County complies with the procedures set forth above.

16.3 Certain Exceptions. The provisions of this Section 16 shall not be applicable to information which: (a) is or becomes generally available to the public other than as a direct or indirect result of an intentional or inadvertent disclosure by the Recipient Party or any Related Parties of the Recipient Party or anyone to whom the Recipient Party or any of its Related Parties transmits the information; (b) was available to the Recipient Party prior to its disclosure to the Recipient Party by the Disclosing Party or any of the Disclosing Party's Related Parties, provided that such information is not known to the Recipient Party to be subject to another confidentiality agreement with, or other obligation of secrecy to, the Disclosing Party or another party; (c) becomes available to the Recipient Party from a source other than the Disclosing Party or any of the Disclosing Party's Related Parties, provided that such source is not known to the Recipient Party to be subject to another confidentiality agreement with, or other obligation of secrecy to, the Disclosing Party or another party; or (d) is independently developed by the Recipient Party, other than in connection with this Agreement.

16.4 No Obligation to Disclose. Notwithstanding any other provision of this Section 16, the Disclosing Party has not affirmatively agreed to disclose or provide any particular Confidential Information to the Recipient Party and the Disclosing Party shall have no obligation to disclose or provide any such information whatsoever. The Recipient Party acknowledges and agrees that the Disclosing Party makes no warranty or representation whatsoever concerning the Confidential Information, whether as to the accuracy or completeness thereof or the applicability or usefulness thereof to any product or activity of the Recipient Party or otherwise. Neither the Disclosing Party nor any Related Parties of the Disclosing Party shall be liable to the Recipient Party.

16.5 Return of Confidential Information. Upon (a) the termination of this Agreement for any reason, (b) the delivery at any time by the Disclosing Party to the Recipient Party of a written notice or demand requesting the return of the Confidential Information to the Disclosing Party, or (c) the breach or default by the Recipient Party in the performance or observance of any material provision, condition, representation, warranty, restriction or limitation of this Section 16, the Recipient Party (i) shall immediately return to the Disclosing Party any and all Confidential Information and all other materials related thereto at its own cost and expense and (ii) shall not thereafter make any use whatsoever of any Confidential Information of the Disclosing Party.

16.6 Survival. Notwithstanding the application of any other statute of limitations (which statute hereby is expressly waived with respect to any potential claim as between the Parties), the obligations contained in this Section 16 shall survive the

termination of this Agreement until the fifth (5^{th}) anniversary of the PDA Termination Date.

17. Miscellaneous.

17.1 Modification. This Agreement shall not be amended, changed or modified except by a subsequent agreement in writing which indicates that such writing is intended to amend the terms of this Agreement and is signed by duly authorized officers of both Parties. The Parties agree that this Agreement shall not be amended in any manner by any course of dealing between the Parties.

17.2 Waiver. No delay or forbearance by a Party in exercising any right, power or remedy accruing to such Party upon the occurrence of any breach or default by any other Party hereto under this Agreement shall impair any such right, power or remedy of such Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party hereto of any such breach or default under this Agreement, or any waiver on the part of any Party hereto of any provision or condition of this Agreement, must be in writing signed by the Party to be bound by such waiver and shall be effective only to the extent specifically set forth in such writing.

17.3 Entire Agreement. This Agreement contains and integrates the complete agreement between the Parties with respect to the subject matter hereof and supersedes all other agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof; provided, however, that the Confidentiality Agreement shall survive the execution and delivery of this Agreement with respect to any Confidential Information (as defined in the Confidentiality Agreement) provided by a Party to the other Party prior to the PDA Effective Date.

17.4 Decision-Making by Parties. Except where this Agreement expressly provides for a different standard, whenever this Agreement provides for a determination, decision, permission, consent or approval of a Party, the Party shall make such determination, decision, grant or withholding of permission, consent or approval in a commercially reasonable manner and without unreasonable delay. Any denial of an approval, permission, decision, determination or consent required to be made in a commercially reasonable manner shall include in reasonable detail the reason for denial or aspect of the request that was not acceptable. In the case of an assignment of this Agreement by a Party to a proposed assignee, the withholding of consent to such assignment shall be deemed to be unreasonable for purposes of Section 12.1 if the proposed assignee has the financial resources and technical expertise that are customarily required to enable such proposed assignee to perform its obligations under this Agreement.

17.5 Relationship of Parties. The relationship of the Parties shall be that of independent contractors. Neither this Agreement nor the performance by the Parties of their respective obligations under this Agreement shall create or constitute, or be construed to create or constitute, a partnership, joint venture or association, or establish a fiduciary relationship, a principal and agent relationship or any other relationship of a similar nature, between County and Bio Energy.

17.6 No Third Party Beneficiary. This Agreement is for the sole and exclusive benefit of the Parties hereto and shall not create a contractual relationship with, or cause of action in favor of, any third party.

17.7 Governing Law. This Agreement and any provisions contained herein shall be governed by, and construed and interpreted in accordance with, the laws of the State of Washington without regard to its conflicts of law principles; provided, that with respect to matters of law concerning the internal corporate affairs of any corporate entity which is a party to this Agreement, the law of the jurisdiction under which the respective entity derives its powers shall govern.

17.8 Further Assurances. Each Party agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by, and to carry out the intent of, this Agreement, including the execution and delivery of additional documents. Without limiting the generality of the foregoing, County shall cooperate with Bio Energy and its Financing Parties in connection with Bio Energy's construction and long-term financing for the Plant, including the furnishing of such information, the giving of such certificates and the furnishing of a consent to the collateral assignment of this Agreement to the Financing Parties (substantially in the form set forth in Exhibit B with such changes required by the Financing Parties) and such opinions of counsel and other matters as Bio Energy and its Financing Parties may reasonably request, provided that the foregoing undertaking shall not obligate the County to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of the County under this Agreement.

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

17.10 No Recourse to Affiliates. This Agreement is solely and exclusively between County and Bio Energy, and any obligations created herein on the part of any Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, joint venturer, Affiliate, director or officer of any other Party for performance of such obligations unless such obligations were assumed in writing by the Person against whom recourse is sought.

17.11 Costs. Each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Agreement and shall not have any right to claim or seek reimbursement of such costs and expenses from the other Party.

17.12 Specific Performance. Notwithstanding the dispute resolution procedures set forth in Section 13, and except as the context specifically otherwise requires, if a Party breaches or threatens to breach any provision of this Agreement, the other Party shall have the right to have such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the other Party and that money damages will not provide adequate remedy. All rights under this Section 17.12 shall be in addition to, and not in lieu of, any other rights and remedies available to either Party at law or in equity, all of which shall be independent of the other and severally enforceable.

17.13 Time is of the Essence. Except as the context specifically otherwise requires, time is of the essence with respect to all dates and time periods set forth in this Agreement.

17.14 Schedules; Exhibits. The Schedules and Exhibits to this Agreement are incorporated by reference into, and shall form part of this Agreement, and shall have full force and effect as though they were expressly set out in the body of this Agreement; provided, however, that in the event of any conflict between the terms, conditions and provisions of this Agreement (excluding the Exhibits and Schedules thereto) and the Schedules or Exhibits hereto, the terms of this Agreement (excluding the Exhibits and Schedules thereto) shall prevail.

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

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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

[KING COUNTY]

By: _____
Title: _____

[BIO ENERGY (WASHINGTON), LLC]

By: [_____]., its sole member

By: _____
Title:_____

LIST OF SCHEDULES AND EXHIBITS

Schedules

1.1	Definitions and Rules of Construction
3.1.1	Project Timetable
3.1.2	Required Permits

Exhibits

A	Description of Cedar Hills Regional Landfill
B	Form of Consent to Collateral Assignment to Financing Parties

SCHEDULE 1.1

DEFINITIONS AND RULES OF CONSTRUCTION

SCHEDULE 3.1.1

PROJECT TIMETABLE

Milestone	Milestone Date
Target SEPA Filing Date	PDA Effective Date + 60 days
Target Additional Permit Filing Date	SEPA Notice Acquisition Date + 30 days
• Application for PSCAA Air Operating Permit to construct	
• Modification of Wastewater Discharge Permit	
• Modification of Solid Waste Handling Permit	
• Application for Special Use Permit or Modification	
Submit Construction Permit Applications	Special Use Permit Acquisition Date + 90 days
Complete Flare Station Relocation Plan	PDA Effective Date + 250 days
Target Permit Acquisition Date	PDA Effective Date + 456 days
Target Equipment Order Date	Financial Closing Date + 30 days
Target Closing Date	Permit Acquisition Date + 90 days
Completion of Plant Site Lease Improvements	Target Construction Start Date
Target Construction Start Date	Equipment Order Date + 304 days
Start Movement of Flares from North Flare Station to New Flare Station Site	Construction Start Date + 61 days
Complete Movement of Flares from North Flare Station to New Flare Station Site	Construction Start Date + 153 days
Commence Commissioning of Plant	Equipment Delivery Date + 243 days
Target Commercial Operation Date	Equipment Delivery Date + 365 days

SCHEDULE 3.1.2

REQUIRED PERMITS

- SEPA
- PSCAA Air Operating Permit
- Wastewater Discharge Permit
- Solid Waste Handling Permit
- Special Use Permit
- Construction Permit

EXHIBIT A

DESCRIPTION OF CEDAR HILLS REGIONAL LANDFILL

EXHIBIT B

FORM OF CONSENT TO COLLATERAL ASSIGNMENT TO FINANCING PARTIES

PLANT SITE LEASE

This Plant Site Lease ("Lease") is made as of _____, 2003 (the "Lease Effective Date"), by and between Bio Energy (Washington), LLC, a Delaware limited liability company ("Bio Energy"), and King County, a Washington municipal corporation ("County"), (collectively the "Parties" or each individually, a "Party").

