

As a matter of proper business decorum, the Board of Commissioners respectfully request that all cell phones be turned off or placed on vibrate. To prevent any potential distraction of the proceeding, we request that side conversations be taken outside the meeting room.

**AMENDED AGENDA**  
**REGULAR BOARD MEETING**  
**VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY**  
**VICTORVILLE CITY HALL, CONFERENCE ROOM D**  
**14343 CIVIC DRIVE, VICTORVILLE CA 92392**

**Dial-in to listen and participate at: 720-386-7442 or online at:**  
**<https://www.uberconference.com/kcasteel>**

**Thursday, March 17, 2022**  
**Closed Session 7:30 a.m. Open Session 8:00 a.m.**

**Teleconference Notice**

WHILE MEMBERS OF THE COMMISSION AND STAFF WILL ATTEND THE MEETING IN PERSON, SOME MEMBERS OF THE COMMISSION AND STAFF MAY APPEAR TELEPHONICALLY. THE PUBLIC MAY LISTEN IN AND PARTICIPATE IN THIS BOARD MEETING THROUGH THE PHONE NUMBER PROVIDED 720-386-7442 or online at: <https://www.uberconference.com/kcasteel>.

MEMBERS OF THE PUBLIC WHO WISH TO COMMENT ON MATTERS BEFORE THE BOARD MAY PARTICIPATE IN THE FOLLOWING WAYS:

(1) COMMENTS AND CONTACT INFORMATION CAN BE EMAILED TO PUBLICCOMMENT@VWVRA.COM BY 3:00 P.M. THE DAY BEFORE THE SCHEDULED MEETING TO BE INCLUDED IN THE WRITTEN RECORD;

(2) A REQUEST TO SPEAK CAN BE EMAILED TO PUBLICCOMMENT@VWVRA.COM AND AT THE TIME THE REQUESTED AGENDA ITEM IS TO BE ADDRESSED, THE BOARD SECRETARY WILL CONTACT THE COMMENTER BY PHONE AND ALLOW THE COMMENTER TO SPEAK TO THE BOARD VIA SPEAKER PHONE DURING THE LIVE MEETING FOR UP TO THREE MINUTES. IF YOU WISH TO ADDRESS ANY ITEM ON THE AGENDA, PLEASE INDICATE WHICH ITEM YOU WILL BE ADDRESSING AND WISH TO BE HEARD. IF YOU HAVE NO ACCESS TO E-MAIL OR TELEPHONE, PLEASE CONTACT VWVRA'S BOARD SECRETARY AT 760-246-2896 FOR ALTERNATIVE ARRANGEMENTS.

ACCESS TO THE AGENDA WILL BE MADE AVAILABLE AT VWVRA'S WEBSITE: WWW.VWVRA.COM; IF YOU NEED ACCESS TO PRINTED (HARD) COPIES OF THE AGENDA PLEASE CONTACT 760-246-2896 OR KCASTEEL@VWVRA.COM AND ARRANGEMENTS WILL BE MADE TO PROVIDE HARD COPIES OF THE AGENDA AS NEEDED.

*VWVRA is committed to protecting public health and the environment in the Victor Valley by providing effective and fiscally responsible wastewater collection, treatment, and recycling.*

**Call to Order**

**Holland**

**Roll Call**

**Casteel**

**Call to Order & Pledge of Allegiance**

**Holland**

**CLOSED SESSION:** During the course of conducting the business set forth on this agenda as a regular meeting of the Board, the Chair may convene the Board in closed session to consider matters of pending real estate negotiations, pending or potential litigation, or personnel matters, pursuant to Government Code Sections 54956.8, 54956.9, 54957 or 54957.6, as noted. Reports relating to (a) purchase and sale of real property; (b) matters of pending or potential litigation; or (c) employment actions, or which are exempt from public disclosure under the California Public Records Act, may be reviewed by the Board during a permitted closed session and are not available for public inspection. At such time the Board takes final action on any of these subjects, the minutes will reflect all required disclosures of information. Closed Session is scheduled to commence at 7:30 a.m.. If the matters discussed in closed session require additional time beyond 8:00 a.m., in deference to the public, the Board may continue the Closed Session discussion after Open Session is concluded. In that case, Closed Session will resume after the Commissioners Comments section and any reportable action will be reported after the continued Closed Session has concluded and before adjournment.

**Closed Session**

**Item 1. (Gov. Code Sec. 54957.6/ 54954.5 (f)) Conference with Legal Counsel- Labor Negotiation**

- The City Employees Association
- Supervisors Association

**Item 2. (Gov. Code Sec. 54957)- Conference with Legal Counsel-Public Employee Evaluation- General Manager**

**Item 3. (Gov. Code Sec. 54956.8)- Conference with Legal Counsel-Real Property Negotiations**

- SoCal Biomethane, LLC: Lease for RNG and Biosolids Processing Facility

**Public Comment (Government Code Section 54954.3)**

**Holland**

Opportunity for members of the public to directly address the Board on items of public interest within its jurisdiction. The public may also address the Board on items being considered on this agenda. VVWRA requests that all public speakers complete a speaker’s card and provide it to the Secretary. Persons desiring to submit paperwork to the Board of Commissioners shall provide a copy of any paperwork to the Board Secretary for the official record. We request that remarks be limited to five minutes or less. Pursuant to Government Code Section 54954.3, if speaker is utilizing a translator, the total allotted time will be doubled.

**Possible Conflicts of Interest**

**Holland**

**Consent Calendar**

**Holland**

All matters placed on the Consent Calendar are considered as not requiring discussion or further explanation and unless any particular item is requested to be removed from the Consent Calendar by a Commissioner, staff member or member of the public in attendance, there will be no separate discussion of these items. All items on the Consent Calendar will be enacted by one action approving all motions and casting a unanimous ballot for resolutions included on the consent calendar. All items removed from the Consent Calendar shall be considered in the regular order of business.

|   |                |
|---|----------------|
| <p><b><u>Item 4.</u> Receive, Approve and File Minutes</b></p> <ul style="list-style-type: none"> <li>Regular Board Meeting 02/17/2022</li> </ul> <p><b><u>Item 5.</u> Receive, Approve and File February 2022 Disbursement</b></p> <ul style="list-style-type: none"> <li>Warrant Summary Disbursements</li> </ul> | <b>Poulsen</b> |
| <p><b><u>Board Action Required</u></b></p> <p>Staff Recommendation: Approve as presented</p>  |                |

**Action Items**

The Executive Leadership Team will provide brief updates on existing matters under their purview and will be available to respond to any questions thereof.

|  |                |
|--|----------------|
| <p><b><u>Item 6.</u> Recommendation to Adopt Resolution 2022-01 to Amend Flow Billing Percentages and Approve the Flow Billing Rates as Measured by ADS Environmental Services, Inc.</b></p> <p>It is recommended that the Board of Commissioners adopt Resolution 2022-01 to amend flow billing percentages and approve the flow billing rates as measured by ADS Environmental Services, Inc.</p>  | <b>Keagy</b>   |
| <p><b><u>Board Action Required</u></b></p> <p>Staff Recommendation: Approve as Presented</p>   |                |
| <p><b><u>Item 7.</u> Recommendation to Approve the Lease Agreement for the RNG and Biosolids Processing Facility</b></p> <p>It is recommended that the Board of Commissioners approve the General Manager to execute the lease agreement for the RNG and Biosolids Processing Facility with Anaergia Inc. upon approval of the amendment by the VVWRA Attorneys</p>  | <b>Poulsen</b> |
| <p><b><u>Board Action Required</u></b></p> <p>Staff Recommendation: Approve as Presented</p>   |                |
| <p><b><u>Item 8.</u> Recommendation to Approve a Cooperative Agreement with the City of Victorville to Allow for Construction Over the VVWRA Easement, to Allow for the Installation of A Future Use Pipeline and Allow for the Usage of \$600,000 of Unrestricted Connection Fee Reserves to Reimburse the City for the Installation of the Pipe Within the Victorville Wellness Center Property</b></p> <p>It is recommended that the Board of Commissioners approve the General Manager to execute the cooperative agreement with the City of Victorville:</p> <ul style="list-style-type: none"> <li>To allow for construction over the VVWRA easement</li> <li>To allow for the installation of a future use pipeline within the Victorville Wellness Center Property</li> <li>To allow for the usage of \$600,000 of unrestricted connection fee reserves</li> </ul> | <b>Poulsen</b> |

|   |  |                |
|---|--|----------------|
| All upon approval of the agreement by the VVWRA Attorneys.  |  |                |
| <b><u>Board Action Required</u></b>   |  |                |
| Staff Recommendation: Approve as Presented  |  |                |
| <b><u>Item 9. Recommendation to Approve Administrative Building Architectural Services</u></b>  |  | <b>Poulsen</b> |
| It is recommended that the Board of Commissioners approve the General Manager to award a Architectural Services Agreement to Steeno Design Studio in the amount of \$ \$45,000, pending legal review and approval of the agreement.                     |  |                |
| <b><u>Board Action Required</u></b>   |  |                |
| Staff Recommendation: Approve as Presented  |  |                |
| <b><u>Item 10. Recommendation to Award a Contract for the Demolition of the Old Scada Wall Project in the Amount of \$96,000.00 Per Fiscal Year to Netgain Networks, Inc.</u></b>   |  | <b>Poulsen</b> |
| It is recommended that the Board of Commissioners approve the General Manager to award a contract for the demolition of old Scada wall Project in the amount of \$96,000.00 to Davis Electric, inc. pending legal review and approval of the agreement. |  |                |
| <b><u>Board Action Required</u></b>   |  |                |
| Staff Recommendation: Approve as Presented  |  |                |

**Staff Reports**

|   |
|---|
| <b>Item 11. General Managers Report</b>   |
| <ul style="list-style-type: none"> <li>- Update on the sub-regional recycled water deliveries</li> <li>- Update on the Hesperia Settlement Information Request</li> </ul> |

Reports are submitted as presented by Staff on a Quarterly Basis.

| Report Range   | Board Meeting Date (Thursday) |
|--|-------------------------------|
| 1st Quarter<br>January 2022-March 2022                 | May 19, 2022                  |
| 2 <sup>nd</sup> Quarter<br>April 2021-June 2021        | September 15, 2022            |
| 3 <sup>rd</sup> Quarter<br>July 2021- September 2021   | November 17, 2022             |
| 4 <sup>th</sup> Quarter<br>October 2021- December 2021 | February Board 2023           |

## **American Disabilities Act Compliance Statement**

*Government Code Section 54954.2(a)*



*Any request for disability-related modifications or accommodations (including auxiliary aids or services) sought to participate in the above public meeting should be directed to the VVWRA's Secretary at (760) 246-8638 at least 72 hours prior to the scheduled meeting. Requests must specify the nature of the disability and the type of accommodation requested.*

## **Agenda posting**

*Government Code Section 54954.2*

*This agenda has been posted in the main lobby of the Authority's Administrative offices not less than 72 hours prior to the meeting date and time above. All written materials relating to each agenda item are available for public inspection in the office of the Board Secretary.*

## **Agenda items received after posting**

*Government Code Section 54957.5*

*Materials related to an item on this agenda submitted after distribution of the agenda packet are available for public review at the VVWRA office located at, 20111 Shay Road, Victorville CA 92394. The materials will also be posted on the VVWRA website at [www.vvwra.com](http://www.vvwra.com).*

## **Items Not Posted**

*Government Code Section 54954.2(b)*

*In the event any matter not listed on this agenda is proposed to be submitted to the Board for discussion and/or action, it will be done as an emergency item or because there is a need to take immediate action, which came to the attention of the Board subsequent to the posting of the agenda, or as set forth on a supplemental agenda posted in the manner as above, not less than 72 hours prior to the meeting date.*

### **Items Continued**

*Government Section 54954.2(b)(3)*

*Items may be continued from this meeting without further notice to a Committee or Board meeting held within five (5) days of this meeting*

### **Meeting Adjournment**

*This meeting may be adjourned to a later time and items of business from this agenda may be considered at the later meeting by Order of Adjournment and Notice*

*VVWRA's Board Meeting packets and agendas are available for review on its website at [www.vvwra.com](http://www.vvwra.com). The website is updated on Friday preceding any regularly scheduled board meeting.*

**MINUTES OF A REGULAR MEETING**  
**REGULAR MEETING OF THE BOARD OF COMMISSIONERS**  
**VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY (VWRA)**  
**February 17, 2022**

**CALL TO ORDER:** Chair Bill Holland called the meeting to order at 7:42 AM; in Conference Room D at Victorville City Hall, located at 14343 Civic Drive, Victorville California, with the following members present:

**CITY OF VICTORVILLE**  
**CITY OF HESPERIA**  
**ORO GRANDE (CSA 42) AND**  
**SPRING VALLEY LAKE (CSA 64)**  
**TOWN OF APPLE VALLEY**

**Lary Bird, Chair**  
**Dakota Higgins, Vice-Chair**  
**Scott Nassif, Secretary**  
  
**Debra Jones, Treasurer**

**VWRA Staff and Legal Counsel:**

**Darron Poulsen, General Manager**  
**Kristi Casteel, Executive Assistant**  
**Piero Dallarda, Legal Counsel (BB&K)**  
**Chieko Keagy, Controller**  
**Robert Coromina, Director of Administration**

**Brad Adams, Plant Superintendent**  
**David Wylie, Safety & Communications**  
**Officer**

**Guest Present:**

**Brain Gengler, City of Victorville**

**Keith Metzler, City of Victorville**

**CLOSED SESSION**

**PUBLIC COMMENTS- CLOSED SESSION AGENDA**

Chair Bird asked if there were any comments from the public regarding any item on the Closed Session Agenda. Hearing none, Chair Bird called for a motion to enter into Closed Session.

**Moved: Commissioner Jones**

**Second: Commissioner Nassif**

**Motion to enter into Closed Session**

**Motion passed by a 4-0 roll call vote**

**REGULAR SESSION**

**CALL TO ORDER & PLEDGE OF ALLEGIANCE**

**VVWRA Regular Meeting Minutes**  
**Thursday, February 17, 2022**  
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Chair Bird called the meeting to order at 9:15 AM.

**REPORT FROM CLOSED SESSION**

None

**PUBLIC COMMENTS- REGULAR SESSION AGENDA**

None

**POSSIBLE CONFLICT OF INTEREST**

Commissioner Nassif will be abstaining from any disbursements to Napa Auto Parts on item 5

**CONSENT CALENDAR:**

4. **Receive, Approve and File Minutes, November 18, 2021**
5. **Receive, Approve and File November, December 2021 and January 2022 Disbursement**

**Moved: Commissioner Higgins**

**Second: Commissioner Jones**

**Approval of the Consent Calendar Items 4 and 5 with Commissioner Nassif abstaining from any disbursements to Napa Auto Parts on item 5.**

**Chair Bird - Yes**

**Commissioner Higgins- Yes**

**Commissioner Nassif - Yes**

**Commissioner Jones - Yes**

**Motion passed by a 4-0 roll call vote**

**ACTION ITEM:**

6. **Recommendation to Amend the Fiscal Year 2021-22 Capital and Operating Budget by Unfunding Existing Capital Projects and Approve Funding of More Vital Capital Projects and Operational Expenses**

The Board will consider approval to authorize the General Manager and the Controller to amend the FY 2021-22 Capital and Operating Budget by unfunding



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less vital capital projects to fund more critical operational and capital needs, which are further detailed in Exhibit 1 and approve the General Manager and the Controller to utilize unrestricted Capital Connection Fees to cover the SRF loan payment shortcoming of \$609,176.

**Moved: Commissioner Nassif****Second: Commissioner Jones**

**Approval to authorize the General Manager and the Controller to amend the FY 2021-22 Capital and Operating Budget by unfunding less vital capital projects to fund more critical operational and capital needs, which are further detailed in Exhibit 1 and approve the General Manager and the Controller to utilize unrestricted Capital Connection Fees to cover the SRF loan payment shortcoming of \$609,176.**

**Chair Bird - Yes****Commissioner Higgins- Yes****Commissioner Nassif - Yes****Commissioner Jones - Yes****Motion passed by a 4-0 roll call vote**

**7. Recommendation to Authorize the General Manager to Purchase and Install New Media and PLCs for the Auqadiamond Filters from Misco Water**

The Board will consider approval to authorize the General Manager to purchase and install new media and PLCs for the Auqadiamond filters from Misco Water for \$272,900.00 plus a 5% contingency, to cover unforeseen costs, totaling \$287,000.00

**Moved: Commissioner Jones****Second: Commissioner Higgins**

**Approval to authorize the General Manager to purchase and install new media and PLCs for the Auqadiamond filters from Misco Water for \$272,900.00 plus a 5% contingency, to cover unforeseen costs, totaling \$287,000.00**

**Chair Bird - Yes****Commissioner Higgins- Yes****Commissioner Nassif - Yes****Commissioner Jones - Yes****Motion passed by a 4-0 roll call vote**

**VVWRA Regular Meeting Minutes****Thursday, February 17, 2022****Page 4****8. Update on Previous Presentation Re Lease Agreement for RNG and Biosolids Processing Facility**

The Board will consider the General Manager to continue analysis and discussion for the RNG and Biosolids Processing Facility with SoCal Biomethane, LLC

**No Action Taken**

**CLOSED SESSION (If Closed Session is continued)**

**ADJOURNMENT**

**The board will adjourn to a regular board meeting on March 17, 2022 at 7:30 a.m.**

**APPROVAL:**

**DATE:** March 17, 2022

**BY:** \_\_\_\_\_

Approved by VVWRA Board Scott Nassif,  
Secretary VVWRA Board of Commissioners



## Victor Valley Wastewater Reclamation Authority

*A Joint Powers Authority and Public Agency of the State of California*

Administrative Offices

20111 Shay Road, Victorville, CA 92394


Telephone: (760) 246-8638

Fax: (760) 948-9897

e-mail: mail@vwwra.com

**DATE:** March 17, 2022

**TO:** Darron Poulsen  
General Manager

**FROM:** Chieko Keagy   
Controller

**SUBJECT:** Cash Disbursements Register

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### RECOMMENDED ACTION

It is recommended that the Board of Commissioners approve the cash disbursements and payroll register for the Victor Valley Wastewater Reclamation Authority.

### BACKGROUND

The Cash Disbursements Register totals represented below are for the month of FEBRUARY 2022, check numbers 124434-124479 and ACH's.

| <i>Accounts Payable</i> |                        |                     |                       |
|-------------------------|------------------------|---------------------|-----------------------|
| <i>Checks</i>           | <i>ACH's and EFT's</i> | <i>Payroll</i>      | <i>Total</i>          |
| <i>\$79,406.88</i>      | <i>\$3,700,033.71</i>  | <i>\$336,649.62</i> | <i>\$4,116,090.21</i> |

**Victor Valley Wastewater Reclamation Authority**  
**Cash Disbursement Register**  
**From 2/1/22 through 2/28/22**

| Vendor Name                       | Payment # | Date     | Total        |
|-----------------------------------|-----------|----------|--------------|
| Robertson'S Ready Mix, Ltd        | 124434    | 02/03/22 | \$ 3,887.88  |
| Mojave Desert A.Q.M.D.            | 124435    | 02/07/22 | \$ 1,000.00  |
| Answering 365                     | 124436    | 02/10/22 | \$ 148.00    |
| Applied Industrial Technologies   | 124437    | 02/10/22 | \$ 394.51    |
| Battery Mart                      | 124438    | 02/10/22 | \$ 1,481.26  |
| Big Sky Electric                  | 124439    | 02/10/22 | \$ 14,789.00 |
| Burrtec Waste Ind., Inc.          | 124440    | 02/10/22 | \$ 711.03    |
| Cintas Corporation                | 124441    | 02/10/22 | \$ 355.45    |
| Dell Inc.                         | 124442    | 02/10/22 | \$ 1,696.22  |
| Fha Services, Inc.                | 124443    | 02/10/22 | \$ 4,337.11  |
| Guardian                          | 124444    | 02/10/22 | \$ 869.64    |
| Hi Grade Materials Co.            | 124445    | 02/10/22 | \$ 4,156.29  |
| Konica Minolta Business Solutions | 124446    | 02/10/22 | \$ 170.23    |
| Mojave Desert A.Q.M.D.            | 124447    | 02/10/22 | \$ 534.18    |
| Orkin                             | 124448    | 02/10/22 | \$ 565.00    |
| Prudential Overall Supply         | 124449    | 02/10/22 | \$ 1,566.91  |
| Verizon Wireless                  | 124450    | 02/10/22 | \$ 2,206.70  |
| Applied Industrial Technologies   | 124451    | 02/16/22 | \$ 131.33    |
| City Of Victorville / Sanitation  | 124452    | 02/16/22 | \$ 4,180.04  |
| Dell Inc.                         | 124453    | 02/16/22 | \$ 696.75    |
| Fha Services, Inc.                | 124454    | 02/16/22 | \$ 3,221.56  |
| Hi Grade Materials Co.            | 124455    | 02/16/22 | \$ 2,599.12  |
| Hi-Desert Communications          | 124456    | 02/16/22 | \$ 150.00    |
| J.G. Tucker & Son Inc.            | 124457    | 02/16/22 | \$ 841.25    |
| Liberty Utilities                 | 124458    | 02/16/22 | \$ 101.84    |
| Orkin                             | 124459    | 02/16/22 | \$ 411.00    |
| Prudential Overall Supply         | 124460    | 02/16/22 | \$ 1,593.71  |
| Quill Corporation                 | 124461    | 02/16/22 | \$ 164.82    |
| Town & Country Tire               | 124462    | 02/16/22 | \$ 211.79    |
| Uline, Inc.                       | 124463    | 02/16/22 | \$ 1,746.71  |
| Battery Mart                      | 124464    | 02/24/22 | \$ 5,218.98  |
| Bird, Larry                       | 124465    | 02/24/22 | \$ 100.00    |
| Dell Inc.                         | 124466    | 02/24/22 | \$ 89.47     |
| Done-Right Concrete Co            | 124467    | 02/24/22 | \$ 11,939.00 |
| G & M Automotive Center           | 124468    | 02/24/22 | \$ 1,856.51  |
| Higgins, Dakota                   | 124469    | 02/24/22 | \$ 100.00    |
| Jones, Debra                      | 124470    | 02/24/22 | \$ 100.00    |
| Konica Minolta Business Solutions | 124471    | 02/24/22 | \$ 185.58    |
| Napa Victorville                  | 124472    | 02/24/22 | \$ 624.95    |
| Nassif, Scott                     | 124473    | 02/24/22 | \$ 100.00    |
| Nobel Systems Inc.                | 124474    | 02/24/22 | \$ 1,500.00  |
| Orkin                             | 124475    | 02/24/22 | \$ 204.00    |
| Prudential Overall Supply         | 124476    | 02/24/22 | \$ 796.25    |
| Safety-Kleen Systems Inc.         | 124477    | 02/24/22 | \$ 1,433.81  |
| Shredyourdocs.Com                 | 124478    | 02/24/22 | \$ 114.00    |

