



Contract Number

SAP Number

San Bernardino County Flood Control District

Department Contract Representative	Terry W. Thompson, Director, Real Estate Services Department
Telephone Number	(909) 387-5252
Contractor	Rialto Bioenergy Facility, LLC
Contractor Representative	Jeremy Metts, Vice President
Telephone Number	(760) 436-8870 x 106
Contract Term	7/1/2021 – 6/30/2026
Original Contract Amount	\$53,687.90
Amendment Amount	
Total Contract Amount	\$53,687.90
Cost Center	1920002522
GRC/PROJ/JOB No.	38004152
Internal Order No.	

IT IS HEREBY AGREED AS FOLLOWS:

The term of this license agreement is for a period of five years with three five-year options to extend the term of the license. The premises consist of approximately 2,394 lineal feet of San Bernardino County Flood Control District land located on the west side of and running parallel to District's Rialto Channel, south of Santa Ana Avenue in the City of Rialto for operating and maintaining an existing underground 6-inch PVC water pipeline. The initial annual fee is \$7,972.

Approved as to Legal Form

► See signature page

Agnes Cheng, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

Date _____

Reviewed/Approved by Department

►

Jim Miller, Real Property Manager, RESD

Date _____

**SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT
LICENSE AGREEMENT**

DISTRICT: San Bernardino County Flood Control District
825 East Third Street
San Bernardino, CA 92415-0835

LICENSEE: Rialto Bioenergy Facility, LLC
503 East Santa Ana Avenue
Bloomington, CA 92316

PREMISES: Approximately 2,394 lineal feet of District land located on the west side of and running parallel to District's Rialto Channel, south of Santa Ana Avenue in the City of Rialto to operate and maintain an existing underground 6-inch PVC water pipeline

TERM OF LICENSE: Five years with three (3) five-year options to extend the term

COMMENCEMENT DATE OF LICENSE: July 1, 2021

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT CONTRACT NUMBER:

REV. 3/1/2011

TYPED:

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EXHIBIT "A" – PREMISES-MAP, PERMIT NO: P-22007043

EXHIBIT "B" – LIST OF FORMER DISTRICT OFFICIALS

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT LICENSE AGREEMENT

Recitals

WHEREAS, the San Bernardino County Flood Control District ("DISTRICT") owns certain land in Rialto, California, on which it has constructed the Rialto Channel ("District Land").

WHEREAS, on December 8, 2020, DISTRICT approved a permit for Rialto Bioenergy Facility, LLC ("LICENSEE") to operate and maintain an existing underground 6-inch PVC water pipeline, which had been installed by a prior licensee, located on a portion of the District Land, comprising approximately 2,394 lineal feet, located on the west side of and running parallel to DISTRICT's Rialto Channel, south of Santa Ana Avenue ("Premises").

WHEREAS, LICENSEE commenced use of the Premises as of December 8, 2020 notwithstanding that a license agreement had not yet been executed by the parties, and as a result, LICENSEE shall remit a one-time, lump sum payment to DISTRICT for retroactive fees for its use of the Premises for the period from December 8, 2020 through June 30, 2021, as more specifically set forth herein; and,

WHEREAS, LICENSEE and the DISTRICT now desire to enter into this License for the Premises for a period of five (5) years, commencing on July 1, 2021 and ending on June 30, 2026 on the terms and conditions set forth in this License.

NOW, THEREFORE, DISTRICT and LICENSEE agree as follows:

1. **PARTIES:** This License is made between the San Bernardino County Flood Control District ("DISTRICT"), as licensor, and Rialto Bioenergy Facility, LLC ("LICENSEE"), as licensee.
2. **PREMISES LICENSED:** DISTRICT licenses to LICENSEE and LICENSEE licenses from DISTRICT approximately 2,394 lineal feet of District Land located on the west side of and running parallel to DISTRICT's Rialto Channel, south of Santa Ana Avenue ("Premises") to operate and maintain an existing underground 6-inch PVC water pipeline, as the Premises are as described in Exhibit "A" attached hereto and made a part hereof.
3. **USE:** Subject to the rights reserved by DISTRICT herein, the DISTRICT grants a license for the above-described Premises to LICENSEE for the purpose of LICENSEE's use and maintenance of an existing underground 6-inch PVC water pipeline ("Pipeline Improvement") for an organics recycling discharge line. Use of the Premises by LICENSEE shall be deemed conclusive that the Premises is fit and proper for the purposes for which the same is hereby to be used with LICENSEE's acknowledgment, acceptance and understanding that the Premises and the Pipeline Improvement run parallel to District's Rialto Channel, and the Premises have been and will be used by the DISTRICT for the purpose of flood control. DISTRICT hereby expressly reserves the right to use the Premises, which may affect the Pipeline Improvement, for the maintenance of above ground and underground flood control channels. Provided however, that the DISTRICT shall use diligence to conduct such maintenance with minimum interference to LICENSEE's use of the Premises and the Pipeline Improvement, as circumstances permit. In the event of any loss or damage sustained by LICENSEE to the Pipeline Improvement or use of the Premises from DISTRICT's operations, or from the flow of water by flood, or otherwise, LICENSEE, as further consideration for this License, does hereby waive any and all damages or claims against DISTRICT resulting from or arising out of such operations or flow of waters.