RECITALS:

WHEREAS, County owns and operates the Cedar Hills Regional Landfill located in Maple Valley, Washington, legally described in Exhibit A hereto (the "Landfill");

WHEREAS, Bio Energy desires to construct and operate an electricity generating facility at the Landfill and to obtain rights to Landfill Gas from the Landfill, and County desires to encourage Bio Energy's construction and operation of the generating facility, to lease and license the use of real property at the Landfill to Bio Energy for that purpose, and to sell Landfill Gas to Bio Energy;

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

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

1. Definitions; Rules of Construction.

   1.1. Definitions. Except as otherwise expressly provided herein, capitalized terms used herein shall have the meanings assigned thereto in Schedule 1.1.

   1.2. Rules of Construction and Interpretation. Except as otherwise expressly provided herein, the rules of construction and interpretation set forth in Schedule 1.1 shall apply to this Lease.

2. Plant Site.

   2.1. Description. County does hereby lease to Bio Energy, and Bio Energy does hereby lease from County, upon the terms and conditions herein set forth, that certain real property (the "Plant Site") consisting of a portion of the Landfill together with all improvements now existing or subsequently constructed on the Plant Site. A sketch showing the general location of the Plant Site is shown on the map in Exhibit B attached hereto, and the legal description of the Plant Site is set forth on Exhibit B-1 attached hereto.

   2.2. Easement Areas. The County hereby grants to Bio Energy a non-exclusive easement for the Lease Term for ingress, egress, construction staging and lay-down, evacuation and transmission of electric energy from the Plant to the interconnection point where such electric energy will be delivered to the transmission system (the "Transmission Line Easement") and all other uses reasonably necessary for the construction, operation and maintenance of the Plant over and

across those portions of the Landfill in the locations indicated on the map in Exhibit B attached hereto or otherwise approved in advance by County (the "Easement Areas"). A legal description of the Easement Areas is attached hereto as Exhibit B-2.

3. Term. This Lease shall be coterminous with the Initial PDA Term (approximately fifteen (15) years after the Commercial Operation Date) (the "Initial Lease Term") and shall be: (i) automatically extended by a period equal to the First Extension Term and the Second Extension Term (as each such term is defined in Section 2 of the PDA), to the extent such extension terms become effective under the PDA; and (b) automatically terminated as of the PDA Termination Date (provided, that no such termination shall relieve Bio Energy from its Restoration Obligations defined in Section 10.1 below). The extension of this Lease pursuant to the first sentence of this Section 3 shall be on the same terms and conditions provided herein (as such terms and conditions may have been amended or modified during the Initial Lease Term or during an extension term in accordance with Section 26.5)(the Initial Lease Term, as so extended, the "Lease Term"). Bio Energy shall be entitled to possession of the Plant Site upon substantial completion by the County of the Plant Site Improvements described in Section 8.2.1, which the parties anticipate will occur approximately ____ days after the PDA Effective Date. The date on which the County actually delivers possession of the Plant Site with the Plant Site Improvements substantially completed shall be deemed the "Commencement Date" of this Lease. Within thirty (30) days of the PDA Effective Date, the County and Bio Energy shall execute an amendment to this Lease in a form suitable for recording confirming the Commencement Date and approximate termination date of the Initial Lease Term.

4. Base Rent. The Parties agree that the consideration for County's lease of the Plant Site is Bio Energy's performance of its obligations under this Lease and the PDA. Bio Energy shall not be required to pay any monthly rent for the lease of the Plant Site, other than the sums denominated as "additional rent" under Sections 5 and 6 and elsewhere in this Lease.

5. Taxes. As additional rent, Bio Energy shall pay all Taxes that may be levied upon or assessed against the Plant, the Plant Site, the Plant Site Lease Improvements, this Plant Site Lease, or Bio Energy's business operations on the Plant Site, and any other property that it owns or operates in connection with this Lease, specifically including any statutory leasehold excise tax imposed by Chapter 82.29A RCW. The term "Taxes" as used in this Section 5 means all federal, state, local and other net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property, leasehold excise tax, tax, customs, duty or other fee, assessment or charge of any kind whatsoever applicable to the Plant, the Plant Site, the Plant Site Lease Improvements, this Plant Site Lease, or Bio Energy's business operations on the Plant Site, together with any interest and any penalties, additions to tax or additional amount with respect thereto. "Taxes" do not include any state or federal taxes applicable to County as a result of County receiving any income or other compensation under this Lease, the PDA, the GSA or any other Project Contract.

6. Utilities. As additional rent, Bio Energy shall pay or cause to be paid when and if due, directly to County or to the provider of such utility or service, at County's election, and shall indemnify, protect and hold harmless County and the Plant Site from, all charges for public or private utility services to or for the Plant Site during the Lease Term, including all charges for water, telephone service, data lines, garbage collection, sewage and drainage service. For all of the foregoing utilities and services, if Bio Energy connects to County's existing utilities and/or services, Bio Energy shall pay all costs and expenses to establish such connection, including any metering that County may elect to have installed, and Bio Energy's right to any such connection shall be conditioned on County's own services and utilities not thereby being degraded in any way.

6.1. Prior to the installation of any utility lines and service within the Plant Site, Bio Energy shall submit to the County plans and specifications for the proposed service. County shall confirm that the installation of the utilities will not adversely affect the utility service to the County.

6.2. After installation, Bio Energy shall be responsible for maintaining all utility services located within the Plant Site in good order and repair. In addition to all other rights and remedies of County herein, after reasonable notice to Bio Energy and an opportunity for Bio Energy to cure the claimed condition, County shall have the right to enter onto the Plant Site to repair or maintain any utility systems or services if Bio Energy fails to do so and the condition of the utility service on the Plant Site is degrading or otherwise materially and adversely impacting the provision of utility service to County. Bio Energy shall reimburse County's actual costs as reasonably incurred in connection with any remedial action taken by the County pursuant to this Section 6.2. Any dispute between County and Bio Energy concerning the adequacy of the design of Bio Energy's utility systems or the compliance of Bio Energy with the maintenance requirements of this Section 6.2 shall be resolved in accordance with the procedures set forth in Section 15.

6.3. For purposes of clarification, the terms and conditions of this Section 6 shall not apply to the electric energy generated by the Plant and transmitted from the Plant across the transmission line located on the Transmission Line Easement, or delivered to the Electricity Delivery Point, or to any of the facilities or equipment required for such generation, transmission or delivery.

7. Uses.

7.1. Plant Site. The Plant Site is leased to Bio Energy for the purpose of constructing, operating and maintaining the Plant and related improvements (the "Permitted Uses") and for no other business or purpose. Bio Energy shall not commit or allow to be committed any waste upon the Plant Site, or any public or private nuisance or other act which violates Applicable Law.

7.2. Easement Areas. The Easement Areas are granted to Bio Energy for the Permitted Uses, subject to the exclusive control and management thereof by County at all times. Bio Energy shall not commit or allow to be committed any waste upon the Easement Areas, or any public or private nuisance or other act which violates Applicable Law, and Bio Energy shall not deposit any solid waste on the Easement Area or any other portion of the Landfill. County shall have the right to (i) establish, modify and enforce reasonable rules and regulations with respect to the Easement Areas, (ii) enter into, modify and terminate agreements with third parties (other than Bio Energy) permitting their use of the Easement Areas, (iii) except for the Transmission Line Easement, temporarily restrict Bio Energy's access to all or any portion of the Easement Areas to such extent as may, in the reasonable opinion of County, be necessary or convenient to enable County to operate the Landfill, (iv) do and perform such other acts in and to the Easement Areas as County deems advisable; provided that County shall not exercise any of its rights (including the foregoing rights) with respect to the Easement Areas in a manner which will materially and adversely interfere with Bio Energy's use the Plant Site or the Easement Areas or the ownership, operation and maintenance of the Plant.

7.3. Compliance With Law. Bio Energy shall, at Bio Energy's expense, comply promptly with all Applicable Law regulating the use, occupancy or improvement of the Plant Site or Easement Areas by Bio Energy.

8. Acceptance of Plant Site.

8.1. "As Is" Condition. Bio Energy hereby accepts the Plant Site and Easement Areas "as-is" in their condition existing as of the Lease Effective Date, except for County's obligations with respect to subdivision, tax parcel segregation, and the Plant Site Lease Improvements described in Sections 8.2.1, 8.2.2 and 8.2.3 below) to be undertaken by County prior to the Commencement Date. County shall have no obligation of any kind to alter, repair, improve, or rebuild the Plant Site in connection with Bio Energy's occupancy thereof or Easement Areas in connection with Bio Energy's use thereof except as specifically stated in this Lease. Bio Energy acknowledges that neither County nor any County Representative has made any representation or warranty as to the suitability of the Plant Site or the Easement Areas for the conduct of Bio Energy's business or performance of the PDA or GSA, except as expressly set forth herein or in the PDA or GSA, and Bio Energy hereby waives any rights, claims or actions against County under any express or implied warranties of suitability.

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

8.2.1. County shall remove all buildings, sheds and warehouses located on the Plant Site or Easement Areas (the "Plant Site Lease Improvements") at its own cost.