**Victor Valley Wastewater Reclamation Authority**  
**Cash Disbursement Register**  
**From 2/1/22 through 2/28/22**

|   |            |                     |           |                  |
|---|------------|---------------------|-----------|------------------|
| Swrcb   | 124479     | 02/28/22            | \$        | 125.00           |
|   |            | <b>Total Checks</b> | <b>\$</b> | <b>79,406.88</b> |
| Southwest Gas Company                           | DFT02830   | 02/03/22            | \$        | 112,267.68       |
| Quadient Leasing Usa, Inc                       | DFT02832   | 02/03/22            | \$        | 100.00           |
| Swrcb   | DFT02833   | 02/03/22            | \$        | 91,028.00        |
| Sparkletts Drinking Water                       | DFT02835   | 02/10/22            | \$        | 887.42           |
| Lincoln Financial Group                         | DFT02837   | 02/10/22            | \$        | 4,984.68         |
| Lincoln Financial Group                         | DFT02838   | 02/10/22            | \$        | 80.11            |
| Principal Life Ins. Co.                         | DFT02839   | 02/10/22            | \$        | 3,166.80         |
| Southern California Edison                      | DFT02840   | 02/10/22            | \$        | 866.42           |
| Ups   | DFT02841   | 02/10/22            | \$        | 114.08           |
| State Water Resources Control Board             | DFT02842   | 02/10/22            | \$        | 258,151.05       |
| Flyers Energy, Llc                              | DFT02865   | 02/17/22            | \$        | 1,571.74         |
| Konica Minolta Business Solutions               | DFT02866   | 02/17/22            | \$        | 427.50           |
| Southern California Edison                      | DFT02867   | 02/17/22            | \$        | 16,284.23        |
| Southwest Gas Company                           | DFT02868   | 02/17/22            | \$        | 218.93           |
| Town Of Apple Valley                            | DFT02869   | 02/17/22            | \$        | 362.18           |
| Ups   | DFT02870   | 02/17/22            | \$        | 626.25           |
| Southern California Edison                      | DFT02872   | 02/24/22            | \$        | 14,465.26        |
| State Water Resources Control Board             | DFT02873   | 02/24/22            | \$        | 1,024,950.85     |
| State Water Resources Control Board             | DFT02874   | 02/24/22            | \$        | 1,462,850.30     |
| Enterprise Fm Trust                             | DFT02895   | 02/22/22            | \$        | 11,645.21        |
| Alliant Insurance Services                      | 0207221    | 02/07/22            | \$        | 73.00            |
| Beck Oil, Inc.                                  | 0207222    | 02/07/22            | \$        | 4,357.13         |
| Caltrol, Inc.                                   | 0207223    | 02/07/22            | \$        | 345.85           |
| Dxp Enterprises                                 | 0207224    | 02/07/22            | \$        | 1,425.00         |
| G.A. Osborne Pipe & Supply                      | 0207225    | 02/07/22            | \$        | 793.73           |
| Grainger  | 0207226    | 02/07/22            | \$        | 7,094.49         |
| Granicus, Inc.                                  | 0207227    | 02/07/22            | \$        | 6,825.00         |
| Inductive Automation Llc                        | 0207228    | 02/07/22            | \$        | 350.00           |
| Msa Safety Sales, Llc C/O Mcr Technologies, Inc | 0207229    | 02/07/22            | \$        | 1,369.14         |
| Adt Commercial                                  | 021020221  | 02/10/22            | \$        | 986.36           |
| Victor Valley Wastewater Employees Assoc        | 0210202210 | 02/10/22            | \$        | 725.00           |
| Alliant Insurance Services                      | 021020222  | 02/10/22            | \$        | 66,935.94        |
| Allmax Software, Inc.                           | 021020223  | 02/10/22            | \$        | 5,665.00         |
| American Express                                | 021020224  | 02/10/22            | \$        | 9,561.20         |
| C.S. Amsco                                      | 021020225  | 02/10/22            | \$        | 766.71           |
| California School Veba                          | 021020226  | 02/10/22            | \$        | 676.00           |
| Csrma   | 021020227  | 02/10/22            | \$        | 1,707.50         |
| High Desert Affordable Landscaping              | 021020228  | 02/10/22            | \$        | 4,459.76         |
| T-Mobile  | 021020229  | 02/10/22            | \$        | 196.50           |
| Alfa Laval Inc.                                 | 021820221  | 02/18/22            | \$        | 2,619.97         |
| G.A. Osborne Pipe & Supply                      | 0218202210 | 02/18/22            | \$        | 542.73           |
| Gierlich Mitchell, Inc.                         | 0218202211 | 02/18/22            | \$        | 4,178.34         |
| Graham Equipment                                | 0218202212 | 02/18/22            | \$        | 15,525.69        |

**Victor Valley Wastewater Reclamation Authority**  
**Cash Disbursement Register**  
**From 2/1/22 through 2/28/22**

|  |            |          |    |            |
|--|------------|----------|----|------------|
| Grainger   | 0218202213 | 02/18/22 | \$ | 3,477.31   |
| Hach Company                                     | 0218202214 | 02/18/22 | \$ | 530.39     |
| Luhdorff And Scalmanini                          | 0218202215 | 02/18/22 | \$ | 4,031.00   |
| Mcgrath Rentcorp                                 | 0218202216 | 02/18/22 | \$ | 5,466.43   |
| Mertec Engineering                               | 0218202217 | 02/18/22 | \$ | 1,671.36   |
| Quinn Company                                    | 0218202218 | 02/18/22 | \$ | 40.00      |
| Scott Equipment, Inc                             | 0218202219 | 02/18/22 | \$ | 6,933.40   |
| Beck Oil, Inc.                                   | 021820222  | 02/18/22 | \$ | 3,484.94   |
| Siemens Industry Inc.                            | 0218202220 | 02/18/22 | \$ | 3,954.15   |
| Socal Biomethane, Llc                            | 0218202221 | 02/18/22 | \$ | 188,822.35 |
| Tyler Technologies, Inc                          | 0218202222 | 02/18/22 | \$ | 542.00     |
| Veteran Janitorial, Llc                          | 0218202223 | 02/18/22 | \$ | 2,630.00   |
| Walters Wholesale Electric                       | 0218202224 | 02/18/22 | \$ | 4,755.42   |
| Waxie Sanitary Supply                            | 0218202225 | 02/18/22 | \$ | 1,322.00   |
| Best, Best & Krieger, L.L.P.                     | 021820223  | 02/18/22 | \$ | 41,120.74  |
| Biogas Engineering                               | 021820224  | 02/18/22 | \$ | 4,300.00   |
| Cdw Government, Inc                              | 021820225  | 02/18/22 | \$ | 2,979.45   |
| Culligan Water Conditioning                      | 021820226  | 02/18/22 | \$ | 555.70     |
| D.K.F. Solutions Group, Llc                      | 021820227  | 02/18/22 | \$ | 350.00     |
| Dxp Enterprises                                  | 021820228  | 02/18/22 | \$ | 47,758.52  |
| Fluid Components Intl. C/O Ponton Industries     | 021820229  | 02/18/22 | \$ | 3,583.62   |
| A.D.S. Corp.                                     | 022820221  | 02/28/22 | \$ | 7,150.00   |
| Mcmaster-Carr Supply Co.                         | 0228202210 | 02/28/22 | \$ | 641.04     |
| Netgain Networks, Inc                            | 0228202211 | 02/28/22 | \$ | 8,450.00   |
| Pro Automation Llc                               | 0228202212 | 02/28/22 | \$ | 980.00     |
| Quinn Company                                    | 0228202213 | 02/28/22 | \$ | 630.00     |
| Siemens Industry Inc.                            | 0228202214 | 02/28/22 | \$ | 1,588.84   |
| Trimax Systems                                   | 0228202215 | 02/28/22 | \$ | 124,363.50 |
| U.S. Bank  | 0228202216 | 02/28/22 | \$ | 4,779.77   |
| Underground Service Alert Of Southern California | 0228202217 | 02/28/22 | \$ | 67.75      |
| Vertech Industrial Systems                       | 0228202218 | 02/28/22 | \$ | 16,575.00  |
| Anthony, Donna                                   | 0228202219 | 02/28/22 | \$ | 422.00     |
| Applied Maintenance Supplies & Solution          | 022820222  | 02/28/22 | \$ | 3,077.98   |
| Billings, Richard                                | 0228202220 | 02/28/22 | \$ | 422.00     |
| Correia, Bruce                                   | 0228202221 | 02/28/22 | \$ | 422.00     |
| Dagnino, Roy                                     | 0228202222 | 02/28/22 | \$ | 422.00     |
| Davis, Tim                                       | 0228202223 | 02/28/22 | \$ | 422.00     |
| Flint, Terrie Gossard                            | 0228202224 | 02/28/22 | \$ | 232.94     |
| Gyurcsik, Darline                                | 0228202225 | 02/28/22 | \$ | 232.94     |
| Hinojosa, Thomas                                 | 0228202226 | 02/28/22 | \$ | 422.00     |
| Keniston, Olin                                   | 0228202227 | 02/28/22 | \$ | 232.94     |
| Main, Randy                                      | 0228202228 | 02/28/22 | \$ | 422.00     |
| Mcgee, Mark                                      | 0228202229 | 02/28/22 | \$ | 422.00     |
| Babcock Laboratories, Inc.                       | 022820223  | 02/28/22 | \$ | 39,879.92  |
| Montgomery, Lillie                               | 0228202230 | 02/28/22 | \$ | 145.65     |
| Nalian, L. Christina                             | 0228202231 | 02/28/22 | \$ | 145.65     |

**Victor Valley Wastewater Reclamation Authority  
Cash Disbursement Register  
From 2/1/22 through 2/28/22**

|                            |            |          |                            |                        |
|----------------------------|------------|----------|----------------------------|------------------------|
| Nave, Patrick              | 0228202232 | 02/28/22 | \$                         | 422.00                 |
| Blackline Safety Corp      | 022820224  | 02/28/22 | \$                         | 210.00                 |
| Cdw Government, Inc        | 022820225  | 02/28/22 | \$                         | 1,213.43               |
| Dxp Enterprises            | 022820226  | 02/28/22 | \$                         | 11,315.27              |
| Fastenal                   | 022820227  | 02/28/22 | \$                         | 871.35                 |
| G.A. Osborne Pipe & Supply | 022820228  | 02/28/22 | \$                         | 2,884.17               |
| Grainger                   | 022820229  | 02/28/22 | \$                         | 30.06                  |
|                            |            |          | <b>Total ACH &amp; EFT</b> | <b>\$ 3,700,033.71</b> |

**Approved**

*CA 81 03 07 22*

|                                 |           |                     |
|---------------------------------|-----------|---------------------|
| <b>Total Checks</b>             | \$        | 79,406.88           |
| <b>Total ACH and EFT</b>        | \$        | 3,700,033.71        |
| <b>Total Payroll - Feb 2022</b> | \$        | 336,64 962          |
| <b>Total</b>                    | <b>\$</b> | <b>4,116,090.21</b> |



**VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY  
Board of Commissioners Staff Report**

**TO:** VVWRA Board of Commissioners

**FROM:** Darron Poulsen, General Manager *DP*

**SUBMITTED BY:** Chieko Keagy, Controller *CK*

**DATE:** March 17, 2022

**SUBJECT:** **ADOPTION OF RESOLUTION 2022-01 TO AMEND FLOW BILLING PERCENTAGES AND APPROVE THE FLOW BILLING RATES AS MEASURED BY ADS ENVIRONMENTAL SERVICES, INC.**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> <b>For Action</b> | <input type="checkbox"/> <b>Fiscal Impact:</b> none           |
| <input type="checkbox"/> <b>Information Only</b>      | <input type="checkbox"/> <b>Account Code:</b> not applicable  |
|   | <input type="checkbox"/> <b>Funds Budgeted/Approved:</b> none |

**STAFF RECOMMENDATION**

It is recommended that the Board of Commissioners adopt Resolution 2022-01 to amend flow billing percentages and approve the flow billing rates as measured by ADS Environmental Services, Inc.

**PREVIOUS ACTION(S)**

None

**BACKGROUND INFORMATION**

On February 24, 2022, the staff met the Engineering Committee members of the Member Agencies for their review of flow billing percentages. The flow allocation rates are based on the data for the period of 12 months ended June 30, 2021 collected by ADS Environmental Services, Inc. who monitors continuous flow measurement throughout the VVWRA collection system. The billing is based on the percentage of flow measured at the influent meters at the wastewater treatment plant. As the Engineering Committee members reached the consensus, the flow study and associated percentages are now forwarded to the Board to adopt the flow allocation rates by the Resolution.

**Attachments:**

**Exhibit 1- Resolution 2022-01**



# EXHIBIT 1

**RESOLUTION NO. 2022-01**

**A RESOLUTION OF THE VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY TO AMEND BILLING PERCENTAGES AND APPROVE FLOW BILLING ADJUSTMENTS RELATING TO THE FLOW MONITORING RESULTS AS MEASURED BY ADS ENVIRONMENTAL SERVICES, INC.**

**WHEREAS**, the Victor Valley Wastewater Reclamation Authority (“Authority”) is a Joint Powers Authority and Public Agency of the State of California established in 1978 that provides Regional wastewater treatment to a designated Service Area; and

**WHEREAS**, an amendment to the Victor Valley Regional Wastewater Service Agreement was made and entered into as of August 1, 2005, by and between the Authority and the City of Victorville, the City of Hesperia, the Town of Apple Valley, and the County of San Bernardino Service Areas No. 42 (Oro Grande) and No. 64 (Spring Valley Lake), collectively referred to as “Member Entities”; and

**WHEREAS**, the Authority provides wastewater treatment service to the Member Entities and issues monthly flow billings to the Member Entities based upon the number of gallons of flow received from each Entity; and

**WHEREAS**, it was agreed and established in 1998 by the VVWRA Technical Advisory Committee that the local metering stations are inaccurate and do not provide reliable flow data, and it was determined that the Authority would utilize the services of an independent agent to conduct periodic flow monitoring with their own equipment; and

**WHEREAS**, it was agreed and established that the results of the flow monitoring study would be used to establish percentages with which to apportion the total flow as measured by the Magmeter at the Regional Treatment Plant and determine member entity flow by said percentages for billing purposes; and

**WHEREAS**, the Commission of the Victor Valley Wastewater Reclamation Authority approved and adopted the flow monitoring results as measured by ADS Environmental Services, Inc., attached hereto as “Exhibit A”, and directed staff to make appropriate flow billing adjustments;

**NOW, THEREFORE, BE IT RESOLVED** that the Commission of the Victor Valley Wastewater Reclamation Authority does hereby amend the flow billing percentages relating to the flow monitoring results as measured by ADS Environmental Services, Inc. and direct staff to implement flow billing adjustments based on the amended billing percentages.

**APPROVED AND ADOPTED** on this 17th day of March 2022.

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Bill Holland, Chair  
VVWRA Board of Commissioners

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott Nassif Secretary  
VWRA Board of Commissioners

\_\_\_\_\_  
Piero C. Dallarda of  
Best, Best & Krieger LLP, VWRA Counsel

**CERTIFICATION:**

I do hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the Board of Commissioners held on March 17,2022.

\_\_\_\_\_  
Kristi Casteel – Clerk of the Board

# EXHIBIT A

Resolution 2022-01

**Victor Valley Wastewater Reclamation Authority  
Flow Allocation Proposed Effective on July 1, 2022**

| Measured by ADS                 | APPROVED<br>Based on<br>July 2019 - June 2020 |                   | Proposed<br>Based on<br>July 2020 - June 2021 |                   |
|---------------------------------|---|-------------------|---|-------------------|
|                                 | Total<br>%                                    | Total<br>MG       | Total<br>%                                    | Total<br>MG       |
| VSD 1 (less North Apple Valley) | 6.4688%                                       | 255.4396          | 6.5356%                                       | 284.3251          |
| VSD 2                           | 13.4062%                                      | 529.3865          | 13.5584%                                      | 589.8431          |
| VSD 3                           | 24.6003%                                      | 971.4198          | 24.9938%                                      | 1,087.3253        |
| VSD 4                           | 6.8534%                                       | 270.6268          | 6.5283%                                       | 284.0048          |
| VSD 5                           | 0.5814%                                       | 22.9596           | 0.5302%                                       | 23.0672           |
| VSD 6                           | 6.5541%                                       | 258.8076          | 7.3268%                                       | 318.7434          |
| <b>VSD Total</b>                | <b>58.4642%</b>                               | <b>2,308.6399</b> | <b>59.4731%</b>                               | <b>2,587.3089</b> |
| Apple Valley 03                 | 16.9962%                                      | 671.1463          | 16.2113%                                      | 705.2550          |
| Apple Valley North              | 0.0649%                                       | 2.5635            | 0.0636%                                       | 2.7676            |
| <b>Apple Total</b>              | <b>17.0611%</b>                               | <b>673.7098</b>   | <b>16.2749%</b>                               | <b>708.0226</b>   |
| <b>Hesperia</b>                 | <b>18.9678%</b>                               | <b>749.0037</b>   | <b>18.8458%</b>                               | <b>819.8634</b>   |
| CSA 64 SVL                      | 4.8580%                                       | 191.8341          | 4.7363%                                       | 206.0466          |
| CSA 42 Oro Grande               | 0.6489%                                       | 25.6252           | 0.6699%                                       | 29.1412           |
| <b>CSA Total</b>                | <b>5.5070%</b>                                | <b>217.4593</b>   | <b>5.4061%</b>                                | <b>235.1878</b>   |
| <b>Total Apportioned Flow</b>   | <b>100.0000%</b>                              | <b>3,948.8127</b> | <b>100.0000%</b>                              | <b>4,350.3827</b> |
| Mojave Narrows Regional Park    |   | 1.1000            |   | 1.2000            |
| <b>Total Study Flow</b>         |   | <b>3,949.9127</b> |   | <b>4,351.5827</b> |



**VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY  
Board of Commissioners Staff Report**

**TO:** VVWRA Board of Commissioners  
**FROM:** Darron Poulsen, General Manager *DJP*  
**SUBMITTED BY:** Darron Poulsen, General Manager  
**DATE:** March 17, 2022  
**SUBJECT:** RECOMMENDATION TO APPROVE THE LEASE AGREEMENT FOR THE RNG AND BIOSOLIDS PROCESSING FACILITY

|   |  |             |
|---|--|-------------|
| <input checked="" type="checkbox"/> <b>For Action</b> | <input checked="" type="checkbox"/> <b>Fiscal Impact</b> | <b>\$ 0</b> |
| <input type="checkbox"/> <b>Information Only</b>      | <input type="checkbox"/> <b>Account Codes:</b>           |             |
|   | <input type="checkbox"/> <b>Funds Budgeted/Approved</b>  |             |

**STAFF RECOMMENDATION**

It is recommended that the Board of Commissioners approve the General Manager to execute the lease agreement for the RNG and Biosolids Processing Facility with Anaergia Inc. upon approval of the amendment by the VVWRA Attorneys.

**PREVIOUS ACTION(S)**

None

**BACKGROUND INFORMATION**

VVWRA and Anaergia’s Subsidiary, SoCal Biomethane, are finishing the construction and development of the first Renewable Natural Gas (RNG) production facility being performed at a California wastewater treatment plant utilizing methane produced from wastewater and food waste materials. This public private partnership has been in place since 2016 when the idea of repurposing existing out of service VVWRA assets, old digesters, into food waste digestion tanks to produce RNG. The project just celebrated the startup of the RNG and injection equipment with a commissioning ceremony on January 21, 2022. It was the success of this project and the strong partnership with Anaergia that a new larger project is now being considered on the VVWRA site.

The scope of the new project is to develop additional food waste digestion capacity to produce more RNG by adding two large digesters between 4 and 6 million gallons of total capacity depending on the results of the feasibility study. In addition to the digestion and RNG production the new project would also add sludge drying capacity and a pyrolysis system at the end of the line to further process the biosolids to a beneficial product, biochar, that can be used

directly as a fertilizer additive. All these new assets would be owned and operated by a future Anaergia subsidiary; a Delaware LLC as identified in the proposed lease agreement. The agreement for this new partnership will look to resolve several pending operational and regulatory concerns that VVWRA is facing with the drying beds and the biosolids processing.

The current VVWRA operations utilize a Gravity Belt Thickener (GBT) to dry digester sludge to a 5.5% to 6% level where it can be pumped into the drying beds until they reach a 90% level of dryness where it can be tested and hauled away for free by American Organics as part of their lease agreement with VVWRA. VVWRA has been put on notice by the Lahontan Regional Water Quality Control Board that the existing drying beds lined with bentonite pose a water quality risk and that they will need to be more permanently lined with rubber liner and concrete at some point in the future. This requirement may come in advance of the further regulations regarding PFAS standards. A project to line all the existing drying beds would cost VVWRA \$10M. On top of these costs to line the drying beds further regulations regarding PFAS will add costs to haul the biosolids to out of state applications or other processing facilities. These additional hauling costs for VVWRA would likely be over \$2M annually. Over a 10-year period if the drying beds project could be financed it would require an increase in VVWRA revenues of approximately \$3.4M to deal with these issues.

In discussing these concerns with Anaergia the proposed project will look to address these concerns at a much lower cost to VVWRA. Within the proposed lease agreement VVWRA will increase revenues by \$1M by having a monthly lease fee of \$20K, it will also annually receive host fees of \$630K and revenue sharing for the sale of Biochar of \$130K per year. VVWRA will also have savings from not having to operate the GBT which will save \$460K per year.

The new project will take VVWRA digested sludge through their new dewatering equipment and then put the material through the pyrolysis process turning our sludge to biochar. This new process eliminates the need to improve the drying beds and eliminates the need to haul biosolids out of state or to a processing facility. VVWRA will incur a cost from Anaergia to utilize the new assets at a cost of approximately \$1.4M per year. This cost is less than the total expected revenues and operational savings by \$60K annually.

Moving forward without this project in place has the potential to cost VVWRA an additional \$3.4M per year to deal with the drying bed operational concerns and the future PFAS regulatory matters. By entering into this lease agreement with Anaergia VVWRA will look to avert those costs and solve these concerns with a either a small increase in overall revenues or revenue and expense neutrality. These cost savings will allow VVWRA to keep operational costs lower for the member agencies, it will allow for more money to be put towards other capital projects, and it will put the responsibility of operating facilities and capital expense outlay on an outside partner.

It is for these reasons that staff is recommending that the Board of Commissioners approve the General Manager to execute the lease agreement for the RNG and Biosolids Processing Facility with Anaergia Inc. upon approval of the agreement by the VVWRA Attorneys. Upon approval Anaergia will begin the necessary feasibility analysis and the environmental CEQA work. Future updates on this process will be shared with the Board.

# EXHIBIT 1



## FACILITY LEASE AND BIOSOLIDS PROCESSING AGREEMENT

THIS FACILITY LEASE AND BIOSOLIDS PROCESSING AGREEMENT (“*Lease*”), dated as of March \_\_, 2022 (the “*Effective Date*”), is entered between VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY, hereinafter referred to as “*Landlord*,” and [\_\_\_\_\_], a Delaware limited liability company, hereinafter referred to as “*Tenant*”. Landlord and Tenant are hereinafter sometimes referred to individually as a “*Party*” and together as “*Parties*”.

### RECITALS

A. Landlord owns and operates a regional wastewater treatment plant (“*WWTP*”) in the City of Victorville, County of San Bernardino, State of California, which is inclusive of administrative offices, treatment and recycled water facilities, anaerobic digesters and drying beds. The areas of the WWTP exclusive of the drying beds is referred to herein as the “*WWTP Core*”. There is an existing easement for transmission towers and lines and a related right of way within a 120 foot strip that runs along the western boundary of the WWTP (“*Transmission Easement*”). The boundaries of the WWTP, the WWTP Core and the Transmission Easement are described on the map which is attached hereto as *Exhibit A*.

B. Landlord further owns real property adjacent to the WWTP on the south side (“*Adjacent Property*”), which includes percolation ponds and land which is leased to Arakelian Enterprises, Inc., dba Athens Services (“*Athens*”) for the operation of the American Organics biosolids recycling facility (“*Athens Facility*”). Existing road and utility access to the WWTP is through the Adjacent Property. The boundaries of the Adjacent Property are described on the map which is attached hereto as *Exhibit B*. The Landlord Property are collectively referred to herein as the “*Landlord Property*”).