Notwithstanding the application of Section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of the executed release which if known by him or her must have materially affected his or her settlement with the debtor."

LICENSEE expressly waives and relinquishes all rights and benefits afforded them by said Section 1542, and any and all similar laws of any State or territory of the United States. This agreement shall act as a release of future claims that may arise from the above-mentioned flooding whether such claims are currently known, unknown, foreseen, or unforeseen. The LICENSEE understands and acknowledges the significance and consequences of such specific waiver of Section 1542 and hereby assumes full responsibility for any injuries, damages, losses, or liability that they or their personnel may hereafter incur from the above-mentioned flooding.

This License and the rights herein granted to LICENSEE shall be subject to the paramount legal duties and obligations of DISTRICT pursuant to the San Bernardino County Flood Control Act of 1939 (the "Flood Control Act"), including, but not limited to, the right to cross over and/or occupy the Premises with any and all equipment necessary in the preservation of the Right-of-Way without liability for any damages to the Pipeline Improvement.

4. **TERM:** This License shall extend for a term of five (5) years, commencing on July 1, 2021 and ending on June 30, 2026 ("Initial Term").

5. **LICENSE FEE:**

A. Within thirty (30) days of the Commencement Date, LICENSEE shall pay to the DISTRICT a one-time, lump sum payment of Four Thousand Three Hundred Twenty Six and 90/100 Dollars (\$4,326.90) for retroactive fees for LICENSEE'S use of the Premises for the period from December 8, 2020 through June 30, 2021.

B. LICENSEE shall pay to DISTRICT the following annual fee payments ("License Fee") in advance commencing on the commencement date and continuing during the Initial Term, subject to an approximate four percent (4%) annual increase, as more specifically reflected and included in the amounts set forth below:

July 1, 2021 thru June 30, 2022 – annual payment of \$7,972.00
July 1, 2022 thru June 30, 2023 – annual payment of \$8,291.00
July 1, 2023 thru June 30, 2024 – annual payment of \$8,623.00
July 1, 2024 thru June 30, 2025 – annual payment of \$8,968.00
July 1, 2025 thru June 30, 2026 – annual payment of \$9,327.00

C. In addition to the License Fee payable pursuant to **Paragraph 5.B**, LICENSEE shall pay to the DISTRICT an annual inspection fee ("Annual Inspection Fee") in the then current amount set forth in the DISTRICT's Schedule of Fee Ordinance No. FCD 20-01 for the annual inspection of the Premises by the DISTRICT for compliance with the terms of this License without waiving any DISTRICT rights hereunder. The annual inspection fee shall be payable in advance on July 1, 2021, and on each July 1 thereafter during the Initial Term. The DISTRICT's current Annual Inspection Fee effective for July 1, 2021 is One Thousand Two Hundred Thirty Six Dollars and 00/100 (\$1,236.00), as shown on the District's Schedule of Fee Ordinance No. FCD 20-01. The Annual Inspection Fee shall not be refunded in whole or in part to the LICENSEE in the event the License is terminated for any reason.

D. If any fee or other sums due hereunder are not paid when due and payable, LICENSEE shall pay to DISTRICT an additional Fifty and 00/100 Dollars (\$50.00) for each fee

due as an administrative processing charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that DISTRICT will incur by reason of late payment by LICENSEE. Acceptance of any late charge shall not constitute a waiver of LICENSEE's default with respect to the overdue amount or prevent DISTRICT from exercising any of the other rights and remedies available to DISTRICT. Fees not paid when due shall bear simple interest from date due at the rate of one and one-half percent (1½%) per month.

6. **OPTION TO EXTEND TERM:** LICENSEE has the option to extend the term of the License on the same provisions and conditions, except for the annual license fee, for three (3) five-year periods ("extended terms") following expiration of the Initial Term. LICENSEE shall give written notice to DISTRICT to exercise the options, at least one (1) year, but not more than eighteen (18) months prior to the expiration of the preceding term. Provided that, if LICENSEE is in default on the date of giving the option notice, the option notice shall be totally ineffective, or if LICENSEE is in default on the date the extended term is to commence, the extended term shall not commence and this License shall expire at the end of the preceding term.

7. **SECURITY DEPOSIT:**

A. On the date LICENSEE executes this License, but no later than the commencement of the Initial Term, LICENSEE shall pay to DISTRICT a security deposit in the amount of Five Thousand and 00/100 Dollars (\$5,000.00) to secure LICENSEE's full and faithful performance of LICENSEE's obligations under this License.