8.2.2. County shall cause to the Plant Site to be in compliance with all applicable subdivision laws and ordinances so that the Plant Site constitutes a single, legally subdivided lot.

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

9. Bio Energy Improvements and Alterations. Bio Energy shall construct, maintain and alter the Plant and other improvements on the Plant Site and Easement Areas pursuant to the terms and conditions of the PDA. Subject to County's obligation to cooperate set forth in Section 5.2 of the PDA, Bio Energy is solely responsible for obtaining all Permits required for the construction of the Plant on the Plant Site [and Easement Areas]. Bio Energy shall pay, when due, all claims for labor or materials furnished to or for Bio Energy at or for use in the Plant Site or related to Bio Energy work in the Easement Areas, which claims are or may be secured by any mechanics' or materialmen's liens against the Plant Site or any interest therein. The Plant and other improvements constructed by Bio Energy, including all additions, alterations and improvements thereto or replacements thereof, shall be the property of Bio Energy.

10. Plant Site Restoration.

10.1. Obligation to Restore. Upon the expiration or earlier termination of this Lease, if County has exercised its Right of First Offer in accordance with Section 4 of the PDA, then, as of the closing date of such purchase transaction, all fixtures, equipment, trade fixtures, improvements, and any additions, alterations, replacements and betterments thereof and thereto, constructed by or for Bio Energy on the Plant Site and the Easement Areas, shall become the property of County. If County does not exercise its Right of First Offer, or Bio Energy elects to transfer and assign the Plant to a Bio Energy Affiliate in accordance with Section 4.3 of the PDA, then Bio Energy shall remove and dispose of any and all fixtures, equipment, trade fixtures, improvements, and any additions, alterations, replacements and betterments thereof and thereto, constructed by or for Bio Energy on the Plant Site and the Easement Areas, and restore the affected portions of the Plant Site and Easement Areas to grade level (including without limitation removing any items

underground or below-grade), at Bio Energy's sole expense. Bio Energy shall repair any damage to the Plant Site or Easement Areas caused by such removal. The foregoing obligations of Bio Energy under this Section 10.1 shall be hereinafter referred to as the "Restoration Obligations."

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

10.3. Bio Energy Letter of Credit.

10.3.1. General. Within _____ days after the PDA Effective Date, Bio Energy shall obtain and deliver to the County an original irrevocable letter of credit (the "Letter of Credit") from a financial institution satisfactory to the County but in any event with (a) not less than $500 Million in net current assets, (b) a financial rating of not less than 40 as rated by Sheshunoff Information Services, Inc. (or any equivalent rating thereto from any successor or substitute rating service selected by the County), (c) an investment grade rating from each of Standard and Poors Corporation and Moody's Investors Service, naming the County as beneficiary, to secure Bio Energy's obligations hereunder. The issuer must either (i) have a letter of credit counter located in King County, Washington upon which draws can be made in person without delay, or (ii) has a local correspondent based in King County, Washington upon which draws can be made in person without delay. The Letter of Credit shall be in substantially the form of Exhibit " " hereto. The Letter of Credit shall be for a term of not less than one (1) year and irrevocable during that term. The Letter of Credit shall provide that it will be honored upon a signed statement by the County or its agent that the County is entitled to draw upon the Letter of Credit, and shall require no signature or statement from any party other than the County or such agent. No notice to Bio Energy shall be required to enable the County to draw upon the Letter of Credit. Each Letter of Credit shall also provide that, following the honor of any drafts in an amount less than the aggregate amount of the Letter of Credit, the issuer financial institution shall return the original Letter of Credit to the County and the County's rights as to the remaining amount of the Letter of Credit will not be extinguished. In the event of a transfer of the County's interest in the Plant Site, the Landfill, or this Lease, the County and its transferees shall have the right, and the Letter of Credit shall expressly so provide, without any requirement of consent of Bio Energy or the issuer, to transfer the Letter of Credit to its transferee (and its transferee(s) may successively so transfer the letter of credit) and the County thereupon shall, without any further agreement between the parties, be released by Bio Energy from all liability therefor and thereunder, and it is agreed that the provisions hereof shall apply to every transfer or assignment of the letter of credit to any new party holding the landlord's interest in this Lease. If the financial institution from which Bio Energy has obtained a Letter of Credit shall admit in writing its inability to pay its debts generally as they become due, file

a petition in bankruptcy or a petition to take advantage of any insolvency act, make an assignment for the benefit of its creditors consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof (each of the foregoing, an "Issuer Insolvency"), then Bio Energy shall obtain a replacement Letter of Credit within thirty (30) days of such act from another financial institution reasonably satisfactory to the County.

10.3.2. Time for Obtaining Letter of Credit. The initial Letter of Credit shall be obtained and delivered to the County concurrently with the execution and delivery of this Lease, and shall be in the face amount of $_____. Letters of Credit covering subsequent periods shall be obtained and delivered to the County not less than thirty (30) days prior to the expiration of the then-existing Letter of Credit.

10.3.3. Uses of Letters of Credit. The County shall have the right to draw upon a Letter of Credit up to its full amount whenever (a) a default under this Lease has occurred, or (b) an event or circumstance has occurred which with notice or passage of time, or both, would constitute a default under the Lease, notwithstanding that transmittal of any such notice may be barred by applicable bankruptcy or insolvency law; or (c) if Bio Energy fails to obtain a any replacement Letter of Credit as and when required hereunder; or (c) after an event constituting an Issuer Insolvency. The County may draw upon the full amount of the then existing Letter of Credit without giving any further notice or time to cure to Bio Energy. No such draw shall (i) cure or constitute a waiver of a default, (ii) be deemed to fix or determine the amounts to which the County is entitled to recover under this Lease or otherwise, or (iii) be deemed to limit or waive the County's right to pursue any remedies provided for in this Lease. If all or any portion of a letter of credit is drawn against by the County, Bio Energy shall, within two (2) business days after demand by the County, cause the issuer of such Letter of Credit to issue to the County, at Bio Energy's expense, a replacement or supplementary Letter of Credit in substantially the form attached hereto as Exhibit "___" such that at all times during the Term, the County shall have the ability to draw on one or more letters of credit totaling, in the aggregate, the amount required pursuant to this Lease.

10.3.4. Increase in Amount of Letter of Credit for Restoration. If Bio Energy is obligated to perform the Restoration Obligations pursuant to Section 10.1 above, then, within thirty (30) days after Bio Energy's requirement to perform the Restoration Obligations arises, Bio Energy shall cause a new or supplemental Letter of Credit to be issued in favor of the County so that the total amount of the Letter(s) of Credit then being held by the County equal or exceed Bio Energy's reasonable estimate of the Restoration Costs; provided that, if such estimate is lower than the then-existing face amount(s) of any Letter of Credit(s) then being held by the County, a new or supplemental Letter of Credit shall not be required.

11. Care of Plant Site. Throughout the Lease Term, Bio Energy shall maintain and repair the Plant Site and the Plant at its expense in good order and condition, subject to normal wear and tear.

12. Access. Bio Energy shall permit County and its agents to enter the Plant Site at reasonable times for the purpose of inspecting same and inspecting Bio Energy's compliance with the terms of this Lease, the PDA and the GSA. Prior to the Commencement Date, Bio Energy may enter onto the Plant Site and the Easement Areas for the purpose of conducting preliminary studies reasonably necessary in preparation for the construction of the Plant, including soils testing and surveys; provided (i) Bio

Energy shall not do any invasive testing, sampling or drilling at the Plant Site without first obtaining the County's prior written consent, which consent may be subject to an employee or agent of the County accompanying Bio Energy and/or its consultants in connection with any such access; and (ii) Bio Energy shall promptly restore the Plant Site to substantially the same condition which existed prior to any such investigations, tests, surveys and other analyses, at Bio Energy's sole cost and expense. Bio Energy's indemnity obligations pursuant to the PDA shall apply from and after the first date on which Bio Energy or any of its employees, agents, or contractors enters onto any portion of the Landfill for any purpose hereunder, and the provisions of this paragraph shall survive the termination, expiration or consummation of this Lease.

13. Condemnation; Relocation.

13.1. Relocation. If all or such portions of the Plant Site or Landfill as may be required for the reasonable use of the Plant are taken by the exercise of the power of eminent domain by a Government Authority (in such capacity, the "Condemning Authority") (which event is referred to as a "Total Taking") the Parties shall [use the procedures set forth in Section 3.4 of the PDA] to determine whether a relocation site exists that, following such relocation, will: (a) enable the Plant to operate in the same manner that the Plant operated before the Total Taking and relocation; and (b) provide Bio Energy with financial and economic benefits that are at least equal to the financial and economic benefits that Bio Energy received prior to such Total Taking and relocation. If the Parties are unable to agree upon a suitable relocation site within thirty (30) days prior to the date the Condemning Authority is to take title to the condemned property, either Party may elect to terminate this Lease upon written notice to the other Party.