C. The State of California has mandated requirements to improve the quality of wastewater effluent discharge by reducing PFOS and PFOA in the sludge that is generated by the WWTP and other constituents of emerging concern while increasing the collection and recycling of organic waste to reduce methane emissions from landfills and create renewable energy from the collection, processing and utilization of biogas as an alternative fuel. These mandates will result in significant future capital expenditures by Landlord in connection with the drying and disposal of sludge that is created by the treatment process (“*Landlord Biosolids*”).

D. Landlord has previously entered into a public-private partnership with an affiliate of Tenant to operate a gas collection facility (“*SoCal Biomethane Facility*”) which uses excess capacity in Landlord’s digesters to treat organic waste and generate renewable natural gas for delivery to Southwest Gas (“*Southwest*”) for use as an alternative fuel. Landlord desires to engage in similar arrangements to pioneer innovative solutions to meet its compliance requirements and the needs of the region.

E. Tenant’s affiliates have developed technology for the processing of organic matter, including biosolids, to create renewable natural gas and recycled products that can be used as fertilizer while reducing greenhouse gas emissions and have demonstrated such technology at a fully operational bioenergy facility in Rialto, California.

F. Tenant is looking for a new site to build an organics and biosolids processing facility which is anticipated will be approximately eleven (11) acres in size and include equipment and facilities for organics processing, biosolids drying and pyrolysis (including drying and pyrolysis of Landlord Biosolids), anaerobic digestion of food waste, dewatering, feedstock receiving and storage (including dedicated road improvements and truck scales), biogas conditioning and industrial wastewater treatment for effluent from operations (collectively, the “*Facility*”).

G. Landlord believes that it would be possible to consolidate operations within that portion of the WWTP that is currently dedicated to its drying beds to provide sufficient space for Tenant to develop, construct, and operate the Facility as designated on *Exhibit C-1* (“*Facility Site*”). It is intended that, to the extent determined to be feasible during the Development Phase and subject to the provisions of Section 1.5(f), once fully operational, the Facility will process all Landlord Biosolids in accordance with the terms set forth herein, offsetting the need for the drying bed acreage that is utilized for the Facility, and will provide an additional option for the processing of biosolids and organic food waste generated within Landlord’s service area and the larger region and conversion of such materials into renewable biogas and commercially useful products, generating additional income for Landlord.

H. Tenant further desires to install a solar photovoltaic power generation system of up to four (4) MW (actual capacity to be determined during the Development Phase) on approximately fourteen (14) acres of land within the WWTP as designated on *Exhibit C-2* (“*Solar System*”). Exhibits C-1 and C-2 are referred to herein as the “*Preliminary Site Plan*”. It is intended that, to the extent determined to be feasible and reflected in an amendment to this Lease or in a separate lease/agreement in accordance with Sections 1.3(j) and 5.3, the Solar System would provide renewable energy to fully power the Facility and sufficient excess power to meet all of the daytime power requirements of Landlord, subject to further agreement by Landlord and Tenant. The Facility and the Solar System are collectively referred to herein as the “*Project*”.

I. Landlord and Tenant desire to document the terms and conditions upon which Landlord would let to Tenant, and Tenant will lease from Landlord, the land required for construction and operation of the Project, and Tenant will build the Project, provide capacity for the treatment of organic waste and biosolids generated by Landlord, and provide energy to Landlord from the Solar System.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

1. Project Development.

1.1. Development Phase. This Lease shall be effective as of the Effective Date, but the obligations of the parties to proceed with the Project in accordance with the terms of this Lease will be subject to a number of conditions precedent for the development, design and financing of the Project which are set forth in this Section 1. It is anticipated that the development, design and approval of the Project will take place over a period of thirty-six (36) months (the “*Development Phase*”) commencing with the Effective Date (subject to extension as set forth in Section 1.2), and that no later than the end of the Development Phase, Tenant will make a final decision to proceed with construction of the Project by providing a written notice to proceed with the financing and construction of the Facility (“*Notice to Proceed*”). Tenant will thereafter have a period of twelve (12) months to complete the financing of the Facility (subject to extension as set forth in Section 1.2) and prepare for the commencement of construction of the Project (“*Financing Contingency Period*”). If Tenant does not give the Notice to Proceed to Landlord by the end of the Development Phase or, having given the Notice to Proceed, does not thereafter close its financing for the construction of the Project during the Financing Contingency Period, then Landlord will have the right to terminate this Lease. The commencement of construction of the Solar System will be subject to further agreement between Landlord and Tenant as the Solar System may be phased in later due to operational constraints concerning the construction of the Facility. Notwithstanding the foregoing, if at any time during the Development Phase the Tenant does not believe, in its sole discretion, that the Project is feasible to proceed, then Tenant may terminate this Lease on thirty (30) days written notice to Landlord and neither Tenant nor Landlord will have any further obligations hereunder.

1.2. Development and Financing Processes. The development process will be focused on three primary milestones: (a) design and siting of the Facility and all roads and utilities necessary to serve the Facility; (b) design and siting of the Solar System and all roads and utilities necessary to serve the Solar System; and (c) satisfaction of all permitting and environmental requirements for the Project. An initial Project development schedule is attached hereto as *Exhibit D* (“*Development Schedule*”). The parties will work together in good faith during the Development Phase to complete milestones in accordance with the Development Schedule set forth herein and, during the Financing Contingency Period, to secure committed financing for the Facility. Landlord and Tenant agree that the timeframes reflected in the Development Schedule and Financing Contingency Period are intended to keep the Project on track for (i) in the case of the Development Phase, a final decision on approval and whether to proceed to financing and construction of the Facility following the end of the Development Phase; and (ii) during the Financing Contingency Period, to obtaining a Financing Commitment and preparing Construction Documents. Except as expressly set forth in this Section 1, timeframes for completion of a task in the Development Schedule or during the Financing Contingency Period are intended to be a guideline and delays in particular tasks will not be cause for default or termination provided that a party is performing under this Lease in good faith and with reasonable diligence. Notwithstanding the foregoing, any extension of the Development Phase will be subject to the approval of Landlord, which approval will not be unreasonably withheld if there are circumstances outside of the control of Tenant that have caused a delay in the development process, including without limitation, delays by third parties to process permits or approvals, delays in the approval of the Project by Landlord as a result of third party litigation or threats of litigation and delays in the ability of the Tenant to complete milestones as a result of Landlord’s failure to review or approve Project development deliverables in accordance with the timeframes set forth herein. Furthermore, with respect to the Financing Contingency Period, Tenant will have a one time option to extend, in its sole discretion, the Financing Contingency Period for a period one hundred eighty (180) days. Following the exercise of such extension, any further extension of the Financing Contingency Period will be subject to the approval of Landlord, which approval will not be unreasonably withheld if Tenant has completed negotiation of a term sheet with one of more financing parties, pursuant to which the financing for the Facility is making reasonable progress through the documentation and closing process in accordance with the conditions to closing set forth such the term sheet. If either party believes that the other is not proceeding in accordance with its obligations under this Section 1 and such failure is causing a delay in the Development Schedule, the concerned party will give written notice to the other party along with any requested extension in the Development Schedule as a result of the delay. A party who receives such a notice will provide a written response along with a revised timeframe for completion of the task. If the party causing the delay is Landlord, then the Development Phase will be extended by the duration of the delay.

1.3. Development Assumptions. Except as may be agreed by Landlord and Tenant pursuant to Section 1.4, the development process will proceed on the basis of the following assumptions (“*Development Assumptions*”):

(a) The Facility will have the capacity to process up to 700 tons per day of recovered organic waste and produce therefrom up to 985,000 MMBTU per year of renewable natural gas (“*Organics Processing*”). Renewable natural gas will be delivered to Southwest pursuant to long term offtake agreement with Southwest and Tenant will install delivery infrastructure from the Southwest interconnection/pipeline which is located adjacent to the SoCal Biomethane Facility;

(b) The Facility will have the capacity to process up to 500 tons per day of biosolids, which includes the (i) biosolids created as a result of Organics Processing by Tenant, (ii) all of the Landlord Biosolids generated by the operation of the WWTP which meet the quality requirements of

the Facility, which Landlord Biosolids are anticipated to be up to 55 tons per day; and (iii) such additional biosolids as the Facility may be able to accept to make full use of the Facility's capacity ("**Biosolids Processing**"). Tenant will install interconnection infrastructure to deliver Landlord Biosolids from the Landlord's anaerobic digesters in the WWTP (including digesters used by the SoCal Biomethane Facility) to the Facility and a bypass for diversion of Landlord Biosolids to a lined backup drying bed for dewatering when the Facility is not operating;

(c) The cost charged to Landlord by Tenant of processing the Landlord Biosolids pursuant to clause (ii) and clause (iii) of Section 1.3(b) shall not exceed seventy-five dollars (\$75.00) per ton ("**Landlord Processing Fee**"), subject to increase during the Term of the Lease as further set forth herein;

(d) The Facility will produce fertilizer and other soil supplements ("**Commercial Byproducts**") as a result of Biosolids Processing and Tenant will install storage and loading facilities for the delivery of Commercial Byproducts to market;

(e) The Facility will include a transfer station for the offloading of organic waste and biosolids feedstock from third parties for Organics Processing and Biosolids Processing and will have the capability to charge market rate tipping fees for the acceptance of such feedstock;

(f) The Facility will have the capacity to pretreat all wastewater discharge from Organics Processing and Biosolids Processing in accordance with Landlord's quality requirements and Landlord will have the capacity to accept all such wastewater discharge;

(g) Electrical utility service will be available pursuant to a separately metered connection from Southern California Edison, it being understood that the infrastructure for such a connection already exists as a result of separate service infrastructure installed for the SoCal Biomethane Facility;

(h) Process water, fire suppression and domestic water service will be available through the joint development by Landlord and Tenant (at shared cost) to obtain a service connection to the WWTP and the Facility from the City of Victorville or potential development of new well infrastructure and treatment facilities;

(i) Landlord will be the local permitting agency for the Project, subject to compliance with applicable federal, state and local laws, rules and regulations, and the lead agency for the purposes of environmental compliance under the California Environmental Quality Act ("**CEQA**"); and

(j) The Solar System, with appropriately sized battery storage as necessary to make the Solar System operate efficiently, will have capacity to provide for the electrical power requirements of the Facility, with such excess capacity as may be agreed upon between Landlord and Tenant to provide electrical power for the WWTP, subject to determination of the economic feasibility of construction and financing of the Solar System. It is acknowledged and understood that although the intent of Tenant and Landlord is to obtain renewable energy for the Facility and the WWTP through the installation of the Solar System, the Solar System is not a condition to moving forward with the Facility and that the final scope of the Solar System, financing arrangements and timeline for construction will be the subject of an amendment to this Lease or a separate lease/agreement.

1.4. Design Phase. Tenant and Landlord will move forward with the design phase of the Project ("**Design Phase**"), with the goal of accomplishing the following milestones within eighteen (18) months following the Effective Date:

(a) Tenant will complete a 10% design of the Project. The 10% design process will include agreement between Landlord and Tenant of the location, capacity and design of the infrastructure for the delivery of Landlord Biosolids to the Facility (“**Landlord Interconnection**”) and the plan to bypass the Facility and dewater and store for disposal Landlord Biosolids when the Facility is not functioning (“**Bypass Infrastructure**”). The agreed specifications for the Landlord Interconnection and Bypass Infrastructure will be attached to this Lease as **Exhibit E**;

(b) Based on the 10% design, Tenant will work with Landlord to identify the proposed areas within the Preliminary Site Plan that will be necessary for the siting, construction, and operation of the Facility and the Solar System (collectively, the “**Premises**”) and those corridors necessary for road and utility access to the Premises, including a paved road sufficient for truck access, a natural gas pipeline for connection to the interconnection facilities of Southwest and such other utility installations as may be necessary (the “**Easement Areas**”). Other than the Landlord Interconnection and any facilities that may be necessary to provide process and domestic water service, it is not intended that the Premises or the Easement Areas will include any of the WWTP Core and utilities and road access will be routed along the perimeter of the WWTP Core. Landlord and Tenant will jointly pursue cooperative agreements with the owner of the SoCal Biomethane Facility, Athens, SCE, the City of Victorville and the owner of the Transmission Easement, as necessary to ensure access to the Easement Areas and avoid any conflicting uses. The two primary factors in making the final determination of the Premises and the Easement Areas will be efficiency and avoidance of interference with existing operations of Landlord or Athens. The final description of the Premises and Easement Areas will be subject to the approval of Landlord, which approval will not be unreasonably withheld. Upon such approval, a map and legal description of the Premises and Easement Areas will replace the Preliminary Site Plan as Exhibit C-1 and C-2;

(c) Tenant will deliver all CEQA Documentation (as defined in Section 1.8) that is necessary for Landlord to complete its CEQA review of the Project in accordance with the requirements of Landlord;

(d) Tenant and Landlord, as applicable, will commence the application process for any permits and approvals that are required by any third party, government agency or regulatory authority with respect to the construction and operation of the Project, including any permits required for the handling, storage and processing of organic waste; and

(e) No later than the delivery of the CEQA Documentation, Tenant will confirm with Landlord whether it believes that the Project is feasible based on the Development Assumptions. If Tenant determines that a material change in the scope of the Development Assumptions is necessary as a result of its analysis, then Tenant will provide to Landlord written notice of the proposed change in scope (“**Project Change Notice**”) and Landlord and Tenant will work together in good faith to agree on a reasonable change in scope for the Project and a corresponding amendment to the Lease. If Landlord and Tenant cannot agree on a change in scope within ninety (90) days of the Project Change Notice, then either party may terminate this Lease.

1.5. **Pre-Construction Phase.** Subject to successful completion of the Design Phase as set forth in Section 1.4, Tenant and Landlord will move forward with the “**Pre-Construction Phase**” of the Project, with the goal of accomplishing the following milestones within thirty-six (36) months following the Effective Date:

(a) Tenant will complete a 30% design of the Project and will commence negotiation of contracts for the construction of the Facility and the Solar System (if applicable);

(b) Tenant and Landlord will agree on technical protocols for (i) the operation of the WWTP and use of drying beds by Landlord during the construction of the Project (“**Construction Protocols**”); and (ii) preliminary guidelines for how Landlord Biosolids will be transferred and processed by Tenant and wastewater from such processing will be treated and returned to Landlord for discharge following the commencement of operations (“**Preliminary Operating Protocols**”). Such Construction Protocols and Preliminary Operating Protocols will be attached as addenda to this Lease;

(c) Tenant and Landlord will agree on the ADM Specifications as described in Section 6.3 of this Lease;

(d) Landlord will complete the CEQA review pursuant to Section 1.9 and to the extent Landlord approves CEQA with mitigation conditions, Landlord and Tenant shall agree in writing on the schedule for the satisfaction of all such conditions. In the event that Landlord does not approve the Project pursuant to Section 1.8, then Landlord and Tenant will meet and confer on such changes to the Project as may be necessary to satisfy the requirements of CEQA and the Development Phase will be extended to allow for agreement on such changes and any appropriate mitigation conditions;

(e) Tenant and Landlord, as applicable, will file any applications with SCE or the City of Victorville which are necessary to establish electrical service for the Facility, an interconnection agreement for the Solar System and water service to the Facility and the WWTP; and

(f) Tenant and Landlord will agree on (i) the capacity reserve at the Facility to provide for processing of the Landlord Biosolids, which amount will be within the range set forth in Sections 1.3(b)(ii) and (iii) (as amended pursuant to Section 1.4(e)) unless otherwise agreed by Tenant and Landlord (“**Landlord Biosolids Capacity**”) and (ii) the final calculation of the initial Landlord Processing Fee based on reasonable projections of the construction, financing and operating costs for the completion of the Facility. If the final calculation of the initial Landlord Processing Fee exceeds the amount set forth in Section 1.3(c) by more than twenty-five percent (25%), then Landlord will have the right to terminate this Agreement.

#### 1.6. Due Diligence and Access Rights of Tenant.

(a) Due Diligence Investigation. During the Development Phase and, if applicable, the Financing Contingency Period, Tenant shall be entitled to make such investigations, examinations and studies of the Landlord Property and the Project as it deems necessary or desirable (“**Due Diligence Investigation**”), including without limitation, the right to: (i) review and approve the condition of title, tax and appraisal issues, preliminary construction issues, and land use and regulatory issues, including, without limitation, the necessity of including, as part of the Project, the development and financing of additional infrastructure to provide for the availability of sufficient potable and/or non-potable water to satisfy legal and regulatory requirements in addition to operational requirements; (ii) conduct soils tests and studies, environmental site assessments, and surveys, provided that no destructive or invasive testing will be done without the prior consent of the Landlord; (iii) evaluate the power infrastructure for installation and interconnection of a solar photovoltaic power generation system constituting the Solar System; (iv) discuss financing for the Project with potential lenders and investors (including, without limitation, such factors as optimal tax and ownership and/or leasing structures and advantages and disadvantages of power purchase agreements); and (v) determine the ability to interconnect with the Southwest natural gas pipeline, potentially by entering into a co-location agreement to share the interconnection facilities governed by the SoCal Biomethane Lease. Landlord makes no

representation or warranty concerning the suitability of Landlord Property for the uses contemplated herein, and Tenant acknowledges and agrees that it is relying solely on the Due Diligence Investigation and its own knowledge and expertise to make a determination whether to move forward with the construction of the Project at the end of the Development Phase. Landlord will cooperate with Tenant to provide requested information on the existing infrastructure of the Landlord Property. All costs and expenses associated with the Due Diligence Investigation and any other due diligence of Tenant with respect to the WWTP and its suitability for the Project shall be the sole responsibility of Tenant. Tenant shall keep the Landlord Property free and clear of any liens or encumbrances as a result of its activities conducting the Due Diligence Investigation.

(b) Indemnity and Insurance. Tenant agrees not to cause any damage to the Landlord Property during any inspections thereof. Tenant further agrees to indemnify, defend and hold Landlord harmless from and against all loss, costs, damages or expenses (including reasonable attorney's fees and expenses) or any claims therefore to the extent arising from activities of Tenant, its agents, employees and contractors, on Landlord Property. Following the completion of any physically intrusive investigation, Tenant covenants and agrees to restore the site in all respects to substantially the same condition as existed prior to the testing. The obligation of Tenant pursuant to this section shall survive any termination of this Lease. Prior to any entry upon the Landlord Property by Tenant or its agents, employees and contractors, Tenant shall deliver to Landlord a current certificate of insurance evidencing that Tenant or its contractor has in place (i) a policy of commercial general liability and automotive liability insurance which names Landlord as an additional insured against personal injury and property damage with a minimum coverage of \$1,000,000 per occurrence and \$3,000,000.00 in the aggregate; and (ii) worker's compensation coverage in the amounts required by state law for any employees that will be present on Landlord Property.

(c) Access. During the Development Phase and, if applicable, the Financing Contingency Period, Landlord shall provide Tenant and its employees, agents, consultants and contractors with access to those areas of the Landlord Property set forth in the Preliminary Site Plan, the Premises and the Easement Areas, as applicable, for the purpose of undertaking and completing the Due Diligence Investigation and any additional investigation deemed necessary or desirable by Tenant attendant to its efforts to obtain financing for the Project or preparation of the Construction Documents. To the extent Landlord desires to monitor Tenant's due diligence activities, Landlord shall make any necessary employees or agents of Landlord available on a timely basis so as not to delay Tenant's activities.

1.7. Offtake Agreement with Southwest. During the Development Phase, Tenant or the Solar Affiliate, as and to the extent applicable, shall have obtained firm commitments for obtaining an interconnection agreement with Southwest for the pipeline to delivery renewable natural gas from the Facility to Southwest's pipeline and entering into a gas purchase agreement with Southwest for the renewable natural gas to be generated from the Facility. It is expressly understood by Landlord that Tenant will not be obligated to proceed unless it obtains terms and pricing for the purchase of renewable natural gas from the Project by Southwest.

1.8. CEQA.

(a) Landlord will be the lead agency for evaluating the environmental impact of the Project under CEQA. Tenant will be responsible for the preparation of all reports and other documentation necessary for CEQA compliance, including an environmental impact report and all technical studies necessary for Landlord to properly evaluate the environmental impact of the Project (collectively, the "*CEQA Documents*") and the submission of those proposed documents to the Landlord for its independent review, as well as complying with any mitigation measures that may be required in connection with the Project.

(b) The submission of the CEQA Documents and the completion of the CEQA process and any approval by the Landlord's governing board will be a condition precedent to moving forward with the Project beyond the Development Phase, and the Parties agree that nothing herein constitutes a commitment by the Landlord to issue any such approvals or otherwise restricts the Landlord's ability to impose feasible mitigation measures or consider or adopt feasible alternatives (including the "no project" alternative) as part of its CEQA process.

(c) Tenant will reimburse Landlord for all reasonable consulting fees, staff time and resources required in connection with CEQA compliance and will reimburse such costs to Landlord within thirty (30) days of the issuance of an invoice by Landlord. Landlord will provide reasonable detail and documentation of all such costs.

(d) Tenant will indemnify and cooperate in the defense of Landlord from any claim or lawsuit which is filed challenging any approval of the Project by Landlord and/or lawsuits or enforcement actions asserting non-compliance with any of the CEQA mitigation measures. Notwithstanding the foregoing, in the event of a challenge to the approval of the Project, Landlord and Tenant will meet and confer to discuss the feasibility of defending such challenge and moving forward with the Lease. If the Parties cannot agree on a strategy to move forward, including mutually acceptable allocation of the defense costs, then either Party may terminate this Lease and Tenant may withdraw the Project. However, the obligation by Tenant to indemnify and cooperate in the defense of the Landlord shall survive any termination of this Lease or rescission of any approvals.

1.9. Termination by Landlord. If at any time during the Development Phase, the Landlord reasonably determines that the Facility will not provide a reliable long term solution for the processing of the Landlord Biosolids, then in addition to any other right of Landlord to terminate this Lease, Landlord will have the right to terminate this Lease without cause upon thirty (30) days written notice to Tenant. If Landlord exercises its right under this Section 1.9, then it will compensate Tenant for its reasonable out of pocket expenses incurred in connection with the development of the Project during the Development Phase through the date of termination by Landlord up to a maximum amount of five hundred thousand dollars (\$500,000.00).

1.10. Notice to Proceed. Upon the completion of the milestones set forth in Sections 1.4 and 1.5 and no later than the end of the Development Phase (subject to extension as set forth in this Section 1), Tenant will issue the Notice to Proceed to Landlord. The Notice to Proceed will contain a final confirmation by Tenant of the ability of the Project to proceed on the basis of the Development Assumptions (subject to any change in scope pursuant to Section 1.4(e) or Section 1.5(f)). In the event that Tenant determines that a material change in the scope of the Development Assumptions (as updated pursuant to Section 1.4(e) and 1.5(f)) is necessary in order to provide the Notice to Proceed, then Tenant will submit a Project Change Notice no later than ninety (90) days prior to the end of the Development Phase and Landlord and Tenant will work together in good faith to agree on a reasonable change in scope for the Project and a corresponding amendment to the Lease. If Landlord and Tenant agree on an amendment to the Lease, then such amendment will be deemed to satisfy the obligation of the Tenant to provide the Notice to Proceed. If Landlord and Tenant cannot agree on a change in scope within ninety (90) days of such Project Change Notice, then either party may terminate this Lease.

1.11. Financing Phase. If the Notice to Proceed has been given, or deemed to have been given pursuant to Section 1.10, prior to the expiration of the Development Phase, then the Financing Contingency Period will commence and Tenant will move forward with the process of obtaining financing for the Project and the preparation of the Construction Documents (as defined in Section 3.1). It is intended that the financing of the Project will include the issuance of private tax-exempt bonds by



Tenant for the financing of the Facility and the obligation of the Tenant to move forward with the Facility will be subject to securing the financing necessary for the construction of the Facility in a form and amount that is acceptable to Tenant, in its sole discretion (“*Financing Commitment*”). Tenant will give notice to Landlord when the Financing Commitment has closed and Tenant is prepared to move forward with the commencement of the Lease (“*Lease Commencement Notice*”). In the event that the Lease Commencement Notice is not given within the Financing Contingency Period, then either Tenant or Landlord will have the right to terminate this Lease. The financing of the Solar System by Tenant or one of its affiliates (“*Solar Affiliate*”) will further be subject to securing financing or such other contractual arrangement, such as a power purchase agreement, as may be agreed upon by Tenant, Landlord and the source of such financing. The financing of the Solar System will not be a contingency to moving forward with the Facility.