B. If LICENSEE fails to pay any monetary sums, including but not limited to the License Fees and the Annual Inspection Fees, and/or defaults in the performance of any other terms, provisions, covenants and conditions of this License, and such failure to pay or other defaults are not timely remedied in accordance with License following written notice from DISTRICT to LICENSEE pursuant to Paragraph 34, NOTICES, DISTRICT may use, apply, or retain the whole or any part of the security deposit for the payment of any amount in default or for any other sum which the DISTRICT may spend or be required to spend by reason of LICENSEE's default.

C. Should LICENSEE fully and faithfully comply with all the terms, provisions, covenants and conditions of this License, the security deposit or any balance of the security deposit shall be returned to LICENSEE at the expiration or earlier termination of the License.

D. DISTRICT requires that if DISTRICT uses all or any portion of the security deposit it be replenished by LICENSEE to the full amount set forth in Paragraph 7.A. within ten (10) days written notice to LICENSEE from DISTRICT.

E. DISTRICT may require, at any time, the security deposit be increased with good cause as determined by the DISTRICT in its good faith judgment.

8. **LICENSE FEE PAYMENT PROCEDURE:**

A. License Fees, Annual Inspection Fees, and any other payments due under this License shall be delivered to the DISTRICT at 825 East 3rd Street, San Bernardino, CA, 92415-0835, Attention: Permit Engineer. The designated place of payment may be changed at any time by DISTRICT upon not less than thirty (30) days prior written notice to LICENSEE. License Fees, Annual Inspection Fees, and any other payments may be made by check payable to the San Bernardino County Flood Control District. LICENSEE assumes all risk of loss or delays if any payments are made by mail and are not timely received by DISTRICT.

B. All sums due under this License shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by

LICENSEE or receipt by DISTRICT of a lesser amount than the payment due shall be deemed to be other than an account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and DISTRICT shall accept such payment without prejudice to DISTRICT'S right to recover the balance of the amount due or pursue any other remedy in this License.

9. **PIPELINE IMPROVEMENT:** Upon termination of this License or any extension or renewal thereof, and the faithful performance of each and all of the terms, covenants and conditions thereof, unless otherwise elected by DISTRICT in writing, the LICENSEE shall remove the Pipeline Improvement, which removal shall be completed on or before the expiration of the then current term. At DISTRICT's option, DISTRICT may extend the time for LICENSEE to remove the Pipeline Improvement up to ninety (90) additional days beyond the expiration of the then current term; in which case, LICENSEE shall pay to DISTRICT during such additional period, license fee equal to the license fee payable immediately preceding such termination or extension or renewal, pro-rated for such additional period.

10. **DISTRICT'S ACCESS TO PREMISES:** DISTRICT's activities shall take precedence at all times, and when, any work or activity must be performed to carry out the functions and purposes of the DISTRICT, LICENSEE must allow same to be done on the Premises without interference. DISTRICT shall give LICENSEE reasonable notice of impending activities on the Premises whenever possible.

11. **HEALTH, SAFETY AND FIRE CODE REQUIREMENTS:** As a condition precedent to the existence of this License, LICENSEE at its sole expense will ensure the Premises meet the applicable requirements of the Health, Safety, Fire and Building Codes, including any requirements for a notice of completion, certificate of occupancy and the Americans with Disabilities Act ("ADA"). Should the continued occupancy of the Premises be in any way prejudiced or prevented due to changes in the ADA or the Health, Safety or Fire Codes, the LICENSEE herein shall correct, update and comply with said changes at LICENSEE's cost.

12. **UTILITIES:** LICENSEE shall furnish to the Premises and pay all utility hook-ups and timely pay all service charges and related taxes for water and all other utilities servicing the Premises, if any.

13. **RETURN OF PREMISES:** The LICENSEE agrees that it will, upon the termination of this License or any extension thereof, return the Premises to DISTRICT in as good a condition and repair as it was initially received by LICENSEE, reasonable wear and tear excepted, and in accordance with the provisions of Paragraph 24 of this License.

14. **HOLDING OVER:** In the event the LICENSEE shall hold over and continue to occupy the Premises with the consent of the DISTRICT, expressed or implied, the License shall be deemed to continue on a month-to-month term upon the same terms and conditions as existed and prevailed at the time of the expiration of the term of this License, excepting the annual license fee. The license fee during any permitted holdover shall be equal to One Hundred and Fifty Percent (150%) of the license fee due for the annual period immediately preceding the commencement of holdover, pro-rated on a monthly basis. Notwithstanding the foregoing, DISTRICT may, in its sole discretion, permit LICENSEE to holdover for the sole purposes of removing the Pipeline Improvement unless removal is not required by DISTRICT; in which case, the holdover period shall not exceed three (3) months and the licensee fee due shall be equal to One Hundred Percent (100%) of the license fee due for the annual period immediately preceding the commencement of holdover, pro-rated on a monthly basis for said three (3) months.