13.2. Total Taking. In the event of a total taking and the termination of this Lease pursuant to Section 13.1, all compensation awarded by the Condemning Authority, or by a court determining such issue in the event of a dispute between the County and the Condemning Authority, (such amount, as finally determined, the "Condemnation Award") shall be the County's property. Bio Energy waives any right to claim an award or damages from the Condemning Authority based on the value of the leasehold, the taking of any leasehold improvements, loss of business or profits, or the loss of any rights conveyed pursuant to the Lease. Bio Energy shall make no claim against County for damages for termination of the leasehold interest or interference. However, Bio Energy shall have the right to claim and recover from the Condemning Authority compensation for any loss to which Bio Energy may be put for Bio Energy's moving or relocation expenses, the taking of Bio Energy's personal property and the unamortized value of any portion of the Plant or any improvements made or installed by Bio Energy at the Plant Site or the Easement Areas and taken by the Condemning Authority

13.3. Partial Taking. In the event of a partial taking or condemnation, e.g., a taking or condemnation of less than that portion of the Plant Site causing the relocation of the Plant pursuant to Section 13.1, the Lease Term shall continue and all compensation awarded by the Condemning Authority, or by a court determining such issue in the event of a dispute between the County and the Condemning Authority, (such amount, as finally determined, the "Condemnation Award") shall be the County's property. Bio Energy waives any right to claim an award or damages from the Condemning Authority based on the value of the leasehold, the taking of any leasehold improvements, loss of business or profits, or the loss of any rights conveyed pursuant to the Lease. Bio Energy shall make no claim against County for damages for termination of the leasehold interest or interference. However, Bio Energy shall have the right to claim and recover from the Condemning Authority compensation for any loss to which Bio Energy may be put for Bio Energy's moving or relocation expenses, the taking of Bio Energy's personal property and the

unamortized value of any portion of the Plant or any improvements made or installed by Bio Energy at the Plant Site or the Easement Areas and taken by the Condemning Authority.

13.4. Temporary Taking. If the whole or any part of the Plant Site, the Plant, the Easement Areas or of Bio Energy's interest under this Lease is taken or condemned by any Condemning Authority for its temporary use or occupancy, and Bio Energy shall continue to pay, in the manner and at the times herein specified, all sums due under this Lease, then this Lease shall continue and, except only to the extent that Bio Energy may be prevented from so doing pursuant to the terms of the order of the Condemning Authority, Bio Energy shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Bio Energy to be performed and observed, as though such taking or condemnation had not occurred. In the event of any such temporary taking or condemnation, Bio Energy shall be entitled to receive the entire amount of any Condemnation Award made for such taking or condemnation, whether paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend to or beyond the expiration date of the Lease Term, in which case such Condemnation Award shall be apportioned between the County and Bio Energy as of the Lease Termination Date.

14. Default.

14.1. Default By Bio Energy. Each of the following events shall constitute events of default on the part of Bio Energy (each, a "Bio Energy Lease Default") which, if not cured within the time permitted (if any) to cure such event of default, shall entitle County to terminate this Lease pursuant to Section 14.3; provided, however, that no such event shall be deemed to be a Bio Energy Lease Default if (a) it is caused by or is otherwise attributable to a breach by County of its obligations under this Lease or any other Project Contract to which County is a party or (b) it occurs as a result of an Event of Force Majeure declared by Bio Energy or County in accordance with Section 19:

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

14.1.2. the failure by Bio Energy to comply with any covenant, obligation or agreement of Bio Energy contained in this Lease (other than any such failure which would constitute a Bio Energy Lease Default under Section 14.1.1, where such failure has a material adverse effect on County or its ability to perform its obligations under this Lease and such failure shall not have been cured during a thirty (30) day period after written notice from the County (the "Initial Cure Period"); provided that if the Initial Cure Period is not reasonably sufficient to permit Bio Energy to cure such failure, and Bio Energy shall have diligently commenced to cure such default within the Initial Cure Period and shall thereafter proceed with reasonable diligence to cure such failure, for such longer period not to exceed thirty (30) additional days (the "Extended Cure Period") as shall be reasonably necessary for Bio Energy to cure the same; or

14.1.3. any default by Bio Energy under the PDA or the GSA that is not cured within any applicable cure period after notice provided therein.

14.2. Default By County. Each of the following events shall constitute events of default on the part of County (each, a "County Lease Default") which, if not cured within the Initial Cure Period, shall entitle Bio Energy to terminate this Lease pursuant to Section 14.3; provided, however, that no such event shall be deemed to be a County Lease Default if (a) it is caused by or is otherwise

attributable to a breach by Bio Energy of its obligations under this Lease or any other Project Contract to which Bio Energy is a party or (b) it occurs as a result of an Event of Force Majeure declared by Bio Energy or County in accordance with Section 19:

14.2.1. the failure by County to comply in any material respect with any covenant, obligation or agreement of County contained in this Lease, where such failure has a material adverse effect on Bio Energy or its ability to perform its obligations under this Lease and such failure shall not have been cured during the Initial Cure Period; provided that if the Initial Cure Period is not reasonably sufficient to permit a cure of such failure, and County shall have diligently commenced to cure such default within the Initial Cure Period and shall thereafter proceed with reasonable diligence to cure such failure, for the Extended Cure Period; or

14.2.2. any default by the County under the PDA or the GSA that is not cured within any applicable cure period after notice provided therein.

14.3. Termination Procedure.

14.3.1. Upon the occurrence of a County Lease Default or a Bio Energy Lease Default, as the case may be, that is not cured within the applicable period (if any) for cure, the non-defaulting Party may, at its option, initiate termination of this Lease by delivering a Notice of Intent to Terminate this Lease to the defaulting Party. The Notice of Intent to Terminate shall specify in reasonable detail the applicable Lease Default giving rise to the Notice of Intent to Terminate.

14.3.2. Following the giving of a Notice of Intent to Terminate, the Parties shall consult for the applicable Consultation Period as to the appropriate actions that should be taken to mitigate the consequences of the relevant Lease Default, taking into account all prevailing circumstances. During the Consultation Period, the defaulting Party may continue to undertake efforts to cure the relevant Lease Default, and if such default is cured at any time prior to the delivery of a Termination Notice in accordance with Section 14.3.3, then the non-defaulting Party shall have no right to terminate this Lease in respect of such cured default.

14.3.3. Upon expiration of the Consultation Period, and unless the Parties shall have otherwise agreed or unless the Lease Default shall have been remedied during the Consultation Period, the Party that issued the Notice of Intent to Terminate may terminate this Lease by delivering a Termination Notice to the defaulting Party, whereupon this Lease shall terminate on the date set forth in the Termination Notice (which date shall in no event be earlier than the date such Termination Notice is delivered to the defaulting Party).

14.3.4. Notwithstanding anything to the contrary set forth in this Lease, from and after the occurrence of the Financial Closing, County shall not seek to terminate this Lease as the result of any default of Bio Energy without first giving a copy of any notices required to be given to Bio Energy under Sections 14.3.1 to the Financing Parties. If there is more than one Financing Party, the Financing Parties will designate in writing to County an Agent and any notice required hereunder shall be delivered to such Agent, such notice to be effective upon delivery to the Agent as if such notice had been delivered to each of the Financing Parties. Each such notice shall be in writing and shall be delivered and shall become effective in accordance with Section 23. The address and facsimile number for each Financing Party or Agent shall be provided to County by Bio Energy at Financial Closing and thereafter may be changed by the

Financing Party or the Agent by subsequent delivery of a notice to County at the address or facsimile number for County provided in Section 23.

14.3.5. No rescission or termination of this Lease by County shall be valid or binding upon the Financing Parties without such notice and the expiration of the Initial Cure Period and the Extended Cure Period. The Financing Parties may make, but shall be under no obligation to make, any payment or perform any act that is required to be made or performed by Bio Energy, with the same effect as if made or performed by Bio Energy. If the Financing Parties fail to cure or are unable or unwilling to cure any Bio Energy Lease Default within the cure period under Section 14.3.2 as provided to Bio Energy in this Lease, County shall have all its rights and remedies with respect to such default as set forth in this Lease. In the event that the Financing Parties fail to cure any Bio Energy Lease Default on or before the expiration of the Extended Cure Period, County may exercise its rights and remedies with respect to such default as set forth in this Lease, County may immediately terminate this Lease, and such termination shall be effective on delivery to the Financing Parties or the Agent of notice of such termination.

14.4. Other Termination Events. This Lease shall terminate immediately without further action on behalf of either Party in the event the Project Development Agreement is terminated in accordance with Sections 3.2.2, 9.4 or 10 (other than Section 10.4) of the Project Development Agreement. For purposes of clarification, Section 14.3 shall not apply to any such termination

15. Dispute Resolution.

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

15.2. Resolution Procedures. Except as otherwise expressly provided in this Lease and before any Party initiates any law suit or legal proceedings pursuant to Section 15.1, the Parties will attempt in good faith to resolve through negotiations any dispute, claim or controversy arising out of or relating to this Lease; provided, however, that either Party may seek interim relief to the extent necessary to preserve its rights hereunder or protect its property during the continuance of the resolution process described herein. Either Party may initiate negotiations by providing notice to the other Party, setting forth the subject of the dispute and the relief requested. The recipient of such notice shall respond within seven (7) days with a written statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each Party with full settlement authority will meet at a mutually agreeable time and place within ten (10) days of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the Parties do not resolve such dispute within twenty (20) days of the initial notice, then either Party shall at any time thereafter have the right to exercise any of its rights and remedies provided to it hereunder or otherwise available at law or in equity.