1.12 Lease Commencement. The Term of this Lease will commence as of the date of the Lease Commencement Notice (“*Commencement Date*”). Tenant shall begin construction of the Facility in accordance with the requirements of Section 3. Construction of the Solar System will commence as mutually agreed upon by Tenant and Landlord.

2. Leased Premises.

2.1. Premises. As of the Commencement Date, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, conditioned upon the terms of this Lease.

2.2. Tenant Utility Easements. Landlord hereby grants to Tenant a non-exclusive easement for the Term of the Lease to install, use, maintain and repair utility infrastructure within the Easement Area to serve electrical, water and telecommunications service to the Project. Landlord will further grant to Tenant an easement to connect to the water distribution infrastructure that is jointly developed by Tenant and Landlord pursuant to the terms of this Agreement. Tenant will cooperate with Landlord to determine the exact location for the installation of utility infrastructure within the Easement Area to avoid any conflict with existing easements and Landlord infrastructure. Landlord further agrees that it will grant individual easements to utility providers as necessary to locate utility infrastructure within the Easement Area in a form that is reasonably acceptable to Landlord and the utility provider.

2.3. Southwest Gas Pipeline Easement. Landlord hereby grants to Tenant a non-exclusive easement for the Term of the Lease to install, use, maintain and repair a pipeline between the Premises and the interconnection point with Southwest. Landlord will grant an easement to Southwest as necessary for such pipeline and interconnection infrastructure in a form that is reasonably acceptable to Landlord and Southwest.

2.4. Access and Road Easement. Landlord grants to Tenant for the benefit of Tenant and its agents, contractors and assignees, at no additional cost or expense to Tenant, a non-exclusive easement, for ingress and egress along Shay Road to and from any roadways that will be installed by Tenant within the Easement Area for access to the Premises. Access from Shay Road will be subject to reasonable security measures that Landlord may put in place along the perimeter of the WWTP and specifically including any security gate that may be installed to regulate access to Landlord Property along Shay Road. Landlord will cooperate with Tenant to ensure that such security measures do not materially interfere with Tenant’s ingress and egress along Shay Road to access the Premises.

2.5. Rights of Landlord. Subject to the rights granted to Tenant herein in the Premises and the Easement Area, Landlord will (i) continue to have the right to use and access the Premises and the Easement Area to operate, maintain, repair and replace infrastructure that is necessary for the operation of the WWTP (such retained infrastructure to be identified and agreed with Tenant as

part of the 30% design process), and (ii) further retains the right to locate infrastructure, pipelines or other utility installations across or under the Premises in the future, provided, however, that such infrastructure will be situated and constructed so as not to cause any material disruption with or interference to Tenant's use of the Premises. Landlord will notify Tenant of any such intended use and provide plans and drawings for the same for Tenant's review and comment at least sixty (60) days prior to the commencement of any construction or other installation. The area utilized by Landlord will not include any areas of the Premises upon which Tenant has erected any permanent structures or improvements. Landlord will have the right to use roadways within the Premises for access to and from areas of the Landlord Property that are not included in the Premises, subject to reasonable security requirements of Tenant. In no event will the easements granted by Landlord hereunder provide Tenant with any right to access or utilize any portion of the WWTP Core without the express written consent and agreement of Landlord.

### 3. Construction of Project: Ownership and Risk of Loss.

3.1. Approval of Construction Documents. Prior to commencing construction of the Project, Tenant, at its sole expense, shall prepare and submit to Landlord, for Landlord's review, a complete set of final designs, plans and specifications with an anticipated construction schedule of key events and their dates with respect to the Project ("**Construction Documents**"), which Construction Documents will be consistent with Section 6.1 ("**Permitted Use**") and the location of the Facility, Solar System, and ancillary facilities set forth in the final approved description of the Premises and the Easement Area. Within thirty (30) days after Landlord's receipt of any materials comprising the Construction Documents, Landlord shall have the right to notify Tenant of its disapproval of any item(s) included in said Construction Documents which do not comply with the requirements of this Lease ("**Landlord Disapproval Notice**"), which Landlord Disapproval Notice (to be effective) must be reasonable and identify with particularity the revisions that are requested by Landlord ("**Corrective Revisions**") to correct such non-compliance. If Landlord fails to timely deliver a Landlord Disapproval Notice, Landlord will be deemed to have approved the Construction Documents. If Landlord timely and properly delivers a Landlord Disapproval Notice, then Tenant and Landlord will meet and confer to discuss the Corrective Revisions and Tenant shall submit to Landlord revised Construction Documents that incorporate the Corrective Revisions, with such changes, if any, as are mutually agreed by Tenant and Landlord pursuant to such meet and confer process. Following Landlord's receipt of the revised Construction Documents from Tenant, Landlord shall again comply with the foregoing review process with respect to such revised Construction Documents until such Construction Documents are approved (or deemed approved). Tenant and Landlord shall each act promptly, reasonably and in good faith in reviewing, revising and approving the Construction Documents. Either Party shall have the right to submit the matter to the mediation (and, if necessary, judicial reference) in accordance with Section 42.4 in the event of any disputes.

3.2. Permits. Tenant is solely responsible for procuring all required building and other permits and approvals, whether governmental or otherwise, required for the construction of the Project ("**Tenant Permits**"), including without limitation, compliance with the requirements of the City of Victorville, if any.

3.3. Operating Protocols. While construction is ongoing, Tenant and Landlord will update and finalize the Preliminary Operating Protocols based on the final design of the Facility and the Construction Documents. The final approved operating protocols will govern the delivery and treatment of Landlord Biosolids and the treatment and discharge of wastewater to Landlord for the remainder of the Term, subject to changes that may be required from time to time to comply with changes in applicable law or material changes in the operation of the Facility and/or the WWTP as a result of changes in commonly accepted operating practices within the wastewater and recycling industry.

3.4. Obligations of Tenant. The construction of all facilities and improvements necessary for the Project shall be in a good and workmanlike manner and otherwise in accordance with the provisions of this Lease (including the Construction Protocols) and the Construction Documents and Tenant Permits. To the extent required by applicable law, all improvements and work must be inspected and approved by the applicable governmental agency. All work on the Landlord Interconnection and the Bypass Infrastructure will be subject to Landlord inspection and approval and any work within the WWTP Core will be carried out under the supervision of Landlord personnel or agents. Landlord will further have the right to inspect all other improvements for compliance with the Construction Documents subject to providing reasonable notice to Tenant and its contractors. Landlord will reasonably cooperate with Tenant as necessary for the application process for any permits and approvals. All of Tenant's contractors shall carry the insurance required by this Lease while working on Landlord Property and shall name Landlord as an additional insured. Tenant shall have the sole responsibility for the construction of the Project and may perform the same itself or through agents, contractors and others selected by it, and may make or issue such contracts, orders, receipts and instructions, and in general do or cause to be done all such other things, as it may in its sole discretion consider requisite or advisable for the construction of the Project and fulfilling its obligations under this Section. All improvements required or permitted by this Lease will be constructed by licensed contractors, including improvements built by Tenant or its affiliates. Each contractor that performs work on the Project for the benefit of Tenant shall be bound by the terms of this Lease related to indemnity and insurance and Tenant shall further be responsible for all acts of such contractors while working on the Premises or within the Easement Area. Upon reasonable notice, to Tenant, Landlord will have the right to enter upon and inspect all construction activities of Tenant and its contractors, provided, however, that Landlord will comply with all safety requirements in connection with the presence of its agents or employees on the Premises or in the Easement Area while construction activities are ongoing, and will not interfere with such activities.

3.5. Prevailing Wage. To the extent required by applicable law, Tenant will be responsible for complying with the prevailing wage requirements of the State of California in the construction of all improvements on the Premises or within the Easement Area and will indemnify and hold harmless Landlord for any failure to comply with such requirements.

3.6. Completion of Construction. It is anticipated that the construction of the Facility will require approximately twenty-four (24) months to complete from the Commencement Date, with another nine (9) months for the start-up, testing and commissioning of the Facility. The date upon which the Facility is ready to commence commercial operations shall be referred to herein as the "**Commercial Operations Date**". For the purposes of this Lease, "**commercial operation**" shall mean that the commissioning process for the Facility is complete and the Facility is ready to accept Landlord Biosolids for regular processing. The Commercial Operations Date shall occur within thirty-six (36) months of the Commencement Date, subject to delays which are beyond the reasonable control of Tenant. Tenant shall promptly notify Landlord of the cause of any such delays and the impact on the construction schedule and subject to Landlord's verification that the cause was beyond the reasonable control of Tenant, the Commercial Operations Date will be extended. Tenant will actively manage the construction of the Project and the failure of Tenant's contractor(s) to complete work in accordance with their obligations under any contracts for the construction of the Project will not be a delay beyond Tenant's control. In the event of a delay in the Commercial Operations Date, then Tenant will work with Landlord in good faith to provide an alternative solution to Landlord for the processing and disposal of the Landlord Biosolids until such time as the Facility achieves commercial operation, including the potential transportation of Landlord Biosolids to the facility operated by Tenant's affiliate in Rialto, California. The cost of such alternative disposal to Landlord will not exceed one hundred fifty percent (150%) of the Landlord Processing Fee and Tenant will be responsible for any cost of alternative disposal in excess of that amount. If such delay continues for a period in excess of twelve (12) months, then Landlord shall be entitled to deliver a notice of default to Tenant. If commercial operation has not occurred within six (6)

months following the date of such notice of default or Tenant does not thereafter undertake alternative disposal of Landlord Biosolids for the amount of the Landlord Processing Fee, then Landlord may terminate the lease. Tenant will deliver the following documents to Landlord promptly after the Facility and the Solar System have completed construction: (i) copies of the “as built” plans for the Facility and the Solar System, including CAD drawings if requested by Landlord; (ii) final lien waivers and all permits, certificates, and sign-offs required to be issued by applicable governmental agencies in connection with the Tenant Permits; and (iii) if applicable, any temporary or permanent certificate of occupancy issued with respect to the Facility.

3.7. Ownership and Risk of Loss. During the Term, Tenant shall at all times remain the owner of the Project and all improvements, facilities and equipment used therein. Tenant shall bear the risk of loss of the Project as a result of any casualty that is not the result of the negligence or willful misconduct of Landlord, its employees and contractors. Landlord warrants and represents that it shall keep the Premises free from all liens, claims and encumbrances of its lenders and any other third parties (other than those created by Tenant or its creditors). Tenant shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the Facility and the Solar System in order to protect its rights therein. The Facility and the Solar System shall be clearly marked and identified as being the property of the Tenant. At the end of the Term, all improvements, equipment and facilities constructed or installed by Tenant shall become the property of Landlord in accordance with the provisions of Section 25.

#### 4. Term.

4.1. The “**Term**” of this Lease will be that period of time commencing upon the Commencement Date and continuing, subject to extension as provided in Section 4.2, until the twentieth (20<sup>th</sup>) anniversary of the Commercial Operations Date, provided, however, that in no event will the aggregate Term of this Lease with renewals exceed thirty-four (34) years.

4.2. Tenant may extend the Term of this Lease for two (2) additional five (5) year periods (each, a “**Renewal Term**”) upon the terms set forth herein. Unless Tenant, in its sole discretion, provides notice to Landlord as least ninety (90) days prior to the then-current Expiration Date that Tenant elects not to extend the Term beyond the then-applicable Expiration Date, then, provided that no Event of Default exists as of the such then-applicable Expiration Date, this Lease shall renew, and the Term shall automatically extend for the initial (or, if applicable, final) Renewal Term, without any further action by the parties, and without the necessity of the parties executing any additional agreements or instruments.

4.3. The last day of the Term is referred to herein as the “**Expiration Date**”.

#### 5. Rent.

5.1. Rent. Tenant will pay rent for the use of the Premises in the form of the Base Rent, Solar Energy, and Host Fees (collectively, the “**Rent**”).

5.2. Base Monthly Rent. During the period from the Commencement Date to the Expiration Date, Tenant will pay to Landlord as basic monthly rent for the Premises the sum of Twenty Thousand Dollars (\$20,000.00) per month (“**Basic Rent**”).

5.3. Electrical Generation. Based on the Due Diligence Investigation and taking into consideration the scope and financing structure of the Solar System, the Parties shall negotiate in good faith, and incorporate (or cause to be incorporated) into this Lease (or, if applicable, into any separate

lease relating to the Solar System), Tenant's (or, if applicable, the Solar Affiliate's) obligations for the provision to Landlord all or a portion of the electrical energy generated by the Solar System in excess of the energy necessary to operate the Project up to the total aggregate daytime demand of Landlord at the WWTP ("**Solar Energy**"). To the extent that the Solar System generates electrical energy in excess of the demand from the Project and the amount agreed to be provided to the WWTP, then Tenant and/or the Solar Affiliate shall be free to store such energy using battery storage for later discharge to the Project and the WWTP during evening hours or export such excess electrical energy to the grid pursuant to an interconnection agreement with SCE. Tenant and/or the Solar Affiliate will be entitled to all credits and/or payments received from SCE as a result of such exports. As of the Effective Date, Tenant makes no assurances to Landlord regarding the ability of the Solar System to produce sufficient Solar Energy in excess of the energy necessary to operate the Project to cover Landlord's entire aggregate daytime demand.

5.4. Host Fees. As host fees for the use of the Premises (collectively, "**Host Fees**"), Tenant will further pay to Landlord, during the portion of the Term commencing on the Commercial Operations Date, an amount equal to the sum of (a) \$2.00 per inbound ton of organic waste and biosolids received by Tenant from third parties for processing at the Facility (the "**Tipping Fee Component**"), plus (b) 5% of the net proceeds received by Tenant from the sale of biochar (the "**Biochar Component**"), which net amount will be calculated by taking the actual gross receipts (excluding shipping costs and sales taxes) received by Tenant from sales of biochar and deducting therefrom the direct costs associated with the production of biochar, as calculated on a cost per ton basis. Tenant will provide to Landlord, on an annual basis, a calculation in reasonable detail of the cost per ton for the production of biochar. Tenant makes no assurances regarding the aggregate Host Fees payable to Landlord that will be generated pursuant to this Section 5.4.

5.5. Escalation of Rent; Other Adjustments.

(a) During the Term, (i) Basic Rent shall be adjusted annually, after the Commencement Date, on the first day of the first calendar month to begin after each anniversary of the Commencement Date; and (ii) the Tipping Fee Component shall be adjusted annually, after the Commercial Operations Date, on the first day of the first calendar month to begin after each anniversary of the Commercial Operations Date (each a "**Rent Adjustment Date**").

(b) With respect to each Rent Adjustment Date, the basis for computing the adjustment shall be percentage by which the tipping fees payable to Tenant per inbound ton of organic waste and biosolids, as determined by Tenant in good faith in accordance with the terms of its contracts with its third-party sources of feedstock and notified to Landlord ("**Fee Per Ton**"), have increased over the payable to Tenant for the month ending on the date that one and one day prior to the Rent Adjustment Date (as applicable to any Adjustment Date, "**Beginning Rate**"). If the Fee Per Ton for the month immediately preceding the Rent Adjustment Date ("**Extension Rate**") has increased over the Beginning Rate, the Basic Rent or Tipping Fee Component as of the Adjustment Date, as applicable, shall be set by multiplying the Basic Rent or Tipping Fee Component applicable during the month immediately prior to the Rent Adjustment Date by a fraction, the numerator of which is the Extension Rate and the denominator of which is the Beginning Rate. If the Extension Rate does not exceed the Beginning Rate, then Basic Rent or Tipping Fee Component, as the case may be, shall remain unchanged until the next Adjustment Date.

(c) If, during the term, changes in market conditions affecting the components of the Host Fees change to a material extent, the Parties may discuss additional changes to the amount or manner of determination of the Host Fee, and, if agreement is reached, the incorporation of such changes into this Lease by amendment.

5.6. Payments/Delivery of Solar Energy to Landlord. All Basic Rent due under this Lease shall be payable in advance on the first day of each month. If the Commencement Date falls on a day other than the first day of the month, then the Basic Rent for the first month following such date will be prorated based upon the number of days in such month and paid within ten (10) working days following the Commencement Date. If the Term of this Lease expires on a day other than the end of a month, the payment of Basic Rent for the last partial month of the Term hereof will be prorated on such basis. All Host Fees will be payable within thirty (30) days of the end of each calendar quarter during the Term and will be accompanied by a written statement showing the source and calculation of the Host Fees for such quarter. Landlord will have the right to audit the amount of the Host Fees once during each calendar year by giving written notice to Tenant and Tenant will make its applicable books and records available to Landlord and its agents during normal business hours. Landlord will bear the cost of such audit unless Tenant is found to have underpaid the Host Fees by an amount in excess of three percent (3%) of the Host Fees due, in which case Tenant will reimburse Landlord for all costs of the audit. Tenant must pay all Rent to Landlord in lawful money of the United States of America at the address indicated in Section 26, or to such other person or at such other place as Landlord may from time to time designate in writing. Solar Energy will be delivered to Landlord as generated by the Solar System on such basis, in such quantities, and with such consequences for breach of Tenant's and/or the Solar Affiliate's obligations with respect to the delivery of Solar Energy, as are mutually agreed by Landlord and the relevant party(ies) and, as applicable, incorporated into this Lease and/or the separate lease relating to the Solar System, in accordance with Section 5.3.

6. Use of the Premises.

6.1. Permitted Use. Tenant will have the right to use the Premises for the construction, installation, operation, maintenance, repair and replacement of facilities to undertake the following activities (i) the collection and processing of organic waste through anaerobic digestion and dewatering to create renewable natural gas and soil additives; (ii) the delivery of renewable natural gas via pipeline to Southwest Gas; (iii) the collection and processing of biosolids through drying and/or pyrolysis to create biochar for use as a fertilizer; (iv) treatment of all effluent from the processing of organic waste to provide industrial pre-treatment in compliance with the requirements of Landlord for the discharge of effluent to Landlord's wastewater system; (v) operation of a truck receiving station for the delivery of feedstock to the Facility and storage and loading facilities for the shipment of solids products; (vi) generation of solar energy for primary use at the Facility and the WWTP through the operation of a solar photovoltaic generation plant and delivery of electricity to SCE; and (vii) such ancillary activities as are reasonable and necessary to carry out the foregoing.

6.2. Gas Monitoring and Management. Tenant will be responsible for monitoring and managing the flow of renewable natural gas within the gas collection system at the Facility. If Tenant determines that storage facilities for renewable natural gas are necessary to optimize production or operation, then Tenant may submit a plan to Landlord to build such storage on or around the Premises. The storage plan will be subject to review and approval by Landlord, which approval will not be unreasonably withheld, conditioned or delayed, provided that such storage does not create a material risk to health or safety on Landlord Property and that space for storage is reasonably available without disrupting Landlord operations. Tenant will be responsible for all costs and permitting required to build and operate such storage facilities.

6.3. ADM Processing. Landlord accepts anaerobically digestible material ("*ADM*") for processing within the anaerobic digesters located at the WWTP, including the digesters which are used in connection with the SoCal Biomethane Facility ("*Digesters*"). Landlord anticipates that the demand for processing of ADM which is generated within the Landlord's service area ("*Regional ADM*"), as it exists on the Effective Date, will exceed the capacity of its Digesters. Regional ADM

which meets the quality requirements (including, without limitation, requirements intended to preserve the availability of environmental credits at an economically acceptable level) that are developed by Tenant and Landlord during the Development Phase and set forth on *Exhibit "F"* ("*ADM Specifications*") can be used as a feedstock for Organics Processing at the Facility. Following the Commercial Operations Date, Tenant agrees to accept Regional ADM that meets the ADM Specifications and is in excess of what Landlord can process at the Digesters and Tenant agrees that such Regional ADM will have priority for processing at the Facility over ADM that is generated outside of Landlord's service area. Tenant will be entitled to tipping fees from the processing of excess Regional ADM that is diverted to the Facility. Notwithstanding the foregoing, Tenant will have the right to separately contract for the acceptance of excess Regional ADM as a feedstock for Organics Processing at the Facility and ADM generated outside of Landlord's service area as it exists on the Effective Date.<sup>1</sup> Furthermore, to the extent that Tenant has excess ADM feedstock that meets the ADM Specifications and Landlord has capacity in its Digesters, Landlord agrees to accept such excess ADM for processing by Landlord and Landlord will be entitled to the tipping fees for such ADM, provided, however, that as the generation of products from the treatment of ADM is a material part of this Lease, the intention is that the use of the Digesters for such processing will only be invoked on a temporary or emergency basis from time to time. Landlord and Tenant may enter into a separate agreement whereby Tenant will procure and manage the delivery of Regional ADM for processing in Landlord's Digesters, in which case such agreement will control the scheduling, storage, processing and revenue sharing with respect to tipping fees from ADM.

#### 6.4. Biosolids Processing.

(a) Each year during the Term, Tenant will accept from Landlord and Landlord will deliver to Tenant all of the Landlord Biosolids up to the Landlord Biosolids Capacity for Biosolids Processing by Tenant, subject to compliance with all of the federal, state and local permitting and other legal requirements applicable to the operation of the WWTP and the Facility. Landlord will not be obligated to deliver Landlord Biosolids to Tenant for processing in excess of the Landlord Biosolids Capacity. Landlord will notify Tenant at the beginning of each year during the Lease Term commencing on the Commencement Date whether it anticipates using the entire Landlord Biosolids Capacity for the following year. To the extent that Landlord does not anticipate using the entire Landlord Biosolids Capacity in any given year, then Tenant will have the right to allocate such unused capacity for processing of biosolids for other customers. If Landlord delivers less than ninety percent (90%) of the anticipated volume of Landlord Biosolids for a period of three (3) years or more as a result of decreased demand at the WWTP, then Tenant will have the right to reduce the Landlord Biosolids Capacity to the average volume delivered over such period until such time as Landlord can demonstrate that it requires the full Landlord Biosolids Capacity to meet actual demand. Landlord will have the option to decrease or release the Landlord Biosolids Capacity at any time upon one hundred eighty (180) days written notice to Tenant, provided, however, that upon exercising such option, Landlord will thereafter be subject to the Excess Capacity Processing Fee (as defined below) for all Landlord Biosolids delivered to Tenant in excess of the adjusted Landlord Biosolids Capacity and only to the extent that Tenant has such capacity available.

(b) Landlord will pay the Landlord Processing Fee for the processing of Landlord Biosolids. Any Landlord Biosolids in excess of the Landlord Biosolids Capacity will be subject to the most favorable rate provided by Tenant to its other processing customers ("*Excess Capacity Processing Fee*").