15. **TAXES, ASSESSMENTS AND LICENSES:** LICENSEE shall pay before delinquency, if any, property taxes, assessments, fees or charges, including possessory interest taxes which may

be levied or assessed upon any personal property, improvements or fixtures installed or belonging to LICENSEE and located within the Premises. LICENSEE shall also pay all licenses or permit fees necessary or required by law for conduct of its operation and/or in accordance with Section 107 of the California Revenue and Taxation Code. LICENSEE recognizes and understands that this License may create a possessory interest subject to property taxation and that the LICENSEE may be subject to the payment of property taxes levied on such interest.

16. **INDEMNIFICATION:** The LICENSEE agrees to indemnify, defend (with counsel reasonably approved by DISTRICT) and hold harmless the DISTRICT, the County of San Bernardino ("COUNTY") and its respective authorized officers, employees, agents and volunteers (collectively "Indemnitees") from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the DISTRICT or COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of the Indemnitees. LICENSEE's indemnification obligation applies to DISTRICT's or COUNTY's "active" as well as "passive" negligence but does not apply to DISTRICT's or COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. The provision of the License shall survive the expiration or earlier termination of the License. Notwithstanding anything else in this License, the obligations in this Paragraph 16 are to indemnify, defend and hold harmless the Indemnitees.

17. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

A. DISTRICT is a self-insured public entity for purposes of professional liability, general liability and workers' compensation.

B. The LICENSEE agrees to provide insurance set forth in accordance with the requirements herein. If the LICENSEE uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the LICENSEE agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the license hereunder.

Without in anyway affecting the indemnity herein provided and in addition thereto, the LICENSEE shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

(1) Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with limits of \$250,000 each accident/disease/policy limit covering all employees providing services on behalf of the LICENSEE under this License.

If LICENSEE has no employees, it may certify or warrant to the DISTRICT that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the DISTRICT's Director of Risk Management.

If, LICENSEE is a non-profit corporation, organized under California or Federal law, volunteers for LICENSEE are required to be covered by Workers' Compensation insurance.

(2) Commercial/General Liability Insurance – The LICENSEE shall carry General Liability Insurance covering all operations performed by LICENSEE providing coverage

for bodily injury and property damage with a limit of one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations.
- (b) Products and completed operations.
- (c) Explosion, collapse and underground hazards.
- (d) Personal and Advertising injury.
- (e) Contractual liability.
- (f) \$2,000,000 general aggregate limit.

(3) Commercial Property Insurance providing all risk coverage for the licensed premises, building, fixtures, equipment and all property constituting a part of the premises. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost.

(4) Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles. The policy shall have a combined single limit of two million dollars (\$2,000,000) each accident for bodily injury and property damage.

(5) Environmental Liability Insurance – This insurance shall have a combined single limit of Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence.

(6) During the period of any construction, LICENSEE shall, in addition to the above insurances, provide or cause its contractor or subcontractor to furnish the following forms and amounts of insurance – Builders All-Risk Insurance covering the entire work against loss or damage until completion. This insurance shall be in amount for the replacement value of the subject building and improvements and endorsed for broad form property damage, breach of warranty, and explosions, collapse, and underground hazards. Deductibles not exceeding five percent (5%) of the construction costs will be allowed.

C. Additional Insured – All policies, except for the Workers' Compensation and Employer's Liability, shall include the DISTRICT, the COUNTY, and their officers, employees and volunteers as additional insureds as their interest may appear under this License with respect to liabilities arising out of the use by LICENSEE under this License. The blanket additional insured endorsements shall not limit the scope of coverage for the DISTRICT or the COUNTY to vicarious liability but shall allow coverage for the DISTRICT and the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as the most recent ISO Form or its equivalent.

D. Waiver of Subrogation Rights – The LICENSEE shall require the carriers of required coverages to waive all rights of subrogation against the DISTRICT, the COUNTY, and their respective officers, employees, and volunteers. All general or auto liability insurance coverage provided shall not prohibit the LICENSEE from waiving the right of subrogation prior to a loss or claim. The LICENSEE hereby waives all rights of subrogation against the DISTRICT and the COUNTY.

E. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the DISTRICT.

F. Severability of Interests – The LICENSEE agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the LICENSEE and the

DISTRICT or between the DISTRICT and any other insured or additional insured under the policy.