16. Surrender of Possession. Upon the Lease Termination Date and following any period of time permitted under this Lease to consummate a purchase of the Plant pursuant to County's exercise of the Right of First Offer or to enable Bio Energy to restore the Plant Site, as applicable, Bio Energy shall promptly and peacefully surrender the Plant Site and Easement Areas to County in good condition, reasonable use, wear and tear and damage as the result of casualty loss excepted. Except to the extent covered by the purchase of the Plant pursuant to County's exercise of its Right of First Offer, Bio Energy shall remove all fixtures, equipment, trade fixtures, improvements, and any additions, alterations, replacements and betterments thereof and thereto, constructed by or for Bio Energy on the Plant Site and the Easement Areas in accordance with Section 10; any property not so removed shall be deemed abandoned and may be sold or otherwise disposed of as County deems advisable.

17. Limitation of Liability.

17.1. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS LEASE: (A) COUNTY AND BIO ENERGY SHALL ONLY BE LIABLE FOR DIRECT DAMAGES SUFFERED BY THE OTHER PARTY AS A RESULT OF A BREACH OR DEFAULT OF THIS LEASE BY THE DEFAULTING PARTY; AND (B) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING COST OF MONEY, LOST PROFITS, LOSS OF USE OF CAPITAL OR REVENUE) OR FOR CLAIMS OF NON-PARTY CUSTOMERS OR PUNITIVE OR EXEMPLARY DAMAGES WHATSOEVER WITH RESPECT TO THE SUBJECT MATTER OF THIS LEASE, WHETHER ANY CLAIM FOR SUCH DAMAGES SHALL ARISE UNDER THIS LEASE, FROM STATUTORY OR REGULATORY NONCOMPLIANCE, IN TORT (WHETHER NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), OR ANY OTHER CAUSE OR FORM OF ACTION WHATSOEVER.

17.2. Waiver of Immunity. Each of bio energy and county hereby waives its immunity with respect to the parties indemnified under the industrial insurance act (RCW Title 51) and/or the longshoreman's and harborworker's act and/or any equivalent acts and expressly agrees to assume potential liability for actions brought against an indemnified party by the indemnifying party's employees. This waiver has been specifically negotiated by the parties to this lease and each party has had the opportunity to, and has been encouraged, to consult with independent counsel regarding this waiver.

18. Intentionally omitted.

19. Force Majeure.

19.1. Effect of Event of Force Majeure. If a Party (the "Affected Party") is prevented, hindered or delayed from performing any of its obligations under this Lease by an Event of Force Majeure, then so long as that situation continues and such Party otherwise complies with its obligations under this Lease, the Affected Party shall be excused from performance of such obligations to the extent it is so prevented, hindered or delayed, and the time for the performance of such obligations shall be extended accordingly. The provisions of this Section 19 shall not relieve Bio Energy from its obligation to make any payments required under this Lease as and when due hereunder.

19.2. Notice of Events of Force Majeure. The Affected Party shall notify the other Party within three (3) days of the occurrence of the Event of Force Majeure, its effect or likely effect on the Affected Party's ability to perform its obligations hereunder and the likely duration of the Event

of Force Majeure. The Affected Party shall keep the non-Affected Party informed of any changes in such circumstances, including when such Event of Force Majeure ends. Following the receipt of a notice given pursuant to this Section 19.2, the Parties shall consult in good faith to assess the Event of Force Majeure, the effects thereof and any ways in which it may be mitigated or avoided. Each Party shall attempt in good faith to notify the other Party of any events of which the notifying party is aware which may be reasonably expected, with the lapse of time or otherwise, to become an Event of Force Majeure.

19.3. Obligations Following Occurrence of Event of Force Majeure.

19.3.1. The Affected Party, subject to Section 19.3.3, shall use all reasonable efforts to remedy the circumstances constituting the Event of Force Majeure (if practicable), mitigate the adverse effects of the Event of Force Majeure and remedy the Event of Force Majeure expeditiously. The Affected Party shall notify the non-Affected Party of the remedy or other termination of the Event of Force Majeure and the date on which the Affected Party will resume its performance hereunder.

19.3.2. Suspension of any obligation as a result of an Event of Force Majeure shall not affect any rights or obligations which may have accrued prior to such suspension or, if the Event of Force Majeure affects only some rights and obligations, any other rights or obligations of the Parties. To the extent that the non-Affected Party is prevented, hindered or delayed from performing its obligations under this Lease as a result of the Affected Party's failure to perform its obligations as the result of the Event of Force Majeure, such non-Affected Party shall be relieved of its obligations to the extent such non-Affected Party has been prevented, hindered or delayed by the Affected Party's failure in performance. So long as the Affected Party has at all times since the occurrence of the Event of Force Majeure complied with the obligations of Sections 19.2 and 19.3.1 and continues to so comply, then any performance deadline that the Affected Party is obligated to satisfy or achieve under this Lease shall be extended on a day-for-day basis equal to the period commencing on the date the Event of Force Majeure occurs and ending on the date that such event is cured.

19.3.3. Notwithstanding anything to the contrary set forth in this Lease, an Affected Party shall not be excused from the performance of its obligations hereunder as a result of an Event of Force Majeure to the extent that a failure or delay in performance would have nevertheless been experienced by the Affected Party had the Event of Force Majeure not occurred.

19.3.4. Neither Party shall be obliged to settle any strike or other labor actions, labor disputes or labor disturbances of any kind, except on terms wholly satisfactory to it.

20. Assignment. Except as provided in this Section 20, Bio Energy may not assign or transfer its rights or obligations under this Lease without the prior consent of the County, such consent not be unreasonably withheld or delayed. In no event may Bio Energy's rights or interests herein be transferred, assigned, or hypothecated, nor may Bio Energy sublease or license any portion of the Plant Site or permit any third party to occupy or operate from any portion thereof, except in connection with (i) Bio Energy's grant of a mortgage, deed of trust, or other security interest to a Financing Party, or (ii) Bio Energy's sale of all or substantially all of its interest in the Plant, this

Lease, the GSA and the PDA. Any purported assignment that fails to comply with the requirements of this Section 20 shall be, at the County's option, null and void and shall have no force or effect.

20.1. Financing. Bio Energy shall have the right to assign to, mortgage, or grant a security interest or liens in favor of the Financing Parties in Bio Energy's rights and interests under or pursuant to (a) this Lease, (b) the Plant, or (c) the Plant Site, subject to the County's prior consent, not to be unreasonably withheld, delayed or conditioned. Bio Energy shall provide reasonable prior notice of any such financing, and in no event shall either Bio Energy or any Financing Party further assign or hypothecate this Lease or sublease all or any portion of the Plant Site to any third party without the County's prior consent, not to be unreasonably withheld, delayed or conditioned.

20.2. Financing Parties. The Financing Parties shall have no obligation to County under this Lease until such time as the Financing Parties or their designees succeed to Bio Energy's interest under this Lease, whether by exercise of other rights or remedies under the Financing Documents or otherwise.

20.3. Successors and Assigns. The County shall have the right at any time to assign or transfer its interest in this Lease. In the event of any such assignment, the County shall be released from all further liability hereunder accruing on or after the effective date of such assignment or transfer. The terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors and permitted assigns of the respective Parties hereto.

21. Further Assurances; Bio Energy Financing. Each Party agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by, and to carry out the intent of, this Lease, including the execution and delivery of additional documents. County acknowledges that Bio Energy will enter into Financing Documents with the Financing Parties in connection with the construction and long-term financing of the Plant and, in order to facilitate such financing, Bio Energy, and its successors and assigns, shall have the right to mortgage its interests under this Lease to provide security for such financing, subject to reasonable conditions satisfactory to the County. Without limiting the generality of the foregoing, County shall cooperate with Bio Energy and its Financing Parties in connection with Bio Energy's construction and long-term financing for the Plant, at no cost or risk to the County, including the furnishing of such information, the giving of such certificates and the furnishing of a consent to the leasehold mortgage and collateral assignment of this Lease to the Financing Parties under terms and conditions reasonably acceptable to the County, provided that the foregoing undertaking shall not obligate the County to materially change any rights or benefits to which it is entitled hereunder, materially reduce the duties or obligations of Bio Energy under this Lease, or materially increase any burdens, liabilities or obligations of the County under this Lease.

22. Insurance. During the Lease Term, Bio Energy shall obtain and maintain the insurance coverages as and when required pursuant to Section 14 of the PDA.

23. Notices.

23.1. Address for and Method of Notice. Except as otherwise expressly provided in this Lease, whenever this Lease requires that a notice be given by one Party to the other Party or to any third party, or a Party's action requires the approval or consent of the other Party, then: (a) each such notice shall be given in writing and each such consent or approval

shall be provided in writing; (b) no notice shall be effective unless it is provided in writing and otherwise satisfies any particular requirements as specified herein for such notice; and (c) the Party from whom approval or consent is sought shall not be bound by any consent or approval except to the extent such consent or approval is in writing. Any such notice, consent or approval that fails to conform to the foregoing requirements shall be null and void and have no force and effect. All notices shall be addressed to such Party at the address of such Party set out below (or at such other address as such Party may have substituted therefor by notice to the other Party in accordance with this Section 23.1) and shall be either (i) delivered personally, (ii) sent by facsimile communication, (iii) sent by nationally-recognized overnight courier or delivery service or (iv) sent by registered mail, return receipt requested; provided that (x) any notice, demand, request or other communication made or delivered in connection with an alleged breach or default hereunder shall only be delivered personally or by a nationally-recognized overnight courier or delivery service and (y) electronic mail shall not be an effective or acceptable means for providing any notice hereunder.