(c) The Landlord Processing Fee shall be adjusted annually, after the Commercial Operations Date, on the first day of the first calendar month to begin after each anniversary

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<sup>1</sup> E.g., wet fraction.

of the Commercial Operations Date (each a “*Landlord Fee Adjustment Date*”). The Landlord Processing Fee will be subject to increase effective each Landlord Fee Adjustment Date based on the *lesser* of:

(i) the increase in Tenant’s actual cost to operate and maintain the Facility during the one-year period ending on such Landlord Fee Adjustment Date, not including administrative overhead, determined by dividing the amount of such increase by the total operating capacity of the Facility and then allocating to Landlord that portion thereof based on the proportion of the Landlord Biosolids Capacity to the total operating capacity of the Facility to determine the increased cost of processing per ton. (For example, if the Landlord Biosolids Capacity is 10% of the total operating capacity of the Facility, then 10% of the increase in operating costs will be allocated to Landlord Biosolids Capacity on a per ton basis); and

(ii) (A) Subject to the following subparagraph (B), the increase, if any, in the Consumer Price Index, all urban wage earners, Riverside-San Bernardino-Ontario metropolitan statistical area (December 2017=100) published by the United States Department of Labor, Bureau of Labor Statistics (“*Index*”) which is published for the month ending on the date that is one year and one day prior to the Landlord Fee Adjustment Date (as applicable to any Landlord Fee Adjustment Date, “*Beginning Index*”). If the Index published for the month immediately preceding the Landlord Fee Adjustment Date (“*Extension Index*”) has increased over the Beginning Index, the Landlord Processing Fee as of the Landlord Fee Adjustment Date shall be set by multiplying the Landlord Processing Fee applicable during the month immediately prior to the Landlord Fee Adjustment Date by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. If the Extension Index does not exceed the Beginning Index, then the Landlord Processing Fee shall remain unchanged until the next Adjustment Date.

(B) If the Index has changed so that the base year differs from that used as of the date hereof, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this Lease, such other Government Index or computation with which it is replaced shall be used in order to obtain substantially the same result as would have been obtained had the Index not been discontinued or revised.

(c) On an annual basis starting with the Commercial Operations Date, Tenant will notify Landlord of any scheduled downtime for maintenance or repair of the Facility in the upcoming year and will work with Landlord to minimize the disruption to the processing of Landlord Biosolids during such periods. Furthermore, Tenant will promptly notify Landlord of any unscheduled occurrence which requires the Facility to be taken offline and the anticipated duration of the occurrence. During any scheduled or unscheduled downtime at the Facility, Landlord Biosolids will be diverted to the Bypass Infrastructure for dewatering and disposal in accordance with the Operating Protocols. If such occurrence is for a period in excess of [ ] days, then Tenant will be responsible for either providing an alternative method for disposal of Landlord Biosolids or if Tenant does not provide such alternative, then reimbursing Landlord for the reasonable cost to Landlord to dispose of such Landlord Biosolids.

6.5. Environmental and Tax Credits. Tenant may apply for all environmental and tax credits that are available in connection with the production of renewable natural gas and any other product produced by the Facility that qualifies for such credits, and will own all such credits. Tenant shall further own all environmental and tax credits associated with the Solar System, except for any greenhouse gas credits that may be available to Landlord in connection with use of the Solar Energy.



7. Tenant Operations and Improvements.

7.1. Covenants of Tenant. Tenant will comply with the following covenants and obligations in connection with its operations on the Premises:

(a) Legal Compliance. Tenant will comply with all Tenant Permits and all federal, state and local laws, rules and regulations applicable to the activities of Tenant on the Premises.

(b) Mitigation. Subject to Tenant's rights of termination at any time prior to the Commencement Date, Tenant covenants that it will comply with all mitigation requirements that are imposed in connection with the approval of CEQA as conditions to the approval of the Project and any additional mitigation that is required pursuant to the Tenant Permits.

(c) Environmental Testing. Tenant agrees to allow Landlord to conduct safety and environmental testing at the Premises no less than once every calendar year. Such testing may include, but shall not be limited to, testing the integrity of the Facility for containment of biogas and biomethane, air sampling, soil samples and water quality samples. Landlord shall bear the costs of such testing. Tenant agrees to provide Landlord reasonable access to conduct any such testing, subject to reasonable notice given to Tenant. Landlord also agrees to share with Tenant the results of any testing conducted at the Premises, including any testing required under Tenant's current permits. Tenant further acknowledges that the Premises contain monitoring wells to monitor the movement of contaminants downslope from the former George Air Force Base and Tenant will not interfere with and will allow access to such wells in accordance with the provisions of Section 2.5.

8. Deliverv of Premises; Condition "AS-IS". Landlord shall deliver possession of the Premises to Tenant upon the Commencement Date free of any known defective, dangerous or unsafe conditions. Tenant acknowledges that Tenant has had an adequate opportunity to fully inspect the Premises and determine its suitability for Tenant's purposes. Except as set forth herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the availability of utilities or other services to the Premises, permits or other governmental approvals, the condition of the Premises or the suitability of the Premises for Tenant's business. Tenant additionally acknowledges that, Landlord shall not have any obligation for securing or protecting the Premises during that portion of the Term of this Lease following delivery of possession of the Premises to Tenant, and that neither Landlord nor any agent of Landlord has made any representation with respect to the safety or security of the Premises for Tenant's business. Tenant shall be solely responsible for providing adequate security and protection of the Premises during that portion of the Term of this Lease following delivery of possession of the Premises. Subject to (and without limiting in any respect) the representations, warranties, covenants and obligations of Landlord set forth herein, Tenant is accepting and leasing the Premises in its current condition, "as-is".

9. Liens.

9.1. Subject to the provisions of Section 9.2 below, Tenant will keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by Tenant. Landlord has the right to post and keep posted on the Premises any notices that may be provided by law or which Landlord may deem to be proper for the protection of Landlord from such liens.

9.2. Tenant has the right to contest the validity or amount of any lien or claimed lien, if Tenant takes all steps necessary to prevent any sale, foreclosure or forfeiture of the Premises or any portion thereof by reason of such nonpayment. On final determination of the lien or claimed lien, Tenant

must immediately pay any judgment rendered with all proper costs and charges and have the lien or claimed lien released or judgment satisfied at Tenant's expense.

#### 10. Landlord Encumbrances.

10.1 As of the date of execution of this Lease, neither the Landlord Property nor Landlord's interest or estate therein, or any portion thereof, is subject to any Encumbrance as security for any debt or other obligation of Landlord. Furthermore, except for the leases for the SoCal Biomethane Facility and the Athens Facility, there are no Encumbrances on the Landlord Property other than those existing easements, rights of way and other Encumbrances that are of record as of the Effective Date ("**Existing Encumbrances**"). The word "**Encumbrance**" as used in this Section 10.1 is an all-inclusive term referring to: (a) a deed of trust, mortgage, and/or other security device, including the note and/or obligation that is secured thereby; (b) easements of any kind or nature, including, without limitation, grants of rights of way; (c) leases, tenancy and rental agreements, including, without limitation, ground leases; (d) reservations of rights; and/or, (e) declarations of covenants, conditions and restrictions. Landlord agrees to work with Tenant to obtain a cooperative agreement with the holder of the Transmission Easement and Southwest to ensure that all existing easements within the Easement Area can be accessed and utilized without any conflict between the holders of such easements.

10.2 This Lease will be prior to any Encumbrance entered into and/or recorded after the date of this Lease affecting all or part of the Premises or Easement Area.

10.3 Landlord will have the right, at any time during the Term, to issue bonds and enter into such other financing arrangements as are necessary or appropriate for a joint powers authority (including lease and lease-back arrangements) in order to finance the ongoing operation, maintenance and repair of the WWTP ("**Landlord Financing**"). To the extent that any Landlord Financing requires this Lease be subordinate to any Encumbrance that is entered into by Landlord to secure such Landlord Financing, then this Lease will be subordinate to that Encumbrance as long as the Encumbrance does not adversely affect Tenant's rights under or in this Lease, or the rights of any Leasehold Mortgagee (as defined in Section 11), in any manner whatsoever, in each case, as determined by the affected party. Such subordination will be conditioned on the holder of any such Encumbrance entering into a written subordination and non-disturbance agreement on terms that are reasonably acceptable to Landlord, Tenant and such holder which expressly provides that any action taken by the holder in connection with such Encumbrance will not affect or disturb Tenant's rights or the rights of any Leasehold Mortgagee under this Lease.

#### 11. Leasehold Mortgages.

11.1. Landlord understands and agrees that Tenant shall be financing the construction of the Project and using the assets of the Facility, including its material contracts, as collateral or other security. Tenant shall have the right, without Landlord's consent, to execute and deliver financing obligations encumbering or mortgaging the Lease and the leasehold estate and allowing such provider of financing to have a lien on and/or security interest in, the Lease and leasehold estate (such encumbrance or mortgage, however created, a "**Leasehold Mortgage**," and any provider of such financing, however such lien and/or security interest is created, as well as any successor or assign of such provider, a "**Leasehold Mortgagee**"). Landlord shall reasonably cooperate with Tenant with respect to any such financing, and shall provide reasonable and customary documentation in connection with a Leasehold Mortgage, provided, however, that no such documentation will require Landlord to agree to any material modification of its rights or obligations under this Lease except as expressly set forth in Section 12. Any Leasehold Mortgagee shall expressly agree in writing that should such Leasehold Mortgagee or another designee be actually assigned the Lease, as a result of a default by Tenant under the terms of the

applicable Leasehold Mortgage or any related document or otherwise, such Leasehold Mortgagee or the designee shall agree, subject to Section 12 and to the terms of any agreement entered into for the benefit of such Leasehold Mortgagee, to be bound by all the terms specified in the Lease.

11.2. Upon Landlord being notified of the making of any Leasehold Mortgage in accordance with Section 12, Landlord agrees that (i) Landlord shall give any Leasehold Mortgagee or other secured party simultaneous notice of any default by Tenant hereunder, and such party shall have the same period after service of such notice, as well as such additional period or periods as are specified in Section 12, to remedy the default, and Landlord shall accept such performance as if the same had been done by Tenant, and (ii) Landlord shall execute reasonable documentation, including standard and customary estoppel certificates, acknowledging the above rights of, and those rights accorded under Section 12 to, any Leasehold Mortgagee and granting to such party reasonable notice of any default hereunder and an opportunity to cure the same as may be requested by Tenant.

12. Leasehold Mortgagee Protections.

12.1. Notice to Landlord. Tenant shall give Landlord prompt notice of each Leasehold Mortgage and related documents, together with address and contact information for notices to the Leasehold Mortgagee (a "**Lender Notice**").

12.2. Notice to Leasehold Mortgagee. In the event of any default by Tenant hereunder, Landlord shall send to each Leasehold Mortgagee for which Landlord has received address information, in the manner provided by the notice provisions of this Lease, a copy of each notice of default sent by Landlord to Tenant, at the time that Landlord sends such notice of default to Tenant or promptly thereafter. No such notice of default given by Landlord to Tenant shall be effective as against the Leasehold Mortgagee unless and until a copy of such notice shall have been so sent to each such Leasehold Mortgagee at the last address furnished to Landlord. Notice to a Leasehold Mortgagee shall be deemed given on the date delivered (or attempted to be delivered) to such address. The Leasehold Mortgagee shall have the right, but not the obligation (except as provided in the next section), to cure such default or to cause such default to be cured, within the time periods set out in Section 12.3.

12.3. Lender Cure of Event of Default. Landlord shall not exercise any right to terminate this Lease following an Event of Default if:

(a) As to an Event of Default arising out of a monetary default, the Leasehold Mortgagee cures such monetary default on or before the date that is thirty (30) days after the later of (i) the date by which such monetary default is required to be cured by Tenant under the terms of this Lease and (ii) the date Leasehold Mortgagee is given notice of such monetary default (a "**Monetary Default Notice**").

(b) As to an Event of Default arising out of a non-monetary default that involves a regulatory violation in respect of which any regulatory authority has required immediate action or would result in any adverse regulatory action against Landlord or a default that materially impacts the normal operation of the WWTP (such as the suspension of processing of Landlord Biosolids) (a "**Material Non-Monetary Default**"), Landlord receives written notice from the Leasehold Mortgagee no later than fifteen (15) days after the later of (i) date by which such Material Non-Monetary Default is required to be cured by Tenant under the terms of this Lease, and (ii) the date on which Leasehold Mortgagee is given Landlord's notice of such non-monetary default (the "**Notice of Material Non-Monetary Default**"), that Leasehold Mortgagee agrees to remedy such default, and Leasehold Mortgagee thereafter diligently performs such obligation to cure the non-monetary default.

(c) As to an Event of Default arising out of any non-monetary default other than one addressed in the preceding subparagraph (b), (i) Landlord receives written notice from the Leasehold Mortgagee no later than thirty (30) days after the later of (i) date by which such non-monetary default is required to be cured by Tenant under the terms of this Lease, and (ii) the date on which Leasehold Mortgagee is given Landlord's notice of such non-monetary default (the "**Notice of Non-Monetary Default**"), that Leasehold Mortgagee agrees to remedy such default, and (ii) the Leasehold Mortgagee timely cures such default on or before the date that is the later of (A) sixty (60) days after the date such default is required to be cured by Tenant under the terms of this Lease, and (B) sixty (60) days after the date Leasehold Mortgagee is given notice of such default; provided, however, that if any such non-monetary default is not capable of being remedied by the Leasehold Mortgagee within such time period, Leasehold Mortgagee shall have such greater period of time as is necessary to cure such default if Rent is paid timely and Leasehold Mortgagee shall (x) commence to remedy the default within such sixty (60) day period and shall diligently continue to prosecute such cure to completion, or (y) if possession of the Premises is required in order to cure such default, institutes judicial or non-judicial foreclosure proceedings within such sixty (60) day period and diligently prosecutes such proceedings in order to obtain possession directly or through a receiver, and, upon obtaining such possession, commences promptly to cure the default and diligently prosecutes the same to completion, provided that, during the period in which such action is being taken and any foreclosure proceedings are pending, all of the payment obligations of Tenant and other obligations of Tenant under this Lease that can be performed by Leasehold Mortgagee are performed by Leasehold Mortgagee.

(d) If a non-monetary default, or any Event of Default arising from Tenant's inability to cure a non-monetary default, is of such a nature that it cannot be cured by Leasehold Mortgagee (a "**Personal Default**"), such as, for example, the bankruptcy of Tenant, and if Leasehold Mortgagee succeeds Tenant to the position and obligations of Tenant hereunder in accordance with the terms of the Leasehold Mortgage and this Lease and executes an instrument or new lease as contemplated by this Section 12, Landlord shall not terminate this Lease solely by reason of such Event of Default unless the Leasehold Mortgagee consents in writing to such termination.

12.4. Leasehold Mortgagee Liability. Subject to the preceding Sections of this Section 12, no Leasehold Mortgagee shall become liable under the provisions of this Lease, or any lease executed pursuant to this Section 12, unless and until such time as it becomes, and then only for as long as it remains, the successor tenant under the leasehold interest created by this Lease or under a new lease entered into by the Leasehold Mortgagee or its designated Affiliate or successor ("**New Lease**"). No Leasehold Mortgagee or its designated Affiliate or successor shall have any personal liability under this Lease except to the extent of its interest in this Lease as a successor Tenant or in a New Lease, plus the limits of insurance or security provided under this Lease or a New Lease, and without prejudice to or impairment of any right or interest of Landlord in any performance or payment security or policies of insurance, even if it becomes Tenant or assumes the obligations of Tenant under this Lease.

12.5. No Obligation to Cure. Notwithstanding anything contained herein, a Leasehold Mortgagee has no obligation to cure any default by Tenant or Event of Default under this Lease.

12.6. New Lease. If this Lease is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditors' rights or is otherwise terminated for any reason other than (a) termination upon expiration of the Term, or (b) the Leasehold Mortgagee's affirmative election not to cure the Event of Default upon which such termination is based, evidenced by written notice by the Leasehold Mortgagee to Landlord to that effect delivered during the applicable period for cure by the Leasehold Mortgagee set forth above, Landlord shall give notice thereof to each Leasehold Mortgagee whose contact information Landlord has received in a Lender Notice, in the manner provided by the notice provisions of this Lease. Such notice shall include an itemization of Event of Default or other

reason for the termination of this Lease. Landlord, upon written request of any such Leasehold Mortgagee (or if more than one Leasehold Mortgagee makes such request, the Leasehold Mortgagee whose Leasehold Mortgage has the most senior lien as determined by Landlord on the basis of a mortgagee title insurance policy or title certificate issued by a title insurance company doing business within the State of California), made within thirty (30) days after the giving of such notice by Landlord, without obligation or liability to any other Leasehold Mortgagee or Tenant, shall promptly execute and deliver to such Leasehold Mortgagee a New Lease of the Premises, naming such Leasehold Mortgagee or its designee as the tenant, for the remainder of the Lease Term upon all of the terms, covenants, and conditions of this Lease except for such provisions that must be modified to reflect such termination, rejection or disaffirmance and the passage of time, if such Leasehold Mortgagee shall pay to Landlord, concurrently with the delivery of such New Lease (subject to the offset in Section 12.7, if applicable), all unpaid Rent and any other amounts due under this Lease up to and including the date of the commencement of the term of such New Lease. Leasehold Mortgagee or its designee shall execute and deliver to Landlord such New Lease within thirty (30) days after delivery of such New Lease by Landlord to Leasehold Mortgagee. Upon execution and delivery of such New Lease, Leasehold Mortgagee shall cure or cause to be cured all Events of Default (other than Personal Defaults) specified by Landlord which are capable of being cured by such Leasehold Mortgagee or its designee promptly and with diligence after the delivery of such New Lease. Any new or replacement lease, or this Lease if assumed by a Lender, shall be assignable by a Leasehold Mortgagee in accordance with the terms of this Section 12. A New Lease and the leasehold estate thereby created shall, subject to the terms and conditions of this Lease, have the same priority as this Lease with respect to any mortgage of the Premises or any leasehold interest therein or any other Lien, charge or encumbrance thereon, whether or not the same shall then be in existence. Landlord at no cost, expense or fee to Landlord, shall execute any instruments reasonably necessary to maintain such priority after receipt of Tenant's request therefor. Concurrent with the execution and delivery of such New Lease, Landlord shall pay to the tenant named in the New Lease any moneys (including insurance and condemnation proceeds) then held by Landlord (and/or a Depository or Fee Lender) that would have been payable to Tenant had this Lease not been terminated, less any costs, expenses or fees incurred by Landlord in connection with enforcement of the terms hereof. With respect to any moneys held by Landlord under the terms of this Lease that would not be payable to Tenant if this Lease had not been terminated, Landlord shall continue to hold, and to disburse, such moneys in accordance with the terms of this Lease and any applicable subordination and non-disturbance agreement.

12.7. Bankruptcy. Landlord's agreement to enter into a New Lease with a Leasehold Mortgagee under Section 12.6 shall be unaffected by the rejection of this Lease in any bankruptcy proceeding by either Landlord or Tenant. In addition, in the event of any bankruptcy proceeding by Landlord:

(a) Tenant shall not have the right to treat this Lease as terminated except with the prior written consent of all Leasehold Mortgagees; and the right to treat this Lease as terminated in such event shall be deemed assigned to each and every Leasehold Mortgagee, whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Tenant and each Leasehold Mortgagee shall be required as a condition to treating this Lease as terminated in connection with such proceeding, and

(b) If this Lease is not treated as terminated in accordance with the preceding provision, then this Lease shall continue in effect upon all the terms and conditions set forth herein, but excluding requirements that are not then applicable or pertinent to the remainder of the term hereof. Thereafter, Tenant or its successors shall be entitled to any offsets against Base Rent and other amounts payable hereunder for any damages arising from such rejection, and no such offset properly made shall be deemed a default under this Lease. The lien of any Leasehold Mortgage then in effect shall extend to the

continuing possessory rights of Tenant following such rejection with the same priority with respect to each such Leasehold Mortgage as it would have enjoyed had such rejection not taken place.

12.8. Lease Amendment. If one or more Leasehold Mortgages is in effect, then, without each Leasehold Mortgagee's consent, (i) no provision in this Lease affecting the rights of any Leasehold Mortgagee or material to the value or utility of this Lease as security for the obligations owed to any Leasehold Mortgagee (including, without limitation, the Term, the definition of the Premises, and any economic provision of this Lease) shall be modified or amended in any manner adverse to such Leasehold Mortgagee, nor shall this Lease be terminated, by the Parties hereto except as provided for in Section 11 or this Section 12, (ii) the Premises shall not be surrendered by Tenant, and (iii) Landlord shall not accept any such surrender of this Premises by Tenant. Notwithstanding the foregoing, (x) this Lease may be terminated by the Parties, and the Premises surrendered by Tenant in connection with such termination, in connection with a casualty or condemnation in accordance with the terms of this Lease, and (y) Landlord may terminate this Lease by reason of an Event of Default in accordance with the terms and conditions of this Lease, subject to the Leasehold Mortgagee's rights under this Section 12. If a Leasehold Mortgagee becomes the owner of the Leasehold Interest hereunder, such Leasehold Mortgagee shall not be bound by any modification, amendment, or termination of this Lease made subsequent to the date of its Leasehold Mortgage and for which such Leasehold Mortgagee's approval was required that was not approved by Leasehold Mortgagee, and delivery to Landlord of the Lender Notice except for (A) a termination effected in connection with a casualty or condemnation in accordance with the terms of this Lease, and (B) a termination occurring by reason of an Event of Default in accordance with the terms and conditions of this Lease, subject to the Leasehold Mortgagee's rights under this Section 12. If Landlord or Tenant initiates any appraisal, arbitration, litigation, or other dispute resolution proceeding affecting this Lease, then the parties shall simultaneously notify each Leasehold Mortgagee. Unless Leasehold Mortgagees shall notify Landlord to the contrary, no settlement shall be effective without each Leasehold Mortgagee's consent.

12.9. Foreclosure or Sale. Notwithstanding any provision of this Lease to the contrary, foreclosure of a Leasehold Mortgage or any sale of Tenant's interest in this Lease in connection with a foreclosure, whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage, or any conveyance of Tenant's interest in this Lease from Tenant to the Leasehold Mortgagee or its nominee or designee by virtue of or in lieu of foreclosure or other appropriate proceedings, or the appointment of a receiver, shall not require the consent or approval of Landlord or constitute a breach of any provision of or a default under this Lease. Any Leasehold Mortgagee (or its nominee or designee) acquiring the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring Tenant's leasehold estate, sell and assign the leasehold estate on such terms and to such Qualified Transferee acceptable to such Leasehold Mortgagee and thereafter be relieved of all obligations accruing thereafter under this Lease; provided that such assignee has cured all then existing Events of Default other than Personal Defaults and delivered to Landlord its written agreement to be bound by all of the provisions of this Lease. For purposes of this Section 12, "**Qualified Transferee**" means (a) any Leasehold Mortgagee (or its nominee or designee or its or such nominee's or designees' successors and assigns or (b) any purchaser or other transferee in foreclosure (or pursuant to a deed in lieu of foreclosure) that, in either such case, (i) (A) has owned or operated at least one facility similar to those included in the Project for at least five years without a record of an uncured material violation of applicable laws, rules or regulatory requirements, or (B) engages an operator with the qualifications specified in clause (A) above; and (ii) has the financial capability to perform Tenant's obligations under this Lease.

12.10. Qualified Operator. Notwithstanding any other provision of this Section 12, no person, including a Leasehold Mortgagee (or any nominee or designee of a Leasehold Mortgagee), shall take possession of the Facility or enter into a New Lease unless such person satisfies the definition of

“Qualified Transferee.” A Leasehold Mortgagee (or such other parson as is taking possession of the Facility or entering into a New Lease) shall give no less than ten (10) days’ prior written notice to Landlord of its qualification as a Qualified Transferee (including, in the case of reliance on clause (b)(i)(B) of such definition, its designation of an operator having the qualifications specified in clause (b)(i)(A) thereof) prior to taking control of the Facility, or in lieu thereof, may agree with Landlord for Landlord to provide such operating expertise until an operator having such qualifications can be engaged.

12.11. Survival. The provisions of this Section 12 shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if this Section 12 were a separate and independent contract made by Landlord, Tenant and Leasehold Mortgagee. The provisions of this Section 12 are for the benefit of Leasehold Mortgagees and may be relied upon and, subject to compliance by Leasehold Mortgagee with the terms and conditions of this Section 12, shall be enforceable by Leasehold Mortgagees in accordance with the terms of this Lease as if Leasehold Mortgagees were a party to this Lease.