G. Proof of Coverage – The LICENSEE shall furnish Certificates of Insurance to the DISTRICT's Real Estate Services Department (RESA) administering the License evidencing the insurance coverage, including blanket additional insured endorsements, as required, prior to the commencement of performance of services hereunder. Upon receipt of notice from its insurer(s), LICENSEE shall provide RESA with thirty (30) days prior written notice of cancellation of any required coverage. LICENSEE shall maintain such insurance from the time LICENSEE commences use under the License hereunder until the end of the period of the License. LICENSEE shall provide copies of the declaration pages for all applicable policies within fifteen (15) days after request of the DISTRICT.

H. Acceptability of Insurance Carrier – Unless otherwise approved by the DISTRICT Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

I. Insurance Review – Insurance requirements are subject to periodic review by the DISTRICT. The DISTRICT's Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever the DISTRICT's Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the DISTRICT. In addition, the DISTRICT's Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the DISTRICT, inflation, or any other item reasonably related to the DISTRICT's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this License. LICENSEE agrees, upon prior written notice, and following LICENSEE's review and acceptance of any such requested changes, to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of RESA or DISTRICT to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RESA or the DISTRICT.

J. Failure to Procure Insurance. All insurance required must be maintained in force at all times by LICENSEE. Failure to maintain said insurance, due to expiration, cancellation, etc., shall be cause for the DISTRICT to give notice to immediately suspend all LICENSEE's business activities on the Premises. Failure to reinstate said insurance within ten (10) days of notice to do so shall be cause for termination and for forfeiture of this agreement, and/or DISTRICT, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by DISTRICT shall be repaid by LICENSEE to DISTRICT upon demand but only for the pro rata period of non-compliance.

K. DISTRICT shall have no liability for any premiums charged for such coverage(s). The inclusion of DISTRICT as additional named insured is not intended to and shall not make a partner or joint venturer with LICENSEE in LICENSEE's operations.

L. The LICENSEE agrees to require all parties or subcontractors, or others it hires or contracts with for any construction project related to the use of this License or Licensed Premises to provide insurance covering such use with the basic requirements and including the DISTRICT as additional insured. LICENSEE agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

18. **REPAIRS AND MAINTENANCE OF PREMISES:**

A. LICENSEE agrees to maintain the Premises in a neat, clean and orderly condition, and not to allow the use of said Premises for any purpose except as set forth in this License.

B. LICENSEE shall have ten (10) days after notice from DISTRICT to commence to perform its obligation under this paragraph, except that LICENSEE shall perform its obligations immediately if the nature of the problem presents a hazard or emergency. If LICENSEE does not perform its obligations within the time limitations in this paragraph, DISTRICT can perform the obligations and has the right to be reimbursed for the sum it actually expends in the performance of LICENSEE's obligations. Any notice or demand provided by the paragraph may be made orally by telephone or otherwise, provided that written confirmation is given within five (5) days after the oral notice or demand is made. Such confirmation shall be made as provided in **Paragraph 33, NOTICES.**

19. **ALTERATIONS:** LICENSEE shall not make any additional improvements or alterations to the Premises without DISTRICT's prior written consent. At DISTRICT's option, any improvements or alterations made shall remain on and be surrendered with the Premises or be removed by LICENSEE at LICENSEE's expense on expiration or termination of the term.

20. **ASSIGNMENT AND SUBLETTING:** LICENSEE shall not voluntarily assign or encumber its interest in this License or in the Premises or any options contained in this License, or sub-license all or any part of the Premises, or allow any other person or entity (except LICENSEE's authorized representatives as approved by DISTRICT) to occupy or use all or any part of the Premises, without first obtaining DISTRICT's prior written consent. Any assignment, encumbrance or sublicense without DISTRICT's prior written consent shall be of no legal effect and, at DISTRICT's election, shall constitute a default. No consent to any assignment, encumbrance, or sub-license shall constitute a further waiver of the provisions of this paragraph.

21. **INSPECTION OF PROPERTY:** DISTRICT, or a duly authorized representative of the DISTRICT, reserves the right to enter upon the Premises at any reasonable time for the purpose of inspecting the Premises for conformance to license provisions.

22. **LICENSEE'S DEFAULT:** The occurrence of any one or more of the following events shall constitute a default and breach of this License by LICENSEE:

A. The vacating for more than thirty (30) consecutive days or abandonment of the Premises by LICENSEE or LICENSEE's failure to pay any license fees or any other payments when due and such failure is not cured within ten (10) days after receipt of written notice from DISTRICT.