If to County, to:

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

With a copy to:

King County Prosecutor
500 Fourth Avenue, 9th Floor
Seattle, WA 98104-5039
Fax: (206) 296 [ ]

If to Bio Energy, to:

Bio Energy (Washington), LLC
c/o Energy Developments, Inc.
Attn: Commercial Manager
7700 San Felipe, Suite 480
Houston, TX 77063-1613
Fax: (713) 300-3330

With a copy to:

EDI Australia

_____

_____

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

the other Party under this Lease shall be deemed to have been duly given, received and effective: (a) if personally delivered, on the date of delivery; (b) in the case of a notice sent by facsimile communication, on the day of actual receipt if a Business Day and received prior to 4:30 p.m. at the place of receipt, or if not so received, on the next following Business Day in the place of receipt, provided that sender's facsimile machine has received the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by telephone to sender that he has received the facsimile message; (c) in the case of a notice sent by mail, when actually received by the addressee; and (d) the Business Day immediately following the day it is sent, if sent for next day delivery to a domestic address by a nationally-recognized overnight courier or delivery service. The addressee, when requested by the sender, shall promptly provide the sender with facsimile acknowledgment of receipt but the delay or failure to give or receive any such acknowledgment will not affect the validity or effectiveness of the notice, communication, consent or approval in respect of which such acknowledgment of receipt is sought

24. Confidentiality. All information provided, supplied, created or made available by County or Bio Energy pursuant to the terms of this Lease shall be subject to the provisions of Section 16 of the PDA relating to confidentiality.

25. Survival. Upon the expiration or termination of this Lease, this Lease shall have no further force and effect, except that any rights and remedies that have arisen or accrued to either Party prior to such expiration or termination, or any obligations or liabilities that have arisen or accrued before such expiration or termination and that expressly survive such expiration or termination pursuant to this Lease, shall in each case survive expiration or termination. The rights, remedies and obligations set out in (a) Sections 15 (Dispute Resolution) and 23 (Notices), shall survive in full force and effect the expiration or termination of this Lease to the extent necessary to enable a Party to exercise any of such accrued rights and remedies, (b) Section 17 (Limitation of Liability) shall survive in full force and effect the expiration or termination of this Lease and (c) Section 10 (Plant Site Restoration) shall survive in full force and effect the expiration or termination of this Lease in accordance with Section 10.1.

26. Miscellaneous.

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

26.2. Recording. Bio Energy shall not record this Lease; provided that, at Bio Energy's request, County agrees to execute a short form or "memorandum" of this Lease which Bio Energy may record at its expense.

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

26.4. Interest; Late Charge. Any sums payable by Bio Energy to County that are not paid by the due date thereof shall bear interest at a rate equal to [twelve percent (12%)] per annum calculated from the date of delinquency to the date of payment. Such interest and late charges shall be deemed additional rent due upon demand, and County shall have rights with respect to such non-payment as it has with respect to any other non-payment of rent hereunder.

26.5. Modification. This Lease shall not be amended, changed or modified except by a subsequent agreement in writing which indicates that such writing is intended to amend the terms of this Lease and is signed by duly authorized officers of both Parties. The Parties agree that this Lease shall not be amended in any manner by any course of dealing between the Parties.

26.6. Waiver. No delay or forbearance by a Party in exercising any right, power or remedy accruing to such Party upon the occurrence of any breach or default by any other Party hereto under this Lease shall impair any such right, power or remedy of such Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party hereto of any such breach or default under this Lease, or any waiver on the part of any Party hereto of any provision or condition of this Lease, must be in writing signed by the Party to be bound by such waiver and shall be effective only to the extent specifically set forth in such writing.

26.7. Entire Agreement. This Lease contains and integrates the complete agreement between the Parties with respect to the subject matter hereof and supersedes all other agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof.

26.8. Decision-Making by Parties. Except where this Lease expressly provides for a different standard, whenever this Lease provides for a determination, decision, permission, consent or approval of a Party, the Party shall make such determination, decision, grant or withholding of permission, consent or approval in a commercially reasonable manner and without unreasonable delay. Any denial of an approval, permission, decision, determination or consent required to be made in a commercially reasonable manner shall include in reasonable detail the reason for denial or aspect of the request that was not acceptable.

26.9. Relationship of Parties. The relationship of the Parties shall be that of independent contractors. Neither this Lease nor the performance by the Parties of their respective obligations under this Lease, shall create or constitute, or be construed to create or constitute, a partnership, joint venture or association, or establish a fiduciary relationship, a principal and agent relationship or any other relationship of a similar nature, between County and Bio Energy.

26.10. No Third Party Beneficiary. This Lease is for the sole and exclusive benefit of the Parties hereto and shall not create a contractual relationship with, or cause of action in favor of, any third party.

26.11. Governing Law. This Lease and any provisions contained herein shall be governed by, and construed and interpreted in accordance with, the laws of the State of Washington without regard to its conflicts of law principles; provided, that with respect to matters of law concerning the internal corporate affairs of any corporate entity which is a party to this Lease, the law of the jurisdiction under which the respective entity derives its powers shall govern.

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

26.13. Costs. Each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Lease and shall not have any right to claim or seek reimbursement of such costs and expenses from the other Party.

26.14. Specific Performance. Except as provided in the dispute resolution procedures set forth in Section 15, and except as the context specifically otherwise requires, if a Party breaches or threatens to breach any provision of this Lease, the other Party shall have the right to have such provision (including the provisions of Section 15) specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the other Party and that money damages will not provide adequate remedy. All rights under this Section 26.15 shall be in addition to, and not in lieu of, any other rights and remedies available to either Party at law or in equity, all of which shall be independent of the other and severally enforceable.

26.15. Time is of the Essence. Except as the context specifically otherwise requires, time is of the essence with respect to all dates and time periods set forth in this Lease.

26.16. Schedules; Exhibits. The Schedules and Exhibits to this Lease are incorporated by reference into, and shall form part of this Lease, and shall have full force and effect as though they were expressly set out in the body of this Lease; provided, however, that in the event of any conflict between the terms, conditions and provisions of this Lease (excluding the Exhibits and Schedules thereto) and the Schedules or Exhibits hereto, the terms of this Lease (excluding the Exhibits and Schedules thereto) shall prevail.

26.17. Counterparts. This Lease may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Lease.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date set forth above.

BIO ENERGY (WASHINGTON), LLC

By: [_____], its sole member

By: _____

Name: _____

Title: _____

KING COUNTY

By: _____

Name: _____

Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

Dated this _____ day of _____, 200___.

_____
(Signature of Notary)

_____
(Legibly Print or Stamp Name of Notary)
Notary public in and for the state of Washington, residing at _____

My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of _____, the sole member of Bio Energy (Washington), LLC a limited liability company, to be the free and voluntary act of such company for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 200___.

_____
(Signature of Notary)

_____
(Legibly Print or Stamp Name of Notary)
Notary public in and for the state of Washington, residing at _____

My appointment expires

EXHIBIT A

LEGAL DESCRIPTION OF LANDFILL

EXHIBIT B

PLANT SITE MAP

EXHIBIT C

FORM OF LETTER OF CREDIT

Date: _____ Letter of Credit No.: _____
Expiration Date: _____

GENTLEMEN:

We hereby establish our irrevocable Letter of Credit in your favor for the account of _____ ("Landlord") available by your draft(s) on us payable at sight not to exceed a total of _____ (_____) when accompanied by this Letter of Credit and the following documents:

1) A statement of the amount for which a draw under this Letter of Credit is made.

2) The original Letter of Credit must accompany all drafts unless a partial draw is presented, in which case the original must accompany the final draft. Upon any partial draw, the original shall be immediately returned to the possession of Landlord or its agent at the time either makes the draw.

Partial drawings are permitted, with the Letter of Credit being reduced, without amendment, by the amount(s) drawn hereunder.

This Letter of Credit shall expire at 2:00 p.m. at the office of _____ on the expiration date.

This Letter of Credit is transferable and may be transferred by the beneficiary hereof to any successor or assignee of such beneficiary's interest in the Plant Site Lease dated _____, 2003 as amended (the "Lease"), or to any lender obtaining a lien or security interest in the property covered by the Lease; and may be successively so transferred. Each draft hereunder by any assignee or successor shall be accompanied by a copy of the fully executed documents or judicial orders evidencing such encumbrance, assignment or transfer.

Any draft drawn hereunder must bear the legend "Drawn under _____ Letter of Credit Number _____ dated _____. Except so far as otherwise expressly stated, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Brochure No. 500."

We hereby agree with you and all persons negotiating such drafts that all drafts drawn and negotiated in compliance with the terms of this Letter of Credit will be duly honored upon presentment and delivery of the documents specified above by certified or registered mail to _____ located at _____ if negotiated not later that 2:00 p.m. on or before the expiration date shown above.

Very truly yours,

By _____
Its _____

Schedule 1.1
(Gas Sales Agreement)
(Plant Site Lease)
(Project Development Agreement)

Definitions

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

"Acts" has the meaning given in Section 8.5.2 of the Project Development Agreement.

"AEA" means the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.

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

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

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

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

"Annual Maintenance Schedule" means an annual schedule for repair and maintenance outages for each of the Collection Facilities and Plant as developed and mutually agreed by Owner and Bio Energy in accordance with Section 7.4 of the Gas Sales Agreement.

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

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

"Billing Meters" means Landfill Gas measuring stations installed, operated and maintained at (a) Owner's expense at (i) Owner's side of the Gas Delivery Point and (ii) the New Flare Station, and (b) at Bio Energy's expense at the Plant Flare.