13. Insurance.

13.1. Tenant shall procure and maintain insurance of the types and in the amounts described below in this Section 13 (“**Required Insurance**”). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Lease or be no less than two times the specified occurrence limit.

(a) General Liability Insurance. Tenant shall procure and maintain occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate for bodily injury, personal injury and property damage.

(b) “All Risk” Property Insurance. Tenant shall procure and maintain a policy of property insurance for perils usual to a standard “all risk” insurance policy on all its improvements or alterations in, on or about the Premises (collectively, the “**Improvements**”), with limits equal to one hundred percent (100%) of the full replacement value of all such improvements or alterations.

(c) Business Vehicle and Automobile Liability Insurance. Tenant shall procure and maintain business automobile liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Tenant or for which the Tenant is responsible, and shall include specific coverage for all vehicles owned, contracted or used by Tenant in the removal, transportation and disposal of biosolids.

(d) Workers’ Compensation Insurance. Tenant shall maintain workers’ compensation insurance with limits as required by the Labor Code of the State of California and employers’ liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and in the aggregate as applicable, at all times during which Tenant retains employees.

(e) Update in Coverage Amounts. On the tenth (10<sup>th</sup>) anniversary of the Commercial Operations Date, Tenant will update the insurance coverage set forth in this Section 13.1 to reflect any changes in the policy coverage and limits that are generally required by Landlord for work or activities on site at the WWTP.

13.2. Any deductibles or self-insured retentions must be declared to and approved by Landlord, which approval will not be unreasonably withheld, and which will in any event be deemed granted for any deductible or self-insured retention of \$25,000 or less. At the option of Landlord, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Landlord, its elected officials, officers, employees, and agents or (b) Tenant shall provide a financial guarantee satisfactory to Landlord guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses, provided, however, that the foregoing shall not cover actions or claims arising out of or related to the negligence or willful misconduct of Landlord or its employees or agents.

13.3. The Required Insurance shall name Landlord, its elected officials, officers, employees, and agents as additional insureds. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to Landlord, its elected officials, officers, employees, and agents.

13.4. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering Landlord, its elected officials, officers, employees, and agents. All policies for the Required Insurance shall provide that the insurance company waives all right of recovery by way of subrogation against Landlord in connection with any damage or harm covered by such policy.

13.5. Tenant shall furnish Landlord with certificates of insurance and endorsements effecting coverage for the Required Insurance on the Commencement Date. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

13.6. Tenant shall maintain the Required Insurance for the term of this Lease and any extension thereof, and shall replace any certificate, policy or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be canceled without providing Landlord with thirty (30) days' prior written notice.

13.7. Unless approved in writing by Landlord, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A:VIII.

#### 14. Indemnification.

14.1. Tenant shall defend, indemnify and hold harmless Landlord, its elected officials, officers, employees, and agents, from any and all actual or alleged claims, demands, causes of action, liability, loss, damage or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state or local governmental body or agency ("*Claims*"), arising out of any acts, omissions, negligence or willful misconduct of Tenant, its personnel, employees, agents or subcontractors in connection with this Lease, Tenant's possession of the Premises and Easement Area, or Tenant's activities on the Premises and Easement Area. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, reasonable attorney's fees and related costs or expenses, and the reimbursement of Landlord, its elected officials, officers, employees, and/or agents for all reasonable legal expenses and costs incurred by each of them. This indemnification will not apply to the extent that a Claim is caused by the negligence or willful misconduct of Landlord or its employees or agents. Tenant's obligation to indemnify shall survive the expiration or termination of this Lease, and shall not be restricted to insurance proceeds, if any, received by Landlord, its elected officials, officers, employees, or agents.



14.2. Landlord shall indemnify, defend and hold harmless Tenant and its directors, officers, employees and agents for, from and against any Claims arising out of any acts, omissions, negligence or willful misconduct of Landlord in connection with this Lease, Landlord's possession of the Landlord Property, or Landlord's activities on the Landlord Property. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, reasonable attorney's fees and related costs or expenses, and the reimbursement of Tenant and its directors, officers, employees and agents for all legal expenses and costs incurred by each of them. This indemnification will not apply to the extent that a Claim is caused by the negligence or willful misconduct of Tenant or its employees or agents as determined by a court or administrative body of competent jurisdiction. Landlord's obligation to indemnify shall survive the expiration or termination of this Lease, and shall not be restricted to insurance proceeds, if any, received by Tenant, its employees and agents.

14.3. The provisions of this Section 14 shall not apply to any Claims related to or arising out of Hazardous Materials on the Premises, all of which shall be governed by the provisions of Section 42.

15. Inspection. Upon at least forty-eight (48) hours prior written notice to Tenant (or, in the case of emergency, such notice as shall be practicable under the circumstances), Tenant shall (and, if applicable, shall cause the Solar Affiliate to) permit Landlord and its agents to enter into and upon the Facility and the Solar System and other portions of the Premises at all reasonable times for the purpose of inspecting the same.

16. Cooperation. The Parties shall negotiate with one another fairly and in good faith and shall cooperate with one another to effectuate the purposes of the Lease. In particular, the Parties recognize and agree that Tenant shall be obtaining project finance to support the development and construction of the improvements on the Premises. Landlord shall cooperate with Tenant and its lender to assist and support that process. Additionally, Landlord shall support and cooperate with Tenant's efforts to develop the Project and secure state and local permits. All approvals required to be given by any party shall be given or denied on good faith and may not be unreasonably denied. Each party shall use due diligence in its attempt to accomplish any act required to be accomplished by that party. Landlord shall cooperate with Tenant in mitigating adverse impacts from force majeure and other events beyond either party's reasonable control that can impede Tenant's anticipated use of the Premises. Landlord shall also reasonably cooperate with Tenant in mitigating adverse impacts to the Project from condemnation, eminent domain, and local resistance. Without limiting the generality of the foregoing:

16.1. Landlord shall reasonably cooperate with Tenant to contact regulatory agencies and obtain information that Tenant deems necessary or advisable for development of the Project; *provided, however*, that (a) the costs for obtaining such permits, licenses, instruments and approvals, including the reasonable out-of-pocket costs and expenses incurred by Landlord in cooperating with Tenant, will be paid by Tenant; and (b) in no event will Landlord be required to agree to covenants or conditions of approval which would have a material adverse effect on the operation of the WWTP. Landlord understands and agrees that its cooperation in this regard is essential to successful development of the Project and Landlord shall cooperate with Tenant to facilitate Tenant's Due Diligence Investigation and ongoing due diligence during the Development Phase.

16.2. Landlord and Tenant agree that if and when any governmental entity or any public utility company requires execution and delivery of any rights-of-way or easements over, under or through the Premises or the Easement Area for the purpose of providing water, gas, electricity, telecommunications, storm and sanitary sewer or any other necessary public utility service or facility for the benefit of the Premises in accordance with the intended use, subject to Landlord's reasonable approval, Landlord and Tenant will execute, acknowledge and deliver, such instruments or documents as

may be reasonably required for such purpose. Landlord's cooperation, as provided for herein, includes, among other things, granting other necessary approvals, joining in executing, acknowledging and delivering, subject to Landlord's approval, any necessary instruments or documents; provided, however, that, except as otherwise provided in this Lease, Landlord is not obligated to expend any sums of money in connection with its obligations to cooperate as provided in this Section 16, nor to agree to any easement or right-of-way through the WWTP Core or that would materially interfere with the operation of the WWTP.

17. Utility Services. Except for the joint development of a source of process and domestic water by Tenant and Landlord, at Tenant's sole cost and expense, Tenant will obtain and pay for, all utilities including, but not limited to, electricity, gas and telephone and other services which Tenant requires with respect to the Premises.

18. Maintenance and Repair.

18.1. At all times during the term hereof, Tenant, at its sole cost and expense, shall operate its business on the Premises and any roads and facilities in the Easement Area in a manner that will keep the Premises, every part thereof and all of the Facility and the Solar System, in good condition and repair, ordinary wear and tear and damage thereto by fire, earthquake, act of God or the elements excepted.

18.2. If any Project facilities, including the Facility and/or the Solar System, are damaged or destroyed by a risk that is covered by the insurance required by Section 11, then Tenant shall restore such facilities to substantially the same condition as they were immediately before the destruction or to the extent covered by insurance and relevant pursuant to codes and requirements at the time.

18.3. If the Project facilities, including the Facility and/or the Solar System, are materially damaged or destroyed by a risk that is not covered by the insurance, Tenant may terminate this Lease at its sole discretion. Alternatively, Tenant may repair such facilities at its sole cost and expense. Tenant will be required to give written notice to Landlord of its intent to terminate or rebuild within ninety (90) days after the date on which the damage or destruction occurred. The Project facilities will be treated as a whole for the purposes of the election of Tenant, and Tenant will not have the right to terminate with respect to the Solar System but to rebuild the Facility. If Tenant does not elect to terminate the Lease or fails to give timely notice of termination, Tenant must restore the Project facilities. If Tenant terminates this Lease pursuant to this Section 18.3, termination shall be accomplished in accordance with Section 25.

18.4. The provisions of Civil Code Sections 1932(2) and 1933(4), and any successor statutes, are inapplicable with respect to any destruction of the Project facilities (such sections providing that a lease terminates upon the destruction of the premises subject to a lease) unless otherwise agreed between the Parties to the contrary).

19. Alterations and Expansion. Tenant shall not make any material alterations, additions or improvements to or of the Premises or the Easement Area, or any part thereof without the prior approval of Landlord, which may be granted in Landlord's sole discretion, other than proposed alternations, additions or improvements (i) allowed in accordance with applicable permits and which do not materially diminish or otherwise interfere with the proper operation of the WWTP, in which case Landlord will not unreasonably withhold approval, or (ii) are necessary to comply with applicable laws and safety requirements, in which case Landlord's approval is not required. In exercising Landlord's approval rights in its sole discretion, Landlord agrees that it will evaluate proposed alternations, additions or improvements that would improve the efficiency or productivity of the Project in good faith, but reserves

that right at all times to make decisions consistent with the best interests of Landlord's primary purpose as a public wastewater agency. All material alterations, additions and improvements to the Premises and Easement Area will be made by Tenant at Tenant's sole cost and expense and shall comply with the requirements of Section 3. If an alteration, addition or improvement not approved by Landlord (other than one required by law or regulation) is determined by Landlord following installation to materially diminish or otherwise interfere with the proper operation of the WWTP, then Landlord may require Tenant to remove such alteration, addition or improvement.

20. Taxes.

20.1. Real Property Taxes and Assessments. Tenant shall be responsible for the timely payment of all property taxes and assessments, including without limitation, any and all utility, city or county assessments which are assessed, levied, confirmed or imposed on the Project facilities during the term of this Lease. Although Landlord is exempt from property tax, the County of San Bernardino may impose possessory interest tax to the leasehold interest of Tenant as a private party.

20.2. Other Taxes. Tenant shall be responsible for the payment of all personal property taxes and any local, state or federal taxes or fees resulting from the operation of Tenant's business. Furthermore, Tenant shall be responsible for all costs associated with any utility improvements upon the Premises which are required for the business of Tenant.

20.3. Tenant's Right to Contest. Tenant has the right to contest or object to the amount or validity of any taxes by appropriate legal proceedings. Landlord is not required to join in any such proceeding unless Landlord's participation is necessary to prosecute the proceeding properly and Tenant has fully indemnified Landlord to its reasonable satisfaction against all costs and expenses in connection with such proceeding.

21. Assignment and Subletting.

21.1. Assignment. Except as otherwise permitted in Section 11, Tenant shall not assign, hypothecate or transfer, either directly or by operation of law, this Lease or any interest herein without prior written consent of Landlord. Any attempt to do so shall be null and void, and any assignee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Landlord covenants and agrees that upon an assignment, or transfer of the Lease, Tenant is relieved of any and all covenants and obligations under this Lease accruing after such assignment or transfer.

21.2. Subletting. Without the prior written consent of Landlord, Tenant may not sublet the Premises, or any part thereof, or permit the use or occupancy of the Premises by any person other than Tenant. Tenant covenants and agrees that no sublease relieves Tenant from any of its covenants and obligations accruing after such sublease, and Tenant will remain liable under this Lease for the full term hereof.

21.3. Transactions with Affiliates. Notwithstanding Sections 21.1 and 21.2, Tenant has the right, without Landlord's consent, to assign or sublet this Lease to an Affiliate of Tenant. Any entity in which Tenant owns a majority of the outstanding voting stock (or similar evidence of management or voting control) hereinafter will be referred to as an "**Affiliate**". Tenant covenants and agrees that no such transaction with an Affiliate relieves Tenant from any of its covenants and obligations accruing after such transaction, and Tenant will remain liable under this Lease for the full term hereof.

21.4. Consent Not to be Unreasonably Withheld. Notwithstanding Sections 21.1 and 21.2, Tenant may assign, hypothecate, transfer or sublet this Lease or any interest herein with the prior written consent of Landlord. Such consent of Landlord shall not be unreasonably withheld or delayed, provided, however, that in determining whether to consent to any such assignment, hypothecation, transfer or subletting, Landlord may consider any relevant factors or issues in connection therewith, including without limitation: (i) whether the proposed transferee has sufficient financial capability to perform all of Tenant's obligations under the Lease; (ii) whether the proposed transferee satisfies the requirements of a Qualified Transferee; (iii) the terms of any assignment or subletting of the Premises; and (iv) whether the proposed transfer might expose Landlord to any material additional risk, liability or cost. Landlord's determination as to whether the proposed transferee has sufficient financial capability to perform all of Tenant's obligations under the Lease shall not be influenced by the financial statements previously delivered to Landlord by the proposed transferor.

21.5. No Waiver. Consent by Landlord to any assignment or subletting of this Lease shall not operate to exhaust Landlord's rights under this Section 21. Any such additional assignment or subletting shall be subject in each instance to the provisions of this Section 21.

22. Memorandum of Lease. Promptly following determination of the Commencement Date and the Expiration Date of the Term, the Parties shall, at the request of either Party, or if required as a condition to any financing of the Project, to execute and record a memorandum of this Lease. Promptly upon termination of this Lease, upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a quitclaim deed relinquishing all interest in the Premises.

23. Events of Tenant's Default and Landlord's Remedies.

23.1. Events of Default. If one or more of the following events ("*Event of Default*") occurs, such occurrence constitutes a breach of this Lease by Tenant:

(a) Tenant fails to pay any Rent as and when the same becomes due and payable, or to provide the Solar Energy to the extent required under the terms hereof, and such failure continues for more than ninety (90) days after Landlord gives written notice thereof to Tenant;

(b) Tenant fails to pay any other sum or charge payable by Tenant hereunder as and when the same becomes due and payable, and such failure continues for more than ninety (90) days after Landlord gives written notice thereof to Tenant;

(c) Tenant fails to comply in all material respects with any legal or regulatory requirement, permit obligation or operating covenant of Tenant pursuant to this Lease and such failure is not remedied within sixty (60) days after Landlord gives written notice thereof to Tenant or, if such default cannot be cured within said sixty (60) day period and Tenant fails within such period to commence with due diligence and dispatch the curing of such default or, having so commenced, thereafter fails to prosecute or complete with due diligence and dispatch the curing of such default, provided, in the case of any such extension, that the continued operation of either the Project or the WWTP is not in imminent danger of being enjoined as a result of such failure to comply; or

(d) Tenant fails to perform or observe any other agreement, covenant, condition or provision of this Lease hereof to be performed or observed by Tenant as and when performance or observance is due, and such failure continues for more than sixty (60) days after Landlord gives written notice thereof to Tenant or, if such default cannot be cured within said sixty (60) day period and Tenant fails within such period to commence with due diligence and dispatch the curing of such

default or, having so commenced, thereafter fails to prosecute or complete with due diligence and dispatch the curing of such default.

23.2. Landlord's Right to Terminate. If an Event of Default occurs, subject to Sections 11 and 12, Landlord at any time thereafter has the right to terminate this Lease.

23.3. Right to Enter. In the event of any termination of this Lease by reason of Tenant's default, Landlord has the immediate right to enter upon and repossess the Premises, and (subject to Section 12) any personal property of Tenant may be removed from the Premises and stored in any public warehouse at the risk and expense of Tenant.

23.4. Cumulative Remedies. The remedies given to Landlord or Tenant under this Lease shall be cumulative and in addition and supplemental to all other rights or remedies which Landlord or Tenant may have in equity, by statute or otherwise.

24. Events of Landlord's Default and Tenant's Remedies.

24.1 If one or more of the following events (each a "*Landlord Event of Default*") occurs, such occurrence constitutes a breach of this Lease by Landlord:

(a) If Landlord fails to pay the Landlord Processing Fee and/or the Excess Capacity Processing Fee as and when the same becomes due and payable, or to pay for Solar Energy to the extent required under the terms hereof, and such failure continues for more than ninety (90) days after Tenant gives written notice thereof to Landlord;

(b) If Landlord fails to perform or observe any agreement, covenant, condition or provision of this Lease to be performed or observed by Landlord as and when performance or observance is due, and such failure continues for more than sixty (60) days after Tenant gives written notice thereof to Landlord or, if the default cannot be cured within said sixty (60) day period, Landlord fails within said period to commence with due diligence and dispatch the curing of such default or, having so commenced, thereafter fails to prosecute or complete with due diligence and dispatch the curing of such default.

24.2 Tenant's Remedies. Upon the occurrence of a Landlord Event of Default set forth in 24.1(a), Tenant may suspend the processing of Landlord Biosolids until payment of all amounts past due. Upon the occurrence of a Landlord Event of Default set forth in 24.1(b), Tenant will have all the rights and remedies available to it at law, in equity, by statute or otherwise.

25. Rights and Obligations on Expiration of the Term or Termination.

25.1 Early Termination. In the event of an early termination of this Lease (subject to the rights of any mortgagee having a lien on the Project or any portion thereof or the buyout right of Landlord pursuant to Section 25.3) for any reason other than as a result of a Landlord Event of Default, Tenant will have the option to (a) abandon the Facility in place, in which case the Facility will become the property of Landlord, or (b) to remove the Facility in accordance with the requirements of Section 25.5. The decision to abandon the Facility will not relieve Tenant of any obligations under Sections 14 and 39.

25.2 Notice of FMV; Landlord Notice: Negotiation of New Lease. No later than one (1) year prior to the Expiration Date, Tenant will provide Landlord with written notice

of Tenants calculation of the Fair Market Value of the Facility (as defined in Section 25.4) as of the Expiration Date (“Notice of FMV”) and will further indicate whether Tenant desires to allow the Lease to expire or to negotiate a new lease for the Facility. Not later than one hundred eighty (180) days prior to the Expiration Date, Landlord will give Tenant notice of its intent to exercise its option to purchase the Facility as of the Expiration Date or Landlord’s desire to negotiate a new lease for the Facility. If Landlord disputes the Fair Market Value of the Facility set forth in the Notice of FMV, Landlord will give Tenant written notice of such dispute within ninety (90) days of the receipt of the Notice of FMV. If Landlord and Tenant cannot resolve the dispute within sixty (60) days of Landlord’s notice of dispute, then either Party may refer the dispute to resolution pursuant to Section 41.4 and the deadline for Landlord to exercise the option to purchase will be extended until such dispute has been resolved. If Landlord does not exercise its option to purchase and Tenant has indicated its desire to negotiate a new lease for the Facility, then the Parties will negotiate in good faith the terms of such a lease. If the Parties have not agreed on the terms for a new lease for the Facility as of the Expiration Date, then the Lease will expire and Tenant will have the options set forth in Section 25.1(a) or (b).

25.3 Option to Purchase. Landlord will have the option to purchase the Facility for its Fair Market Value as of the Expiration Date or within ninety (90) days of early termination (for any reason other than as a result of a Landlord Event of Default and further subject to the rights of any mortgagee having a lien on the Project or any portion thereof), provided, however, that in the case of early termination, in no event will the Fair Market Value be less than the outstanding obligations of Tenant with respect to any bond financing for the construction of the Facility. Landlord will give notice to Tenant of its intent to exercise this option no less than one hundred eighty (180) days prior the Expiration Date or within ninety (90) days following the early termination of this Lease. If the option to purchase is exercised in connection with the expiration of the Lease, then Landlord will pay the Fair Market Value to Tenant no later than the Expiration Date and Tenant will transfer to Landlord all of its right, title and interest in the Facility. If the option to purchase is exercised in connection with the early termination of this Lease, then Landlord and Tenant will thereafter work together in good faith to determine the Fair Market Value of the Facility as of the early termination date. If Landlord and Tenant cannot agree on the Fair Market Value of the Facility within ninety (90) days of notice of exercise, then either Party may refer the calculation of Fair Market Value to arbitration in accordance with Section 41.4. Upon final determination of the Fair Market Value, Landlord will have ninety (90) days to either rescind the exercise of the option to purchase or pay the Fair Market Value to Tenant (or to pay off the liens of any mortgagee). Following payment, Tenant will transfer to Landlord all of its right, title and interest in the Facility. If Landlord rescinds the exercise of the option, then Tenant will have the rights set forth in Section 25.1.

25.4 Determination of Fair Market Value. For the purposes of this provision, the “Fair Market Value” of the Facility will be the cost for the construction of the Facility and all tangible assets and improvements included within the Facility depreciated over the useful life of the Facility and all such tangible assets and improvements. For the avoidance of doubt, the value of an asset or improvement that has been fully depreciated over its useful life will have a value of zero unless such asset can be removed and sold, in which case the fair market value will be the actual value of the asset in the resale market.

25.5 Removal. If Tenant elects to remove the Facility pursuant to Section 25.1, then Tenant shall, within a period of one (1) year from the date of early termination or the Expiration Date: (i) remove all improvements placed on the Premises by Tenant, under Tenant's direction, or while Tenant was in possession of the Premises; (ii) remove or dispose of all debris, stored organic waste, biosolids or other material or property placed on the Premises by Tenant, under Tenant's direction, or while Tenant was possession of the Premises; and (iii) surrender the Premises to Landlord in similar condition as the beginning of the Term, not including restoration of any drying beds or improvements that were originally located on the Premises.

26. Notices. All notices, demands, consents, approvals and other communications which are required to be given by either Landlord or Tenant to the other under this Lease will be deemed to have been fully given when made in writing and (i) personally delivered; (ii) sent via commercial overnight courier; or (iii) sent via electronic mail, subject to receipt of confirmation via electronic mail of receipt thereof by the other party (not including automated notices or confirmations of receipt), and addressed to Landlord or Tenant at the address set forth below, or at such other addresses as Landlord or Tenant may from time to time designate in writing in accordance with this Section 26:

Landlord: Victor Valley Wastewater Reclamation Authority  
Attn: General Manager  
20111 Shay Road  
Victorville, CA 92394  
Phone No.: (760) 246-8638  
Email Address: [dpoulsen@vwwra.com](mailto:dpoulsen@vwwra.com)

with a copy to: Best & Krieger LLP  
Attn: Piero Dallarda  
3390 University Avenue  
Riverside, CA 92501  
Phone No.: (951) 686-1450  
Email Address: [piero.dallarda@bbklaw.com](mailto:piero.dallarda@bbklaw.com)

Tenant: \_\_\_\_\_  
a Delaware limited liability company  
Attn: \_\_\_\_\_  
705 Palomar Airport Road, Suite 200  
Carlsbad, CA 92011  
Phone No.: (760) 436-8870  
Email Address: \_\_\_\_\_

with a copy to: Thor Erickson, General Counsel  
\_\_\_\_\_  
705 Palomar Airport Road, Suite 200  
Carlsbad, CA 92011  
Phone No.: (760) 436-8870  
Email Address: [Thor.Erickson@anaergia.com](mailto:Thor.Erickson@anaergia.com)

27. Quiet Enjoyment; Waiver. Landlord agrees that so long as Tenant is not in default hereunder, Tenant has the right to quiet enjoyment of the Premises without molestation or hindrance on the part of Landlord. Notwithstanding the preceding sentence, Tenant hereby acknowledges that the

Premises are located within the WWTP which is operated by Landlord. Except to the extent otherwise expressly provided herein, Tenant hereby waives the right to assert any claim, demand or other legal action against Landlord arising out of Landlord's operation of the WWTP, so long as Landlord operates the WWTP in compliance with all local, state and federal laws and standards. Landlord hereby acknowledges that the Premises will contain an organic and biosolids processing facility and a solar photovoltaic power generation system. Landlord hereby waives the right to assert any claim, demand or other legal action against Tenant, arising out of Tenant's operation of Facility and/or the Solar System, so long as Tenant operates each such facility in compliance with this Lease and all local, state and federal laws and standards.