B. Except as provided in Paragraph 21.A, the failure by LICENSEE to observe or perform any of the covenants, conditions or provisions of this License to be observed or performed by LICENSEE where such failure shall continue for a period of thirty (30) days after written notice hereby by DISTRICT to LICENSEE, provided however, that if the nature of LICENSEE's default is such that more than thirty (30) days are reasonably required for its cure, then LICENSEE shall not be deemed to be in default if LICENSEE commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

23. **DISTRICT'S REMEDIES ON LICENSEE'S DEFAULT:** In the event of any default by LICENSEE which is not cured by LICENSEE, DISTRICT can terminate this License by giving LICENSEE ten (10) days' notice of termination. On termination of the License for default, pursuant to this paragraph, DISTRICT shall have the right to recover from LICENSEE for any and

all damages which may be the direct or indirect result of such default, including but not limited to the following:

A. The worth at the time of the award of the unpaid license fee that had been earned at the time of termination of this License, and;

B. The worth at the time of the award of the amount by which the unpaid license fee that would have been earned after the date of termination of this License until the time of award exceeds the amount of the loss of license fee that LICENSEE proves could have been reasonably avoided, and;

C. The worth at the time of the award of the amount by which the unpaid license fee for the balance of the term after the time of award exceeds the amount of the loss of license fee that LICENSEE proves could have been reasonably avoided, and;

D. Any other amount and court costs necessary to compensate DISTRICT for all detriment proximately caused by LICENSEE's default, except those amounts LICENSEE proves could have been reasonably avoided.

"The worth at the time of the award", as used in "A" and "B" of this paragraph, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth at the time of the award", as referred to in "C" of this paragraph, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

24. **TERMINATION:** Either party may terminate this License at any time by giving the other party written notice of any termination pursuant to this paragraph at least one hundred twenty (120) days prior to the date of termination. LICENSEE shall perform all necessary removals of the Pipeline Improvement and other personal property within said one hundred twenty (120) day notice period unless a holdover is permitted pursuant to Paragraph 13 for the sole purposes of removal and DISTRICT shall refund any license fees paid for the period after the effective termination date, provided that the annual inspection fee paid shall not be pro-rated nor refunded to LICENSEE.

25. **CONDITION OF PREMISES:** Upon expiration, cancellation or revocation of this License or any cause whatsoever, LICENSEE shall immediately cease all activities hereunder, and unless otherwise elected by DISTRICT in writing, LICENSEE shall remove the Pipeline Improvement and restore the Premises to a clean and level graded condition to the satisfaction of the DISTRICT. LICENSEE shall vacate the Premises by the termination date unless otherwise permitted under this License. Unless otherwise elected by DISTRICT in writing, should LICENSEE neglect to remove Pipeline Improvement (including the underground conduits and above ground pull boxes, and any approved structures or facilities then existing thereon) and restore the Premises in accordance to this License to the satisfaction of the DISTRICT, the DISTRICT will perform such work and LICENSEE agrees to reimburse the DISTRICT for all actual costs of the work so performed.

26. **HAZARDOUS MATERIALS:**

A. **Definition.** For purposes of this License, the term "Hazardous Substance" means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); Toxic Substances Control Act, 15 U.S.C.

Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 1300 et seq., all as amended, (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws") or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos.

B. In connection with the license of the Premises by LICENSEE, (a) LICENSEE agrees and acknowledges that it has had an opportunity to investigate the Premises and the land of which the Premises are a part and its environs for the presence of any hazardous substance; (b) any and all reports, studies, analyses, estimates, maps, drawings, materials, etc. delivered by DISTRICT to LICENSEE preceding the Commencement Date are delivered to LICENSEE as an accommodation and not with the intent that such items be relied upon by LICENSEE, except to the extent that LICENSEE has independently confirmed the validity of such items; and (c) LICENSEE's decision to enter into this License is based upon the investigation, study and analysis of the property made by LICENSEE or its agents and/or independent contractors, and not upon oral or written statements or representations of DISTRICT. It is expressly understood by LICENSEE and DISTRICT that all statements and representations made by DISTRICT which are not included in this License (a) are intended by DISTRICT to be made as an accommodation to LICENSEE in DISTRICT's investigation and not in lieu of LICENSEE's investigation; and (b) are not to be relied and acted upon by LICENSEE.

C. LICENSEE shall not permit, authorize, or suffer at any time herein relevant the presence, use, manufacture, handling, generation, storage, treatment, discharge, release, burial or disposal on, under or about the Premises or the land of which the Premises are a part of any hazardous substance, or the transportation to or from the Premises or the land of which the Premises are a part of any hazardous substance.

D. Without limiting the generality of this indemnity, this indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607 (e) and California Health and Safety Code Section 25364 to insure, protect, hold harmless and indemnify DISTRICT for any liability pursuant to such sections.

E. LICENSEE agrees, in addition to those obligations imposed upon it pursuant to **Paragraph 16, INDEMNIFICATION**, herein, to indemnify, defend with counsel reasonably approved by DISTRICT, protect and herein hold harmless DISTRICT, its directors, officers, employees, agents, assigns, any successor or successors to DISTRICT's interest in the property from and against all claims, actual damages, special and consequential damages, punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses of any kind whatsoever paid, incurred or suffered by, or asserted against, the real property on which the Premises is situated or any indemnified party directly or indirectly arising from or

attributable to (a) any breach by the LICENSEE or any of its agreements, warranties or representations set forth in this License with respect to Hazardous Substances, or (b) any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any hazardous substance on, under or about the Premises or the real property which the Premises is situated on, regardless of whether undertaken due to governmental action if caused by or exacerbated by the actions or omissions of LICENSEE or its employees, agents, and contractors. To the fullest extent permitted by law, the foregoing indemnification shall apply regardless of the fault, active or passive negligence, breach of warranty or contract of LICENSEE.