"Billing Period" means each three-month period during each Operating Year, with the first quarter of each Operating Year commencing on the first day of the applicable Operating Year and ending on the last day of the second month thereafter and each three-month period thereafter; provided, that (a) the first Billing Period of the first Operating Year shall commence on the Commercial Operating Date and end on the last day of the third full month thereafter and (b) the final Billing Period shall terminate on the GSA Termination Date. For example, if the Commercial Operation Date occurs on March 15, the first Billing Period for the first Operating Year would commence on March 15 and end on June 30, and during each Operating Year after the first Operating Year, the first Billing Period would commence on April 1 and end on June 30.

"Bio Energy GSA Default" has the meaning given in Section 11.1 of the Gas Sales Agreement.

"Bio Energy Indemnified Parties" means Bio Energy and its officers, directors, agents, attorneys, Financing Parties and employees.

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

"Bio Energy PDA Default" has the meaning given in Section 10.1 of the Project Development Agreement.

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

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

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

"Change in Law" means any of the following events occurring after the GSA Effective Date: (a) the enactment of any new Applicable Law; (b) the modification of any Applicable Law;

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

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

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

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

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

"Commercial Operation" means that the gas turbine power generation equipment within the Plant has completed testing, start-up and commissioning activities and is prepared to commence deliveries of electrical energy in accordance with the terms of the Power Purchase Agreement.

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

"Condemnation Award" has the meaning given in Section [13.1 or 13.2] of the Plant Site Lease, as applicable.

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

"Condensate" means water and other liquids derived from the process of making Landfill Gas suitable for combustion at the Plant.

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

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

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

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

"Construction Start Date" means the date that Bio Energy provides the primary construction contractor of the Plant with a written notice to proceed in accordance with the terms of the EPC Agreement.

"Consultation Period" means the period of time commencing on the date of delivery of a Notice of Intent to Terminate and ending: (a) in the case of the Gas Sales Agreement (i) ten (10) days following delivery of such notice in case of a Bio Energy GSA Default under Section 11.1.1 of the Gas Sales Agreement or an Owner GSA Default under Section 11.2.2 of the Gas Sales Agreement; and (ii) thirty (30) days following delivery of such notice with respect to any other GSA Default; or (b) in the case of the Project Development Agreement (i) ten (10) days following delivery of such notice in case of a Bio Energy PDA Default under Section 10.1.2 of the Project Development Agreement or a County PDA Default under Section 10.2.2 of the Project Development Agreement; and (ii) thirty (30) days following delivery of such notice with respect to any other PDA Default.

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

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

"County PDA Default" has the meaning given in Section 10.2 of the Project Development Agreement.

"CPI" means the Consumer Price Index for All Urban Consumers – All Items – U.S. Cities Average (Reference Base 1982-84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor, or if that index is suspended or discontinued, the substitute index determined in accordance with Section 20.12 of the Gas Sales Agreement.

"CPI_{base}" means the CPI for the month ending [June], 2003.

"CPI_n" means (a) for the Operating Year in which the Commercial Operation Date occurs, the most recent calendar month CPI published prior to the Commercial Operation Date and (b) for each succeeding Operating Year, the most recent calendar month CPI as published prior to the first day of such Operating Year.

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

"Cure Rights" means Bio Energy's rights to assume implementation of the Cure Plan from Owner in accordance with Section 12.3 of the Gas Sales Agreement.

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

"Delivered Gas" means, for any given time period, the quantity of all Landfill Gas produced by the Collection Facilities and delivered to the Gas Delivery Point, as measured by the applicable Billing Meter.

"Delivery Period" means the period commencing on the earlier of the Target Commercial Operation Date or Commercial Operation Date and ending on the GSA Termination Date.

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

"Draw Event" has the meaning given in Section 10.9.6 of the Project Development Agreement.

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

"Election Notice" has the meaning given (a) in connection with the Gas Sales Agreement, in Section 11.3.5 of the Gas Sales Agreement and (b) in connection with the Project Development Agreement, in Section 10.3.5 of the Project Development Agreement.

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

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

"Environmental Claims" means all claims, demands, suits, causes of action for personal injury or property damage ((a) excluding any such claims, demands, suits or causes of action for depreciation of property values, lost use of property, lost revenues, costs of specific performance or consequential or punitive damages suffered directly by any party to the Gas Sales Agreement or Project Development Agreement, as applicable, and (b) including any such claims, demands, suits or causes of action occasioned by the claims, demands, suits or causes of action of persons not party to the Gas Sales Agreement or Project Development Agreement, as applicable) arising out of Environmental Conditions or Environmental Noncompliance, including actual or threatened damages to natural resources; claims for the recovery of response costs, or administrative or judicial orders directing the performance of investigations, removal, remedial

or other response actions directing the performance of investigations, removal, remedial or other response actions under CERCLA, RCRA or other Environmental Laws; a requirement to implement "corrective action" pursuant to any order or permit issued pursuant to RCRA; claims for restitution, contribution or equitable indemnity from third parties or any Governmental Authority; fines, penalties, liens against property; and claims for injunctive relief or other orders or notices of violation from any Governmental Authority.

"Environmental Conditions" means any environmental conditions, circumstances or other matters of fact, pertaining to, relating to or otherwise affecting the environment, including any natural resources (including flora and fauna), soil, vibration, surface water, ground water, any present or potential drinking water supply, subsurface strata, sound or the ambient air, and relating to or arising out of the presence, use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, disposal (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials), dumping or threatened release (as such term is used in CERCLA or other similar Environmental Laws) of Hazardous Materials.

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

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

"Environmental Noncompliance" means any violation of Environmental Laws, including: (a) the discharge, emission, release or threatened release (as such term is used in CERCLA, the

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

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

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

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

"Equipment Order Date" means the date that Bio Energy provides a written purchase order to the applicable equipment suppliers for the gas turbine power generation equipment that will be incorporated into the Plant.

"Evaluation Period" has the meaning given (a) in connection with the Gas Sales Agreement, in Section 11.3.5 of the Gas Sales Agreement and (b) in connection with the Project Development Agreement, in Section 10.3.5 of the Project Development Agreement.

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

(a) act of God, landslides, fire, lightning, flood, storm, tornado, volcanic eruption, earthquakes or extreme adverse weather or environmental conditions (but excluding adverse weather conditions which are within the range of conditions historically experienced at the Landfill Site);

(b) act of public enemy, armed conflicts or act of foreign enemy (including acts of terrorism (whether state-sponsored or otherwise)), blockades, embargoes, insurrections, riots, sabotage or epidemics, civil disturbances, explosions and wars (whether declared or undeclared);

(c) Changes in Law; and

(d) breakdowns in machinery, equipment or facilities on the transmission and distribution system of the Person with whom the Plant is electrically interconnected and which transmits electric energy generated by the Plant or any other event or disturbance on such system which causes a forced outage of the Plant;

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

"Exercise Period" has the meaning given in Section 4.2 of the Project Development Agreement.

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

"Expansion Landfill Gas" means (a) methane, carbon dioxide and other gases produced by the anaerobic decomposition of waste material within a Landfill Expansion Cell, and (b) any and all, other materials, including entrained liquids, recovered in association with such methane, carbon dioxide and other gases, including all of the foregoing items set forth in clauses (a) and (b) that are generated in a Landfill Expansion Cell and collected by the Expansion Collection Equipment.

"Extended Cure Period" has the meaning given (a) in connection with the Gas Sales Agreement, in Section 11.3.5 of the Gas Sales Agreement and (b) in connection with the Project Development Agreement, in Section 10.3.5 of the Project Development Agreement.

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

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

"Financial Closing Date" means the date upon which Financial Closing occurs.

"Financing Documents" means the loan agreements, leases, partnership agreements, notes, indentures, underwriting agreements, security agreements, and related documents entered into in connection with the construction financing and permanent financing (if any) of the Plant,

provided, that if initial financing includes only construction financing then (i) such term shall only include such documents entered into in connection with such construction financing and (ii) after Financial Closing, such term shall include all such documents entered into in connection with such permanent financing.

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

"Flare Day" has the meaning given in Section 4.3 of the Gas Sales Agreement.

"Flared Gas" has the meaning given in Section 4.3 of the Gas Sales Agreement.

"Flared Gas Quantity" has the meaning given in Section 4.3 of the Gas Sales Agreement.

"GAAP" means generally accepted accounting principles as applied in the United States of America.

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

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

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

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

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

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

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

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

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

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

"GSA" or "Gas Sales Agreement" means the Gas Sales Agreement, dated as of _____, 2003.

"GSA Default" means an Owner GSA Default or a Bio Energy GSA Default, individually or collectively, as the context may require.

"GSA Effective Date" has the meaning given in the introductory paragraph of the Gas Sales Agreement.

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

"GSA Termination Date" means the earlier of (a) the last day of the GSA Term; and (b) the date the Gas Sales Agreement is terminated by Owner or Bio Energy pursuant to a Termination Notice or is otherwise terminated in accordance with the terms thereof.

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

"Indemnified Parties" means County Indemnified Parties, Owner Indemnified Parties or Bio Energy Indemnified Parties, individually or collectively, as the context may require.

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

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

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

"Initial GSA Term" has the meaning given in Section 2.1 of the Gas Sales Agreement.

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

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

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

"Landfill" means the real property consisting of an approximately 920 acre site located in Maple Valley, King County, Washington which site is owned by the Owner and upon which the Owner operates an existing landfill commonly known as the Cedar Hills Landfill, as such real property is further described in Exhibit B to the Gas Sales Agreement.