28. Authority. Each person executing this Lease on behalf of Landlord and Tenant hereby covenants and warrants that (a) the entity on whose behalf such person is signing is duly organized and validly existing under the laws of its state of organization; (b) such entity has and is qualified to do business in California; (c) such entity has full right and authority to enter into this Lease and to perform all Landlord's and Tenant's obligations hereunder; and (d) each person, or both of the persons if more than one signs, signing this Lease on behalf of Landlord or Tenant is duly and validly authorized to do so. The individuals signing on behalf of Landlord further warrant that Landlord is the fee owner of the Premises.

29. No Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

30. Holding Over. If Tenant holds possession of the Premises after the term of this Lease or any extension thereof, Tenant shall, at the option of Landlord, to be exercised by Landlord giving written notice to Tenant and not otherwise, become a tenant from month-to-month upon the terms and conditions herein specified, so far as applicable, and shall continue to be such tenant until ninety (90) days after Tenant shall have given to Landlord, or Landlord shall have given to Tenant, a written notice of intention to terminate such monthly tenancy.

31. Eminent Domain.

31.1. Termination Rights. If all or any part of the Premises or the Easement Area are taken as a result of the exercise of the power of eminent domain or any agreement in lieu thereof, this Lease will terminate as to the part so taken as of the date of taking. In the case of a partial taking, Tenant has the right to terminate this Lease as to the balance of the Premises not taken by giving written notice to Landlord within sixty (60) days after such date; provided, however, that a condition to the exercise by Tenant of such right to terminate is that the portion of the Premises taken is of such extent and nature as substantially to handicap, impede or impair Tenant's use of the remaining portion.

31.2. Condemnation Award. The proceeds of any condemnation award or any private sale in lieu thereof shall be allocated as follows:

- (i) First, to Tenant, an amount equal to the sum of the following:
  - (A) A sum of that portion of the award attributable to Tenant; and



(B) A sum attributable to that portion of the award constituting severance damages for the restoration of the Premises, business interruption, trade fixtures or relocation and moving expenses incurred by Tenant.

(ii) Second, to Landlord, the balance of the award.

31.3. Further Acts. Each Party agrees to deliver to the other all instructions that may be necessary to effectuate the provisions of this Section 31.

31.4. Apportionment of Rent. In the case of a total taking or a partial taking which results in the termination of this Lease, the Basic Rent and any and all other Host Fees theretofore paid or then payable must be apportioned and paid up to the date of termination and any unearned Basic Rent or other Host Fees must be immediately refunded to Tenant. In the case of a partial taking which does not result in a termination of this Lease, Basic Rent and any Host Fees thereafter to be paid by Tenant under this Lease must be equitably reduced in a pro-rata manner in proportion to the part of the Premises which has been taken.

32. Signage. Other than for compliance with the law or safety, Tenant will not place any signage on the Premises without prior approval of Landlord in Landlord's sole discretion other than ground level signage to direct third parties to the Project.

33. Limitation of Liability. Neither Party shall be liable to the other for lost revenues or foreseeable and unforeseeable consequential, special or punitive damages. The foregoing limitation on liability shall not apply to the any liability imposed by a governmental or regulatory agency as a result of any violation of federal, state or local laws or regulations, including without limitation, any fines or penalties imposed in accordance with applicable law.

34. Force Majeure. Neither Party shall not be deemed in default of this Lease, nor shall such Party be responsible for, any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, epidemic, pandemic, act of God (inclusive without limitation of extreme weather events, drought, earthquake, fire, flood, lightening, hurricane, high winds or other natural disasters), war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of Tenant, provided that the Party asking to be excused from performance as a result of such occurrence gives the other Party prompt written notice thereof and takes all steps reasonably necessary to mitigate the effects of the event. The Party claiming the occurrence of force majeure shall use its best efforts to mitigate such event and resume performance as soon as reasonably practicable. If an event of force majeure continues for a period in excess of one hundred eighty (180) days, then the Parties will meet and confer in good faith to determine whether it is economically and operationally feasible to mitigate the effects of the event or to rebuild the facilities of either Party as necessary to restore performance of the terms of this Lease no later than one (1) year from the commencement of the event of force majeure or such longer period which the Parties shall mutually agree upon. If the Parties are not able to identify a mutually acceptable plan to restore performance of this Lease within such time period, then either Party may terminate this Lease.

35. Successors and Assigns. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all Parties hereto, and all of the Parties hereto shall be jointly and severally liable hereunder.

36. Complete Agreement. There are no written or oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, oral or written, if any, between Landlord and

Tenant or displayed by Landlord to Tenant with respect to the subject matter of this Lease or the Premises. There are no representations between Landlord and Tenant or between any real estate broker and Tenant other than those expressly set forth in this Lease, and all reliance with respect to any representations is solely upon representations expressly set forth in this Lease.

37. Amendment and Modification. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Landlord and Tenant. This Lease and any instrument, agreement or document attached hereto or referred to herein, is intended by Landlord and Tenant as the final expression of the agreement with respect to the terms and conditions set forth in this Lease and any such instrument, agreement or document and as the complete and exclusive statement of the terms agreed to by Landlord and Tenant.

38. Estoppel Certificates. At any time and from time to time but on not less than ten (10) days prior written request by Landlord or Tenant, the other Party will execute, acknowledge and deliver to the requesting Party, a certificate certifying, if accurate:

(a) that this Lease is unmodified and in full force and effect or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the date and nature of each modification;

(b) the date, if any, to which all rent and other sums payable hereunder have been paid;

(c) that no notice has been received by such Party of any default by such Party hereunder which has not been cured, except as to defaults specified in the certificate;

(d) that the other Party is not in default hereunder, except as to defaults specified in the certificate;

(e) the existence of any options or other rights to purchase the Premises; and

(f) such other factual matters as may be reasonably requested, including, without limitation, such matters as may be required to be addressed by any person providing financing for the Project.

The certificate may be relied upon by any actual or prospective purchaser, mortgagee or beneficiary under any deed of trust of the Premises or any part thereof.

39. Hazardous Materials.

39.1. At all times and in all respects each Party will comply with all federal, state and local laws, ordinances and regulations ("**Hazardous Materials Laws**") relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, area formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under any such laws, ordinances or regulations, which hereinafter are referred to collectively as "**Hazardous Materials**".

39.2. Landlord represents and warrants to Tenant that as of the date hereof, to the best of Landlord's knowledge:

(i) No Hazardous Substances are now present, or have been used or stored, on or within any portion of the Premises, except those substances which are present in the groundwater plume migrating through the subsurface of the Premises from George Air Force Base, or by Landlord in the normal course of use and operation of the Premises and in compliance with all applicable Environmental Laws;

(ii) Since the date of Landlord's acquisition of the Premises, Landlord is aware and Tenant acknowledges that the United States Air Force and/or the Department of Defense has initiated a clean-up of groundwater contaminated by activities conducted on the former George Air Force Base, and that said cleanup includes monitoring wells, recovery wells and appurtenances, some of which are located on the Premises; and

(iii) No claims have been made by any third party against Landlord relating to any Hazardous Substances on or within the Premises.

39.3. At its own expense, Tenant will procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant's use of the Premises. Tenant will cause any and all Hazardous Materials removed from the Premises to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Tenant will in all respects handle, treat, deal with and manage any and all Hazardous Materials in, on, under or about the Premises in conformity with all applicable Hazardous Materials Laws and prudent industry practices regarding management of such Hazardous Materials. Tenant will not take any remedial action in response to the presence of any Hazardous Materials in or about the Premises, or enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the Premises, without first notifying Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interest with respect thereto.

39.4. Each Party immediately will notify the other in writing of:

(i) Any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Materials Laws with respect to the Premises

(ii) Any claim made or threatened by any person against Tenant, Landlord or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and

(iii) Any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Premises, including any complaints, notices, warnings or asserted violations in connection therewith.

Each Party also will supply to the other as promptly as possible, and in any event within fifteen (15) business days after the first Party receives or sends the same, with copies of all claims, reports, complaints, notices, warnings or asserted violations, relating in any way to the Premises or Tenant's use thereof or Landlord's use thereof. Each Party will deliver promptly to the other copies of hazardous waste manifests reflecting the legal and proper disposal of Hazardous Materials removed from the Premises, as applicable.

39.5. Tenant will indemnify, defend, by counsel chosen by Tenant and reasonably acceptable to Landlord, protect, and hold Landlord and each of Landlord's employees, agents, attorneys,

successors and assigns, free and harmless from and against any and all claims, liabilities penalties, forfeitures, losses or expenses, including attorney's fees, for death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by:

(i) The presence in, on, under or about the Premises or discharge in or from the Premises of any Hazardous Materials placed in, under or about, the Premises by Tenant or at Tenant's direction; or

(ii) Tenant's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Premises; or

(iii) Tenant's failure to comply with any valid and applicable Hazardous Materials Law.

39.6 Landlord will indemnify, defend, by counsel reasonably acceptable to Tenant, protect, and hold Tenant and each of Tenant's employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities penalties, forfeitures, losses or expenses, including attorney's fees, for death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by:

(i) The presence in, on, under or about the Premises, or discharge, in or from the Landlord Property of any Hazardous Materials placed in, on, under or about the Premises or the Easement Area by Landlord or at Landlord's direction, or

(ii) Landlord's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Premises and the Easement Area; or

(iii) Landlord's failure to comply with any valid and applicable Hazardous Materials Law.

39.6. The obligations of each Party ("**Indemnifying Party**") pursuant to Sections 40.5 and 40.6 includes, without limitation, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the affected real property, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith. The obligations of each Indemnifying Party under Sections 40.5 and 40.6 above shall survive the expiration or earlier termination of the term of the Lease.

39.7. For purposes of the release and indemnity provisions hereof, any acts or omissions of a Party, or by employees, agents, assignees, contractors or subcontractors of such Party or others acting for or on behalf of such Party, whether or not they are negligent, intentional, willful or unlawful, will be strictly attributable to the Party.

40. Incorporation of Exhibits and Documents. Each and every exhibit or document referenced in this Lease, whether or not attached to this Lease, shall be incorporated into the body of this Lease and each point of reference.

41. Miscellaneous.

41.1. The words “**Landlord**” and “**Tenant**” as used herein include the plural as well as the singular. If there is more than one Tenant or Landlord, the obligations hereunder imposed upon Tenant or Landlord are joint and several. Time is of the essence of this Lease and each and all of its provisions. Subject to the provisions applicable to assignment, the agreements, covenants, conditions and provisions herein contained apply to and bind the personal representatives, heirs, successors and assigns of Landlord and Tenant.

41.2. This Lease is construed to effectuate the normal and reasonable expectations of a sophisticated Landlord and a sophisticated Tenant.

41.3. This Lease has been submitted by Landlord and reviewed by Tenant, Landlord, and their respective professional advisors. Tenant, Landlord, and their respective advisors believe that this Lease is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor of or against either Tenant or Landlord. Should any provision of this Lease require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Lease shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of all of the parties have participated equally in the negotiation and preparation of this Lease. The language in all parts of this Lease shall be in all cases construed simply, fairly, equitably and reasonably, according to its plain meaning and not strictly for or against any of the Parties. Without limiting the generality of the foregoing: use of the masculine gender includes the feminine and neuter; the singular number includes the plural and the plural number includes the singular; the term "person" includes a corporation or other entity as well as natural person; and the term “including” means “including but not limited to.”

41.4. Should any dispute or claim arise between the Parties concerning the terms, interpretation, effect, or operation of this Lease, the Parties agree to make good faith efforts to informally resolve such dispute or claim through discussions between the General Manager of Landlord and the President/Chief Executive Officer of Tenant. If the Parties fail to resolve such disputes or claims, then either Party shall have the right to submit the dispute or claim to nonbinding mediation with Judicial Arbitration and Mediation Services in the County of San Bernardino, State of California, which mediation will be carried out within thirty (30) days of the submission date. The Parties will share equally in the cost of mediation. If mediation does not arrive at a mutually acceptable resolution of the dispute, then the dispute shall be heard by a referee pursuant to the provisions of California Code of Civil Procedure 638 through 645.1, inclusive, according to the following procedures:

(i) The Parties agree to jointly select a retired judicial officer who is affiliated with the Judicial Arbitration and Mediation Service, or such other equivalent organization as the Parties may mutually select, to act as the trier of fact and judicial officer in such dispute resolution. The Parties shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon. If the Parties are unable to agree upon a referee within ten (10) days of a written request to do so by any Party, then any Party may thereafter seek to have a referee appointed pursuant to California Code of Civil Procedure 638 and 640;

(ii) The Parties agree that the referee shall have the power to decide all issues of fact and law and report his/her decision thereon, and to issue legal and equitable relief appropriate under the circumstances of the controversy before him/her; provided, however, that to the extent the referee is unable to issue and/or enforce any such legal and equitable relief, either Party may petition the court to issue and/or enforce such relief on the basis of the referee’s decision;

(iii) The California Evidence Code rules of evidence and procedure relating to the conduct of the hearing, examination of witnesses and presentation of evidence shall apply;

(iv) Any Party desiring a stenographic record of the hearing may secure a court reporter to attend the hearing; provided, the requesting Party notifies the other Parties of the request and pays for the costs incurred for the court reporter;

(v) The referee shall issue a written statement of decision which shall be reported to the court in accordance with California Code of Civil Procedure 643 and mailed promptly to the Parties;

(vi) Judgment may be entered on the decision of the referee in accordance with California Code of Civil Procedure 644, and the decision may be excepted to, challenged and appealed according to law

(vii) The Parties shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with terms hereof; and

(viii) The cost of such proceeding, including but not limited to the referee’s fees, shall initially be borne equally by the Parties to the dispute or controversy. However, the prevailing Party in such proceeding shall be entitled, in addition to all other costs, to recover its contribution for the cost of the reference and its reasonable attorneys’ fees as items of recoverable costs.

NOTICE: BY INITIALING THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE THAT IS SPECIFICALLY DESCRIBED AS BEING SUBJECT TO THIS “ARBITRATION OF DISPUTES” PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS LEASE TO NEUTRAL ARBITRATION.

LANDLORD’S INITIAL \_\_\_\_\_ TENANT’S INITIAL \_\_\_\_\_

41.5. This Lease is to be governed by and construed in accordance with the laws of the State of California. All disputes will be brought in the superior court of the State of California located in the County of San Bernardino.

41.6. Whenever any Party is required to grant or deny an approval hereunder, such approval will not be unreasonably denied, conditioned or delayed, unless the provision requiring the approval specifically provides that the approval may be granted or withheld in the sole discretion of the Party from whom an approval is requested.

3-10-22 VVWRA DRAFT

*[signature page follows]*

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first herein above written.

**LANDLORD:**

VICTOR VALLEY WASTEWATER  
RECLAMATION AUTHORITY,  
a California joint powers authority

By: \_\_\_\_\_  
Name: Darron Poulsen  
Title: General Manager

Approved as to form:

\_\_\_\_\_  
Best Best & Krieger LLP

**TENANT:**

\_\_\_\_\_  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_





VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY  
Board of Commissioners Staff Report

**TO:** VVWRA Board of Commissioners  
**FROM:** Darron Poulsen, General Manager *DJP*  
**SUBMITTED BY:** Darron Poulsen, General Manager  
**DATE:** March 17, 2022  
**SUBJECT:** RECOMMENDATION TO APPROVE A COOPERATIVE AGREEMENT WITH THE CITY OF VICTORVILLE TO ALLOW FOR CONSTRUCTION OVER THE VVWRA EASEMENT, TO ALLOW FOR THE INSTALLATION OF A FUTURE USE PIPELINE AND ALLOW FOR THE USAGE OF \$600,000 OF UNRESTRICTED CONNECTION FEE RESERVES TO REIMBURSE THE CITY FOR THE INSTALLATION OF THE PIPE WITHIN THE VICTORVILLE WELLNESS CENTER PROPERTY

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|  |  |                    |
|--|--|--------------------|
| <input checked="" type="checkbox"/> For Action | <input checked="" type="checkbox"/> Fiscal Impact                                      | \$ 600,000         |
| <input type="checkbox"/> Information Only      | <input checked="" type="checkbox"/> Account Codes: Unrestricted Connection Fee Reserve | <i>[Signature]</i> |
|  | <input type="checkbox"/> Funds Budgeted/Approved                                       |                    |

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**STAFF RECOMMENDATION**

It is recommended that the Board of Commissioners approve the General Manager to execute the cooperative agreement with the City of Victorville:

- To allow for construction over the VVWRA easement
- To allow for the installation of a future use pipeline within the Victorville Wellness Center Property
- To allow for the usage of \$600,000 of unrestricted connection fee reserves

All upon approval of the agreement by the VVWRA Attorneys.

**PREVIOUS ACTION(S)**

None

**BACKGROUND INFORMATION**

The City of Victorville and VVWRA staff have been working together for a year evaluating the potential impact of the future Victorville Wellness Center on the current and future alignment of VVWRA’s interceptor pipeline system. The Wellness Center will be constructed in Old Town

Victorville on First Street east of E Street next to Eva Dell Park (Exhibit 1). There is an existing 15-foot easement through the Wellness Center property where VVWRA operates a 36-inch ID interceptor pipeline. Recent capacity studies of the interceptor system have identified the existing pipeline to be undersized and a future project to install a parallel pipeline of similar size has been proposed to deal with future capacity requirements.

Discussions on how to design the Wellness Center around the existing and a potential future easement for the new pipeline were discussed and changes were made in the design to accommodate those needs. It was also discussed that VVWRA would be interested in designing and installing a segment of the future pipeline now to limit future interruptions in operations at the Wellness Center. In addition, VVWRA would also avoid a higher cost to install the pipeline in the future due to the avoidance of having to install a future pipeline around existing Wellness Center assets like, block walls, concrete walkways, asphalt streets and underground infrastructure. Construction costs through the middle of an existing Wellness Center would be considerably higher. Both the City of Victorville and VVWRA staff agreed that it would be a good idea to install this pipeline through the Wellness Center now rather than in the future.

In December of 2021 the City of Victorville received grant funding to build this project. Requirements to receive this grant funding stipulated an aggressive schedule to construct the Wellness Center. The City of Victorville and VVWRA staff aggressively began to finalize plans for the easement and future pipeline, as well as a cooperative agreement (Exhibit 2). The cooperative agreement provides permission and guidelines to perform work on the Wellness Center over the exiting VVWRA easement. The agreement details the importance of protecting the existing pipeline during construction. It also describes the requirements for the installation of the new parallel pipeline within the Wellness Center project and the reimbursement back to the City of Victorville for construction costs to install the pipeline.

A design for the pipeline has been approved by VVWRA and the City of Victorville. A preliminary cost estimate by the General Contractor is just under \$500,000. Due to the depth of the installation, 10-feet, and the potential of having to deal with ground water infiltration Victorville and VVWRA staff feel there needs to be a contingency of 20% which brings the potential cost of the project to \$600,000. Terms within the agreement stipulate that the City of Victorville and the General Contractor will work diligently to keep costs within budget or hopefully lower.

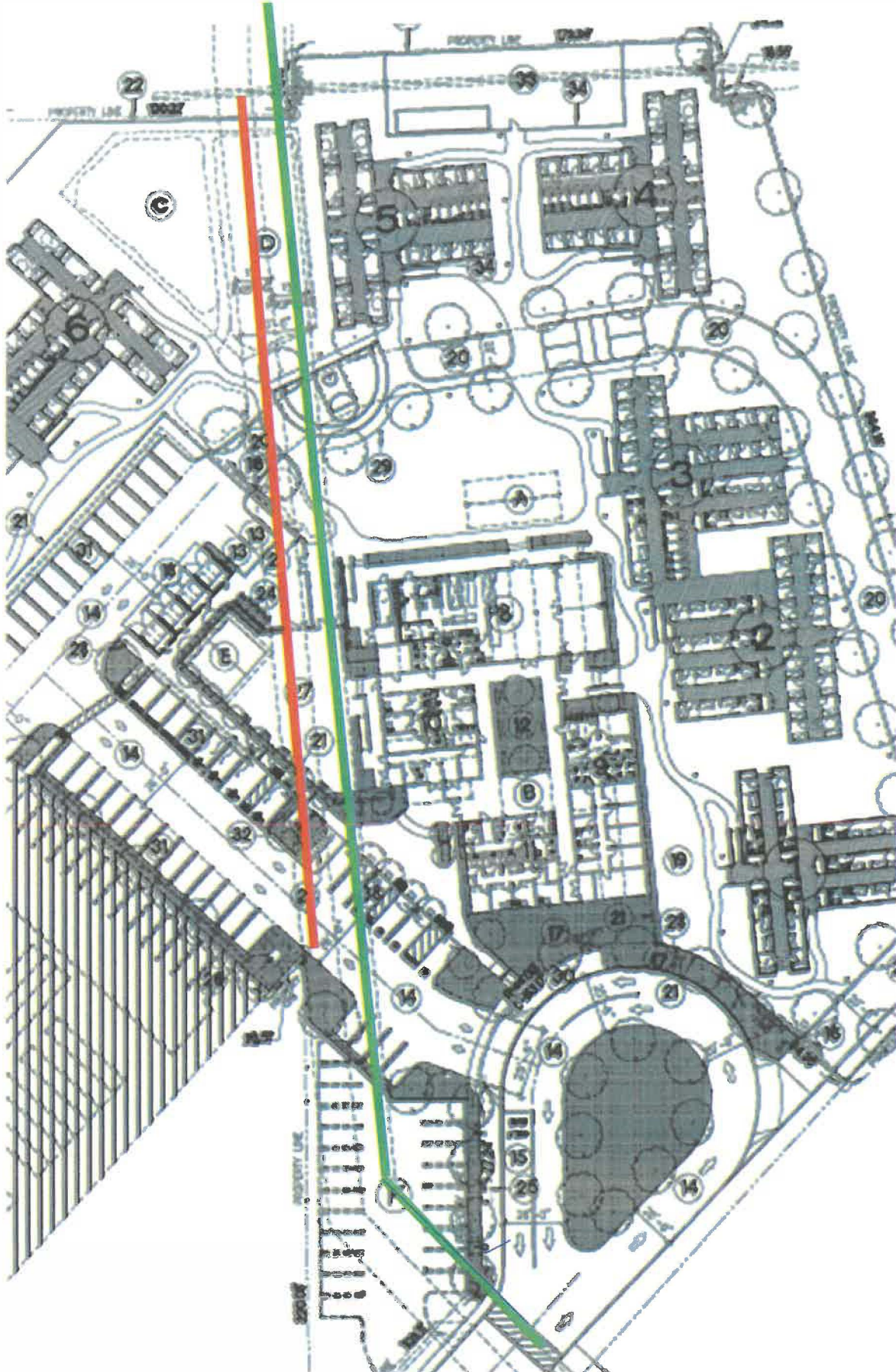
The funds for this improvement are going to be taken from unrestricted connection fee reserves. Being that this pipeline is 100% being installed for a future capacity enhancement, all funds can be paid for utilizing these unrestricted reserve dollars. The projected unrestricted connection fee reserve balance for the fiscal year ending June 30, 2022, is expected to be \$3,250,708. It is unknown at this time whether these funds will be paid out this fiscal year or next. At this time VVWRA staff is looking to add this project to capital project list for fiscal year 2022-23 in case it is not completed until after July 1, 2022.