27. GENERAL COVENANTS AND AGREEMENTS:

A. LICENSEE agrees not to use said Premises, or any part thereof, for any purpose which causes injury to any neighboring property, nor for any purpose in violation of valid applicable laws or ordinances. LICENSEE shall make no use of the Premises which will constitute a nuisance and shall maintain the Premises herein described in a neat and orderly manner.

B. DISTRICT shall be under no obligation whatever to make any repairs upon improvements now or hereafter placed on said Premises by LICENSEE, and said DISTRICT reserves the right throughout said term of this License to enter upon said Premises to inspect same and for carrying out any routine and emergency maintenance or construction repair work on the San Bernardino County Flood Control District's facilities that DISTRICT may deem expedient, nor shall said DISTRICT be liable for damages to the Pipeline improvement as a result thereof.

C. In the event of said Premises being used for any purpose which constitutes a nuisance, this License may be terminated by said DISTRICT unless said LICENSEE shall abate such nuisance within ten (10) days after DISTRICT has served upon LICENSEE, written notice requiring such abatement.

(1) If LICENSEE records this License, LICENSEE shall execute a full reconveyance thereof at the time of expiration or sooner termination thereof.

D. No political signs, as described in Chapter 12, Section 87.1215(3), of the San Bernardino County Code, shall be permitted on the Premises.

E. Any DISTRICT right-of-way monuments that are removed, disturbed, or destroyed as a result of LICENSEE's use under this License shall be replaced by the DISTRICT at LICENSEE's cost. LICENSEE will be billed and agrees to immediately pay all costs of such replacement.

F. Uses granted to LICENSEE under this License are valid only to the extent of the DISTRICT's existing rights and may be subject to other easements and encumbrances. Rights granted to the LICENSEE are not exclusive.

G. Prior to commencement of any use under this License, the LICENSEE shall provide to the DISTRICT copies of any and all permits required from other agencies.

H. Any damage caused to DISTRICT's facilities or structures by reason of the exercise of the License shall be repaired at the cost of the LICENSEE to the satisfaction of the DISTRICT. LICENSEE will be billed with the actual cost to the DISTRICT should LICENSEE neglect to make such repairs promptly.

I. LICENSEE agrees to pay any fees required by any governmental agency including to DISTRICT.

J. Activities under this License are subject to any instructions of DISTRICT's Flood Control Engineer or his representative.

K. If the LICENSEE should refuse or neglect to comply with the provisions of the License, or the orders of the DISTRICT, the DISTRICT may have such provisions or orders carried out by others at the expense of the LICENSEE. All the terms, covenants and conditions set forth herein are to be strictly complied with by the LICENSEE. Any failure to comply therewith shall be grounds for immediate cancellation of the License.

L. This License is valid only to the extent of DISTRICT jurisdiction. Permits required by other interested agencies shall be the responsibility of the LICENSEE. **NOTHING CONTAINED IN THIS LICENSE SHALL BE CONSTRUED AS A RELINQUISHMENT OF ANY RIGHTS NOW HELD BY THE DISTRICT.**

28. **SPECIAL COVENANTS AND AGREEMENTS:** At any time during the term of the License, the DISTRICT shall have the right to revise, modify, or add provisions to the License as may be required to meet the DISTRICT's obligations for water conservation and flood control purposes so long as any revisions, modifications, etc., do not substantially interfere with LICENSEE's use of the Premises.

29. **PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.

30. **CONSENT:** Unless specified otherwise in the relevant provision of the License, whenever consent or approval of either party is required that party shall not unreasonably withhold such consent or approval.

31. **EXHIBITS:** All exhibits referred to are attached to this License and incorporated by reference.

32. **LAW AND VENUE:** This License shall be construed and interpreted in accordance with the laws of the State of California. The parties acknowledge and agree that this License was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this License will be the Superior Court of California, County of San Bernardino, San Bernardino. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any action or claim concerning this License is brought by and third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino.

33. **CAPTIONS, TABLE OF CONTENTS AND COVER PAGE:** The paragraph captions, table of contents and the cover page of this License shall have no effect on its interpretations.

34. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally by a reputable overnight courier service, or sent by United States first-class mail, postage prepaid, certified or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may

change its address by notifying the other party of the change of address. Notice shall be deemed delivered and effective upon the earlier of (i) actual receipt or (ii) the date of delivery or refusal of the addressee to accept delivery by a reputable overnight courier service or if notice is sent by United States mail, postage prepaid, certified or registered, return receipt requested. Any notices received after 5pm local time shall be deemed delivered on the next business day.

DISTRICT's address: San Bernardino County Flood Control District
Attn: Assistant Director, Flood Control
825 E. Third Street
San Bernardino, CA 92415-0835

With a copy to: San Bernardino County Flood Control District
c/o Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

LICENSEE's address: Rialto Bioenergy Facility, LLC
503 East Santa Ana Avenue
Bloomington, CA 92316

35. **WAIVERS:** No waiver by either party of any provisions of this License shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provisions.

36. **AMENDMENTS:** No provision of this License may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successor in interest, expressing by its terms an intention to modify this License.

37. **SEVERABILITY:** If any word, phrase, clause, sentence, paragraph, section, article, part or portion of this License is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this License or any other portion thereof.

38. **INCORPORATION OF PRIOR AGREEMENT:** This License contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this License, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

39. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, shall bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under **Paragraph 16, INDEMNIFICATION.**

40. **SUCCESSORS:** This License shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

41. **SURVIVAL:** The obligations of the parties which, by their nature, continue beyond the term of this License, will survive the termination of this License.

42. **FORMER COUNTY OR DISTRICT OFFICIALS:** LICENSEE agrees to provide or has already provided information on former County of San Bernardino ("COUNTY") or DISTRICT administrative officials (as defined below) who are employed by or represent LICENSEE. The information provided includes a list of former COUNTY or DISTRICT administrative officials who

terminated COUNTY or DISTRICT employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of LICENSEE. For purposes of this provision, "COUNTY or DISTRICT administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY or DISTRICT Administrative Officer or member of such officer's staff, COUNTY or DISTRICT department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "B", List of Former County or District Officials.)

43. **MATERIAL MISREPRESENTATION:** If during the course of the administration of this License, the DISTRICT determines that the LICENSEE has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the DISTRICT, this License may be immediately terminated. If this License is terminated according to this provision, the DISTRICT is entitled to pursue any available legal remedies.

44. **INTERPRETATIONS:** As this License was jointly prepared by both parties, the language in all parts of this License shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

45. **PUBLIC RECORDS DISCLOSURE:** All information received by the DISTRICT from the LICENSEE or any source concerning this License, including the License itself, may be treated by the DISTRICT as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act"). LICENSEE understands that although all materials received by the DISTRICT in connection with this License are intended for the exclusive use of the DISTRICT, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which LICENSEE has reasonably requested DISTRICT to hold in confidence is made to the DISTRICT, the DISTRICT shall notify the LICENSEE of the request and shall thereafter disclose the requested information unless the LICENSEE, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides DISTRICT a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the DISTRICT harmless in any/all actions brought to require disclosure. LICENSEE waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event DISTRICT fails to notify LICENSEE of any such disclosure request and/or releases any information concerning this License received from the LICENSEE or any other source.

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46. **AUTHORIZED SIGNATORS:** Both parties to this License represent that the signators executing this document are fully authorized to enter into this License.

**SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT**

RIALTO BIOENERGY FACILITY, LLC

By: _____
Curt Hagman, Chairman
Board of Supervisors

By: _____
Jeremy Metts

Title: Vice President

Date: _____

Date: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County fo San Bernardino

By: _____
Deputy

Date: _____

Approved as to Legal Form:

MICHELLE D. BLAKEMORE, County Counsel
San Bernardino County, California

By: _____
Agnes Cheng, Deputy County Counsel

Date: _____

LOCATION OF PERMIT P-22007034

CITY OF COLTON

CITY OF RIALTO

SANTA ANA RIVER

RIALTO CHANNEL

S RIVERSIDE AV

W. AGUA MANSA RD

W. CARTER LN

W. DUNN RANCH RD

W. TROPICA

W. HOPKINS RD

W. BRYANT ST

W. ELMAS DR

W. CANTER LN

W. ACCESS RD

W. TERPRISE RD

W. JEFFERSON RD

W. CEMEN RD

W. ORANGEMOOD CR

W. CASA WY

W. JURUPA AV

W. BUNTING CR

W. FORTUNA WY

W. AGUA MANSA

W. HOPKINS

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EXHIBIT "B" - LIST OF FORMER COUNTY OR DISTRICT OFFICIALS

INSTRUCTIONS: List the full name of the former COUNTY or DISTRICT Administrative Official, the title/description of the Official's last position with the DISTRICT, the date the Official terminated COUNTY or DISTRICT employment, the Official's current employment and/or representative capacity with the LICENSEE, the date the Official entered LICENSEE's employment and/or representation.

OFFICIAL'S NAME: REQUIRED INFORMATION