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

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

"Landfill Site" means the site described on Exhibit C to the Gas Sales Agreement (which, after the Commencement Date, shall exclude the Plant Site).

"LC Amount" has the meaning given in Section 10.9.1 of the Project Development Agreement.

"LC Issuer" has the meaning given in Section 10.9.1 of the Project Development Agreement.

"LC Issuer Insolvency" has the meaning given in Section 10.9.5 of the Project Development Agreement.

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

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

"Letter of Credit" has the meaning given in Section 10.9.1 of the Project Development Agreement.

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

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

"Meter" means a Billing Meter or a Bio Energy check-meter as described in Section 14 of the Gas Sales Agreement, individually or collectively as the context may require.

"Milestones" means any specific tasks or achievements necessary to complete the Plant and achieve Commercial Operation, as set forth on Schedule 3.1.1 to the Project Development Agreement.

"Milestone Date" means, with respect to any particular Milestone, the date by which such Milestone is scheduled to be completed, as set forth on Schedule 3.1.1 to the Project Development Agreement.

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

"New Flare Station" means the North Flare Station relocated pursuant to the Flare Station Relocation Plan developed by Bio Energy and County in accordance with Section 3.4 of the Project Development Agreement.

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

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

"Nonconforming Condensate" shall mean any Condensate, as measured at the Condensate Delivery Point, which exceeds the quality specification limits as provided in the County's wastewater discharge permit.

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

"Notice of Intent to Terminate" means a notice by a non-defaulting Party to a defaulting Party of its intent to terminate the Gas Sales Agreement or the Project Development Agreement, as applicable, in accordance with the terms of such agreement.

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

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

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

"Owner Cure Plan" means the plan provided by Owner to Bio Energy in accordance with Section 12.1 of the Gas Sales Agreement that details Owner's proposed method and timetable for curing the circumstances that have given rise to a particular Triggering Event Notice.

"Owner GSA Default" has the meaning given in Section 11.2 of the Gas Sales Agreement.

"Owner Indemnified Parties" means Owner and its officers, directors, agents, attorneys and employees.

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

"PDA" or "Project Development Agreement" means the Project Development Agreement, dated as of _____, 2003 between the County and Bio Energy.

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

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

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

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

"Permit" means any authorization, consent, approval, license, franchise, ruling, permit, certification, exemption, filing, variance, order, judgment, decree, publication, notices to, declarations of or registration by or with any Governmental Authority in connection with the ownership, financing, design, engineering, construction, operation or maintenance of the Collection Facilities or the Plant, as the case may be.

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

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

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

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

"Plant Flare" means the flare located at the Plant (and associated ancillary equipment) that is used for burning-off Landfill Gas.

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

"Plant Site Lease" means the Plant Site Lease, dated as of _____, 2003 between Bio Energy and County.

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

"Plant Transmission Line" means the transmission line and related interconnection facilities that will be built on an Easement Area as described in the Plant Site Lease, which line will interconnect the Plant with a third-party electric transmission or distribution system.

"Power Purchase Agreement" means the Power Purchase Agreement to be entered into between Bio Energy and a third party that will purchase the electric energy generated by the Plant.

"Primary Milestones" means the Target SEPA Filing Date, the Target Additional Permit Filing Date, the Target Equipment Order Date, the Target Construction Start Date and the Target Commercial Operation Date, individually or collectively, as the context may require.

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

"Project Contracts" means the Gas Sales Agreement, the Plant Site Lease, the Project Development Agreement, the Transmission Agreement, the Power Purchase Agreement, the EPC Agreement and the Interconnection Agreement; provided, however, that each Project Contract that has a stated term (including any stated renewal term) that has expired in full at the end of such stated term (or stated renewal term) and each Project Contract which does not have a stated term that has been fully performed in accordance with its terms (including through the

final payment of all amounts due or to become due thereunder) shall cease to be a Project Contract as of the date thereof.

"Purchase Period" has the meaning given in Section 4.3 of the Project Development Agreement.

"Purchaser" has the meaning given in Section 12.4.2 of the Project Development Agreement.

"PURPA" means the Public Utility Regulatory Policies Act of 1978.

"Quality Specification" has the meaning given in Section 3.8 of the Project Development Agreement.

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

"RCW" means the Revised Code of Washington.

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

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

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

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

"Required Permit" means each Permit set forth on Schedule 3.1.2 to the Project Development Agreement required to be obtained by Bio Energy.

"Restoration Obligations" has the meaning given in Section 10.6 of the Project Development Agreement.

"Restoration Costs" has the meaning given in Section 10.6 of the Project Development Agreement.

"Right of First Offer" has the meaning given in Section 4.1 of the Project Development Agreement.

"Rights Notice" has the meaning given in Section 4.2 of the Project Development Agreement.

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

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

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

"SEPA Notice" means the checklist relating to the Plant filed in accordance with _____.

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

"Special Use Permit" means the permits necessary under Applicable Law to use the Plant Site for the construction and operation of the Plant.

"Special Use Permit Acquisition Date" means the date upon which either (a) Bio Energy has received a Special Use Permit permitting operation of the Plant at the Landfill Site or (b) the County has received a modification to its Special Use Permit allowing operation of the Plant at the Landfill Site, and in either case, on terms and conditions satisfactory to Bio Energy and in either case, all actions taken by the Governmental Authority issuing such permit or modification have become final and non-appealable by all Persons.

"Start-up Period" means the period commencing on the date as set forth in the notice provided by Bio Energy to Owner pursuant to Section 4.2 of the Gas Sales Agreement and ending on the Commercial Operation Date.

"State" means the State of Washington.

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

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

"Target Closing Date" means the date that is ninety (90) days following the Permit Acquisition Date; provided that such ninety (90) day period shall be extended by a number of days equal to the number of days by which Financial Closing has been delayed by: (a) an Event of Force Majeure; or (b) County's or Owner's failure to perform or delay in performing any of its respective obligations under any Project Contract to which it is a party.

"Target Commercial Operation Date" means the date that is three hundred sixty five (365) days following the Equipment Delivery Date; provided that such three hundred sixty five (365) day period shall be extended by a number of days equal to the number of days by which Commercial Operation has been delayed by: (a) an Event of Force Majeure; or (b) County's or Owner's failure to perform or delay in performing any of its respective obligations under any Project Contract to which it is a party.

"Target Construction Start Date" means the date that is three hundred and four (304) days following the Equipment Order Date; provided that such three hundred four (304) day period shall be extended by a number of days equal to the number of days by which Construction Start has been delayed by: (a) an Event of Force Majeure; (b) County's or Owner's failure to perform or delay in performing any of its respective obligations under any Project Contract to which it is a party; or (c) Bio Energy's failure to receive power generating equipment from its chosen equipment manufacturer on or before the delivery date specified in the applicable equipment purchase order, provided that an extension for a delay in equipment delivery shall not exceed ninety (90) days.

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

"Target Permit Acquisition Date" means the date that is four hundred fifty six (456) days following the PDA Effective Date; provided that such four hundred fifty six (456) day period shall be extended by a number of days equal to the number of days by which the Permit Acquisition Date has been delayed by: (a) an Event of Force Majeure; (b) County's or Owner's failure to perform or delay in performing any of its respective obligations under any Project Contract to which it is a party; or (c) the failure of a Governmental Authority to grant or otherwise issue a Required Permit after application for such Required Permit has been timely made and satisfies all material requirements under Applicable Law.

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

"Technical Expert" means the third party selected by (a) the Owner and Bio Energy in accordance with Section 12.2 of the Gas Sales Agreement to resolve disputes regarding an

Owner Cure Plan or (b) County and Bio Energy in accordance with Section 3.3 of the Project Development Agreement to resolve disputes regarding the Flare Station Relocation Plan.

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

"Termination Payment" has the meaning given in Section 10.7 of the Project Development Agreement.

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

"Transmission Agreement" means the agreement to be entered into between Bio Energy and a third party providing for the transmission of electric energy from the Plant's interconnection point with the transmission system to the Person purchasing such electric energy pursuant to the Power Purchase Agreement.

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

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

"Triggering Event Notice" means notice provided by Bio Energy to Owner in accordance with Section 12.1 of the Gas Sales Agreement that Bio Energy believes that a Triggering Event has occurred.

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

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

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

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

"Washington Environmental Laws" means any state or local law, regulation, rule or ordinance now or hereafter in effect relating to Environmental Conditions including the Model Toxics Control Act, Ch. 70.105D RCW; Ch. 70.105 RCW, Hazardous Waste Management; Ch. 70.95 RCW, Solid Waste Management – Reduction and Recycling; and the Washington Clean

Air Act, Ch. 70.94 RCW; and amendments thereto now or hereafter adopted or that otherwise become effective; any plans, rules, regulations, orders or ordinances adopted or that otherwise become effective; any plans, rules, regulations, orders or ordinances adopted (including fire, land, use, zoning and other codes and regulations relating to Environmental Conditions), or other guidance or policies promulgated pursuant to the preceding laws; any local laws, ordinances, codes or regulations pertaining to or otherwise addressing Environmental Conditions; or any terms or conditions in state or local permits, licenses or other authorizations relating to Environmental Conditions; and any common law principles (including decisions by or orders of courts, agencies, boards of appeals or similar bodies with mandatory or persuasive authority) relating to Environmental Conditions.

Rules of Construction and Interpretation

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