Performing this work as part of the new construction eliminates future interruption of the Wellness Center Operations and will cost far less than the future cost of installation. It is for these reasons that staff is recommending that the Board of Commissioners approve the General Manager to execute this cooperative agreement with the City of Victorville.

**Exhibit 1 – Wellness Center Detail Map with the VVWRA Pipelines and Easements**  
**Exhibit 2 – The Cooperative Agreement with the City of Victorville**

# EXHIBIT 1

Green Line / Existing 36-inch Line - Orange Line / Proposed 36-Inch Line



# EXHIBIT 2

**COOPERATIVE AGREEMENT**

**CONSTRUCTION OF NEW SEWER INTERCEPTOR IMPROVEMENTS**

This Agreement is made and entered into as of March [ ], 2022 (the “Effective Date”), by and between the City of Victorville, a municipal corporation located in the County of San Bernardino, State of California, (hereinafter referred to as “Victorville”) and the Victor Valley Wastewater Reclamation Authority, a joint powers authority located in the County of San Bernardino, State of California, (hereinafter referred to as “VWRA”).

**RECITALS**

WHEREAS, Victorville is planning to cause the construction of an interim housing facility with support services (the “Wellness Center”) for individuals and families who are homeless or at risk of becoming homeless. The Wellness Center is planned on Victorville-owned property located at 16902 First Street within the Old Town neighborhood of Victorville which property is shown on Exhibit ‘A’ attached hereto and incorporated by this reference (the “Property”); and

WHEREAS, Victorville is currently pursuing funding for the Wellness Center and to the extent such funding becomes available Victorville hopes to cause commencement of construction of the Wellness Center in the First Quarter of 2022 or shortly thereafter; and

WHEREAS, an existing VWRA sewer interceptor line (“Interceptor”) and easement is currently located on the Property upon which the Wellness Center is to be built; and

WHEREAS, Victorville seeks permission from VWRA to utilize the easement area for the Wellness Center campus, and

Cooperative Agreement –VWRA

WHEREAS, it is not prudent to allow construction of permanent improvements over an existing interceptor line and VWRA anticipates the need to increase the capacity of the Interceptor in the future to handle additional wastewater flows, and

WHEREAS, VWRA therefore desires to cause the construction of a new parallel segment of sewer interceptor line on the Property which will run parallel to the Interceptor within a portion of the Property that will not have overlying improvements, except as provided in Section 4(4) hereof, in connection with the Wellness Center (the “Project”), the location of which Project is shown on Exhibit ‘B’ attached hereto and incorporated by this reference (“Project Site”); and

WHEREAS; the design and construction of the Project will only take place to the extent the City obtains the necessary funding to commence construction and completion of the Wellness Center; and

WHEREAS, Victorville and VWRA (sometimes hereinafter collectively referred to as the “Parties” and individually as “Party”), desire to enter into an agreement regarding the design, construction and funding of the Project and establishing the obligations of Victorville and VWRA with respect thereto; and

WHEREAS, one of the purposes of this Agreement is for Victorville and VWRA to share the costs and duties with respect to the construction of the Project; and

WHEREAS, the Parties recognize that the mutual cooperation will benefit both Parties.

**NOW, THEREFORE**, in consideration of the forgoing and the mutual promises and covenants set forth herein, the Parties mutually agree as follows:

**Section 1. RECITALS**

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth herein.

**Section 2. TERM**

This Agreement shall be effective as of the Effective Date and will continue for a period of five (5) years thereafter, terminating on the fifth anniversary of the Effective Date, unless this Agreement is otherwise extended in writing by both Parties or otherwise terminated by either Party pursuant to the terms of this Agreement prior to said expiration date.

**Section 3. RESPONSIBILITIES OF VWVRA**

VWVRA shall perform the following obligations related to the Project during the Term of this Agreement:

- (1) Design, or cause to be designed, plans for the Project at its sole cost and expense, copies of which are attached hereto as Exhibit 'C' and incorporated herein by this reference ("Project Design"). The Project Design will be subject to review and approval by Victorville. VWVRA will assume full responsibility and all costs related to the design of the Project.
- (2) Prior to the construction commencement of the Project, VWVRA shall provide a Non-Interference Letter to Victorville allowing the Victorville, and any future property owner, the ability to utilize the sewer line easement areas for the construction and operation of the Wellness Center, provided, however, that no improvements are constructed over the Project Site except as set forth in Section 4(4).



- (3) Upon completion of the construction of the Project, regularly monitor and inspect the condition of the Project and maintain the Project in a safe condition in a manner consistent with its maintenance of other similar projects within Victorville as well as repair any and all damage to the Project unless such damage is caused by the actions of Victorville, any future owner of the Property or their respective agent or contractors.

**Section 4. RESPONSIBILITIES OF VICTORVILLE**

Victorville shall perform the following obligations during the Term of this Agreement:

- (1) Upon City approval of the Project Design, cause any and all permits and approvals for the Project to be obtained and undertake and complete all CEQA or other environmental review that is necessary for the Project;
- (2) Cause the construction of the Project on the Property in accordance with the Project Design. VWVRA will have the right to monitor and inspect such construction to ensure compliance with the Project Design and approval of the final Project facilities. Such construction shall take place and be coordinated with the construction of the Wellness Center when and if such Wellness Center is constructed. If the commencement of construction of the Wellness Center does not occur within the Term, then the Parties will have no further obligations pursuant to the terms of the Agreement;
- (3) Pay all costs in connection with the construction of the Project, subject to reimbursement by VWVRA in accordance with the terms of Section 5;
- (4) Upon completion of the Project, Victorville shall cause to be prepared an amendment of the existing sewer interceptor line easement to cover the

Project Site in a form reasonably acceptable to VWVRA (the “Amended Easement”) and shall grant such Amended Easement to VWVRA to allow for access to and maintenance of the Project. Such Amended Easement shall allow for paved parking, landscaping, and fencing over the Easement area but will prohibit the construction of any permanent structures on the Easement. All Project facilities that are constructed pursuant to this Agreement will be the property of VWVRA upon completion and inspection by VWVRA.

- (5) Require all contractors and vendors working on the Project to have appropriate adequate insurance coverage for the mutual protection of benefit of the Parties. Victorville will notify VWVRA prior to the award of any contract for the Project to enable VWVRA to provide input as to any prior experience with the bidding contractors. Victorville shall require and ensure that all contractors/sub-contractors working on the Project shall have insurance policies that contain endorsements naming Victorville and VWVRA and their officers, agents, volunteers and additional insured with respect to the liabilities arising out of or performance of the construction services. Victorville will also require that all city contractors/sub-contractors comply with all applicable laws and regulations including but not limited to the prevailing wage laws of the California Labor Code as well as any and all Air Pollution Control, Water Pollution, Safety and Health ordinances and statutes which apply to the construction work performed pursuant to this Agreement.

**Section 5. PROJECT COST**

VWRA agrees to reimburse Victorville for the cost of construction of the Project in an amount not to exceed Six Hundred Thousand Dollars (\$600,000) without the prior written consent of VWRA. This amount includes a current estimate of costs plus a twenty percent contingency. VWRA and Victorville will work cooperatively in good faith to obtain final bids that are below the current estimate, but the failure to do so will not impact the enforceability of this Section 5. Within sixty (60) days of the completion of the Project, Victorville will submit to VWRA an invoice detailing the actual costs of construction for the Project, which costs will not include any allocation of administrative overhead of Victorville staff in connection with Project management or oversight. VWRA will have the right to review and audit the books and records of Victorville as necessary to verify the Project costs. VWRA will pay the invoice within thirty (30) days of receipt, provided, however, that such payment due date will be extended to the extent that VWRA has reasonable questions or concerns regarding Project cost.

**Section 6. NO AGENCY RELATIONSHIP CREATED; LIABILITY**

(a) Nothing contained in this Agreement shall be deemed, construed or represented by the Victorville or VWRA or by any third person to create the relationship of principal and agent.

(b) VWRA shall have no authority, expressed or implied, to act on behalf of the Victorville in any capacity whatsoever as an agent.

(c) Victorville shall have no authority, expressed or implied, to act on behalf of the VWRA in any capacity whatsoever as an agent.

(d) Victorville or its contactor(s), shall be solely responsible for any liability for the direct payment of any salary, wage or other such compensation to any person employed by Victorville or its contractor(s) to perform the construction of the Project.

**Section 7.           TERMINATION**

This Agreement may be suspended with cause by either Party at any time provided that the respective Party provides the other Party at least ten (10) calendar days' written notice of such suspension. Such suspension shall remain in effect until the underlying cause has been cured or notice of an event of default has been given pursuant to Section 8. This Agreement may further be terminated for breach by either Party if the other Party fails to cure an event of default within the cure periods specified in Section 8. Victorville may further terminate this Agreement at any time with thirty (30) days written notice to VWVRA if it determines not to proceed with the Wellness Center.

**Section 8.           DEFAULT**

a. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within thirty (30) calendar days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

b. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of

Cooperative Agreement –VWRA

default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default of any party to this Agreement may remain uncured for more than thirty (30) calendar days following written notice, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

e. Neither Party shall be responsible for damages or be in default or deemed to be in default by reason of delay caused by strikes, lockouts, accidents, or acts of God, or by reason of any other delays beyond the Party's control.

**Section 9. KEEPING OF DOCUMENTS**

Any records or documents either created by or provided to either Party in connection with the performance of this Agreement shall be kept in the ordinary course of business by that Party.

**Section 10. BOOKS AND RECORDS**

Both Parties shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to the work completed under this Agreement for a minimum period of two years, or for any longer period required by law, from the date of performance pursuant to this Agreement.



Cooperative Agreement –VWVRA

With a copy to:

Green de Bortnowsky, LLP  
 30077 Agoura Court, Suite 210  
 Agoura Hills, CA 91301  
 Telephone: (818) 704-0195  
 Attn: Andre de Bortnowsky

**Section 14.            ASSIGNMENT**

There shall be no assignment of the Agreement by either party without first obtaining the prior written consent of the other party.

**Section 15.            ATTORNEY'S FEES**

In the event of any legal proceeding being instituted to enforce any term or provision of this Agreement, The prevailing party of said legal proceeding shall be entitled to recover reasonable attorney's fees and costs.

**Section 16.            ENTIRE AGREEMENT**

This Agreement supersedes any and all agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that representation by any party that is not embodied herein nor any other agreement, statement or promise not contained in this Agreement, shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing and signed by all parties.

**Section 17.            INDEMNIFICATION**

a. VWVRA shall defend, indemnify and hold harmless Victorville, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect, (including any and all costs and expenses in connection wherein), arising out of VWVRA's performance of this Agreement, except for any such claim arising out of the

sole negligence or willful misconduct of Victorville and its officers, agents, employees or volunteers.

b. Victorville shall defend, indemnify and hold harmless VWVRA, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect, (including any and all costs and expenses in connection wherein), arising out of Victorville's performance of this Agreement, including any claim caused by the negligent acts or willful misconduct of Victorville's contractor(s) in connection with the construction of the Project, except for any such claim arising out of the sole negligence or willful misconduct of VWVRA and its officers, agents, employees or volunteers.

**Section 18. SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

**Section 19. VENUE**

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.



**Section 20. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least a copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 21. AUTHORITY TO ENTER AGREEMENT**

Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

**Section 22. PRINCIPAL REPRESENTATIVES**

a. The City Engineer, or his or her designee, is designated as the principal representative of Victorville responsible for undertaking, managing and supervising the performance of all of the services. The City Engineer or his designee shall be the principal representative of Victorville for purposes of communicating with VWVRA on any matter associated with the performance of the services set forth in this Agreement.

b. The VWVRA General Manager, or his designee, is designated as the principal representative of VWVRA. The General Manager or his designee shall be the principal representative of VWVRA for purposes of communicating with Victorville on any matter associated with the performance of the services set forth in this Agreement.

**Section 23. INTERPRETATION**

This Agreement shall not be interpreted against either party on the grounds that one of the parties was solely responsible for preparing it or caused it to be prepared as both parties were involved in drafting it.

**Section 24. CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

**Section 25. GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

**Section 26. RIGHTS AND REMEDIES**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.**

**CITY OF VICTORVILLE**

**VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

**APPROVED AS TO FORM**

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Authority Counsel

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 'A'**  
**PROPERTY**

**EXHIBIT 'B'**

**PROJECT DESCRIPTION AND LOCATION**

**EXHIBIT 'C'**  
**PROJECT DESIGN**



VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY  
Board of Commissioners Staff Report

**TO:** VVWRA Board of Commissioners  
**FROM:** Darron Poulsen, General Manager *DJP*  
**SUBMITTED BY:** Robert Coromina, Director of Administration  
**DATE:** March 17, 2022  
**SUBJECT:** ADMINISTRATIVE BUILDING ARCHITECTURAL SERVICES

|                          |                         |                                     |                                      |                            |
|--------------------------|-------------------------|-------------------------------------|--------------------------------------|----------------------------|
| <input type="checkbox"/> | <b>For Action</b>       | <input checked="" type="checkbox"/> | <b>Fiscal Impact</b>                 | <b>\$ 45,000.00</b>        |
| <input type="checkbox"/> | <b>Information Only</b> | <input type="checkbox"/>            | <b>Account Code:</b>                 | <b>01-02-515-9000-R149</b> |
|                          |                         | <input type="checkbox"/>            | <b>Funds Budgeted/ Approved: Yes</b> | <i>cm</i>                  |

**STAFF RECOMMENDATION**

It is recommended that the Board of Commissioners approve the General Manager to award a Architectural Services Agreement to Steeno Design Studio in the amount of \$ \$45,000, pending legal review and approval of the agreement.

**PREVIOUS ACTION(S)**

On October 28, 2021, the Board approved the awarding of the Asbestos abatement of the administration building which was subsequently completed in November of 2021. This was the first step in the rehabilitation process, the next steps include the remodel process by retaining architectural services for the conceptual design and floor plans for the structure as well as some internal demolition.

**BACKGROUND INFORMATION**

The Victor Valley Wastewater Reclamation Authority staff has been unable to occupy the Main Administrative/Lab building due to run-down and unsafe conditions since 2007. During the past 14 years VVWRA management tried to use other temporary structures to house the administrative staff from leasing space from the City of Hesperia to renting temporary trailers which the staff is currently housed in.

When searching for an architect VVWRA contacted three (3) local architects to provide quote for services.

|                         |                |
|-------------------------|----------------|
| Steno Design Studio     | \$45,000.00    |
| Omega Design Group      | Non-Responsive |
| Frick, Frick, and Jette | Non-Responsive |

Based on the exemptions listed below and the lack of responsiveness I am recommending we move forward with waiving the requirements for the acquisition for these professional and technical services, based on the following procedure:

Per the VVWRA procurement policy, section VI, Paragraph D: Exclusions.

The General Manager has the authority to waive the requirements of this section in the following circumstances provided that the reasons for such a waiver are documented as part of the purchasing process:

1. The acquisition of engineering, professional, audit, or legal services.
2. The acquisitions of highly technical and specialized outside services.

In order to move the project forward staff is recommending that the Board of Commissioners approve the General Manager to award this contract as a sole source acquisition to Steeno Design Studio in the amount of \$45,000.

**Attachment(s):**

**Exhibit 01 – Steeno Design Studio Proposal**



# EXHIBIT 1



January 19, 2022

Robert Coromina  
 Director of Administrative Services  
 Victorville Valley Wastewater  
 Reclamation Authority  
 20111 Shay Rd.  
 Victorville, CA. 92394

**Re: ARCHITECTURAL SERVICES AGREEMENT FOR 20111 SHAY ROAD,  
 VICTORVILLE, CA**

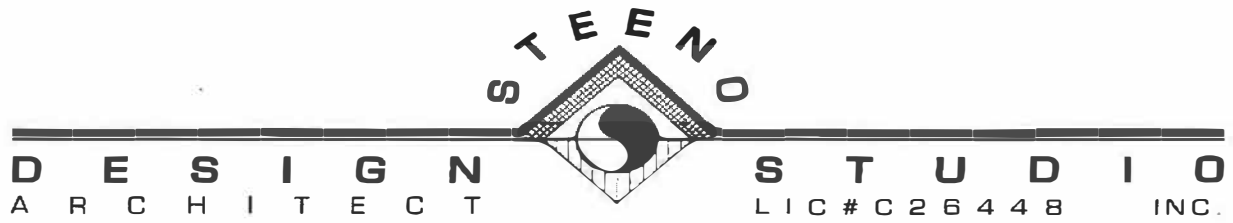
Dear Robert,

Thank you for the opportunity to provide our Agreement for Architectural Services for Remodel and Design Services for the 8,034 square foot 2-Story Building built in 1978 at 20111 Shay Road in Victorville, California. It was very helpful to meet at the site last week to discuss the plans to renovate the interior and exterior of the building for a fresh updated look. We will approach the remodel and redesign of this building as follows:

- 1- Initial job walk to go over scope of project.
- 2- Communicate with staff department heads for programming needs of project.
- 3- Site visit to photo document entire structure and field measure floor plan As-Built specifics.
- 4- Draw As-Built floor plans and exterior elevations.
- 5- Design conceptual floor plans for first and second floors.
- 6- Design exterior elevation proposals to include new main entry.
- 7- Provide colored full fly around 3D animation rendering of exterior of building.
- 8- Provide colored fly around 3d rendering on interior lobby space and board room & training room.
- 9- Meet with staff department heads to review design and make any modifications requested on floor plan, exterior elevations & 3D animations.

The proposed fee for services 1 – 9 above is \$45,000, forty-five thousand dollars. We will work with you to fine tune your floor plan design Per ADA Code, CBC 2019 current building codes. The above scope of work will complete the design portion of the project, however, to submit a formal application to the City of Victorville a site plan will be required along with appropriate application filings.

Prior to drawing the site plan, an as built topography will be required by a licensed surveyor. Once the topo is received this is our opportunity to provide any site circulation, parking, landscaping & security measures to be provided. When creation of the stie plan is requested, we can provide a proposal for the site plan, along with a conceptual landscape plan and a 3D animation of the site.



January 19, 2022  
 VVWRA – Shay Road VV

All municipal fees, and fees for engineering, and special studies are separate and not part of our proposed fee. Reproduction is billed separately at \$3 per page and mailings are billed separately. We can complete a preliminary design of new building elevations and floor plans for your review within 4-6 weeks from start of work and complete the final design and 3D renderings within 3-4 weeks from your design approval. Client is responsible to provide architect with any CC&R's or other restrictions to the building.

Payment Schedule of fees is:

- \$11,250 to Start Project,
- \$11,250 at completion of As-Built Plans and Start of Design Services,
- \$11,250 at Client Approval of Floor Plan and Exterior Elevations Designs,
- \$11,250 at Approval of 3D Rendering

Cancellation of this agreement must be in dated and in writing to the architect's office. If client cancels this agreement, all work performed to that date will be billed and the responsibility of the client. The undersigned hereby authorized Steeno Design Studio, Inc. to perform the above-described services in accordance with the fee arrangement described above in conformity with all the laws, ordinances, rules, and regulations of competent authority. This proposal is good for 30 days.

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
 Thomas R. Steeno  
 Architect

\_\_\_\_\_  
 Client Signature



**VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY  
Board of Commissioners Staff Report**

**TO:** VVWRA Board of Commissioners  
**FROM:** Darron Poulsen, General Manager *DJP*  
**SUBMITTED BY:** Latif Laari, Business Applications Manager  
**DATE:** 3/17/2022

**SUBJECT:** **RECOMMENDATION TO AWARD A CONTRACT FOR THE DEMOLITION OF THE OLD SCADA WALL PROJECT IN THE AMOUNT OF \$96,000.00 PER FISCAL YEAR TO NETGAIN NETWORKS, INC.**

|                                     |                         |                                     |  |                     |
|-------------------------------------|-------------------------|-------------------------------------|--|---------------------|
| <input checked="" type="checkbox"/> | <b>For Action</b>       | <input checked="" type="checkbox"/> | <b>Fiscal Impact</b>                     | <b>\$ 96,000.00</b> |
| <input type="checkbox"/>            | <b>Information Only</b> | <input checked="" type="checkbox"/> | <b>Account Code: 01-02-515-9000-R149</b> |                     |
|                                     |                         | <input checked="" type="checkbox"/> | <b>Funds Budgeted/ Approved:</b>         | <i>sch</i>          |

**STAFF RECOMMENDATION**

It is recommended that the Board of Commissioners approve the General Manager to award a contract for the demolition of old Scada wall Project in the amount of \$96,000.00 to Davis Electric, inc. pending legal review and approval of the agreement.

**PREVIOUS ACTION(S)**

On October 28, 2021, the Board approved the awarding of the Asbestos abatement of the administration building which was subsequently completed in November of 2021. This was the first step in the rehabilitation process, the next steps include the remodel process by retaining architectural services for the conceptual design and floor plans for the structure as well as some internal demolition.

**BACKGROUND INFORMATION**

The old SCADA wall is located in the old administration, it was installed in the 1980's and is no longer needed. In preparation to repropose this building, the SCADA wall need to be removed and disposed of.

On February 28, 2022, VVWRA solicited quotes through a request for proposal (RFQ) for the demolition of the old Scada wall project; the Contractor will furnish all labor, equipment, materials, and supervision to safely complete the project, as described in the scope of work (**Exhibit 1**).

Received quotes were reviewed for accuracy and compliance with the RFQ. The quotes tabulation sheet is also attached for reference. All other quotes requirements were evaluated and found to be complete.

The bids received are as follows:

| <b>Company</b>              | <b>Total Cost</b> |
|-----------------------------|-------------------|
| <b>Davis Electric. Inc</b>  | \$96,000.00       |
| <b>Big Sky Electric Inc</b> | \$173,161.00      |

Following an in-depth review of all proposals, Staff selected Davis Electric Inc with an excellent reputation and the ability to perform the work of this contract as the most qualified low bidder.

Staff recommends that the Board of Commissioners approve the General Manager to award a contract for the demolition of old Scada wall Project in the amount of \$96,000.00 per fiscal year to Davis Electric Inc. Pending legal review and approval of the agreement.

**Attachments:**

**Exhibit 1- Services Scope of Work**

**Exhibit 1- Services Scope of Work**

1. Remove and discard all wiring from the existing SCADA annunciator panel in the old Administration Building at the regional plant located at 20111 Shay Rd Victorville CA 92394.
2. Investigate routings, clear all Hot circuits from SCADA/annunciator panel to field equipment
  - a. Wires to the RAS PLC.
  - b. Wires to the OLD Blower Building PLC.
  - c. Wires to the EQ PLC.
3. Remove and discard the Old Administration building PLC And Cabinet
4. Remove and discard all unnecessary wiring in all locations demolished or investigated
5. The Old Admin Annunciator Panel to be removed and disposed out of the building.
6. Comply with the NEC regarding the removal of any and all disconnected or not in service wiring.
7. Enter confined spaces as needed

# EXHIBIT 1

**Exhibit 1- Services Scope of Work**

1. Remove and discard all wiring from the existing SCADA annunciator panel in the old Administration Building at the regional plant located at 20111 Shay Rd Victorville CA 92394.
2. Investigate routings, clear all Hot circuits from SCADA/annunciator panel to field equipment
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3. Remove and discard the Old Administration building PLC And Cabinet
4. Remove and discard all unnecessary wiring in all locations demolished or investigated
5. The Old Admin Annunciator Panel to be removed and disposed out of the building.
6. Comply with the NEC regarding the removal of any and all disconnected or not in service wiring.
7. Enter confined spaces as needed